

Local Government (Water Services Preliminary Arrangements) Bill

Government Bill

As reported from the Finance and Expenditure Committee

Commentary

Recommendation

The Finance and Expenditure Committee has examined the Local Government (Water Services Preliminary Arrangements) Bill and Amendment Paper No 41. We recommend by majority that the bill be passed. We recommend all amendments, including incorporating Amendment Paper No 41 into the bill, by majority.

Introduction to the bill

Context

The quality of water services (drinking water, wastewater, and stormwater) is inconsistent across councils. Some councils struggle to maintain their water infrastructure, meet regulatory requirements, invest in upgrades, and provide for housing growth. Water services are a key driver of council expenditure and are putting pressure on councils' debt levels. Significant increases to rates have been proposed.

This bill is the second of three pieces of legislation relating to delivery of water services that the Government has announced it intends to introduce:

- First, the Water Services Acts Repeal Act 2024 repealed the previous Government's approach to reforming water services. It received Royal assent on 16 February 2024.
- Second, this bill would establish preliminary arrangements for the delivery of water services.
- Third, the Government plans to introduce a bill in December 2024 that would establish the enduring legislative settings for water services.

What the bill would do

Water services delivery plans

The bill would require territorial authorities to submit water services delivery plans, within 12 months of the bill's enactment, that:

- include information on the current state of councils' water services.
- set out a strategy for how councils will deliver financially sustainable water services and meet regulatory standards.
- provide information to lay the groundwork for economic regulation of water services.

The bill proposes granting the Minister of Local Government powers in relation to the preparation of these plans, in addition to existing powers in Part 10 of the Local Government Act 2002. The proposed powers include the ability to appoint a Crown facilitator or a Crown water services specialist.

Information disclosure

The bill would also require territorial authorities and council-controlled organisations that provide water services to disclose certain information, where such disclosure would promote the long-term benefit of consumers and support efficiency, innovation, and investment.

Council-controlled organisations

The Local Government Act 2002 allows territorial authorities to establish council-controlled organisations to deliver water services. Under the existing processes, councils are first required to consider all reasonably practicable options for delivering water services, and potentially undertake multiple rounds of community consultation. These requirements can be time consuming and require extensive resourcing.

The bill aims to create streamlined, alternative processes that councils can choose to use when establishing, joining, or amending a water services council-controlled organisation.

Watercare

Watercare Services Limited (Watercare) is a council-controlled organisation that provides water supply and wastewater services in Auckland. The bill would financially separate Watercare from Auckland Council, which should give Watercare greater access to borrowing while preserving the Council's credit rating.

The bill would:

- shift the legislative obligation to provide water supply and wastewater services from Auckland Council to Watercare
- prohibit Auckland Council from providing financial support to Watercare in any situation or under any condition

- enable the Minister of Local Government to appoint a Crown Review Team, Crown Observer, or Crown manager to Watercare if a significant problem arises
- enable interim economic regulation to be developed for Watercare
- enable the appointment of an individual, a Crown entity, or a company under Schedule 4 of the Public Finance Act 1989 as a Crown monitor to Watercare for the purposes of interim economic regulation
- enable the Crown to reimburse Watercare for expenses incurred during an emergency.

Structure of the bill as introduced

The bill is an omnibus bill:

- Clauses 1 to 81 of the bill would become a standalone Act.
- Clauses 83 to 91 would amend the Local Government Act 2002.
- Clauses 93 to 98 would amend the Local Government (Auckland Council) Act 2009.
- Schedule 2 contains consequential amendments related to Watercare Services Limited, and would amend the:
 - Civil Defence Emergency Management Act 2002
 - Local Government (Rating) Act 2002
 - Receiverships Act 1993.
- Amendment Paper 41 (discussed in detail below) would amend the Water Services Act 2021.

Legislative scrutiny

As part of our consideration of the bill, we have examined its consistency with principles of legislative quality. We wish to bring the House's attention to an issue relating to proposed clause 102, which we discuss in more detail later in this commentary under the heading Amendment Paper No 41.

Proposed amendments

This commentary covers the main amendments we recommend to the bill as introduced. We do not discuss minor or technical amendments. We have structured this commentary by clause, rather than thematically.

Amendment Paper No 41

Under Standing Order 295(1)(b), the House authorised us to consider out-of-scope amendments contained in Amendment Paper No 41. We recommend, by majority, incorporating the amendment paper into the bill in its entirety and without any changes to its text.

What the amendment paper would do

The amendment paper would insert clauses 100 to 102 into the bill. These clauses would amend the Water Services Act 2021.

Proposed clause 101 would insert sections 138(3A) and 138(3B) into the Water Services Act. These sections would provide that, when setting wastewater environmental performance standards, Taumata Arowai—the Water Services Regulator must not have regard to the hierarchy of obligations that is part of the concept of *Te Mana o te Wai*. This concept is contained in the National Policy Statement for Freshwater Management 2020 (NPS-FM)¹.

This is intended to be an interim measure, while the Government works to update the NPS-FM. To that effect, proposed clause 102 would insert section 138A into the Water Services Act. This section would allow sections 138(3A), 138(3B), and 138A to be repealed by an Order in Council on the recommendation of the Minister responsible for the administration of the Water Services Act. The Minister would only be able to recommend repealing these sections if the Minister for the Environment recommends replacing, reviewing, changing, or revoking the NPS-FM.

Henry VIII considerations

We note that proposed clause 102 would allow executive action (secondary legislation) to override an Act of Parliament. Specifically, it would allow the repeal of sections 138(3A), 138(3B), and 138A by Order in Council. This is commonly referred to as a Henry VIII provision.

The Regulations Review Committee and New Zealand Law Society expressed concerns about proposed clause 102 and recommended that we remove or amend it. They suggested that Henry VIII clauses should not be used as transitional provisions unless absolutely necessary.

The Legislation Design and Advisory Committee's legislation guidelines state that Henry VIII clauses create a risk of undermining the separation of powers. However, the guidelines also state that not all Henry VIII clauses raise the same level of constitutional concern. The guidelines give an example of a Henry VIII clause that does not pose significant constitutional risk: when the secondary legislation supports a policy intent set by Parliament. In this case, if Parliament passes the amendment paper into law, it would be setting the policy objective of temporarily disapplying the hierarchy of obligations until the NPS-FM is replaced. Clause 102 would enable this policy intent to be met. We view the provisions in the amendment paper as an appropriate mechanism to ensure the legislation can be aligned with an updated NPS-FM.

¹ Taumata Arowai is the entity that regulates water services. *Te Mana o te Wai* is a concept in the NPS-FM that refers to the fundamental importance of water. It includes a framework of six principles and a hierarchy of three obligations.

Further, we note that an Order in Council made under this provision would be secondary legislation subject to Parliamentary presentation and disallowance processes, in accordance with the Legislation Act 2019.

Preliminary provisions

Purpose clause

Clause 3 sets out the purpose of the bill. Clause 3(2)(c) states that the bill would require “territorial authorities to provide other specified foundational information in relation to delivering water services, for the purpose of supporting economic regulation.” We recommend replacing “provide other” with “publicly disclose.” We think this would better reflect the nature of the information disclosure regime, where entities would be required to publicly disclose information.

Definitions

Clause 5 defines terms used in the bill. We recommend numerous amendments to this clause:

- The bill as introduced does not define the term “consumer.” We think a definition is needed because of the nature of stormwater services. As a public good, people paying for stormwater services may not directly “consume” those services. We also note that the Commerce Commission must exercise its powers for long-term benefit of consumers, so a definition of consumer in the context of water services is important. We recommend defining “consumer” as “a person who consumes, uses, acquires, or is provided with, water services.”
- In the bill as introduced, the terms “joint arrangement,” “joint service area,” “joint water services council-controlled organisation or joint WSCCO,” and “joint water services delivery plan or joint plan” are defined with reference to territorial authorities. However, Wellington Regional Council is not a territorial authority. We recommend amending these definitions to accommodate Wellington Regional Council. It is the only regional council that supplies bulk water to territorial authorities in its region, so is in a unique situation.
- The bill as introduced does not define the term “price.” We recommend amending it to define “price” in a way that is consistent with the Commerce Act 1986 and the Telecommunications Act 2001. This would clarify the scope of the information that the Commerce Commission could require to be disclosed under clause 37 of the bill.
- We recommend amending the definition of the term “stormwater network” to align with the definition in the Water Services Act. This would maintain consistency and ensure that the definition adequately captures the interaction between built and natural drainage systems. That Act defines stormwater networks with reference to “urban areas,” which is not a defined term in the bill as introduced. Consequently, we also recommend defining “urban areas,” “green

water services infrastructure,” “overland flow path,” and “watercourse” into the bill.

- We recommend amending the definition of “water supply network” so that water supplies for firefighting are only included when they are part of a drinking water supply.

The definition of “water services” needs to be robust. We acknowledge submissions that the current definition may be too broad for the purposes of economic regulation. Later in this commentary we recommend changes to clauses 32 and 59B, which we think will address some of the concerns raised in submissions. We also acknowledge that further consideration of this matter will be needed during the development of the next water services bill.

Water services delivery plans

Territorial authority must prepare water services delivery plan

Clause 8 of the bill would require each territorial authority to prepare a water services delivery plan. We recommend inserting clause 8(3) to clarify that these plans are one-off occurrences. This should help to address any misunderstandings about the purpose of the plans.

For simplicity, we also recommend amending clause 8(1)(b)(i) to refer to water services rather than stormwater networks, wastewater networks, and water supply networks.

Joint plans

Clause 9 of the bill suggests that territorial authorities need to enter into an “arrangement” for the purpose of submitting a joint plan. However, the policy intent of the clause is to enable territorial authorities to submit a joint plan, and for the joint plan to include information on the proposed arrangement to deliver water services. We recommend amending clause 9 to better reflect this policy intent.

We also recommend amending the bill to enable Wellington Regional Council to be part of a joint water services delivery plan. We discussed Wellington Regional Council’s unique situation more in the Definitions section of this commentary.

Content of water services delivery plans

Clause 11 lists the information that would need to be included in a water services delivery plan. We acknowledge the submissions that asked for greater clarity or additional requirements in this clause. We note that the Department of Internal Affairs is preparing guidance and templates that will assist with the preparation of these plans.

As introduced, clause 11(1)(d) would require plans to describe “whether and to what extent water services comply with regulatory requirements.” We agree with submitters that this provision could be expanded. We recommend also requiring plans to describe whether and to what extent water services will comply with any anticipated future regulatory requirements. We recommend inserting clause 11(1)(da) so, if non-

compliance occurs or is anticipated, plans would be required to describe this non-compliance and how it will be avoided.

Since Watercare provides water supply and wastewater services in Auckland, we recommend inserting clause 10(3) so that Auckland Council only needs to prepare a plan for its stormwater infrastructure and services.

Clause 12(2)(a) sets out that a joint plan may contain “an indicative implementation plan and timeline for the delivery of water services under the joint plan.” We recommend inserting clause 11(1)(ma) to require all water services delivery plans to include an implementation plan. This would give more transparency about what steps councils are taking to implement their plans and provide a basis for accountability. Accordingly, we recommend that the bill prescribe what information must be in an implementation plan by inserting clause 11(1A).

Time period covered by water services delivery plan

Clause 13 would require water services delivery plans to “cover a period of not less than 10 consecutive financial years, starting with the 2024–25 financial year.” We think it would be helpful to amend the bill to specifically enable the plans to cover a longer period. We recommend amending clause 13 to allow plans to include information covering a 30-year period, where that information will help identify future investment requirements for water infrastructure or to support future housing growth and urban development.

Secretary for Local Government and rules relating to plans

Clause 14 would enable the Secretary for Local Government to make rules in relation to water services delivery plans. We recommend amending this clause so the Secretary could only make rules within the 3 months following the bill’s commencement. This would give certainty to councils, while still allowing time for the Secretary to undertake consultation before making a rule.

Minister may grant extension to deadline for submitting plan

Clause 17 would allow the Minister to extend the deadline for an applicant to submit a water services delivery plan. The Minister could grant an extension after receiving an application, or without an application if they are “satisfied that exceptional circumstances justify granting the extension.”

If the Minister grants an extension, clause 17(6) would require the Minister to notify the applicant of the length of the extension. We recommend amending clause 17 so the Minister would also be required to notify applicants if they decide not to grant an extension, or if they grant an extension without having received an application.

Accepted water services delivery plans

Clause 18 requires the Secretary for Local Government to consider each water services delivery plan that is submitted, and to accept it if it complies with requirements.

We acknowledge submissions that expressed concern about a lack of a specified time-frame for this process. We recommend amending clause 18 to require the Secretary to decide on a plan as soon as reasonably practicable. This recognises that the amount of work involved in reviewing plans could vary greatly, while responding to the concerns raised by submitters.

We also recognise that the Secretary may need to consult other entities when reviewing plans. To avoid the risk of omitting specific entities, we recommend amending clause 18(2) so the Secretary may consult any other person they consider relevant.

Giving effect to plans

The bill as introduced does not explicitly require councils to give effect to their water services delivery plans. However, we think councils should commit to their proposed plans and begin working towards implementing them. (We discuss implementation plans above.)

We recommend inserting clause 19A to require councils to give effect to some of the contents of water services delivery plans once those plans are accepted. Specifically, councils should be required to give effect to proposals or undertakings relating to the future delivery of water services. We consider this will ensure that councils commit to implementation and start actioning their plans. This requirement will be especially important where councils have proposed delivering water services jointly with other territorial authorities.

Changing a plan that has been accepted

The bill as introduced would not allow a territorial authority to modify a plan once it has been accepted by the Secretary. Because our proposed changes would require councils to give effect to the anticipated or proposed model or arrangements for delivering water services, we recommend inserting clause 19B to enable a territorial authority to modify a plan after it has been accepted. This way, councils would be committed to a process, but would be able to make changes if this becomes necessary.

Proposed changes to a plan should be submitted to the Secretary for Local Government for consideration. The Secretary should be able to require councils to amend or resubmit the plan.

Giving the Secretary power to monitor plans

We also recommend inserting clause 19C so the Secretary could require territorial authorities to provide information that enables the Secretary to monitor compliance with water services delivery plans. The Secretary is the person who will be receiving the plans, so it is appropriate they have the power to monitor compliance.

Ministerial powers in relation to water services delivery plans

Minister may appoint Crown facilitator

Clause 20 would allow the Minister to appoint a Crown facilitator for water services delivery plans. We agree with submitters that the Minister should be required to

engage with territorial authorities before making this decision. We recommend inserting clause 26A to require the Minister to notify territorial authorities of a proposed appointment of a Crown facilitator before making the appointment. This would be similar to section 258Q of the Local Government Act 2002 (which concerns the appointment of a Ministerial body). This would give territorial authorities an opportunity to respond to the proposed appointment, while preserving the Minister's discretion to appoint a Crown facilitator.

Earlier in this commentary we recommended requiring territorial authorities to give effect to parts of water services delivery plans. We recommend amending clause 20(2) to add new grounds for the Minister to appoint a Crown facilitator: if "the territorial authority or the group of territorial authorities has not given effect to its water services delivery plan." This would further strengthen the requirement to give effect to parts of plans.

How a Crown facilitator is appointed

Clause 21 sets out the process for how the Minister would appoint a Crown facilitator, including what must be contained in the written notice of appointment. To avoid potential uncertainty or disagreement, we recommend amending clause 21 so the notice of appointment must state how the Crown facilitator's costs will be allocated across territorial authorities (if the appointment is being made to a group of authorities).

Clause 21(3) would require the Minister to notify the relevant territorial authorities of any changes to a panel of people appointed to be a Crown facilitator. We recommend also requiring the Minister to notify the other members of the panel.

Clause 21(1)(c) would require the Minister to give notice in the *Gazette* of the appointment of a Crown facilitator. We recommend that information about Crown facilitator appointments should also be made publicly available on a website maintained by the Department of Internal Affairs. This requirement would be consistent with clause 61 of the bill.

Role of Crown facilitator

Clause 22 sets out the role of a Crown facilitator. We recommend expanding the role to account for our earlier recommendation that councils should be required to give effect to parts of water services delivery plans. We recommend amending clause 22 so a Crown facilitator may be appointed to assist, advise, or direct councils in relation to giving effect to the proposals in a water services delivery plan.

Similar changes relating to Crown water services specialist

Clauses 23 to 25 mirror clauses 20 to 22 but relate to the appointment and role of Crown water services specialists instead of Crown facilitators.

Clause 20: Minister may appoint Crown facilitator	Clause 23: Minister may appoint Crown water services specialist
Clause 21: How Crown facilitator appointed	Clause 24: How Crown water services specialist is appointed
Clause 22: Role of Crown facilitator	Clause 25: Role of Crown water services specialist

We recommend amending clauses 23 to 25 in a similar manner to clauses 20 to 22. The reasons for these recommend changes are the same as for our recommended changes to clauses 20 to 22.

Minister retains powers under Part 10 of the Local Government Act

Clause 28 provides that the Minister’s powers under this subpart of the bill would be in addition to, not in place of, the Minister’s powers under Part 10 of the Local Government Act 2002. Part 10 gives the Minister powers to act in relation to a local authority that has a problem. “Problem” is defined in the Local Government Act 2002, and for the purposes of this bill only, is expanded in clause 28(2).

We recommend amending the definition of “problem” in the bill to include a situation where a territorial authority has failed to amend a water services delivery plan by the date specified by the Secretary for Local Government.

Foundational information disclosure requirements

Part 2, Subpart 3 (clauses 32 to 48) is about foundational information disclosure. If a council or council-related provider is specified in an Order in Council, the Commerce Commission would determine the information they are required to disclose.

Purpose and application of this subpart

Clause 32 sets out that the purpose of Part 2, Subpart 3 would be “to promote the long-term benefit of consumers of water services provided by territorial authorities ... by promoting outcomes that are consistent with [those] produced in competitive markets.” In short, it aims to prevent monopolistic outcomes caused by water services providers.

Clause 33 then states that Part 2, Subpart 3 would apply to water services provided by a broader list of entities, not just territorial authorities. We recommend amending clause 32 so it applies to all water services providers that can currently be established under a water services delivery plan, not just territorial authorities. This would ensure that the purpose clause accurately reflects the policy intent that council-controlled organisations for water services should be captured by these provisions.

We also recommend amending clause 32 so that Part 2, Subpart 3 would only apply to water services where there is little or no competition, and little or no likelihood of substantial increases in competition. This recommendation is in response to submissions that the definition of “water services” may be too broad for the purposes of economic regulation, which should be limited to services where there are monopolies.

The Commerce Commission would make determinations under Part 2, Subpart 3. We recommend linking the purpose of Part 2, Subpart 3 to:

- clause 3(1)—The purpose of this Act is to establish a framework for local government to manage and deliver water services.
- and clause 3(2)(c)—This Act delivers that purpose by— requiring territorial authorities to provide other specified foundational information in relation to delivering water services, for the purpose of supporting economic regulation.

In our view, the Commerce Commission should not have to justify its decisions under Part 2, Subpart 3 by reference to the other parts of clause 3, which do not directly relate to information disclosure.

We recommend amending clause 32 so it contains a purpose statement for information disclosure as an economic regulation tool. Having a purpose statement aligned with the Commerce Act and Telecommunications Act would improve certainty, as they are well understood by the Commerce Commission and existing regulated suppliers.

Whether an entity holds information

Clause 33 would require Ministers, before recommending information disclosure through an Order in Council, to believe that the relevant council “holds information.” We think this should be less restrictive and recommend replacing “holds information” with “holds, can prepare, or can produce information.”

Commerce Commission may make determination

Clause 35 would allow the Commerce Commission to determine what information councils would have to disclose.

Under clause 35(2) the Commerce Commission must consult interested parties before making a determination. We think the bill could be clearer about who the Commission can consult. We recommend inserting clause 33A to clarify that the Commerce Commission can consult any interested parties, regardless of whether an Order in Council has been made.

Clause 35(8) states that a determination made under this provision would be secondary legislation. For consistency with the Commerce Act and Telecommunications Act, we recommend amending the bill to grant some exemptions from secondary legislation requirements under the Legislation Act 2019.

We recommend inserting clause 40A into the bill, a levy-making power to recover the costs of the Commerce Commission’s regulatory work under subpart 3 of Part 2. This approach would be consistent with the Commerce Act and the funding of economic regulation for other sectors. It would also provide for continuity until the permanent regime for economic regulation comes into effect.

Watercare and information disclosure

We recommend amending clause 33 to state that Watercare would not be subject to the information disclosure regime under Part 2, subpart 3. Watercare would already be subject to equivalent requirements to disclose information to the Crown monitor under clause 70.

Additional monitoring and investigation powers based on Commerce Act

Clause 40 would give the Commerce Commission additional monitoring and investigation powers to enable it to carry out its functions and exercise its powers under Part 2 of the bill. This clause is modelled on parts of section 53ZD of the Commerce Act. We recommend expanding clause 40 so it covers all the same powers as in section 53ZD.

Sharing of information and documents between Commission and department

Clause 41 would authorise the Commerce Commission and the Department of Internal Affairs to share information with each other for the purposes of the bill. We are concerned that the term “provider of the information” in clause 41(1) is unclear. We recommend amending this clause to clarify that the “provider of the information” refers to either the Commerce Commission or the Department of Internal Affairs.

Clause 41(2)(b) would restrict the Commerce Commission’s use of the information it receives. It could only use the information for the “performance or exercise of its functions, duties, or powers under this Act or under the Commerce Act 1986.” We do not want this clause to limit the Commerce Commission’s ability to use the information it receives to develop the enduring economic regulation that will be part of the Government’s third water services bill. We recommend amending this clause accordingly.

Pecuniary penalties

Clause 42 would authorise the High Court to order the payment of a pecuniary penalty in certain circumstances related to disclosing information under this subpart. We agree with the New Zealand Law Society that the bill should state that the rules of civil procedure and the civil standard of proof apply to proceedings brought under this subpart. We recommend inserting clause 46A accordingly.

Clause 43(3) states that “a person may not be liable to more than 1 pecuniary penalty in respect of the same conduct.” However, they could be liable for a pecuniary penalty and a criminal offence for the same conduct. We recommend inserting clause 46B so a person cannot be ordered to pay a pecuniary penalty and be liable for a fine in respect of the same conduct.

Amendment to Local Government Act

Clause 48 would replace section 255(2) of the Local Government Act 2002 so the Minister may also exercise powers under Part 10 of the Act in relation to territorial authorities or joint arrangements.

We recommend deleting clause 48 and therefore clause 47. They are unnecessary because territorial authorities already fall under Part 10 of the Local Government Act 2002.

Establishing water services council-controlled organisations

Clause 49 sets out the purpose of Part 3 of the bill (clauses 49 to 59):

- to provide alternative consultation and decision-making requirements that territorial authorities can use when establishing, joining, or amending a water services council-controlled organisation
- to give territorial authorities greater flexibility in relation to water services council-controlled organisations by providing additional powers to, or exemptions from, specific Local Government Act provisions.

We recommend inserting clause 49A to reflect that Part 3 may also apply to Wellington Regional Council. (We discuss Wellington Regional Council's unique role in the Definitions section of this commentary.)

Section 137 of the Local Government Act 2002 requires a local government organisation to undertake consultation before entering into a "joint local government arrangement" (defined as "an arrangement entered into by 2 or more local government organisations for the purpose of providing water services or any aspect of a water service"). Given this requirement to undertake consultation, councils considering a "joint local government arrangement" would benefit from access to the alternative consultation and decision-making processes proposed by the bill. We recommend amending clause 49 so that Part 3 applies to situations where 2 or more territorial authorities (and Wellington Regional Council, if relevant) are considering entering into a "joint local government arrangement."

Principles of consultation under the Local Government Act

Clause 50 would allow territorial authorities to use any of the alternative requirements set out in clauses 51 to 54 instead of the obligations that would otherwise apply under the Local Government Act 2002.

Section 82 of the Local Government Act 2002 requires consultation by local authorities to be in accordance with a list of principles. For the avoidance of doubt, we recommend amending clause 50 of the bill to specify that section 82 of the Local Government Act 2002 applies even if any of the alternative requirements are used.

Information that must be made publicly available

Clause 54 would require territorial authorities to make certain information publicly available when consulting in relation to establishing, joining, or amending a water services council-controlled organisation.

The bill as introduced does not define the term "publicly available." For consistency with the Local Government Act 2002, we recommend inserting a definition of the term into clause 54.

We recommend amending clause 54 to explicitly require territorial authorities to make publicly available information about how proposed changes could affect what people are charged for water services. We understand that this was intended to be captured in clauses 54(1)(c) and (d), which refer to the likely consequences of proceeding, or not proceeding, with a proposal on rates. We think it should be made explicit.

Watercare Services Limited

Part 4 of the bill (clauses 60 to 99) are about Watercare, the council-controlled organisation that provides drinking water and wastewater services in Auckland.

Crown monitor

Clause 60 would allow the Minister to appoint a Crown monitor to Watercare. We recommend inserting clause 60A to include a definition of Crown monitor. The term is not defined in the bill as introduced and differs from other types of Crown monitors in other legislation. A Crown monitor should be defined in the bill as “the Crown monitor for the interim economic regulation of Watercare appointed under section 60.”

Setting Watercare’s charter

Clause 62 sets out what the role of the Crown monitor would entail. In the bill as introduced, the role would include preparing a charter for Watercare. Auckland Council submitted that the power of the Crown monitor to prepare the Watercare charter extends too far. It does not want the Crown monitor to have the exclusive power to make the charter.

We recognise that the role of setting the charter is important given the implications for Watercare, Auckland Council, and consumers. We agree with Auckland Council that it has significant interest in the charter on behalf of its residents. However, we do not think it is appropriate for Auckland Council, as the owner of Watercare, to have joint responsibility for setting the charter. Joint responsibility could lead to unnecessary confusion and tension. Also, there could be a perception that Auckland Council had a strong level of control over decisions related to Watercare’s pricing, investment, and borrowing. This runs the risk of credit rating agencies consolidating Watercare’s borrowing onto Auckland Council’s balance sheet.

Instead, we recommend inserting clauses 62A and 62B so the Secretary for Local Government would prepare the Watercare charter in consultation with Auckland Council, Watercare, Taumata Arowai, and the Commerce Commission. The Secretary would then submit it to the Minister of Local Government for approval. The Secretary should also have the power to consult any other person they think appropriate in the preparation of the plan. This model would prevent a concentration of power in the Crown monitor, while maintaining an appropriate level of separation between Auckland Council and the preparation of the charter. The role of the Crown monitor would then be to:

- review, and provide comments on, Watercare’s business plan
- monitor, and report on, Watercare’s performance against the charter
- take action to address any failure by Watercare to comply with the charter, if necessary.

Watercare's business plan

Clause 62(2) would enable the Crown monitor to specify the form and content of the business plan that Watercare would be required to submit. The Crown monitor would also be able to specify the order in which Watercare must submit each component of a business plan.

We acknowledge Auckland Council's concern that clause 62(2) could impose onerous compliance requirements on Watercare. To address this concern, we recommend inserting clause 65(5) to require the Crown monitor to have regard to Watercare's existing obligations under the Local Government Act 2002.

Customer compensation scheme

Clause 63(2)(a)(iii) would require the Watercare charter to include a customer compensation scheme. This scheme would involve compensating customers if Watercare fails to meet a minimum standard for service quality.

We acknowledge Auckland Council's concern about the potential cost of a mandatory scheme. We also agree that it may be preferable for the money to be paid out to consumers under such a scheme to instead be invested in assets. On the other hand, we note that consumer compensation schemes are common internationally.

On balance, we recommend amending this provision to make the customer compensation scheme optional. This could be re-considered when the permanent regulatory scheme is designed.

Finalising Watercare's business plan

Clause 67 would require the Crown monitor to review Watercare's draft business plan and provide comments. Watercare would then be required to submit a finalised business plan that "gives effect to" any comments received and includes any additional information the monitor requested.

We agree with Auckland Council that the requirement for Watercare to give effect to any comments received goes too far. We recommend amending clause 67(2)(b) so Watercare would only be required to "take into account" any comments received, rather than give effect to them.

The intent behind requiring Watercare to give effect to the comments from the monitor was to ensure that the business plan is consistent with the requirements of the charter. Since we are recommending softening clause 67(2)(b), we recommend inserting clause 67(2A) to require Watercare to ensure that the final business plan is consistent with the requirements of the charter.

Content of Watercare's charter

Clause 68(1) would require Watercare's charter to include certain information about a price-quality path. A price-quality path would involve, among other things, the minimum or maximum prices that Watercare could charge for its services and the minimum standards Watercare would be required to meet.

Auckland Council recommended deleting clause 68(3), (4), and (5) because it thinks they would introduce too much complexity during the interim period of economic regulation. These subclauses would allow, but not require, the price-quality path to include certain incentives and performance requirements. We do not recommend deleting these clauses as it could increase uncertainty about what could be included in the charter.

Auckland Council recommended that, if these subclauses were retained, the optional incentives and performance requirements should only be included in the charter if they promote the long-term benefit of consumers of water services. This provision would be similar to the purpose statement for Part 2, subpart 3.

We think a purpose statement would be helpful in guiding the preparation of Watercare's charter. We recommend inserting clause 59A: a purpose statement for Part 4 of the bill that is similar to the purpose statement for Part 2, subpart 3. The new purpose statement is consistent with section 57(1)(a) of the Local Government (Auckland Council) Act 2009, which requires Watercare to maintain its operations efficiently.

We note, however, that the bill already has a general purpose (clause 3(2)). We recommend limiting the purpose of Part 4 to the purpose in clause 3(2)(e), which is the only paragraph in clause 3(2) relevant to Watercare.

We recommend inserting clause 59B so that Part 4 only applies to goods and services supplied by Watercare where there is little or no competition, and little or no likelihood of a substantial increase in competition. This mirrors our recommended changes to the purpose clause for Part 2, subpart 3. Economic regulation should be limited to monopoly services. It should not apply to goods and services supplied in a competitive market.

Crown monitor to monitor and report on performance

Clause 71 would require the Crown monitor to monitor Watercare's performance under the charter. Clause 71(2) would entitle the Crown monitor to attend any meeting of the board of Watercare. We acknowledge Auckland Council's concern that the Crown monitor having an unfettered ability to attend board meetings could confuse accountabilities. We recommend amending clause 71 so the Crown monitor could only attend Watercare board meetings when it is necessary to perform or exercise its functions, duties, or powers under the bill.

Crown monitor's expenses are recoverable from Watercare

Clause 74 would require Watercare to reimburse the Crown monitor for expenses incurred in monitoring Watercare. Earlier in this commentary, we have recommended reducing the Crown monitor's role. We have recommended making the Secretary for Local Government responsible for preparing Watercare's charter, rather than it being the responsibility of the Crown monitor. Accordingly, we recommend amending clause 74 to enable the Crown to recover from Watercare the Secretary for Local Government's costs associated with preparing the charter.

As introduced, clause 74 would allow only the expenses of the Crown monitor to be recovered. We recommend amending clause 74 to also allow the cost of their remuneration to be recovered. This would ensure that all costs can be recovered.

Finally, we think clause 74 could be further improved by requiring the Minister to consult Auckland Council and Watercare before determining the terms and conditions for the recovery of expenses. We recommend amending the bill accordingly.

Commerce Commission's functions and powers

Clause 75 sets out what the Commerce Commission's functions and powers would be. As a Crown entity, the Commerce Commission can only do what it is specifically empowered to do by legislation. We recommend amending clause 75 to enable the Commerce Commission to provide services to the Crown monitor or the Secretary for Local Government if it is not appointed to be Crown monitor itself. This amendment would ensure that arrangements for the Crown monitor can be flexible.

High Court may impose orders

Clause 76 would enable the High Court to make various orders (including an injunction or an order to pay a pecuniary penalty) if Watercare contravenes the charter. In line with our recommended amendment to clause 42, we recommend amending clause 76 to state that the rules of civil procedure and the civil standard of proof apply to proceedings brought under this subpart.

Clause 77 provides that the maximum pecuniary penalty payable under clause 76 is \$10,000,000. We recommend lowering the amount to \$5,000,000. This would be consistent with section 87 of the Commerce Act, while still retaining the deterrence value of the penalty.

Clause 78 would enable the High Court to make an order to pay a pecuniary penalty if Watercare did not provide required information or submit a business plan under clause 65. Clause 79 would set the maximum pecuniary penalty payable under clause 78 at \$300,000. We recommend increasing this to \$5,000,000 for consistency with our recommended change to clause 77.

Application of the Official Information Act

We agree with the Office of the Ombudsman that the Crown monitor should be subject to the Official Information Act 1982 and the Ombudsmen Act 1975. Accordingly, we recommend amending Schedule 2 of the bill, which would insert the Crown monitor into Schedule 1 of the Ombudsmen Act 1975.

New Zealand Labour Party differing view

The Labour Party members on this committee oppose the passing of this bill. Within this bill are a number of measures that will inevitably leave local councils and rate-payers paying more for water services.

The local government sector was promised by the incoming Government that once water reform was repealed local councils would be financially supported by the Gov-

ernment. The bill does not follow through with that promise. The Department of Internal Affairs advice shows that most ratepayers will pay more than they otherwise would have under water reform.

This bill provides no tangible way forward for local councils, while requiring additional work from them without resourcing to cover the cost. The local government sector has been clear that any additional requirements placed upon them by the Government must come with financial support, otherwise this will result in even higher rates increases. It is the view of the Labour members that by not providing financial assistance to local councils, this bill will add to cost pressures on households, given rates rises are currently one of the major contributors to cost of living increases.

The bill also fails to reassure local councils, especially smaller and rural councils and those under financial strain, that they will not be left to manage water services by themselves. Under such a scenario, this would essentially mean the status quo, which the local government sector has stated is unsustainable. Many smaller and rural councils are facing costs to maintain and upgrade water services that are unaffordable without the scale and efficiencies that come with joining with other councils. This bill leaves that process up to the goodwill of their neighbouring councils. This does not adequately provide councils and ratepayers with the reassurances they seek in regards to affordability and sustainability moving forward.

In addition, while there remains broad support for Taumata Arowai as the water regulator, the bill does not provide clarity regarding funding and direction for local councils that do not have the resources to make the regulatory requirements work.

In essence, the Labour members view this bill as imposing more compliance on local councils and ratepayers without any clear benefit. This is a missed opportunity that will only increase uncertainty for councils who now face being forced to increase rates yet again, possibly to levels unaffordable for many.

Green Party of Aotearoa New Zealand differing view

The Green Party opposes the Local Government (Water Services Preliminary Arrangements) Bill. We are disappointed in the extremely short time frame of only 10 days for submissions, which meant that many councils and communities were unable to have their voices heard on legislation that has significant implications for their health, local community, and environment.

The definition of financial sustainability is too narrow to provide for more comprehensive decision-making that ensures long-term resilience. We agree with submitters that it should be expanded to include debt and future borrowing, affordability for communities, and environmental sustainability.

The 10-year minimum timeframe for Water Services Delivery Plans is insufficient when planning for resilient water infrastructure and water services, particularly with increasing climate impacts. Short-term plans may constrain investment and lead to maladaptation, whereas long-term plans will promote sustained improvements in water quality and infrastructure resilience. Water service infrastructure is an intergenerational investment and a required time frame of 30 years minimum with a require-

ment to consider climate change, as recommended by numerous submitters, would ensure long term viability of investment. It would also be in line with existing council requirements for future development and infrastructure strategies.

While it is a positive step that Greater Wellington Regional Council has been included in the bill, the general exclusion of regional councils undermines the collaborative approach needed for effective water service decision-making and delivery. All regional councils should be able to be included in the planning, alternative consultation, and joint water service arrangements decision-making requirements alongside territorial authorities to allow for elected voices that represent the needs of the wider community outside of individual territorial authority boundaries.

The removal of Taumata Arowai being able to consider Te Mana o Te Wai when setting wastewater standards is inappropriate, short-sighted, and introduces considerable complexity and uncertainty. We agree with submitters that Te Mana o te Wai was designed as a “cohesive whole” and that the removal of Te Mana o Te Wai provisions would be a significant step backward for New Zealand’s water management. We note submissions from public health experts who consider this step as deprioritising the safety and quality of people’s drinking water and potentially increasing the risk of illness from polluted drinking water. In addition, we are concerned this could result in locking in further underinvestment through substandard infrastructure decision-making, with resulting detrimental implications for human and ecosystem health. That the removal of Te Mana o Te Wai provisions were tacked on in a last-minute amendment paper shows how little time and consideration was given to these changes by the Government. We agree with the Regulations Review Committee and New Zealand Law Society that the proposed amendment is a Henry VIII clause. As such, it should be removed.

The role of Iwi/Māori partnerships and the Crown’s Te Tiriti o Waitangi obligations should be emphasised in water service delivery, even in this preliminary bill. Meaningful consultation and collaboration with Iwi/Māori is essential for respecting and upholding their rights and ensuring that water management practices align with cultural values and Te Tiriti obligations. The bill should provide clear mechanisms for engaging with Iwi/Māori and protecting their interests in water services.

Finally, we would have liked to have seen the committee adopt the submissions from local government in granting a more pragmatic 18 to 24-month timeframe for submitting their Water Services Delivery Plans; working together on a more clearly defined definition of stormwater and better integration with existing planning frameworks and processes such as the Long term/annual plan processes and the Future Development Strategy development and review. These changes would allow for more fit-for-purpose legislation that is integrated with existing planning processes and ensure Aotearoa’s infrastructure deficit and the resulting impacts on human and ecosystem health are more comprehensively addressed.

The bill requires substantial revisions to address its shortcomings. Expanding the definition of financial sustainability, requiring long-term planning, including all regional councils, providing a clear 30-year timeframe for Water Services Delivery Plans that

require climate considerations, retaining Te Mana o Te Wai provisions, and upholding Iwi/Māori partnerships are crucial steps toward effective and equitable water service delivery.

In the absence of these changes, the Green Party is disappointed by this missed opportunity to prioritise the health and wellbeing of our communities and our environment in addressing Aotearoa's infrastructure needs. We oppose the bill.

Appendix

Committee process

The Local Government (Water Services Preliminary Arrangements) Bill was referred to our committee during a sitting of the House that began on 30 May 2024. The calendar date the bill was referred to us was 1 June 2024. The House instructed us to report the bill back no later than 18 July 2024.

Under Standing Order 295(1)(b), the House gave us the power to consider out-of-scope amendments set out in Amendment Paper No 41.

On 4 June 2024, we called for submissions on the bill and the amendment paper with a closing date of 13 June 2024. We received and considered submissions from 187 interested groups and individuals. We heard oral evidence from 53 submitters at hearings held in Wellington and by videoconference. We invited the Minister of Local Government to make an oral submission.

The Department of Internal Affairs, the Ministry of Business, Innovation and Employment, and Taumata Arowai provided advice on the bill. The Office of the Clerk provided advice on the bill's legislative quality. The Regulations Review Committee wrote to us about proposed clause 102. The Parliamentary Counsel Office assisted with legal drafting.

Committee membership

Stuart Smith (Chairperson)

Jamie Arbuckle

Hon Barbara Edmonds

Ryan Hamilton

Nancy Lu

Hon Dr Deborah Russell

Todd Stephenson

Chlöe Swarbrick

Rawiri Waititi

Catherine Wedd

Hon Dr Megan Woods

Shanan Halbert and Lan Pham participated in our consideration of this bill.

Related resources

The documents we received as advice and evidence are available on the Parliament website.

**Local Government (Water Services Preliminary
Arrangements) Bill**

Key to symbols used in reprinted bill

As reported from a select committee

text inserted by a majority

~~text deleted by a majority~~

Hon Simeon Brown

Local Government (Water Services Preliminary Arrangements) Bill

Government Bill

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Local Government (Water Services Preliminary Arrangements) Act **2024**.

2 Commencement

- (1) This Act comes into force on the day after Royal assent.
- (2) However, **sections 82 to 99 and Schedule 2** come into force on a date or dates set by Order in Council made on the recommendation of the Minister.
- (3) Any provision of this Act that has not come into force by **1 July 2025** comes into force then. 5
- (4) An Order in Council made under this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Part 1 Preliminary provisions 10

3 Purpose

- (1) The purpose of this Act is to establish a framework for local government to manage and deliver water services.
- (2) This Act delivers that purpose by—
 - (a) requiring territorial authorities to prepare water services delivery plans; and 15
 - (b) providing for the Minister to assist or intervene if territorial authorities find it difficult to prepare a water services delivery plan; and
 - (c) requiring territorial authorities to ~~provide other~~ publicly disclose specified foundational information in relation to delivering water services, for the purpose of supporting economic regulation; and 20
 - (d) providing specific consultation and decision-making processes that territorial authorities may use to establish, join, or amend council-controlled organisations that will deliver water services; and
 - (e) providing a financially sustainable model for Watercare to be financially separate from Auckland Council and an interim economic regulation regime for Watercare that is administered by a Crown monitor. 25

4 Overview

- (1) This Part provides for preliminary matters, including the purpose of this Act and the definitions of terms and expressions used in this Act. 30
- (2) **Part 2** has the following subparts:
 - (a) **subpart 1**, which requires territorial authorities to prepare and submit water services delivery plans:
 - (b) **subpart 2**, which relates to Ministerial powers in relation to water services delivery plans: 35
 - (c) **subpart 3**, which sets out a framework for specified territorial authorities to disclose additional foundational information for the purposes of

- economic regulation, and also includes provisions relating to information sharing and enforcement.
- (3) **Part 3** sets out consultation and decision-making processes that territorial authorities may use when establishing, joining, or amending a water services council-controlled organisation. 5
- (4) **Part 4** sets out specific requirements for Watercare to be financially separate from Auckland Council, including the requirement for the Minister to appoint a Crown monitor and the requirement to have a Watercare charter.
- (5) **Part 5** amends section 138 of the Water Services Act 2021 by removing the requirement for Taumata Arowai to have regard to the hierarchy of obligations contained in the National Policy Statement for Freshwater Management when making wastewater environmental performance standards. It also authorises, in certain circumstances, the amendment to be reversed by the Governor-General making an Order in Council. 10
- 5 Interpretation** 15
- In this Act, unless the context otherwise requires,—
- ~~amend, in relation to a council-controlled organisation, means to amend—~~
- (a) ~~the constitution of the organisation; or~~
- (b) ~~any other rules or documents that constitute the organisation or govern its activities~~ 20
- Commission** means the Commerce Commission established by section 8 of the Commerce Act 1986
- consumer** means a person who consumes, uses, acquires, or is provided with, water services
- council-controlled organisation** has the meaning set out in section 6(1) of the Local Government Act 2002 25
- Crown facilitator** means a Crown facilitator for water services delivery plans appointed under **section 20**
- Crown water services specialist** means a Crown water services specialist appointed under **section 23** 30
- department** means the department, departmental agency, or interdepartmental venture (as named in Part 1, 2, or 4 of Schedule 2 of the Public Service Act 2020) that, with the authority of the Prime Minister, is responsible for the administration of this Act
- drinking water supply** has the meaning set out in section 9 of the Water Services Act 2021 35
- financial year** means a period of 12 months ending on 30 June

financially sustainable means, in relation to a territorial authority's delivery of water services, that—

- (a) the revenue applied to the authority's delivery of those water services is sufficient to ensure the authority's long-term investment in delivering water services; and
- (b) the authority is financially able to meet all regulatory standards and requirements for the authority's delivery of those water services

5

firefighting water supplies has the meaning set out in section 6 of the Fire and Emergency New Zealand Act 2017

government department means a department listed in Part 1 of Schedule 2 of the Public Service Act 2020

10

green water services infrastructure—

- (a) means a natural or semi-natural area, feature, or process that mimics natural areas, features, or processes that are planned or managed to provide water services; and
- (b) includes an engineered system that is an area, feature, or process that complies with **paragraph (a)**

15

joint arrangement means an arrangement ~~between 2 or more territorial authorities to deliver water services (see **section 9**)~~ between—

- (a) 2 or more territorial authorities; or
- (b) the Wellington Regional Council and 1 or more territorial authorities

20

joint service area means,—

- (a) in relation to a joint arrangement, the combined districts of the territorial authorities that are a party to the joint arrangement (and, if applicable, the relevant part of the Wellington Regional Council's region); or
- (b) in relation to a joint WSCCO, the combined districts of the territorial authorities that control the joint WSCCO (and, if applicable, the relevant part of the Wellington Regional Council's region)

25

joint water services council-controlled organisation or **joint WSCCO** means a water services council-controlled organisation—

30

- (a) controlled by 2 or more territorial authorities; or
- (aa) controlled by the Wellington Regional Council and 1 or more territorial authorities; or
- (b) in which 2 or more territorial authorities are shareholders; or
- (c) in which the Wellington Regional Council and 1 or more territorial authorities are shareholders

35

joint water services delivery plan or **joint plan** means a water services delivery plan relating to ~~2 or more territorial authorities~~ —

- (a) 2 or more territorial authorities; or

(b) the Wellington Regional Council and 1 or more territorial authorities

LGA2002 means the Local Government Act 2002

long-term plan has the meaning set out in section 5(1) of the LGA2002

Minister means the Minister of the Crown who, under the authority of a warrant or with the authority of the Prime Minister, is responsible for the administration of this Act 5

ministerial appointee means—

(a) a Crown facilitator for water services delivery plans appointed under **section 20**; or

(b) a Crown water services specialist appointed under **section 23** 10

overland flow path means any flow path taken by stormwater on the surface of land

price—

(a) means any 1 or more of individual prices, aggregate prices, or revenues (whether in the form of specific numbers, or in the form of formulas by which specific numbers are derived); and 15

(b) includes any related terms of payment

Secretary means the Secretary for Local Government

~~**stormwater network** means the infrastructure and processes that —~~

~~(a) are used to collect, treat, drain, reuse, or discharge stormwater in an urban area; and~~ 20

~~(b) are owned by, or operated by, for, or on behalf of a territorial authority, a council-controlled organisation, or a subsidiary of a council-controlled organisation~~

(a) means the infrastructure and processes that— 25

(i) are used to collect, treat, drain, reuse, or discharge stormwater in an urban area; and

(ii) are owned by, or operated by, for, or on behalf of a territorial authority, a council-controlled organisation, or a subsidiary of a council-controlled organisation; and 30

(b) includes—

(i) an overland flow path;

(ii) green water services infrastructure that delivers stormwater services;

(iii) watercourses that are part of, or related to, the infrastructure described in **paragraph (a)** 35

Taumata Arowai means Taumata Arowai—the Water Services Regulator established by section 8 of the Taumata Arowai—the Water Services Regulator Act 2020

territorial authority has the meaning set out in section 5(1) of the LGA2002

urban area— 5

(a) means an area identified in a district plan or proposed district plan as being primarily zoned for residential, industrial, or commercial activities, together with adjoining special-purpose and open-space zones, however described; but

(b) does not include an area zoned primarily for rural or rural-residential activities, however described 10

urban development has the meaning set out in section 10 of the Urban Development Act 2020

wastewater network means the infrastructure and processes that—

(a) are used to collect, store, transmit through reticulation, treat, or discharge wastewater; and 15

(b) are owned by, or operated by, for, or on behalf of a territorial authority, a council-controlled organisation, or a subsidiary of a council-controlled organisation

water services means services in relation to a territorial authority's— 20

(a) water supply network:

(b) stormwater network:

(c) wastewater network

water services council-controlled organisation or **WSCCO**—

(a) means a council-controlled organisation that— 25

(i) delivers water services; or

(ii) provides goods or services that are incidental and related to, or consequential on, delivering water services; and

(b) includes a joint water services council-controlled organisation; but

(c) does not include a council-controlled organisation that provides goods or services other than those listed in **paragraph (a)** 30

water services delivery plan—

(a) means a water services delivery plan prepared under **subpart 1 of Part 2**; and

(b) includes a joint water services delivery plan 35

water supply network means the infrastructure and processes that—

(a) are used to provide ~~firefighting water supplies or drinking water supply;~~ and

- (i) a drinking water supply; or
- (ii) firefighting water supplies, if the supply is part of a drinking water supply; and
- (b) are owned by, or operated by, for, or on behalf of a territorial authority, a council-controlled organisation, or a subsidiary of a council-controlled organisation 5
- Watercare** means Watercare Services Limited and includes any subsidiary of Watercare Services Limited.
- watercourse** means a watercourse that is part of, or related to, the drainage or discharge of stormwater in an urban area. 10
- 6 Transitional, savings, and related provisions**
- The transitional, savings, and related provisions (if any) set out in **Schedule 1** have effect according to their terms.
- 7 Act binds the Crown**
- This Act binds the Crown. 15

Part 2

Water services delivery plans and foundational information disclosure requirements

Subpart 1—Water services delivery plans

- Water services delivery plan: preparation and contents* 20
- 8 Territorial authority must prepare water services delivery plan**
- (1) Each territorial authority must prepare a water services delivery plan that—
- (a) identifies the current state of the authority’s water services; and
- (b) demonstrates publicly its commitment to deliver water services in a way that— 25
- (i) ensures that the territorial authority will meet all relevant regulatory quality standards for its ~~stormwater network, wastewater network, and water supply network~~ water services; and
- (ii) is financially sustainable for the territorial authority; and
- (iii) ensures that the territorial authority will meet all drinking water quality standards; and 30
- (iv) supports the territorial authority’s housing growth and urban development, as specified in the territorial authority’s long-term plan.
- (2) **Subsection (1)** is subject to **section 9(3)**. 35

(3) To avoid doubt, this Act requires each territorial authority to prepare and have accepted a water services delivery plan only once (however, see **section 19B** for the circumstances in which a water services delivery plan may be amended).

8A Reference to territorial authority includes Wellington Regional Council 5

In the following provisions, a reference to a territorial authority includes, where applicable, a reference to the Wellington Regional Council:

- (a) sections 9, 9A, 10, 11, 12, 14, 15, 16, 17, 19A, and 19B:
- (b) to the extent they are used in the sections listed in paragraph (a), the definitions in section 5. 10

9 Territorial authorities may ~~enter into an arrangement to~~ submit joint plan

(1) A territorial authority may, in the circumstances described in **subsection (2)**, ~~enter into an arrangement with 1 or more other territorial authorities for the purpose of submitting~~ submit a joint water services delivery plan with 1 or more other territorial authorities, in relation to delivering ~~the~~ water services in the joint service area covered by ~~that a joint~~ arrangement. 15

(2) For the purposes of **subsection (1)**, the circumstances are that the territorial authorities anticipate or propose delivering water services through a joint arrangement, as set out in ~~a~~ the joint water services delivery plan.

(3) If 2 or more territorial authorities ~~enter into an arrangement to~~ decide to submit a joint plan, the territorial authorities are required to prepare only 1 water services delivery plan in respect of the joint service area. 20

- (4) ~~A joint arrangement must relate to the delivery of~~
- (a) ~~all water services for all of the territorial authorities; or~~
 - (b) ~~all water services except for some or all services relating to all of the territorial authorities' stormwater networks; or~~ 25
 - (c) ~~all water services for some of the territorial authorities, and all water services except for some or all services relating to stormwater networks for the other territorial authorities.~~

Example 30

~~Territorial authorities A, B, and C join together to form a joint arrangement. The joint arrangement relates to the delivery of all water services for territorial authorities A and B, but territorial authority C joins the joint arrangement in relation to water services other than those services relating to its stormwater network. Territorial authority C will deliver its services related to stormwater networks independently, rather than through the joint arrangement.~~ 35

~~Alternatively, territorial authority C may join the joint arrangement in relation to water services other than some of its services relating to its stormwater network, and choose to deliver the remaining stormwater services independently.~~

9A **Extent of joint arrangement**

A joint arrangement must relate to the delivery of—

- (a) all water services for all of the territorial authorities; or
- (b) all water services except for some or all services relating to all of the territorial authorities' stormwater networks; or
- (c) all water services for some of the territorial authorities, and all water services except for some or all services relating to stormwater networks for the other territorial authorities.

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Example

Territorial authorities A, B, and C join together to form a joint arrangement. The joint arrangement relates to the delivery of all water services for territorial authorities A and B, but territorial authority C joins the joint arrangement in relation to water services other than those services relating to its stormwater network. Territorial authority C will deliver its services related to stormwater networks independently, rather than through the joint arrangement.

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Alternatively, territorial authority C may join the joint arrangement in relation to water services other than some of its services relating to its stormwater network, and choose to deliver the remaining stormwater services independently.

10 **Water services to be covered by water services delivery plan**

- (1) A water services delivery plan must relate to all water services.
- (2) To avoid doubt, if a joint arrangement relates to the delivery of all water services except some or all of those relating to 1 or more of the authorities' stormwater networks, the joint plan must relate to the delivery of all water services in the joint service area.

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Example

Territorial authorities A, B, and C join together to form a joint arrangement. The joint arrangement relates to the delivery of all water services for territorial authorities A and B, but territorial authority C joins the joint arrangement in relation to water services other than those services relating to its stormwater network. The joint plan must contain the required information in relation to all water services for all 3 territorial authorities, including information about territorial authority C's delivery of services relating to its stormwater network.

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- (3) Despite **subsection (1)**, the water services delivery plan for the Auckland Council need not relate to water services that relate to its water supply network or its wastewater network.

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11 **Contents of water services delivery plan**

- (1) A territorial authority's water services delivery plan must contain the following information in relation to the water services delivered in the authority's district:
 - (a) a description of the current state of the water services network:

- (b) a description of the current levels of service relating to water services provided:
- (c) a description of—
 - (i) the areas in the district that receive water services (including a description of any areas in the district that do not receive water services); and
 - (ii) the water services infrastructure associated with providing for population growth and development capacity:
- (d) whether and to what extent water services ~~comply with regulatory requirements:—~~
 - (i) comply with current regulatory requirements:
 - (ii) will comply with any anticipated future regulatory requirements:
- (da) if any water services do not comply with current regulatory requirements or will not comply with any anticipated future regulatory requirements,—
 - (i) a description of the non-compliance; and
 - (ii) a description of how the anticipated or proposed model or arrangements provided under **paragraph (j)** will assist to ensure water services will comply:
- (e) details of the capital and operational expenditure required—
 - (i) to deliver the water services; and
 - (ii) to ensure that water services comply with regulatory requirements:
- (f) financial projections for delivering water services over the period covered by the plan, including—
 - (i) the operating costs and revenue required to deliver water services; and
 - (ii) projected capital expenditure on water services infrastructure; and
 - (iii) projected borrowing to deliver water services:
- (g) an assessment of the current condition, lifespan, and value of the water services ~~network~~ networks:
- (h) a description of the asset management approach being used, including capital, maintenance, and operational programmes for delivering water services:
- (i) a description of any issues, constraints, and risks that impact on delivering water services:
- (j) the anticipated or proposed model or arrangements for delivering water services (including whether the territorial authority is likely to enter into

- a joint arrangement under **section 9** or will continue to deliver water services in its district alone):
- (k) an explanation of how the revenue from, and delivery of, water services will be separated from the territorial authority's other functions and activities: 5
- (l) a summary of any consultation undertaken as part of developing the information required to be included in the plan under **paragraphs (j) and (k)**:
- (m) an explanation of what the territorial authority proposes to do to ensure that the delivery of water services will be financially sustainable by 30 June 2028: 10
- (ma) an implementation plan—
- (i) for delivering the proposed model or arrangements described under **paragraph (j)**; and
- (ii) if a territorial authority is proposing to deliver water services itself and not as part of a joint arrangement for delivering water services, that sets out the action that the territorial authority will take to ensure its delivery of water services will be financially sustainable by 30 June 2028: 15
- (n) any other information prescribed in rules made by the Secretary under **section 14.** 20
- (1A) For the purposes of **subsection (1)(ma)**, an implementation plan must include the following:
- (a) a process for delivering the proposed model or arrangements:
- (b) a commitment to give effect to the proposed model or arrangements once the plan is accepted: 25
- (c) the name of each territorial authority that commits to delivering the proposed model or arrangements:
- (d) the time frames and milestones for delivering the proposed model or arrangements. 30
- (2) A water services delivery plan must also comply with any requirements prescribed in rules made by the Secretary under **section 14.**
- 12 ~~Additional requirements for~~ Contents of joint water services delivery plans**
- (1) A joint water services delivery plan must contain the following: 35
- (a) information that clearly identifies each territorial authority that is proposed to be a party to the joint arrangement:
- (b) information as to whether the joint arrangement will deliver—

- (i) all water services for all of the territorial authorities that are parties to the joint arrangement; or
- (ii) all water services except for some or all services in relation to all of the territorial authorities' stormwater networks; or
- (iii) all water services for some of the territorial authorities, and all water services except for some or all services in relation to stormwater networks for the other territorial authorities: 5
- (c) all of the information listed in **section 11**:
- (d) information on the likely form of the joint arrangement, including whether it is anticipated it will involve water services being delivered by— 10
 - (i) a joint WSCCO; or
 - (ii) ~~a joint local government arrangement or joint arrangement under an arrangement described in~~ section 137 of the LGA2002; or
 - (iii) another organisation or arrangement that the territorial authorities are considering. 15
- ~~(2) A joint water services delivery plan may also contain the following information to the extent that the information is available when the plan is submitted to the Secretary under **section 16**:~~
 - ~~(a) an indicative implementation plan and timeline for the delivery of water services under the joint plan: 20~~
 - ~~(b) further information about the joint arrangement, including the ownership structure, the governance structure, and the control and financial rights of each territorial authority in the joint arrangement.~~
- (2) To the extent that further information about the joint arrangement is available when the plan is submitted to the Secretary under **section 16**, a joint water services delivery plan may also contain that information, including— 25
 - (a) the ownership structure; and
 - (b) the governance structure; and
 - (c) the control and financial rights of each territorial authority in the joint arrangement. 30
- (3) For the purposes of **subsection (1)(c)**, a joint plan must contain the information required under **section 11** in relation to—
 - (a) each territorial authority that is a party to the joint arrangement; and
 - (b) all water services delivered in the joint service area (including services relating to each territorial authority's stormwater network). 35
- (4) **Subsection (1)(c)** applies to a territorial authority's delivery of water services relating to its stormwater network even if the delivery of those services is not part of the joint arrangement.

- (5) A joint plan must also comply with any requirements prescribed in rules made by the Secretary under **section 14**.
- 13 Period covered by water services delivery plan**
- (1) A water services delivery plan ~~must cover a period of not less than 10 consecutive financial years, starting with the 2024–25 financial year.~~ 5
- (a) must cover a period of not less than 10 consecutive financial years, starting with the 2024–25 financial year; and
- (b) may include information that covers an additional 20 consecutive years, if the information identifies investment requirements—
- (i) for water services infrastructure; or 10
- (ii) to support future housing growth and urban development.
- (2) A water services delivery plan must provide the required information—
- (a) in detail in relation to each of the first 3 financial years covered by the plan; and
- (b) in outline in relation to each of the subsequent financial years covered by the plan. 15
- 14 Secretary may make rules in relation to water services delivery plans**
- (1) The Secretary may make rules for 1 or more of the following purposes relating to water services delivery plans:
- (a) specifying additional information that must be included in a plan: 20
- (b) specifying the manner and form in which information must be included in a plan.
- (2) Without limiting **subsection (1)(a)**, a rule made under **subsection (1)(a)** may require the inclusion of information that—
- (a) improves accountability to a territorial authority’s community: 25
- (b) provides a basis for regulating the delivery of water services:
- (c) relates to 1 or more of the following:
- (i) financial matters (including, for example, revenues, equity levels, debt arrangements, and expenses):
- (ii) the assets involved in delivering water services (including, for example, asset management plans and asset replacement policies): 30
- (iii) financial and non-financial performance measures:
- (iv) the relevant performance measures and statistics relating to water quality:
- (v) pricing practices, assumptions, policies and methodologies used in delivering water services. 35

- (3) Before making a rule, the Secretary must consult each person or organisation that the Secretary considers to hold views that are representative of the views held, or that may be held, in the local government sector.
- (4) A rule is not invalid only because the consultation required under **subsection (3)** occurred before this Act came into force. 5
- (4A) Rules made under this section must not be made, or come into force, later than the date (the **relevant date**) that is 3 months after the date on which this section comes into force.
- (4B) Rules made under this section, and in force on the relevant date,—
- (a) continue in force after the relevant date; but 10
- (b) cannot be amended, revoked, or replaced by further rules made under this section after the relevant date.
- (5) Rules made under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

15 Process to prepare and adopt water services delivery plan 15

- (1) A territorial authority must adopt a water services delivery plan by resolution.
- (2) ~~Except as provided in **Part 3** of this Act, a~~ territorial authority must comply with ~~subpart 1 of Part 6 of the LGA2002 (**Planning and decision making**)~~ when preparing, adopting, or amending a water services delivery plan, except as provided in **Part 3** of this Act. 20
- (3) This Act does not require a territorial authority to consult in relation to a water services delivery plan, ~~but another enactment (for example, the LGA2002) may require a territorial authority to consult.~~ However, a territorial authority must comply with the LGA2002 and any other relevant enactments when making decisions that relate to the water services delivery plan. 25

Submission of water services delivery plan

16 Plan must be submitted to Secretary for acceptance

- (1) A territorial authority or a ~~joint arrangement group of 2 or more territorial authorities~~ (as the case may be) must submit its water services delivery plan to the Secretary— 30
- (a) no later than 1 year after the date on which this ~~Act~~ section comes into force; or
- (b) on or before a later date specified by the Minister under **section 17**.
- (2) Each water services delivery plan that is submitted to the Secretary for acceptance must include a certification that— 35
- (a) the plan complies with this Act; and
- (b) the information contained in the plan is true and accurate.
- (3) The certification must be made,—

- (a) in the case of a joint water services delivery plan, by the chief executive of each authority to which the plan relates, in respect of the information provided by that authority; and
- (b) in any other case, by the chief executive of the territorial authority to which the plan relates. 5
- 17 Minister may grant extension to deadline for submitting water services delivery plan**
- (1) A territorial authority or a ~~joint arrangement~~ group of 2 or more territorial authorities that is proposing to submit a joint plan (the **applicant**) may apply to the Minister for an extension to the deadline for submitting its water services delivery plan. 10
- (2) An application for an extension must—
- (a) be in writing; and
- (b) specify the length of the extension that the applicant is seeking; and
- (c) include sufficient information to enable the Minister to decide whether to grant the extension; and 15
- (d) be made no later than 1 month before the last date for submitting a plan under **section 16(1)(a)**.
- (3) The Minister may grant an extension only if the Minister is satisfied that—
- (a) an application for the extension is made in accordance with **subsection (2)**; and 20
- (b) the applicant requires the extension for 1 or more of the following reasons:
- (i) the applicant anticipates forming or joining a joint arrangement, and requires the extension to consult its communities in relation to the plan: 25
- (ii) the applicant anticipates forming or joining a joint arrangement, and requires the extension to conclude the negotiations relating to forming or joining the joint arrangement:
- (iii) the applicant is late preparing its water services delivery plan as a result of having attempted, unsuccessfully, to form or join a joint arrangement: 30
- (iv) any other reason that the Minister considers justifies granting the ~~exemption~~ extension.
- (4) **Subsection (3)** is subject to **subsection (5)**. 35
- (5) The Minister may grant an extension despite not having received an application for an extension if satisfied that exceptional circumstances justify granting the extension.

- ~~(6) If the Minister grants an extension, the Minister must respond to the applicant, notifying it of the length of the extension and specifying the date by which the water services delivery plan must be submitted to the Secretary.~~
- (6) If the Minister decides to grant an extension, the Minister—
- (a) must notify the length of the extension and the date by which the water services delivery plan must be submitted to the Secretary to,— 5
- (i) if an applicant applied for the extension, the applicant; or
- (ii) if the Minister has not received an application for the extension, each territorial authority to which the extension applies; and
- (b) may notify the length of the extension and the date by which the water services delivery plan must be submitted to the Secretary to any other territorial authority that the Minister considers relevant. 10
- (6A) If the Minister decides not to grant an extension, the Minister must notify the applicant of that decision.
- (7) The Minister may grant an extension subject to any conditions that the Minister thinks reasonable in the circumstances. 15

Acceptance of water services delivery plan

18 Secretary accepts water services delivery plan

- (1) The Secretary must, as soon as reasonably practicable,—
- (a) consider each water services delivery plan submitted under **section 16**; and 20
- (b) accept a water services delivery plan only if satisfied that the plan complies with this Act.
- (2) In deciding whether to accept a water services delivery plan, the Secretary may consult 1 or more of the following: 25
- (a) a government department;
- (b) the Commission;
- (c) Taumata Arowai;
- (d) Crown Infrastructure Partners Limited;
- (e) any other person the Secretary considers relevant. 30
- (3) If the Secretary is not satisfied that a plan complies with the requirements in this Act, the Secretary must, as soon as reasonably practicable,—
- (a) advise the territorial authority or joint arrangement group of 2 or more territorial authorities why the Secretary is not satisfied with the plan and require the territorial authority or joint arrangement group to amend the plan (which may be by including additional information) and resubmit it to the Secretary by a specified date; or 35

- (b) decide not to accept the plan.
- (4) A territorial authority or ~~joint arrangement~~ group of 2 or more territorial authorities must comply with a requirement to amend and resubmit a plan by the date specified.
- (5) After deciding whether to accept a water services delivery plan, the Secretary must notify the territorial authority or ~~joint arrangement~~ group of 2 or more territorial authorities—
- (a) whether the Secretary has accepted the plan; and
- (b) if the Secretary has decided not to accept the plan, the reason for that decision.
- 19 Publication of accepted water services delivery plan**
- If the Secretary notifies a territorial authority or ~~joint arrangement~~ group of 2 or more territorial authorities that its water services delivery plan has been accepted,—
- (a) the territorial authority or ~~joint arrangement~~ group of 2 or more territorial authorities must, as soon as reasonably practicable, publish the water services delivery plan,—
- (i) in the case of a plan relating to 1 territorial authority, on the territorial authority’s internet site; or
- (ii) in the case of a joint plan, on the internet site of each territorial authority to which the plan relates; and
- (b) the Secretary must, at the same time as the Secretary notifies having accepted the plan, provide a copy of the plan to—
- (i) the Commission; and
- (ii) Taumata Arowai.

Implementation, amendment, and monitoring of water services delivery plans

19A Territorial authority must give effect to water services delivery plan

A territorial authority must give effect to the proposals or undertakings relating to the future delivery of water services that are specified, in accordance with section 11, in the territorial authority’s water services delivery plan.

19B Territorial authority may amend water services delivery plan

- (1) In the circumstances described in subsection (2), a territorial authority may amend its water services delivery plan and resubmit the amended plan to the Secretary.
- (2) The circumstances are that—

- (a) the territorial authority has submitted its water services delivery plan to the Secretary, and the Secretary has accepted the plan under **section 18(1)**; and
 - (b) the proposed amendments to the plan are significant; and
 - (c) the proposed amendments are to the model or arrangements for delivering water services, as set out in the water services delivery plan (see **section 11(1)(j)**); and 5
 - (d) the territorial authority submits the amended plan no later than the date that is 18 months after the date on which this section comes into force.
- (3) An amended plan that is submitted to the Secretary for acceptance must include a certification that— 10
- (a) the amended plan complies with this Act; and
 - (b) the information contained in the amended plan is true and accurate.
- (4) The certification must be made by the person specified in **section 16(3)**.
- (5) The Secretary must consider an amended plan and decide whether to accept the proposed amendments. 15
- (6) For the purposes of **subsection (5)**, **sections 18 and 19** apply with all necessary modifications.
- 19C** **Secretary may require territorial authority to provide information for monitoring purposes** 20
- The Secretary may require a territorial authority to provide information that enables the Secretary to monitor the territorial authority's compliance with the territorial authority's water services delivery plan, including the proposals or undertakings relating to the future delivery of water services that are specified in that plan in accordance with **section 11**. 25

Subpart 2—Ministerial powers in relation to water services delivery plans

Crown facilitator for water services delivery plans

- 20** **Minister may appoint Crown facilitator**
- (1) The Minister may, in the circumstances set out in **subsection (2)**, appoint a Crown facilitator for water services delivery plans to— 30
- (a) a territorial authority; or
 - (b) a group of 2 or more territorial authorities that is proposing to submit, or that has submitted, a joint water services delivery plan.
- (2) The Minister may appoint a Crown facilitator if— 35

- (a) the territorial authority or the group of territorial authorities requests, in writing to the Minister, that the Minister do so and the Minister decides to grant that request; or
- (b) the Minister believes, on reasonable grounds, that it would be beneficial to appoint a Crown facilitator because— 5
- (i) the territorial authority or the group is otherwise unlikely to submit its plan to the Secretary in accordance with ~~this subpart~~ **subpart 1**; or
- (ii) in the case of a group of territorial authorities, the group is having difficulty agreeing on the terms of a joint plan; or 10
- (iii) contrary to **section 19A**, the territorial authority or the group of territorial authorities has not given effect to its water services delivery plan.
- (3) The Minister may appoint either 1 person or a panel of 2 or more persons to be a Crown facilitator. 15
- (4) If the Minister appoints a panel to be a Crown facilitator, the Minister must appoint 1 member as the chairperson.
- 21 How Crown facilitator appointed**
- (1) The Minister appoints a Crown facilitator by—
- (a) providing notice in writing to the person appointed to be the Crown facilitator or, if the Minister appoints a panel, to each member of the panel; and 20
- (b) providing notice in writing to the territorial authority or, in the case of an appointment to a group of territorial authorities, to each authority that is a member of the group; and 25
- (c) giving notice of the appointment in the *Gazette*.
- (2) A notice under **subsection (1)** must include the following information:
- (a) the terms of reference of the Crown facilitator, including— 30
- (i) an outline of the role the Crown facilitator has been appointed to undertake; and
- (ii) the extent of the Crown facilitator's authority:
- (b) the name of the Crown facilitator or, if the Crown facilitator is a panel, the name of each member of the panel:
- (c) the start and end dates of the Crown facilitator's appointment:
- (d) if the Crown facilitator is a panel, the name of the chairperson of the panel: 35
- (da) if the Crown facilitator is appointed to a group of 2 or more territorial authorities, details of how the remuneration and expenses of the Crown

facilitator will be apportioned between the territorial authorities (see **section 30**):

- (e) the name of each territorial authority to which the Crown facilitator has been appointed.
- ~~(3) The Minister must notify any change in the membership of a Crown facilitator in writing to each territorial authority to which the Crown facilitator is appointed.~~ 5
- (3) If the Minister changes the membership of a Crown facilitator, the Minister must provide notice of the change, in writing, to the following:
 - (a) each territorial authority to which the Crown facilitator is appointed; and 10
 - (b) if the Crown facilitator is a panel, each panel member.
- (4) The department must publish each notice provided under **subsection (1) or (3)** on an internet site operated by or on behalf of the department.

22 Role of Crown facilitator

- (1) A Crown facilitator for water services delivery plans may be appointed to do 1 or more of the following: 15
 - (a) assist the relevant territorial authority or group of territorial authorities to prepare a water services delivery plan:
 - (b) advise the relevant territorial authority or group of territorial authorities how to prepare a water services delivery plan: 20
 - (c) assist the relevant territorial authority or group of territorial authorities to amend a draft water services delivery plan after being advised to do so by the Secretary (*see **section 18(3)(a)***):
 - (d) direct the relevant territorial authority or group of territorial authorities how to do 1 or both of the following: 25
 - (i) prepare a water services delivery plan:
 - (ii) if the Secretary has required a water services delivery plan to be amended (*see **section 18(3)(a)***), amend a water services delivery plan:
 - (e) assist 2 or more territorial authorities to agree on the terms of a joint arrangement, including, for example, by co-ordinating the negotiation process or by determining the terms of the joint arrangement: 30
 - (ea) assist the territorial authority or group of territorial authorities to give effect to an accepted water services delivery plan:
 - (eb) advise the territorial authority or group of territorial authorities how to give effect to an accepted water services delivery plan: 35
 - (ec) direct the territorial authority or group of territorial authorities to give effect to an accepted water services delivery plan:

- (f) assist a territorial authority or group of territorial authorities to comply with the requirements in this Act:
- (g) anything else specified in the Crown facilitator's terms of reference.
- (2) However, a Crown facilitator may be appointed to determine the terms of a joint arrangement in accordance with **subsection (1)(e)** only if the relevant territorial authorities agree to the Crown facilitator having that role. 5
- (3) As part of performing its role, a Crown facilitator may also recommend to the Minister that the Minister should take further action, for example, by—
- (a) appointing a Crown water services specialist; or
- (b) taking further action under Part 10 of the LGA2002. 10

Crown water services specialist

23 Minister may appoint Crown water services specialist

- (1) The Minister may, in the circumstances set out in **subsection (2)**, appoint a Crown water services specialist to—
- (a) a territorial authority; or 15
- (b) a group of 2 or more territorial authorities that is proposing to ~~form a joint arrangement~~ submit, or that has submitted, a joint water services delivery plan.
- (2) The Minister may appoint a Crown water services specialist if—
- (a) the territorial authority or the group of territorial authorities requests, in writing to the Minister, that the Minister do so and the Minister decides to grant that request; or 20
- (b) the territorial authority or the group has failed to submit its water services delivery plan to the Secretary in accordance with **section 16**; or
- (c) the territorial authority or the group— 25
- (i) has submitted a water services delivery plan to the Secretary; but
- (ii) despite the Secretary requiring the plan to be amended (*see section 18(3)(a)*), the plan does not comply with **subpart 1**; or
- (ca) contrary to **section 19A**, the territorial authority or the group of territorial authorities has not given effect to its water services delivery plan; 30
- or
- (d) a Crown facilitator for water services delivery plans appointed to the territorial authority or the group of territorial authorities has recommended that the Minister should make such an appointment, and the Minister agrees to do so. 35
- (3) The Minister may appoint 1 person or a panel of 2 or more persons to be a Crown water services specialist.

- (4) If the Minister appoints a panel to be a Crown water services specialist, the Minister must appoint 1 member as the chairperson.

24 How Crown water services specialist is appointed

- (1) The Minister appoints a Crown water services specialist by—
- (a) providing notice in writing to the person appointed to be the Crown water services specialist or, if the Minister appoints a panel, to each member of the panel; and 5
 - (b) providing in writing to the territorial authority or, in the case of an appointment to a group of territorial authorities, to each authority that is a member of the group; and 10
 - (c) giving notice of the appointment in the *Gazette*.
- (2) A notice under **subsection (1)** must include the following information:
- (a) the terms of reference of the Crown water services specialist, including—
 - (i) an outline of the role the Crown water services specialist has been appointed to undertake; and 15
 - (ii) the extent of the Crown water services specialist’s authority:
 - (b) the name of the Crown water services specialist or, if the Crown water services specialist is a panel, the name of each member of the panel;
 - (c) the start and end dates of the Crown water services specialist’s appointment: 20
 - (d) if the Crown water services specialist is a panel, the name of the chairperson of the panel:
 - (da) if the Crown water services specialist is appointed to a group of 2 or more territorial authorities, details of how the remuneration and expenses of the Crown water services specialist will be apportioned between the territorial authorities (see **section 30**): 25
 - (e) the name of each territorial authority to which the Crown water services specialist has been appointed.
- (3) The Minister must ~~notify~~ provide notice of any change in the membership of a Crown water services specialist— 30
- (a) in writing to each territorial authority to which the Crown water services specialist is appointed; and
 - (aa) if the Crown water services specialist is a panel, in writing to each panel member; and 35
 - (b) by notice in the *Gazette*.
- (4) The department must publish each notice provided under **subsection (1) or (3)** on an internet site operated by or on behalf of the department.

25 Role of Crown water services specialist

- (1) A Crown water services specialist may be appointed to do 1 or more of the following:
- (a) prepare a water services delivery plan for the territorial authority or the group of territorial authorities: 5
 - (b) direct the territorial authority or the group of territorial authorities to adopt a specified water services delivery plan (which may be a plan that the specialist has prepared):
 - (c) direct the territorial authority or the group of territorial authorities to submit a specified water services delivery plan to the Secretary under **section 16**: 10
 - (ca) assist the territorial authority or group of territorial authorities to give effect to an accepted water services delivery plan:
 - (cb) advise the territorial authority or group of territorial authorities how to give effect to an accepted water services delivery plan: 15
 - (cc) direct the territorial authority or group of territorial authorities to give effect to an accepted water services delivery plan:
 - (d) anything else specified in the specialist's terms of reference.
- (2) As part of performing its role, a Crown water services specialist may also recommend to the Minister that the Minister should take further action, for example, taking further action under Part 10 of the LGA2002. 20

26 Decisions and directions of Crown water services specialist

- (1) This section applies to a territorial authority after the expiry of the term of a Crown water services specialist appointed to the territorial authority.
- (2) A direction given to the territorial authority by the Crown water services specialist ceases to have effect despite **section 27(c)**. 25
- (3) Despite **subsection (2)**, any decision made by the territorial authority giving effect to a direction continues in force unless and until the territorial authority revokes or amends the decision.
- (4) A territorial authority that revokes or amends a decision under **subsection (3)** must, as soon as reasonably practicable, notify the Secretary for Local Government that the authority has done so. 30

Compare: 2002 No 84 s 258ZA(1)–(3)

*General provisions***26A Notice of proposed appointment of ministerial appointee** 35

- (1) Before appointing a ministerial appointee, the Minister must—
- (a) give the relevant territorial authority written notice that—
 - (i) the Minister intends to make the appointment; and

- (b) have a water services delivery plan accepted by the Secretary within a reasonable period after submitting it for acceptance:
- (c) give effect to proposals or undertakings specified in an accepted water services delivery plan relating to the future delivery of water services:
- (d) comply with **section 27** of this Act. 5
- (3) In **subsection (2)(c)**, an **accepted water services delivery plan** means a plan that—
- (a) relates to the territorial authority or group of territorial authorities; and
- (b) has been accepted by the Secretary under **section 18**.
- 29 Remuneration and expenses of ministerial appointee** 10
- (1) A ministerial appointee is entitled—
- (a) to receive remuneration for services as a Crown facilitator or as a Crown water services specialist (as applicable) as determined by the Minister in accordance with the fees framework; and
- (b) to be reimbursed for actual and reasonable travelling and other expenses incurred in carrying out their office as a Crown facilitator or as a Crown water services specialist in accordance with the fees framework. 15
- (2) In this section, **fees framework** means the framework determined by the Government from time to time for the classification and remuneration of statutory and other bodies in which the Crown has an interest. 20
- Compare: 2002 No 84 s 258V
- 30 Recovery of ~~expenses and~~ remuneration and expenses from local authority**
- (1) A territorial authority owes as a debt to the Crown ~~any remuneration and expenses that the Crown incurs for the appointment of a ministerial appointee to the territorial authority (whether individually or as a group of territorial authorities), including the payment of remuneration and expenses to the ministerial appointee.~~ 25
- (a) any remuneration and expenses that the Crown incurs for the appointment of a ministerial appointee (including the payment of remuneration and expenses to the ministerial appointee) if the ministerial appointee is appointed to the authority individually; or 30
- (b) the territorial authority's share of any remuneration and expenses that the Crown incurs for the appointment of a ministerial appointee (including the payment of remuneration and expenses to the ministerial appointee) if the ministerial appointee is appointed to a group of territorial authorities. 35
- (2) The Crown may recover remuneration and expenses under **subsection (1)** as a debt to the Crown.
- Compare: 2002 No 84 s 258W(1), (3)

31 Protection from liability

(1) A ministerial appointee is not liable for any act done or omitted to be done by them in good faith in the performance or intended performance of their functions, responsibilities, and duties, or the exercise of their powers, as a ministerial appointee. 5

(2) **Subsection (1)** applies, without limitation, to acts done or omitted to be done when directing a territorial authority or a group of territorial authorities.

Compare: 2002 No 84 s 258Y

Subpart 3—Foundational information disclosure requirements

32 Purposes of this subpart 10

(1) The purposes of this subpart ~~is to promote the long-term benefit of consumers of water services provided by territorial authorities.~~ are—

(a) to promote the long-term benefit of consumers of water services; and

(b) to ensure that sufficient information is readily available to interested persons to assess whether the purpose in **paragraph (a)** is being met. 15

(2) This subpart achieves ~~that~~ the purpose in **subsection (1)(a)** by promoting outcomes that are consistent with outcomes produced in competitive markets such that ~~territorial authorities~~ providers of water services—

(a) have incentives to—

(i) innovate and to invest in water services, including in replacement, upgraded, and new assets; and 20

(ii) improve efficiency in providing water services; and

(iii) provide water services at a quality that reflects consumer demands; and

(b) share with consumers the benefits of efficiency gains in supplying water services, including through lower prices; and 25

(c) are limited in their ability to extract excessive profits.

(3) This subpart—

(a) relates only to delivering the purpose of this Act under **section 3(1) and (2)(c)**; and 30

(b) applies in relation to delivering water services only in circumstances where there is—

(i) little or no competition in delivering those water services; and

(ii) little or no likelihood of a substantial increase in the level of competition. 35

33 Application of this subpart

- (1) This subpart applies to 1 or more of the following entities that have been specified by the Governor-General by Order in Council made on the recommendation of the Minister and the Minister of Commerce and Consumer Affairs:
- (a) a territorial authority that delivers water services: 5
 - (b) a council-controlled organisation that delivers water services:
 - (c) a subsidiary of a council-controlled organisation that delivers water services.
- (1A) Despite subsection (1)(b), an Order in Council must not specify that Watercare is a specified entity.** 10
- (2) Before making a recommendation under **subsection (1)**, the Minister and the Minister of Commerce and Consumer Affairs must—
- (a) consider advice from the Secretary and the Commission; and
 - (b) having considered that advice, believe that the entity to be specified in the Order in Council holds, can prepare, or can produce information that, if disclosed, would enable an interested person to assess whether the purpose of this subpart is being met. 15
- (3) An Order in Council made under this section must include the following information:
- (a) the name of the entity: 20
 - (b) the water services to which a determination made under **section 35** may apply.
- (4) An Order in Council made under this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

33A Commission may consult at any time 25

- (1) For the purposes of this subpart, the Commission may consult any interested parties.**
- (2) Subsection (1) applies whether or not an Order in Council has been made under section 33.**

34 Meaning of specified entity 30

In this subpart, **specified entity** means an entity that is specified in an Order in Council made under **section 33**.

*Determinations***35 Commission may make determination**

- (1) The Commission may make a determination setting out the information that a specified entity must ~~make publicly available~~ disclose and must disclose to the Commission (*see* **section 36**). 35

- (2) The Commission must consult interested parties before making a determination.
- (3) A determination may relate to all specified entities or to 1 or more specified entities.
- (4) It is not necessary for a single determination to address all matters relating to all water services and different parts of any determination may come into effect at different times. 5
- (5) A determination may require a specified entity to comply with the requirements set out in any other determination that has been made under this section.
- (6) The Commission may amend a determination in a material way only after the Commission has consulted interested parties, but may amend a determination in a non-material way without prior consultation. 10
- (7) As soon as practicable after making or amending a determination, the Commission must give to each specified entity to whom the determination relates notice of the determination or the amendment (as applicable) and where it is available. 15
- (8) A determination made under this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Compare: 2023 No 54 s 15

36 Effect of determination 20

- (1) A specified entity to which a determination made under **section 35** applies must—
 - (a) publicly disclose information in accordance with the requirements set out in the determination; and
 - (b) supply to the Commission a copy of all information disclosed in accordance with the determination within 5 working days after the specified entity first ~~makes~~ publicly discloses the information ~~available to the public~~. 25
- (2) The Commission—
 - (a) may monitor and analyse all information disclosed in accordance with this subpart; and 30
 - (b) must, as soon as practicable after any information is publicly disclosed, publish (on an internet site operated by or on behalf of the Commission) a summary and an analysis of that information for the purpose of promoting greater understanding of the performance of individual specified entities, their relative performance, and changes in their performance over time. 35
- (3) The Commission may, as part of a summary and an analysis, include an analysis of how effective the information disclosure requirements imposed on specified entities are in promoting the purpose in **section 32**. 40

- (4) In complying with **subsection (2)(b)**, the Commission must ensure that satisfactory provision exists to protect the confidentiality of any information that may reasonably be regarded as confidential or commercially sensitive.
Compare: 2023 No 54 s 34
- 37 Contents of determination** 5
- (1) A determination made under **section 35** must specify the following:
- (a) the specified entity to which it applies:
 - (b) the water services to which it applies:
 - (c) any time frames that must be complied with or that apply:
 - (d) the information that the specified entity must disclose: 10
 - (e) the manner in which the information must be disclosed:
 - (f) the form of disclosure:
 - (g) when, and for how long, the specified entity must disclose the information:
 - (h) ~~any other~~ methodologies that the specified entity must apply in preparing or compiling the information. 15
- (2) In making a determination under **section 35**, the Commission may have regard to the scale, complexity, and risk profile of each specified entity (or class of specified entity), or the type of water services being provided by each specified entity (or class of specified entity), to which the determination will apply (for example, by requiring more or less information to be disclosed). 20
- (3) A determination may require a specified entity to disclose information that includes, without limitation, 1 or more of the following:
- (a) financial statements (including projected financial statements):
 - (b) asset values and valuation reports: 25
 - (c) prices, terms and conditions relating to prices, and pricing methodologies:
 - (d) contracts:
 - (e) transactions with related parties:
 - (f) financial and non-financial performance measures: 30
 - (g) plans and forecasts, including (without limitation) plans and forecasts about demand, investments, prices, revenues, quality and service levels, capacity and spare capacity, and efficiency improvements:
 - (h) asset management plans:
 - (i) quality performance measures and statistics: 35
 - (j) assumptions, policies, and methodologies used or applied in the delivery of water services:

- (k) consolidated information that includes information about goods or services that are not incidental to, or related to, water services, in which case **section 38** applies:
- (l) information about the financing of territorial authorities and water services council-controlled organisations that includes information about goods or services that are not incidental to, or related to, water services, in which case **section 38** applies. 5
- (4) In addition, a determination may require a specified entity to disclose information about how the entity is supporting and enabling planning processes, growth, and housing and urban development and, in particular, the entity’s level of responsiveness in relation to those issues. 10
- (5) A determination may do 1 or more of the following:
 - (a) require disclosed information, or information from which disclosed information is derived (in whole or in part), to be verified by statutory declaration: 15
 - (b) require independent audits of disclosed information:
 - (c) require the retention of data on which disclosed information is based, and associated documentation:
 - (ca) exempt any specified entity or class of specified entity, or provide for exemptions, from any requirements of the determination, and provide for the revocation of exemptions: 20
 - (d) provide for transitional provisions:
 - (e) impose any other requirements that the Commission considers necessary or desirable to promote the purpose of this subpart.
- (6) If a determination authorises a person to grant an exemption under **subsection (5)(ca)**,— 25
 - (a) an instrument granting or revoking an exemption is secondary legislation (see Part 3 of the Legislation Act 2019 for publication requirements), unless it applies only to 1 or more named persons; and
 - (b) the determination must contain a statement to that effect. 30

Compare: 2023 No 54 s 35

38 Determination may require specified entity to provide additional information

- (1) The purpose of this section is to enable the Commission to monitor—
 - (a) compliance with requirements to disclose information under this subpart in relation to delivering water services; and 35
 - (b) the ongoing capability of a specified entity to raise finance with respect to its delivery of water services by assessing the specified entity’s overall financial position.

- (2) A determination made under **section 35** may require a specified entity to disclose information referred to in **subsection (3)** only to the extent required to enable the Commission to monitor 1 or both of the matters referred to in **subsection (1)**.
- (3) If a specified entity provides goods or services that are not incidental to or related to delivering water services (**other goods or services**), a determination may require the entity to disclose— 5
- (a) consolidated financial statements, and any other information referred to in **section 37**, for all ~~businesses~~ activities (including those related to the supply of other goods or services) undertaken by that entity; and 10
 - (b) consolidated financial statements, and any other information referred to in **section 37**, for the supply of all other goods or services in aggregate; and
 - (c) reconciliation of information provided under **paragraphs (a) and (b)** with information disclosed in accordance with information disclosure requirements applying to delivering water services; and 15
 - ~~(d) information about the financing of—~~
 - ~~(i) all businesses (including those related to the supply of other goods or services) undertaken by that entity; and~~
 - ~~(ii) the supply of all goods and services (including other goods or services) provided by that entity.~~ 20
 - (d) information about the financing of all activities (including those related to the supply of other goods or services) undertaken by that entity.

Compare: 2023 No 54 s 36

38A Commission may exempt disclosure of commercially sensitive information 25

- (1) The Commission may, on application, exempt a specified entity or class of specified entity, in respect of any information or class of information that the Commission considers to be commercially sensitive, from any obligation to publicly disclose that information as part of the requirement to disclose information under this subpart. 30
- (2) The Commission may grant the exemption on any terms and conditions that it thinks fit.
- (3) The Commission may vary or revoke any exemption.
- (4) The Commission must keep a list of all current exemptions made by it under this section available for public inspection free of charge during normal office hours of the Commission at the offices of the Commission. 35
- (5) An exemption, and any variation or revocation of it, made under this section is secondary legislation (see Part 3 of the Legislation Act 2019 for publication requirements).

39 Charge for providing copies to public

- (1) A specified entity that is required, by a determination made under **section 35**, to provide copies of statements and information to the public on request may charge for providing those copies.
- (2) The charge must be no more than is reasonably required to recover the costs of providing those copies. 5
- Compare: 1986 No 5 s 53E; 2023 No 54 s 37

40 Additional monitoring and investigation powers based on subpart 8 of Part 4 of Commerce Act 1986

- (1) For the purpose of carrying out its functions and exercising its powers under this Part, the Commission may do any of the following: 10
- (a) consult any person the Commission considers may assist it:
- (b) investigate any of the following:
- (i) how effectively and efficiently a ~~specified entity~~ provider of water services is delivering water services: 15
- (ii) how any conditions relating to the quality of water services may be, or are being, fulfilled:
- (c) examine, consider, or investigate any activity, cost, revenue, transfer, asset valuation, circumstance, or event that is occurring or that has occurred during the previous 7 years: 20
- (d) by notice in writing, require any provider of water services—
- (i) to prepare and produce forecasts, forward plans, or other information; and
- (ii) to apply any methodology specified by the Commission in the preparation of forecasts, forward plans, or other information: 25
- (e) by notice in writing, require any provider of water services or any previous provider of water services to do either or both of the following:
- (i) produce or supply to the Commission documents and information in relation to water services or the prices or operations of the provider in respect of water services: 30
- (ii) answer any questions about any matter that the Commission has reason to believe may be relevant:
- (f) by notice in writing, require any provider of water services, at the time and place specified in the notice, to produce or supply to the Commission an expert opinion from an appropriately qualified person, or from a member of a class of appropriately qualified persons, as determined by the Commission in relation to the matters in **paragraph (b), (c), (d), or (e)(i).** 35

- (2) The Commission's powers under **subsection (1)** are in addition to its powers under the rest of this Act and under section 98 of the Commerce Act 1986.

Compare: 2023 No 54 s 138(1)

Levy

- 40A Levy** 5
- (1) Every person who provides water services must pay to the Minister the levy determined in accordance with regulations made under **subsection (2)**.
- (2) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations—
- (a) specifying the amount of levies, or method of calculating or ascertaining the amount of levies, on the basis that the estimated costs for an appropriation period of performing or exercising the Commission's functions, duties, and powers under this subpart, and of collecting the levy money, should be met fully out of levies: 10
- (b) including in levies, or providing for the inclusion in levies of, any short-fall in recovering those actual costs: 15
- (c) refunding, or providing for refunds of, any over-recovery of those actual costs:
- (d) providing different levies for different classes of providers of water services: 20
- (e) specifying the appropriation period or part appropriation period to which those levies apply, and applying to that appropriation period or part appropriation period and each subsequent appropriation period until revoked or replaced:
- (f) providing for the payment and collection of those levies: 25
- (g) for the first appropriation period to which the levy applies to a provider of water services or class of provider of water services, including in the levy amount or method any costs incurred by the Commission in connection with preparing itself to perform or exercise, and performing or exercising, its functions, duties, and powers under this subpart, irrespective of the fact— 30
- (i) that the regulations are made and come into effect after that period; or
- (ii) that the water services become regulated after the costs were incurred: 35
- (h) requiring payment of a levy for an appropriation period or a part appropriation period, irrespective of the fact that the regulations may be made after that appropriation period has commenced:

- (i) exempting, or providing for exemptions from, and providing for waivers of, the whole or any part of the levy for any case or class of cases.
- (3) In **subsection (2), appropriation period**, in relation to any estimated costs, means—
- (a) a financial year; or 5
- (b) if the estimated costs will be incurred under the authority of a multi-year appropriation or of a multi-year appropriation proposed in any Estimates, the financial years to which the multi-year appropriation applies.
- (4) In **subsection (3)**,—
- Estimates— 10
- (a) has the meaning given in section 2(1) of the Public Finance Act 1989; and
- (b) includes Supplementary Estimates as defined in section 2(1) of that Act
multi-year appropriation means an appropriation authorised to apply for more than 1 financial year (see section 10 of the Public Finance Act 1989). 15
- (5) The Crown may recover any unpaid levy as a debt to the Crown.
- (6) The Minister must consult with providers of water services before making a recommendation for the purposes of **subsection (2)**.
- (7) Regulations made under this section are secondary legislation (see Part 3 of the Legislation Act 2019 for publication requirements). 20

Sharing of information

41 Sharing of information and documents between Commission and department

- (1) The Commission and the department may share information with each other if the Commission or the department (whichever is the provider of the information) believes that sharing the information is for either or both of the following purposes: 25
- (a) understanding a territorial authority’s intention and commitment to deliver water services in a way that is consistent with the purpose of a water services delivery plan (see **section 8**); ~~or~~ 30
- (b) ensuring that sufficient information is available to interested persons to assess whether the purposes of this subpart ~~is~~ are being met.
- (2) Any information received by the department or the Commission under this Act may only be used in connection with,—
- (a) in the case of the department, the performance or exercise of its functions, duties, or powers under this Act; or 35

- (b) in the case of the Commission, ~~the performance or exercise of its functions, duties, or powers under this Act or under the Commerce Act 1986.~~
- (i) the performance or exercise of its functions, duties, or powers under this Act or under the Commerce Act 1986; or 5
- (ii) the development of a long-term economic regulation regime for the delivery of water services.
- (3) The department or the Commission may share information under this section whether or not a request has been made.
- (4) The department and the Commission must ensure that appropriate protections are or will be in place to maintain the confidentiality of information shared under this section. 10
- (5) The department and the Commission may share commercially sensitive information under this section.
- (6) This section applies despite anything to the contrary in any contract, deed, or document. 15
- (7) The department or the Commission may share the information subject to any conditions they think are appropriate.

Pecuniary penalty orders

- 42 When High Court may make pecuniary penalty order** 20
- (1) The High Court may, on the application of the Commission, order a person to pay to the Crown a pecuniary penalty if the court is satisfied that the person has—
- (a) contravened an obligation to disclose information under this subpart; or
- (b) contravened an obligation to disclose information in the form or within the time required; or 25
- (c) disclosed information under this subpart that is false or misleading; or
- (d) attempted to contravene an obligation to disclose information under this subpart; or
- (e) been involved in a contravention of an obligation to disclose information under this subpart. 30
- (2) In **subsection (1)(e)**, a person has been **involved in a contravention** if the person—
- (a) has aided, abetted, counselled, or procured the contravention; or
- (b) has induced the contravention, or attempted to induce it, whether by threats or promises or otherwise; or 35
- (c) has been in any way, directly or indirectly, knowingly concerned in, or party to, the contravention; or

- (d) has conspired with others to effect the contravention.
- (3) Proceedings under this section may be commenced at any time within 3 years after the contravention occurred.
Compare: 2023 No 54 ss 83(1), 126
- 43 Maximum amount of pecuniary penalty** 5
- (1) The maximum amount of a pecuniary penalty imposed under **section 42** is, in respect of each act or omission,—
- (a) \$500,000, in the case of an individual; or
- (b) \$5 million, in any other case.
- (2) In determining the amount of pecuniary penalty, the court must have regard to all relevant matters, including— 10
- (a) the nature and extent of the contravention; and
- (b) the circumstances in which the contravention took place (including whether the contravention was intentional, inadvertent, or caused by negligence); and 15
- (c) whether the person has previously been found by the court in proceedings under this subpart to have engaged in similar conduct.
- (3) A person may not be liable to more than 1 pecuniary penalty in respect of the same conduct.
Compare: 2023 No 54 s 84(1) 20

Orders about information disclosure

- 44 Order requiring information disclosure requirement to be complied with**
- (1) The High Court may, on application by the Commission, order a specified entity to comply with an obligation that applies to the entity to disclose information under this subpart. 25
- (2) An order under this section must specify the date by which, or period within which, the specified entity must comply with the requirement.
Compare: 2023 No 54 s 92

Offence

- 45 Offence relating to requirement to disclose information** 30
- (1) A person commits an offence if—
- (a) the person, knowing that water services are subject to an obligation to disclose information under this subpart, intentionally contravenes any requirement in relation to that obligation; or
- (b) the person is subject to an order under **section 44** and fails to comply with the order by the date, or within the period, specified. 35

- (2) A person who commits an offence under **subsection (1)** is liable on conviction to a fine not exceeding \$200,000, in the case of an individual, or \$1 million, in any other case.

Compare: 2023 No 54 s 98

Miscellaneous provisions

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46 Application of Part 7 of Commerce Act 1986 (Miscellaneous provisions)

For the purposes of this subpart, the following provisions of the Commerce Act 1986 apply with any necessary modifications:

Powers relating to evidence

- (a) section 98 (Commission may require person to supply information or documents or give evidence): 10
- (b) section 98A (power to search) as if the reference to regulation under Part 4 of the Commerce Act 1986 were a reference to secondary legislation made under this Act:
- (c) section 98G (Commission may exercise powers notwithstanding other proceedings): 15
- (d) section 99 (powers of Commission to take evidence):

Offences and administrative provisions

- (e) section 100 (powers of Commission to prohibit disclosure of information, documents, and evidence): 20
- (f) section 100A (Commission may state case for opinion of High Court):
- (g) section 103 (offences):
- (h) section 104 (determinations of Commission):
- (i) section 106 (proceedings privileged):
- (j) section 106A (judicial notice): 25
- (k) section 109 (Commission may prescribe forms).

46A Proceedings for pecuniary penalties

- (1) Any proceedings for a pecuniary penalty under this subpart are civil proceedings.
- (2) The usual rules of court and rules of evidence and procedure for civil proceedings apply (including the standard of proof). 30

46B No pecuniary penalty and fine for same conduct

A person cannot be ordered to pay a pecuniary penalty and be liable for a fine under this Act for the same conduct.

Compare: 2013 No 69 s 507

35

Amendment to Local Government Act 2002

47 Amendment to Local Government Act 2002

Section 48 amends the Local Government Act 2002.

48 Section 255 amended (Application of this Part)

Replace section 255(2) with:

- (2) ~~Despite subsection (1), the Minister may exercise the powers in this Part in relation to—~~
- (a) ~~a local board, and, for that purpose, this Part applies, with any necessary modifications, as if a local board were a local authority; or~~
 - (b) ~~a territorial authority, a group of territorial authorities, or a joint arrangement for the purposes of the Local Government (Water Services Preliminary Arrangements) Act 2024, and, for those purposes, this Part applies, with any necessary modifications, as if the territorial authority, the group of territorial authorities, or the joint arrangement were a local authority.~~
- (3) ~~In **subsection (2), joint arrangement** has the same meaning as in **section 5** of the Local Government (Water Services Preliminary Arrangements) Act 2024.~~

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15

Part 3

Establishing water services council-controlled organisations and joint local government arrangements

20

Preliminary provisions

49 Purposes of this Part

The purposes of this Part ~~is~~ are—

- (a) to set out alternative consultation and decision-making requirements that territorial authorities can use ~~(in place of certain consultation and decision-making requirements set out in the LGA2002) when establishing, joining, or amending a water services council-controlled organisation (the alternative requirements) (see sections 50 to 54); and~~
 - (i) when the territorial authorities are establishing, joining, or amending a water services council-controlled organisation (or are deciding whether or not to do so); or
 - (ii) when the territorial authorities are establishing, joining, or amending a joint local government arrangement under section 137 of the LGA2002 (or are deciding whether or not to do so); and

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- (b) to give territorial authorities greater flexibility in relation to WSCCOs and joint local government arrangements by setting out additional powers to, or exemptions from, specific provisions in the LGA2002 (*see sections 55 to 58*).

49A Reference to territorial authority includes Wellington Regional Council 5

In this Part and, to the extent they are used in this Part, in the definitions in section 5—

- (a) a reference to a territorial authority includes, where applicable, a reference to the Wellington Regional Council; and
- (b) a reference to a territorial authority’s district includes, where applicable, a reference to the relevant part of the Wellington Regional Council’s region. 10

Alternative requirements

50 Alternatives to requirements in Local Government Act 2002

- (1) If a territorial authority complies with an alternative requirement specified in **sections 51 to 54**, it need not comply with the corresponding requirement in the LGA2002. 15
- (2) However, except as specified in this Part, all other relevant requirements in the LGA2002 continue to apply. For example, the requirements in sections 77(1)(c), 81, and 82(2) of the LGA2002 continue to apply to a territorial authority whether or not it complies with the alternative requirements. 20
- (3) A territorial authority may decide to rely on none, any, or all of the alternative requirements set out in **sections 51 to 54**.
- (4) A territorial authority that does not rely on an alternative requirement must comply with the corresponding requirement in the LGA2002. 25
- (5) Section 76 of the LGA2002 does not apply to the extent that a territorial authority complies with an alternative requirement.

51 Alternative requirement: decision making

- (1) This section applies if a territorial authority is deciding whether or not to establish, join, or amend ~~a water services council controlled organisation.~~ 30
- (a) a water services council-controlled organisation; or
- (b) a joint local government arrangement under section 137 of the LGA2002.
- (2) In the course of that decision-making process, the territorial authority—
- (a) must identify both of the following 2 options for delivering water services: 35

- (i) remaining with the existing approach for delivering water services; and
 - (ii) joining, forming, or amending (as the case may be) the WSCCO or the joint local government arrangement; but
 - (b) may identify additional options for delivering water services; and 5
 - (c) must assess the advantages and disadvantages of all options identified.
 - (3) For the purpose of **section 50(1)**, the corresponding requirement for this section is in section 77(1)(a) and (b) of the LGA2002.
- 52 Alternative requirement: consultation**
- (1) This section applies if a territorial authority is deciding whether or not to establish ~~or, join a water services council-controlled organisation, or amend—~~ 10
 - (a) a water services council-controlled organisation; or
 - (b) a joint local government arrangement under section 137 of the LGA2002.
 - (2) Before the territorial authority decides whether or not to establish ~~or, join, or~~ 15 amend the WSCCO or the joint local government arrangement, the territorial authority is only required to undertake consultation once.
 - (3) Despite **subsection (2)**, a territorial authority may decide to undertake further consultation before making the decision.
 - (4) When deciding whether to undertake further consultation, a territorial authority 20 must have regard to—
 - (a) the requirement in section 78(1) of the LGA2002; and
 - (b) the extent to which the authority already knows the views and preferences of persons likely to be affected by, or to have an interest in, the decision; and 25
 - (c) the nature and significance of the decision, including its likely impact from the perspective of the persons who will or may be affected by, or have an interest in, the decision.
 - (5) This section applies despite anything to the contrary in the authority’s significance and engagement policy adopted under section 76AA of the LGA2002. 30
 - (6) A territorial authority that defers adopting its 2024–2034 long-term plan under clause 48 of Schedule 1AA of the LGA2002 may, to satisfy the requirement to consult on the decision under this section, combine—
 - (a) the consultation under this section; and
 - (b) the authority’s consultation on its 2025–2034 long-term plan. 35
 - (7) For the purpose of **section 50(1)**, the corresponding requirement for this section is in section 56(1) of the LGA2002.

53 Alternative requirement: consultation on amendment to long-term plan

- (1) If a territorial authority is required to amend its long-term plan for the purpose of establishing, joining, or amending a WSCCO or a joint local government arrangement under section 137 of the LGA2002, the authority is not required to consult on the amendment if the authority— 5
- (a) has already consulted its community in relation to the proposal to establish, join, or amend (as the case may be) a WSCCO or a joint local government arrangement; and
 - (b) is satisfied that its community has a good understanding of the implications of the proposal; and 10
 - (c) is satisfied that it understands its community's views on the proposal.
- (2) This section applies despite anything to the contrary in the authority's significance and engagement policy adopted under section 76AA of the LGA2002.
- (3) For the purpose of **section 50(1)**, the corresponding requirements for this section are in sections 93(5) and 97(2)(b) of the LGA2002. 15

54 Alternative requirement: information requirements for consultation

- (1) When a territorial authority consults about whether or not to establish, join, or amend a WSCCO or a joint local government arrangement under section 137 of the LGA2002, the authority must make the following information publicly available: 20
- (a) the proposal, an explanation of the proposal, and the reasons for the proposal:
 - (b) an analysis of the reasonably practicable options (including the proposal), which must,— 25
 - (i) if the authority relies on the alternative requirement in **section 51(2)**, be ~~at least~~ the options identified under **section 51(2)(a) and (b)**; or
 - (ii) in all other cases, be the options identified under section 77(1) of the LGA2002:
 - (c) ~~the likely consequences of how proceeding with the proposal on the authority's rates, debt, and levels of service: is likely to affect—~~ 30
 - (i) the authority's rates, debt, and levels of service; and
 - (ii) any charges for water services;
 - (d) ~~the likely consequences of not how not proceeding with the proposal on the authority's rates, debt, and levels of service: is likely to affect—~~ 35
 - (i) the authority's rates, debt, and levels of service; and
 - (ii) any charges for water services;
 - (e) if the proposal involves establishing, joining, or amending a joint WSCCO or a joint local government arrangement, the implications for

communities throughout the joint service area of the joint WSCCO or the joint local government arrangement:

- (f) if the proposal involves transferring ownership or control of a strategic asset to the WSCCO or the joint local government arrangement, a description of any accountability or monitoring arrangements the authority will use to assess the performance of the WSCCO or the joint local government arrangement in regard to the asset: 5
 - (g) any other relevant implications of the proposal that the authority considers will be of interest to the public.
- (2) For the purpose of **section 50(1)**, the corresponding requirement for this section is in section 82A(2) of the LGA2002. 10
- ~~(3) In this section, **strategic asset** has the meaning set out in section 5(1) of the LGA2002.~~
- (3) In this section,—
publicly available means that the territorial authority must take reasonable steps to— 15
- (a) ensure that the information or a copy of it is accessible to the general public in a manner appropriate to the purpose of the information, including, where practicable, on the territorial authority’s internet site; and
 - (b) publicise, in a manner appropriate to the purpose and significance of the information, both the fact that the information (or a copy of it) is available and the manner in which the information (or the copy) may be accessed 20
- strategic asset** has the meaning set out in section 5(1) of the LGA2002.

Additional powers and exemption 25

55 Ability to consider joint service area

When deciding whether or not to establish, join, or amend a joint WSCCO or a joint local government arrangement under section 137 of the LGA2002, a territorial authority may, despite sections 12(4) and 14(1)(g) of the LGA2002, also consider— 30

- (a) the impact of the joint WSCCO or the joint local government arrangement on the communities in the joint service area (as well as the impact on the authority’s district); and
- (b) the views of people in communities in the joint service area (as well as the views of people in the authority’s communities); and 35
- (c) the views of the other territorial authorities who are parties to the joint WSCCO or the joint local government arrangement.

56 Joint committees

- (1) ~~Two~~ 2 or more territorial authorities that are considering whether or not to establish or amend a joint WSCCO or a joint local government arrangement under section 137 of the LGA2002 may use a joint committee appointed under clause 30(1)(b) of Schedule 7 of the LGA2002 to perform 1 or more of the following tasks: 5
- (a) identify and assess the options under **section 51(2)** of this Act or section 77(1) of the LGA2002:
 - (b) recommend a proposal to the territorial authorities for the purposes of consultation: 10
 - (c) if the territorial authorities have authorised the joint committee to do so, undertake consultation on behalf of the territorial authorities:
 - (d) following all required consultation, recommend a decision to the territorial authorities.
- (2) This section applies in addition to, and without limiting, any provision in Schedule 7 of the LGA2002 that relates to joint committees. 15
- (3) For the purposes of a joint committee performing any of the tasks listed in **subsection (1)**, a reference in Part 6 of the LGA2002 (planning, decision-making, and accountability) to a local authority may be read as a reference to the joint committee. 20
- (4) If 3 or more territorial authorities are considering whether or not to establish or amend a joint WSCCO or a joint local government arrangement, some (but not all) of the territorial authorities may use a joint committee to perform the tasks listed in **subsection (1)**.

57 Ability to conditionally approve amending long-term plan 25

- (1) This section applies if, for the purpose of establishing, joining, or amending a joint WSCCO or a joint local government arrangement under section 137 of the LGA2002, a territorial authority is required to—
- (a) amend its long-term plan; or
 - (b) provide for the joint WSCCO or the joint local government arrangement when adopting its long-term plan. 30
- (2) The authority may approve the amendment or the adoption conditional on the other territorial authorities that are to be parties to the joint WSCCO or to the joint local government arrangement—
- (a) approving corresponding amendments to their long-term plans; or 35
 - (b) adopting their long-term plans with corresponding provisions.

58 Exemption from cost-effectiveness review

- (1) This section applies if a territorial authority—

- (a) is deciding whether or not to establish, join, or amend a WSCCO; or
 - (aa) is deciding whether or not to establish, join, or amend a joint local government arrangement under section 137 of the LGA2002; or
 - (b) has established, joined, or amended a WSCCO; or
 - (c) has established, joined, or amended a joint local government arrangement. 5
- (2) The authority is not required to undertake a review under section 17A of the LGA2002 in relation to the WSCCO or the joint local government arrangement.
- 59 Repeal of section 58** 10
- Section 58** and this section are repealed on the date that is 5 years after this ~~Act~~ section comes into force.

Part 4 Watercare Services Limited

- 59A Purposes of this Part** 15
- (1) The purposes of this Part are—
- (a) to promote the long-term benefit of consumers of water services provided by Watercare; and
 - (b) to ensure that sufficient information is readily available to interested persons to assess whether the purpose in **paragraph (a)** is being met; and 20
 - (c) to ensure that Watercare manages its operations efficiently with a view to keeping the overall costs of delivering water services at the minimum levels consistent with the effective conduct of its undertakings and the maintenance of the long-term integrity of its assets.
- (2) This Part achieves the purposes by promoting outcomes that are consistent with outcomes produced in competitive markets such that Watercare— 25
- (a) has incentives to—
 - (i) innovate and to invest in water services, including in replacement, upgraded, and new assets; and
 - (ii) improve efficiency in providing water services; and 30
 - (iii) provide water services at a quality that reflects consumer demands; and
 - (b) shares with consumers the benefits of efficiency gains in supplying water services, including through lower prices; and
 - (c) is limited in its ability to extract excessive profits. 35

Local Government (Water Services Preliminary Arrangements) Bill	
<u>Part 4 cl 59B</u>	
(3)	<u>This Part relates only to delivering the purpose of this Act under section 3(2)(e).</u>
59B	<u>Application of this Part</u>
	<u>This Part applies to water services provided by Watercare in circumstances if there is—</u>
	5
	<u>(a) little or no competition in providing those services; and</u>
	<u>(b) little or no likelihood of a substantial increase in the level of competition.</u>
	<i>Crown monitor</i>
60	Minister may appoint Crown monitor
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	The Minister may appoint one of the following to be a Crown monitor to Watercare:
	(a) an individual; or
	(b) a Crown entity; or
	(c) a company named in Schedule 4A of the Public Finance Act 1989.
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(2)	In this section, Crown entity has the meaning set out in section 7(1) of the Crown Entities Act 2004.
60A	<u>Definitions of Crown entity and Crown monitor</u>
	<u>In this Part,—</u>
	<u>Crown entity has the meaning set out in section 7(1) of the Crown Entities Act 2004</u>
	20
	<u>Crown monitor means the Crown monitor for the interim economic regulation of Watercare appointed under section 60.</u>
61	How Crown monitor appointed
(1)	The Minister must appoint a Crown monitor by providing notice in writing to—
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	(a) the Crown monitor; and
	(b) Watercare.
(2)	The notice must include the following information:
	(a) the name of the Crown monitor; and
	(b) the date on which the Crown monitor’s appointment starts.
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(3)	The Minister may, by notice in writing to Watercare and the Crown monitor,—
	(a) change the terms of the Crown monitor’s appointment; or
	(b) end the Crown monitor’s appointment.

- (4) The department must, as soon as practicable after the Minister appoints a Crown monitor, changes the terms of an appointment, or ends an appointment, give public notification of the Minister having done so—
- (a) on an internet site maintained by, or on behalf of, the department; and
 - (b) in a format that is readily accessible.

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62 Role of Crown monitor

- (1) The role of the Crown monitor is to—
- ~~(a) prepare a charter for Watercare (see **section 63**); and~~
 - (b) review, and provide comments on, Watercare’s business plan (see **section 67**); and
 - (c) monitor, and report on, Watercare’s performance against the charter (see **sections 71 and 72**); and
 - (d) take action to address any failure by Watercare to comply with the charter (see **sections 76 to 81**).
- (2) The Crown monitor may specify—
- (a) the form and content of the business plan that Watercare must submit under **section 65**;
 - (b) the order in which Watercare must submit each component of a business plan.

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Watercare charter

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62A Secretary to prepare Watercare charter

- (1) The Secretary must prepare a Watercare charter.**
- (2) When preparing a charter, the Secretary—**
- (a) must consult Auckland Council, Watercare, Taumata Arowai, and the Commission on the draft charter; and**
 - (b) may consult—**
 - (i) any other Crown entity on the draft charter;**
 - (ii) any other person the Secretary considers appropriate on the draft charter.**
- (3) After consulting under **subsection (2)**, the Secretary must—**
- (a) make any changes to the draft Watercare charter that the Secretary thinks fit to make as a result of the consultation; and**
 - (b) then submit the charter to the Minister.**
- (4) The Secretary must prepare and submit—**
- (a) each part of the charter separately (see **section 63**); and**
 - (b) Part 2 of the charter after submitting Part 1 of the charter.**

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62B Watercare charter is made by Order in Council

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make the Watercare charter or a part of the charter.
- (2) An Order in Council made under this section is secondary legislation (see Part 3 of the Legislation Act 2019 for publication requirements). 5

63 Contents of Watercare charter

- (1) ~~A Crown monitor must prepare and make a Watercare charter.~~
 A Watercare charter must comprise the following 2 parts:
- (a) Part 1 of the charter ~~must contain (see section 64), which—~~
- (i) must contain minimum service quality standards for Watercare (which may include the time frame during which Watercare must meet the standards); and 10
 - (ii) must contain financial performance objectives for Watercare; and
 - (iii) may contain a customer compensation scheme for Watercare:
- (b) Part 2 of the charter, which must— 15
- (i) contain a price-quality path for Watercare (see **section 68**); and
 - (ii) specify the time period during which the charter applies (which must start no earlier than the day after the date on which ~~the Crown monitor makes~~ Part 2 of the charter is made under section 62B). 20
- (2) ~~The Crown monitor must make—~~
- (a) ~~the 2 parts of the charter separately; and~~
 - (b) ~~Part 2 of the charter after it has made Part 1 of the charter.~~
- (3) ~~Before making each part of a Watercare charter, the Crown monitor must consult the following:~~ 25
- (a) ~~Watercare;~~
 - (b) ~~Auckland Council;~~
 - (c) ~~Taumata Arowai;~~
 - (d) ~~the Commerce Commission.~~
- (4) ~~A charter made under this section is secondary legislation (see Part 3 of the Legislation Act 2019 for publication requirements).~~ 30

Part 1 of Watercare charter

64 Content of Part 1 of Watercare charter

Minimum service quality standards

- (1) Minimum service quality standards contained in Part 1 of a Watercare charter (see **section 63(2)(a)(i)**) may relate to 1 or more of the following: 35

- (a) services provided by Watercare to consumers:
 - (b) the performance of Watercare’s water supply network:
 - (c) the performance of Watercare’s wastewater network:
 - (d) the delivery of Watercare’s capital investment.
- Financial performance objectives* 5
- (2) Financial performance objectives contained in Part 1 of a Watercare charter (see section 63(2)(a)(ii)) may include 1 or more of the following:
- (a) the maximum amount of revenue that Watercare may earn on water supply services and wastewater services:
 - (b) the approach that Watercare must use to recover the cost of its infrastructure through infrastructure growth charges: 10
 - (c) efficiency targets that Watercare must achieve:
 - (d) the minimum credit rating that Watercare must maintain.
- Customer compensation scheme*
- (3) A customer compensation scheme contained in Part 1 of a Watercare charter (see section 63(2)(a)(iii)) must specify the compensation that Watercare must pay to a customer if Watercare fails to meet a minimum service quality standard set out in the charter relating to that customer. 15
- 65 Watercare must submit business plan to Crown monitor**
- (1) Watercare must submit a draft business plan to the Crown monitor. 20
- (2) Watercare must submit the draft business plan no later than 4 months after the date on which ~~the Crown monitor makes~~ Part 1 of the Watercare charter is made under section 62B.
- (3) A business plan must, for the period during which it applies, include—
- (a) the sources of, and Watercare’s intended approach to, funding, revenue, and pricing; and 25
 - (b) Watercare’s water infrastructure growth charging policy; and
 - (c) Watercare’s intended approach to pricing its services and charging customers; and
 - (d) Watercare’s financial strategy for each financial year covered by the plan; and 30
 - (e) Watercare’s intended efficiency improvements for operating and capital expenditure; and
 - (f) Watercare’s investment priorities for its infrastructure assets; and
 - (g) how Watercare will— 35
 - (i) operate, maintain, and renew its infrastructure assets; and
 - (ii) provide new infrastructure assets; and

- (h) information about how the plan helps to achieve Watercare’s proposed activities and intentions (as set out in its statement of intent).
- (4) Watercare must ensure that—
- (a) the business plan that it submits complies with any requirements specified by the Crown monitor as to the form and content of the plan; and 5
 - (b) it provides each component of the plan to the Crown monitor in any order specified by the Crown monitor.
- (5) When specifying any form and content requirements of the business plan, the Crown monitor must have regard to, and ensure consistency with, Watercare’s obligations under Part 5 of the LGA2002. 10
- 66 Period covered by business plan submitted to Crown monitor**
- (1) A business plan that Watercare submits under **section 65** must cover a period of at least 10 consecutive financial years.
 - (2) The Crown monitor may require that a business plan includes the required information— 15
 - (a) in detail in relation to each of the first 3 financial years covered by the plan; and
 - (b) in outline in relation to each of the subsequent financial years covered by the plan.
- 67 Process for finalising business plan** 20
- (1) After receiving a draft business plan under **section 65**, the Crown monitor—
 - (a) must review the plan; and
 - (b) may require Watercare to provide additional information relating to the plan; and
 - (c) may provide written comments on the plan to Watercare; and 25
 - (d) must specify a time frame for Watercare to submit a final version of the plan.
 - (2) Watercare must submit a final version of the business plan after—
 - (a) providing any additional information requested by the Crown monitor; and 30
 - (b) ~~giving effect to~~ taking into account any comments made by the Crown monitor.
- (2A) Watercare must ensure that the final version of the business plan that it submits is consistent with any requirements in the Watercare charter.
- (3) Watercare must submit the final version of the business plan within the time frame specified by the Crown monitor. 35

Part 2 of Watercare charter

68 Content of Part 2 of Watercare charter

- (1) A price-quality path for Watercare contained in Part 2 of a Watercare charter (a **price-quality path**) must include the information required by the Crown monitor, which may be 1 or more of the following: 5
 - (a) the period to which it applies (which must not be more than 5 years):
 - (b) the minimum or maximum price or prices that Watercare may charge:
 - (c) the minimum or maximum revenue that Watercare may recover:
 - (d) the minimum service quality standards, performance targets, or financial performance objectives that Watercare must meet. 10
- (2) A price-quality path may include incentives for Watercare to maintain or improve its services.
- (3) For the purposes of **subsection (2)**, the incentives may include (without limitation) any of the following:
 - (a) penalties by way of a reduction in Watercare’s maximum prices or revenues based on whether, or by what amount, Watercare fails to meet the minimum service quality standards, performance targets, or financial performance objectives specified in Part 1 of the Watercare charter: 15
 - (b) rewards by way of an increase in Watercare’s maximum prices or revenue based on whether, or by what amount, Watercare meets or exceeds the minimum service quality standards, performance targets, or financial performance objectives specified in Part 1 of the Watercare charter. 20
- (4) A price-quality path may include any of the following performance requirements:
 - (a) requirements to adopt a particular approach to risk management: 25
 - (b) requirements in relation to the condition of assets and remaining asset life:
 - (c) requirements to make particular types of investment:
 - (d) requirements to provide information about any investments planned for a particular period: 30
 - (e) requirements to consult the Crown monitor about certain kinds of investments and investment decisions:
 - (f) requirements to adopt asset management policies and practices:
 - (g) requirements to ring-fence minimum amounts of revenue for investment purposes: 35
 - (h) reporting requirements, including—
 - (i) to whom reports must be made; and
 - (ii) the timing of reports; and

- (iii) special reporting requirements in asset management plans, if Watercare fails to meet minimum service quality standards or performance targets; and
- (iv) any other matters relating to reporting, including requirements for additional information: 5
 - (i) requirements that any disclosed information, or any information from which disclosed information is derived, be verified by statutory declaration or certified (in the form specified by the Crown monitor) as true and accurate:
 - (j) requirements to undertake cost-benefit analysis before Watercare begins any specified projects: 10
 - (k) requirements relating to consultation and engagement with consumers:
 - (l) requirements based on comparative benchmarking of efficiency.
- (5) A requirement to ring-fence revenue (as referred to in **subsection (4)(g)**) may include a requirement not to spend the relevant funds without the approval of the Crown monitor. 15

Effect of Watercare charter

69 Effect of charter

- (1) After ~~the Crown monitor makes~~ Part 2 of the Watercare charter is made under **section 62B**, the charter is binding on Watercare during the time period to which it applies. 20
- (2) If there is any inconsistency between obligations in the charter and obligations in Auckland Council's long-term plan, the obligations in the charter prevail.
- (3) Each agreement for services entered into between Watercare and a customer of Watercare during the time period to which the charter applies must include any information relating to a customer compensation scheme that the charter requires. 25

Information disclosure

70 Crown monitor may require information disclosure

- (1) The Crown monitor may, by notice in writing, require Watercare to provide any information the Crown monitor considers may enable the Crown monitor to perform or exercise its ~~duties~~, functions, duties, or powers under this Act. 30
- (2) Information that the Crown monitor may require Watercare to disclose may include (without limitation) 1 or more of the following:
 - (a) financial statements (including projected financial statements): 35
 - (b) asset values and valuation reports:

- (c) prices, terms and conditions relating to prices, and pricing methodologies:
 - (d) contracts:
 - (e) transactions with related parties:
 - (f) financial and non-financial performance measures: 5
 - (g) plans and forecasts, including (without limitation) plans and forecasts about demand, investments, prices, revenues, quality and service levels, capacity and spare capacity, and efficiency improvements:
 - (h) asset management plans:
 - (i) quality performance measures and statistics: 10
 - (j) assumptions, policies, and methodologies used or applied in relation to relevant information, including in relation to the information listed in **paragraphs (a) to (i)**.
- (3) For the purpose of monitoring whether Watercare is complying with a price-quality path in Part 2 of the Watercare charter, the Crown monitor may, by notice in writing to Watercare, require it to provide 1 or more of the following: 15
- (a) a written statement advising whether Watercare is complying with the price-quality path:
 - (b) a written report analysing the written statement under **paragraph (a)**, signed by— 20
 - (i) an auditor; or
 - (ii) a suitably qualified and experienced independent expert:
 - (c) sufficient information for the Crown monitor to be satisfied that Watercare is complying with the price-quality path.
- (4) As part of requiring Watercare to disclose information under this section, the Crown monitor may require Watercare to provide a certificate confirming that the information it provides is true and accurate. 25
- (5) A certificate must be—
- (a) in the form specified by the Crown monitor; and
 - (b) signed by at least 1 director of Watercare. 30

Crown monitor to monitor and report on performance

71 Crown monitor must monitor Watercare’s performance

- (1) The Crown monitor must monitor Watercare’s performance under the charter.
- (2) For the purposes of **subsection (1)**, the Crown monitor is entitled to attend any meeting of the board of Watercare. 35

- (3) However, the Crown monitor may only attend a meeting if it is or may be necessary to do so for the Crown monitor to perform or exercise its functions, duties, or powers under this Act.

72 Crown monitor must make annual report

- (1) No later than 30 November in each year, the Crown monitor must report on Watercare's performance in the previous financial year against the following (contained in the Watercare charter): 5
- (a) minimum service quality standards or performance targets:
 - (b) financial performance objectives:
 - (c) the price-quality path. 10
- (2) The Crown monitor must—
- (a) provide the report to—
 - (i) Auckland Council; and
 - (ii) the Minister; and
 - (iii) the Minister of Commerce and Consumer Affairs; and 15
 - (b) as soon as reasonably practicable after complying with **paragraph (a)**, make the report available to the public on an internet site maintained by, or on behalf of, the Crown monitor in a format that is readily accessible.

73 Crown monitor must make quarterly reports to Minister

- (1) The Crown monitor must provide a quarterly report to the Minister. 20
- (2) A quarterly report must report on the Crown monitor's performance or exercise of its functions, duties, or powers under this Act.

Crown monitor's expenses

74 Crown monitor's expenses are recoverable from Watercare

- (1AAA) This section applies to the following (the expenses): 25
- (a) expenses incurred by the Crown monitor in relation to monitoring Watercare; and
 - (b) the remuneration of the Crown monitor; and
 - (c) expenses incurred by the Secretary in relation to preparing or amending the Watercare charter. 30
- ~~(1) The Crown monitor's expenses in relation to monitoring Watercare must be reimbursed—~~
- ~~(a) by Watercare to the Crown monitor; and~~
 - ~~(b) on any terms and conditions set by the Minister.~~
- (1) The Crown may recover the expenses from Watercare on any terms and conditions set by the Minister. 35

- (1A) Before setting any terms and conditions, the Minister must consult—
- (a) Auckland Council; and
 - (b) Watercare.
- (2) The terms and conditions may, for example, do 1 or more of the following:
- (a) specify, or specify classes, descriptions, or kinds of, all or any of the expenses: 5
 - (b) impose a cap on classes of expenses or total expenses:
 - (c) specify a time period in which classes of, or total, expenses are incurred, for the purposes of calculating a cap.
- (3) The duty to reimburse the expenses is not the Crown lending money for the purposes of the Public Finance Act 1989. 10
- (4) The Crown may recover the expenses as a debt to the Crown.

Compare: 2022 No 77 Schedule 1 cl 35

Commerce Commission's functions, duties, and powers

- 75 Commerce Commission's functions, duties, and powers** 15
- (1) For the purposes of this Act, the Commission may review Parts 1 and 2 of a draft Watercare charter and provide comments to the Crown monitor.
- (2) The purpose of the Commission's review and provision of comments is to help to optimise—
- (a) the charter; and 20
 - (b) the application of the charter to Watercare; and
 - (c) decisions made by the Crown monitor in relation to the charter.
- (3) As part of its functions, duties, and powers under this Act, the Commission may ~~engage with any party it considers practicable (for example, Taumata Arowai):~~— 25
- (a) engage with any party it considers practicable (for example, Taumata Arowai); and
 - (b) unless it is appointed to be the Crown monitor, provide services to the Crown monitor or the Secretary (for example, under a service-level agreement). 30
- (4) If the Minister appoints the Commission to be the Crown monitor,—
- (a) the Commission has the functions, duties, and powers, ~~and duties~~ required to perform that role; but
 - (b) ~~section 63(4)(d) and~~ this section and the obligation under section 62A(2)(a) for the Secretary to consult the Commission do not apply. 35

*Enforcement***76 High Court may impose orders**

- (1) The High Court may, on application by the Crown monitor, make 1 or more of the orders listed in **subsection (2)** if the court is satisfied that Watercare—
- (a) has contravened the Watercare charter; or 5
 - (b) has attempted to contravene the Watercare charter.
- (2) The orders are as follows:
- (a) an order requiring Watercare to comply with the charter:
 - (b) an injunction restraining Watercare from contravening the charter:
 - (c) an order requiring Watercare to pay to the Crown a pecuniary penalty: 10
 - (d) any other order that the court considers appropriate in the circumstances, including an order directing Watercare to pay to the Crown the costs of the proceedings.
- (3) In this section, **contravening the charter** includes—
- (a) failing to comply with the requirements in a price-quality path, whether by charging a price for services that is higher than the maximum price permitted, or by receiving more revenue than is permitted, or in any other way: 15
 - (b) failing to comply with the requirements in any minimum service quality standards or performance targets, or in any financial performance objectives: 20
 - (c) failing to comply with the requirements relating to a customer compensation scheme.
- (4) Proceedings under this section are not able to be commenced later than 3 years after the contravention occurred. 25
- (5) Any proceedings under this section are civil proceedings.
- (6) The usual rules of court, and rules of evidence and procedure, for civil proceedings apply (including the standard of proof).

77 Maximum amount of pecuniary penalty

- (1) The maximum amount of a pecuniary penalty imposed under **section 76** is ~~\$10,000,000~~ \$5,000,000 in respect of each act or omission. 30
- (2) In determining the amount of pecuniary penalty, the court must have regard to all relevant matters, including—
- (a) the nature and extent of the contravention; and
 - (b) the nature and extent of any loss or damage suffered by any person as a result of the contravention; and 35

- (c) the circumstances in which the contravention took place (including whether the contravention was intentional, inadvertent, or caused by negligence); and
 - (d) whether the court, in proceedings under this Act or any other legislation, has previously found Watercare to have engaged in any similar conduct. 5
- (3) Watercare may not be liable to more than 1 pecuniary penalty in respect of the same conduct.
- 78 Order to disclose information**
- (1) The High Court may, on application by the Crown monitor, make 1 or more of the orders listed in **subsection (2)** if the court is satisfied that Watercare has failed— 10
- (a) to comply with a notice under **section 70** requiring Watercare to disclose information; or
 - (b) to comply with the requirement to submit a business plan in accordance with **section 65**; or 15
 - (c) to address the Crown monitor’s comments on a draft business plan, as required under **section 67(2)(b)**.
- (2) The orders are as follows:
- (a) an order directing Watercare to comply with the relevant obligation:
 - (b) an order requiring Watercare to pay to the Crown a pecuniary penalty: 20
 - (c) any other order that the court considers appropriate in the circumstances, including an order directing Watercare to pay to the Crown the costs of the proceedings.
- 79 Maximum amount of pecuniary penalty**
- (1) The maximum amount of a pecuniary penalty imposed under **section 78** is ~~\$300,000~~ \$5,000,000 in respect of each act or omission. 25
- (2) Watercare may not be liable to more than 1 pecuniary penalty in respect of the same conduct.
- 80 Further penalty for continuing breach**
- (1) For a continuing breach, the High Court may impose, for each day or part of a day during which the breach continues, a further penalty in addition to a pecuniary penalty imposed under **section 76 or 78**. 30
- (2) The further penalty under **subsection (1)** is—
- (a) \$500,000 for a breach referred to in **section 76**; and
 - (b) \$50,000 for a breach referred to in **section 78**. 35
- (3) A further penalty under **subsection (1)** may be imposed only in respect of the period that—

- (a) begins on the day on which the pecuniary penalty was imposed under **section 76 or 78** (as applicable); and
- (b) ends on the day on which the breach is remedied.

81 Appeal

- (1) A party to proceedings under **section 76** who is dissatisfied with an order or a decision of the High Court under that section may, with the leave of the Court of Appeal, appeal to that court on a question of law against the order or decision. 5
- (2) In determining an appeal under this section, the Court of Appeal may exercise any power of the High Court in respect of proceedings under **section 76**. 10
- (3) An appeal must be made by giving notice of appeal—
 - (a) not later than 20 working days after the date on which the order was made or notice of the decision was communicated to the appellant; or
 - (b) within any further time that the Court of Appeal allows.

Related amendments to LGA2002 15

82 Principal Act

Sections 83 to 91 amend the Local Government Act 2002.

83 Section 121 amended (The Crown not liable for debts)

Replace section 121(1) with:

- (1) The Crown is not liable to contribute to the payment of any debts or liabilities of— 20
 - (a) any local authority; or
 - (b) Watercare Services Limited.

84 Section 122 amended (Disclosure document and loan documents to contain statement that the Crown does not guarantee financial products or loan) 25

In section 122(1) and (3), after “local authority”, insert “or Watercare Services Limited”.

85 Section 124 amended (Interpretation)

In section 124, insert in their appropriate alphabetical order:

Auckland has the meaning set out in section 4(1) of the Local Government (Auckland Council) Act 2009 30

Watercare means Watercare Services Limited, and includes any subsidiary of Watercare Services Limited

- 86 Section 127 amended (Duty to ensure communities have access to drinking water if existing suppliers facing significant problems)**
- After section 127(3)(a), insert:
- (aa) a **territorial authority** (despite the definition of that term in section 5(1)) includes Watercare: 5
- 87 Section 130 amended (Obligation to maintain water services)**
- (1) In the heading to section 130, after “**water services**”, insert “: **general**”.
- (2) After section 130(4), insert:
- (5) In this section, **local government organisation** has the meaning given in section 124, except it— 10
- (a) includes Auckland Council only in relation to its provision of storm-water services in Auckland; and
- (b) excludes Watercare.
- 88 New section 130A inserted (Obligation to maintain water services: Watercare)** 15
- After section 130, insert:
- 130A Obligation to maintain water services: Watercare**
- (1) Watercare must continue to provide water services in Auckland and maintain its capacity to meet its obligations under this subpart.
- (2) In order to fulfil the obligations under this subpart, Watercare must— 20
- (a) not use assets of its water services as security for any purpose:
- (b) not divest its ownership or other interest in a water service:
- (c) not lose control of, sell, or otherwise dispose of the significant infrastructure necessary for providing water services in Auckland, unless, in doing so, it retains its capacity to meet its obligations: 25
- (d) not, in relation to a property to which it supplies water,—
- (i) restrict the water supply unless section 193 applies; or
- (ii) stop the water supply unless section 25 of the Water Services Act 2021 applies.
- (3) This section does not override sections 131 to 137. 30
- (4) In this section, **water services** means water supply and wastewater services.
- 89 Section 253 amended (Outline of Part)**
- In section 253(a) and (b), after “local authorities”, insert “or Watercare”.
- 90 Section 254 amended (How this Part works)**
- (1) Replace section 254(2) with: 35

- (2) Subpart 1 provides the Minister with a range of options in relation to a local authority or Watercare if they have a problem. The options are available only in relation to the local authority or Watercare itself, and not to any entity that the local authority or Watercare may control or have an interest in.
- (2) In section 254(4) and (5), after “local authority”, insert “or Watercare”. 5
- 91 Section 255 amended (Application of this Part)**
After section 255(2), insert:
- (3) Despite subsection (1), the Minister may exercise the powers in section 257 to 258E in relation to Watercare and, for that purpose, sections 256 to 258E, 258N to 258Q, and 258S to 258ZA apply as if Watercare were a local authority. 10

Related amendments to Local Government (Auckland Council) Act 2009

- 92 Principal Act**
Sections 93 to 98 amend the Local Government (Auckland Council) Act 2009.
- 93 Section 4 amended (Interpretation)** 15
In section 4(1), replace the definition of **Auckland water organisation** with:
Auckland water organisation means Watercare Services Limited, and includes any subsidiary of Watercare Services Limited
- 94 New section 56A and cross-headings inserted** 20
After the Part 5 heading, insert:
- Auckland Council*
- 56A Limits on Auckland Council**
- (1) The Auckland Council—
- (a) has no right, title, or interest (legal or equitable) in the assets, security, debts, or liabilities of an Auckland water organisation; and 25
- (b) must not receive any equity return, directly or indirectly, from an Auckland water organisation; and
- (c) must not give an Auckland water organisation any financial support or capital; and
- (d) must not lend money or provide credit to an Auckland water organisation; and 30
- (e) must not give any person any guarantee, indemnity, or security in relation to the performance of any obligation by an Auckland water organisation; and

- (f) must not direct an Auckland water organisation in relation to any borrowing of any sort by that organisation.
- (2) In this section,—
- borrowing—**
- (a) means the incurring by any means of debt to raise money; and 5
- (b) includes the incurring of debt—
- (i) under any contract or arrangement for hire purchase, deferred payment, instalment payment, sale and lease-back or buy-back, financial lease, loan, overdraft, or other arrangement for obtaining debt finance; or 10
- (ii) by the drawing, acceptance, making, endorsement, issue, or sale of bills of exchange, promissory notes, and other negotiable instruments and debt securities; or
- (iii) by the use, for any purpose, of funds received or invested by the Auckland water organisation for any other purpose if the Auckland water organisation has resolved to repay, with or without interest, the funds used; or 15
- (iv) under any contract for services; but
- (c) does not include debt incurred in connection with the hire purchase of goods, the deferred purchase of goods or services, or the giving of credit for the purchase of goods or services if— 20
- (i) the period for which the indebtedness is outstanding is less than 91 days and the indebtedness is not incurred again promptly after payment; or
- (ii) the goods or services are obtained in the ordinary course of the Auckland water organisation’s performance of its lawful responsibilities, on terms and conditions available generally to parties of equivalent creditworthiness, for amounts not exceeding in aggregate an amount— 25
- (A) determined by resolution of the Auckland water organisation as not being so significant as to require specific authorisation; or 30
- (B) recorded for the purposes of this subparagraph in the then current borrowing management policy of the Auckland water organisation; and 35
- (d) does not include a contract for services that is entered into—
- (i) in the ordinary course of the Auckland Council’s or an Auckland water organisation’s performance of its lawful responsibilities; and

- (ii) on terms and conditions generally available to other parties of equivalent creditworthiness

capital includes uncalled capital

equity return means—

- (a) profits of an Auckland water organisation; or 5
- (b) distributions from an Auckland water organisation; or
- (c) any benefit derived, directly or indirectly, from an Auckland water organisation that represents, is calculated by reference to, or is determined by—
 - (i) a share in or proportion of an Auckland water organisation’s capital; or 10
 - (ii) an Auckland water organisation’s surplus or residual economic value (after satisfying prior contractual claims); or
 - (iii) an Auckland water organisation’s profitability or any other indicator of its success 15

give financial support or capital does not include to enter into any contract for services to sell or supply goods or services on credit—

- (a) in the ordinary course of the Auckland Council’s, or an Auckland water organisation’s, performance of its lawful responsibilities; and
- (b) on terms and conditions generally available to other parties of equivalent creditworthiness 20

lend money or provide credit—

- (a) includes, without limiting the generality of that expression,—
 - (i) to defer payment for any goods or services supplied or works constructed for any person, organisation, or government; and 25
 - (ii) to enter into hire purchase agreements or agreements that are of the same or a substantially similar nature; and
 - (iii) to enter into finance lease arrangements or arrangements that are of the same or a substantially similar nature; and
 - (iv) to subscribe for any debt securities or uncalled capital; but 30
- (b) does not include to enter into any contract for services to sell or supply goods or services on credit—
 - (i) in the ordinary course of the Auckland Council’s, or an Auckland water organisation’s, performance of its lawful responsibilities; and 35
 - (ii) on terms and conditions generally available to other parties of equivalent creditworthiness

security has the meaning set out in section 6(1) of the Financial Markets Conduct Act 2013.

Compare: 2022 No 77 s 171

Auckland water organisations

95	New sections 57A and 57B inserted	5
	After section 57, insert:	
57A	Auckland water organisation must repay debt to Auckland Council	
(1)	If, on the date on which this section comes into force, an Auckland water organisation owes a debt to the Auckland Council in respect of water services infrastructure, the Auckland water organisation must repay that debt, including any interest payable.	10
(2)	An Auckland water organisation must repay a debt under subsection (1) despite anything in section 56A .	
(3)	The repayment—	
(a)	may be made by instalments; but	15
(b)	must be paid in full no later than the close of the day that is 5 years after this section comes into force.	
57B	Repeal of section 57A	
	This section and section 57A are repealed on the date that is 5 years after this section comes into force.	20
96	Section 58 amended (Auckland water organisation must give effect to LTP and act consistently with other specified plans and strategies of Council)	
	After section 58(3), insert:	
(4)	This section is subject to—	
(a)	section 69(2) (effect of charter) of the Local Government (Water Services Preliminary Arrangements) Act 2024 ; and	25
(b)	section 56A (limits on Auckland Council) of this Act.	
97	New section 60A inserted (Charges as security)	
	After section 60, insert:	
60A	Charges as security	30
(1)	This section applies if—	
(a)	an Auckland water organisation has granted a security interest over a charge or charging regime revenue as security for a loan or the performance of any obligations under an incidental arrangement; and	

- (b) a receiver has been appointed under section 40A or 40B of the Receiverships Act 1993 in respect of that loan or arrangement; and
- (c) the Crown monitor has been informed of the appointment.
- (2) The receiver may, without further authority than this section, assess and collect in each financial year a charge under this section to recover sufficient funds to meet—
- (a) the payment of the Auckland water organisation’s commitments in respect of the loan or incidental arrangement during that year; and
- (b) the reasonable costs of administering, assessing, and collecting the charge.
- (3) However, a receiver may not create, or receive, any interest or security in water services infrastructure.
- (4) A charge under this section must be assessed as a uniform charge in the dollar on the water services charges of a property—
- (a) in Auckland; or
- (b) if the Auckland water organisation resolved that, at the time when the loan was being raised or the incidental arrangement was being entered into, it was for the benefit of only a specified area, that area.
- (5) A charge under this section over any 1 or more of the assets of an Auckland water organisation is subject to section 40D(5) and (6) of the Receiverships Act 1993.
- (6) In this section, **Crown monitor** means a Crown monitor appointed under **section 60** of the Local Government (Water Services Preliminary Arrangements) Act **2024**.
- 98 Section 92 amended (Substantive council-controlled organisations must give effect to LTP and act consistently with other specified plans and strategies of Council)** 25
- After section 92(2), insert:
- (3) This section is subject to—
- (a) **section 69(2)** (effect of charter) of the Local Government (Water Services Preliminary Arrangements) Act **2024**; and
- (b) **section 56A** (limits on Auckland Council) of this Act.

Consequential amendments

- 99 Consequential amendments relating to Waterecare Services Limited**
- ~~Amend the legislation specified in **Schedule 2** as set out in that schedule.~~ 35

Part 5
Amendments to Water Services Act 2021 and consequential
amendments

Amendments to Water Services Act 2021

- 100** **Principal Act** 5
Sections 101 and 102 amend the Water Services Act 2021.
- 101** **Section 138 amended (Wastewater environmental performance standards)**
After section 138(3), insert:
- (3A)** **When making wastewater environmental performance standards under this section, Taumata Arowai must not have regard to the hierarchy of obligations in clause 1.3(5) of the National Policy Statement for Freshwater Management.** 10
- (3B)** **Subsection (3A)** applies despite any other provision of this Act.
- 102** **New section 138A inserted (Repeal of provisions relating to National Policy Statement for Freshwater Management)**
After section 138, insert: 15
- 138A** **Repeal of provisions relating to National Policy Statement for Freshwater Management**
- (1)** **The Governor-General may, by Order in Council made on the recommendation of the Minister, repeal **section 138(3A) and (3B)** and this section.**
- (2)** **The Minister may make a recommendation under **subsection (1)** only when the Minister for the Environment—** 20
- (a)** **recommends the approval of a new national policy statement under section 52 of the Resource Management Act 1991 to replace the National Policy Statement for Freshwater Management; or**
- (b)** **reviews, changes, or revokes the National Policy Statement for Freshwater Management under section 53(1) of the Resource Management Act 1991.** 25
- (3)** **An Order in Council made under this section is secondary legislation (see Part 3 of the Legislation Act 2019 for publication requirements).**
- Consequential amendments* 30
- 103** **Consequential amendments**
- Amend the legislation specified in **Schedule 2** as set out in that schedule.**

Schedule 1
Transitional, savings, and related provisions

s 6

Part 1
Provisions relating to this Act as enacted

5

There are no transitional, savings, or related provisions in this Act as enacted.

Schedule 2
Consequential amendments relating to ~~Watercare Services Limited~~

s-99 103

Part 1

Amendments to primary legislation

5

Civil Defence Emergency Management Act 2002 (2002 No 33)

In section 115A, after “local authority”, insert “or Watercare Services Limited” in each place.

Legislation Act 2019 (2019 No 58)

In Schedule 3, insert in its appropriate alphabetical order:

10

Local Government
(Water Services
Preliminary
Arrangements) Act 2024

Section 35

Exemption applies

Exemption applies

Section 38A

Exemption applies

Exemption applies

Local Government (Rating) Act 2002 (2002 No 6)

After section 19(2), insert:

- (3) **Subsection (1)** does not apply to Auckland Council.
- (4) In **subsection (3)**, **Auckland Council** means the local authority established by section 6(1) of the Local Government (Auckland Council) Act 2009.

15

Ombudsmen Act 1975 (1975 No 9)

In Schedule 1, Part 2, insert in its appropriate alphabetical order:

Crown monitor appointed under **section 60** of the Local Government (Water Services Preliminary Arrangements) Act 2024

Receiverships Act 1993 (1993 No 122)

In the cross-heading above section 40A, after “*authorities*”, insert “*and Watercare*”.

Before section 40A, insert:

20

40AAA Meaning of Watercare

In sections 40A to 40E, **Watercare** means Watercare Services Limited.

In section 40A, after “local authority”, insert “or Watercare”.

Replace section 40B with:

40B Power of court to appoint receiver

25

- (1) Subject to sections 40D and 40E and this section, the High Court may,—

Receiverships Act 1993 (1993 No 122)—continued

- (a) on the application of any creditor of a local authority, appoint a receiver of any asset of the local authority or appoint a receiver for the purposes of section 115 of the Local Government Act 2002:
- (b) on the application of any creditor of Watercare, appoint a receiver of any asset of Watercare or appoint a receiver for the purposes of **section 60A** of the Local Government (Auckland Council) Act 2009. 5
- (2) An appointment under **subsection (1)** must be for the period, and with the rights, powers, and duties, and on any terms and conditions, including as to security and remuneration, that the court considers appropriate in all the circumstances. 10
- (3) When considering, in accordance with **subsection (2)**, the terms and conditions upon which a receiver can be appointed by a court in relation to a local authority, the court must—
- (a) take account of the interests of both the secured and non-secured creditors of the local authority, as against— 15
- (i) the interests of the local authority itself; and
- (ii) the requirement of the local authority to provide those services that are essential for the maintenance of public health and safety; and
- (iii) the interests of the ratepayers with property within the area of the local authority; and 20
- (iv) the interests of the general public living within the area of the local authority; and
- (b) take account of the interests of secured creditors as against the interests of non-secured creditors of the local authority. 25
- (4) When considering, in accordance with **subsection (2)**, the terms and conditions upon which a receiver can be appointed by a court in relation to Watercare, the court must—
- (a) take account of the interests of both the secured and non-secured creditors of Watercare, as against— 30
- (i) the interests of Watercare itself; and
- (ii) the requirement of Watercare to provide those services that are essential for the maintenance of public health and safety; and
- (iii) the interests of consumers with property in Auckland; and
- (iv) the interests of the general public living in Auckland; and 35
- (b) take account of the interests of secured creditors as against the interests of non-secured creditors of Watercare.

Receiverships Act 1993 (1993 No 122)—continued

(5) In this section, **Auckland** has the same meaning as in section 4(1) of the Local Government (Auckland Council) Act 2009.

In section 40D(1), after “local authority”, insert “or Watercare” in each place.

In section 40D(3), after “local authority”, insert “or Watercare”.

In section 40D(4), after “local authority’s”, insert “or Watercare’s”. 5

Replace section 40D(5) with:

(5) Subject to subsection (6), **subsection (5A)** applies to any land that is vested in a local authority or Watercare and is—

- (a) a reserve under the Reserves Act 1977; or
- (b) land over which the local authority or Watercare has no power of disposition; or 10
- (c) land in respect of which the local authority’s or Watercare’s power of disposition is conditional.

(5A) The power of disposition that a receiver of that local authority or Watercare has in respect of the land is limited to a power of disposition by way of lease or licence for a term or terms not exceeding in the aggregate 9 years. 15

In section 40D(6), after “local authority”, insert “or Watercare”.

In section 40E(1), (2), and (3)(a), after “local authority”, insert “or Watercare”.

Part 2

Amendments to secondary legislation 20

National Civil Defence Emergency Management Plan Order 2015 (LI 2015/140)

In the Schedule, heading to Part 10, after “local authorities”, insert “and Watercare Services Limited”.

In the Schedule, clause 159(1) and (4), after “local authorities”, insert “and Watercare Services Limited”. 25

In the Schedule, clause 160, after “local authorities”, insert “or Watercare Services Limited”.

In the Schedule, after clause 161(7), insert:

(8) In this clause, **local authority** has the meaning given in clause 2(2) but also includes Watercare Services Limited. 30

In the Schedule, heading to clause 162, after “local authorities”, insert “and Watercare Services Limited”.

In the Schedule, clause 162, delete “by local authorities to”.

In the Schedule, clause 162(a), before “care”, insert “by local authorities to”.

National Civil Defence Emergency Management Plan Order 2015 (LI 2015/140)*—continued*

In the Schedule, clause 162(b) and (c), before “take”, insert “by local authorities and Watercare Services Limited to”.

In the Schedule, heading to clause 163, after “**local authorities**”, insert “**and Watercare Services Limited**”.

In the Schedule, clause 163(1), after “local authorities”, insert “or Watercare Services Limited”. 5

Legislative history

30 May 2024

Introduction (Bill 52–1), first reading and referral to Finance and Expenditure Committee