

# **Water Services Legislation Bill**

Government Bill

As reported from the Finance and Expenditure Committee

## **Commentary**

### **Recommendation**

The Finance and Expenditure Committee has examined the Water Services Legislation Bill and recommends by majority that it be passed. We recommend all amendments unanimously.

### **Introduction**

This bill is the second of three bills aimed at reforming New Zealand’s water infrastructure and services.<sup>1</sup>

Under the Water Services Entities Act 2022, from 1 July 2024 drinking water, wastewater, and stormwater services would be provided by four publicly owned water services entities (WSEs), in place of the 67 territorial authorities that currently provide these services. This bill would set out the functions, powers, obligations, and oversight arrangements of the WSEs.

The bill is an omnibus bill and would amend a range of legislation relating to water services. Most notably, Part 1 of the bill would amend the Water Services Entities Act 2022 (the Act) and insert new Parts 6–13. If enacted, the bill and the Act would form a single Water Services Entities Act, detailing the new arrangements for the provision of water services in New Zealand.

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<sup>1</sup> The first was enacted as the Water Services Entities Act 2022. We are considering and reporting separately on the third bill, the Water Services Economic Efficiency and Consumer Protection Bill.

### **Changes to the reform announced**

We note that, during our consideration of the bill, the Minister of Local Government announced his intention to propose legislative changes to the water services entities model, including a proposal for the model to provide for 10 publicly owned entities instead of four. The Minister also signalled that the entities' commencement would be staggered, starting from 1 July 2024, and ending no later than 1 July 2026.

It is our understanding that these proposed changes fall outside the scope and content of this bill, as this bill would give the entities their functions and powers required to operate and deliver water services. Amendments to the number of entities, the date of the establishment of those entities, and a range of consequential matters may be dealt with by separate legislation at a later date. Our report therefore does not discuss any potential changes to the reforms related to the Minister's announcement.

### **Legislative scrutiny**

As part of our consideration of the bill, we have examined its consistency with principles of legislative quality. We received a comprehensive legislative scrutiny analysis from the Office of the Clerk, and have recommended a number of amendments to address matters of legislative quality. In particular, we have recommended substantial amendments to the offence provisions generally. We have recommended narrowing a particular offence provision relating to the notification of hazards, which raised concerns vis-à-vis the right to freedom of expression in the New Zealand Bill of Rights Act 1990. We have also recommended inserting a requirement for consent to be sought before entering certain types of Māori land, among other amendments.

### **Proposed amendments**

This commentary covers the main amendments we recommend to the bill as introduced. We do not discuss minor or technical amendments.

### **Definitions used in the bill**

Clause 5 of the bill is the interpretation clause, containing definitions of key terms used throughout the bill. It would amend section 6 of the Water Services Entities Act. To ensure consistency across the suite of water services legislation, we propose inserting or amending definitions in that provision, including defining the following terms:

- “consumer”
- “water supply”
- “wastewater network”
- “stormwater network”
- “transport corridor manager”
- “transport stormwater system”.

As introduced, the bill would insert a definition of “specified serious risk” into section 6 of the Act. We recommend amending the definition to include a serious risk to sites of cultural significance.

We note that “small mixed-use rural water supply” may appear as a new definition under clause 5, but we have moved that definition into that clause from proposed section 234 of the Water Services Entities Act.

We also recommend that the definition of “mana whenua” be removed from section 6 of the bill. We note that the Act already defines “mana whenua”, “mana whenua panel member”, and “mana whenua representative”, and clause 7 of the bill as introduced would make partnering and engaging with mana whenua one of the functions of a WSE.

We recommend that references to “mana whenua” be replaced with the broader term “interested persons” in provisions related to engagement in new section 461. The term “interested persons” is not defined in the Act or the bill, and is to be interpreted using its natural meaning. We intend that this would include mana whenua.

### **Expanding the functions of water services entities**

One of the bill’s fundamental purposes is to set out the functions of the WSEs. Section 13 of the Water Services Entities Act already gives the entities two functions. Clause 7 of the bill as introduced would replace section 13 to set out a more comprehensive list of functions to align the Act with the range of new functions that would be established through the bill. We propose the following main amendments to clause 7 of the bill (new section 13 of the Act). We recommend:

- amending proposed new section 13(o) so that it relates to the mitigation of, and adaptation to, the effects of climate change. This would be consistent with other legislation, including one of the entities’ existing objectives, set out in section 12(g) of the Act;
- adding section 13(oa) to expand the WSEs’ functions relating to risk management. A WSE would need to identify hazards relating to water services, assess risks associated with those hazards, and manage, control, monitor, or eliminate those risks;
- deleting proposed subsection (q), which would allow a WSE to do anything that was “consistent with its objectives”. This approach is too broad and would give rise to situations where, for example, a WSE could do anything that “protects and promotes public health”, such as operating a hospital.

### **Receivership arrangements and other legislation**

The bill as introduced includes receivership arrangements for the WSEs. Without this component, WSEs’ credit ratings and access to loans would be compromised. Clause 15 would insert new section 137A in the Water Services Entities Act, so that in the event that a WSE defaulted on a debt, a receiver would be able to support the entity to

avoid bankruptcy. We understand that this provision mirrors similar arrangements in existing local government legislation.

We recommend modifying the bill's receivership arrangements to make clear how these provisions would work, and to better align them with similar provisions in other legislation. The changes we recommend are:

- removing clause 15 and relocating proposed section 137A to new Part 13, subpart 4 (which deals with financial arrangements), becoming new section 469 of the Act
- ensuring it is clear that the Crown monitor must be informed of any appointment of a receiver, to ensure that intervention powers could be exercised if necessary (new section 469(1)(c))
- ensuring that a receiver could not create or receive any interest or security in water services infrastructure (new section 469(3))
- amending proposed new section 137A(3)–(4) as introduced (to become new section 469(4)) by replacing reference to “rateable value of property” with “water services charges of a property”
- amending sections 40A–40E and Schedule 1 of the Receiverships Act 1993 so that Act extends to WSEs, rather than just local authorities (new subpart 21A of Part 2 of the bill)
- placing constraints on a receiver, comparable to section 114 of the Local Government Act 2002, by inserting new clause 148F of the bill (which would insert new section 40D into the Receiverships Act).

### **Granting the Auditor-General sufficient audit time**

Sections 160–168 of the Act require WSEs to prepare and publish annual reports providing information on their operations and their annual financial statements. Clause 21 of the bill would amend section 161 of the Act in relation to the form and content of entities' annual reports.

Submitters raised concerns about clause 21. For example, they consider that the required timing for annual reports to be published would not give the Office of the Auditor-General sufficient time to audit annual reports appropriately. We share their concerns and accordingly propose adding clause 21A (amending section 165(2) of the Act) to provide the Office of the Auditor-General with 4 months rather than 3 months following the end of a financial year to audit and report on the WSEs' annual reports.

### **Relationship agreements**

The bill as introduced would insert new Part 13, subpart 3, new sections 467–469 into the Act. WSEs would be required to enter into relationship agreements with councils and transport corridor managers whose jurisdiction overlapped with the WSE's service area. The agreements would set out where parties would need to work together and how they would need to exercise their respective statutory roles and functions, and would specify the course of action in the event of a dispute.

A number of councils that submitted on the bill were concerned about the non-binding nature of these agreements, the content of the agreements, and the lack of a dispute resolution provision. We consider that the subpart should be amended to address these concerns, and be developed to better reflect the intent of the provisions.

From a structural perspective, we recommend relocating the provisions about relationship agreements to become new Part 5A of the Act (sections 199A–199F, inserted by new clause 21C).

In addition, from a substantive perspective, we recommend that the relevant provisions be amended to provide that relationship agreements:

- are distinct from optional service level agreements which document roles and responsibilities in respect of certain services delivered by the parties to a relationship agreement, with service level agreements being inserted into new section 199F of new Part 5A of the Act
- be binding on the parties to the agreements (new section 199A(3))
- set out where the parties will work together (such as on spatial planning), how they would work together, and the expectations of that relationship (new section 199B)
- have a prescribed set of mandatory content (new section 199B)
- be subject to a more detailed clause on dispute resolution for the parties involved, requiring parties to refer to arbitration if a dispute is not resolved using a non-binding process (new section 199D)
- be reviewed at least every 5 years (new section 199E)
- be in place whenever parties enter into service level agreements.

To further strengthen the bill's requirement to enter into relationship agreements, we recommend two amendments to clause 55 of Schedule 1 (in the bill's transitional arrangements):

- We propose that section 55(1) require that the agreements be entered into no later than 3 months before the establishment date of entities. This was recommended by submitters who suggested there be a period of time to allow for any disputes to be resolved, and for the parties to a relationship agreement to prepare to implement them operationally before they become effective.
- We also recommend amending 55(2), so that if the parties are unable to agree on terms and conditions for the agreement, then the terms and conditions become any of those that the parties did agree to, and those determined by the Minister (if any).

### **Provisions relating to water services infrastructure**

Clause 22 of the bill would insert new Parts 6–13 into the Act, relating to water services infrastructure. We propose a number of amendments to each new part. Our commentary below is organised to discuss our most substantive suggestions for each, beginning with substantive amendments to new Part 6 of the Act.

One exception is that we have grouped our amendments to new section 220, and to new sections 220A, 220B, 222A, and 222B (which we propose inserting under new Part 6), into our discussion on stormwater provisions under proposed subpart 2 of new Part 9. We have done this because those amendments relate fundamentally to the management of stormwater, and therefore we considered them in relation to that specific subpart.

### **Powers to work on water services infrastructure**

Clause 22 introduces a replacement section 200 of the Act which gives WSEs the power to carry out work on land. We note that the section as introduced refers to carrying out this work “on or under land”. In our opinion, this wording could be interpreted to exclude infrastructure above land, such as on a bridge. Given that the clause is intended to also apply to include all water services infrastructure regardless of its location, we propose amending new section 200 to make it explicit that the provision applies to water infrastructure services “on, over, or under” land.

### **Giving notice to carry out work**

Before WSEs would be able to carry out infrastructure work under new section 200, new section 201 of the Act would require them to notify the landowner or occupier of its intention to do that work. We consider it inevitable that, between the time a notification was sent to the owner and the work began, WSEs might need to change the date or time at which they entered a property to carry out work.

To avoid WSEs having to restart the notification process, we recommend inserting section 201(1)(b). Our amendment would enable the entity to update the owner or occupier if there were any changes to the specified date and time of the proposed entry following issue of a notice of the WSE’s intention to enter land and carry out work.

### **Entities can obtain court orders**

The bill would allow for a WSE to apply to the District Court for an order authorising it to work on someone’s land, if the entity had not obtained consent from the owner, or had received consent with unreasonable conditions. New section 204 as introduced sets out the requirements for the court order. To improve this provision’s workability, and its consistency with the Public Works Act 1981, we recommend:

- amending proposed section 204(2)(c) to delete the wording “and determined the route to be preferable”
- amending proposed section 204(3)(c) so it states that any compensation relates to the payment of compensation under the provisions of the Public Works Act 1981
- inserting section 204(4) to require the Court before making an order to have regard to the particulars of any applicable conditions in a resource consent or building consent.

**Working on land that a marae, urupā, or Māori reservation is situated on**

The bill contains special requirements for carrying out work in relation to water services infrastructure when it is on or under Māori land. New section 207 would specifically set out requirements for work on land that has a marae or urupā, or is a Māori reservation.

Submitters noted that there may be no permanent occupier of these arrangements, but the owners might have an interest in knowing that works are being undertaken on their land. We therefore recommend amending section 207(2)(b) to require notice to be provided to any occupier of the land, in addition to the owner.

**Consent to work on Māori land with more than 10 owners**

In the bill, new section 209 of the Act would set out specific requirements for carrying out work on water services infrastructure in relation to Māori land with more than 10 owners.

One submitter maintained that, to carry out work under new section 209, consent should be obtained from the affected landowners. This is because maintenance works can be significant, and because the act of obtaining consent acknowledges the status and importance of Māori land.

We consider it appropriate to require landowners' consent, and therefore recommend amending proposed section 209 by inserting subsection (2)(aaa) to this effect. Our amendment would provide consistency within the bill in relation to requiring consent to access Māori land to undertake water services work. For example, it would be consistent with the access arrangements in new section 208.

**Work on post-settlement governance entity land**

If the entities needed to carry out work on or under land bestowed upon councils or post-settlement governance entities<sup>2</sup> (PSGEs), they would need to give that council or PSGE notice of their intention under new section 210.

We consider that this provision is unclear about whether a WSE must notify a council and PSGE instead of, or in addition to, the consent requirements in new section 200(2)–(3). We note that it is intended that the latter apply, and therefore recommend amending section 210(4) to clarify that notification requirements in section 210(2) apply, in addition to the consent requirements set out in section 200.

**Rights of entry in respect of level crossings**

Subpart 3 of new Part 6 of the Act would grant WSEs rights of entry in relation to level crossings,<sup>3</sup> so that water services could be built or maintained along, over,

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<sup>2</sup> Post-settlement governance entities represent iwi claimant groups and manage settlement assets that arise from a Treaty settlement.

<sup>3</sup> A level crossing is where a road crosses over a railway line.

across, or under the level crossing. For example, the provision would enable a WSE to build or maintain a stormwater culvert under a rail road crossing. Similar rights of entry are granted to gas and electricity network operators under the Gas Act 1992 and the Electricity Act 1992.

We consider that new section 214 should align with the relevant position of these two Acts, and therefore recommend amending the provision to:

- require a WSE to give at least 15 working days' notice to the owner or occupier of the level crossing (new section 214(2))
- remove the reference to "with the owner of the level crossing" (new section 214(1)(b))
- remove the reference to "with the owner of the land (new section 214(4)(b)).

### **Controlled drinking water catchments**

New Part 7 of the Act, to be inserted by clause 22 of the bill, would enable the board of a water services entity to designate controlled drinking water catchment areas. The board of a WSE would also be able to issue a management plan for that area, allowing the entity to do such things as manage risks or hazards to a source of an area's drinking water.

To strengthen the bill's approach to controlled drinking water catchments, and to improve its workability, we recommend:

- inserting new section 232A to provide that a WSE chief executive may issue permits containing prohibitions, restrictions, or requirements relating to activities in a controlled drinking water catchment area
- inserting new section 232B to require the board of an entity to engage with interested persons when developing its controlled drinking water management plan
- deleting new section 233, removing a WSE chief executive's ability to give a direction to comply with the plan (given that the bill would enable compliance officers to do this).

### **Small mixed-use rural water supplies**

As part of the wider reform, almost all water supplies currently owned by territorial authorities would transfer to WSEs on the entities' establishment date.<sup>4</sup> The scope of assets being transferred to WSEs includes small mixed-use rural water supplies that are owned by councils. Small mixed-use rural water supplies are water supplies with special characteristics essential to rural economies and farms. These supplies are

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<sup>4</sup> Territorial authorities would still manage water supplies solely used for agricultural or horticultural purposes, where that water is not also used for drinking water or as a fire-fighting supply.

where water is used for agricultural or horticultural purposes, as well as for drinking water.

As introduced in the bill, the provisions in new Part 8 of the Act would enable rural communities to apply for ownership and operation of these supplies to be transferred back from the relevant WSE, if certain criteria are met and 75% of the supplies' users agree. We discuss our amendments below.

### **Strengthening engagement on small mixed-use rural water supplies**

We recommend that a new set of provisions be inserted into Part 8 of the Act to strengthen the bill's provisions on small mixed-use rural water supplies, and to enable better engagement with the communities they would affect. Our recommendation would require WSEs to have a rural supply plan, where a water supply is a "small mixed-use rural water supply" within the meaning of our proposed clause 5. We propose inserting new section 235 to require that the rural supply plan must define the geographic area of the supply, and set out:

- how the WSE will operate the supply with its users, including arrangements where the infrastructure is on land owned by its users
- any details for ongoing maintenance or upgrades of the supply arrangements
- any committee or other arrangements for making decisions about the operation of the supply by the entity and representatives of its users
- the roles and responsibilities under the drinking water safety plan for the supply.

In addition, we propose that the rural supply plan be reviewed at least every 3 years (new section 238), and that the bill require:

- the entity to engage with interested persons before a rural supply plan is made or when it is reviewed (new section 236)
- the chief executive of a WSE to give effect to the plan (new section 237(a))
- the chief executive to have regard to the plan when making or reviewing the WSE's asset management plan, funding and pricing plan, or infrastructure strategy (new section 237(b)).

### **Transferring small mixed-use rural water supplies**

We have proposed moving new Part 8 of the bill as introduced to the transitional provisions in new Schedule 6 of the Act, given that those provisions are transitional in nature. We note this for readers of our amendments to assist them in navigating this change. We have also recommended certain amendments to that part, adding new requirements for small mixed-use rural water supply operations. These are covered above under the heading "Strengthening engagement on small mixed-use rural water supplies", but appear in our revision tracked amendments in new part 8. We record this to avoid confusion for our readers.

In addition to moving Part 8 as introduced to new Schedule 6 of the Act, we also recommend amendments to this part, so that:

- costs of transferring all assets, liabilities, and interests relating to a small mixed-use rural water supply must be shared equally between the alternative operator from the local community and the water services entity (clause 2(2) of new Schedule 6)
- the transfer would be subject to a binding referendum conducted under the Local Electoral Act 2001 (clause 2(1)(d) of new Schedule 6)
- the cost of polling arrangements would be shared equally between the alternative operator from the local community and the water services entities, if the referendum was successful (clause 12 of new Schedule 6).

### **Service provider and water services assessment obligations**

The bill as introduced would insert new Part 9 into the Water Services Entities Act to place obligations on WSEs. For example, it would require them to assess water services and to create management plans and strategies. These mechanisms are intended to ensure that WSEs properly and rigorously understand, and can be accountable for their management of, the needs of their customers and communities. We discuss this part more below, as we note our substantive amendments.

#### **Water services assessments must assess access to water services**

The bill would insert new Part 9 into the Act, setting out WSEs' obligations for assessing people's access to drinking water supply, wastewater, and urban stormwater services. In subpart 1, new section 245 would require that, through assessments, WSE boards know what access each community and population has to water services within its service area.

We consider that the bill should provide communities with equitable access to water services—particularly communities that lack access to water services currently. We therefore recommend amending proposed section 245(2)(i) so that a water services assessment would need to consider communities or populations that might have deficient or no water services. It must also have regard to the entity's asset management plan and infrastructure strategy to ensure that the assessment is well aligned with the WSE's long term plans.

We also propose amending new section 245 so that references to drinking water supplies, and wastewater and urban stormwater services, are aligned with the terms defined in the bill, as well as changing "assessments" to "water services assessments".

#### **When assessments must be conducted**

We recommend amending proposed section 246 in subpart 1 of new Part 9. Our proposal would require the first water services assessments to be conducted 5 years after the entities' establishment date (instead of 3 years), so that other activity could be prioritised in the first years following establishment. This would still enable the first assessment to feed into the entities' second asset management plan.

### **Extending the timeframe to review water services entities**

Proposed new section 248 would require that, before finalising an assessment of water services, the board of a WSE must provide its regional representative group (RRG) with a copy of the water services assessment. The group would then have 30 working days to review and comment on it, before the board finalised the assessment.

We recommend extending the 30 working day review period, instead giving the RRG 2 months to undertake its review. Our proposal aligns with the timeframe that RRGs are given to review and comment on asset management plans, funding and pricing plans, and infrastructure strategies, under Schedule 3 of the Act.

### **Discretion to develop consumer behaviour rules**

Proposed new sections 274 and 275 of the Act would allow WSEs to make rules in respect of water supply and wastewater services, including rules to restrict water usage and to regulate certain consumer behaviour. We note that the two sections contain overlapping subject matter, and therefore recommend consolidating them as new section 274.

We also think that consumers should be aware of any rules that form part of a service agreement, so we propose that WSEs must attach the rules as an appendix to the service agreement that is required to be published.

### **Stormwater provisions**

Subpart 2 of proposed new Part 9 contains the stormwater provisions that would be inserted into the Water Services Entities Act. The purpose of the subpart is to set out matters such as a framework for managing stormwater in urban areas and coordinating with interested agencies and risk management arrangements. To improve the bill's workability, at a high level, we recommend inserting the following new sections:

- 252A to set out the purpose of the stormwater provisions in subpart 2, proposed new Part 9 of the Water Services Entities Act. This includes the high-level principle that WSEs will be responsible for managing stormwater. (The rationale for this is described below in further detail).
- 252B to define key terms used in proposed subpart 2.
- 252C to consolidate stormwater management plans and rules into a single instrument, becoming “stormwater management strategies”.
- 252D to outline engagement requirements on the strategy, consistent with similar provisions in the bill.

### **Making WSEs responsible for managing stormwater networks through private land**

It is our view that the recent extreme weather events have highlighted the importance of adequate maintenance of watercourses that are part of the stormwater network.

The current regulatory regime across most of New Zealand, apart from Auckland, appears to be focused on how changes to stormwater assets may or may not be made,

but does not set out clearly the duty of care and maintenance in respect of stormwater assets. Stormwater arrangements are subject to the requirements in the applicable regional and district plans made under the RMA. The making of plans under the RMA is a function of territorial authorities and regional councils as applicable. Practically, the large number of different plans by different authorities that address stormwater, means there is a large range of obligations and standards in place regarding stormwater. Plans may include objectives such as minimising the effect of flooding or erosion. They may also include rules to closely control diversion of water, dams, or earthworks near watercourses. The Local Government Act 2002 requires that local government agencies “continue to provide water services and maintain its capacity to meet its obligations”, but that does not necessarily require specific maintenance or renewal obligations. Different local authorities have implemented those requirements in different ways, many—but not all—of them choosing to be proactive. Auckland is the outlier with no such explicit or inferred obligation, by virtue of its use of a bylaw; that is, it manages stormwater under the Auckland Stormwater Bylaw 2015.

We see the bill as an opportunity to improve the relevant policy settings, and to strike a better balance between the respective maintenance responsibilities of the WSEs and the owners of private land, with the objective of reducing flooding risks through achieving better maintenance of watercourses.

The responsibilities for maintaining watercourses for stormwater purposes is currently regulated by a patchwork of bylaws and approaches by regional councils and territorial local authorities. While there a range of approaches we observe:

- Auckland Council is the only council that requires private landowners to maintain rural watercourses. It is the responsibility of regional councils everywhere else.
- Open watercourses in urban areas are mostly an issue in parts of our cities developed since the 1980s. Prior to that waterways were piped and underground. Almost all of Wellington’s watercourses are piped. Christchurch has 187km of open watercourses.
- Territorial authorities take a range of approaches. For example, Christchurch maintains its urban waterways and does not require private landowners to maintain them. Auckland uses its bylaw to require private landowners to maintain watercourses that run through or next to their land.

We think that the bill is an opportunity to put in place policy settings that would be uniform across the country. We consider that this would calibrate a better balance of responsibilities between the WSEs and private landowners.

Our proposals would not amount to a great deal of change, other than in Auckland where the council has a large network of watercourses, and has used a bylaw to say that private landowners are responsible for maintaining their watercourses. We consider that the latter has created two problems.

First, particularly for urban homeowners, it is impractical and financially prohibitive for them to maintain the streams when large amounts of debris are washed down-

stream onto their property. As a result, the maintenance simply does not get done, and it is our observation that Auckland very rarely ever uses its compliance powers.

Second, an urban stream can run through dozens of properties. All it takes is one property owner to leave a blockage and entire neighbourhoods can experience catastrophic flooding as a result.

For the above reasons, we are proposing a change to the bill as introduced. This change is to give the WSEs primary responsibility for managing and maintaining watercourses with a stormwater management function that they do not own. We are not, however, proposing to remove the responsibilities of private landowners for issues caused by impairments or alterations without consent that the owner causes to watercourses on the land they own. To achieve this balance, our proposed amendments to the stormwater provisions would do the following:

- Clearly state that WSEs are responsible for managing and maintaining the water services infrastructure in their service area (new section 220(1AAA) and 220(1AAB)).
- Introduce new section 222B to require landowners to notify WSEs before undertaking any work that might affect water services infrastructure. WSEs may then impose reasonable conditions in relation to the work undertaken by a landowner.
- Provide that, where a landowner has interfered with a watercourse without consent or has breached a stormwater network rule, that owner is responsible for either eliminating impairments to the stormwater network on their land in a timely fashion and to an acceptable standard, or meeting the costs of the WSEs doing so (new section 220(3)(a) and (b)).

We consider that clearly demarcating the financial responsibility for maintenance of private landowners would help to incentivise them to act appropriately.

- However, a private landowner would not be responsible for an impairment or alteration of a stormwater network if that impairment or alteration was caused by the act or omission of another person (new section 220(2A)).

We consider it important to provide for situations where a landowner's failure to properly deal with debris from their property causes a watercourse impairment on another person's property.

- The WSEs would be empowered under new section 200 to undertake work on private land (following a notice period) to eliminate impairments and remediate unauthorised alterations to the stormwater network.
- Where an owner undertakes remedial work, and if the WSE determined that work had not been completed to the necessary standards or in compliance with the requirement specified in stormwater network rules, the WSE would be required to carry out the remedial work necessary to comply with those standards and requirements itself (new section 220A(1)).

- If a WSE undertakes the remedial action rather than the private land owner, the private land owner would be liable for paying for the work on their property (new section 220A(2)).

We recommend adding new section 220B to capture our intent that sections 220 and 220A will not apply to infrastructure that is: owned and operated by entities other than WSEs; or watercourses that are not recognised as having a stormwater network function.

We are aware that our changes do not specifically address the civil regime regarding stormwater. It may therefore be the case that a landowner would not be liable for failure to maintain stormwater infrastructure on their land under the Water Services Entities Act, but would be liable in a civil claim in nuisance. However, this type of anomaly between civil and other regimes is commonplace in our view, and is not problematic as would seldom be used.

We have sought to strike a balance between the responsibility of private landowners and the WSEs in our proposed approach. It is not viable, in our view, to have all responsibility sit with either private landowners, or the WSEs. If only private landowners were responsible, we consider there would remain a significant risk that the improvements to planning, risk management, and the setting of rules would not lead to sufficient maintenance of these key assets. If only the WSEs had responsibility for maintenance of stormwater-related watercourses on private land, private landowners' incentive to avoid and remediate problems they are responsible for (which may in some cases be quite expensive) would be significantly undercut. In addition, having sole responsibility would be a significant operational challenge for WSEs.

Even with the balance of responsibilities proposed, our amendments would be a significant addition to WSEs' operational responsibilities. In practical terms, this is principally about addressing the maintenance of stormwater infrastructure in Auckland, which has been the outlier.

### **Water services infrastructure connections**

The bill as introduced would insert new Part 10 into the Act. That Part would provide for the three-stage approval process for the connection to, or disconnection from, water services infrastructure. We suggest amendments to these provisions, particularly related to developers.

### **Water services entities' responsiveness to the needs of urban development and growth**

We think that the WSEs should support, enable, and be responsive to planning processes and growth, the construction of additional housing, and urban development in their areas. We consider that, in the past, existing water service providers have not always been responsive to requests from developers in a manner that would support these aims. At the same time, we acknowledge that WSEs would need to pursue these objectives in a way that is consistent with their role as water service providers, and with relevant local authority plans.

We consider that the way to balance these objectives and obligations is to require each entity to create a development code. The codes would likely need to be authored in conjunction with technical experts on relevant matters, due to the unique circumstances of each entity. For this reason, we think that each WSE should be required to draft its own code.

Nevertheless, we think that the Commerce Commission should be responsible for approving each code, after it has assessed that the code complies with the bill. We think that enforcement of the code should also sit with the Commerce Commission. This would ensure that developers have a way to resolve disputes with WSEs that exceed the minimum value for disputes addressed by the consumer dispute resolution service. (That service is provided for under the Water Services Economic Efficiency and Consumer Protection Bill, which we are considering alongside this bill). This would give developers an alternative to seeking redress through the courts, which can be costly and time-consuming for all parties.

We therefore suggest amendments to these provisions, proposing that new Part 10 of the bill be amended to:

- introduce new section 293A, which would require WSEs to draft and implement a Development Code
- set out the process for formulating and adopting a Development Code (new section 294A–294C)
- require that a Development Code must be drafted consistently with a set of principles, including that WSEs support, enable, and are responsive to planning processes and growth for additional housing and urban development
- require the Development Code to provide for a range of operational considerations, including the form of applications, applicable engineering design standards, and necessary criteria a connection application must satisfy
- require that a Development Code must specify how disputes are to be resolved in relation to infrastructure connections or disconnections, with a requirement for the dispute resolution mechanism to provide for independent, timely, practical, and cost-effective resolution of disputes.

## **Charging for water services**

Clause 22 of the bill would insert new Part 11 into the Water Services Entities Act, containing provisions that would enable charging for water services. We suggest various amendments to these provisions and discuss our most substantive changes below.

### **Liability for water services charges in respect of Māori land**

Proposed new section 322 of the Act sets out who would be liable to pay water services charges in respect of Māori land. We note that it is common for the occupier to be the user of water services, as opposed to the owner. However, we consider that the bill as introduced does not provide effectively for these kinds of informal arrangements made between Māori landowners and the occupier of their land.

We recommend inserting new section 322(3A) into the Act. Our amendment would provide that, where Māori land that is owned by multiple people is occupied through an arrangement other than a lease, the occupier is liable to pay water services charges, unless the arrangement specifies otherwise.

### **Penalty for failing to pay water services charges and fees**

If a water services charge is not paid, the bill would allow consequences to be imposed on the person responsible for the payment. New section 325(1) states that, if a debt remains unpaid to a WSE, it “increases at a rate determined by the Commission in the service quality code”. The Water Services Economic Efficiency and Consumer Protection Bill—which we are currently considering alongside this bill—sets out the service quality code referenced in the new section. Clause 70 of that bill outlines the contents of the code.

We consider that proposed new section 325(1) of the Act is inconsistent with clause 70(c) of that bill, as it states that the service quality would need to “specify a penalty rate for unpaid debt owed to regulated water services providers by consumers, or a method of calculating the penalty due, or both”.

To align new section 325 with clause 70(c) of that bill, we propose amending section 325(1) to indicate that the Commerce Commission would be enabled to specify a method of calculating the penalty due on the unpaid debt. To give effect to our recommendation, we also suggest deleting proposed section 325(2) and (6).

We note that our proposed amendment to new section 363 of the bill as introduced (discussed below under the heading “Entities must supply a sufficient quantity of water”) would make it clear that WSEs must supply a sufficient quantity of water, even if a person fails to pay fees or charges under the Act.

### **Board must set charges consistent with the funding and pricing plan**

New section 330 of the bill as introduced provides a framework for setting water services charges. It would lay out what the board of a WSE could set charges for, and would set the requirements for how charges are to be set, paid, or collected.

We consider that some form of consultation should be required when setting water services charges. We note that section 155 of the Water Services Entities Act requires that an entity must have a funding and pricing plan (FPP), outlining its intended approach to pricing its services and charging customers. The FPP would then be given to the regional representative group, which would publish a report on how the plan considered consumer feedback and incorporated it into the plan.

We recommend inserting subsection (3) into new section 330 so that charges set out under the section must be consistent with the FPP.

### **Principles when setting charges**

Proposed new section 331 of the Act would require the board of a WSE to consider a set of principles outlined in the bill when setting charges for water services. The principles are intended to be non-exhaustive, and other factors could be taken into

account, such as an entity's broader operating principles (outlined in section 14 of the Water Services Entities Act). To make clear that the factors listed under proposed section 331(1) are not exhaustive, we recommend inserting section (1A) to the provision.

We recommend amending new section 331 by inserting subsection (4A). Our amendment would confirm that the charging principles would not limit the powers in new section 334, in turn enabling WSEs to charge geographically averaged prices for water services (adjusting charges based on where consumers live, so that costs are averaged out). We discuss new section 334, and our suggested amendments, later in this report.

To remove potential uncertainty about when new section 331 would expire, we recommend deleting "or later date" from section 331(5)(b).

### **Publishing charges in a tariff list**

The board of a WSE would be required to review and publish the charges that apply to its annual billing period, under proposed new section 332 of the Act.

We understand that it is intended under the bill that the WSEs be required to set out those charges in an annual tariff list. We recommend reflecting this position explicitly in the bill, amending new section 332 so that:

- the heading states "Obligation to publish tariff lists"
- the board would be obliged to publish a tariff list, and to update it if the board made any changes to it (new section 332(1))
- it includes a definition of "tariff list", referring to water services charges set under new section 330.

### **Discounting water services charges**

The bill would insert new section 333 into the Act, allowing the chief executive of a water services entity to discount charges for water services. We would like to see more transparency and consistency provided for in the bill regarding the chief executive's considerations when deciding on discounts.

To achieve this, we recommend inserting new section 332A and amending new section 333(2). Our recommendations would require the board of a WSE to create and publish a policy on discounting, so that decisions a chief executive makes about discount charges align with that policy.

### **Charges could be geographically averaged**

A key purpose in reforming New Zealand's water services is to address affordability issues relating to water services provision, particularly for some of the country's smaller communities. New section 334 would enable WSE boards to charge geographically averaged prices for water services, so that efficiency gains can be realised by sharing costs across communities. Geographic averaging under the bill could occur at different scales for different types of services and different classes of communities; that is, it need not be applied universally across New Zealand.

To improve transparency in the provision's application, we recommend amending proposed section 334 so that the pricing method must be included in the funding and pricing plan, under sections 154–156 of the Water Services Entities Act. In addition, we recommend inserting section 334(2A)(b) so that the Commerce Commission could not override geographic price averaging decisions by the water services entity. Geographic averaging decisions would remain subject to judicial review proceedings.

### **Setting up transitional collection of charges**

Clause 22 would insert new sections 336–337 in the Act to set transitional arrangements for collecting water services charges while the provision of water services transferred from territorial authorities to WSEs. As introduced, it would provide that a WSE chief executive could authorise the local authority or authorities in its service area to collect charges on behalf of the entity. This would enable some local authorities to use existing systems and processes to collect charges on behalf of entities, giving flexibility and reducing risk when delivering water services from “day 1”. Under new section 337, the arrangement would expire on 30 June 2029 (if it was still in use by that date), unless the parties involved agreed to extend it.

We consider that the expiry date in new section 337 should be shortened, instead expiring on 30 June 2027 (new clause 65B(2) in Schedule 1). We think this would be enough time for WSEs to set up their billing systems. It would not prevent them from negotiating directly with local authorities after that date if needed—although local authorities would not be obliged to provide the billing service.

Similarly, we propose bringing forward the date in new section 338(3) as introduced. Our recommendation would mean that local authorities would only be compelled to collect charges until 1 July 2027, not 1 July 2029 (new clause 65C(3) of Schedule 1).

Lastly, the proposed provisions on pass-through billing are all transitional arrangements, helping to transition water services from being provided by territorial authorities to being provided instead by the entities. We therefore recommend moving new sections 336–338 of the Act to Schedule 1 of the bill, becoming new clauses 65A–65C of that schedule, where other transitional arrangements are placed.

### **Requirements when charging for stormwater services**

New section 340 sets out requirements that would be placed on WSEs when they charge for stormwater services. We consider that changes are needed to make clear which property owners would be liable for stormwater charges.

We consider that, as introduced, the bill provides insufficient guidance to WSEs for using “geographical zones” as a basis for stormwater pricing. Currently that term is undefined in the bill, but we think it should be. We also consider that stormwater management plans should be required to show geographical zones and identify properties that benefit from stormwater services although they are not directly connected to them. For example, geographical zones could identify properties upstream from a stormwater service that benefit from the service in times of heavy rain. Properties that receive no benefit should not be included in a geographical zone. We consider that

entities should have to take account of these geographical zones when setting stormwater charges as part of a funding and pricing plan. To give effect to these considerations, we recommend:

- amending the date in new section 340(4)(b) so that new section 340 applied from 1 July 2024 (or after the Commerce Commission had put in place relevant input methodologies, if earlier)
- amending new section 340(2)(b)(ii) so that the provision refers to the geographical zone specified in WSEs' stormwater management plans under new section 256(1)(b)
- including in proposed section 252C reference to the funding and pricing plan, requiring WSEs to take their stormwater management plan (which would include geographical zones) into account when making or reviewing funding and pricing plans
- amending proposed section 256(1) by adding new paragraph (b) to specify that stormwater management plans must include geographical zones, indicating the properties that benefit from water services entities' stormwater services.

### **Kāinga Ora to pay water infrastructure contribution charges**

In the bill as introduced, new section 348 of the Act would exempt the Crown from paying water infrastructure contributions, in the same manner as the Crown is exempt currently from development contributions under the Local Government Act. We note that Kāinga Ora is liable to pay development contributions under the Local Government Act. Therefore, we consider that the agency should also be liable for water infrastructure contributions, and recommend making this explicit through proposed section 348(2).

Proposed new section 350(2) states that nothing in that section would affect Kāinga Ora's ability to use development contributions for the development of water services infrastructure, under the Urban Development Act 2020. We do not consider this provision necessary, given that we are recommending consequential amendments to the Urban Development Act. Territorial authorities would no longer be able to use development contributions for water supply, wastewater, and urban stormwater services. This would make the exclusion of Kāinga Ora redundant, so we recommend deleting proposed section 350(2).

### **Invoicing for water infrastructure contribution charges**

Water services entities would have requirements about when they could invoice for water infrastructure contribution charges (new section 349). Several submitters told us about their concerns in relation to this provision, including that they felt it does not clearly outline the procedure for charging water infrastructure contribution charges.

We propose various amendments to make the application of new section 349 clear, and to improve its workability. Our recommendations would amend relevant provisions, modelled on the development contributions regime under the Local Govern-

ment Act. Our notable recommendations in relation to this section include, but are not limited to:

- empowering the entities to refuse a property’s connection to water services if the owner had not paid their water infrastructure contribution, or had not agreed to an instalment plan (new section 349(2A))
- clarifying under new section 349(1B) that an entity could only require the water infrastructure contribution charge as provided for in a water infrastructure contribution charges policy, adopted under new section 346.

### **Compliance and enforcement arrangements**

New Part 12 of the Act, under clause 22 of the bill as introduced, would establish WSEs’ compliance and enforcement arrangements for offences relating to water services. The arrangements would implement (with some modifications) many of the existing compliance and enforcement functions and powers that relate to water services from local government legislation. To improve the bill’s workability, we recommend some amendments; the most substantive are discussed below.

#### **Compliance officers should not be subject to WSEs’ directions**

The bill would enable water services entities to appoint compliance officers whose purpose would be to carry out activities such as investigating serious risks to water services. Under proposed new section 360 of the Water Services Entities Act, a compliance officer would be subject to directions by the Director of Compliance and Enforcement, but not to the directions of the board or chief executive of a WSE.

We consider that it would be inappropriate for the board or chief executive of a WSE to direct compliance officers in relation to the officers carrying out their functions and duties. Therefore, we recommend explicitly prohibiting this by inserting new section 360(4).

#### **Entities must supply a sufficient quantity of water**

Through new section 363 of the Act, the bill would grant WSEs the power to restrict water supply to land, a building, or a person, if a compliance officer deemed it necessary under section 362 of the Act. Several submitters raised various concerns about this power, including that the entities should not be able to disconnect people’s drinking water in the event that a household does not pay charges set by an entity.

We note that, under section 25 of the Water Services Act 2021, drinking water suppliers are required to provide a “sufficient quantity of drinking water” to every point of water supply. The supply may be restricted or interrupted, but notice provisions apply when doing so under that Act. Section 25 also states that a supplier may restrict water supply for unpaid accounts, but it must continue to provide a sufficient quality of water.

To address some of our submitters’ concerns, we recommend inserting new section 363(2) to clarify the relationship of the provision with section 25(1) of the Water Services Act. We also recommend inserting new section 25(9) into that Act, through

clause 188 of the bill, to avoid doubt that a compliance officer has the power to restrict water supply to land or a building under the Water Services Entities Act 2022.

### **Criminalising offences committed knowingly or with intent**

Under the bill's clause 22, new subpart 4 of Part 12 would cover offences relating to matters like water supply and wastewater networks. Whilst we consider the provisions in that part appropriate, we recommend the following amendments to improve the bill.

For the offences set out in new sections 391, 393, 396, and 402 of that subpart, we propose changing the word “knowingly” to “intentionally”. The mental element of these sections (a person knowing what they are doing or have done) is intended to apply to both the person's conduct and the risk it creates. However, by using the word “knowing”, a person could avoid being charged under those sections if they committed an act but were unaware of the risk associated with it. We therefore consider that the word “intentionally” would more clearly assert that a person has committed an offence if they are aware of the act and its risks.

New sections 391AAA, 409–411, and 414 would insert further criminal offences into the Act. We want to avoid criminalising relatively minor consumer behaviours under the bill. We therefore propose amending these new sections so that an offence is committed if someone has knowingly failed to comply with the relevant duty, as well as knowing that non-compliance with the duty causes a “specified serious risk”. We think this would ensure that offences only relate to significant conduct, and we note that low-level actions could still be addressed by infringement fines or civil compliance powers elsewhere in the bill.

We also recommend amending the wording of the above new sections to better set out what behavioural elements would be considered as constituting an offence.

Lastly, we recommend amending proposed section 408(1)(b). Our recommendation would make it an offence to breach a prohibition, restriction, or requirement of a permit issued under proposed section 232A.

### **Referencing the Director of Compliance and Enforcement**

We note that, in proposed new Part 12 of the Water Services Entities Act, subparts 5–7 and 10 variously refer to the “Director of Compliance and Enforcement”, as well as the “chief executive of a water services entity”. For example, proposed new section 429 refers to the director in that section's heading, but refers to the chief executive in the subsections of the provision. To correct these errors, we recommend amending subparts 5–7 and 10 of Part 12 so that references to the “chief executive” are replaced with the “Director of Compliance and Enforcement”.

### **Deleting defences in prosecution for strict liability offences**

Proposed new section 436 sets out offences that would apply in prosecutions for strict liability offences under specified sections of the Act. We note that some of the offences listed in the table in subsection (1) include a mental element and cannot be

described as strict liability offences. We therefore recommend amending proposed section 436(1) to delete some of the sections specified in that table.

We also recommend amending proposed section 436(3)(a) so that it relates to an action or event that was necessary for the purposes of preventing, avoiding, or mitigating a specified serious risk.

### **Restriction or prohibition orders for offenders**

The bill as introduced empowers the Court to make restriction and prohibition orders, which apply to people in relation to the delivery of water services, under proposed new section 445 of the Act. We consider that the section should refer to an offender rather than a person. This would enable a greater range of sentencing options, extending beyond a fine or custodial sentence.

The Water Services Act also provides for these orders, so referring to an “offender” in the bill, and enabling more sentencing options, could be useful in circumstances where a person is engaging in repeat offending (for example, poisoning a watercourse or dumping waste in it). We therefore recommend amending proposed section 445 of the Act to this effect.

### **Application for internal review**

Proposed subpart 11 of new Part 12 of the Water Services Entities Act would provide for internal reviews and appeals in respect of specific decisions made under the Act. New section 446, in that new subpart, would enable those decisions to be reviewed and subject to:

- directions issued by a WSE’s compliance officer
- decisions relating to a permit for a controlled catchment area
- decisions relating to a trade waste permit

We consider that the reference to “a permit for a controlled catchment area” is unclear. The empowering section for a controlled drinking water catchment management plan refers to permits (new Part 7 of the Act). However, there is no empowering provision to enable a WSE to issue a permit relating to activities in a controlled drinking water catchment.

We therefore recommend amending new Part 7 to enable a WSE’s chief executive to issue permits relating to activities that may be undertaken in a controlled drinking water catchment, including any conditions on activities or related requirements.

## **Miscellaneous provisions**

### **Implementing consistency in the engagement requirements**

Clause 22 in new Part 13 sets out miscellaneous provisions. Most notably, new section 461 would insert engagement requirements into the Act, outlining how engagement should occur in relation to a number of specific functions and powers. We consider that the requirements need amending, as they are inconsistent with the operating

principles in section 14 of the Act. We recommend that the bill require that engagement under the statutory instruments listed in new section 461 must include:

- adequate and appropriate notice of the content of the proposed instrument, and a reasonable opportunity for people to make submissions on it (new section 461(6)(a)–(b))
- appropriate consideration of any submissions received (new section 461(6)(c))
- a provision stating that engagement is not required where an instrument needs to be amended urgently, and not where dealing with minor or technical changes (new section 461(7))

Our proposed amendments would be similar to other legislation, such as section 53 of the Water Services Act.

### **Engagement with Māori**

We note that all persons performing or exercising duties, functions, or powers under the Act are required to give effect to the principles of te Tiriti o Waitangi/the Treaty of Waitangi and to Te Mana o te Wai, to the extent that the latter is relevant to the context. The bill as introduced would also make partnering and engaging with mana whenua one of a WSE's functions (new section 13 in clause 7 of the bill as introduced).

### **Amending and repealing other legislation**

As introduced, Part 1 of the bill (clauses 3–25) covers amendments of existing sections in the Water Services Entities Act, and would insert new Parts 6–13. Part 2 of the bill (clauses 26–203) covers amendments to and repeal of other legislation. We discuss our most substantive recommendations to Part 2 below.

### **Amendments to Treaty settlement legislation**

In submissions, some iwi expressed a need for the bill to better reflect the relationships between water services legislation and water bodies. Although we recommend inserting clause 77A into Schedule 1 (which covers transitional provisions and is discussed later in this report) as a commitment to amend other Acts that may be affected by the bill, a few iwi specifically recommended amendments to the Acts that are relevant to them. We therefore recommend amending:

- Schedule 2 of Te Awa Tupua (Whanganui Claims Settlement) Act 2017, requiring persons exercising or performing functions, duties, and powers under Taumata Arowai—the Water Services Regulator Act 2020, the Water Services Act 2021, and the Water Services Entities Act 2022 to recognise and provide for the Whanganui River's status as Te Awa Tupua (Part 2, new subpart 24B, clauses 163C and 163D)
- the Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010, requiring a person performing functions or powers under Taumata Arowai—the Water Services Regulator Act 2020, the Water Services Act 2021, and the Water Services Entities Act 2022 to have regard to the vision and strategy

under that settlement legislation (Part 2, new subpart 27A, clauses 184A and 184B)

- section 18 of the Ngati Tuwharetoa, Raukawa, and Te Arawa River Iwi Waikato River Act 2010, in the same way as above (Part 2, new subpart 16A, clauses 138A and 138B).

We wish to note that the Department of Internal Affairs (which we appointed to advise us on the bill) engaged directly with the relevant iwi on these amendments. We understand that, for each Act, the department engaged with multiple iwi, and worked to ensure consensus.

### **Land transferred to entities should be liable for rates**

We note that a number of councils are concerned that WSEs would not be liable for rates under the bill as introduced. We understand it was intended that land transferred to the entities would be rateable, and WSEs will be liable to pay those rates. To reflect this intention, we recommend deleting clause 137 of the bill, which would have amended Schedule 1 of the Local Government (Rating) Act 2002.

### **Repealing local Acts no longer fit for purpose for water services**

We note that New Zealand has several local Acts relating to the delivery of water services that are no longer fit for purpose or necessary, and therefore should be repealed. Clause 203 of the bill as introduced would repeal two local Acts, but we note that there are more which should be added to the list. We recommend amending clause 203 to add a further 15 Acts to the list of local Acts that would be repealed by the bill.

We also recommend inserting a new clause into the bill to provide that, where any conflict arises between a local Act and the Water Services Entities Act, the latter Act prevails. We consider that this would avoid ambiguity between the legislation and local Acts—particularly given that many local Acts are no longer fit for purpose.

The Department of Internal Affairs has advised us that it has consulted with the relevant territorial authorities and confirmed these Acts are appropriate for repeal.

## **Schedule 1**

In the bill as introduced, Schedule 1 would insert new Part 2 into Schedule 1 of the Act. It includes transitional arrangements for water services provision to transfer from councils to the water services entities. This section of our report sets out our substantive changes to Schedule 1.

### **Minister should inform councils on allocation schedule changes**

As introduced, clause 40 of Schedule 1 would require an establishment chief executive of a WSE to submit a draft allocation schedule to the Minister of Local Government for approval.

We note that some submitters were concerned that the Minister would be granted too much power, as the Minister could amend an allocation schedule at the final approval stage, and councils would have no right to respond. Given the significant nature of

councils' interests in the restructuring arrangements, we consider that they should have an opportunity to comment on any changes to the allocation schedule, other than minor or technical changes.

We therefore recommend that the Minister be required to inform affected councils in writing of any decision to amend the allocation schedule, provide reasons for any changes, and give those councils a reasonable opportunity to comment on the amendments. Our recommendations would be inserted into the bill under Schedule 1, clause 40(3).

### **Council-controlled organisations and the transition**

Under the bill as introduced, all local government organisations' service delivery and infrastructure arrangements relating to drinking water and wastewater would transfer to WSEs. This would include the services and assets held by, or managed on behalf of, territorial authorities, such as through council-controlled organisations (CCOs).

Submitters raised concerns about this, given that many CCOs are "mixed-purpose" organisations.<sup>5</sup> We agree. We also acknowledge that, for mixed-purpose CCOs, the transfer process in the bill as introduced would likely be disruptive, create uncertainty, and would have unintended financial and commercial implications.

We recommend amending Schedule 1 by inserting clause 40A to state that, for CCOs and subsidiaries, the transfer arrangements in clauses 42 to 47 would only apply to CCOs whose predominant purpose is to provide services to territorial authorities to support their delivery of water services.

To determine a CCO's predominant purpose, we recommend inserting new clause 40A(5). Our recommendation would mean that, if 85% or more of a CCO's revenue comes from the sale of water-related services to customers of territorial authorities, then the transfer provisions would apply. We consider that requiring the threshold to sit at 85% would make it clear that, at that point, a CCO's purpose is largely about providing water services. Under our recommendation, this test would apply to clauses 5, 22–29, 30–33, and 42–47 in Schedule 1 of the Water Services Entities Act.

However, we note that the above recommendation would capture Citycare, as its predominant purpose is to support local authorities throughout New Zealand in operating water services. This would mean that Citycare's staff and assets would transfer to WSEs. We received a letter from the Minister of Local Government during our consideration of bill, in which the Minister asked us to consider this issue. We consider that transferring Citycare's staff and assets to WSEs would result in unacceptable risks to water services continuity across the country. We therefore recommend that new clause 40A make explicit that the provisions listed in new clause 40A(1)(a)–(e) do not apply to Citycare.

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<sup>5</sup> Council-controlled organisations that are "mixed-purpose" provide services on a commercial basis to territorial authorities, regarding a mix of asset and infrastructure areas, including water services, roads, parks and reserves, property, and other infrastructure and amenities.

We also note that, while efforts have been made to identify all CCOs in our consideration of the bill, it may be possible that some were not captured. We therefore consider that the bill should provide some flexibility for the Minister of Local Government to specify what CCOs are excluded from the application of the specified provisions (new clause 40A(2)).

### **Transitioning bylaws from councils to the entities**

Clause 56 of Schedule 1 sets out that WSE boards may make specified instruments during the transition period (the three year period from the beginning of the entities' establishment date). For example, they could make controlled drinking water catchment management plans, stormwater network rules, trade waste plans, water usage restrictions, and consumer behaviour rules. When making an instrument, the board could adopt or consolidate existing bylaws made by councils under the Local Government Act.

We consider that there are several issues with the approach in the bill that could hinder workability with existing bylaws. Our main concerns are that:

- there would be misalignment between bylaws and instruments: in many cases, whilst there are provisions in bylaws, they would likely not be substantial enough to form new instruments
- different regulatory approaches exist: councils sometimes regulate activities differently or choose not to regulate at all, instead using tools such as public information and education or using guidance, or in some situations deciding that no intervention may be required at all
- there is an issue about legitimacy of engagement: where an establishment entity would need engagement to fill gaps in existing bylaws, it would be time critical (before 1 July 2024), and structures would not be in place to allow for proper consultation (no regional representatives groups would be in place, which is one way councils and communities have input about the transition).

We note that this is an important and complex area for councils, given that bylaws for water services will need to be replaced over time with new statutory instruments set out in the bill. Therefore, we recommend amending clauses 56 to 59 of Schedule 1 to give an extended transitional period for existing bylaws, if the bill is enacted. Under our recommended approach:

- existing bylaw arrangements would continue for up to three years
- water services entities would have compliance and enforcement powers in relation to bylaws
- entities and territorial authorities would be required to enter into relationship agreements about transitional arrangements relating to bylaws
- territorial authorities would not be required to review bylaws during this period (but they would continue to have powers to amend bylaws to deal with transitional issues), and any bylaws that expire would continue for the three year period

- an entity would be able to make new statutory instruments to replace bylaws within the three year transition period
- the above early transition could happen district by territorial authority district, reflecting the jurisdictional arrangements for bylaws.

We recommend this approach for multiple reasons. Once established, the WSEs would be better placed to review and replace bylaws, given that they would have technical expertise and would be able to run the appropriate engagement processes. It would also give them reasonable time to determine and consider the scale and prevalence of any issues or gaps that are present, as well as providing for a range of tools that could be used to manage behaviours, including the creation of instruments.

This approach also aligns with the approach relating to drinking water standards in the Water Services Act, and has been used in other complex transitional areas. Our recommend amendments therefore follow an established precedent.

### **Upholding Treaty settlement obligations**

The Water Services Entities Act currently provides high-level protections to support the integrity, intent, and effect of settlement legislation relating to te Tiriti o Waitangi–Treaty of Waitangi. In Schedule 1 of the bill, clauses 77 and 78 set out obligations under the bill for Treaty settlement. Some iwi that submitted on the bill, including the Freshwater Iwi Leaders Advisory Group, wanted greater certainty that their settlement legislation would be upheld as a result of the water services reform.

In light of this, we recommend aligning the bill’s approach to Treaty settlement legislation with the proposed protections in the Natural and Built Environment Bill. We consider that this would protect the relationship between Crown and Māori, and would provide confidence to post-settlement governance entities<sup>6</sup> (PSGEs) that the Crown intends to act in good faith and introduce legislation as soon as it can to uphold Treaty settlements. We also consider that it would provide confidence to both parties about the steps that need to be taken, lowering the risk of legal challenges to the process.

We understand that advisers from the Department of Internal Affairs engaged with other departments, including Te Arawhiti, and that these provisions reflect a consistent Crown position for Treaty settlements that is also incorporated in the Natural and Built Environment Bill and the Spatial Planning Bill.

We are aware of ongoing discussions between the Crown and iwi relating to any changes required to Treaty settlements, surrounding agreements, and arrangements to ensure they are upheld in light of water services reform. We are supportive of these discussions and recognise that the amendments we are recommending can be considered as a “holding pattern” while the Crown and iwi discuss the changes required to

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<sup>6</sup> Post-settlement governance entities represent iwi claimant groups and manage settlement assets that arise from a Treaty settlement.

their Treaty settlements and surrounding agreements in greater depth to ensure they are upheld in light of water services reform.

We recommend inserting clause 77A and replacing clause 78 in Schedule 1, so that the bill has procedural protections relating to Treaty settlement legislation, preserving the integrity, intent, and effect of Treaty settlements. Departmental advisers engaged with Te Arawhiti on the proposed approach, consulted the Freshwater Iwi Leaders Advisory Group on the proposed drafting, and advised that the amendments are acceptable to each.

New clause 77A would be based on the approach in clause 4, Schedule 2 of the Natural and Built Environment Bill. Our proposed amendment incorporates feedback from the Freshwater Iwi Leaders Advisory Group. The group proposed that the bill make clear the obligation on the Crown if there is a need to amend legislation to give effect to an agreement relating to Treaty settlement obligations in the context of the water services reforms. The Department of Internal Affairs advised that the obligation on the Crown should be to take necessary steps to introduce a bill to the House that amends the post-settlement governance entity's Treaty settlement Act or any other Act. These italicised words that came from the iwi group are to make clear that new clause 77A(4) does not intend that only Treaty settlement Acts may need to be amended in future in order to uphold Treaty settlement obligations—water services Acts may need amending, too.

We also recommend that the bill be amended so that, by the establishment date, or as soon as practicable after it, the establishment chief executive must:

- identify the agreements, arrangements, and understandings between local authorities and mana whenua relating to water services that would not be subject to the process in clause 77A (new clause 78(2) of Schedule 1)
- work together with these parties to prepare the assumption by the WSE of any responsibility set out in the agreements, arrangements, and understandings under 78(1) (new clause 78(2) of Schedule 1).

## **Schedule 2**

### **Strengthening accountability of subsidiaries**

In Schedule 2 of the bill as introduced, which would replace Schedule 5 of the Water Services Entities Act, WSEs would be enabled to establish, own, or operate subsidiaries. To influence or limit subsidiaries' activities, the bill provides for public accountability mechanisms. They include requiring a statement of intent and performance reporting, as well as imposing specific obligations on them.

Several submitters expressed concern about the enablement of subsidiaries in the bill. Some questioned the purpose of subsidiaries, their accountability and oversight arrangements, and whether they are even needed. Although we do not consider that subsidiaries would reduce the entities' public accountability, we propose amendments to new Schedule 5 to help to remove doubt about the protection of public accountability in the event that WSEs establish subsidiaries.

We recommend amending clause 20 to require subsidiaries to provide any information required by a WSE that would enable entities to prepare their planning and performance obligations, and to meet any information requests made by Taumata Arowai. We also recommend amendments to ensure that subsidiaries would be required to have annual reports.

In addition, we recommend extending the engagement requirements to apply to subsidiaries in clause 8 of Schedule 2. This would mean that, if a subsidiary was performing a function of a WSE that required engagement (set out in new sections 461 and 462 of the Act), the subsidiary would be required to comply with any engagement requirements of the parent WSE. We believe this would promote stronger transparency and accountability at the community level, and therefore recommend amending clause 8 of Schedule 2 to this effect.

### **National Party differing view**

The National Party members oppose the select committee recommending the passage of the Water Services Legislation Bill.

This bill was introduced only hours after the passage of the Water Services Entities Bill and significantly amends it to fill in the functions of the proposed four mega-entities that make up the first iteration of the Government's water services reforms. National opposed the passage of the Water Services Entities Bill and thus continues to oppose this mega-entity water reform agenda as contained in this bill.

National considers the engagement with the public and local councils on this reform inadequate. The overwhelming majority of New Zealanders oppose the mega-entity model for three waters service delivery. In addition, most councils also oppose these changes, and as the asset owners, their concerns should have been appropriately considered and changes made to the reforms. This did not occur. The Water Services Legislation Bill continues this, with the bill inflexible and not responding to the serious concerns raised with committee members during the public consultation process.

Councils currently own their water assets on behalf of their ratepayers, who have paid for them over generations and deserve a say in their operation. Maintaining council ownership of water assets must be the bottom line in any reform. Still, in giving powers to water service entities, this bill strengthens these reforms' commitment to strip local communities of local control and ownership of their water assets.

The proposed governance structure of the water services entities, as they stand, is of grave concern to the National Party members for several reasons. This bill enshrines these bureaucratic and complicated governance structures with extensive powers and continues to ignore alternative governance that puts communities at the heart of decision-making. Co-governance was another bottom line of the Government's reforms that have hamstrung proper consideration of meaningfully engaging iwi to create a representative structure that would serve communities. Instead, the reform's representation arrangements remain unworkable.

The Water Services Legislation Bill remains largely as it was when it was presented to the committee for consideration: inflexible, unresponsive, and broken. National

members continue to be concerned about what this bill's passage will mean for communities.

The bill's rigid four-entity structure means that water pricing is not transparent and cannot be priced for individual communities and regions. This bill fails to recognise two key elements that make flexibility in pricing essential. Firstly, many communities are concerned about cross-subsidising, which would see them pay higher water charges despite making the needed investment in water assets to ensure they are on stable financial footing. These communities should not be forced to bear the financial cost of paying for water assets for other communities that did not make that investment. Secondly, the bill has no flexibility for targeting or deprivation, meaning that uniformity for water charging will apply regardless of any other factor that might otherwise change charging under the status quo.

The only way to appropriately price water is to have the decision-making sit with communities supported by pragmatic consumer protection legislation. Local communities have first-hand knowledge of the socioeconomic conditions of their residents. By having a say in water pricing, communities can ensure that the cost of water remains affordable and equitable, particularly for low-income households. They can consider the financial capabilities of their residents and implement pricing structures that do not burden vulnerable populations excessively. Water pricing should also reflect the local cost of providing and maintaining water infrastructure. Each community has unique characteristics, such as water sources, treatment facilities, distribution systems, and ongoing maintenance requirements. By allowing local communities to set the price, they can account for these specific factors and ensure that the cost of water adequately covers operational expenses while maintaining reasonable rates for consumers. A broad entity-level pricing structure does not allow this and will leave the country worse off.

National raised concerns during the passage of the Water Services Entities Bill with the scope of the asset transfer included in this bill. While the status quo of council ownership exists, the delineation between asset types is less critical, as other assets serving as water assets and public or private recreation or property all have responsibility vested in councils. This is particularly relevant for stormwater, where the definition of a stormwater asset is not universal, and many assets like overland flow paths and watercourses on private land could be considered stormwater assets.

In the early stages of that discussion, parks, including Wellington's Waitangi Park, were identified as eligible for transfer. This was not denied when National members questioned the then Minister, Hon Nanaia Mahuta. Subsequent consideration in the Committee of the whole House clarified this in the Water Services Entities Bill, but this has once again become an issue in the Water Services Legislation Bill.

National remains seriously concerned about this bill's asset transfer scope. It is completely unacceptable that assets that also serve other purposes could be transferred. Public assets such as parks and water infrastructure are vital components of a community's well-being and quality of life. They serve as gathering places, promote physical and mental health, and contribute to the overall sustainability of a region. Local com-

munities possess invaluable knowledge and understanding of their unique needs and challenges. They have first-hand experience with the local environment, climate, and cultural dynamics, enabling them to make informed decisions about managing parks and water infrastructure. This local context cannot be easily replicated or understood by centralised authorities.

Communities are also better positioned to identify and implement solutions that meet their needs. They can adapt strategies to address local challenges, such as water scarcity or environmental preservation while considering the preferences and priorities of their residents. A decentralised approach allows for flexibility in resource allocation, project prioritisation, and the development of innovative initiatives that align with the community's values and goals. The benefits of local community control cannot occur under the provisions of this bill.

National considers much of this deliberation redundant as even the Government who sent this bill to the committee acknowledges it is not fit for purpose. Recently they have announced their intention to significantly change this bill and the Water Services Entities Bill to increase the number of entities from four to 10. National is disappointed that proper consideration of alternatives was not given during the process of considering this bill, and the proposed changes do not fix the issues highlighted in this minority view. The bill and the Government's intention to immediately scrap much of it in favour of another bill should illustrate the fatal flaws in this entire legislative agenda.

Instead of setting functions and expanding the scope of mega entities, regardless of number, this bill should be focused on doing local water well.

Proper, desperately needed reforms should focus on enshrining the things that work in the status quo, such as the strong local voice and ability to tailor services to the local context. Reforms should focus on making changes only where they enhance service delivery, like giving councils additional financing tools for managing their water and supporting their service delivery with strong and pragmatic regulations for consumer protection and water quality.

National will repeal the provisions of this bill, restore local control of water and support councils to deliver water services with strict rules for asset and water quality, and give them the tools to reach financial sustainability. This can all be done with local ownership as a bottom line.

### **Green Party of Aotearoa New Zealand differing view**

The need for some reform of the provision of drinking water and wastewater is recognised. But the Green Party agrees with Auckland Council that the Government's "three waters reform" in this bill and the Water Services Entities Act 2022 involves a "level of unaccountable corporatisation [which] is unprecedented in post-war New Zealand".

The Green Party set out its concerns about the transfer of water services management from councils to water services entities and the corporatisation of these services in its differing view on the Water Services Entities Bill (2022). These concerns include the

loss of community voice, the limited ability of councils to influence the entities' infrastructure planning, policy and pricing, the limited accountability of entities, and entities being responsible for stormwater management. All of these concerns remain with the Water Services Legislation Bill.

The Green Party opposes the bill for the reasons below.

The focus on balance sheet separation and independent credit ratings for the entities to enable greater borrowing means there is less accountability to the public than with a council-controlled organisation model, such as Auckland Council's Watercare. Other options to provide greater investment capital to maintain, upgrade, and expand three waters infrastructure (such as a Water Infrastructure Fund administered by Crown Infrastructure Partners as proposed by Auckland Council) have not been well canvassed.

Despite some improvements to the bill as introduced, accountability to the public and water consumers remains limited. The entities have a strong degree of autonomy. Councils have limited ability to influence the entities' performance of their responsibilities, or to require changes to the entities' key operational documents such as the asset management plan, the funding and pricing plan, and the infrastructure strategy. Councils' influence is restricted to contributing to the statement of strategic and performance expectations, alongside mana whenua representatives.

The Green Party is particularly concerned that this bill will bring in a water-charging regime without strong protections for residential water users against the risk of services being restricted for non-payment. The bill allows the WSE boards to charge geographically averaged prices so that costs can be shared across communities. We would prefer a model that requires cross-subsidisation of residential water supply by commercial water users. While the Water Services Act 2021 and this bill require a drinking water supplier to "provide a sufficient quantity of water" to every point of supply; the bill enables a supplier to still restrict the supply for unpaid accounts. This risks quality of life, health, and wellbeing issues for those unable to afford the charges.

Stormwater management should not be transferred from councils to the water services entities. Removing stormwater management from councils and giving it to utility operators is highly experimental and untested internationally. Auckland Council said it was not aware of "any other country which manages stormwater functions outside of councils or has transferred them to a utility operator, or subjected stormwater pricing to economic regulation (without democratic oversight)".

Stormwater management is closely connected with land use planning, the type, scale, and location of urban development, provision of open space, and roading. Recent storm and flooding events highlight why stormwater management should continue to be integrated with decisions on land use and urban development. As the Stormwater Technical Reference Group noted (and the Green Party has said previously:<sup>7</sup> "stormwater systems are more complex than drinking water or wastewater systems, with most having a dedicated reticulated stormwater network and above-ground, secondary, and overland flow paths. Stormwater infrastructure and assets are diverse and

can include pipes, swales, detention basins, ponds, wetlands, and urban (modified and unmodified) streams and rivers. The arrangements for managing them vary and are strongly linked to outcomes for water quality, flood protection, resilience, recreational opportunity, amenity, and transport outcomes.”

There is no consensus across local government that stormwater should be transferred. Metropolitan councils such as Auckland and Christchurch City strongly oppose making WSEs responsible for stormwater because of its connection to placemaking and urban planning.

Stormwater management has many public-good aspects and cannot be charged for volumetrically as drinking water and wastewater can. For example, Christchurch City Council’s construction of wetlands and stormwater retention basins to trap sediment, improve water quality, and slow stormwater runoff has also created places for walking, cycling, and other public recreation. The entities have no basis to recover the costs of providing these public benefits. This risks their decision making around stormwater focusing on least-cost options such as piped, hard infrastructure, rather than solutions which promote cultural, social, and environmental wellbeing. While the bill’s proposed charging regime for stormwater services based on property values mimics a targeted rate, it offends the principle of “no taxation without representation” because entity boards are appointed, not elected.

The bill’s provisions around the transfer of stormwater assets are directive, complex, and likely to be very difficult to implement, if not unworkable. They are likely to involve significant transaction costs because of the time, effort, and resources needed to unbundle stormwater accountabilities, assets, and outcomes and to organise easements over council landholdings. They cut across the protections for public reserve land in the Reserves Act. The unrestricted decision-making powers of the Minister of Local Government to amend and decide the asset allocation schedule risks further eroding trust between local and central government, instead of building a partnership around shared outcomes.

The bill gives entities the power to prepare stormwater management plans, controlled drinking water catchment plans, and rules. This risks duplicating the land use management and regulation under the Resource Management Act, potentially creating confusion and uncertainty.

The Green Party opposes new Part 8 and new Schedule 6 of the bill which allow “small mixed-use rural water supplies” to be privatised, further benefiting private agribusiness interests at the expense of the public interest in healthy rivers and aquifers. These schemes can involve excessive takes from rivers, streams, and aquifers. They have benefited private landholders because the water is used for commercial agricultural and horticultural purposes, not just for domestic household use. These rural water supply schemes, often funded by central and/or local government and currently managed by councils, will transfer to the entities. The bill allows schemes

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<sup>7</sup> Green Party differing view on Water Services Entities Bill 2022.

which service fewer than 1,000 dwellings (not including dwellings on farmland) and where 85% or more of the water is used for agricultural or horticultural purposes to be privatised and transferred to an alternative operator if 75% of scheme users agree in a referendum. This prevents the future use of these supplies for public drinking water infrastructure.

### **ACT Party differing view**

ACT engaged constructively through the initial process established by the Government, because there are real problems with three waters infrastructure which need to be solved.

The cost of provisioning three waters infrastructure under current funding and financing models is a barrier to land development and has increased the cost of a section far beyond increases in the cost of construction.

This has led to a decrease in housing affordability compared to incomes, and a lack of land provisioned for urban development.

In addition, there has been consistent under-investment in existing underground pipe networks and wastewater infrastructure over many decades.

The current system is not up to scratch, but the Government's three waters reforms are not the answer. Communities and councils have roundly rejected the Government's three waters reform agenda which this bill gives effect to.

The bill says nothing about how infrastructure will be paid for, who pays, and how much.

There are real problems with drinking water quality in some communities, failing wastewater networks, and sewage overflows into rivers and onto beaches. None of these problems are solved by trying to force complex governance structures which mandate inclusion of a minimum 50 percent of Māori representatives on to a future three waters delivery model.

The focus must be on ensuring New Zealanders have access to safe drinking water and high-quality infrastructure for storm and wastewater.

ACT opposes this bill, and should we be a part of a future Government we will seek to repeal it.

#### Problems with the bill

##### *Centralisation*

We are unconvinced the Government's centralised model will result in better outcomes for our communities. This bill provides for the establishment of four mega water services entities. However, on 13 April 2023 the Government announced that the number of entities will be increased to 10, and that every council would get a seat on a representative group.

No amendments have been proposed by the Government to the committee which would legislate for that announcement, and this reinforces how disorganised and incoherent the reform process has been to date.

However, whether it is 10 or four entities, simply shifting water assets from one government body to another is a recipe for more red tape and less local input, not an enduring solution to upgrade water infrastructure in New Zealand.

Centralisation as proposed by the bill is rendered unnecessary by having already established a water quality regulator Taumata Arowai (under the Water Services Act 2021) to provide monitoring, oversight, and enforcement of drinking water quality across regional and local entities.

This mandate will be extended to wastewater and stormwater from 2025, which means that councils that have failing infrastructure have just over two years to meet consent requirements and fix pollution before they will be subject to enforcement action.

That should be sufficient threat to drive investment in three waters assets.

#### *Co-governance and Māori rights and interests*

ACT does not believe that the complex and divisive co-governance model for the proposed regional representative groups is necessary, and in fact it makes the reform objectives much more difficult to achieve.

The role of Te Mana o Te Wai statements is still unclear, although the WSEs are no longer required to “give effect to” these statements, but must take them into account in planning.

ACT believes that giving a group the ability to provide statements which water infrastructure operators have to consider, based on their ethnicity, is unnecessary and divisive.

#### *Funding and financing*

Funding and financing the three waters infrastructure deficit, which is estimated at \$120–180 billion, is often cited by the Government as a justification for standing up four water services entities.

The provisions of this bill make it much more difficult to engage in long-term funding and finance arrangements which would allow infrastructure to be delivered faster and at an affordable price to consumers.

Funding, finance, and delivery frameworks should be as flexible as possible to allow for infrastructure at the size, scale, location, user base, and a time frame for investment and payback period related to the asset life cycle. Both long-term programmes and high-value projects should be delivered using private sector and institutional capital where possible to supplement or replace funding provided by local and central government borrowing.

#### *Technical matters*

The proposal to include stormwater management under the control of WSEs appears to be unworkable. This highlights that land use and stormwater management form part of an integrated planning process, and to separate them structurally is unnecessary and unwise.

The relationship agreements and other instruments required to delineate which entity and council control what parts of the stormwater system are likely to take years and cost enormous amount of money to litigate then operate.

*ACT Party alternative Three Waters Plan*

The alternative models proposed by Communities for Local Democracy and more recently by Auckland and Christchurch Mayors have widespread support from communities and councils.

ACT's Water Infrastructure Plan would:

- provide for councils to enter voluntary “shared services” agreements, gaining the benefits of scale, while retaining local ownership and control
- establish long-term 30-year central government–local government partnership agreements to plan water infrastructure upgrades tailored to specific regions
- establish public–private partnerships to attract investment from financial entities such as KiwiSaver funds, ACC, iwi investment funds, etc
- expand the exemption from domestic supply for a single dwelling to also include all small water suppliers supplying fewer than 30 endpoint users.

We can improve the current system, but we do not need to do so through state-mandated centralisation and allowing some people to have more influence than others based on their ethnicity.

ACT's plan will better balance community control of water assets alongside a plan for levelling up the necessary infrastructure to ensure safety and efficient water allocation.

## Appendix

### Committee process

The Water Services Legislation Bill was referred to the committee on 14 December 2022. We invited the Minister of Local Government to provide an initial briefing on the bill.

We called for submissions on the bill with a closing date of 12 February 2023. We received and considered submissions from 438 interested groups and individuals. We heard oral evidence from 95 submitters at hearings in Wellington and via videoconference. We conducted hearings in tandem on both the Water Services Legislation Bill and the Water Services Economic Efficiency and Consumer Protection Bill. Therefore, we have treated the oral submissions as applying to both bills.

We received advice on the bill from the Department of Internal Affairs, and our independent adviser, Amelia East. The Office of the Clerk provided advice on the bill's legislative quality. The Parliamentary Counsel Office assisted with legal drafting. The Regulations Review Committee reported to us on the powers contained in clause 22, new sections 274, 275, 330, 331, and 474 of the Water Services Entities Act 2022, and clauses 42 and 67 of Schedule 1.

We recognise the time taken and effort made by submitters to assist us with our consideration. We also recognise the considerable volume of work within a short amount of time by government officials, the Parliamentary Counsel Office, and the committee secretariat that went into drafting this bill and assisting us with our consideration. We wish to thank officials, Parliamentary Counsel, our independent adviser, and staff for this significant effort. We wish to particularly note that we found it useful that our independent adviser provided us with a table scrutinising the draft amendments in the revision-tracked bill. We suggest that, in future, other select committees instruct departmental officials, and, where applicable, independent advisers to prepare similar tables to assist committees with navigating and considering draft amendments.

However, we wish to put on record that we did experience some problems during our scrutiny of the bill and the preparation of this report to the House. We are concerned there were instances where it appeared that departmental officials, perhaps inadvertently, directed Parliamentary Counsel to make changes to the revision-tracked version of the bill that were either not clearly authorised by us, or ran contrary to recommendations the department had previously made and that were adopted by the committee as drafting instructions to Parliamentary Counsel.

It is a fundamental principle of the legislative process that amendments are included in a revision-tracked version of the bill only at the committee's instruction. If a select committee agrees to recommend the amendments set out in a revision-tracked version of a bill, that version of the bill becomes part of the committee's report, and the amendments carry the endorsement of at least a majority of committee members. The principle of informed decision-making by elected representatives sits at the heart of a democratic legislative process.

The division of labour that operates at select committee is that the department officials support committee members with information and advice. The committee then decides what recommendations it wishes to make when it reports the bill back to the House.

We encourage all persons who are appointed to assist select committees in the consideration of legislation to keep in mind these principles.

### **Committee membership**

Ingrid Leary (Chairperson from 17 April 2023)

Hon Rachel Brooking (Chairperson from 8 February to 12 April 2023 and member until 3 May 2023)

Hon Barbara Edmonds (Chairperson until 2 February and member until 8 February 2023)

Andrew Bayly

Glen Bennett (until 8 February 2023)

Hon Dr David Clark (from 8 February 2023)

Shanan Halbert (until 3 May 2023)

Anna Lorck

Dan Rosewarne (from 3 May 2023)

Damien Smith

Chlöe Swarbrick

Hon Phil Twyford (from 8 February 2023)

Simon Watts

Helen White (until 8 February and from 3 May 2023)

Nicola Willis

Simon Court, Hon Eugenie Sage, Teanau Tuiono, Vanushi Walters, and Hon Michael Woodhouse also participated in our consideration.

**Key to symbols used in reprinted bill**

**As reported from a select committee**

text inserted unanimously

~~text deleted unanimously~~



*Hon Kieran McAnulty*

## **Water Services Legislation Bill**

Government Bill

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| 471  | Requirement to provide information to territorial authority for purposes of land information memorandum    | 184 |
| 472  | Requirement to provide information to territorial authority for purposes of project information memorandum | 185 |
| 473  | Reporting and record-keeping rules   | 185 |
| 473A | <u>Engagement on reporting and record-keeping rules</u>  | 186 |
|      | <b>Subpart 6—Regulations</b>   |     |
| 474  | Regulations: general   | 186 |
| 475  | Regulations: volumetric charging   | 188 |
|      | <b>Subpart 7—Other matters</b>   |     |
| 476  | <u>Relationship with local Acts</u>  | 188 |
| 23   | Schedule 1 amended   | 188 |
| 24   | Schedule 3 amended   | 189 |
| 25   | Schedule 5 replaced  | 190 |

**Part 2**

**Amendments to and repeal of other legislation**

Subpart 1—Amendments to Civil Defence Emergency Management Act 2002

|    |  |     |
|----|--|-----|
| 26 | Principal Act  | 190 |
| 27 | Section 94A amended (Minister may give notice of national transition period)           | 190 |
| 28 | Section 94B amended (Notice of local transition period)                                | 190 |
| 29 | Section 94D amended (Extension of transition periods)                                  | 190 |
| 30 | Section 115A amended (Permanent legislative authority for payment of certain expenses) | 190 |

**Water Services Legislation Bill**

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|            |  |            |
|------------|--|------------|
|            | Subpart 2—Amendment to Climate Change Response Act 2002  |            |
| 31         | Principal Act  | 191        |
| 32         | Section 5ZW amended (Minister or Commission may request certain organisations to provide information on climate change adaptation)                   | 191        |
|            | Subpart 3—Amendments to Crown Organisations (Criminal Liability) Act 2002  |            |
| 33         | Principal Act  | 191        |
| 34         | Section 4 amended (Interpretation)   | 191        |
| 35         | Section 6 amended (Prosecutions against Crown organisations)   | 191        |
| 36         | Section 7 amended (Legal status of certain Crown organisations)  | 191        |
|            | Subpart 4—Amendment to Financial Markets Conduct Act 2013  |            |
| 37         | Principal Act  | 191        |
| 38         | Schedule 1 amended   | 191        |
|            | Subpart 5—Amendment to Fire and Emergency New Zealand Act 2017   |            |
| 39         | Principal Act  | 192        |
| 40         | Section 73 amended (Duty to develop, consult on, recommend the approval of, and publish and notify code of practice for firefighting water supplies) | 192        |
|            | Subpart 6—Amendments to Goods and Services Tax Act 1985  |            |
| 41         | Principal Act  | 192        |
| 42         | Section 2 amended (Interpretation)   | 192        |
| <u>42A</u> | <u>Section 5 amended (Meaning of term supply)</u>  | <u>192</u> |
| 43         | Section 6 amended (Meaning of term taxable activity)   | 192        |
| <u>43A</u> | <u>Section 9 amended (Time of supply)</u>  | <u>192</u> |
| <u>43B</u> | <u>Section 11B amended (Zero-rating of some supplies by territorial authorities, some supplies involving contributions to local authorities)</u>     | <u>192</u> |
|            | Subpart 7—Amendment to Government Roding Powers Act 1989   |            |
| 44         | Principal Act  | 193        |
| 45         | Section 52 amended (Notice to be given of local authority works)   | 193        |
|            | Subpart 8—Amendments to Health Act 1956  |            |
| 46         | Principal Act  | 193        |
| 47         | Section 2 amended (Interpretation)   | 193        |
| 48         | Section 25 amended (Local authority to provide sanitary works)   | 193        |
| 49         | Section 27A amended (Grants and subsidies for refuse disposal works, sewerage works, and water supplies)   | 195        |
| 50         | Section 33 amended (Proceedings in respect of nuisances)   | 195        |
| 51         | Section 34 amended (Power to abate nuisance without notice)  | 195        |

**Water Services Legislation Bill**

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|            |  |            |
|------------|--|------------|
| 52         | Section 35 amended (Proceedings when nuisance caused by default outside district)                                  | 195        |
| 53         | Section 64 amended (Bylaws)  | 195        |
| 54         | Section 116C amended (Purpose)   | 196        |
| 55         | Section 116D amended (Interpretation)  | 196        |
| 56         | Section 116E amended (Director-General may direct local authority to add or not to add fluoride to drinking water) | 196        |
| 57         | Section 116F amended (Contents of direction)   | 196        |
| 58         | Section 116G amended (Engagement with local authority)   | 196        |
| 59         | Section 116H amended (Local authority not required to consult)   | 196        |
| 60         | Section 116I amended (Local authority must comply with direction)  | 196        |
| 61         | Section 116J amended (Offence to contravene or permit contravention of section 116I)                               | 197        |
| 62         | Schedule 1AA amended   | 197        |
|            | Subpart 9—Amendments to Income Tax Act 2007  |            |
| 63         | Principal Act  | 197        |
| 64         | New section CW 38C inserted (Water services entities)  | 197        |
|            | CW 38C Water services entities   | 197        |
| 65         | Section YA 1 amended (Definitions)   | 197        |
|            | Subpart 10—Amendments to Infrastructure Funding and Financing Act 2020   |            |
| 66         | Principal Act  | 198        |
| 67         | Section 3 amended (Purpose)  | 198        |
| 68         | Section 7 amended (Interpretation)   | 198        |
|            | <u>Subpart 10A—Amendments to Land Drainage Act 1908</u>  |            |
| <u>68A</u> | <u>Principal Act</u>   | <u>198</u> |
| <u>68B</u> | <u>New section 2B inserted (Relationship to Water Services Entities Act 2022)</u>                                  | <u>198</u> |
|            | <u>2B Relationship to Water Services Entities Act 2022</u>   | <u>198</u> |
|            | Subpart 11—Amendments to Local Government Act 1974   |            |
| 69         | Principal Act  | 198        |
| 70         | Section 2 amended (Interpretation)   | 199        |
| 71         | Section 319 amended (General powers of councils in respect of roads)   | 199        |
| <u>71A</u> | <u>Section 334A amended (Council may light roads, etc)</u>   | <u>199</u> |
| <u>71B</u> | <u>Section 337 amended (Alteration of pipes and drains)</u>  | <u>199</u> |
| 72         | Section 338 amended (Council may grant right to lay conduit pipes along or under road)                             | 199        |
| 73         | New Part 25A inserted  | 199        |

**Water Services Legislation Bill**

|  |   |     |
|--|---|-----|
| <b>Part 25A</b>  |   |     |
| <b>Role of water services entities in respect of Parts 26 and 29</b>     |   |     |
| 439A   | Local authorities must obtain agreement of water services entities to exercise certain powers affecting stormwater network <del>or management plans</del> | 199 |
| 439B   | Local authorities must provide notice to water services entities in certain circumstances   | 200 |
| 439C   | Local authorities must consult water services entities before applying for declaration under section 507  | 200 |
| 74   | New section 468A inserted (Contracts relating to provision of drains)   | 200 |
|  | 468A Contracts relating to provision of drains  | 201 |
| 75   | Section 510 amended (Inspection of private dams, etc)   | 201 |
| 76   | Section 517J amended (Service of transfer proposal)   | 201 |
| 77   | Section 517K replaced (Right to object to transfer proposal)  | 201 |
|  | 517K Right to object to transfer proposal   | 201 |
| 78   | Section 517L replaced (Notice of right to object)   | 202 |
|  | 517L Notice of right to object  | 202 |
| 79   | Section 517M amended (Contents of notice of right to object)  | 202 |
| 80   | Section 517P amended (Notification by local authority of receipt of objections)   | 202 |
| 81   | Section 517S amended (Procedure on receipt of objections)   | 202 |
| 82   | Section 517U amended (Relevant criteria)  | 203 |
| 83   | Section 517V amended (Notice of Commission's determination)   | 203 |
| 84   | Section 647 repealed (Fire hydrants)  | 203 |
| 85   | Section 648 repealed (Pipes to be kept charged with water)  | 203 |
| 86   | Schedule 14 amended   | 203 |
| Subpart 12—Amendments to Local Government Act 2002                       |   |     |
| 87   | Principal Act   | 204 |
| 88   | Section 5 amended (Interpretation)  | 204 |
| 89   | Section 17 amended (Transfer of responsibilities)   | 204 |
| 90   | Section 17A amended (Delivery of services)  | 204 |
| 91   | <del>Section 101A amended (Financial strategy)</del>  | 204 |
| 92   | <del>Section 101B amended (Infrastructure strategy)</del>   | 204 |
| 93   | Section 123 amended (Outline of Part)   | 205 |
| 94   | Subpart 1 heading in Part 7 replaced  | 205 |
| Subpart 1—Obligations in respect of water services and sanitary services |   |     |
| 95   | Sections 124 and 125 replaced   | 205 |
|  | 124 Territorial authorities and regional councils must consider findings and implications of water services assessment                                    | 205 |
|  | 125 Requirement to assess sanitary services   | 205 |

**Water Services Legislation Bill**

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|                |   |                |
|----------------|---|----------------|
| 96             | Sections 126 to 128 repealed  | 206            |
| 97             | Subpart 2 of Part 7 repealed  | 206            |
| 98             | Section 143 amended (Outline of Part)   | 206            |
| 99             | Section 146 replaced (Specific bylaw-making powers of territorial authorities)                    | 206            |
|                | 146 Specific bylaw-making powers of territorial authorities                                       | 206            |
| 100            | Section 148 repealed (Special requirements for bylaws relating to trade wastes)                   | 207            |
| 101            | Section 149 amended (Power of regional councils to make bylaws)                                   | 207            |
| 102            | Section 153 amended (The Crown bound by certain bylaws)   | 207            |
| 103            | Section 181 amended (Construction of works on private land)                                       | 207            |
| 104            | Section 182 replaced (Power of entry to check utility services)                                   | 207            |
|                | 182 Power of entry to check utility services  | 207            |
| 105            | Section 193 replaced (Power to restrict water supply)   | 208            |
|                | 193 Power to restrict agricultural water supply   | 208            |
| 106            | Section 197 amended (Interpretation)  | 208            |
| <u>106A</u>    | <u>Section 199F amended (Appointment and register of development contributions commissioners)</u> | <u>208</u>     |
| <u>106B</u>    | <u>Section 199L amended (Liability of development contributions commissioners)</u>                | <u>209</u>     |
| 107            | Sections 224 to 227 and cross-headings repealed   | 209            |
| 108            | Section 232 amended (Damage to local authority works or property)                                 | 209            |
| 109            | Section 242 amended (Penalties for offences)  | 209            |
| <del>110</del> | <del>Section 261B amended (Secretary must make rules specifying performance measures)</del>       | <del>209</del> |
| 111            | Schedule 1AA amended  | 209            |
| <del>112</del> | <del>Schedule 8 amended</del>   | <del>209</del> |
| 113            | Schedule 10 amended   | 210            |
|                | Subpart 13—Amendments to Local Government (Auckland Council) Act 2009                             |                |
| 114            | Principal Act   | 210            |
| 115            | Section 3 amended (Purpose)   | 210            |
| 116            | Section 4 amended (Interpretation)  | 210            |
| 117            | Part 5 repealed   | 210            |
|                | Subpart 14—Amendments to Local Government (Auckland Transitional Provisions) Act 2010             |                |
| 118            | Principal Act   | 210            |
| 119            | Sections 17 to 27 and cross-heading above section 17 repealed                                     | 210            |
| 120            | Section 34 repealed (Wastewater rate for 2011/2012 financial year)                                | 210            |
| 121            | Sections 55 and 56 repealed   | 211            |
| 122            | Section 58 amended (Financial contributions already made or owed to existing local authorities)   | 211            |

**Water Services Legislation Bill**

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|                |  |                |
|----------------|--|----------------|
| 123            | Sections 59 and 60 repealed  | 211            |
| 124            | Section 67 amended (Statutory warrants relating to law other than transport law)                         | 211            |
| 125            | Section 83 amended (Tax)   | 211            |
| 126            | Section 98 amended (Interpretation)  | 211            |
|                | Subpart 15—Amendments to Local Government Official Information and Meetings Act 1987                     |                |
| 127            | Principal Act  | 211            |
| 128            | Section 2 amended (Interpretation)   | 211            |
| 129            | Section 44A amended (Land information memorandum)  | 211            |
| 130            | Schedule 1 amended   | 212            |
| 131            | Schedule 2 amended   | 212            |
|                | Subpart 16—Amendments to Local Government (Rating) Act 2002  |                |
| 132            | Principal Act  | 212            |
| 133            | Section 9 amended (Non-rateable land liable for certain rates)   | 212            |
| 134            | Section 19 amended (Targeted rate for water supply)  | 212            |
| 135            | Section 19A amended (Rates not to overlap with targeted rates under Urban Development Act 2020)          | 212            |
| 136            | Section 21 amended (Certain rates must not exceed 30% of total rates revenue)                            | 213            |
| <del>137</del> | <del>Schedule 1 amended</del>  | <del>213</del> |
| 138            | Schedule 3 amended   | 213            |
|                | <u>Subpart 16A—Amendment to Ngati Tuwharetoa, Raukawa, and Te Arawa River Iwi Waikato River Act 2010</u> |                |
| <u>138A</u>    | <u>Principal Act</u>   | <u>213</u>     |
| <u>138B</u>    | <u>Section 18 amended (Duty to have particular regard to vision and strategy)</u>                        | <u>213</u>     |
|                | Subpart 17—Amendment to Ombudsmen Act 1975   |                |
| 139            | Principal Act  | 213            |
| 140            | Schedule 1 amended   | 214            |
|                | Subpart 18—Amendment to Public Audit Act 2001  |                |
| 141            | Principal Act  | 214            |
| 142            | Schedule 1 amended   | 214            |
|                | Subpart 19—Amendment to Public Records Act 2005  |                |
| 143            | Principal Act  | 214            |
| 144            | Section 4 amended (Interpretation)   | 214            |
|                | Subpart 20—Amendments to Public Works Act 1981   |                |
| 145            | Principal Act  | 214            |
| 146            | Section 2 amended (Interpretation)   | 214            |

**Water Services Legislation Bill**

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|   |   |            |
|---|---|------------|
| Subpart 21—Amendment to Rates Rebate Act 1973             |   |            |
| 147   | Principal Act   | 214        |
| 148   | Section 2 amended (Interpretation)  | 215        |
| <u>Subpart 21A—Amendments to Receiverships Act 1993</u>   |   |            |
| <u>148A</u>   | <u>Principal Act</u>  | <u>215</u> |
| <u>148B</u>   | <u>Cross-heading above section 40A amended</u>                                  | <u>215</u> |
| <u>148C</u>   | <u>Section 40A amended (Instrument may provide for appointment of receiver)</u> | <u>215</u> |
| <u>148D</u>   | <u>Section 40B replaced (Power of court to appoint receiver)</u>                | <u>215</u> |
|   | <u>40B Power of court to appoint receiver</u>                                   | <u>215</u> |
| <u>148E</u>   | <u>Section 40C amended (Powers and duties of receivers)</u>                     | <u>216</u> |
| <u>148F</u>   | <u>Section 40D amended (Constraints on receiver)</u>                            | <u>216</u> |
| <u>148G</u>   | <u>Section 40E amended (Protection for receiver)</u>                            | <u>217</u> |
| <u>148H</u>   | <u>Schedule 1 amended</u>   | <u>217</u> |
|   | <u>2 References to directors</u>  | <u>217</u> |
|   | <u>7 Exception in relation to obligations of grantor</u>                        | <u>217</u> |
|   | <u>16 Power make certain applications</u>                                       | <u>218</u> |
|   | <u>18 Copies of documents</u>   | <u>219</u> |
| Subpart 22—Amendments to Resource Management Act 1991     |   |            |
| 149   | Principal Act   | 219        |
| 150   | Section 2 amended (Interpretation)  | 219        |
| 151   | Section 95B amended (Limited notification of consent applications)              | 219        |
| 152   | New section 95H inserted (Meaning of affected water services entity)            | 219        |
|   | <u>95H Meaning of affected water services entity</u>                            | <u>219</u> |
| 153   | Section 104 amended (Consideration of applications)                             | 220        |
| 154   | Section 108AA amended (Requirements for conditions of resource consents)        | 220        |
| 155   | Section 166 amended (Definitions)   | 220        |
| 156   | Section 220 amended (Condition of subdivision consents)                         | 220        |
| 157   | Section 224 amended (Restrictions upon deposit of survey plan)                  | 220        |
| 158   | Schedule 1 amended  | 221        |
| 159   | Schedule 4 amended  | 221        |
| Subpart 23—Amendments to Search and Surveillance Act 2012 |   |            |
| 160   | Principal Act   | 221        |
| 161   | Schedule amended  | 221        |
| Subpart 24—Amendments to Social Security Act 2018         |   |            |
| 162   | Principal Act   | 222        |
| 163   | Section 65 amended (Accommodation supplement: discretionary grant)              | 222        |

**Water Services Legislation Bill**

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| <u>Subpart 24A—Amendments to Taumata Arowai—the Water Services Regulator Act 2020</u>      |  |            |
| <u>163A</u>  | <u>Principal Act</u>   | <u>223</u> |
| <u>163B</u>  | Section 4 amended (Interpretation)   | <u>223</u> |
| <u>Subpart 24B—Amendments to Te Awa Tupua (Whanganui River Claims Settlement) Act 2017</u> |  |            |
| <u>163C</u>  | <u>Principal Act</u>   | <u>224</u> |
| <u>163D</u>  | <u>Schedule 2 amended</u>  | <u>224</u> |
| Subpart 25—Amendment to Te Ture Whenua Maori Act 1993                                      |  |            |
| 164  | Principal Act  | 225        |
| 165  | New section 26AAA and cross-heading inserted   | 225        |
| <i>Jurisdiction of court under Water Services Entities Act 2022</i>                        |  |            |
|  | 26AAA Jurisdiction of court under Water Services Entities Act 2022   | 225        |
| Subpart 26—Amendments to Urban Development Act 2020  |  |            |
| 166  | Principal Act  | 225        |
| 167  | Section 9 amended (Interpretation)   | 225        |
| 168  | Section 23 amended (Duty to co-operate)  | 225        |
| <u>168A</u>  | <u>Section 62 amended (Further contents of development plan: funding)</u>  | <u>225</u> |
| 169  | Section 68 amended (Documents and other matters relevant to preparation of development plan)   | 226        |
| 170  | Section 142 amended (Interpretation for this subpart)  | 226        |
| 171  | Section 160 amended (Kāinga Ora responsible for costs of construction)   | 226        |
| 172  | Section 161 amended (Limitations on power to alter water-related infrastructure Kāinga Ora does not control)                         | 226        |
| 173  | Section 164 amended (Ongoing application of section 181(4) of Local Government Act 2002 to transferred water-related infrastructure) | 226        |
| 174  | Section 167 amended (Power of Kāinga Ora to propose bylaw change)  | 226        |
| 175  | Section 179 amended (Bylaw-making authorities must consult Kāinga Ora on certain proposals)  | 227        |
| 176  | Section 186 amended (Order in Council may authorise Kāinga Ora to set rates)   | 227        |
| 177  | Section 189 amended (Procedure for setting rates)  | 227        |
| 178  | Section 219 amended (Principles for development contributions)   | 227        |
| 179  | Section 221 amended (Kāinga Ora may require development contributions)   | 227        |

Water Services Legislation Bill

|             |   |            |
|-------------|---|------------|
| 180         | Section 224 amended (Limits on power to require development contributions)                        | 227        |
| 181         | Section 237 amended (Transfer of previous development contributions to Kāinga Ora)                | 227        |
| 177A        | New subpart 3A of Part 4 inserted   | 228        |
|             | <u>Subpart 3A—Water infrastructure contributions</u>  |            |
| <u>237A</u> | <u>Principles of water infrastructure contributions</u>   | <u>228</u> |
| <u>237B</u> | <u>Meaning of development</u>   | <u>228</u> |
| <u>237C</u> | <u>Kāinga Ora may require water infrastructure contributions</u>                                  | <u>228</u> |
| <u>237D</u> | <u>Determining amount of water infrastructure contributions</u>                                   | <u>229</u> |
| <u>237E</u> | <u>When Kāinga Ora may charge for water infrastructure contribution</u>                           | <u>229</u> |
|             | <i>Use of water infrastructure contributions</i>  |            |
| <u>237F</u> | <u>Use of water infrastructure contributions by Kāinga Ora</u>                                    | <u>230</u> |
|             | <i>Objections to water infrastructure contributions</i>   |            |
| <u>237G</u> | <u>Right to object to assessed amount of water infrastructure contribution</u>                    | <u>231</u> |
| <u>237H</u> | <u>Scope of water infrastructure contribution objections</u>                                      | <u>231</u> |
| <u>237I</u> | <u>Procedure for water infrastructure contribution objections</u>                                 | <u>232</u> |
| <u>237J</u> | <u>Consideration of water infrastructure contribution objection</u>                               | <u>232</u> |
| <u>237K</u> | <u>Interim effect of water infrastructure contribution objection</u>                              | <u>233</u> |
| <u>237L</u> | <u>Costs of water infrastructure contribution objections</u>                                      | <u>233</u> |
|             | <i>Other matters</i>  |            |
| <u>237M</u> | <u>Consequences if water infrastructure contribution unpaid</u>                                   | <u>233</u> |
| <u>237N</u> | <u>Development agreements</u>   | <u>234</u> |
| <u>237O</u> | <u>Transfer of previous water infrastructure contributions to Kāinga Ora</u>                      | <u>234</u> |
| 182         | Schedule 2 amended  | 235        |
|             | Subpart 27—Amendments to Utilities Access Act 2010  |            |
| 183         | Principal Act   | 235        |
| 184         | Section 4 amended (Interpretation)  | 235        |
|             | <u>Subpart 27A—Amendment to Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010</u> |            |
| <u>184A</u> | <u>Principal Act</u>  | <u>235</u> |
| <u>184B</u> | <u>Section 17 amended (Duty to have particular regard to vision and strategy)</u>                 | <u>235</u> |

**Water Services Legislation Bill**

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|  |  |            |
|--|--|------------|
| Subpart 28—Amendments to Water Services Act 2021                               |  |            |
| 185  | Principal Act  | 236        |
| 185A   | Section 2 replaced (Commencement)  | <u>236</u> |
|  | <u>2</u> Commencement  | <u>236</u> |
| 186  | Section 3 amended (Purpose of this Act)  | 236        |
| 187  | Section 5 amended (Interpretation)   | 237        |
| 188  | Section 25 amended (Duty to provide sufficient quantity of drinking water)   | 238        |
| 189  | Section 26 amended (Duties where sufficient quantity of drinking water at imminent risk)   | 239        |
| 190  | Section 29 amended (Duty of officers, employees, and agents to exercise due diligence)   | 239        |
| 191  | Section 33 amended (Planned events)  | 239        |
| 192  | Section 34 amended (Unplanned supply of drinking water)  | 239        |
| 193  | New section 35A inserted (Water services entity or regional council may be required to warn users of domestic self-supply about contamination) | 239        |
|  | 35A Water services entity or regional council may be required to warn users of domestic self-supply about contamination                        | 239        |
| 194  | Section 49 amended (Compliance rules)  | 240        |
| 195  | Section 62 amended (Special powers of Taumata Arowai during drinking water emergency)  | 240        |
| 196  | Section 104 amended (Directions)   | 240        |
| 197  | New subpart 7A heading in Part 3 and new section 139A inserted   | 240        |
| Subpart 7A—Provisions relating to stormwater networks                          |  |            |
|  | 139A Stormwater environmental performance standards  | 240        |
| 198  | Section 140 amended (Interpretation)   | 241        |
| 199  | Section 148 amended (Further provisions relating to reporting)   | 242        |
| 200  | Section 205 amended (Publication of instruments)   | 242        |
| 201  | Section 211 repealed (Section 146 amended (Specific bylaw-making powers of territorial authorities))   | 242        |
| Subpart 29—Amendments to secondary legislation                                 |  |            |
| 202  | Amendments to secondary legislation  | 242        |
| Subpart 30—Repeals   |  |            |
| <u>203</u>   | <u>Repeals</u>   | <u>243</u> |
| <u>203</u>   | <u>Repeals</u>   | <u>243</u> |
| <b>Schedule 1</b>  |  |            |
| <b>New Part 2 inserted into Schedule 1 of Water Services Entities Act 2022</b> |  |            |
| <b>Schedule 2</b>  |  |            |
| 274  |  |            |
| <b>Schedule 5 of <u>Water Services Entities Act 2022</u> replaced</b>          |  |            |

|   |     |
|---|-----|
| <b>Schedule 3</b>   | 290 |
| <b>New Part 7 inserted into Schedule 1AA of Local Government Act 2002</b> |     |
| <b>Schedule 4</b>   | 291 |
| <b>Amendments to secondary legislation</b>                                |     |

**The Parliament of New Zealand enacts as follows:**

**1 Title**

This Act is the Water Services Legislation Act **2022**.

**2 Commencement**

- (1) **Section 23** and **Schedule 1** come into force on the day after the date of Royal assent. 5
- (2) The rest of this Act comes into force—
- (a) on a date set by the Governor-General by Order in Council; or
- (b) to the extent not brought into force earlier, on **1 July 2024**.
- (3) An Order in Council made under this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements). 10

**Part 1**

**Amendments to Water Services Entities Act 2022**

**3 Principal Act**

This Part amends the Water Services Entities Act 2022. 15

**4 Section 5 amended (Provisions on Te Tiriti o Waitangi/the Treaty of Waitangi)**

- (1) After section 5(b), insert:
- (ba) in section 13(d), that a function of a water services entity is to partner and engage with mana whenua in its service area: 20
- (2) After section 5(g), insert:
- (h) in ~~sections 232(5), 247(1)(a), 257(1)(b), 262(1)(d), 271(1)(c), 286(1)(b), 347(1)(a), 355(b), 473(3), and 474(2) and (6)~~, that there must be engagement with mana whenua:
- (i) in ~~section 465(1)(b)(ii)~~, that the chief executive of a water services entity must, as soon as practicable after finalising a specified document, prepare and publish a report on how each specified document gives effect to— 25
- (i) the principles of te Tiriti o Waitangi/the Treaty of Waitangi; and

- (ii) ~~Te Mana o te Wai (to the extent that Te Mana o te Wai applies to the relevant duties, functions, and powers):~~
- (j) ~~in **section 474(1)(c)** and **clause 78 of Schedule 1** that contracts, arrangements or understandings which local authorities have entered with mana whenua relating to water services transfer to water services entities:~~ 5
- (h) in **section 161(1)(ia)**, that provides that the annual reports of water services entities must contain information on actions they have taken to give effect to te Tiriti o Waitangi/the Treaty of Waitangi with reference to each of the other matters listed in this section: 10
- (i) in **section 474(2)**, that there must be engagement with mana whenua:
- (k) in **clause 77 of Schedule 1** that during the establishment period for water services entities, all persons exercising duties, functions, or powers must uphold the integrity, intent, and effect of Treaty settlement obligations: 15
- (ka) in **clause 77A of Schedule 1**, that the Crown must uphold the integrity, intent, and effect of Treaty settlement obligations in accordance with that clause:
- (kb) in **clauses 78 and 78A of Schedule 1**, that agreements, arrangements, or understandings that local authorities have entered with mana whenua relating to water services transfer to water services entities: 20
- (l) in **clause 8 of Schedule 5**, that a subsidiary of a water services entity must give effect to Treaty settlement obligations that apply to the parent entity and are relevant to the purpose and objectives of the subsidiary.
- 5 Section 6 amended (Interpretation)** 25
- (1) In section 6, definition of **regulations**, replace “section 210” with “**sections 474 or 475** (as the case may be)”.
- (1A) In section 6, definition of **stormwater network**, after paragraph (b)(ii), insert:
- (iii) watercourses that are part of, or related to, the infrastructure described in paragraph (a); but 30
- (2) In section 6, definition of **stormwater network**, after paragraph (b), insert:
- (c) does not include a transport stormwater system
- (3) ~~In section 6, definition of **water supply**, after paragraph (b), insert:~~
- (e) ~~water supplied by a water services entity for agricultural or horticultural purposes.~~ 35
- (3) In section 6, definition of **water supply**, replace paragraph (c) with:
- (c) a small mixed-use rural water supply
- (3A) In section 6, definition of **water supply network**, replace “used by” with “used by, for, or on behalf of”.

- (4) In section 6, insert in their appropriate alphabetical order:

**administering body** has the same meaning as in section 2(1) of the Reserves Act 1977

**alternative operator**, in relation to a small mixed-use rural water service, means any of the following who has submitted a transfer proposal under **section 236(1)** in respect of the service: 5

- (a) 1 or more individuals who are users of the service:
- (b) an entity incorporated by and owned solely by 1 or more users of the service

**board** means members of the board of a water services entity who number no fewer than the required quorum acting together as a board 10

~~**building, building code, building consent, and building work** have the same meanings~~ has the same meaning as in section 7(1) of the Building Act 2004

~~**building code** has the same meaning as in section 7(1) of the Building Act 2004~~ 15

**company** has the same meaning as in section 2(1) of the Companies Act 1993

**compliance officer** means a person appointed under **section 357**

**compliance requirement** means a requirement, rule, condition, or restriction imposed by—

- (a) a direction issued under this Act by a compliance officer in accordance with **section 364**: 20
- (b) an order issued under this Act by the Director of Compliance and Enforcement or a court in accordance with **section 362**:
- (c) a trade waste permit in accordance with **section 267**:
- (d) a controlled drinking water catchment management plan in accordance with **section 232**: 25
- (e) stormwater network rules in accordance with **section 260**:
- (ea) rules relating to specified classes of work in certain places in accordance with **section 285**:
- (f) an offence provision or an infringement offence provision in or under this Act in accordance with **sections 408 to 416**: 30
- (g) a set of powers under this Act relating to a water supply network (in accordance with **section 392**), a wastewater network (in accordance with **sections 394 and 395**), or a stormwater network (in accordance with **section 285**) and the protection of that network 35
- (h) ~~a set of powers under this Act relating to consumers (for example, demand management restrictions on water supply)~~

**consumer** means a person who acquires, consumes or is provided with water supply, wastewater, or stormwater services by a water services entity

**determination**, in relation to a supplier of regulated goods or services, means a determination made by the Commission that applies to a supplier

**Director of Compliance and Enforcement** or **Director**, in relation to a water services entity, means the person appointed by the water services entity under **section 351**

**drinking water safety plan** means a plan prepared under section 30 of the Water Services Act 2021

**farmland** means land that is being worked in the farming or agricultural business of the land's owner

**home**—

- (a) means a place occupied as a dwelling house; and
- (b) includes any garden, yard, garage, outhouse, or other appurtenance of a dwelling house

**level crossing** has the same meaning as in section 4(1) of the Railways Act 2005

~~**local authority** has the same meaning as in section 5(1) of the Local Government Act 2002~~

~~**mana whenua**, for an identified area, means the iwi or hapū holding and exercising, in accordance with tikanga, authority or other customary rights or interests in that area~~

**Maori customary land** has the same meaning as in section 4 of Te Ture Whenua Maori Act 1993

**Maori freehold land** has the same meaning as in section 4 of Te Ture Whenua Maori Act 1993

**Maori land** has the same meaning as in section 4 of Te Ture Whenua Maori Act 1993

**Maori land with more than 10 owners** means any Maori land whose legal ownership is vested in more than 10 persons

**Maori reservation** has the same meaning as in section 4 of Te Ture Whenua Maori Act 1993

**marae** includes the area of land on which buildings such as wharenuī, wharekai, wharepaku, papakāinga, and any other associated buildings are situated

**officer of Parliament** means an Ombudsman holding office under the Ombudsmen Act 1975, the Parliamentary Commissioner for the Environment, or the Controller and Auditor-General

**public conservation land** means land that is held or administered under the Conservation Act 1987 or any of the Acts specified in Schedule 1 of that Act, unless authorised by the Minister of Conservation or their delegate

**rating information database**, in relation to a local authority, means the database that the local authority keeps and maintains under section 27 of the Local Government (Rating) Act 2002

**regional council** has the same meaning as in section 5(1) of the Local Government Act 2002

**reserve** has the same meaning as in section 2(1) of the Reserves Act 1977

**resource consent** has the same meaning as in section 87 of the Resource Management Act 1991

**road**—

- (a) means a road as defined in section 315(1) of the Local Government Act 1974; and
- (b) includes—
  - (i) a road under the jurisdiction of a local authority;
  - (ii) a public footpath;
  - (iii) a State highway within the meaning of section 2(1) of the Government Rooding Powers Act 1989; but
- (c) does not include—
  - (i) public conservation land;
  - (ii) a private road as defined in section 315(1) of the Local Government Act 1974;
  - (iii) a motorway within the meaning of section 2(1) of the Government Rooding Powers Act 1989;
  - (iv) any roadway laid out by order of the Maori Land Court under sections 315 to 327 of Te Ture Whenua Maori Act 1993, except where that order has been cancelled, or where the roadway has been declared under section 320 of that Act to be a road

**sitework** has the same meaning as in section 7(1) of the Building Act 2004

~~**small mixed-use rural water service** has the meaning given in **section 234**~~

**small mixed-use rural water supply** means a water supply owned by a water services entity that meets both of the following criteria:

- (a) 85% or more of the total volume of water supplied by the supply is for agricultural or horticultural purposes; and
- (b) 1,000 or fewer homes (not being homes on farmland) rely on the supply for drinking water and other domestic household purposes

**specified serious risk** means a serious risk of, or to, any of the following relating to the delivery of water services:

- (a) illness, injury, or death;
- (b) public health;

- (c) the natural or a built environment:
- (d) water services infrastructure;
- (e) sites of cultural significance
- subsidiary**, in relation to a water services entity,—
- (a) means a company or body corporate in which 1 or more water services entities— 5
- (i) control the composition of the board of the company or body corporate; or
- (ii) are in a position to exercise, or control the exercise of, more than one-half the maximum number of votes that can be exercised at a meeting of the company or body corporate; or 10
- (iii) hold more than one-half of the issued shares of the company or body corporate, other than shares that carry no right to participate beyond a specified amount in a distribution of either profits or capital; or 15
- (iv) are entitled to receive more than one-half of every dividend paid on shares issued by the company or body corporate, other than shares that carry no right to participate beyond a specified amount in a distribution of either profits or capital; and
- (b) includes a company in which— 20
- (i) 2 or more water services entities hold shares; and
- (ii) the combined shareholding produces 1 or more of the circumstances described in **paragraph (a)**
- ~~**territorial authority** has the same meaning as in section 5(1) of the Local Government Act 2002~~ 25
- trade waste**—
- (a) means any waste that is—
- (i) produced for an industrial or trade purpose, or a related purpose; and
- (ii) discharged into a wastewater network; but 30
- (b) does not include any class of waste or material that has been specified not to be trade waste by a trade waste plan under **section 270(2)**
- trade waste carrier** means a person that transports trade waste (other than by reticulation)
- trade waste permit** means a permit issued under **section 267** 35
- trade waste premises** means premises used, or intended to be used, for—
- (a) an industrial or a trade purpose; or
- (b) the storage, transfer, treatment, or discharge of trade waste

**trading subsidiary** means a subsidiary that operates a trading undertaking for the purpose of making a profit

**transport corridor manager** means—

- (a) the New Zealand Transport Agency established under section 93 of the Land Transport Management Act 2003: 5
- (b) KiwiRail Limited:
- (c) Auckland Transport established under section 38 of the Local Government (Auckland Council) Act 2009:
- (d) any local authority that has, in relation to a road defined in section 315(1) of the Local Government Act 1974, jurisdiction over the road 10

**transport stormwater system**—

- (a) means the infrastructure owned or operated by, or processes used by, a transport corridor manager to collect, treat, drain, store, reuse, or discharge stormwater ~~affecting~~ relating to a transport corridor; and
- (b) includes— 15
  - (i) an overland flow path ~~(as defined in this section);~~ and
  - (ii) green water services infrastructure that delivers stormwater services (as defined in this section)

~~**trunk main** means a main used for the purpose of—~~

- (a) ~~conveying water—~~ 20
  - (i) ~~from a source of supply to a filter or reservoir; or~~
  - (ii) ~~from one filter or reservoir to another filter or reservoir; or~~
  - (iii) ~~in bulk from a part of the limits of supply to another part of those limits; or~~
- (b) ~~giving or taking a supply of water in bulk~~ 25

**urban area**—

- (a) means an area identified in a district plan or a proposed district plan as being primarily zoned, or intended to be for residential, industrial, commercial and mixed use, or settlement activities, together with adjoining special-purpose and open-space and recreation zones, however described; but 30
- (b) does not include any other area zoned primarily for rural activities, however described

**utility operator** has the same meaning as in section 4 of the Utilities Access Act 2010 35

**variable volumetric charge** means a charge where the unit rate varies depending on the volume of water supplied or the volume of wastewater discharged (or both)

~~**water services debt—**~~

- (a) ~~means any charge or fee required to be paid to a water services entity under this Act; but~~
- (b) ~~does not include any debt owed to the water services entity by a territorial authority~~

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**water services debt** means any charge or fee required to be paid to a water services entity under this Act

- (5) In section 6, insert as subsection (2):
- (2) For the purposes of **Part 10, applicant**, in respect of an application made under that Part, includes any person who, after the application is made, acquires responsibility for a property that is the subject of the application.

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**6 Section 11 amended (Water services entities established)**

In section 11(2), replace “section 210(1)(d)” with “**section 474(1)(h)**”.

**7 Section 13 replaced (Functions of water services entities)**

Replace section 13 with:

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**13 Functions of water services entities**

The functions of each water services entity are—

- (a) to provide safe, reliable, and efficient water services in its area; and
- (b) to own or operate water services infrastructure; and
- (c) to partner and engage with its territorial authority owners; and
- (d) to partner and engage with mana whenua in its service area; and
- (e) to engage with consumers and communities in its service area; and
- (f) to engage and co-operate with other water services entities on matters relating to the provision of water services that cross service area boundaries; and
- (g) to provide advice, information, funding, and support to its regional representative group (and any regional advisory panel) to enable the regional representative group (and any regional advisory panel) to perform or exercise its duties, functions, and powers in accordance with this Act and the water services entity’s constitution; and
- (h) to charge for services that a water services entity provides to consumers in accordance with **section 321** and any other legislation; and
- (i) to administer regulatory requirements (for example, rules or plans) relating to water services that a water services entity is responsible for; and
- (j) to collaborate with other agencies, organisations, and individuals in the water services sector; and

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- (k) to collaborate with, and provide assistance or advice to, overseas agencies and organisations, as required, but only if doing so would not adversely affect the water services entity in carrying out its other functions and meeting its objectives; and
- (l) to build, maintain, and support the capability of the water services sector; and 5
- (m) to facilitate, promote, and support research, education, and training relating to water services; and
- (n) to provide guidance, advice, and information on matters relating to water services; and 10
- ~~(o) to identify and mitigate hazards and risks relating to water services, including adaptation to the effects of climate change; and~~
- (o) to mitigate the effects of climate change and natural hazards, and support and enable climate change adaptation; and
- ~~(oa) to identify hazards relating to water services, assess risks relating to those hazards, and manage, control, monitor, or eliminate those risks; and~~ 15
- (p) to ensure that communities have access to drinking water if existing suppliers are facing significant problems; and
- ~~(q) to perform any other functions or activities that are consistent with the water services entity's objectives and that the water services entity considers are necessary or desirable to enable the achievement of those objectives; and~~ 20
- ~~(r) to own or operate 1 or more subsidiaries (including those subsidiaries that trade with other persons) if—~~ 25
- ~~(i) the only functions they perform are functions specified in **paragraphs (a) to (s)**; and~~
- ~~(ii) they comply with the requirements specified in **Schedule 5**; and~~
- (r) to own or operate 1 or more subsidiaries (including those subsidiaries that trade with other persons) if the only functions the subsidiary performs are functions specified in **paragraphs (a) to (s)**; and 30
- (s) to perform or exercise the duties, functions, or powers conferred or imposed on it by this Act or any other legislation; and
- (t) any functions that are incidental and related to, or consequential on, its functions set out in **paragraphs (a) to (s)**. 35

## 8 Section 15 amended (Status of water services entities)

In section 15(5)(a), delete “as defined in section 2(1) of the Companies Act 1993”.

**9 Section 18 amended (Other things water services entities can do)**

After section 18(2), insert:

- (3) A water services entity—
- (a) may establish, own (in whole or in part), or operate a subsidiary only if the subsidiary complies with the requirements specified in **Schedule 5**; and
  - (b) may not enter into a partnership with another person or persons.
- (4) In this section, **partnership** has the meaning given to it under sections 8 and 9 of the Partnership Law Act 2019.

**10 Section 97 amended (Process for amending or replacing constitution)** 10

In section 97(9), replace “section 210(d)” with “**section 474(4)**”.

**11 Section 118 amended (Obligation to maintain water services)**

- (1) In section 118(2)(b) and (c)(i), replace “Schedule 4” with “**Part 8** or Schedule 4”.
- (2) After section 118(2)(c), insert:
- (d) transfer any of its significant infrastructure to a subsidiary that the water services entity owns or operates.

**12 Section 119 amended (Contracts relating to provision of water services)**

- (1) In section 119(1), after “Despite section 118”, insert “or anything in the Infrastructure Funding and Financing Act 2020”.
- (2) In section 119(2), after “subsection (1)”, insert “with any person (including a subsidiary that it owns or operates)”.

**12A Section 120 amended (Joint arrangements for purpose of providing water services)**

In section 120(1), replace “Section 118 does not prevent” with “Nothing in section 118 or the Infrastructure Funding and Financing Act 2020 prevents”.

**13 Section 133 amended (Purpose and content of Government policy statement)**

- (1) After section 133(3)(a)(~~vi~~)(vii), insert:
- (~~vii~~viii) geographic averaging of residential water supply and residential wastewater service prices across each water services entity’s service area;
  - (~~viii~~ix) redressing historic service inequities;
  - (x) overall direction and priorities for charging arrangements for water services:
- (2) After section 133(3), insert:

(4) **Subsection (3)(a)(viii)** applies only to a Government policy statement issued on and after **1 July 2027**.

(5) **Subsection (3)(a)(x)** and this subsection are repealed on **1 July 2027**.

**14 Section 134 amended (Preparation or review of Government policy statement)**

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In section 134(b), replace “section 206” with “**section 461**”.

**15 New section 137A inserted (Charges as security)**

After section 137, insert:

**137A Charges as security**

(1) This section applies if—

(a) a water services entity has granted a security interest over a charge or charging revenue as security for any loan or the performance of any obligations under an incidental arrangement; and

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(b) a receiver has been appointed under section 40A or 40B of the Receiverships Act 1993 in respect of that loan or arrangement.

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(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 water services entity’s commitments in respect of the loan or incidental arrangement during that year; and

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(b) the reasonable costs of administering, assessing, and collecting the charge.

(3) A charge under this section must be assessed as a uniform charge in the dollar on the rateable value of property—

(a) in the service area; or

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(b) if the water services entity 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.

(4) For the purposes of this section, **rateable value**, in relation to any property, means its capital value as recorded in the relevant local authority’s rating information database under the Local Government (Rating) Act 2002.

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Compare: 2002 No 84 s 115

**16 Section 144 amended (Water services entity must respond to Te Mana o te Wai statement for water services)**

(1) In section 144(1)(b), replace “section 206” with “**section 461**”.

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(2) Replace section 144(2) with:

(2) A response to a Te Mana o te Wai statement for water services must include—

- (a) a plan that sets out how the water services entity intends (consistent with, and without limiting, section 4(1)(b)) to give effect to Te Mana o te Wai, to the extent that it applies to the entity's duties, functions, and powers; and
- (b) a statement on how the plan gives effect to the obligations specified in section 4. 5
- 16 Section 149 amended (Content of statement of intent)**  
 In section 149(3)(b), replace “financial statements” with “forecast financial statements”.
- 17 Section 153 replaced (Obligation to publish asset management plan)** 10  
 Replace section 153 with:
- 153 Obligation to publish asset management plan**  
 As soon as practicable after an asset management plan is provided to the regional representative group, the chief executive of a water services entity must publish the asset management plan ~~in accordance with section 465 on~~ an Internet site maintained by, or on behalf of, the water services entity in a format that is readily accessible. 15
- 18 Section ~~154-155~~ amended (Content of funding and pricing plan)**
- (1) Replace section ~~154(1)(b)-155(1)(b)~~ with:
- (b) the water services entity's intended approach to— 20
- (i) pricing its services and charging consumers; and
- (ii) complying with the charging principles specified in **section 331**; and
- (2) After section 155(1)(c), insert:
- (d) the water infrastructure contribution policy of the water services entity. 25
- 19 Section 156 replaced (Obligation to publish funding and pricing plan)**  
 Replace section 156 with:
- 156 Obligation to publish funding and pricing plan**  
 As soon as practicable after a funding and pricing plan is provided to the regional representative group, the chief executive of a water services entity must publish the funding and pricing plan ~~in accordance with section 465 on~~ an Internet site maintained by, or on behalf of, the water services entity in a format that is readily accessible. 30
- 20 Section 159 replaced (Obligation to publish infrastructure strategy)**  
 Replace section 159 with: 35

|             |  |    |
|-------------|--|----|
| <b>159</b>  | <b>Obligation to publish infrastructure strategy</b>   |    |
|             | As soon as practicable after an infrastructure strategy is provided to the regional representative group, the chief executive of a water services entity must publish the infrastructure strategy <del>in accordance with section 465</del> <u>on an Internet site maintained by, or on behalf of, the water services entity in a format that is readily accessible.</u> | 5  |
| <b>21</b>   | <b>Section 161 amended (Form and content of annual report)</b>   |    |
| (1)         | After section 161(1)(i), insert:   |    |
|             | (ia) <u>information on actions a water services entity has taken to give effect to te Tiriti o Waitangi/the Treaty of Waitangi with reference to each of the matters listed in section 5 (apart from section 5(h)):</u>  | 10 |
| (2)         | After section 161(1)(k), insert:   |    |
|             | (ka) <u>information on how the Director of Compliance and Enforcement of the water services entity has exercised their compliance and enforcement powers under this Act in the previous financial year:</u>  | 15 |
| <b>21A</b>  | <b>Section 165 amended (Audit report)</b>  |    |
| (1)         | <u>In section 165(2), replace “3 months” with “4 months”.</u>  |    |
| (2)         | <u>In section 165(3)(a), replace “Act” with “Act, including an assessment as to whether a water services entity’s annual financial statements, statement of service delivery performance, and any other information that the Auditor-General has agreed, or is required, to audit achieve their purpose”.</u>  | 20 |
| <b>21B</b>  | <b>Section 175 amended (Monitor’s power to request information)</b>  |    |
|             | After section 175(2), insert:  |    |
| (3)         | <u>For the purposes of this section, <b>relevant person</b> excludes an officer of Parliament.</u>   | 25 |
| <b>21C</b>  | <b>New Part 5A inserted</b>  |    |
|             | After section 199, insert:   |    |
|             | <b>Part 5A</b>   |    |
|             | <b>Relationship agreements</b>   |    |
| <b>199A</b> | <b>Requirement to enter into relationship agreement</b>  | 30 |
| (1)         | <u>A water services entity and each of the following must enter into a relationship agreement under this section:</u>  |    |
|             | (a) <u>a territorial authority owner:</u>  |    |
|             | (b) <u>a regional council whose boundary is inside, or overlaps with, the water services entity’s service area:</u>  | 35 |

- (c) a transport corridor manager that owns or operates a transport storm-water system.
- (2) The relationship agreement may be entered into by a water services entity with—
- (a) any 1 of the parties listed in **subsection (1)**; or 5
- (b) any 2 or more of the parties listed in **subsection (1)**.
- (3) A relationship agreement is binding on the parties concerned.
- (4) A relationship agreement under this section remains in force until the agreement is replaced by another agreement.
- (5) Nothing in this section precludes a water services entity from entering a relationship agreement with any other party relating to the provision of water services (for example, an iwi or hapū). 10
- 199B Contents of relationship agreement**
- (1) A relationship agreement must—
- (a) be in writing; and 15
- (b) identify the parties to the agreement; and
- (c) set out—
- (i) the general principles governing the relationship between the parties (for example, acting in good faith); and
- (ii) how the parties will work together in relation to the performance or exercise of any statutory functions, powers, or duties (for example, stormwater management, spatial and land use planning, emergency management, and Treaty settlement obligations); and 20
- (iii) how the parties will engage with each other, and work together, in relation to the provision of, and planning for, water services; and 25
- (iv) how the parties will engage with each other, and work together, in relation to areas where they have shared interests; and
- (v) any information sharing between the parties; and
- (vi) how the parties will report on compliance with the relationship agreement. 30
- (2) The relationship agreement may provide for any other matters that the parties consider appropriate.
- (3) A relationship agreement must not limit any compliance or enforcement powers or obligations that the parties to the agreement have in relation to each other and has no effect to the extent that it does so. 35

**199C Further requirements relating to relationship agreements between water services entities and local authorities**

(1) A relationship agreement between a water services entity and a territorial authority required by **section 199A(1)** must set out—

(a) how the territorial authority is to work with the water services entity when the territorial authority is performing or exercising its functions, duties, or powers under the Building Act 2004; and

(b) how the water services entity will engage with the territorial authority on the water services entity's assessment of water services required by **section 245**.

(2) A relationship agreement between a water services entity and a territorial authority or regional council required by **section 199A(1)** must set out how the territorial authority or regional council is to work with the water services entity in relation to planning processes, including (without limitation) in relation to—

(a) the preparation by the territorial authority of standards, policy statements, or plans required by Part 5 of the Resource Management Act 1991; and

(b) resource consents issued under Part 6 of the Resource Management Act 1991; and

(c) when the territorial authority is performing or exercising its functions, duties, or powers under Part 10 of the Resource Management Act 1991.

**199D Disputes between parties to relationship agreement**

(1) This section applies if a dispute arises between parties to a relationship agreement on a matter they are required under the agreement to work together on, jointly develop, or agree.

(2) The parties—

(a) may by agreement undertake a binding process or non-binding process of dispute resolution; but

(b) if they do not reach agreement on a non-binding process, or the dispute remains unresolved after a non-binding process has been undertaken, must undertake a binding process of dispute resolution.

(3) If the parties undertake a binding process, the parties must refer the dispute to arbitration under the Arbitration Act 1996 and the provisions of that Act apply to the dispute.

**199E Review of relationship agreement**

A relationship agreement must be reviewed within 5 years of the date on which the agreement is made and at least once every 5 years after a previous review.

**199F Parties to relationship agreement may enter into service-level agreement**

- (1) The parties to a relationship agreement may choose to enter into a service-level agreement relating to the provision of a service to which the relationship agreement applies.
- (2) A service-level agreement must—
- (a) identify the parties to the agreement; and
  - (b) specify the services to which the agreement applies and does not apply; and
  - (c) set out the parties' respective roles and responsibilities for the management, operation, or maintenance of the services to which the agreement applies and how those responsibilities will be allocated; and
  - (d) set out information relating to how the services will be funded.

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**22 Part 6 replaced**

Replace Part 6 with:

**Part 6**

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**Provisions relating to water services infrastructure****Subpart 1—Water services infrastructure on, over, or under land****200 Power to carry out work in relation to water services infrastructure on, over, or under land**

- (1) A water services entity may carry out the following work that it considers necessary or desirable for the provision of water services:
- (a) constructing or placing water services infrastructure on, over, or under land or under a building on land:
  - (b) ~~removing any obstruction or blockage, or clearing any flora that constitutes a risk to, water services infrastructure on or under land or under a building on land:~~
  - (b) managing, controlling, monitoring, or eliminating any risks relating to water services infrastructure:
  - (c) operating, inspecting, maintaining, altering, renewing, or replacing any water services infrastructure on, over, or under land or under a building on land;
  - (d) doing work relating to an overland flow path or watercourse.
- (2) A water services entity may exercise the power to carry out work specified in **subsection (1)(a)** only—
- (a) with the prior written consent of, and in accordance with any reasonable conditions imposed by, the owner of the land; or

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- (b) if it has obtained an order under **section 204** authorising it to carry out the work.
- (3) A water services entity must exercise the power to carry out work specified in **subsection (1)(b) or (c)** in accordance with any reasonable conditions imposed by the owner of the land or by an order made under **section 204** (as the case requires). 5
- (4) A condition referred to in **subsection (3)** may not limit or override any new or existing legally binding agreement between the owner of the land and the water services entity relating to water services.
- (5) Nothing in **subsection (1)(a)** applies in respect of— 10
- (a) land owned by the Crown; or
- (b) land held or administered under the Conservation Act 1987 or any of the Acts specified in Schedule 1 of that Act.
- (6) Despite **subsection (5)(b), subsection (1)(a)** applies to land administered by a local authority under the Reserves Act 1977. 15
- Compare: 2001 No 103 s 135
- 201 Notice required before carrying out work on, over, or under land**
- (1) Before a water services entity proceeds to carry out any work under **section 200(1)**, the water services entity must notify the owner and occupier of the land of ~~its intention to enter the land and carry out the work.~~ 20
- (a) its intention to enter the land and carry out the work:
- (b) any change to the date or time of a proposed entry.
- (2) A notice under **subsection (1)** must—
- (a) be in writing; and
- (b) be given at least 15 working days before the proposed work is to start; 25
- and
- (c) specify—
- (i) the location of the proposed entry; and
- (ii) the date and time of the proposed entry; and
- (iii) the nature of the work to be carried out and the reasons for it; and 30
- (iv) the length of time that an officer, employee, or agent of the water services entity expects to be on the land or in the building.
- (3) This section applies subject to **sections 207 to 210** (which set out specific requirements that apply in respect of carrying out work in relation to water services infrastructure on or under certain land). 35

- 202 Water services entity to be notified of conditions of work**
- (1) Not later than 10 working days after receiving notice of a water services entity's intention to carry out work under **section 200(1)(b) or (c)**, the owner of the land must give written notice to the water services entity of any conditions imposed under **section 200(3)**. 5
- (2) If the owner of the land fails to comply with **subsection (1)**, any conditions imposed do not apply, and the water services entity may start the work.
- Compare: 2001 No 103 ss 137, 138
- 203 Application to District Court to carry out work**
- (1) This section applies if an owner of land— 10
- (a) has not granted consent for a water services entity to carry out work under **section 200(1)(a)** within 15 working days of receiving a notice under **section 201**; or
- (b) has granted consent for the water services entity to carry out work under **section 200(1)(a)** subject to conditions that the water services entity considers to be unreasonable. 15
- (2) The water services entity may apply to the District Court for an order under **section 204** authorising it to carry out the work.
- (3) The water services entity must give the owner of the land at least 10 working days' notice of its intention to apply to the District Court under this section. 20
- Compare: 2001 No 103 s 120
- 204 Court order**
- (1) The District Court may, if satisfied that the requirements in **subsection (2)** have been met, make an order authorising the water services entity to—
- (a) enter the land at reasonable times, with or without any person who is, or anything that is, reasonably necessary for the purposes of carrying out the work: 25
- (b) carry out the work.
- (2) The requirements are that—
- (a) carrying out the work is necessary or desirable for the provision of water services; and 30
- (b) the water services entity has taken reasonable steps to ~~negotiate an agreement for entry onto the land with~~ obtain the consent of the owner of the land; and
- (c) in relation to the construction or placement of the water services infrastructure, the water services entity has given adequate consideration to alternative routes ~~and determined the route to be preferable~~. 35
- (3) An order made under **subsection (1)** must specify—



- (3) **Section 201(2)** applies to a notice given under **subsection (2)(b)** as if it were a notice given under that section.
- (4) This section applies subject to **section 208**.
- 208 Specific requirements for carrying out work under section 200(1)(a) in relation to Maori land with more than 10 owners** 5
- (1) This section applies if a water services entity wishes to carry out—
- (a) work described in **section 200(1)(a)** in relation to water services infrastructure on or under Maori land with more than 10 owners; or
- (b) work described in **section 200(1)(b) or (c)** in relation to water services infrastructure on or under land— 10
- (i) that is Maori land with more than 10 owners; and
- (ii) in respect of which **section 207(1)** applies.
- (2) The water services entity may enter the land and carry out the work only if—
- (a) it has been granted consent by the owners of the land; and
- (b) at least 30 working days before commencing the work, it has done one of the following: 15
- (i) given written notice of its intention to enter the land and carry out the work to the trustees of the principal marae of the hapū associated with the land;
- (ii) published a notice on an Internet site maintained by, or on behalf of, the Maori Land Court or in the Maori Land Court Pānui (or both) relating to its intention to enter the land and carry out the work: 20
- (iii) served notice on the Registrar of the Maori Land Court in accordance with section 181 of Te Ture Whenua Maori Act 1993 of its intention to enter the land and carry out the work. 25
- (3) If, for the purposes of **subsection (2)(a)**, consent is required to enter the land, decisions relating to that consent must be made in accordance with Parts 9 and 10 of Te Ture Whenua Maori Act 1993.
- 209 Specific requirements for carrying out work under section 200(1)(b) or (c) in relation to Maori land with more than 10 owners** 30
- (1) This section applies if a water services entity wishes to carry out any work described in **section 200(1)(b) or (c)** in relation to water services infrastructure on or under land—
- (a) that is Maori land with more than 10 owners; and 35
- (b) in respect of which **section 207** does not apply.

- (2) The water services entity may enter the land and carry out the work only if, at least 30 working days before commencing the work, it has done one of the following:
- (aaa) obtained the consent of the owners of the land:
- (a) given written notice of its intention to enter the land and carry out the work to the trustees of the principal marae of the hapū associated with the land: 5
- (b) published a notice on an Internet site maintained by, or on behalf of, the Maori Land Court or in the Maori Land Court Pānui (or both) relating to its intention to enter the land and carry out the work: 10
- (c) served notice on the Registrar of the Maori Land Court in accordance with section 181 of Te Ture Whenua Maori Act 1993 of its intention to enter the land and carry out the work.
- 210 Notice required before carrying out work on or under reserve vested in post-settlement governance entity** 15
- (1) This section applies if a water services entity wishes to carry out work described in **section 200(1)** in relation to water services infrastructure on or under land that is a reserve that is—
- (a) vested in a post-settlement governance entity under a Treaty settlement Act; and 20
- (b) managed by an administering body that is a local authority.
- (2) Before commencing the work, the water services entity must give notice of its intention to enter the land and carry out the work to the post-settlement governance entity and the administering body.
- (3) **Section 201(2)** applies to a notice given under **subsection (2)** as if it were a notice given under that section. 25
- (4) The requirement to give notice under **subsection (2)** applies in addition to the obligations of a water services entity set out in **section 200(2) and (3)** in relation to carrying out the work.
- Subpart 2—Water services infrastructure on or under roads 30
- 211 Power to carry out work in relation to water services infrastructure on or under roads**
- (1) A water services entity may carry out the following work that it considers necessary for the provision of water services:
- (a) constructing, placing, operating, inspecting, maintaining, altering, renewing, or replacing water services infrastructure on, along, over, across, or under any road: 35

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| <ul style="list-style-type: none"> <li>(b) removing any obstruction or blockage relating to water services infrastructure, or clearing any flora that constitutes a risk to, water services infrastructure on, along, over, across, or under any road:</li> <li>(c) for the purposes of <b>paragraphs (a) and (b)</b>,— <ul style="list-style-type: none"> <li>(i) <del>opening or breaking up working in</del> any road:</li> <li>(ii) altering the position of, or altering, repairing, or removing, any gas, electricity, or telecommunications infrastructure or any part of that infrastructure on, along, over, across, or under any road.</li> </ul> </li> </ul>   | <p>5</p> <p>10</p>                      |
| <p>(2) A water services entity must exercise the powers specified in <b>subsection (1)</b> in accordance with any reasonable conditions imposed by the road owner, other person who has jurisdiction over the road, or utility operator whose infrastructure is likely to be affected by the work.</p> <p>Compare: 2001 No 103 s 135</p>  |   |
| <p><b>212 Notice required before carrying out work under on or under road</b></p>   |   |
| <ul style="list-style-type: none"> <li>(1) Before a water services entity proceeds to carry out any work under <b>section 211(1)</b>, the <u>water services</u> entity must notify the road owner, other person who has jurisdiction over the road, or utility operator whose infrastructure is likely to be affected by the work.</li> <li>(2) A notice under <b>subsection (1)</b> must— <ul style="list-style-type: none"> <li>(a) be in writing; and</li> <li>(b) be given at least 15 working days before the proposed work is to start; and</li> <li>(c) specify— <ul style="list-style-type: none"> <li>(i) the location of the proposed work; and</li> <li>(ii) the date and time when the proposed work is to start; and</li> <li>(iii) the nature of the work to be carried out and the reasons for it; and</li> <li>(iv) the length of time the water services entity expects the work to continue.</li> </ul> </li> </ul> </li> </ul> | <p>15</p> <p>20</p> <p>25</p> <p>30</p> |
| <p>Compare: 2001 No 103 s 136</p>   |   |
| <p><b>213 Water services entity to be notified of conditions</b></p>  |   |
| <ul style="list-style-type: none"> <li>(1) Not later than 15 working days after receiving notice of a water services entity's intention to carry out work under <b>section 211(1)</b>, the road owner, other person who has jurisdiction over the road, or utility operator whose infrastructure is likely to be affected by the work must give written notice to the water services entity of any reasonable conditions imposed under <b>section 211(2)</b>.</li> <li>(2) If a person fails to comply with <b>subsection (1)</b>, any conditions imposed do not apply, and the water services entity may start the work.</li> </ul>  | <p>35</p>                               |
| <p>Compare: 2001 No 103 ss 137, 138</p>   |   |

## Subpart 3—Level crossings

**214 Rights of entry in respect of level crossings**

- (1) This section applies if a water services entity—
- (a) wishes to enter a level crossing for the purpose of constructing or maintaining any works on, along, over, across, or under the level crossing; and 5
  - (b) has been unable to negotiate an agreement for entry ~~with the owner of the level crossing~~ after taking all reasonable steps to do so.
- (2) The water services entity may, after giving the owner or occupier of the level crossing not less than ~~10~~ 15 working days' notice of its intention to enter the level crossing, apply to the District Court for an order under this section to enter the level crossing and carry out the work. 10
- (3) The District Court may, if satisfied that the requirements in **subsection (4)** have been met, make an order authorising the water services entity to—
- (a) enter the level crossing at reasonable times, with or without any person who is, or anything that is, reasonably necessary for the purposes of carrying out the work: 15
  - (b) carry out the work.
- (4) The requirements are that—
- (a) carrying out the work is necessary or desirable for the provision of water services; and 20
  - (b) the water services entity has taken all reasonable steps to negotiate an agreement for entry onto the land ~~with the owner of the land~~; and
  - (c) in relation to the construction or placement of the water services infrastructure, no practical alternative route exists. 25
- (5) An order made under **subsection (3)**—
- (a) may authorise the water services entity to—
    - (i) enter and re-enter the level crossing at reasonable times, with or without the assistants, aircraft, boats, vehicles, appliances, machinery, and equipment that are reasonably necessary for the construction or maintenance of any works: 30
    - (ii) perform the work that may be reasonably necessary to construct or maintain any works:
  - (b) must specify—
    - (i) how and when entry may be made; and 35
    - (ii) the specific powers that may be exercised; and

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| <p>(iii) any other conditions (including conditions relating to the payment of compensation) that the District Court thinks fit to impose.</p> <p>Compare: 1992 No 124 s 32; 1992 No 122 s 31</p> <p><b>215 Service of order</b></p> <p>Before exercising any powers authorised by an order made under <b>section 214(3)</b>, the water services entity must serve a copy of the order on the owner of the level crossing to which the order relates.</p> <p>Compare: 2001 No 103 s 123</p> <p><b>216 Requirement to produce evidence of authority and identity</b></p> <p>An officer, employee, or agent of a water services entity acting under an order made under <b>section 214(3)</b> must carry and produce evidence of their authority and identity—</p> <p>(a) on initial entry; and</p> <p>(b) after the initial entry, on request.</p> <p>Compare: 2001 No 103 s 124</p> <p>Subpart 4—Further provisions relating to water services infrastructure</p> <p style="text-align: center;"><i>Immediate action in emergency</i></p> <p><b>217 Power to take immediate action in case of emergency or specified serious risk</b></p> <p>(1) This section applies if—</p> <p>(a) an emergency has been declared under the Water Services Act 2021, the Civil Defence Emergency Management Act 2002, the Hazardous Substances and New Organisms Act 1996, or the Biosecurity Act 1993 and the immediate action is necessary to respond to the emergency; or</p> <p>(b) an officer, employee, or agent of a water services entity believes, on reasonable grounds, that a specified serious risk exists.</p> <p>(2) An officer, employee, or agent of a water services entity—</p> <p>(a) may take immediate action to carry out any work described in—</p> <p>(i) <b>section 200(1)(a) or 207(1)</b> without complying with the requirement to obtain consent <del>to</del> before entering the land; and</p> <p>(ii) <b>section 200(1)(b) or (c) or 211(1)</b> without complying with the requirement to give notice before entering the land; and</p> <p>(b) must give the information required by <b>section 201(2)(c) or 212(2)(c)</b> as soon as practicable after commencing the work, including by providing information about the action taken <u>and the reasons for taking the action</u>.</p> | <p>5</p> <p>10</p> <p>15</p> <p>20</p> <p>25</p> <p>30</p> <p>35</p> |
|---|--|

- (3) An officer, employee, or agent of the water services entity, while exercising powers under this section in respect of the land or road, must—
- (a) carry evidence of their authority and identity; and
  - (b) produce the evidence on request.

*Compensation*

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**218 Compensation**

- (1) The exercise of a power set out in **sections 200(1)** applies subject to Part 5 of the Public Works Act 1981 as to compensation for injurious affection to land.
- (2) The amount of the compensation may be agreed between the water services entity and the person concerned or, failing agreement, be determined in the manner provided for by the Public Works Act 1981.

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Compare: 2001 No 103 s 154; 2002 No 84 s 181(6)

*Protection and maintenance of water services infrastructure*

**219 Protection of water services infrastructure on, over, or under land, road, or level crossing not owned by water services entity**

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- (1) This section applies to any water services infrastructure that—
  - (a) is on, over, or under land that is not owned by a water services entity; or
  - (b) is on, along, over, across, or under any road or level crossing that is not owned by a water services entity.
- (2) The water services infrastructure is to be treated as being lawfully fixed or installed, and continues to be lawfully fixed or installed, until the water services entity decides otherwise.
- (3) No person other than the water services entity has an interest in any water services infrastructure by reason only of having an interest in the land.

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Compare: 2001 No 103 s 155

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**220 Maintenance Management and maintenance of water services infrastructure**

(1AAA) A water services entity must manage and maintain the water services infrastructure in its service area (including meeting the costs of doing so).

(1AAB) A water services entity is responsible for managing and maintaining all overland flow paths and watercourses in an urban area other than a stormwater network that is owned or operated by a public stormwater network owner or operator (for example, a transport network corridor manager) within the meaning of **section 252B**.

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- (1) An owner or occupier of land on, over, or under which any existing water services infrastructure is constructed or placed is not required to maintain the infrastructure.

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- (2) ~~Despite **subsection (1)**, the owner of the land may be required to maintain an overland flow path in accordance with a rule made under **section 260**.~~
- (2) However, if the owner or occupier has—
- (a) impaired, or altered without consent, a stormwater network (including, without limitation, any overland flow path or watercourse) on their land, the owner or occupier must—
- (i) carry out remedial work to eliminate the impairment or restore the stormwater network; or
- (ii) meet the reasonable costs that the water services entity incurs in carrying out remedial work to eliminate the impairment or restore the stormwater network; or
- (b) breached a stormwater network rule made under **section 260**, the owner or occupier must meet the reasonable costs of eliminating any impairment to a stormwater network that the breach has caused.
- (2A) Nothing in this Act requires the owner or occupier to eliminate an impairment or alteration to a stormwater network on their land that is caused by—
- (a) an act or omission of another person in respect of other land; or
- (b) a breach of any rules made under this Act by another person in respect of other land; or
- (c) a natural disaster.
- (3) The owner of a road or level crossing on, along, over, across, or under which any existing water services infrastructure is constructed or placed is not required to maintain the infrastructure.
- (4) ~~**Subsections (1) and (2)** do not limit or override~~ Nothing in **subsections (1AAA) to (2A)** limits or overrides any new or existing legally binding agreement that provides for the owner or occupier to be responsible for any management or maintenance.

Compare: 1992 No 122 s 22A

#### **220A Remedial work must meet certain requirements**

- (1) Remedial work carried out in respect of a stormwater network (including, without limitation, any overland flow path or watercourse) must—
- (a) be carried out as soon as is reasonably practicable; and
- (b) comply with—
- (i) the standards considered appropriate for that work at the time it was carried out; and
- (ii) any relevant requirements specified in stormwater network rules made under **section 260**.
- (2) If an owner or occupier of land carries out work to eliminate an impairment to, or to restore, a stormwater network on their land under **section 220(3)(a)(i)**

and the relevant water services entity has determined that the work fails to comply with **subsection (1)(b)**,—

- (a) the relevant water services entity must carry out the remedial work needed to comply with **subsection (1)(b)** as soon as is reasonably practicable; and 5
- (b) the owner or occupier must meet the reasonable costs that the water services entity incurs in carrying out that remedial work.

Compare: 2023 No 1 s 76(2)(a)

**220B Water services entities are not responsible for managing and maintaining certain things** 10

- (1) Despite anything in **sections 220 and 220A**, a water services entity is not responsible for managing and maintaining—
  - (a) a stormwater network of a private stormwater network owner or operator (as defined in **section 252B**); or
  - (b) any watercourse on private land that is not part of the stormwater network of a water services entity. 15
- (2) For the purposes of **sections 220 and 220A**, owner or occupier excludes a water services entity.

*Moving water services infrastructure*

**221 Owner or occupier of land may require water services infrastructure to be moved** 20

- (1) This section applies in relation to any land or buildings on, over, or under which water services infrastructure has been constructed or placed.
- (2) The owner or occupier of the land or buildings may, at the owner or occupier's own expense, move the water services infrastructure and re-lay, reconstruct, or replace the water services infrastructure, subject to— 25
  - (a) the work being lawfully carried out; and
  - (b) compliance with any reasonable conditions imposed by the water services entity.
- (3) However, no water services infrastructure may be moved, re-laid, reconstructed, or replaced under **subsection (2)** without the consent of the water services entity, which must not be unreasonably withheld. 30
- (4) Before the owner or occupier of the land carries out work under this section, the owner or occupier must notify the water services entity of their intention to carry out the work. 35
- (5) A notice under **subsection (4)** must—
  - (a) be in writing; and

- (b) be given at least ~~15~~ 30 working days before the proposed work is to start; and
- (c) specify the current location of the water services infrastructure and the proposed location to which it is to be moved.
- (6) A water services entity that receives a notice under **subsection (4)** must, before the date on which the proposed work is to start, provide a written response to the notice— 5
- (a) advising whether it consents to the work; and
- (b) stating any reasonable conditions it wishes to specify for the work. 10
- Compare: 1992 No 122 s 35; 1992 No 124 s 36
- 222 Road owner may require water services infrastructure to be moved**
- (1) This section applies in relation to any water services infrastructure constructed or placed on, along, over, across, or under any road.
- (2) The road owner or other person who has jurisdiction over the road may, by notice, require the water services entity to move or otherwise alter the position of the water services infrastructure. 15
- (3) A notice under **subsection (2)** must—
- (a) be in writing; and
- (b) be given at least 15 working days before the work is required to start; and 20
- (c) specify the current location or position of the water services infrastructure and the proposed location to which it is to be moved.
- (4) A water services entity that receives a notice under **subsection (2)** may—
- (a) carry out the work; or
- (b) authorise the road owner or other person who has jurisdiction over the road (or a person acting on their behalf) to carry out the work. 25
- (5) The reasonable cost of all work required to be done under this section must be paid by the person who gave the notice under **subsection (2)**.
- (6) If there is a dispute about costs of any work carried out under this section (including, a dispute about liability for payment of those costs), the dispute must be determined— 30
- (a) by agreement between the parties; or
- (b) failing that agreement, by arbitration under the Arbitration Act 1996.
- Compare: 1992 No 122 s 33

*Information and approval***222A Requirement to provide information about location of water services infrastructure**

- (1) A water services entity must inform each local authority and building consent authority in its service area about the location of any water services infrastructure that the water services entity owns or operates in its service area. 5
- (2) The information must include a map showing the location of the infrastructure.
- (3) A person may request a copy of the map from the water services entity.
- (4) If a request for a copy of the map is made, the water services entity must provide the copy within 15 working days of receiving the request. 10
- (5) The water services entity must update the information provided under this section annually.

**222B Requirement to obtain approval before carrying out building work over or near water services infrastructure**

- (1) This section applies to a person who proposes to carry out building work over or near water services infrastructure. 15
- (2) The person must apply to the relevant water services entity for approval to carry out the building work at least 30 days before the proposed building work is to start.
- (3) The water services entity must, within 30 working days of receiving an application, notify the applicant, the relevant local authority, and the relevant building consent authority of its decision in writing. 20
- (4) The water services entity may—
- (a) approve the application subject to any conditions relating to the carrying out of the building work that it considers necessary to protect or provide for the operation and maintenance of the water services infrastructure, including (without limitation) the relocation of the water services infrastructure if practical to do so; 25
- (b) decline the application if it reasonably considers that no other practical alternative is available. 30
- (5) The water services entity may recover the reasonable costs of any work carried out by or on or behalf of the water services entity to modify or shift water services infrastructure to provide for the building work.

*Miscellaneous***223 Prohibition on charging for access to certain water services infrastructure** 35

- (1) A water services entity is not required to pay rent to the Crown in relation to any land in ~~an Auckland~~ a harbour on, over, or under which water services infrastructure has been constructed or placed.

- (2) A water services entity is not required to pay rent to a road owner, any other person who has jurisdiction over a road, or a utility operator in relation to any road on, along, over, across, or under which water services infrastructure has been constructed or placed. 5  
Compare: 2009 No 32 s 59
- 224 Requirements for easements over certain land**
- (1) This section applies if a water services entity is seeking to create an easement on the record of title in relation to land on which a marae or an urupā is situated or that is a Maori reservation.
- (2) Sections 315 to 326 of Te Ture Whenua Maori Act 1993 apply, with any necessary modifications, to the creation of the easement as if it were land to which Part 14 of that Act applies. 10
- 225 Land that may be needed for settlement of Treaty of Waitangi claims**
- (1) This section applies if a water services entity intends to purchase any Crown-owned land that is not subject to a Treaty settlement deed for the purposes of constructing or placing water services infrastructure. 15
- (2) Before purchasing the land, the water services entity must consult the Minister for Treaty of Waitangi Negotiations for the purpose of considering the Crown's obligation to provide redress by way of Crown-owned land for any future settlements of Treaty of Waitangi claims. 20
- Subpart 5—Appeals
- 226 Appeal to District Court**
- Appeal by water services entity*
- (1) A water services entity may appeal to the District Court against all or any of the conditions on carrying out work imposed— 25
- (a) by an owner of land under **section 200(3)**;
- (b) by a road owner, other person who has jurisdiction over the road, or a utility operator under **section 211(2)**.
- Appeal by owner or occupier of land*
- (2) An owner or occupier of land may appeal to the District Court against ~~a refusal of a water services entity to consent to the owner or occupier moving water services infrastructure under **section 221**.~~ 30
- (a) a refusal of a water services entity to consent to the owner or occupier moving water services infrastructure under **section 221**:
- (b) all or any of the conditions on carrying out work imposed by a water services entity under **section 222B(4)**. 35

*Provisions relating to appeal*

- (3) An appeal under this section must be made by giving notice of appeal—
- (a) not later than 15 working days after the date of notification of the conditions imposed; or
  - (b) within any further time that the District Court may allow. 5
- (4) The District Court may,—
- (a) in relation to an appeal made under **subsection (1)**, do 1 or more of the following:
    - (i) confirm, modify, or cancel all or any of the conditions imposed:
    - (ii) impose new conditions: 10
  - (b) in relation to an appeal made under **subsection (2)**, confirm or reverse the decision.

Compare: 2001 No 103 s 141

**227 Appeals to High Court**

- (1) A person may appeal to the High Court on a question of law only in relation to— 15
- (a) an order made by the District Court under **section 204**; or
  - (b) a decision of the District Court made under **section 226**.
- (2) 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 20
  - (b) within any further time that the High Court allows.
- (3) However, nothing in this section affects the right of any person to apply for judicial review.

Compare: 2021 No 36 s 95

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**228 Appeals to Court of Appeal or Supreme Court**

- (1) A party to an appeal under **section 227** may appeal to the Court of Appeal or the Supreme Court against any determination of the High Court on a question of law arising in that appeal, with the leave of the court appealed to.
- (2) The Court of Appeal or the Supreme Court hearing an appeal under this section has the same power to adjudicate on the appeal as the High Court had. 30
- (3) **Subsection (1)** is subject to section 75 of the Senior Courts Act 2016 (which provides that the Supreme Court must not give leave to appeal directly to it against a decision made in a court other than the Court of Appeal unless it is satisfied that there are exceptional circumstances that justify taking the proposed appeal directly to the Supreme Court). 35

Compare: 2021 No 36 s 96

**229 Appeal to Maori Land Court**

- (1) A water services entity may appeal to the Maori Land Court against a refusal to grant consent for the water services entity to carry out work described in **section 200(1)** in respect of any Maori land.
- (2) An appeal must be made by giving notice of appeal— 5
- (a) not later than 15 working days after the date on which the notice of the decision was communicated to the water services entity; or
- (b) within any further time that the Maori Land Court allows.
- (3) The Maori Land Court may confirm or set aside the decision.

**230 Appeal to Maori Appellate Court**

- (1) A person may appeal to the Maori Appellate Court on a question of law only in relation to a decision of the Maori Land Court made under **section 229**. 10
- (2) 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 15
- (b) within any further time that the Maori Appellate Court allows.
- (3) However, nothing in this section affects the right of any person to apply for judicial review.

**Part 7****Controlled drinking water catchments****231 Board may designate controlled drinking water catchment areas**

- (1) The board of a water services entity may, by notice, designate the following to be a **controlled drinking water catchment area** for the purposes of this sub-part: 20
- (a) a geographical area that surrounds surface water: 25
- (b) a groundwater catchment from which drinking water is abstracted.
- (2) A designation under **subsection (1)** may be made only if—
- (a) the water services entity owns or has long-term control of the land to which the designation relates; or
- (b) the owner of the land to which the designation relates agrees to the designation. 30
- (3) A notice made under **subsection (1)** is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

**232 Board may issue controlled drinking water catchment management plan**

- (1) The board of a water services entity may, by notice, issue a controlled drinking water catchment management plan in relation to 1 or more controlled drinking water catchment areas for the purposes of managing, controlling, monitoring, or eliminating risks or hazards to a source of a drinking water supply in the area. 5
- (2) A plan issued under **subsection (1)**—
- (a) must identify the controlled drinking water catchment area (or areas) to which the plan applies; and
  - (b) may set out prohibitions, restrictions, or requirements relating to— 10
    - (i) access to the area;
    - (ii) activities that may be undertaken in the area, including the use of water in the area; and
  - (c) may set out prohibitions or restrictions relating to contamination of water in the area; and 15
  - (d) may specify conditions or related requirements (for example, in relation to permits relating to any specific class of activity) activities that are allowed, or subject to restrictions or prohibitions, in a controlled catchment management area under a permit issued by the chief executive of the water services entity. 20
- (3) If the controlled drinking water catchment management plan relates to land that is not owned by, or under the long-term control of, the water services entity, the owner of the land must agree for the plan to apply to the land.
- (4) Despite **subsection (3)**, if the plan applies to 2 or more controlled drinking water catchment areas and an owner of land in the catchment area does not agree for the plan to apply to their land, the plan applies only in respect of land in the catchment areas whose owners have agreed for the plan to apply. 25
- (5) ~~When developing a controlled drinking water catchment plan, the board of the water services entity must engage with the territorial authorities, regional councils, mana whenua, consumers, and communities in the service area of the entity in accordance with **section 461**.~~ 30
- (6) The board of a water services entity must—
- (a) ~~publish the plan in accordance with **section 465**; and~~
  - (b) ~~review the plan in accordance with **section 466**.~~
- (6A) The board of the water services entity must review its controlled drinking water catchment management plan in accordance with **section 466**. 35
- (7) A notice made under **subsection (1)** is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

|   |  |    |
|---|--|----|
| <b>232A</b>   | <b><u>Chief executive of water services entity may issue permit relating to activities in controlled drinking water catchment area</u></b>   |    |
| (1)   | <u>The chief executive of a water services entity may issue permits containing prohibitions, restrictions, or requirements in relation to activities in a controlled drinking water catchment area.</u>  | 5  |
| (2)   | <u>A permit must give effect to any relevant requirements relating to permits set out in a controlled drinking water catchment management plan issued under <b>section 232</b>.</u>  |    |
| <b>232B</b>   | <b><u>Engagement on controlled drinking water catchment management plan</u></b>  |    |
| (1)   | <u>The board of a water services entity must, when developing (or considering changes to) a controlled drinking water catchment management plan, engage with interested persons.</u>   | 10 |
| (2)   | <u>In conducting the engagement, the board of a water services entity must—</u>  |    |
| (a)   | <u>comply with the requirements set out in <b>section 461</b>; and</u>   |    |
| (b)   | <u>be guided and informed by the principles set out in <b>section 462</b>; and</u>   | 15 |
| (c)   | <u>prepare and publish a report on the engagement in accordance with <b>section 465</b>.</u>   |    |
| <b>233</b>  | <b><u>Chief executive may give direction to comply with controlled drinking water catchment management plan</u></b>  |    |
| (1)   | <u>The chief executive of a water services entity may give a direction described in <b>subsection (2)</b> to any person.</u>   | 20 |
| (2)   | <u>The direction must be about the taking of preventative or corrective action in respect of any prohibition, restriction, or requirement of a controlled drinking water catchment management plan that the chief executive reasonably believes is necessary to ensure that the plan is complied with.</u> | 25 |
| <b>Part 8</b>   |  |    |
| <b>Transfer of small mixed-use rural water services</b> |  |    |
| <b>234</b>  | <b><u>Meaning of small mixed-use rural water service</u></b>   |    |
|   | <u>In this Part, <b>small mixed-use rural water service</b> or <b>service</b> means a water supply owned by a water services entity that meets both of the following criteria:</u>   | 30 |
| (a)   | <u>85% or more of the total volume of water supplied by the service is for agricultural or horticultural purposes; and</u>   |    |
| (b)   | <u>1,000 or fewer dwellings (not being dwellings on farmland) rely on the service for drinking water supply and other domestic household purposes.</u>   | 35 |

**235 Eligibility for transfer of service**

~~A small mixed-use rural water service may only be transferred under this Part if—~~

- ~~(a) the service meets the criteria set out in **section 234(a) and (b)**; and~~
- ~~(b) the transfer of the service does not breach any Treaty settlement obligation.~~

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**236 Requirement to transfer service to alternative operator**

~~(1) A water services entity must transfer all assets and liabilities of, and interests relating to, a small mixed-use rural water service owned by the entity to an alternative operator if—~~

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- ~~(a) the water services entity has received a proposal from an alternative operator to transfer the service to the operator (a **transfer proposal**) and a business plan relating to the proposal; and~~
- ~~(b) an assessment by a panel of experts under **section 238** has concluded that the proposed transfer is viable; and~~
- ~~(c) the transfer proposal is supported, in a binding referendum conducted under section 9 of the Local Electoral Act 2001 using the First Past the Post electoral system, by 75% or more of the votes cast in accordance with **section 242**.~~

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~~(2) The transfer proposal prepared by the alternative operator must—~~

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- ~~(a) include information that demonstrates that the service proposed to be transferred meets the criteria of a small mixed-use rural water service (as set out in **section 234(a) and (b)**); and~~
- ~~(b) confirm that the proposed transfer does not breach any Treaty settlement obligation; and~~
- ~~(c) confirm that the alternative operator has consulted, and had regard to the views of, Taumata Arowai on the transfer proposal; and~~
- ~~(d) confirm that the alternative operator has complied with **section 237(a)**; and~~
- ~~(e) confirm that the alternative operator is able to meet the costs referred to in **section 237(b)**.~~

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**237 Obligations of alternative operator in relation to transfer proposal**

~~An alternative operator who submits a transfer proposal under **section 236(1)(a)** must—~~

- ~~(a) make publicly available a summary of the transfer proposal that contains sufficient information to enable a reasonable person to understand the material aspects of the proposal; and~~
- ~~(b) pay all the costs associated with—~~

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|            |   |    |
|------------|---|----|
| (i)        | an independent assessment of the transfer proposal under <b>section 238</b> ; and   |    |
| (ii)       | if applicable, a referendum on the transfer proposal conducted under <b>section 236(1)(c)</b> .   |    |
| <b>238</b> | <b>Independent assessment of transfer proposal</b>  | 5  |
| (1)        | This section applies if a water services entity receives a transfer proposal from an alternative operator under <b>section 236(1)(a)</b> .  |    |
| (2)        | The water services entity and the alternative operator must jointly appoint a panel of experts (a <b>panel</b> ) to assess the viability of the proposed transfer of the relevant service to the alternative operator.  | 10 |
| (3)        | In appointing the panel, the water services entity and the alternative operator must ensure that the panel has, collectively from its members, sufficient skills and experience to assess all of the components of the business plan prepared by the alternative operator to support the transfer proposal. |    |
| (4)        | The panel may determine its own procedure, including (without limitation) holding hearings and inviting submissions, as it thinks fit, in assessing the transfer proposal.  | 15 |
| <b>239</b> | <b>Alternative operator must prepare business plan in relation to transfer proposal</b>   |    |
| (1)        | The alternative operator must prepare and provide the panel with a business plan relating to the transfer proposal.   | 20 |
| (2)        | The business plan must—   |    |
| (a)        | provide information about the long-term governance arrangements of the alternative operator; and  |    |
| (b)        | identify the assets, liabilities, and interests of the water services entity that will transfer to the alternative operator if the transfer proposal is supported in a referendum conducted under <b>section 236(1)(c)</b> ; and  | 25 |
| (c)        | include any comments received from Taumata Arowai relating to the transfer proposal; and  |    |
| (d)        | be accompanied by each of the following in relation to the service:   | 30 |
| (i)        | an asset management plan that complies with <b>subsection (3)</b> ;   |    |
| (ii)       | a funding and pricing plan that complies with <b>subsection (4)</b> ;   |    |
| (iii)      | a drinking water safety plan prepared in accordance with section 30 of the Water Services Act 2021 as if the alternative operator were the owner of the service; and  | 35 |
| (e)        | include any other information that sets out how the alternative operator will comply with all applicable regulatory requirements under the Water Services Act 2021; and   |    |

- (f) include any other relevant information relating to the service.
- (3) An asset management plan referred to in **subsection (2)(d)(i)** must—
- (a) cover a period of not less than 10 consecutive financial years; and
- (b) set out—
- (i) investment priorities for the infrastructure assets of the service; 5  
and
- (ii) how the alternative operator will—
- (A) operate, maintain, and renew the infrastructure assets of the service; and
- (B) provide new infrastructure assets for the service. 10
- (4) The funding and pricing plan referred to in **subsection (2)(d)(ii)** must—
- (a) cover a period of not less than 10 consecutive financial years; and
- (b) set out—
- (i) the sources of, and the alternative operator's intended approach to, 15  
funding, revenue, and pricing; and
- (ii) the alternative operator's intended approach to pricing its services  
and charging consumers; and
- (iii) a financial strategy in respect of all of the financial years covered 20  
by the plan that includes a statement of the factors that are expected to have a significant impact on the alternative operator during those financial years, including—
- (A) the expected changes in population and the use of land in 25  
the service area, and the capital and operating costs of providing for those changes; and
- (B) the expected capital expenditure on network infrastructure that is required to maintain current levels of service; and
- (C) other significant factors affecting the alternative operator's ability to maintain current levels of service and to meet additional demands for services.
- (5) For the purposes of this section, the water services entity must provide the 30  
alternative operator with relevant information held by the entity, and reasonably requested by the operator, relating to the service.
- (6) The business plan must not contain any information that may be reasonably regarded as confidential or commercially sensitive.
- 240 Assessment by panel** 35
- (1) The panel must assess the transfer proposal and decide whether the proposed transfer of the service to the alternative operator is viable.
- (2) In making a decision, the panel must take into account—

- (a) ~~whether the alternative operator has sustainable governance arrangements; and~~
- (b) ~~whether the alternative operator is likely to have long-term consent to take the water; and~~
- (c) ~~whether the alternative operator is sufficiently trained to support the ongoing operations and maintenance of the service; and~~ 5
- (d) ~~whether the alternative operator will be able to keep the service in operation, including by assessing the operator's proposed asset management plan; and~~
- (e) ~~whether the alternative operator will be able to fund the total costs of running the service over the long term; and~~ 10
- (f) ~~whether the alternative operator will be able to provide a service that is cost-effective for consumers generally, including by reference to the operator's proposed funding and pricing plan; and~~
- (g) ~~whether the alternative operator will ensure that the drinking water is safe and meet drinking water standards on an ongoing basis, including by assessing the operator's proposed drinking water safety plan; and~~ 15
- (h) ~~whether the alternative operator will be able to comply with all applicable regulatory requirements.~~
- (3) ~~The panel may take any steps it considers necessary to confirm the accuracy or reliability of the information set out in the business plan.~~ 20
- 241 Decision on transfer proposal**
- (1) ~~The panel must issue a written decision on the viability of the proposed transfer of the service to the alternative operator, and provide a copy of its decision to the water services entity and alternative operator.~~ 25
- (2) ~~If the panel unanimously agrees that the proposed transfer of the service is viable, the transfer proposal may proceed to a referendum under **section 236(1)(c)**.~~
- 242 Eligibility to vote in referendum**
- A person is **eligible to vote** in a referendum under **section 236(1)(c)** if the person is qualified as— 30
- (a) ~~a residential elector under section 23 of the Local Electoral Act 2001 and the address in respect of which the person is registered as a parliamentary elector is a property serviced by the service that is the subject of the referendum; or~~ 35
- (b) ~~a ratepayer elector under section 24 of the Local Electoral Act 2001 and the property, for the purposes of section 24(1)(a) or (b) of that Act, is a property serviced by the service that is the subject of the referendum.~~

Compare: 2002 No 84 s 132

**243 Responsibility for conduct of referendum**

- (1) ~~The territorial authority that is responsible for conducting a referendum under **section 236(1)(c)** is the territorial authority in whose district the majority of persons eligible to vote in that referendum are on the roll of electors of that territorial authority.~~ 5
- (2) ~~The electoral officer of the territorial authority that is responsible for conducting the referendum must prepare a special roll of the persons eligible to vote under **section 242**.~~
- (3) ~~The Local Electoral Act 2001 applies, with any necessary modifications, to the conduct of a referendum under **section 236(1)(c)**.~~ 10

~~Compare: 2002 No 84 s 133~~

**244 Referendum documentation**

~~A referendum petition for a referendum conducted under **section 236(1)(c)** must—~~

- (a) ~~specify the question that is proposed to be put to the voters in the referendum; and~~ 15
- (b) ~~be accompanied by documentation that—~~
- (i) ~~provides a summary of the transfer proposal that contains sufficient information to enable a reasonable person to understand the material aspects of the transfer proposal; and~~ 20
- (ii) ~~states where a copy of the transfer proposal may be accessed; and~~
- (iii) ~~states that the costs associated with the referendum are to be met by the alternative operator; and~~
- (iv) ~~states that, if the referendum is successful,—~~
- (A) ~~the ownership of the small mixed-use rural water service, and all assets and liabilities relating to the service, will transfer to the alternative operator; and~~ 25
- (B) ~~the operation of the small mixed-use rural water service (including the obligation to supply drinking water) will transfer to the alternative operator and the water services entity will no longer be required to supply drinking water to the consumers who access the transferred service.~~ 30

**Part 8****Small mixed-use rural water supplies****233 Rural supply plans** 35

A water services entity must prepare a rural supply plan for each small mixed-use rural water supply in its service area.

**234 Purpose of rural supply plan**

The purpose of a rural supply plan is to—

- (a) set out the roles and responsibilities relating to the small mixed-use rural water supply; and
- (b) provide transparency to consumers about how the water services entity will operate the supply; and 5
- (c) provide the water services entity with a means to engage with consumers about supply arrangements.

**235 Contents of rural supply plan**

A rural supply plan must, in relation to a small mixed-use rural water supply,— 10

- (a) define the geographic area of the supply; and
- (b) set out how the water services entity will operate the supply with users of the supply, including the arrangements where the infrastructure relating to the supply is on land owned by its users; and
- (c) set out any details relating to ongoing maintenance or upgrade of the supply arrangements; and 15
- (d) set out any committee or other arrangements for making decisions about the operation of the supply by the water services entity and representatives of users of the supply; and
- (e) set out the roles and responsibilities under the drinking water safety plan for the supply. 20

**236 Engagement on rural supply plans**

(1) The board of a water services entity must, when developing (or considering changes to) its rural supply plan, engage with interested persons.

(2) In conducting the engagement, the board of a water services entity must— 25

- (a) comply with **section 461**; and
- (b) be guided and informed by the principles set out in **section 462**.

**237 Duties of chief executive of water services entity relating to rural supply plan**

The chief executive of a water services entity must— 30

- (a) give effect to the rural supply plan when the chief executive performs or exercises any relevant function or power of the chief executive; and
- (b) take the rural supply plan into account when making or reviewing its asset management plan, funding and pricing plan, or infrastructure strategy. 35

Compare: 2021 No 36 s 136(7)

**238 Review of rural supply plan**

The board of a water services entity must review a rural supply plan at least every 3 years.

Compare: 2021 No 36 s 136(2)

**Part 9**

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**Service provider and water services assessment obligations**Subpart 1—~~Assessment of water services~~ Water services assessments**245 ~~Access to drinking water supply, wastewater, and urban stormwater~~ water services must be assessed**

- (1) The board of a water services entity must inform itself about the access that each community and population within the territorial authority district boundaries in its service area has to ~~drinking water supplies and wastewater and urban stormwater~~ water services by undertaking an assessment of those services under this section (an **water services assessment**). 10
- (2) ~~An A~~ water services assessment must— 15
- (a) identify each community and population within territorial authority district boundaries that receives the services; and
  - (b) describe the characteristics of those communities and populations and the nature of the services that they currently receive; and
  - (c) assess the extent to which those communities and populations are currently receiving, and will continue to receive, sufficient services, including a consideration of— 20
    - (i) their current access; and
    - (ii) any reasonably foreseeable risks to their future access; and
    - (iii) their current and estimated future demands for the services; and 25
  - (d) describe the safety and quality of drinking water currently being supplied to the communities and the populations within territorial authority district boundaries in its service area, using information collected and made available by Taumata Arowai and any other organisations that the water services entity considers relevant; and 30
  - (e) assess the adequacy of ~~drinking water and wastewater and urban stormwater~~ water services available to communities and populations within territorial authority district boundaries within its service area from a public health perspective and in light of—
    - (i) the health risks to those communities and populations arising from any absence of, or deficiency in, those services; and 35

- (ii) the quality of those services currently available to those communities and populations; and
- (iii) the current and estimated future demands for any of those services; and
- (iv) the actual or potential consequences of ~~urban~~ stormwater and sewage discharges within its service area; and 5
- (f) identify and assess any other public health risks and any environmental risks relating to the services supplied to communities and populations within territorial authority district boundaries; and
- (g) take account of— 10
- (i) the diversity of the communities and populations within the water services entity's service area, their current and future interests, and the likely impact on their well-being; and
- (ii) the equity of provision of ~~drinking water, wastewater services, and urban stormwater~~ water services, including (without limitation) for Māori; and 15
- (h) specify the assumptions regarding current and estimated future demands for water services and how they compare with the relevant assumptions specified in the water services entity's asset management plan; and
- (i) based on the water services assessment under **paragraphs (b) to (h)**,— 20
- (i) assess the consequences if the communities or the populations within territorial authority district boundaries of its service area lose access to the services in the future, or are provided with services that are deficient in any way, including the implications for their public health; and 25
- (ia) consider communities or populations that might have deficient water services or no services; and
- (ii) outline a plan that provides for the ongoing access of those communities and populations to the services; and
- (iii) have regard to the water services entity's asset management plan and infrastructure strategy. 30
- (3) ~~An A~~ water services assessment,—
- (a) in relation to ~~drinking water supply~~, does not include assessments in relation to domestic self-suppliers:
- (b) in relation to ~~wastewater and other sanitary services~~, does not include assessments in relation to ~~individual properties with on-site wastewater services arrangements (for example, septic tanks).~~ 35

Compare: 2002 No 84 ss 124, 125, 128(2)

**246 When water services assessments must be conducted**

- (1) The board of a water services entity—
- (aaa) must conduct its first water services assessment before **1 July 2029**:
- (a) must, after it completes its first water services assessment, conduct an a water services assessment at least once every 3 years (which may be carried out when other assessments are carried out or at different times): 5
- (b) may conduct an a water services assessment at an earlier date (if the water services entity is made aware of concerns about the access that a community or population within territorial authority district boundaries has to drinking water, wastewater services, or urban stormwater services). 10
- (2) The board must provide the means for any person to alert the water services entity at any time of concerns about access to drinking water, wastewater services, and urban stormwater services for a community or population within territorial authority district boundaries in its service area. 15

Compare: 2002 No 84 s 125

**247 Additional considerations for water services assessments**

- (1) The board of a water services entity—
- (a) must invite the territorial authorities, regional councils, and mana whenua interested persons in the service area of the water services entity, and the water services entity's consumer forum, to participate in the water services assessment; and 20
- (b) must take the water services assessment into account in its asset management plans, funding and pricing plans, and stormwater management plans. 25
- (1A) In complying with **subsection (1)**, the board of a water services entity must—
- (a) comply with **section 461**; and
- (b) be guided and informed by the principles set out in **section 462**; and
- (c) prepare and publish a report on the engagement in accordance with **section 465**. 30
- (2) For the purposes of this section and **sections 245 and 246**,—
- (a) water services assessment includes—
- (i) assessing a service for the first time; and
- (ii) reviewing and updating an existing assessment: 35
- (b) the scope of each water services assessment must include—
- (i) communities and the population within territorial authority district boundaries that receive drinking water, wastewater services, and

|            |   |    |
|------------|---|----|
|            | stormwater services from the water services entity or other service provider; and   |    |
|            | (ii) communities and populations within territorial authority district boundaries in its service area that do not receive water supply services from the water services entity; and                                       | 5  |
|            | (iii) all types of water supply arrangements, including communities and populations (and households within those communities and populations) that do not receive water supply services supplied by network reticulation: |    |
| (c)        | water services entities need not consider within <del>an</del> <u>a water services</u> assessment water supply services that are owned or operated by the Crown:  | 10 |
| (d)        | <del>an</del> <u>a water services</u> assessment may be carried out by the water services entity or undertaken on its behalf (whether in whole or in part) by another appropriate organisation, including—                | 15 |
|            | (i) an iwi or Māori organisation:   |    |
|            | (ii) a relevant territorial authority or regional council.  |    |
|            | Compare: 2002 No 84 ss 14(1)(c), 125  |    |
| <b>248</b> | <b>Regional representative group review of proposed <u>water services</u> assessments</b>   | 20 |
|            | Before finalising <del>an</del> <u>a water services</u> assessment, the board of a water services entity must—  |    |
| (a)        | provide its regional representative group with a copy of the proposed <u>water services</u> assessment; and   |    |
| (b)        | give the group <del>30 working days</del> <u>2 months</u> to review and comment on the proposed <u>water services</u> assessment; and   | 25 |
| (c)        | take into account the group's comments (if any) before finalising the <u>water services</u> assessment.   |    |
| <b>249</b> | <b>Requirements following <del>assessment of</del> <u>water services</u> assessments</b>  |    |
| (1)        | On completion of <del>an assessment of</del> a <u>water service services</u> assessment, the chief executive of a water services entity must—   | 30 |
| (a)        | make the <u>water services</u> assessment available to the public on an Internet site maintained by, or on behalf of, the water services entity; and  |    |
| (b)        | provide Taumata Arowai with a copy of the <u>water services</u> assessment in electronic form.  | 35 |
| (2)        | The chief executive must also notify Taumata Arowai about—  |    |
| (a)        | any drinking water <del>supplies</del> <u>suppliers</u> that are, or appear to be, failing to meet their statutory obligations or are at risk of doing so; and  |    |

- (b) any other matters of concern arising from the water services assessment, including potential risks to communities within the water services entity's service area affected by the water services assessment that relate to—
- (i) any absence of, or deficiency in, a water supply service; or 5
  - (ii) a drinking water supplier that is at risk of ceasing to provide a service.
- Compare: 2002 No 84 s 126
- 250 Duty to ensure communities have access to drinking water if existing supplier faces significant problems** 10
- (1) **Subsection (2)** applies if—
- (a) a water services entity's or Taumata Arowai's assessment of a drinking water ~~supply~~ is that the supplier (not being the water services entity) is facing a significant problem or potential problem with its drinking water ~~supply~~, and the water services entity has notified Taumata Arowai of those concerns and discussed them with Taumata Arowai; or 15
  - (b) Taumata Arowai requires the water services entity to take action under **subsection (2)**.
- (2) If this subsection applies, a water services entity must—
- (a) work collaboratively with the supplier, the consumers of the supply, and Taumata Arowai to identify, as the circumstances allow and within a time frame determined by Taumata Arowai, 1 or more of the following: 20
    - (i) an immediate solution to the problem:
    - (ii) a temporary solution to the problem:
    - (iii) a long-term, permanent solution to the problem; and 25
  - (b) ensure that drinking water is provided to the affected consumers on a temporary or permanent basis if—
    - (i) the supplier is unable to continue to provide a service that meets the statutory requirements; and
    - (ii) an alternative solution is not readily available, or cannot be agreed by the parties involved within the time frame determined by Taumata Arowai. 30
- (3) For the purposes of this section, a **significant problem or potential problem** includes where—
- (a) a drinking water supplier has persistently failed to comply with legislative requirements; or 35
  - (b) there is a serious risk to public health relating to the drinking water ~~supply~~ provided by a drinking water supplier; or

- (c) a drinking water supplier has ceased to supply drinking water, or is, in Taumata Arowai's opinion, at significant risk of ceasing to supply drinking water.
- (4) If a water services entity is obliged to ensure access to drinking water, the water services entity may consider a range of options to fulfil its obligation, including— 5
- (a) taking over the management and operations of the drinking water supplier, on a temporary or permanent basis;
- (b) ensuring that drinking water continues to be provided through alternative supply arrangements. 10
- (5) However, nothing in **subsection (4)** obliges the water services entity to provide the supply via a reticulated network.
- (6) If a water services entity takes over the management and operations of a drinking water supplier on a permanent basis, the water services entity, Taumata Arowai, the former supplier, and (if relevant) the affected consumers must work together to determine how to deal with— 15
- (a) any assets and liabilities of the former supplier; and
- (b) any legal or other issues that may affect the water services entity's ability to manage and operate the supplier, such as access to the land on, or beneath which, assets are situated; and 20
- (c) how the water services entity might be compensated for the costs incurred in taking over the responsibilities of the former supplier.
- (7) A water services entity may charge for any drinking water ~~supplies that are~~ is provided to affected consumers, and may recover its costs from the previous supplier, but, when making decisions about future charges and funding arrangements, the water services entity must— 25
- (a) take reasonable steps to ascertain and consider the financial circumstances facing the affected consumers; and
- (b) consider the range of funding sources provided for in its revenue and financing policy; and 30
- (c) on request, demonstrate that it has considered those factors.
- (8) *See also* subpart 12 of Part 2 of the Water Services Act 2021 (statutory management and transfer of operations). 35
- Compare: 2002 No 84 s 127
- Fire hydrant provisions*
- 251 Fire hydrants**
- (1) A water services entity must, in every part of the service area in which it supplies water,—

- (a) fix fire hydrants in the main pipes, ~~other than trunk mains,~~ of the water supply network at the most convenient places for extinguishing any fire as the water services entity determines—
- (i) in consultation with the relevant territorial authority; and
  - (ii) with the approval of Fire and Emergency New Zealand; and
- (b) keep those fire hydrants in effective working order.
- (2) Fire hydrants must be fixed at the distances from each other that the water services entity decides with the approval of Fire and Emergency New Zealand.
- (3) The water services entity must put near each fire hydrant a conspicuous notice or mark of a kind approved by Fire and Emergency New Zealand showing the location of the hydrant, and that notice may, if the water services entity thinks fit, be put on any building.
- (4) If the water services entity is dissatisfied with any decision of Fire and Emergency New Zealand under this section, it may, within 1 month after receiving notice of the decision, appeal against that decision to the District Court.
- (5) The decision of the District Court in determination of the appeal under this section is final.

Compare: 1974 No 66 s 647

## 252 Pipes to be kept charged with water

- (1) A water services entity must at all times keep charged with water the pipes to which fire hydrants are affixed to by the water services entity under **section 251**.
- (2) **Subsection (1)** does not apply—
- (a) in the case of an unusual drought, an accident, or a ~~shortage from any cause~~ an interruption or restriction of the water supply;
  - (b) during any necessary repairs, renewals, connections, or inspections of the pipes;
  - (c) in the case of a state of emergency declared under the Civil Defence Emergency Management Act 2002;
  - (d) in the case of a drinking water emergency declared under section 59 of the Water Services Act 2021.
- (3) Subject to the overall requirements of any controller while a state of emergency exists under the Civil Defence Emergency Management Act 2002, the water services entity must allow any person to take and use water from any water supply network for extinguishing fire without any payment for the water.

Compare: 1974 No 66 s 648

## Subpart 2—Stormwater provisions

**252A Purpose of subpart**

The purpose of this subpart is to—

- (a) provide that a water services entity is responsible for managing—
  - (i) stormwater in the urban areas in its service area; and 5
  - (ii) the effects of stormwater in those areas; and
- (b) provide a framework to—
  - (i) deliver strategic and long-term outcomes for the management of stormwater in urban areas; and
  - (ii) enable engagement with the framework; and 10
- (c) provide, alongside relationship agreements and service-level agreements under **Part 5A**, a framework for co-ordination of agencies with responsibilities relating to stormwater in urban areas; and
- (d) require water services entities to provide comprehensive risk management of stormwater in urban areas; and 15
- (e) provide Taumata Arowai with oversight of the stormwater management of water services entities.

**252B Interpretation**

In this subpart, unless the context otherwise requires,—

**private stormwater network owner or operator** means a person who— 20

- (a) owns or operates a stormwater network in an urban area that connects or discharges to a stormwater network of the water services entity; and
- (b) is not a public stormwater network owner or operator

**public entity** means—

- (a) a local authority, council-controlled organisation, or subsidiary of a council-controlled organisation; 25
- (b) a department;
- (c) the New Zealand Defence Force;
- (d) a person who operates a stormwater network, or any aspect of a stormwater network, for, or on behalf of, an organisation specified in **paragraphs (a) to (c)** 30

**public stormwater network owner or operator** means a public entity that owns or operates a stormwater network in an urban area that connects or discharges to a stormwater network of the water services entity.

*Stormwater management strategies***252C Stormwater management strategies**

- (1) The board of a water services entity must have a stormwater management strategy that includes—
- (a) a stormwater management plan for all stormwater networks in its service area; and 5
  - (b) a stormwater risk management plan for all the stormwater networks in its service area, including networks owned or operated by a water services entity, a public entity, or a private stormwater network owner or operator; and 10
  - (c) stormwater network rules that apply to all the stormwater networks in its service area, including—
    - (i) networks owned or operated by a water services entity; and
    - (ii) networks owned or operated by a public entity; and
    - (iii) networks owned or operated by a private stormwater network owner or operator. 15
- (2) The board of a water services entity must—
- (a) provide its proposed or revised stormwater management strategy to Taumata Arowai; and
  - (b) develop its final stormwater management strategy in a manner that gives effect to any comments that Taumata Arowai makes on the proposed or revised stormwater management strategy; and 20
  - (c) provide its final stormwater management strategy to Taumata Arowai on or before **1 July 2028**; and
  - (d) give effect to its final stormwater management strategy; and 25
  - (e) take its final stormwater management strategy into account when making or reviewing its—
    - (i) asset management plan;
    - (ii) infrastructure strategy;
    - (iii) funding and pricing plan. 30
- (3) The territorial authorities, regional councils, and transport corridor managers involved in or affected by the stormwater management strategy must work with the water services entity to develop the strategy.
- (4) The board of a water services entity must—
- (a) review its stormwater management strategy at least once every 5 years; 35
  - (b) provide Taumata Arowai with its updated stormwater management strategy as soon as practicable following the review.

**252D Engagement on stormwater management strategy**

- (1) The board of a water services entity must, when proposing or reviewing its stormwater management strategy, engage with interested persons.
- (2) In conducting the engagement, the board of a water services entity must—
- (a) comply with the requirements set out in **section 461**; and
  - (b) be guided and informed by the principles set out in **section 462**; and
  - (c) prepare and publish a report on the engagement in accordance with **section 465**.

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*Stormwater management plans***253 Stormwater management plans**

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~~A~~The board of a water services entity must prepare and implement a stormwater management plan for all of the stormwater networks in its service area.

Compare: 2021 No 36 s 139(1)

**254 Purpose of stormwater management plans**

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The purpose of a stormwater management plan is to provide a water services entity with—

- ~~(a) a strategic framework for stormwater network management; and~~
- ~~(b) a means to engage with others on its stormwater management direction.~~
- (a) a long-term strategic framework for managing its stormwater networks; and
- (b) comprehensive information about its stormwater networks and any regulatory requirements that apply to them; and
- (c) a means to engage with others on the management of its stormwater networks.

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**255 ~~Water services entity must comply with their stormwater management plans~~**

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A water services entity must—

- (a) comply with its stormwater management plan; and
- (b) take its stormwater management plan into account when making or reviewing its asset management plan or its infrastructure strategy.

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**256 Contents of stormwater management plans**

- (1) A stormwater management plan must—

*Outcomes*

- (a) state the outcomes that the water services entity wants is intending to achieve and the means to monitor progress against those outcomes; and

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*Information*

- (b) ~~provide the details and mapping of each stormwater network in the service area of the water services entity, including details about its reticulated network, stormwater infrastructure, overland flow paths, and treatment networks; and~~ 5
- (e) ~~provide the details of the stormwater infrastructure in any transport corridor in the service area of the water services entity; and~~
- (d) ~~specify any statutory requirements that relate to the stormwater networks in the service area of the water services entity, including any resource consent requirements; and~~ 10
- (e) ~~include any stormwater environmental performance measures, standards, or targets that Taumata Arowai has set under the Water Services Act 2021 and specify how those measures, standards, or targets are to be met; and~~
- (b) identify the geographical zones (on a catchment-level basis) and set out the areas that each stormwater network serves; and 15
- (c) provide the relevant details of each stormwater network in the service area of the water services entity, including maps of each stormwater network; and
- (d) provide the relevant details of each stormwater network that relates to a transport corridor; and 20
- (e) specify any statutory requirements that relate to the stormwater networks (for example, stormwater environmental performance standards or conditions in resource consents); and
- (ea) provide the relevant details about any wastewater networks that are part of, or related to, a stormwater network; and 25
- (eb) provide the relevant details of any community that a stormwater network of the water services entity serves (including, without limitation, areas of urban development or growth); and

*Te Mana o te Wai* 30

- (f) ~~state how the stormwater management plan relates to is to give effect to Te Mana o te Wai, including any actions the water services entity is to take (consistent with its plan under section 144(2)) as part of a its response to a Te Mana o te Wai statement under section 144 for water services; and~~ 35
- (g) ~~identify any hazards that relate to a stormwater network in the service area of the water services entity, assess any risks associated with those hazards, and state how those risks are to be managed, controlled, monitored, or eliminated; and~~

- (h) ~~provide an overview of the maintenance and operation of each stormwater network in the service area of the water services entity (for example, monitoring, maintenance, operational procedures, and erosion control); and~~
- (i) ~~specify the access that each community has, or is to have, to stormwater services in the water services entity's service area (as assessed under **section 245(1)**):~~ 5  
*Roles and responsibilities*
- (g) ~~identify the roles and responsibilities relating to managing stormwater networks in the water services entity's service area (for example, local authorities or private stormwater network owners or operators).~~ 10
- (2) A stormwater management plan may—
- (a) include any other matters that the water services entity considers appropriate:
- (b) relate to 1 stormwater network or to multiple stormwater networks. 15
- 257 Engagement for stormwater management plans**
- (1) ~~The board of a water services entity must, when developing (or considering changes to) its stormwater management plan, engage, in accordance with **section 461**, with—~~
- (a) ~~the territorial authorities, regional councils, and transport corridor managers that the plan (or changes to it) would involve or affect; and~~ 20
- (b) ~~the mana whenua, consumers, and communities in the service area of the water services entity; and~~
- (c) ~~any other interested persons that the water services entity considers appropriate.~~ 25
- (2) ~~The territorial authorities, regional councils, and transport corridor managers that would be involved or affected by the stormwater management plan must work with the water services entity to develop the plan.~~
- 258 Taumata Arowai oversight**
- (1) ~~Before finalising a draft stormwater management plan, the relevant water services entity must—~~ 30
- (a) ~~provide a draft stormwater management plan to Taumata Arowai within a time frame that is—~~
- (i) ~~notified by Taumata Arowai in the *Gazette*; and~~
- (ii) ~~no earlier than **1 July 2028**; and~~ 35
- (b) ~~develop a final stormwater management plan that gives effect to any comments made by Taumata Arowai on the draft plan; and~~

- (e) ~~provide the final stormwater management plan to Taumata Arowai within a time frame notified in the *Gazette* by Taumata Arowai.~~
- (2) ~~Taumata Arowai may set different time frames for completing stormwater management plans for different stormwater networks within the service area of a water services entity.~~ 5
- (3) ~~The chief executive of the water services entity must publish the final stormwater management plan in accordance with **section 465**.~~

### **259 Review of stormwater management plans**

A water services entity must—

- (a) ~~review its stormwater management plan in accordance with **section 466**; and~~ 10
- (b) ~~provide the updated plan to Taumata Arowai as soon as practicable following each review if changes are made to the plan as a consequence of the review.~~

Compare: 2021 No 36 s 139(4) 15

#### *Stormwater network risk management plans*

### **259A Stormwater network risk management plans**

The board of a water services entity must prepare a stormwater network risk management plan for all stormwater networks in its service area, including all stormwater networks of— 20

- (a) every private stormwater network owner or operator;
- (b) every public stormwater network owner or operator.

### **259B Contents of stormwater network risk management plan**

A stormwater network risk management plan must—

- (a) identify any hazards that relate to a stormwater network, including (without limitation) emerging or potential hazards; and 25
- (b) assess any risks that are associated with those hazards; and
- (c) identify how those risks are to be managed, controlled, monitored, or eliminated.

#### *Stormwater network rules* 30

### **260 Board may make stormwater network rules**

- (1) The board of a water services entity may make stormwater network rules that do all or any of the following:
- (a) ~~specify the geographical area in the water service entity's service area to which the rules apply;~~ 35

|   |  |
|---|--|
| <p>(b) set restrictions, requirements, conditions, <u>standards, authorisations, or prohibitions relating to—</u></p> <p style="padding-left: 2em;">(i) <del>discharges into to a stormwater networks (other than discharges from other stormwater networks):</del></p> <p style="padding-left: 2em;">(ii) <del>works on or near, or relating to the maintenance of, overland flow paths of a stormwater network:</del></p> <p style="padding-left: 2em;">(ii) <u>the volume of stormwater in a stormwater network:</u></p> <p style="padding-left: 2em;">(iii) <u>risks and hazards identified in a stormwater network risk management plan relating to—</u></p> <p style="padding-left: 4em;">(A) <u>activities in the service area of a water services entity:</u></p> <p style="padding-left: 4em;">(B) <u>overland flow paths and watercourses in the service area of an entity:</u></p> <p>(e) <del>manage the volume of stormwater and entry of contaminants into stormwater networks:</del></p> <p>(d) <del>set quality standards for discharges into stormwater networks.</del></p> <p>(c) <del>set notification requirements (for example, notification of hazards or risks relating to a stormwater network).</del></p> <p>(1A) <u>Rules made under this section must specify the geographic area in the water services entity’s service area to which the rules apply.</u></p> <p>(2) Rules made under this section relating to works on or near, or relating to the maintenance of, overland flow paths of the stormwater network may not conflict with or restrict the rights and obligations of <del>land owners or road owners</del> under <b>section 221 or 222</b>; or other utility operators under the Telecommunications Act 2001, the Electricity Act 1992, or the Gas Act 1992.</p> <p>(2A) <u>Rules made under this section may not require an owner or occupier of land to eliminate an impairment of a stormwater network (including, without limitation, any overland flow path or watercourse) on their land that is caused by—</u></p> <p style="padding-left: 2em;">(a) <u>an act or omission of another person in respect of other land; or</u></p> <p style="padding-left: 2em;">(b) <u>a breach of a rule made under this Act by another person in respect of other land; or</u></p> <p style="padding-left: 2em;">(c) <u>a natural disaster.</u></p> <p>(3) <del>The chief executive of a water services entity must publish the stormwater network rules in accordance with <b>section 465</b>.</del></p> <p>(4) Stormwater network rules are secondary legislation (<i>see</i> Part 3 of the Legislation Act 2019 for publication requirements).</p> <p><b>261 Stormwater network rules may apply to various networks</b></p> <p>Stormwater network rules may apply to a part, or the whole, of 1 or more of the following:</p> | <p>5</p> <p>10</p> <p>15</p> <p>20</p> <p>25</p> <p>30</p> <p>35</p> |
|---|--|

- (a) the stormwater networks of the water services entity;
- (b) the networks of a public stormwater network owner or operator ~~that has agreed to the stormwater network rules in writing;~~
- (c) the networks of a private stormwater network owner or operator ~~that has agreed to the stormwater network rules in writing.;~~ 5
- (d) the networks of a transport corridor manager that has agreed to the stormwater network rules in writing;
- (e) the stormwater networks (including, without limitation, any overland flow path or watercourse) on land that a water services entity does not own. 10
- (2) In this section,—
- private stormwater network owner or operator** means a person who—
- (a) ~~owns or operates a stormwater network in an urban area that connects or discharges to a stormwater network of the water services entity; and~~
- (b) is not a public stormwater network owner or operator 15
- public entity** means—
- (a) ~~a local authority, council-controlled organisation, or subsidiary of a council-controlled organisation;~~
- (b) a transport corridor manager;
- (c) a department; 20
- (d) the New Zealand Defence Force;
- (e) a person who operates a stormwater network, or any aspect of a stormwater network, for, or on behalf of, an organisation specified in **paragraphs (a) to (d)**
- ~~**public stormwater network owner or operator** means a public entity that owns or operates a stormwater network in an urban area that connects or discharges to a stormwater network of the water services entity.~~ 25
- 262 Engagement on stormwater network rules**
- (1) The board of a water services entity must, when developing (or considering changes to) its stormwater network rules, engage with— 30
- (a) Taumata Arowai; and
- (b) the territorial authorities whose district includes a stormwater network in the geographical area that the rules are to cover; and
- (c) the regional councils whose region includes a stormwater network in the geographical area that the rules are to cover; and 35
- (d) the consumers, mana whenua, communities, and transport corridor managers in the service area of the water services entity; and
- (e) any other interested persons that the board considers appropriate.

|            |   |    |
|------------|---|----|
| (2)        | In complying with <b>subsection (1)</b> , the board of a water services entity must be guided and informed by the principles that apply to water services entities under <b>sections 461 and 462</b> .  |    |
| <b>263</b> | <b>Review of stormwater network rules</b>   |    |
|            | The board of a water services entity must review its stormwater network rules in accordance with <b>section 466</b> .   | 5  |
| <b>262</b> | <b>Stormwater management of watercourses</b>  |    |
| (1)        | <u>If a stormwater network risk management plan identifies a hazard or risk relating to a watercourse on land that is not owned by a water services entity, the water services entity must work collaboratively with the owner of land to implement a solution to ensure the risk is managed, controlled, monitored, or eliminated.</u>   | 10 |
| (2)        | <u>If a collaborative approach cannot be agreed with the owner of land under <b>subsection (1)</b> in a reasonable time frame, or the owner of land is unable to implement a solution to address the risk identified in the stormwater network risk management plan, the water services entity must implement a solution to ensure the risk is managed, controlled, monitored, or eliminated.</u> | 15 |
| (3)        | <u>Despite anything in <b>subsection (1) or (2)</b>, any obligations imposed by a stormwater network rule made under <b>section 260(1)(b)</b> continue to apply to an owner of land.</u>  | 20 |
| (4)        | <u>However, nothing in this section overrides the responsibility of a water services entity under <b>section 220</b> to manage and maintain the water services infrastructure in its service area (including, without limitation, any overland flow path or watercourse on land that the water services entity does not own).</u>   |    |
|            | <i>Stormwater environmental performance standards</i>   | 25 |
| <b>264</b> | <b>Requirement to give effect to stormwater environmental performance standards</b>   |    |
|            | If the board of a water services entity makes stormwater network rules under <b>section 260</b> relating to a stormwater network, the rules must give effect to any stormwater environmental performance standards made under <b>section 139A</b> of the Water Services Act 2021.   | 30 |
| (2)        | <del>If a territorial authority makes bylaws under the Local Government Act 2002, the Reserves Act 1977, or the Land Transport Act 1998 relating to a stormwater network, the bylaws must give effect to any stormwater environmental performance standards made under <b>section 139A</b> of the Water Services Act 2021.</del>  | 35 |
| (3)        | <del><b>Subsection (2)</b> applies to bylaws made on and after the commencement of <b>section 139A</b> of the Water Services Act 2021.</del>  |    |
|            | Compare: 2002 No 84 s 146(2)  |    |

**265 Application to transport stormwater systems**

~~This subpart applies to a transport stormwater system only if the relevant transport corridor manager provides written notice to the owner or operator of the transport stormwater system that it applies.~~

**Subpart 3—Trade waste provisions**

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*Trade waste permits***266 Certain persons may apply for trade waste permits**

(1) A person may apply to the chief executive of a water services entity for a trade waste permit if the person—

- (a) owns or occupies trade waste premises in the water services entity's service area; or
- (b) is a trade waste carrier that carries out work in the water services entity's service area.

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(2) The application must be made in the manner and in the form that the chief executive of the water services entity specifies.

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**267 Chief executive of water services entity may issue trade waste permit**

(1) The chief executive of a water services entity may issue a trade waste permit only to a person who may apply for a trade waste permit.

(2) The chief executive may specify any requirements, conditions, and limits in a trade waste permit that the chief executive considers appropriate for the person to comply with in the circumstances, including (without limitation) 1 or more of the following:

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- (a) requirements relating to the storage, handling, treatment, or discharge of trade waste:
- (b) notification requirements (for example, notification requirements relating to unintended or accidental discharge of trade waste, whether into a wastewater network, a stormwater network, or the environment):
- (c) volumetric requirements, conditions, or limits:
- (d) contaminant requirements, conditions, or limits:
- (e) treatment requirements or conditions:
- (f) measurement or monitoring requirements:
- (g) laboratory testing requirements:
- (h) qualification, training, or supervision requirements:
- (i) unique identifiers (for example, a code that enables an entity to identify particular trade waste premises or a vehicle used to transport trade waste):

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|------------|---|----|
|            | (j) record-keeping, audit, and inspection requirements.   |    |
| (3)        | A trade waste permit must give effect to any relevant wastewater environmental performance standard made under section 138 of the Water Services Act 2021.                          |    |
| <b>268</b> | <b>Persons may discharge trade waste into wastewater networks only if complying with trade waste permits</b>  | 5  |
|            | A person may discharge trade waste into a wastewater network only if the person complies with every requirement, condition, and limit specified in the relevant trade waste permit. |    |
|            | <i>Trade waste plans</i>  | 10 |
| <b>269</b> | <b>Board must have trade waste plan</b>   |    |
| (1)        | The board of a water services entity must—  |    |
|            | (a) have a trade waste plan that sets out the approach that the water services entity is to take to regulate—   |    |
|            | (i) trade waste in its service area; and  | 15 |
|            | (ii) the discharge of trade waste into its wastewater networks; and   |    |
| (b)        | consider any relevant building code made under the Building Act 2004 when making a trade waste plan.  |    |
| (2)        | The purpose of the trade waste plan is to provide transparency in relation to the matters specified in <b>section 270</b> .   | 20 |
| (3)        | <del>The chief executive of a water services entity must publish the trade waste plan in accordance with <b>section 465</b>.</del>  |    |
| (4)        | A trade waste plan made under this Act is secondary legislation ( <i>see</i> Part 3 of the Legislation Act 2019 for publication requirements).                                      |    |
| <b>270</b> | <b>Contents of trade waste plans</b>  | 25 |
| (1)        | A trade waste plan must specify—  |    |
|            | (a) which activities will be allowed under a permit; and  |    |
|            | (b) which activities will be subject to restrictions under a permit; and  |    |
|            | (c) any activities that will be prohibited under a permit; and  |    |
|            | (d) the water services entity's intended approach—  | 30 |
|            | (i) to issuing permits for trade waste over a 5-year period, including the approach to classes of trade waste, trade waste premises, and trade waste carriers:                      |    |
|            | (ii) to determining the requirements, conditions, and limits that are to apply to different classes of trade waste under trade waste permits:                                       | 35 |

|  |    |
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| <ul style="list-style-type: none"> <li>(iii) to determining the qualification, training, and supervision requirements that are to apply to persons who are granted trade waste permits:</li> <li>(iv) to determining the considerations that are to apply when the water services entity sets fees or charges in relation to trade waste permits.</li> </ul>   | 5  |
| (2) A trade waste plan may specify the classes of waste or material that are not trade waste.  |    |
| (3) <u>A person who holds a trade waste permit may, at any time, request a review of, and ask for changes to, the trade waste permit.</u>  | 10 |
| Compare: 2021 No 36 s 136(6)   |    |
| <b>271 Engagement requirements for trade waste plans</b>   |    |
| (1) <del>The board of a water services entity must, when developing (or considering changes to) its trade waste plan, engage with—</del>   |    |
| <ul style="list-style-type: none"> <li>(a) <del>Taumata Arowai; and</del></li> <li>(b) <del>the territorial authorities whose district includes a wastewater network in the service area of the water services entity; and</del></li> <li>(c) <del>the consumers, mana whenua, and communities in the entity's service area; and</del></li> <li>(d) <del>the chief executive of the agency that administers the Building Act 2004; and</del></li> <li>(e) <del>any other interested persons that the board considers appropriate.</del></li> </ul> | 15 |
| (2) <del>In complying with <b>subsection (1)</b>, the board of a water services entity must be guided and informed by the principles that apply to water services entities under <b>sections 461 and 462</b>.</del>  | 25 |
| <b>271 Engagement on trade waste plans</b>   |    |
| (1) <u>The board of a water services entity must, when developing (or considering changes to) its trade waste plan, engage with interested persons.</u>  |    |
| (2) <u>In conducting the engagement, the board of a water services entity must—</u>  |    |
| <ul style="list-style-type: none"> <li>(a) <u>comply with the requirements set out in <b>section 461</b>; and</u></li> <li>(b) <u>be guided and informed by the principles set out in <b>section 462</b>; and</u></li> <li>(c) <u>prepare and publish a report on the engagement in accordance with <b>section 465</b>.</u></li> </ul>   | 30 |

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| <b>272</b> | <b>Chief executive of water services entity must <del>have regard</del> give effect to trade waste plans</b>   |    |
|            | The chief executive of a water services entity must give effect to the trade waste plan of the water services entity when the chief executive performs or exercises any relevant function or power of the chief executive. | 5  |
|            | Compare: 2021 No 36 s 136(7)   |    |
| <b>273</b> | <b>Review of trade waste plan</b>  |    |
|            | The board of a water services entity must review its trade waste plan in accordance with <b>section 466</b> .  | 10 |
|            | Compare: 2021 No 36 s 136(2), (3)  |    |
|            | <b>Subpart 4—<del>Water restrictions and consumer behaviour</del> <u>supply and wastewater services rules</u></b>  |    |
| <b>274</b> | <b><del>Board may make rules restricting water usage</del></b>   |    |
| (1)        | <del>The board of a water services entity may—</del>   |    |
|            | (a) <del>make rules that restrict water usage among consumers of water services delivered by the entity; and</del>   | 15 |
|            | (b) <del>implement those rules as it thinks fit.</del>   |    |
| (2)        | <del>The rules may—</del>  |    |
|            | (a) <del>restrict the quantity of water that a consumer may use;</del>   |    |
|            | (b) <del>restrict the purposes for which, and the way in which, a consumer may use water;</del>  | 20 |
|            | (c) <del>apply to 1 or more consumers or classes of consumers;</del>   |    |
|            | (d) <del>be different for each consumer or class of consumers;</del>   |    |
|            | (e) <del>specify the criteria for when restrictions apply;</del>   |    |
|            | (f) <del>specify the geographical area or areas to which the rules or arrangements apply.</del>  | 25 |
| (3)        | <del>As soon as practicable after making rules, the board—</del>   |    |
|            | (a) <del>must take reasonable steps to notify the water services entity’s consumers; and</del>   |    |
|            | (b) <del>must publish a copy of the rules in accordance with <b>section 465</b>.</del>   | 30 |
| (4)        | <del>As soon as practicable after implementing any rules, the board—</del>   |    |
|            | (a) <del>must take reasonable steps to notify the water services entity’s consumers to whom the rules apply; and</del>   |    |
|            | (b) <del>must provide information specifying which rules are implemented on an Internet site maintained by, or on behalf of, the entity in a format that is readily accessible.</del>                                      | 35 |

- (5) **Section 277** does not apply to notifications under **subsection (4)**.
- (6) Rules made under **subsection (1)** do not apply to consumers of the water services entity who have entered into a commercial bulk supply agreement with the water services entity.
- (7) Rules made under **subsection (1)** are secondary legislation (see Part 3 of the Legislation Act 2019 for publication requirements). 5
- 275 Board may make rules regulating certain consumer behaviour**
- (1) The board of a water services entity may make rules that regulate the behaviour of its consumers with respect to water supply and wastewater.
- (2) The rules may— 10
- (a) set requirements, restrictions, and prohibitions with respect to—
- (i) disposing of materials or substances, or making discharges, into the water services entity's wastewater system:
- (ii) using equipment or devices relevant to wastewater or water supply: 15
- (iii) wasting water:
- (b) require consumers to notify the water services entity of any risks to its supply of water services, including any faults, hazards, or other issues, or any significant change in usual usage (for example, filling or emptying a swimming pool): 20
- (c) apply to 1 or more consumers or classes of consumers:
- (d) be different for each consumer or class of consumers.
- (3) The rules must specify the geographical area or areas to which rules apply.
- (4) The rules may not restrict ordinary domestic use of water supply or ordinary domestic wastewater discharges. 25
- (5) The board must publish rules in accordance with **section 465**.
- (6) Rules made under **subsection (1)** with respect to—
- (a) water supply do not apply to consumers of the water services entity who have entered into a commercial bulk supply agreement with the water services entity: 30
- (b) wastewater do not apply to a person who holds a trade waste permit.
- (7) Rules made under **subsection (1)** are secondary legislation (see Part 3 of the Legislation Act 2019 for publication requirements).
- 274 Board may make water supply and wastewater services rules**
- (1) The board of a water services entity may make rules relating to water supply and wastewater services, including (without limitation) rules— 35

- (a) concerning the use of water supplied to consumers by a water services entity (for example, restrictions on the amount of water that is used or the purpose for which it is used):
- (b) concerning the disposal of materials or substances into, or discharging to, a wastewater network: 5
- (c) concerning equipment or devices relating to water supply or wastewater networks (for example, a backflow prevention device):
- (d) requiring consumers to notify the water services entity of any significant risk to its water supply or wastewater services (for example, faults, hazards, or any significant change in normal usage). 10
- (2) The rules may—
- (a) apply to 1 or more consumers or classes of consumers:
- (b) be different for each consumer or class of consumers.
- (3) The rules must—
- (a) specify the geographic area or areas to which the rules apply; and 15
- (b) be published as an appendix to the water services entity’s service agreement.
- (4) As soon as practicable after making the rules, the board must—
- (a) take reasonable steps to notify the water services entity’s consumers about how the rules apply to them (for example, whether there is a drought for which water restrictions apply); and 20
- (b) provide information specifying which rules are published on an Internet site maintained by, or on behalf of, the water services entity in a format that is readily accessible.
- (5) Rules made under **subsection (1)** with respect to wastewater do not apply to a person who holds a trade waste permit. 25
- (6) Rules made under **subsection (1)** are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).
- 276 Requirements for water usage restrictions and consumer behaviour supply and wastewater services rules** 30
- ~~Water usage restrictions imposed under **section 274** and consumer behaviour supply and wastewater services rules made under **section 275 274**—~~
- (a) must not be inconsistent with the following:
- (i) section 25 of the Water Services Act 2021;
- (ii) compliance rules made under section 49 of the Water Services Act 2021: 35
- (iii) codes or determinations set or made by the Commission; and

|            |     |  |    |
|------------|-----|--|----|
|            | (b) | must not cause a building to become an insanitary building within the meaning of section 123 of the Building Act 2004.   |    |
| <b>277</b> |     | <b>Engagement requirements for water usage restrictions rules and consumer behaviour rules</b>   |    |
| (1)        |     | The board of a water services entity must, when developing (or considering changes to) water usage restrictions rules and consumer behaviour rules, engage with—                                       | 5  |
|            | (a) | Taumata Arowai; and  |    |
|            | (b) | the territorial authorities whose district includes an area in the service area of the water services entity; and  | 10 |
|            | (c) | the consumers and communities in the geographical area or areas to which the rules apply; and  |    |
|            | (d) | the chief executive of the agency that administers the Building Act 2004; and  |    |
|            | (e) | the water services entity's consumer forum and the provider of the consumer dispute resolution scheme; and   | 15 |
|            | (f) | the Commission.  |    |
| (2)        |     | In complying with <b>subsection (1)</b> , the board of a water services entity must be guided and informed by the principles that apply to water services entities under <b>sections 461 and 462</b> . | 20 |
| <b>277</b> |     | <b>Engagement on water supply and wastewater services rules</b>  |    |
| (1)        |     | <u>The board of a water services entity must, when developing (or considering changes to) water supply and wastewater services rules, engage with interested persons.</u>                              |    |
| (2)        |     | <u>In conducting the engagement, the board of a water services entity must—</u>  | 25 |
|            | (a) | <u>comply with the requirements set out in <b>section 461</b>; and</u>   |    |
|            | (b) | <u>be guided and informed by the principles set out in <b>section 462</b>; and</u>   |    |
|            | (c) | <u>prepare and publish a report on the engagement in accordance with <b>section 465</b>.</u>   |    |
| <b>278</b> |     | <b>Review of rules made under section 274 or 275</b>   | 30 |
|            |     | The board of a water services entity must review the rules that it makes under <b>section 274 or 275</b> in accordance with <b>section 466</b> .   |    |

## Subpart 5—Service agreements

**279 Water services entity must have service agreement with person liable to pay charges**

- (1) A water services entity must have a service agreement with each person who is liable to pay charges under **section 321 or 322**. 5
- (2) Each service agreement—
- (a) must include the matters specified in **section 280**;
  - (b) must specify any other terms and conditions of the water services to be provided;
  - (c) must comply with the requirements specified in **sections 281 and 282**: 10
  - (d) may be different for different areas, services, or classes of bill payers;
  - (e) continues to apply until amended or replaced (at which point the amended or replacement agreement applies).
- (3) Service agreements made under **subsection (1)** with respect to— 15
- (a) water supply do not apply to bill payers who have entered into a commercial bulk supply agreement with the water services entity;
  - (b) wastewater do not apply to a person who holds a trade waste permit.
- (4) Service agreements made under **subsection (1)** apply to consumers— 20
- (a) on and after the date on which they are published in accordance with **section 282(2)**;
  - (b) on or after the date on which services are supplied and liability for charges commences.

**280 Matters that must be specified in service agreements**

- (1) Each service agreement— 25
- (a) must specify—
    - (i) the bill payers, or classes of bill payers, to whom the agreement applies; and
    - (ii) how the water services entity is to communicate with its bill payers; and 30
    - (iii) the applicable billing and charging processes to be used (including, without limitation, how charges are determined and bills may be paid); and
    - (iv) how the water services entity is to notify its bill payers of any proposed or actual changes to the agreement; and 35
  - (b) must, in the case of agreements that concern water supply services or waste water services, specify—

- (i) how the water services entity is to notify its bill payers of any issues or faults; and
- (ii) how the water services entity is to access the properties of its consumers (for example, the means of notification and the times for reading meters); and 5
- (c) may specify any other matters that the water services entity considers appropriate.
- (2) Nothing in **subsection (1)** constitutes a term for the purposes of section 46K(1)(c) of the Fair Trading Act.
- 281 ~~Consultation requirements~~Engagement on service agreements** 10
- (1) Before entering into, amending, or replacing a service agreement, the board of a water services entity must—
- (a) provide a draft of the agreement (or amendment) to its consumer forum, consumer dispute resolution scheme, and the Commission; and
- (b) provide bill payers, consumers, and communities in the service area of the water service entity with an opportunity to provide feedback on any of those documents by complying with **section 282**; and 15
- (c) provide the parties specified in **paragraphs (a) and (b)** with at least 20 working days to review and comment on the draft of the agreement (or amendment); and 20
- (d) have regard to any feedback received from the parties specified in **paragraph (a) and (b)**; and
- (e) notify its bill payers of any changes that are made; and
- (f) ~~comply with the requirements of sections 461 and 462.~~
- (f) comply with **section 461**; and 25
- (g) be guided and informed by the principles set out in **section 462**; and
- (h) prepare and publish a report on the engagement in accordance with **section 465**.
- (2) **Subsection (1)** does not apply if—
- (a) a proposed change to the agreement is minor or technical: 30
- (b) the water services entity is amending the agreement to give effect to changes required under **section 283**.
- 282 Publication requirements**
- (1) A water services entity to which **section 281** applies must ensure that the following documents are published in draft before they are finalised: 35
- (a) service agreements:
- (b) amendments to service agreements:

|  |  |
|--|--|
| <p>(c) replacement service agreements.</p> <p>(2) After the documents are finalised, the chief executive of the water services entity must publish the documents <del>in accordance with <b>section 465</b> on an Internet site maintained by, or on behalf of, the water services entity.</del></p> <p>Compare: 2021 No 36 s 205</p> <p><b>283 Other requirements</b></p> <p>(1) If the provider of the consumer dispute resolution scheme recommends changes to a water services entity's service agreement, which it may do at any time, the water services entity must consider the recommendation.</p> <p>(2) The board of a water services entity must review the water services entity's service agreement in accordance with <b>section 466</b>.</p> <p>(3) The Commission may review a water services entity's service agreement at any time.</p> <p>(4) If the Commission reviews and requires changes to the terms and conditions of a water services entity's service agreement, the water services entity must make those changes.</p> <p>(5) A service agreement may not include anything that is inconsistent with any codes or determinations made by the Commission.</p> <p><b>284 Application of certain legislation</b></p> <p>The following legislation, to the extent that it is relevant, applies to service agreements:</p> <p>(a) the Contract and Commercial Law Act 2017, except for the following provisions:</p> <p style="padding-left: 20px;">(i) sections 21 to 32:</p> <p style="padding-left: 20px;">(ii) sections 35 and 36 to 49:</p> <p style="padding-left: 20px;">(iii) sections 54 to 57:</p> <p style="padding-left: 20px;">(iv) sections 341 to 344:</p> <p>(b) the Fair Trading Act 1986.</p> <p style="text-align: center;">Subpart 6—Rules regulating specified classes of work</p> <p><b>285 Board may regulate specified classes of work in certain places</b></p> <p>(1) The board of a water services entity may make rules that regulate, restrict, or prohibit the undertaking of specified classes of work near, under, or above a water supply system, a wastewater network, or a stormwater network.</p> <p>(2) The rules may—</p> <p style="padding-left: 20px;">(a) specify the class or classes of work that are subject to the rules:</p> | <p>5</p> <p>10</p> <p>15</p> <p>20</p> <p>25</p> <p>30</p> <p>35</p> |
|--|--|

- (b) specify the application process that a person must follow to apply for approval to undertake a specified class of work:
- (c) regulate the way in which the specified class or classes of work may be undertaken:
- (d) restrict the extent to which the specified class or classes of work may be undertaken: 5
- (e) prohibit the undertaking of the class or classes of work.
- (3) Rules made under this section may not conflict with or restrict the rights and obligations of land owners or road owners under **section 221 or 222**, or other utility operators under the Telecommunications Act 2001, the Electricity Act 1992, or the Gas Act 1992. 10
- (4) ~~As soon as practicable after making rules, the board—~~
- (a) ~~must take reasonable steps to notify any person undertaking a specified class of work in the service area of the water services entity; and~~
- (b) ~~must publish a copy of the rules in accordance with **section 465**.~~ 15
- (4) As soon as practicable after making rules, the board must take reasonable steps to notify any person undertaking a specified class of work in the service area of the water services entity.
- (5) Rules made under **subsection (1)** are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements). 20
- 286 Engagement requirements for rules that regulate specified classes of work**
- (1) ~~The board of a water services entity must, when developing (or considering changes to) rules that regulate specified classes of work, engage with—~~
- (a) ~~the territorial authorities whose district includes an area in the service area of the water services entity; and~~ 25
- (b) ~~the mana whenua in the service area of the water services entity; and~~
- (c) ~~the consumers and communities in the service area of the water services entity; and~~
- (d) ~~any other interested persons that the water services entity considers appropriate.~~ 30
- (2) ~~In complying with **subsection (1)**, the board of a water services entity must be guided and informed by the principles that apply to water services entities under **sections 461 and 462**.~~
- 286 Engagement on rules that regulate specified classes of work**
- (1) The board of a water services entity must, when developing (or considering changes to) rules that regulate specified classes of work, engage with interested persons. 35
- (2) In conducting the engagement, the board of a water services entity must—



|            |  |    |
|------------|--|----|
| (ii)       | <u>is not adding any additional connections to the existing water services infrastructure:</u>   |    |
| (b)        | another utility operator is acting in accordance with a statutory authorisation to move works.   |    |
| <b>290</b> | <b>Applications may be concurrent</b>  | 5  |
| (1)        | A person may make an application for any stage or stages of the 3-stage approval process at the same time.   |    |
| (2)        | <del>If, in relation to a given connection or disconnection approval, a person makes applications for more than 1 stage of the approval,—</del>  |    |
| (a)        | <del>a water services entity may consider and approve the stages set out in the applications concurrently:</del>   | 10 |
| (b)        | <del>and if the stages set out in the applications have different time frames, the time frame that is the longest applies to each application.</del>   |    |
| (2)        | <u>If, in relation to a given connection or disconnection approval, a person makes applications for more than 1 stage of the approval, a water services entity may consider and approve the stages set out in the applications concurrently.</u>             | 15 |
| (3)        | <u>When considering a multistage application, a water services entity and the relevant consent authority may take into account the scale and complexity of the relevant development at any stage or stages of the 3-stage approval process.</u>              |    |
| <b>291</b> | <b>Applications may be amended</b>   | 20 |
| (1)        | A stage 1, 2, or 3 application may be amended while it is being assessed but, if a proposed amendment is received, the water services entity may take up to a further 10 working days to process the amendment.  |    |
| (2)        | A stage 1, 2, or 3 application may be amended after it is granted but the same process to grant the approval must be undertaken to process the amendment.  | 25 |
| <b>292</b> | <b>Obligation to publish water services infrastructure plan</b>  |    |
|            | A water services entity must—  |    |
| (a)        | publish a plan of its water services infrastructure that shows the location of the connection points and pipes <del>in its water services</del> <u>the infrastructure on an Internet site maintained by, or on behalf of, the water services entity;</u> and | 30 |
| (b)        | <del>keep the plan updated.</del>  |    |
| (b)        | <u>update the plan as soon as practicable after any changes in the location of the connection points or pipes.</u>   |    |
| <b>293</b> | <b>Obligation to provide written approvals</b>   | 35 |
|            | <del>If a water services entity decides to grant a stage 1 or 2 approval, it must provide written approval in accordance with—</del>   |    |

- (a) the applicable provisions of the Resource Management Act 1991; and
- (b) the applicable water services infrastructure connection requirements.

### **293 Form of approvals**

If a water services entity decides to grant a stage 1 or 2 approval, it may provide written approval in accordance with the applicable provisions of the Resource Management Act 1991.

#### *Development code*

### **293A Development code**

- (1) The board of a water services entity must, not later than 12 months after the establishment date for the entity, prepare a development code and obtain approval for it from the Commission, in accordance with **sections 294 to 294C and 295**.
- (2) Each development code is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

### **294 Water services infrastructure connection or disconnection requirements**

- (1) The board of a water services entity may set requirements in respect of the following water services infrastructure connection or disconnection matters:
  - (a) prescribing forms for the infrastructure connection process;
  - (b) specifying the information that needs to be provided by applicants for the infrastructure connection process;
  - (c) specifying the criteria for granting extensions to how long approvals are valid for and any further conditions on which the extension can be granted;
  - (d) specifying applicable engineering design standards;
  - (e) specifying who is considered to be a suitably qualified person to carry out certain types of work relating to the infrastructure connection or disconnection;
  - (f) specifying how disputes are to be resolved in relation to infrastructure connections or disconnections;
  - (g) specifying when a network capacity assessment is or is not required;
  - (h) specifying the circumstances in which a water services entity must give written approval for an activity, or to an application for resource consent, under the Resource Management Act 1991;
  - (i) specifying the criteria for approving an application to vest infrastructure in the water services entity;
  - (j) providing for any other matter that relates to the infrastructure connection or disconnection process provided for in this Act.

- (2) ~~Requirements set under this section are secondary legislation (see Part 3 of the Legislation Act 2019 for publication requirements).~~

## 294 **Contents of development code**

The board of a water services entity must ensure that—

- (a) the draft development code includes, in the first part, a statement of development principles including (without limitation) principles designed to ensure that— 5
- (i) the water services entity is supportive of development within their area; and
- (ii) the water services entity supports, enables, and is responsive to, planning processes and growth, additional housing, and urban development; but 10
- (iii) the water services entity does not act in a way that is inconsistent with any local authority plan;
- (b) the draft development code includes, in the second part, provisions in respect of the following water services infrastructure connection or disconnection matters: 15
- (i) specifying application forms;
- (ii) specifying the information that needs to be provided by applicants for the infrastructure connection process; 20
- (iii) specifying the criteria for granting extensions to how long approvals are valid for and any further conditions on which an extension may be granted;
- (iv) specifying applicable engineering design standards;
- (v) specifying who is considered to be a suitably qualified person to carry out certain types of work relating to the infrastructure connection or disconnection; 25
- (vi) specifying how disputes in relation to infrastructure connections or disconnections are to be resolved independently, and in a manner that is timely, practicable, and cost-effective for the parties; 30
- (vii) specifying when a network capacity assessment is or is not required;
- (viii) specifying the circumstances in which a water services entity must be given written approval for an activity, or to an application for a resource consent, under the Resource Management Act 1991; 35
- (ix) specifying the criteria for approving an application to vest infrastructure in the water services entity;
- (x) providing for any other matter that relates to the infrastructure connection or disconnection process provided for in this Act;

|  |                               |
|--|-------------------------------|
| <ul style="list-style-type: none"> <li>(xi) <u>providing a process for—</u> <ul style="list-style-type: none"> <li>(A) <u>prioritising water services connections (in accordance with the sequencing of the stages 1, 2, and 3 processes, as set out in <b>sections 297 to 315</b>); and</u></li> <li>(B) <u>estimating when water services connection or disconnection requirements will be implemented and supplying those time estimates to consumers:</u></li> </ul> </li> <li>(xii) <u>prescribing the fees for applying for—</u> <ul style="list-style-type: none"> <li>(A) <u>a stage 1 approval of concept plans:</u></li> <li>(B) <u>a stage 2 approval of engineering plans:</u></li> <li>(C) <u>a stage 3 approval sign-off:</u></li> <li>(D) <u>a multistage approval (which may be different for different combinations of stages).</u></li> </ul> </li> </ul>  | <p>5</p> <p>10</p>            |
| <b>294A Process for preparing Part 1 of draft development code</b>   |                               |
| <ul style="list-style-type: none"> <li>(1) <u>This section applies to the preparation by the board of each water services entity of a draft Part 1 of the entity’s development code.</u></li> <li>(2) <u>The board must prepare a draft Part 1 of entity’s development code dealing with the matters in <b>section 294(a)(i) to (iii)</b>.</u></li> <li>(3) <u>The board must ensure that draft Part 1 of the code is consistent with the draft Part 1 of the draft codes of other water services entities but, if the draft Part 1 is inconsistent with the draft parts prepared by the other water services entities in any material respect, indicate the reasons for the inconsistency.</u></li> <li>(4) <u>The board of each water services entity that prepares a draft Part 1 of its development code must send it to—</u> <ul style="list-style-type: none"> <li>(a) <u>the board of other water services entities; and</u></li> <li>(b) <u>the Commission.</u></li> </ul> </li> <li>(5) <u>The board of the water services entity, after receiving feedback, may then revise the draft Part 1 of the entity’s development code and send it to the Commission for approval.</u></li> </ul> | <p>15</p> <p>20</p> <p>25</p> |
| <b>294B Approval of Part 1 of draft development code</b>   |                               |
| <ul style="list-style-type: none"> <li>(1) <u>This section applies in relation to a draft Part 1 of a development code received by the Commission under <b>section 294A(5)</b>.</u></li> <li>(2) <u>The Commission must consider if the purpose of section 3(1) of the Water Services Entities Act 2022 would be better promoted if draft Part 1 of the development code were approved and whether <b>section 294(a)(i) to (iii)</b> has been complied with.</u></li> <li>(3) <u>The Commission must approve draft Part 1 of the code if the Commission is satisfied that the purpose of section 3(1) of the Water Services Entities Act</u></li> </ul>  | <p>30</p> <p>35</p>           |

2022 would be better promoted if draft Part 1 of the development code were approved and **section 294(a)(i) to (iii)** has been complied with.

- (4) If the Commission considers that the draft Part 1 does not comply with **section 294(a)(i) to (iii)** or is inconsistent with the better promotion of the purpose of section 3(1) of the Water Services Entities Act 2022, the Commission must require the board of the water services entity to— 5
- (a) amend the code to remedy the deficiency; and
  - (b) resubmit it to the Commission for approval, in accordance with any timetable set by the Commission; and
  - (c) approve the code. 10

#### **294C Preparing and approving Part 2 of development code**

- (1) This section applies in relation to the preparation by the board of a water services entity, and the approval of, draft Part 2 of the entity's development code.
- (2) After draft Part 1 of its development code is approved by the Commission, the board of a water services entity must prepare a draft Part 2 of the entity's development code, that— 15
- (a) complies with **section 294(b)(i) to (xii)**; and
  - (b) gives effect to the principles set out in Part 1 of the development code (as approved by the Commission).
- (3) The board of the Water Services Entities Act 2022 must then ensure that— 20
- (a) there is engagement on the draft Part 2 of the entity's development code in accordance with **section 295**; and
  - (b) a copy of the draft Part 2 of the development code is sent to the Commission.
- (4) The board of the water services entity, after receiving feedback, may then revise the draft Part 2 of the entity's development code and send it to the Commission. 25
- (5) The Commission must consider if the draft Part 2 of the code received under **subsection (4)** gives effect to the principles set out in Part 1 of the entity's development code and complies with **section 294(b)(i) to (xii)**. 30
- (6) If the draft Part 2 of the development code gives effect to those principles and complies with **section 294(b)(i) to (xii)** the Commission must approve the code.
- (7) If the Commission considers that the draft Part does not comply with **section 294(b)(i) to (xii)** or does not give effect to those principles, the Commission must require the board of the water services entity to— 35
- (a) amend the code to remedy the deficiency; and
  - (b) resubmit it to the Commission for approval, in accordance with any timetable set by the Commission; and

- (c) approve the code.

**294D Compliance with development code**

- (1) Each water services entity must comply with its own development code.
- (2) Each regulated water services provider (within the meaning of **section 61** of the **Water Services Economic Efficiency and Consumer Protection Act 2022**), that is not a water services entity, must comply with the development code of the water services entity within whose district the head office of the provider is located.

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**294E Amendment of development codes**

- (1) If the board of a water services entity wishes to amend Part 1 of the entity's development code, **sections 293A and 294 to 294B** apply with any necessary modifications.
- (2) If the board of a water services entity wishes to amend Part 2 of the entity's development code, **sections 293A, 294, and 294C** apply with any necessary modifications.

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**295 ~~Engagement for water services infrastructure connection requirements~~**

- (1) ~~The board of a water services entity must, when developing (or considering changes to) water services infrastructure connection requirements, engage with—~~
- ~~(a) Taumata Arowai; and~~
- ~~(b) the territorial authorities whose district includes an area in the service area of the water services entity; and~~
- ~~(c) any other interested persons that the board considers appropriate.~~
- (2) ~~In complying with **subsection (1)**, the board of a water services entity must be guided and informed by the principles that apply to water services entities under **sections 461 and 462**.~~

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**295 Engagement on development code**

- (1) The board of a water services entity must, when developing (or considering changes to) a development code, engage with interested persons.
- (2) In conducting the engagement, the board of a water services entity must—
- (a) comply with the requirements set out in **section 461**; and
- (b) be guided and informed by the principles set out in **section 462**; and
- (c) prepare and publish a report on the engagement in accordance with **section 465**.

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**296 ~~Obligation to publish finalised water services infrastructure connection requirements~~**

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~~The chief executive of a water services entity must—~~

|            |  |    |
|------------|--|----|
| (a)        | publish the water services infrastructure connection requirements in accordance with <b>section 465</b> ; and  |    |
| (b)        | prepare and publish a report on how input into, and feedback on, the water services infrastructure connection requirements was considered and incorporated into the water services infrastructure connection requirements; and | 5  |
| (c)        | review the service infrastructure connection requirements in accordance with <b>section 466</b> .  |    |
| <b>296</b> | <b><u>Review of development code</u></b>   |    |
|            | The chief executive of a water services entity must review a development code in accordance with <b>section 466</b> .  | 10 |
|            | <i>Stage 1 approval: concept</i>   |    |
|            | <i>Process for stage 1 approval of concept plans</i>   |    |
| <b>297</b> | <b><u>Stage 1 approval of concept plans: application of sections 298 to 303</u></b>  |    |
|            | <b>Sections 298 to 303</b> apply if a person applies for a stage 1 approval of concept plans to be connected to or disconnected from water services infrastructure.  | 15 |
| <b>298</b> | <b><u>Stage 1 approval of concept plans: information required for applications</u></b>   |    |
| (1)        | When making an application for a stage 1 approval of concept plans, the applicant must provide—  | 20 |
| (a)        | all of the information that the water services infrastructure connection requirements require for stage 1 applications; and  |    |
| (b)        | any other information that the water services entity considers relevant.   |    |
| (2)        | When assessing an application, a water services entity may, in addition to the information provided in the application, consider any other information that it considers relevant.   | 25 |
| (3)        | If an application is incomplete, the water services entity may decline the application.  |    |
| <b>299</b> | <b><u>Stage 1 approval of concept plans: timing of approval of applications</u></b>  |    |
| (1)        | A water services entity must, within 20 working days of receiving an application for a stage 1 approval of concept plans, give the applicant,—   | 30 |
| (a)        | in the case of an approval, its decision in writing; and   |    |
| (b)        | in the case of an initial decision to approve the application with conditions or an initial decision to decline the application, its initial decision in writing along with—   | 35 |
| (i)        | the reasons for its initial decision; and  |    |

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|------------|--|----|
| (ii)       | a reasonable time frame (determined in consultation with the applicant) within which the applicant may amend the application or provide further information before a final decision is made. |    |
| (2)        | A water services entity must, within 10 working days of receiving an amended application or further information,—  | 5  |
| (a)        | consider the amendments or further information; and  |    |
| (b)        | give the applicant its final decision in writing.  |    |
| <b>300</b> | <b>Stage 1 approval of concept plans: approvals may be subject to conditions</b>   |    |
|            | A water services entity may approve an application for a stage 1 approval of <u>concept plans</u> subject to any conditions it considers appropriate.  | 10 |
| <b>301</b> | <b>Stage 1 approval of concept plans: grounds for declining applications</b>   |    |
|            | If a water services entity receives an application for a stage 1 approval of <u>concept plans</u> , it may decline the application if—   |    |
| (a)        | the water services infrastructure <u>that is</u> to be connected to or disconnected from lacks the capacity to handle the likely increase in demand for water services; or                   | 15 |
| (b)        | the water services entity determines that a more efficient way to connect to or disconnect from the water services infrastructure exists than the one proposed in the application; or        |    |
| (c)        | there are circumstances specified in the water services infrastructure connection or disconnection requirements that warrant declining the application.                                      | 20 |
| <b>302</b> | <b>Stage 1 approval of concept plans: period of validity for approval</b>  |    |
| (1)        | A stage 1 approval of <u>concept plans</u> is valid for 1 year.  |    |
| (2)        | However, a stage 1 approval of <u>concept plans</u> may be valid for a period longer than 1 year if—   | 25 |
| (a)        | the water services entity that granted the approval grants an extension; or  |    |
| (b)        | the applicant and the water services entity agree to a longer specified period.  |    |
| (3)        | An extension may be granted—   | 30 |
| (a)        | in accordance with any requirements specified in the water services infrastructure connection requirements; and  |    |
| (b)        | subject to any conditions the water services entity considers appropriate; and   |    |
| (c)        | for a specified period.  | 35 |
| (4)        | A water services entity may not specify a date for the end of a specified period that—   |    |

- (a) exceeds the expiry date of any applicable resource consent or building consent; or
- (b) is more than 5 years after the date on which the extension is granted.
- (5) In this section, **specified period** means a period of time that—
- (a) begins with the date on which the extension is granted; and 5
- (b) ends with the date specified in the extension.
- Stage 2 approval: engineering plans*
- Process for stage 2 approval of engineering plans*
- 303 Stage 2 approval of engineering plans: application of sections 304 to 308**
- Sections 304 to 308** apply if— 10
- (a) water services infrastructure connection or disconnection requirements require a person to apply for a stage 2 approval ~~to connect to water services infrastructure of engineering plans~~; and
- (b) the person applies to be connected to or disconnected from the water services infrastructure. 15
- 304 Stage 2 approval of engineering plans: information required for applications**
- (1) When making an application for a stage 2 approval of engineering plans, the applicant must provide all of the information that the water services infrastructure connection requirements require for stage 2 applications, including (without limitation)— 20
- (a) all information specified in the water services infrastructure connection requirements; and
- (b) an engineering plan that is prepared— 25
- (i) in accordance with any engineering design standards specified in the water services infrastructure connection requirements; or
- (ii) by a suitably qualified person specified in the water services infrastructure connection requirements; and
- (c) any other information that the water services entity considers relevant.
- (2) When assessing an application, a water services entity may, in addition to the information provided in the application, consider any other information that it considers relevant. 30
- (3) If an application is incomplete, the water services entity may decline the application.

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|------------|---|----|
| <b>305</b> | <b>Stage 2 approval of engineering plans: timing of approval of applications</b>  |    |
| (1)        | A water services entity must, within 30 working days of receiving an application for a stage 2 approval of engineering plans, give the applicant,—  |    |
| (a)        | in the case of an approval, its decision in writing; and  |    |
| (b)        | in the case of an initial decision to approve the application with conditions or an initial decision to decline the application, its initial decision in writing along with—  | 5  |
| (i)        | the reasons for its initial decision; and   |    |
| (ii)       | a reasonable time frame (determined in consultation with the applicant) within which the applicant may amend the application or provide further information before a final decision is made.  | 10 |
| (2)        | A water services entity must, within 10 working days of receiving an amended application or further information,—   |    |
| (a)        | consider the amendments or further information; and   |    |
| (b)        | give the applicant its final decision in writing.   | 15 |
| <b>306</b> | <b>Stage 2 approval of engineering plans: approvals may be subject to conditions</b>  |    |
|            | A water services entity may approve an application for a stage 2 approval of engineering plans subject to any conditions it considers appropriate.  |    |
| <b>307</b> | <b>Stage 2 approval of engineering plans: grounds for declining applications</b>  | 20 |
|            | If a water services entity receives an application for a stage 2 approval of engineering plans, it may decline the application if,—   |    |
| (a)        | for an engineering plan prepared in accordance with any engineering design standards specified in the water services infrastructure connection or disconnection requirements, the water services entity determines that the engineering plan— | 25 |
| (i)        | does not comply with those standards; or  |    |
| (ii)       | does not comply with any of the conditions of the stage 1 approval:   |    |
| (b)        | for an engineering plan prepared by a qualified person specified in the water services infrastructure connection or disconnection requirements, the water services entity determines that—  | 30 |
| (i)        | a more efficient way to connect to the water services infrastructure exists than the one proposed in the engineering plan; or   |    |
| (ii)       | the engineering plan does not comply with any conditions of the stage 1 approval:   | 35 |

- (c) there are circumstances specified in the water services infrastructure connection or disconnection requirements that warrant declining the application.

**308 Stage 2 approval of engineering plans: period of validity for approval**

- (1) A stage 2 approval of engineering plans is valid for 5 years, unless the water services entity that granted the approval grants an extension. 5
- (2) An extension may be granted—
- (a) in accordance with any requirements specified in the water services infrastructure connection requirements; and
- (b) subject to any conditions the water services entity considers appropriate; and 10
- (c) for a specified period.
- (3) A water services entity may not specify a date for the end of a specified period that—
- (a) exceeds the expiry date of any applicable resource consent or building consent; or 15
- (b) is more than 5 years after the date on which the extension is granted.
- (4) In this section, **specified period** means a period of time that—
- (a) begins with the date on which the extension is granted; and
- (b) ends with the date specified in the extension. 20

*Stage 3 approval: sign-off*

*Process for stage 3 approval sign-off*

**309 Stage 3 approval sign-off: application of sections 310 to 315**

**Sections 310 to 315** apply if—

- (a) water services infrastructure connection requirements require a person to apply for a stage 3 approval sign-off to connect to or disconnect from a water services network; and 25
- (b) a water services entity grants or has granted the person—
- (i) a stage 2 approval; or
- (ii) a stage 1 approval in those cases in which a stage 2 approval is not required. 30

**310 Stage 3 approval sign-off: information required for applications**

- (1) When making an application for a stage 3 approval sign-off, the applicant must provide all of the information that the water services infrastructure connection requirements require for stage 3 applications, including (without limitation)— 35

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|--|----|
| <ul style="list-style-type: none"> <li>(a) all information specified in the water services infrastructure connection requirements; and</li> <li>(b) evidence that work undertaken complies with any relevant requirements and conditions of the approval process; and</li> <li>(c) any other information that the water services entity considers relevant.</li> </ul>   | 5  |
| <ul style="list-style-type: none"> <li>(2) When assessing an application, a water services entity may, in addition to the information provided in the application, consider any other information that it considers relevant, including (without limitation) any information it may gather when undertaking site visits to inspect the work undertaken.</li> </ul>   |    |
| <ul style="list-style-type: none"> <li>(3) If an application is incomplete, the water services entity may decline the application.</li> </ul>  | 10 |
| <b>311 Stage 3 approval sign-off: timing of approval of applications</b>   |    |
| <ul style="list-style-type: none"> <li>(1) A water services entity must, within 30 working days of receiving an application for a stage 3 approval <u>sign-off</u>, give the applicant,— <ul style="list-style-type: none"> <li>(a) in the case of an approval, its decision in writing; and</li> <li>(b) in the case of an approval with conditions or an initial decision to decline the application, its decision in writing along with— <ul style="list-style-type: none"> <li>(i) the reasons for its decision; and</li> <li>(ii) a reasonable time frame (determined in consultation with the applicant) within which the applicant may amend the application or provide further information before a final decision is made.</li> </ul> </li> </ul> </li> </ul> | 15 |
| <ul style="list-style-type: none"> <li>(2) A water services entity must, within 10 working days of receiving an amended application or further information,— <ul style="list-style-type: none"> <li>(a) consider the amendments or further information; and</li> <li>(b) give the applicant its final decision in writing.</li> </ul> </li> </ul>  | 20 |
| <b>311A Stage 3 approval sign-off may be subject to conditions</b>   |    |
| <u>A water services entity may approve an application for a stage 3 approval sign-off subject to any conditions it considers appropriate.</u>  |    |
| <b>312 Stage 3 approval sign-off: approval to connect or disconnect</b>  |    |
| <ul style="list-style-type: none"> <li>(1) If a water services entity approves <u>an application for a stage 3 approval sign-off</u> application, the water services entity must issue to the applicant an approval that shows that the required work has been completed in accordance with any approvals granted under stage 1 or stage 2.</li> </ul>   | 30 |
| <ul style="list-style-type: none"> <li>(2) An approval issued under <b>subsection (1)</b> must— <ul style="list-style-type: none"> <li>(a) contain the information required to be provided in the approval in the water services infrastructure connection requirements and include (without limitation) the date on which the water services entity's approved</li> </ul> </li> </ul>   | 35 |

agent is to connect (or disconnect) the applicant's property to (or from) the water services infrastructure; and

- (b) be issued at least 10 working days before the date for connecting to or disconnecting from the applicant's property to the water services infrastructure.

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### 313 **Stage 3 approval sign-off: certificates of connection or disconnection**

- (1) As as soon as practicable after the connection or disconnection is completed, the water services entities must issue a certificate of completion to the applicant.
- (2) A certificate issued under **subsection (1)** must contain the information required to be provided in the certificate by the water services infrastructure connection or disconnection requirements.

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### 314 **Stage 3 approval sign-off: grounds for declining applications**

If a water services entity receives an application for a stage 3 approval sign-off, it may decline the application if satisfied that the work undertaken—

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- (a) does not comply with any requirement or condition of stage 1 approval (where stage 1 approval is required);
- (b) does not comply with any requirement or condition of stage 2 approval (where stage 2 approval is required).

### 315 **Stage 3 approval sign-off: period of validity for approval**

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- (1) A stage 3 approval sign-off is valid for 3 years; unless the water services entity that granted the approval grants an extension.
- (2) An extension may be granted—
  - (a) in accordance with any requirements specified in the water services infrastructure connection requirements; and
  - (b) subject to any conditions the water services entity considers appropriate; and
  - (c) for a specified period.
- (3) A water services entity may not specify a date for the end of a specified period that—
  - (a) exceeds the expiry date of any applicable resource consent or building consent; or
  - (b) is more than 8 years after the date on which the extension is granted.
- (4) In this section, **specified period** means a period of time that—
  - (a) begins with the date on which the extension is granted; and
  - (b) ends with the date specified in the extension.

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*Continuing conditions***316 Registration of ~~consent notices with continuing conditions~~ approval notices**

(1AAA) A water services entity may grant approval subject to conditions that the owner and subsequent owners are required to comply with on a continuing basis.

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(1) If a water services entity decides to grant ~~consent approval~~ subject to a condition that the owner and subsequent owners are required to comply with on a continuing basis, the water services entity—

(a) must, for the purposes of section 224 of the Resource Management Act 1991, issue a written ~~consent approval~~ notice that specifies the ~~condition~~; condition to—

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(i) the applicant;

(ii) the Registrar-General of Land to be lodged for registration;

(iii) the relevant territorial authority;

(b) may (in any case other than a subdivision consent) include a condition requiring that a covenant be entered into, in favour of the water services entity, in respect of the performance of any condition of the ~~consent approval~~.

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(1A) For the purposes of section 224 of the Resource Management Act 1991, written approval issued under **subclause (1)** is written consent.

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(2) The ~~consent approval~~ notice must be signed by a person that the water services entity has authorised to sign ~~consent approval~~ notices.

(3) At any time after the ~~consent approval~~ notice is issued,—

(a) the owner may apply to the water services entity to vary or cancel any condition specified in the ~~consent approval~~ notice:

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(b) the water services entity may review any condition specified in the ~~consent approval~~ notice and vary or cancel the condition.

(4) The ~~consent approval~~ notice is to be treated as—

(a) an instrument creating an interest in the land within the meaning of section 51 of the Land Transfer Act 2017, and may be registered accordingly; and

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(b) a covenant running with the land when registered under the Land Transfer Act 2017, and, despite anything to the contrary in section 103 of that Act, binds all subsequent owners of the land.

(5) If a registered ~~consent approval~~ notice has been varied or cancelled or has expired, the Registrar-General of Land may make an entry in the register (and on any relevant instrument of title) noting the variation, cancellation, or expiration if satisfied that it has occurred.

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- (6) ~~A consent~~ An approval notice in respect of Maori land must be lodged with the Registrar of the Maori Land Court and entered into Maori land records that the Maori Land Court holds.

Compare: 1991 No 69 s 221

### *Vesting*

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#### **317 Vesting water services infrastructure in water services entity**

- (1) A person may apply to a water services entity to vest water services infrastructure in the water services entity.
- (2) The water services entity may approve the application if—
- (a) the water services infrastructure meets the criteria specified in the water services infrastructure connection requirements for vesting water services infrastructure in the water services entity; and
- (b) the water services entity—
- (i) has granted stage 3 approval or issued a certificate of completion in respect of the water services infrastructure; or
- (ii) considers that special circumstances exist and has reached an agreement with the person specifying the terms and conditions for vesting the water services infrastructure in the water services entity.
- (3) If the application is approved, the water services entity must—
- (a) issue a certificate to the applicant and the Registrar-General of Land that documents the vesting; and
- (b) ensure that the relevant records are amended to show that the water services infrastructure is vested in the water services entity.
- (3A) If the application is approved, the Registrar-General of Land must amend the relevant records of title to show that the water services infrastructure is vested in the water services entity.
- (4) In this section, **person** means the owner of the water services infrastructure.

## **Part 11 Charging**

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### *Rates rebate scheme*

#### **318 Charging information needed by territorial authorities**

- (1) ~~Each~~ By 1 August of each year, each water services entity must give the relevant territorial authority all charging information from the water services entity's records that is reasonably required by the territorial authority in order to calculate entitlements to rebates under the Rates Rebate Act 1973.

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- (2) For the purposes of this section, **charging information** includes (without limitation) the names and addresses of the persons that the water services entities have charged for the delivery of water services and the amounts that those persons were charged.

Compare: 2020 No 47 s 41

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### *Sharing rating information*

#### **319 Rating information needed by water services entity**

- (1) This section applies in relation to a rating information database that a local authority keeps and maintains under section 27 of the Local Government (Rating) Act 2002.

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- (2) The local authority must give a water services entity information in the rating information database that the water services entity reasonably needs to charge its consumers, if the water services entity—

- (a) requests the information; and
- (b) provides water services to consumers in the area of the local authority.

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- (3) The local authority must provide the rating information—

- (a) as soon as is reasonably practicable after receiving a request from the water services entity; and
- (b) on a reasonable cost basis.

Compare: 2020 No 47 s 41

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#### **320 Rating information that may not be withheld**

- (1) This section applies to a local authority that—

- (a) has removed particulars from its rating information database under section 28C(3) of the Local Government (Rating) Act 2002; and
- (b) has not restored the particulars under section 28C(4) of that Act.

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- (2) The local authority—

- (a) must provide, if requested by a water services entity, information that the local authority holds but has been removed from the database; and
- (b) may not withhold any particulars that remain removed from its rating information database under section 28C(3) of the Local Government (Rating) Act 2002.

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### *Liability for water services charges*

#### **321 Liability for water services charges in respect of property**

- (1) This section applies to any person who—

- (a) owns property, other than Maori land, in the service area of a water services entity; or

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- (b) occupies property in the service area of a water services entity under a lease that—
- (i) is for a term (including renewals) exceeding 10 years; and
  - (ii) is registered under section 91 of the Land Transfer Act 2017 on or after 12 November 2018; or 5
  - (iii) provides that the lessee must be entered in the rating information database and the district valuation roll as the ratepayer in respect of the unit; or
  - (iv) ~~any person who~~ occupies public conservation land or Crown land in accordance with a lease, license, permit, easement, or other similar authority. 10
- (2) The person is liable to pay water services charges (other than trade waste charges) for the water services that the water services entity provides in respect of the property.
- (3) The occupier is liable to pay trade waste charges in respect of a property— 15
- (a) that has a trade waste permit; or
  - (b) for which an application for a trade waste permit has been lodged.
- (4) However, this section does not apply to Maori land in the water services entity's service area (for which **section 322** provides).
- 322 Liability for water services charges in respect of Maori land** 20
- (1) This section applies to Maori land in the service area of a water services entity.
- (2) If Maori land is owned legally and beneficially by 1 or 2 owners, the owner or owners are liable to pay water services charges, other than trade waste charges, for the water services that the water services entity provides for the Maori land.
- (3) If Maori land in multiple ownership is leased, the lessee is liable to pay water services charges (other than trade waste charges) for the water services that the water services entity provides for the Maori land unless the lease provides for the lessor to be liable to pay the water services charges. 25
- (3A) If Maori land in multiple ownership is occupied through an arrangement other than a lease, the occupier is liable to pay water services charges (other than trade waste charges) for the water services that the water services entity provides for the Maori land unless the arrangement provides for the owners or trustees to be liable to pay the water services charges. 30
- (4) If Maori land in multiple ownership is subject to an occupation order made by the Maori Land Court under section 328 of Te Ture Whenua Maori Act 1993 (or an equivalent order made under an Act replaced by that Act), the person in whose favour the order is made is liable to pay water service charges (other than trade waste charges) for the Maori land unless the order provides for the owners or trustees to pay the water services charges. 35

- (5) If ~~subsection (3) or (4)~~ **subsection (3), (3A), or (4)** does not apply, the following persons are liable to pay the water services charges (other than trade waste charges):
- (a) for Maori land owned by more than 2 persons who are not trustees, the owners: 5
  - (b) for Maori land vested in trustees, the trustees.
- (6) If an area is divided from Maori land, the person actually using the area is liable to pay the water services charges (other than trade waste charges) for water services that the water services entity provides for the area.
- (7) In this section,— 10
- lease** includes a tenancy at will, and any other tenancy that confers a leasehold interest upon the tenant, whether at law or in equity
- trustee** includes a body corporate constituted under Part 13 of Te Ture Whenua Maori Act 1993. 15
- Compare: 2002 No 6 s 92
- 323 Limitation on trustee liability**
- (1) If trustees are liable to pay water services charges in respect of Maori land under **section 322**,—
- (a) the charges must be paid out of income derived from the land and received by the trustees for the beneficial owners of the land; and 20
  - (b) the trustees are liable for charges only to the extent of the money derived from the land and received by the trustees on behalf of the beneficial owner or owners.
- (2) Trustees seeking to rely on **subsection (1)(b)** must, on request by a water services entity, provide copies of any annual financial statements provided to the beneficial owners by the trustees. 25
- Compare: 2002 No 6 s 93
- 324 Water services charges and fees to constitute debt**
- (1) Any water services charge or fee that has become payable to a water services entity is— 30
- (a) a water services debt due to the water services entity; and
  - (b) recoverable as a debt by the water services entity in any court of competent jurisdiction.
- (2) Until the charge or fee is paid in full, it remains a debt due to the water services entity. 35
- Compare: 2014 No 32 s 211

- 325 Penalty for failure to pay water services charges and fees**
- (1) If, after the expiry of the time provided for by or under this Act or by **subsection (3)**, all or any part of a water services debt remains unpaid to a water services entity, the unpaid debt increases at a penalty rate determined by ~~the Commission in the service quality code.~~ 5
- (a) the Commission in the service quality code; or
- (b) the calculation method that the Commission has specified in the service quality code.
- (2) ~~In the absence of a rate determined under **subsection (1)**, the amount by which an unpaid water services debt, or any unpaid part of a water services debt, increases is at a rate determined by the Governor-General by Order in Council.~~ 10
- (3) If a time for payment is not provided for by the Commission in the service quality code, the debt must be paid within 20 working days after the written demand for payment from the water services entity is received by the person responsible for payment. 15
- (4) When the water services entity notifies a person of the incurring of a water services debt, it must also notify that person of the consequences of non-payment under this section.
- (5) This section applies only in respect of water services debts that first arise after the commencement of this Act. 20
- (6) ~~An Order in Council made under **subsection (2)** is secondary legislation (see Part 3 of the Legislation Act 2019 for publication requirements).~~
- Compare: 2014 No 32 s 215
- 326 Waiver or refund of debt** 25
- The chief executive of a water services entity may, in relation to a debt due under **section 324**,—
- (a) waive all or any part of a debt:
- (b) refund all or any part of any payment of the debt.
- 327 Waiver of penalty** 30
- (1) The chief executive of a water services entity may waive the payment of all or any part of the penalty added to a debt under **section 325** if satisfied that the failure or refusal of a person to pay all or any part of the debt was a result of a genuine dispute between the person and the water services entity as to either or both of the following: 35
- (a) the person's liability to pay the debt:
- (b) the amount of the debt.

- (2) The chief executive of the water services entity may also waive the payment of all or any part of the penalty if the chief executive is satisfied that there is some other good reason for waiving payment.
- (3) In any action for the recovery of a water services debt, the court may waive the payment of all or any part of the penalty added to the debt under **section 325** if the court is satisfied that the failure or refusal of a person to pay all or any part of the debt was a result of a genuine dispute between the person and the water services entity as to either or both of the following:
- (a) the person's liability to pay the debt:
  - (b) the amount of the debt.
- Compare: 2014 No 32 s 216
- 328 Disputes do not suspend obligations to pay charges, fees, or penalties**
- A dispute between a person and the chief executive of a water services entity about the person's liability to pay a charge, fee, or penalty under this Act does not suspend—
- (a) the obligation of the person to pay the charge, fee, or penalty; or
  - (b) the right of the chief executive to receive and recover the charge, fee, or penalty.
- Compare: 2014 No 32 s 213
- 329 Charging for volumetric use of water supply or wastewater services**
- (1) A water services entity may charge a consumer for the consumer's volumetric use of water services supply or wastewater services (these water services).
- (2) If a water services entity does so, it must,—
- (a) in the case of a consumer who is to be charged for the first time for these water services, determine the consumer's volumetric use during the period—
    - (i) beginning on the date on which the water meter for the consumer starts operating; and
    - (ii) ending on the date of the first meter reading:
  - (b) in the case of a consumer who has had a water meter installed but did not previously pay a charge for volumetric use, determine the consumer's volumetric use during the period—
    - (i) beginning on the date on which the water services entity provides these water services to the consumer; and
    - (ii) ending on the date of the first meter reading:
  - (c) in the case of any other consumer, determine the consumer's volumetric use since the latest meter reading for which the water services entity charged the consumer.

- (3) Despite anything in **subsection (2)**, a water services entity may—
- (a) estimate the consumer’s volumetric use once between each determination and charge the consumer for the estimated use:
  - (b) charge a consumer for any unpaid volumetric use since the consumer was last billed, including any use that occurred before the water services entity was established.

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*Framework for setting water services charges*

**330 Board may set certain charges**

- (1) The board of a water services entity may set water services charges for all or any of the following:
- (a) water supply services:
  - (b) wastewater services, including trade waste services:
  - (c) stormwater services:
  - (d) the initial connection to 1 or more of the services specified in **paragraphs (a) to ~~(d)~~ (c)**:
  - (e) a contribution to the capital costs of infrastructure to service—
    - (i) the additional demand on the network:
    - (ii) increased demand for 1 or more of the services specified in **paragraphs (a) to ~~(d)~~ (c)**:
  - (f) meeting the costs that the water services entity incurs in performing and exercising its duties, functions, and powers under this Act.
- (2) The board of a water services entity may determine how a charge is set or how it may be paid or collected, and may (by way of example and without limitation of the board’s discretion)—
- (a) charge a fixed or variable fee:
  - (b) require a deposit and then further payment:
  - (c) require full payment at the outset:
  - (d) charge on the basis of an hourly rate or any other rate or method of charging.

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- (3) A charge set under this section must be set in accordance with the funding and pricing plan of the water services entity.

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Compare: 2004 No 72 s 281A(2)

**331 Charging principles**

- (1) The board of a water services entity must consider the following principles when setting charges or requiring water infrastructure contributions under **section 330**:

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|---|--|
| <p>(a) charges should reflect the costs of service provision, including (without limitation) by—</p> <p style="padding-left: 2em;">(i) promoting the efficient use of resources:</p> <p style="padding-left: 2em;">(ii) charging different groups of consumers differently only if—</p> <p style="padding-left: 4em;">(A) those groups receive different levels or types of services; or</p> <p style="padding-left: 4em;">(B) the cost of providing services to those groups is different; and</p> <p>(b) charges should be simple, transparent, and easy for consumers to understand; and</p> <p>(c) charges should be consistent with the input methodologies and determinations that the Commission issues or makes.</p> <p><u>(1A) However, the board may consider any other matters it considers appropriate when setting charges or requiring water infrastructure contributions under <b>section 330</b>.</u></p> <p>(2) Despite <b>subsection (1)</b>, the board may set lower charges (including no charges) for particular consumers to remedy inequities in the provision of services, including (without limitation) differences in water infrastructure contributions made before <b>1 July 2027</b>.</p> <p>(3) When the board is assessing the application of the principle specified in <b>subsection (1)(a)(ii)(B)</b>, the prices for the different groups of consumers are geographically averaged over different areas, the costs being compared must be the average costs for the smaller of the areas being compared.</p> <hr/> <p><b>Example</b></p> <p>If trying to compare a commercial charge that is averaged at a territorial authority district level with a residential charge that is averaged at a service area level, the correct comparison is with the residential costs for the same territorial authority district, not the service area.</p> <hr/> <p>(4) <b>Subsection (1)</b> does not override <b>section 333</b>.</p> <p><u>(4A) Nothing in this section limits the power in <b>section 334</b> to charge geographically averaged prices for water services.</u></p> <p>(5) This section applies only on the earlier of the following:</p> <p style="padding-left: 2em;">(a) a date appointed by the Governor-General by Order in Council;</p> <p style="padding-left: 2em;">(b) <b>1 July 2027</b> or a later date.</p> <p>(6) An Order in Council made under <b>subsection (5)(a)</b> is secondary legislation (<i>see</i> Part 3 of the Legislation Act 2019 for publication requirements).</p> <p><b>332 Obligation to review and publish charges publish tariff lists</b></p> <p>(1) <del>The board of a water services entity must publish the charges that apply to its annual billing period (at least once a year) and any changes to them (as soon as practicable after the changes are made) in accordance with <b>section 465</b>.</del></p> | <p>5</p> <p>10</p> <p>15</p> <p>20</p> <p>25</p> <p>30</p> <p>35</p> |
|---|--|

- (1) The board of a water services entity—
- (a) must publish a tariff list setting out the water services charges that apply to its annual billing period (at least once a year) on an Internet site maintained by, or on behalf of, the water services entity in a format that is readily accessible; and 5
- (b) update the tariff list as soon as practicable after the board makes any changes to it.
- (2) However, the board is not required to comply with **subsection (1)** in respect of charges that the board considers to be customised or otherwise unusual.
- (3) For the purposes of this section, **tariff list** means a list of the water services charges set under **section 330**. 10

### **332A Boards must adopt discount policies**

- (1) The board of a water services entity must adopt a policy for discounting charges.
- (2) The board of a water services entity must— 15
- (a) publish the discount policy that applies to its annual billing period (at least once a year) on an Internet site maintained by, or on behalf of, the water services entity; and
- (b) update the published discount policy as soon as practicable after the board makes any changes to it. 20
- (3) The discount policy must not apply to water infrastructure contributions.

### **333 Chief executive of water services entity may discount charges**

- (1) The chief executive of a water services entity may do 1 or both of the following:
- (a) discount any charges ~~that the entity's board has set~~; and 25
- (b) offer a discount to any class of consumers or individual consumers that takes measures to reduce the burden on water services.
- (2) ~~This section overrides **sections 330 and 331**.~~
- (2) A discount given under this section must be consistent with the policy for discounting charges adopted under **section 332A**. 30

### *Geographical averaging*

### **334 Charges for water services may be averaged geographically**

- (1) The board of a water services entity may—
- (a) charge geographically averaged prices for ~~the~~ water services;
- (b) geographically average prices at different scales for different service types and different classes of consumers. 35

- (2) However, the board of a water services entity may decide not to charge a geographically averaged price if—
- (a) communities receive—
    - (i) a higher level of service than is generally provided elsewhere within those boundaries; or 5
    - (ii) a lower level of service than is generally provided elsewhere within those boundaries; or
  - (b) a levy is in place within those boundaries under the Infrastructure Funding and Financing Act 2020; or
  - (c) a water services entity has taken over a failed drinking water supplier; or 10
  - (d) a water supply charge has a volumetric component and the difference in charges is only a difference in that component.
- (2A) If the board of a water services entity decides to charge a geographically averaged price,—
- (a) the board must include the price, and the method for determining it, in the funding and pricing plan of the water services entity: 15
  - (b) the Commission may not override the decision.
- (3) This section does not apply to water infrastructure contributions.  
Compare: 2001 No 103 s 201
- Changing contracted prices* 20
- 335 Chief executive of water services entity may enter into negotiations to change certain provisions in certain contracts**
- (1) The chief executive of a water services entity may enter into negotiations to change the pricing and charging provisions in a contract that—
    - (a) relates to the supply of water services by the water services entity; and 25
    - (b) is transferred from a local government organisation to the water services entity.
  - (2) In complying with **subsection (1)**, the chief executive must—
    - (a) provide the other parties to the contract with written notice of the proposed changes, including the reasons for them; and 30
    - (b) discuss the proposed changes with those parties along with any alternative changes that the parties may put forward; and
    - (c) consider any relevant matters or concerns the parties raise or put forward regarding the proposed changes or alternatives.
  - (3) If the chief executive and the other parties fail to vary the contract before **1 July 2029**, the contract expires. 35

*Pass-through billing***336 Chief executive of water services entity may authorise local authorities to collect charges**

- (1) ~~The chief executive of a water services entity may authorise the local authority or authorities in its service area to collect charges on behalf of the water services entity.~~ 5
- (2) ~~Before relying on **subsection (1)**, the chief executive and the local authority or authorities must take all reasonable steps to enter into a charges collection agreement that provides the local authority or authorities with reasonable compensation for collecting charges on behalf of the water services entity.~~ 10
- (3) ~~If the chief executive and the local authority or authorities are unable to agree on all the terms of a charges collection agreement, they must refer the matter to the Minister.~~
- (4) ~~The Minister must determine all outstanding terms of the agreement within 20 working days.~~ 15

~~Compare: 2020 No 47 ss 54–56~~

**337 Terms of charges collection agreements**

- (1) ~~The terms of a charges collection agreement are—~~
- ~~(a) as agreed between the parties, to the extent that they are agreed; and~~
  - ~~(b) otherwise, as the Minister has determined; and~~ 20
  - ~~(c) binding on the parties.~~
- (2) ~~A charges collection agreement, if still in force, expires with the close of **30 June 2029** unless the parties to the agreement agree to extend it.~~

~~Compare: 2020 No 47 s 56~~

**338 Local authorities not responsible for collecting unpaid charges** 25

- (1) ~~This section applies if—~~
- ~~(a) a charges collection agreement is in force; and~~
  - ~~(b) charges to be collected under the agreement are unpaid.~~
- (2) ~~The local authority responsible for the collection of the charge—~~
- ~~(a) must notify the chief executive of the relevant water services entity that—~~ 30
    - ~~(i) a charge is unpaid; and~~
    - ~~(ii) the local authority is not going to collect the unpaid charge; and~~
  - ~~(b) is not required to collect that unpaid charge on behalf of the relevant water services entity if notification is given under **paragraph (a)**.~~ 35

- (3) This section, the cross-heading above **section 336**, and **sections 336 and 337** are repealed on **1 July 2029**.

Compare: 2020 No 47 s 57

*Charging unconnected properties*

**339 Liability for certain charges in respect of properties not connected to water supply or ~~waste water~~ wastewater networks** 5

- (1) This section applies to a person who owns property that—
- (a) is within 100 metres of a water supply or wastewater network that has sufficient capacity to service the property; and
  - (b) is not, but can be, connected to that supply or network; and 10
  - (c) is not Maori land; and
  - (d) is not non-rateable land specified in Part 1 of Schedule 1 of the Local Government (Rating) Act 2002.
- (2) The person is liable to pay charges for water supply and wastewater services if the board of the relevant water services entity sets charges for those services in relation to property that is not connected to its water supply or wastewater network. 15
- (3) However, if the property is non-rateable land specified in Part 2 of Schedule 1 of the Local Government (Rating) Act 2002, the person is liable to pay only 50% of those charges. 20
- (4) For the purposes of this section, a **person who owns property** includes a person who leases property under a lease that requires the person to pay charges to a water services entity that the owner of the property would otherwise pay.

*Stormwater charging*

**340 Requirements for charges for stormwater services** 25

- (1) A water services entity must calculate the total recoverable cost of delivering its stormwater services in its service area during the financial year in accordance with any relevant input methodologies for price-quality regulation that the Commission has determined.
- (2) The board of a water services entity must determine the apportionment of the recoverable cost of stormwater services on the basis of— 30
- (a) the capital value of the property (which may be adjusted by a suitable valuation index to take account of the different 3-yearly valuation cycles in different territorial authorities); and
  - (b) whether the property is— 35
    - (i) served by a stormwater network or is within 100 metres of a stormwater network that can serve the property; or

- (ii) within a particular geographical zone of the water services entity's service area that is specified in a water services entity's stormwater management plan under **section 256(1)(b)**.
- (3) The chief executive of a water services entity must—
- (a) publish the water services entity's stormwater services recoverable costs calculations and recoverable cost apportionment determinations—~~in accordance with **section 465** on an Internet site maintained by, or on behalf of, the water services entity in a format that is readily accessible;~~ 5  
and
- (b) review the calculations and determinations in accordance with **section 466**. 10
- (4) This section applies on and after the earlier of the following:
- (a) the date on which the Commission has put in place the relevant input methodologies:
- (b) **1 July 2027 2024**. 15
- 341 Liability for stormwater services charges**
- (1) This section applies to a person who owns property that—
- (a) is not Maori land that receives water supply or wastewater services; and
- (b) is not non-rateable land specified in Part 1 of Schedule 1 of the Local Government (Rating) Act 2002. 20
- (2) A person to whom this section applies is liable to pay charges for stormwater services if the board of the relevant water services entity sets charges for those services in relation to property that is in its service area.
- (3) The board must set the charges on the basis provided for in **section 340(2)**.
- (4) However, if the property is non-rateable land specified in Part 2 of Schedule 1 of the Local Government (Rating) Act 2002, the person is liable to pay only 50% of those charges. 25
- (5) For the purposes of this section, a **person who owns property** includes a person who leases property under a lease that requires the person to pay charges to a water services entity that the owner of the property would otherwise pay. 30
- 342 Water services entity not liable for rates in certain cases**
- A water services entity is not liable to pay rates to any local ~~or territorial~~ authority in respect of—
- (a) any pipes that it owns and that run through property that it does not own; or 35
- (b) any assets that it owns and that are located on property that it does not own.

*Water infrastructure contributions charges***343 Basis on which water infrastructure contributions charges may be set required**

(1AAA) The purpose of the water infrastructure contributions provision in this Act is to enable water services entities to recover a fair, equitable, and proportionate portion of the total cost of capital expenditure necessary to service an additional or increased demand on water services infrastructure over the long term from persons who are—

5

(a) undertaking development; or

(b) placing increased commercial demand on water services.

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(1) The board of a water services entity may set-require water infrastructure contributions charges in relation to developments or increased commercial demand if the effect of the developments or increased demand is expected to require new or additional assets or assets of increased capacity and, as a consequence, a water services entity incurs, or expects to incur, capital expenditure to provide for those assets.

15

(2) This section does not prevent the board of a water services entity from setting water infrastructure contributions charges that are to be used to pay, in full or in part, for capital expenditure already incurred by the water services entity, or a local government organisation before the establishment date, in anticipation of development or increased commercial demand.

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(3) All water infrastructure contributions charges must be consistent with any the policy adopted under **section 346**.

(4) In this section, **effect** includes the cumulative effects that a development or increased commercial demand may have in combination with other developments or increased commercial demand.

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**344 Principles for setting water infrastructure contributions or policies charges**

(1) ~~If~~ When the board of a water services entity adopts a water infrastructure contributions charges policy under **section 346** or ~~sets a~~ requires water infrastructure contributions charge under **section 343**, the board should take into account the following principles:

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(a) water infrastructure contributions charges should be required only if the effects or cumulative effects of developments or increased commercial demand have created or will create a requirement for the water services entity to provide new or additional assets or assets of increased capacity:

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(b) water infrastructure contributions charges should be determined in a manner that is generally consistent with the capacity life of the assets for which they are intended to be used and in a way that avoids over-recov-

- ery of costs allocated to water infrastructure contributions~~—charges~~ funding:
- (c) cost allocations used to establish water infrastructure contributions~~—charges~~ should be determined according to, and be proportional to, the persons who are to benefit from the assets to be provided (including the community as a whole) and the persons who create the need for those assets: 5
- (d) water infrastructure contributions~~—charges~~ should be used only for the benefit of the area or the part of the area that is identified in the water infrastructure contributions~~—charges~~ policy in which the water infrastructure contributions~~—charges~~ are required: 10
- (e) water services entities should make sufficient information available to demonstrate what water infrastructure contributions~~—charges~~ are being used for and why they are being used:
- (f) when calculating and requiring water infrastructure contributions~~—charges~~, water services entities should group together certain developments by geographic area or categories of land use, provided that the grouping is done in a manner that balances practical and administrative efficiencies with considerations of fairness and equity. 15
- (2) Water infrastructure contributions~~—charges~~ must be consistent with the input methodology or methodologies and determinations that the Commission issues or makes. 20
- 345 Board may set lower discount water infrastructure contributions~~—charges~~ in certain circumstances**
- (1) The board of a water services entity may set lower discount water infrastructure contributions~~—charges~~ (including no charges by charging no contributions) for a person who— 25
- (a) owns the property related to the development of the infrastructure; and
- (b) has put in place measures that mitigate, or will mitigate, additional demand on water supply, wastewater networks, and stormwater networks. 30
- (2) **Subsection (1)** applies despite anything in **section 331**.
- 346 Board must set or adopt water infrastructure contributions~~—charges~~ policy**
- (1) The board of a water services entity must set or adopt a water infrastructure contributions~~—charges~~ policy. 35
- (2) A water infrastructure contributions~~—charges~~ policy must include—
- (a) the total cost of capital expenditure that the water services entity expects to incur to meet the increased demand for water services and the basis of these estimates; and

- (b) the proportion of the total cost to be funded by the water infrastructure contributions~~charges~~ policy; and
- (c) a schedule of the water infrastructure contributions~~charges~~ that apply to new developments and increases in commercial demand; and
- (d) a summary of the methodology applied by the water services entity to determine those~~charges~~ contributions in line with the principles specified in **section 344**; and 5
- (e) a statement of the discounts available for demand mitigation measures.
- (3) The board of a water services entity must include the policy in its funding and pricing plan. 10
- 347 Consultation requirements for proposed water infrastructure contribution charges policies**
- (1) ~~Before adopting a proposed water infrastructure contribution charges policy, the board of a water services entity must—~~
- (a) ~~engage with the territorial authorities, consumers, mana whenua, and communities in the entity’s service area; and~~ 15
- (b) ~~consult any other party that the board reasonably believes has an interest in—~~
- (i) ~~water infrastructure contribution charges; or~~
- (ii) ~~the proposed water infrastructure contribution charges policy; and~~ 20
- (c) ~~produce a report on the consultation undertaken, including (without limitation) information on—~~
- (i) ~~who was consulted; and~~
- (ii) ~~the feedback received; and~~
- (iii) ~~any change made to the proposed water infrastructure contribution charges policy.~~ 25
- (2) ~~The chief executive of a water services entity—~~
- (a) ~~must publish the report and the policy in accordance with **section 465**; and~~
- (b) ~~must review the report and the policy in accordance with **section 466**; and~~ 30
- (c) ~~may include the policy in the funding and pricing plan of the water services entity.~~
- 347 Review of water infrastructure contributions policy**
- The board of a water services entity must review its water infrastructure contributions policy in accordance with **section 466**. 35

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| <b>348</b> | <b>Crown exempt from water infrastructure contributions<del>charges</del></b>  |    |
| (1)        | The Crown is exempt from paying any water infrastructure contributions <del>charges</del> .  |    |
| (2)        | However, this section does not apply to Kāinga Ora.  |    |
| <b>349</b> | <b>When water services entity may <del>invoice-charge</del> for water infrastructure contribution<del>charges</del> contributions</b>  | 5  |
| (1)        | A water services entity may <del>invoice-charge</del> a person who owns property in its service area for water infrastructure <del>contribution-charge</del> contributions required under <b>section 343</b> when—   |    |
| (a)        | the person is granted a <del>building consent or a resource consent</del> :—   | 10 |
| (i)        | a resource consent under the Resource Management Act 1991 for a development within its service area; or  |    |
| (ii)       | a building consent under the Building Act 2004 for a development in its service area:  |    |
| (b)        | the person's property is connected to a water service:   | 15 |
| (c)        | an increase in commercial demand for water services occurs:  |    |
| (d)        | a stage 1, 2, or 3 approval is granted under <b>Part 10</b> .  |    |
| (1A)       | A water services entity may only charge a person who owns property for a water infrastructure contribution if the contribution is consistent with a policy adopted under <b>section 346</b> .  | 20 |
| (1B)       | For the purposes of <b>subsection (1A)</b> , a water infrastructure contribution must be consistent with the content of the water infrastructure contributions policy adopted under <b>section 346</b> that was in force at the time that the person submitted an application (with all of the required information) for a resource consent, building consent, or service connection, or at the time the increase in commercial demand occurred. | 25 |
| (2)        | A <del>property owner</del> person who owns property and a water services entity may agree that—   |    |
| (a)        | any unpaid <del>water</del> infrastructure contributions <del>charges</del> may be paid off in quarterly or annual instalments over an agreed period (not exceeding 50 years):   | 30 |
| (b)        | the water services entity may charge an agreed rate of interest on any unpaid balance.   |    |
| (2A)       | A water services entity may refuse to connect a property to water services if the person who owns property has not—  | 35 |
| (a)        | paid their water infrastructure contribution; or   |    |
| (b)        | agreed to an instalment plan.  |    |

- (3) A water services entity may charge an agreed rate of interest on the unpaid balance with the rate agreed with the ~~property owner~~ person who owns property when the agreement is put in place.
- (3A) A water services entity must register any unpaid balance against the relevant land under the Land Transfer Act 2017 on the title of the land in respect of which the water infrastructure contribution was required. 5
- (4) If the property subject to the agreement is sold, the new owner of the property is liable to pay the unpaid water infrastructure contributions ~~charges~~ in accordance with the agreement reached under **subsection (2)**.
- (5) For the purposes of this section, a **person who owns property** includes a person who leases property under a lease that requires the person to pay charges to a water services entity that the owner of the property would otherwise pay. 10
- 349A Review of decisions to charge water infrastructure contributions**
- A person who is charged for a water infrastructure contribution may apply under **section 446** for a review of the decision to charge that person on any ground set out in **section 349D**. 15
- 349B Refund of water infrastructure contributions**
- (1) A person who has paid all or part of a water infrastructure contribution is entitled to a refund of the payment from the water services entity if—
- (a) the water services entity does not use the water infrastructure contribution for the purpose for which it was charged; or 20
- (b) the relevant resource consent or building consent lapses; or
- (c) the development will not proceed.
- (2) Despite anything in **subsection (1)**, a water services entity may retain any portion of a water infrastructure contribution that is equivalent in value to the costs incurred by the water services entity in relation to a development that does not proceed. 25
- Objections to water infrastructure contributions*
- 349C Right to object to assessed amount of water infrastructure contribution**
- (1) A person may object, on any ground set out in **section 349D**, to the assessed amount of the water infrastructure contribution that a water services entity has charged the person under **section 349**, advised in— 30
- (a) a notice given to the person for that purpose by the water services entity; or
- (b) if notice has not been given, such other formal advice of the requirement that the water services entity has given to the person. 35

- (2) The right of objection conferred by **subsection (1)** applies irrespective of whether an internal review of the requirement for a water infrastructure contribution has been applied for under **section 446**.
- (3) The right of objection conferred by this section does not apply to challenges to the content of a water infrastructure contributions policy prepared in accordance with **section 346**. 5

#### **349D Scope of water infrastructure contribution objections**

- (1) An objection under **section 349C** may be made only on the grounds that—
- (a) a water services entity has—
- (i) failed to properly take into account features of the objector’s development or increased commercial demand that, on their own or cumulatively with those of other developments or increased commercial demand from other properties, would substantially reduce the impact of the development or increased demand on requirements for assets in the water services entity’s service area or parts of that service area; or 10 15
- (ii) required a water infrastructure contribution for assets not required by, or related to, the objector’s development or increased commercial demand, whether on its own or cumulatively with other developments or increased commercial demand from other properties; or 20
- (iii) already required a water infrastructure contribution for the same purpose in respect of the same development or increased commercial demand; or
- (iv) incorrectly applied its water infrastructure contributions policy to the objector’s development or increased commercial demand; 25
- (b) the objector will fund or otherwise provide for the same assets for which the water infrastructure contribution had been required.
- (2) However, an objection may not be made on the ground outlined in **subsection (1)(a)(iii)** if the water services entity has required an additional water infrastructure contribution to reflect an increase in the scale or intensity of the development or further increase in commercial demand since the original contribution was required. 30

#### **349E Procedure for water infrastructure contribution objections**

- Sections 199H, 199I, 199K, 199L, 199M, 199N, 199O, and Schedule 13A of the Local Government Act 2002 apply in relation to objections under **section 349C** with all necessary modifications, including the following: 35
- (a) a reference to a territorial authority must be read as a reference to a water services entity;
- (b) a reference to a district must be read as a reference to a service area; 40

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| (c)         | <u>a reference to a development contribution must be read as a reference to a water infrastructure contribution:</u>   |    |
| (d)         | <u>a reference to a development contribution objection must be read as a reference to a water infrastructure contribution objection:</u>   |    |
| (e)         | <u>a reference to a development contributions policy must be read as a reference to a water infrastructure contributions policy:</u>   | 5  |
| (f)         | <u>the right to lodge a development contribution objection under section 199C must be read as the right to lodge a water infrastructure contribution objection under <b>section 349C</b> of this Act:</u>  |    |
| (g)         | <u>the notice of the outcome of a reconsideration under section 199B of the Local Government Act 2002 must be read as the notice of decision on internal review under section 448 of this Act:</u>   | 10 |
| (h)         | <u>a reference to section 150A must be read as a reference to <b>section 349H</b> of this Act.</u>   |    |
| <b>349F</b> | <b><u>Consideration of water infrastructure contribution objection</u></b>   | 15 |
|             | <u>When considering a water infrastructure contribution objection and any evidence provided in relation to that objection, development contributions commissioners must give due consideration to the following:</u>   |    |
| (a)         | <u>the grounds on which the water infrastructure contribution objection was made:</u>  | 20 |
| (b)         | <u>the purpose and principles of water infrastructure contributions set out in <b>sections 343 and 344</b>:</u>  |    |
| (c)         | <u>the provisions of the water infrastructure contributions policy under which the water infrastructure contribution that is the subject of the objection was, or is, required:</u>  | 25 |
| (d)         | <u>the cumulative effects of the objector's development or increased commercial demand in combination with the other developments or increased commercial demand in a service area, or parts of a service area, on the requirement to provide the assets that the water infrastructure contribution is to be used for or toward:</u> | 30 |
| (e)         | <u>any other relevant factor associated with the relationship between the objector's development or increased commercial demand and the water infrastructure contribution to which the objection relates.</u>  |    |
| <b>349G</b> | <b><u>Interim effect of water infrastructure contribution objection</u></b>  |    |
| (1)         | <u>If a water infrastructure contribution objection is lodged, the water services entity may still require the water infrastructure contribution to be made, but must not use it until the objection has been determined.</u>  | 35 |
| (2)         | <u>If a water services entity does not require a water infrastructure contribution to be made pending the determination of an objection, the water services entity</u>   |    |

may withhold granting a service connection under **Part 10** until the objection has been determined.

### **349H Costs of water infrastructure contribution objections**

- (1) If a person objects to a water services entity’s requirement that a water infrastructure contribution be made, the water services entity may recover from the person its actual and reasonable costs in respect of the objection. 5
- (2) The costs that the water services entity may recover under this section are the costs incurred by it in respect of—
- (a) the selection, engagement, and employment of the development contributions commissioners; and 10
  - (b) the secretarial and administrative support of the objection process; and
  - (c) preparing for, organising, and holding the hearing.
- (3) A water services entity may, in any particular case and in its absolute discretion, waive or remit the whole or any part of any costs that would otherwise be payable under this section. 15
- (4) A water services entity’s actual and reasonable costs in respect of objections are recoverable under **section 324**.

### *Territorial authorities*

### **350 Territorial authorities may no longer use certain contributions**

- (1) Despite anything in the Local Government Act 2002 or the Resource Management Act 1991, on or after **1 July 2024**, a territorial authority— 20
- (a) ~~may not charge for~~ require development contributions under the Local Government Act 2002 or financial contributions under the Resource Management Act 1991 to fund infrastructure or other assets that the water services entity holds, including infrastructure or other assets transferred from the territorial authority to a water services entity: 25
  - (b) may not use development contributions collected under the Local Government Act 2002 or financial contributions collected under the Resource Management Act 1991 to fund infrastructure or other assets that the water services entity holds, including infrastructure or other assets transferred from the territorial authority to a water services entity. 30
- (2) ~~Nothing in this section affects Kāinga Ora’s ability to use development contributions for the development of water services infrastructure under the Urban Development Act 2020.~~
- (2) Nothing in this section prevents a territorial authority from requiring development contributions or financial contributions to fund water services infrastructure where applications for a resource consent, building consent, or service connection have been lodged prior to **1 July 2024**. 35

## Part 12 Compliance and enforcement

### Subpart 1—Director of Compliance and Enforcement

#### **351 Director of Compliance and Enforcement**

- (1) A water services entity must appoint an employee of the water services entity as Director of Compliance and Enforcement for the entity. 5
- (2) The Director must not also hold the position of chief executive of the water services entity.
- (3) The Director—
- (a) must be appointed for a term not exceeding 5 years; and 10
  - (b) may be reappointed.
- (4) The chief executive of the water services entity must—
- (a) consult the board of the water services entity on the terms and conditions of employment of the Director; and
  - (b) agree terms and conditions of employment with the Director; and 15
  - (c) give effect to those terms and conditions.
- (5) To avoid doubt, when performing or exercising a function, duty, or power under this Act or any other Act, the Director—
- (a) does so as an employee of the water services entity; but
  - (b) must exercise independent judgement if that Act requires the Director to do so (for example, if there is any requirement to act independently of the water services entity or any other person). 20

#### **352 Director’s functions, duties, and powers**

- (1) The Director of Compliance and Enforcement has the functions, duties, and powers conferred or imposed directly on the Director under this Act. 25
- (2) Without limiting **subsection (1)**, the Director’s functions, duties, and powers include the functions, duties, and powers set out in this **Part**, except any functions, duties, and powers in **subpart 11** (which relates to internal reviews and appeals).

#### **353 Director’s duty to act independently**

- (1) The Director of Compliance and Enforcement must act independently when performing or exercising their functions, duties, and powers under this Act or any other Act. 30
- (2) The board or the chief executive of a water services entity may not give directions to the Director in relation to the performance or exercise of the Director’s functions, duties, or powers. 35

## Subpart 2—Compliance and enforcement strategy

- 354 Water services entity must issue compliance and enforcement strategy**
- (1) The board of a water services entity must issue a compliance and enforcement strategy for the water services entity.
- (2) The purpose of the strategy is to— 5
- (a) provide transparency about the water services entity’s intended approach for achieving compliance with this Act over a 3-year period, and the outcomes sought from that approach:
- (b) provide a basis on which the water services entity is accountable for the performance and exercise of its functions, duties, and powers set out in this **Part**. 10
- (3) The board—
- (a) must review the strategy at least every 3 years; and
- (b) may amend the strategy at any time.
- (4) The board may, following a review, issue a new compliance and enforcement strategy that replaces the strategy that was reviewed. 15
- (5) A compliance and enforcement strategy must relate to at least 3 financial years.
- (6) When issuing or reviewing the strategy, the board must seek to ensure that the strategy is consistent with the compliance and enforcement strategies of other water services entities and, if the strategy is inconsistent with the compliance and enforcement strategy of any other water services entities in any material respect, indicate the reasons for the inconsistency. 20
- (7) As soon as practicable after issuing a compliance and enforcement strategy, the board must publish a copy of the strategy ~~in accordance with **section 465** on an Internet site maintained by, or on behalf of, the water services entity in a format that is readily accessible.~~ 25
- (8) The Director of Compliance and Enforcement must have regard to the strategy when performing their functions, duties, and powers.
- 355 Engagement on compliance and enforcement strategy**
- ~~The board of a water services entity must, when developing (or considering any changes to) its compliance and enforcement strategy, engage, in accordance with **section 461**, with—~~ 30
- (a) Taumata Arowai; and
- (b) ~~the territorial authorities, regional councils, and mana whenua in the water services entity’s service area; and~~ 35
- (c) ~~the water services entity’s consumer forum; and~~
- (d) ~~the other water services entities.~~

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| <b>355</b> | <b>Engagement on compliance and enforcement strategy</b>   |    |
| (1)        | The board of a water services entity must, when developing (or considering any changes to) its compliance and enforcement strategy, engage with interested persons.  |    |
| (2)        | In conducting the engagement, the board of a water services entity must—   | 5  |
| (a)        | comply with the requirements set out in <b>section 461</b> ; and   |    |
| (b)        | be guided and informed by the principles set out in <b>section 462</b> ; and   |    |
| (c)        | prepare and publish a report on the engagement in accordance with <b>section 465</b> .   |    |
| <b>356</b> | <b>Content of compliance and enforcement strategy</b>  | 10 |
|            | The compliance and enforcement strategy must include—  |    |
| (a)        | the results of any engagement with territorial authority owners, mana whenua in the water services entity's service area, and other water services entities under <b>section 461</b> ; and   |    |
| (b)        | a statement summarising—   | 15 |
| (i)        | the views received on the draft strategy from territorial authority owners, mana whenua in the water services entity's service area, and other water services entities;  |    |
| (ii)       | whether the strategy is consistent with the strategies of other entities and, if the strategy is inconsistent with the compliance and enforcement strategy of any other water services entities in any material respect, the reason for the inconsistency. | 20 |
|            | <i>Compare: 2002 No 84 Schedule 8 cl 1</i>   |    |
|            | <b>Subpart 3—Compliance and enforcement provisions</b>   |    |
|            | <i>Compliance officers</i>   | 25 |
| <b>357</b> | <b>Appointment of compliance officers</b>  |    |
| (1)        | A water services entity may, by notice in writing, appoint the following as a compliance officer:  |    |
| (a)        | an employee of the water services entity:  |    |
| (b)        | any other person who the Director of Compliance and Enforcement is satisfied—  | 30 |
| (i)        | is suitably qualified and trained; or  |    |
| (ii)       | belongs to a class of persons who are suitably qualified and trained to perform or exercise all or any of the functions, duties, and powers of a compliance officer.   | 35 |
| (2)        | A compliance officer's compliance powers are subject to any conditions or limitations specified in the notice of the officer's appointment (including any  |    |

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|            | conditions imposed at the request of the Director of Compliance and Enforcement).   |    |
| (3)        | However, the exercise of a compliance power by a compliance officer is not invalid merely because it did not comply with the conditions specified in their notice of appointment. | 5  |
|            | Compare: 2015 No 70 s 163; 2021 No 36 s 98  |    |
| <b>358</b> | <b>Identity cards</b>   |    |
| (1)        | A water services entity must give each compliance officer an identity card that states the person's name and appointment as a compliance officer.                                 |    |
| (2)        | A compliance officer must, when exercising compliance powers under this Act, produce their identity card for inspection on request.   | 10 |
| (3)        | A person who ceases to be a compliance officer must return the identity card to the water services entity as soon as practicable.   |    |
|            | Compare: 2015 No 70 s 164; 2021 No 36 s 99  |    |
| <b>359</b> | <b>Suspension and ending of appointment of compliance officers</b>  | 15 |
| (1)        | A water services entity may suspend or end the appointment of a compliance officer at any time.   |    |
| (2)        | To avoid doubt, a person's appointment as a compliance officer ends when the person ceases to be eligible for appointment as a compliance officer.                                |    |
|            | Compare: 2015 No 70 s 165; 2021 No 36 s 100   | 20 |
| <b>360</b> | <b>Compliance officer subject to <del>water services entity's</del> <u>Director of Compliance and Enforcement's</u> directions</b>  |    |
| (1)        | A compliance officer (whether or not an employee) is subject to directions of the Director of Compliance and Enforcement in the exercise of their compliance powers.              | 25 |
| (2)        | A direction under <b>subsection (1)</b> may be of a general nature or may relate to a specified matter or specified class of matter.  |    |
| (3)        | A failure to comply with a direction under <b>subsection (1)</b> does not invalidate the exercise of a compliance officer's compliance powers.                                    |    |
| (4)        | <u>The board or the chief executive of a water services entity may not give directions to a compliance officer in relation to the exercise of their compliance powers.</u>        | 30 |
|            | Compare: 2015 No 70 s 166; 2021 No 36 s 101   |    |
| <b>361</b> | <b><del>Director of Enforcement and Compliance and Enforcement</del> <u>has powers of compliance officer</u></b>  | 35 |
|            | The Director of <del>Enforcement and Compliance and Enforcement</del> <u>has all the powers that a compliance officer has under this Act.</u>                                     |    |
|            | Compare: 2015 No 70 s 167; 2021 No 36 102   |    |

*Compliance powers***362 Purpose of compliance powers**

A compliance officer may exercise a power under this **Part** only for 1 or more of the following purposes:

- (a) to ensure that compliance requirements have been, are being, or will be met: 5
- (b) to investigate serious risks relating to water services:
- (c) to respond to a specified serious risk or a potential specified serious risk:
- (d) to investigate the commission of offences under this Act:
- (e) to bring proceedings in relation to any compliance order or offence under this Act. 10

Compare: 2021 No 36 s 103

**363 Power to restrict water supply**

- (1) If a compliance officer exercises a power for a purpose specified in **section 362(a) or (c)**, a water services entity may restrict the water supply to land or a building if a person, in respect of the land or building,— 15
  - (a) commits an offence against this Act or legislation made under this Act; or
  - (b) fails or refuses to do anything required by this Act or a requirement set under this Act in respect of water services; or 20
  - (c) fails to comply with any rule or arrangement made under this Act or legislation made under this Act that relates to water services; or
  - (d) fails or refuses to do anything that the person has undertaken or agreed to do in respect of water services supplied to the person’s land or building; or 25
  - (e) refuses entry to, or obstructs, ~~an enforcement~~ a compliance officer exercising a power of entry in respect of water services; or
  - (f) fails to pay applicable fees or charges for the delivery of water services.
- (2) Nothing in **subsection (1)** limits or affects the duty of a water services entity to provide a sufficient quantity of drinking water under section 25(1) of the Water Services Act 2021. 30

Compare: 2002 No 84 s 193

**364 Directions**

- (1) A compliance officer may issue a direction to a person who has a duty or requirement to ensure that compliance requirements have been, are being, or will be met. 35

- (2) A person to whom a direction is issued must comply with the direction within any time frame (including immediately) specified in the direction (if any).
- (3) A direction may be amended or revoked at any time.
- (4) The amendment or revocation of a direction does not have retrospective effect.
- (5) A compliance officer must issue a direction under this section in accordance with **section 366**. 5
- Compare: 2021 No 36 s 104
- 365 Compliance officer’s powers in respect of specified serious risk**
- (1) This section applies if a compliance officer believes, on reasonable grounds, that a specified serious risk exists. 10
- (2) The compliance officer may—
- (a) take immediate action, or direct any person to take immediate action, to prevent, reduce, or eliminate the specified serious risk:
- (b) direct any person to stop, or prohibit any person from starting, anything that the compliance officer believes, on reasonable grounds, is a cause of, or contributes to, the specified serious risk. 15
- (3) A person who is directed by a compliance officer under **subsection (2)** must comply with that direction.
- (4) A compliance officer must issue a direction under this section in accordance with **section 366**. 20
- Compare: 2021 No 36 s 105
- 366 Requirements for directions**
- (1) A direction issued under **section 364 or 365(2)(b)**—
- (a) must be in writing; and
- (b) must contain contact information for the water services entity and the compliance officer (if applicable); and 25
- (c) must state that a person has a right of review under **section 446** or a right of appeal under **section 450**; and
- (d) may be addressed to any person under the person’s legal name or usual business name or style. 30
- (2) In this section, **contact information** includes—
- (a) the name of the Director of Compliance and Enforcement, and the name of the compliance officer (if applicable); and
- (b) 1 or more of the following:
- (i) phone number: 35
- (ii) email address:

(iii) physical or postal address.

Compare: 2015 No 70 s 112; 2021 No 36 s 125

*Power to take and test samples*

**367 Power to take and test samples**

- (1) A compliance officer may, for a purpose specified in **section 362**, take and test a sample of any material, substance, or thing for analysis. 5
- (2) However, nothing in **subsection (1)** authorises a compliance officer to take a sample from a person's body.
- (3) A compliance officer must, not later than 10 working days after removing any sample under this section, give the person from whom it was taken an inventory of all samples taken. 10
- (4) A sample taken under **subsection (1)** may only be used to determine whether compliance requirements have been, are being, or will be met.

Compare: 2015 No 70 s 172; 2021 No 36 s 107

*Power to obtain information*

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**368 Power to obtain information**

- (1) A compliance officer may, for the purpose of performing or exercising their functions or powers,—
- (a) inspect, at all reasonable times, all records and documents of every description in the possession or control of a person that are required to be kept under this Act; and 20
- (b) make copies of, or take extracts from, those records and documents; and
- (c) direct any person who has possession or control of those records and documents to supply to the compliance officer, in any reasonable manner that the officer specifies, all or any of those records or documents; and 25
- (d) take photographs, video recordings, and other visual images; and
- (e) take audio sound recordings; and
- (f) make electronic records.
- (2) The compliance officer must, not later than 10 working days after directing a person to supply documents under this section, give the person an inventory of all documents taken. 30
- (3) Subpart 5 of Part 4 of the Search and Surveillance Act 2012 (privilege and confidentiality) applies to anything done under this section.
- (4) Nothing in this section limits any other legislation that imposes a prohibition or restriction on the collection of information. 35

Compare: 2021 No 36 s 108

**369 Power to require name and address**

- (1) A compliance officer may require a person to provide the person's name and residential address if—
- (a) the officer finds the person committing an offence against this Act; or
  - (b) the officer finds the person in circumstances that lead, or has information that leads, the officer to reasonably suspect that the person has committed an offence against this Act. 5
- (2) When asking a person to provide their name and residential address, the compliance officer must—
- (a) tell the person the reason for the requirement to provide their name and residential address; and 10
  - (b) warn the person that it is an offence to fail to provide their name and residential address, unless the person has a reasonable excuse.
- (3) If the compliance officer reasonably believes that the name and residential address a person provides are false, the compliance officer may require the person to give evidence of their correctness. 15
- (4) Subpart 5 of Part 4 of the Search and Surveillance Act 2012 (privilege and confidentiality) applies to anything done under this section.
- (5) Nothing in this section limits any other legislation that imposes a prohibition or restriction on the collection of information. 20

Compare: 2015 No 70 s 175; 2021 No 36 s 109

**370 Power to question**

- (1) If a compliance officer reasonably believes that a person holds relevant information, the compliance officer may direct that person to answer any question for the purpose of—
- (a) ensuring that compliance requirements have been, are being, or will be met; or
  - (b) investigating anything the officer believes is, or might be, a specified serious risk. 25
- (2) The person must answer the questions, subject to **subsections (3) and (4)**. 30
- (3) Subpart 5 of Part 4 of the Search and Surveillance Act 2012 (privilege and confidentiality) applies to anything done under this section.
- (4) Nothing in this section limits any other legislation that imposes a prohibition or restriction on the collection of information. 35

Compare: 2021 No 36 s 110

**371 Powers of entry and inspection**

- (1) A compliance officer may exercise a power under **subsection (2)** for 1 or more of the purposes in **section 362(a) to (c)**.

- (2) Subject to this section, a compliance officer may, in relation to a place,—
- (a) enter the place; and
  - (b) inspect the place; and
  - (c) exercise the power set out in **section 367** (power to take and test samples). 5
- (3) Before exercising the power to enter a place, the compliance officer must make reasonable efforts to contact the owner, occupier, or person in charge of the place.
- (4) A compliance officer must not enter a home, except with the consent of an occupier. 10
- (5) A compliance officer must not enter any land on which a marae or an urupā is situated or that is a Maori reservation, except with the consent of an owner.
- (6) A compliance officer must not enter any Maori land unless, before entering, the compliance officer has given reasonable notice in writing to the owner (or owners) of the land. 15
- (7) However, if the land referred to in **subsection (6)** is owned by more than 10 persons with no clear management structure or is owned by more than 10 persons and not vested in a trustee, the compliance officer must not enter the land unless, before entering, the compliance officer has given reasonable notice in writing to the trustees of the principal marae of the hapū associated with the land. 20
- (8) A compliance officer must not enter any land that is a reserve vested in a post-settlement governance entity and managed by an administering body unless, before entering, the compliance officer has given reasonable notice in writing to the post-settlement governance entity and the administering body. 25
- (9) A compliance officer must not enter a defence area (within the meaning of section 2(1) of the Defence Act 1990) under this section, except in accordance with a written agreement between the Director of Compliance and Enforcement and the Chief of Defence Force.
- (10) Part 4 of the Search and Surveillance Act 2012 (other than subparts 2, 3, 6, and 8 and sections 118 and 119) applies to anything done under this section. 30
- (11) For the purposes of this section, in relation to circumstances in which consent is required, the person giving consent must be a person who has the capacity to consent.
- Compare: 2021 No 36 s 111 35
- 372 Power to enter place without search warrant**
- (1) A compliance officer may exercise a power under **subsection (2)** if the officer believes, on reasonable grounds, that the exercise of the power is required in relation to a specified serious risk.
- (2) A compliance officer may, in relation to a place,— 40

- (a) enter the place without a search warrant; and
- (b) search the place; and
- (c) exercise any of the powers in **sections 364 to 370**.
- (3) Before exercising the power to enter a place, the compliance officer must make reasonable efforts to contact the owner, occupier, or person in charge of the place. 5
- (4) A compliance officer must not enter a home, except with the consent of an occupier.
- (5) A compliance officer must not enter any land on which a marae or an urupā is situated or that is a Maori reservation, except with the consent of an owner. 10
- (6) A compliance officer must not enter any Maori land unless, before entering, the compliance officer has given reasonable notice in writing to the owner (or owners) of the land.
- (7) However, if the land referred to in **subsection (6)** is owned by more than 10 persons with no clear management structure or is owned by more than 10 persons and not vested in a trustee, the compliance officer must not enter the land unless, before entering, the compliance officer has given reasonable notice in writing to the trustees of the principal marae of the hapū associated with the land. 15
- (8) A compliance officer must not enter any land that is a reserve vested in a post-settlement governance entity and managed by an administering body unless, before entering, the compliance officer has given reasonable notice in writing to the post-settlement governance entity and the administering body. 20
- (9) A compliance officer must not enter a defence area (within the meaning of section 2(1) of the Defence Act 1990) under this section, except in accordance with a written agreement between the Director of Compliance and Enforcement and the Chief of Defence Force. 25
- (10) Part 4 of the Search and Surveillance Act 2012 (other than subparts 2, 3, 6, and 8 and sections 118 and 119) applies to anything done under this section.
- (11) For the purposes of this section, in relation to circumstances in which consent is required, the person giving consent must be a person who has the capacity to consent. 30
- Compare: 2014 No 32 s 311; 2021 No 36 s 112
- 373 Notice of entry**
- (1) If a compliance officer enters any place under this Act and is unable, despite reasonable efforts, to find the owner, occupier, or person in charge as required by this Act, the officer must, before leaving the place, leave a written notice stating— 35
- (a) the officer’s identity; and
- (b) the officer’s contact information; and 40

- (c) the date and time of entry; and
- (d) the officer's reasons for entering.
- (2) In **subsection (1)(b)**, **contact information** includes—
- (a) the name of the officer; and
- (b) 1 or more of the following: 5
- (i) phone number:
- (ii) email address:
- (iii) physical or postal address.
- Compare: 2015 No 70 s 171; 2021 No 36 s 113
- 374 Power of Director of Compliance and Enforcement to authorise making of applications for search warrants** 10
- (1) The Director of Compliance and Enforcement may authorise a specified person to enter and search a place, vehicle, or other thing for the purpose of ascertaining whether a person has engaged in or is engaging in conduct that contravenes or may contravene any compliance requirement, if satisfied that there are reasonable grounds— 15
- (a) to suspect that person has engaged in or is engaging in conduct that constitutes or may constitute a contravention; and
- (b) to believe that the search will find evidential material in or on any part of the place, vehicle, or thing. 20
- (2) A specified person authorised under **subsection (1)** may enter and search the place, vehicle, or other thing if—
- (a) the occupier of the place or the person in charge of the vehicle or thing (as the case may be) consents; or
- (b) the specified person obtains a warrant under **subsection (3)**. 25
- (3) An issuing officer may issue a search warrant in relation to a place, vehicle, or thing on an application made in the manner provided by subpart 3 of Part 4 of the Search and Surveillance Act 2012 by a specified person authorised under **subsection (1)**, if the issuing officer is satisfied that there are reasonable grounds— 30
- (a) to suspect that a person has engaged in or is engaging in conduct that contravenes or may contravene any compliance requirement or drinking water safety plan; and
- (b) to believe that the search will find evidential material in or on any part of the place, vehicle, or thing. 35
- (4) In this section, **specified person** means—
- (a) a compliance officer; or
- (b) an employee of the water services entity; or

|            |  |    |
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| (c)        | any other person who the Director of Compliance and Enforcement is satisfied is suitably qualified and trained.  |    |
| (5)        | Despite <b>subsection (4)</b> , a constable may apply for a warrant to be issued under <b>subsection (3)</b> without an authorisation from the Director of Compliance and Enforcement.   | 5  |
| (6)        | The provisions of Part 4 of the Search and Surveillance Act 2012 (except sections 118 and 119) apply, with any necessary modifications.<br>Compare: 2015 No 70 s 173; 2021 No 36 s 114   |    |
| <b>375</b> | <b>Continuation of powers of entry and inspection without search warrants</b><br>A compliance officer who, in the course of exercising a power under <b>section 372</b> , finds evidence of contravention of a relevant compliance requirement is not required to obtain a search warrant under <b>section 374</b> to continue exercising powers under <b>section 372</b> .<br>Compare: 2015 No 70 s 174; 2021 No 36 s 115   | 10 |
| <b>376</b> | <b>Conditions of entry, search, and seizure</b>  | 15 |
| (1)        | A compliance officer must take all reasonable steps to ensure that any equipment the officer has taken into a place is—  |    |
| (a)        | free from contamination; and   |    |
| (b)        | in good working order.   |    |
| (2)        | Section 110(e) of the Search and Surveillance Act 2012 applies.<br>Compare: 2014 No 32 s 299; 2021 No 36 s 116   | 20 |
| <b>377</b> | <b>Compliance with Building Act 2004</b><br>If a compliance officer, in the course of performing functions or exercising powers under this Act, believes that any building or sitework that relates to water services infrastructure does not comply with the Building Act 2004 or the building code, the officer must notify the appropriate territorial authority in writing and include details of the officer's opinion.<br>Compare: 1956 No 65 s 128A; 2021 No 36 s 117 | 25 |
| <b>378</b> | <b>Power to ask for assistance</b>   |    |
| (1)        | A compliance officer who considers it necessary to do so may ask a person for assistance in performing their functions or exercising their powers (other than exercising a power of entry), under this Act.  | 30 |
| (2)        | If the person agrees to assist, they—  |    |
| (a)        | must act under the supervision of, and as instructed by, the officer; and  |    |
| (b)        | may accompany the officer into any place that the officer enters.<br>Compare: 2014 No 32 s 297; 2021 No 36 s 118   | 35 |

**379 Protection of persons acting under authority of Act**

- (1) This section applies to the following persons:
- (a) an officer, employee, or agent of a water services entity acting under **section 217**:
  - (b) the Director of Compliance and Enforcement: 5
  - (c) a compliance officer:
  - (d) a person called to assist a compliance officer:
  - (e) a water services entity:
  - (f) a specified person authorised to enter and search a place, vehicle, or thing under **section 374**. 10
- (2) The person is protected from civil and criminal liability, however it may arise, for any act that the person does or omits to do in the performance or purported performance of the person's duties or functions, or the exercise or purported exercise of the person's powers, under this Act—
- (a) in good faith; and 15
  - (b) with reasonable cause.
- (3) *See also* section 6 of the Crown Proceedings Act 1950.  
Compare: 2014 No 32 s 351; 2021 No 36 s 119

*Compliance orders***380 Power to issue compliance order** 20

- (1) The Director of Compliance and Enforcement may serve a compliance order on any person—
- (a) requiring that person to stop, or prohibiting that person from starting, anything done or to be done by, or on behalf of, that person that the Director believes, on reasonable grounds,— 25
    - (i) contravenes, or is likely to contravene, a compliance requirement; or
    - (ii) will or may create a specified serious risk; or
  - (b) requiring that person to do something that the Director believes, on reasonable grounds, will— 30
    - (i) ensure compliance by, or on behalf of, that person with the compliance requirement; or
    - (ii) prevent, reduce, or eliminate any specified serious risk.
- (2) A compliance order may be made subject to directions and conditions. 35  
Compare: 2021 No 36 s 120

|            |  |    |
|------------|--|----|
| <b>381</b> | <b>Compliance with compliance order</b>  |    |
| (1)        | A person on whom a compliance order is served must—  |    |
|            | (a) comply with the order within the period specified in it; and   |    |
|            | (b) unless the order directs otherwise, pay all the costs and expenses of complying with it.   | 5  |
| (2)        | This section is subject to <b>sections 450 to 454</b> (which set out rights of appeal).  |    |
|            | Compare: 2021 No 36 s 121  |    |
| <b>382</b> | <b>Form and content of compliance order</b>  |    |
|            | A compliance order must state—   | 10 |
|            | (a) the name of the person to whom it relates; and   |    |
|            | (b) the reasons for the order; and   |    |
|            | (c) the action required to be taken, stopped, or not to be taken; and  |    |
|            | (d) the period within which the action must be taken or stopped, being a reasonable period within which to take the action required or to stop the action.   | 15 |
|            | Compare: 2021 No 36 s 122  |    |
| <b>383</b> | <b>Director may vary or cancel order</b>   |    |
|            | Except as provided in <b>section 454</b> , a compliance order may be amended or revoked by the Director of Compliance and Enforcement at any time.   | 20 |
|            | Compare: 2015 No 70 ss 114, 124; 2021 No 36 s 123  |    |
| <b>384</b> | <b>Formal irregularities or defects in order</b>   |    |
|            | A compliance order is not invalid merely because of any defect, irregularity, omission, or want of form in the order unless the defect, irregularity, omission, or want of form causes or is likely to cause a miscarriage of justice. | 25 |
|            | Compare: 2015 No 70 s 115; 2021 No 36 s 124  |    |
| <b>385</b> | <b>When Director of Compliance and Enforcement may take remedial action</b>  |    |
| (1)        | This section applies if a person fails to comply with the whole or any part of a compliance order that is issued to the person.  |    |
| (2)        | The Director of Compliance and Enforcement may take any remedial action they believe is reasonable to address serious risks to—  | 30 |
|            | (a) ensure compliance by, or on behalf of, that person with a compliance requirement; or   |    |
|            | (b) prevent, reduce, or eliminate a specified serious risk.  |    |
| (3)        | However, the Director of Compliance and Enforcement may only take action under <b>subsection (2)</b> after giving written notice to the person of—   | 35 |

|            |  |    |
|------------|--|----|
| (a)        | the Director’s intention to take that action; and  |    |
| (b)        | the person’s liability for the costs of that action.   |    |
|            | Compare: 2015 No 70 s 119; 2021 No 36 s 126  |    |
| <b>386</b> | <b>Power of Director of Compliance and Enforcement to take other remedial action</b>   | 5  |
| (1)        | This section applies if the Director of Compliance and Enforcement reasonably believes that—   |    |
| (a)        | circumstances exist in which a compliance order can be issued; but   |    |
| (b)        | a compliance order cannot be issued at a place because, after reasonable steps are taken, the person to whom the order could be issued cannot be found.  | 10 |
| (2)        | The Director of Compliance and Enforcement may take any remedial action necessary to—  |    |
| (a)        | ensure compliance by, or on behalf of, that person with any compliance requirement; or   | 15 |
| (b)        | prevent, reduce, or eliminate a specified serious risk.  |    |
|            | Compare: 2015 No 70 s 120; 2021 No 36 s 127  |    |
| <b>387</b> | <b>Costs of remedial or other action</b>   |    |
| (1)        | A water services entity may recover as a debt due to the <u>water services</u> entity the reasonable costs of any remedial action taken under—   | 20 |
| (a)        | <b>section 385</b> , from the person to whom a compliance order is issued; or  |    |
| (b)        | <b>section 386</b> , from any person to whom a compliance order could have been issued in relation to the matter.  |    |
| (2)        | This section is subject to <b>section 388</b> .  |    |
|            | Compare: 2015 No 70 s 121; 2021 No 36 s 128  | 25 |
| <b>388</b> | <b>Protection of Maori land against execution for debt</b>   |    |
| (1)        | This section applies in relation to—   |    |
| (a)        | a judgment for the payment of costs of remedial or other action under <b>section 387</b> :   |    |
| (b)        | a fine imposed for an offence against this Act.  | 30 |
| (2)        | The judgment or fine cannot be enforced against a person’s interest in Maori customary land or, subject to section 343 of Te Ture Whenua Maori Act 1993, a person’s beneficial freehold interest in Maori freehold land. |    |
| (3)        | Nothing in <b>subsection (2)</b> —   |    |
| (a)        | limits or affects the operation of any mortgage or charge to which any Maori land is subject:  | 35 |

- (b) applies to any revenue derived by any person from any interest in land to which that subsection applies, and all such revenue is available for the payment of the person's debts.
- (4) For the purposes of this section, the interest of any person in Maori land is to be taken to include— 5
- (a) that person's interest in all timber, flax and other things (other than industrial crops) so attached to the land as to form part of it as between the heir and the executor of a deceased freeholder at common law; and
- (b) while the land remains Maori land, that person's interest in all money that is the proceeds of any alienation of that land, except any money that has been actually received by that person or by any trustee for that person. 10

Compare: 1993 No 4 s 342

### *Water meters*

#### **389 Chief executive of water services entity may authorise persons to read water meters** 15

- (1) The chief executive of a water services entity may authorise persons to access the properties of its consumers for the purpose of reading water meters.
- (2) Before authorising a person under **subsection (1)**, the chief executive must be satisfied that the person— 20
- (a) meets the requirements of section 69 of the Water Services Act 2021 and any relevant regulations made under that Act; and
- (b) has received the training needed to access the property appropriately and to read the water meter accurately.
- (3) The authorisation— 25
- (a) must be in writing; and
- (b) may not be granted to a person who is appointed as a compliance officer under this Act.

#### **390 Authorised persons may access properties under certain conditions**

- (1) A person authorised under **section 389** may access the property of a consumer only— 30
- (a) for the purpose of checking a water meter or any equipment or device (for example, a backflow prevention device) required by a rule made under section 274; and
- (b) in accordance with the process set out in the relevant service agreement. 35
- (2) The person exercising the power under **subsection (1)** must have the appropriate written authorisation and evidence of identity, and must produce them to the person in charge of the property concerned—

- (a) on first entering the property; and
- (b) whenever subsequently reasonably required to do so by the person in charge.

Compare: 2020 No 38 s 626(5)

#### Subpart 4—Offences

5

##### *Offence relating to water services infrastructure*

#### **391AAA Carrying out building work over or near water services infrastructure without approval**

- (1) A person commits an offence against this section if the person carries out building work over or near water services infrastructure without approval and the work causes a specified serious risk. 10
- (2) A person who commits an offence against this section is liable on conviction,—
  - (a) for an individual, to a fine not exceeding \$20,000:
  - (b) for a body corporate or an unincorporated body, to a fine not exceeding \$200,000. 15

##### *Offences relating to water supply network*

#### **391 Knowingly-Intentionally or recklessly engaging in conduct relating to water supply network that causes specified serious risk**

- (1) ~~A person commits an offence if the person knowingly or recklessly engages in conduct relating to a water supply network that causes a specified serious risk.~~ 20
- (1) A person commits an offence against this section if the person—
  - (a) engages in conduct relating to a water supply network that causes a specified serious risk; and
  - (b) intentionally causes, or is reckless as to, the specified serious risk. 25
- (2) A person who commits an offence against this section is liable on conviction,—
  - (a) for an individual, to a term of imprisonment not exceeding 2 years or a fine not exceeding \$75,000, or both:
  - (b) for a body corporate or an unincorporated body, to a fine not exceeding \$1.5 million. 30

#### **392 Negligently engaging in conduct relating to water supply network that causes specified serious risk**

- (1) A person commits an offence against this section if the person negligently engages in conduct relating to a water supply network that causes a specified serious risk. 35

- (2) A person who commits an offence against this section is liable on conviction,—
- (a) for an individual, to a fine not exceeding \$100,000:
  - (b) for a body corporate or an unincorporated body, to a fine not exceeding \$600,000.

5

*Offences relating to wastewater network*

**393 ~~Knowingly~~ Intentionally or recklessly disposing of materials or substances into wastewater network**

- (1) ~~A person commits an offence if the person knowingly or recklessly disposes of materials or substances in, or discharges them into, a wastewater network in breach of a rule made under this Act that causes a specified serious risk.~~

10

- (1) A person commits an offence against this section if the person—

- (a) disposes of materials or substances in, or discharges them into, a wastewater network and that disposal or discharge causes a specified serious risk; and

15

- (b) intentionally causes, or is reckless as to, the specified serious risk.

- (2) A person who commits an offence against this section is liable on conviction,—

- (a) for an individual, to a term of imprisonment not exceeding 2 years or a fine not exceeding \$75,000, or both:

20

- (b) for a body corporate or an unincorporated body, to a fine not exceeding \$1.5 million.

**394 ~~Disposing~~ Negligently disposing of materials or substances into wastewater network**

- (1) ~~A person commits an offence if the person disposes of materials or substances in, or discharges them into, a wastewater network in breach of a rule made under this Act.~~

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- (1) A person commits an offence against this section if the person negligently disposes of materials or substances in, or discharges them into, a wastewater network and that disposal or discharge causes a specified serious risk.

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- (2) A person who commits an offence against this section is liable on conviction,—

- (a) for an individual, to a fine not exceeding \$100,000:

- (b) for a body corporate or an unincorporated body, to a fine not exceeding \$600,000.

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|            |  |    |
|------------|--|----|
| <b>395</b> | <b>Connecting to, disconnecting from, or discharging into wastewater network without authorisation</b>   |    |
| (1)        | A person commits an offence <u>against this section</u> if the person connects to, disconnects from, or discharges material or substances into a wastewater network without the <del>written</del> authorisation of a water services entity. | 5  |
| (2)        | A person who commits an offence against this section is liable on conviction,—   |    |
|            | (a) for an individual, to a fine not exceeding \$100,000:  |    |
|            | (b) for a body corporate or an unincorporated body, to a fine not exceeding \$500,000.   | 10 |
| <b>396</b> | <b><del>Knowingly</del> <u>Intentionally</u> or recklessly engaging in conduct relating to wastewater network that causes specified serious risk</b>   |    |
| (1)        | <del>A person commits an offence if the person knowingly or recklessly engages in conduct relating to a wastewater network that causes a specified serious risk.</del>   |    |
| (1)        | <u>A person commits an offence against this section if the person—</u>   | 15 |
|            | (a) <u>engages in conduct relating to a wastewater network that causes a specified serious risk; and</u>   |    |
|            | (b) <u>intentionally causes, or is reckless as to, the specified serious risk.</u>   |    |
| (2)        | A person who commits an offence against this section is liable on conviction,—   | 20 |
|            | (a) for an individual, to a term of imprisonment not exceeding 2 years or a fine not exceeding \$75,000, or both:  |    |
|            | (b) for a body corporate or an unincorporated body, to a fine not exceeding \$1.5 million.   |    |
| <b>397</b> | <b>Negligently engaging in conduct relating to wastewater network that causes specified serious risk</b>   | 25 |
| (1)        | A person commits an offence <u>against this section</u> if the person negligently engages in conduct relating to a wastewater network that causes a specified serious risk.  |    |
| (2)        | A person who commits an offence against this section is liable on conviction,—   | 30 |
|            | (a) for an individual, to a fine not exceeding \$100,000:  |    |
|            | (b) for a body corporate or an unincorporated body, to a fine not exceeding \$600,000.   |    |
| <b>398</b> | <b>Discharging trade waste without trade waste permit</b>  | 35 |
| (1)        | A person commits an offence <u>against this section</u> if the person discharges trade waste into a wastewater network without a trade waste permit issued under <b>section 267</b> .  |    |

- (2) A person who commits an offence against this section is liable on conviction,—
- (a) for an individual, to a fine not exceeding \$500,000:
  - (b) for a body corporate or an unincorporated body, to a fine not exceeding \$3 million.

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### 399 Breach of trade waste permit

- (1) A person commits an offence against this section if the person breaches a trade waste permit issued under **section 267**.
- (2) A person who commits an offence against this section is liable on conviction,—
- (a) for an individual, to a fine not exceeding \$250,000:
  - (b) for a body corporate or an unincorporated body, to a fine not exceeding \$3 million.

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### *Offences relating to stormwater network*

### 400 ~~Knowingly or recklessly connecting to or disconnecting from stormwater network without authorisation~~ Intentionally or recklessly disposing of or discharging materials or substances into stormwater network causing specified serious risk

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- (1) ~~A person commits an offence if the person knowingly or recklessly connects to or disconnects from a stormwater network without the written authorisation of a water services entity.~~

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- (1) A person commits an offence against this section if the person—
- (a) disposes of or discharges materials or substances into a stormwater network and that disposal or discharge causes a specified serious risk; and
  - (b) intentionally causes, or is reckless as to, the serious specified risk.

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- (2) A person who commits an offence against this section is liable on conviction,—
- (a) for an individual, to a fine not exceeding \$200,000:
  - (b) for a body corporate or an unincorporated body, to a fine not exceeding \$1.5 million.

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### 401 ~~Negligently connecting to or disconnecting from stormwater network without authorisation~~ Negligently disposing of or discharging substances or materials into stormwater network

- (1) ~~A person commits an offence if the person negligently connects to or disconnects from a stormwater network without the written authorisation from a water services entity.~~

35

- (1) A person commits an offence against this section if the person negligently disposes of or discharges materials or substances into a stormwater network and the disposal or discharge causes a specified serious risk.
- (2) A person who commits an offence against this section is liable on conviction,— 5
- (a) for an individual, to a fine not exceeding \$50,000:
- (b) for a body corporate or an unincorporated body, to a fine not exceeding \$500,000.
- 402 Knowingly-Intentionally or recklessly engaging in conduct relating to stormwater network that causes specified serious risk** 10
- (1) ~~A person commits an offence if the person knowingly or recklessly engages in conduct relating to a stormwater network that causes a specified serious risk.~~
- (1) A person commits an offence against this section if the person—
- (a) engages in conduct relating to a stormwater network that causes a specified serious risk; and 15
- (b) intentionally causes, or is reckless as to, the specified serious risk.
- (2) A person who commits an offence against this section is liable on conviction,—
- (a) for an individual, to a term of imprisonment not exceeding 2 years or a fine not exceeding \$75,000, or both: 20
- (b) for a body corporate or an unincorporated body, to a fine not exceeding \$1.5 million.
- 402A Connecting to or disconnecting from, or discharging materials or substances into, stormwater network without authorisation**
- (1) A person commits an offence against this section if the person, without authorisation from a water services entity,— 25
- (a) connects to or disconnects from a stormwater network; or
- (b) discharges materials or substances into a stormwater network.
- (2) A person who commits an offence against this section is liable on conviction,— 30
- (a) for an individual, to a fine not exceeding \$50,000:
- (b) for a body corporate or an unincorporated body, to a fine not exceeding \$500,000.

|            |  |    |
|------------|--|----|
| <b>403</b> | <b>Negligently engaging in conduct relating to stormwater network that causes specified serious risk</b>   |    |
| (1)        | A person commits an offence <u>against this section</u> if the person negligently engages in conduct relating to a stormwater network that causes a specified serious risk.  | 5  |
| (2)        | A person who commits an offence against this section is liable on conviction,—   |    |
|            | (a) for an individual, to a fine not exceeding \$100,000:  |    |
|            | (b) for a body corporate or an unincorporated body, to a fine not exceeding \$600,000.   | 10 |
|            | <i>Other offences relating to water supply network, wastewater network, and stormwater network</i>   |    |
| <b>404</b> | <b>Discharging into water supply network without authorisation</b>   |    |
| (1)        | A person commits an offence <u>against this section</u> if the person discharges anything into a water supply network without written authorisation from a water services entity.  | 15 |
| (2)        | A person who commits an offence against <del>this section</del> <b>subsection (1)</b> is liable on conviction,—  |    |
|            | (a) for an individual, to a fine not exceeding \$50,000:   |    |
|            | (b) for a body corporate or an unincorporated body, to a fine not exceeding \$500,000.   | 20 |
| <b>405</b> | <b>Connecting to or disconnecting from water supply network or supplying water to another person without authorisation</b>   |    |
| (1)        | A person commits an offence <u>against this section</u> if the person—   |    |
|            | (a) knowingly connects to or disconnects from, or takes water from, a water supply network without authorisation from a water services entity; or  | 25 |
|            | (b) <del>having been supplied with water by a water services entity from a water supply network, knowingly and without authorisation from the water services entity—</del>   |    |
|            | (i) <del>extends their network connection to another property that should be party to a service agreement with the water services entity; or</del>   | 30 |
|            | (ii) <del>permits that other person to take water supplied from a water services entity.</del>   |    |
|            | (b) <u>having been supplied with water by a water services entity from a water supply network, knowingly and without authorisation from the water services entity extends their network connection to another property that should be party to a service agreement with the water services entity.</u> | 35 |

- (2) A person does not commit an offence against **subsection (1)(b)** if the activity is authorised by section 48 of the Fire and Emergency New Zealand Act 2017.
- (3) A person who commits an offence against this section is liable on conviction,—
- (a) for an individual, to a fine not exceeding \$50,000: 5
- (b) for a body corporate or an unincorporated body, to a fine not exceeding \$500,000.
- 406 Carrying out work on or in relation to water supply network, wastewater network, or stormwater network without authorisation**
- (1) A person commits an offence against this section if the person knowingly carries out work on or in relation to a water supply network, wastewater network, or a stormwater network owned or operated by a water services entity without first— 10
- (a) notifying the entity of their intention to carry out the work; and
- (b) obtaining written authorisation from the water services entity to carry out the work on any terms or conditions that the water services entity thinks fit. 15
- (2) A person does not commit an offence against this section if the work is carried out in accordance with a statutory authorisation.
- (3) It is a defence to an offence against this section if the work carried out was necessary to avoid an emergency, or to mitigate or remedy the effects of an emergency. 20
- (4) A person who commits an offence against this section is liable on conviction,—
- (a) for an individual, to a fine not exceeding \$100,000: 25
- (b) for a body corporate or an unincorporated body, to a fine not exceeding \$500,000.
- (5) Nothing in this section applies to work carried out on, in relation to, or near any green stormwater infrastructure, overland flow path, or watercourse that is part of, or relates to, a stormwater network. 30
- 407 ~~Carrying out work in immediate proximity to water supply network, wastewater network, or stormwater network without notification~~**
- (1) A person commits an offence if the person—
- (a) ~~has a duty under a rule to notify a water services entity before carrying out work in the immediate proximity of a water supply network, wastewater network, or stormwater network owned or operated by a water services entity; and~~ 35
- (b) ~~knowingly carries out work without notifying the water services entity.~~

- (2) ~~A person does not commit an offence against this section if the work is carried out in accordance with a statutory authorisation.~~
- (3) ~~It is a defence to an offence against this section if the work carried out was necessary to avoid an emergency, or to mitigate or remedy the effects of an emergency.~~ 5
- (4) ~~A person who commits an offence against this section is liable on conviction,—~~
- (a) ~~for an individual, to a fine not exceeding \$100,000;~~
- (b) ~~for a body corporate or an unincorporated body, to a fine not exceeding \$500,000.~~ 10
- Offence relating to plans, rules, directions, and compliance orders*
- 408 Breach of controlled drinking water catchment management plan or permit**
- (1) ~~A person commits an offence if the person breaches a prohibition, requirement, or restriction set out in a controlled drinking water catchment management plan issued under **section 232**.~~ 15
- (1) A person commits an offence against this section if the person—
- (a) breaches a prohibition, restriction, or requirement set out in a controlled drinking water catchment management plan issued under **section 232**;  
or 20
- (b) breaches a prohibition, restriction, or requirement in a permit issued under **section 232A**.
- (2) A person who commits an offence against this section is liable on conviction,—
- (a) for an individual, to a fine not exceeding \$20,000: 25
- (b) for a body corporate or an unincorporated body, to a fine not exceeding \$100,000.
- 409 Breach of requirement, condition, authorisation, or prohibition in stormwater network rule**
- (1) ~~A person commits an offence if the person fails to comply with a requirement, condition, authorisation, or prohibition in a stormwater network rule made under **section 260**.~~ 30
- (1) A person commits an offence against this section if the person—
- (a) has a duty under a stormwater network rule made under **section 260**;  
and 35
- (b) knowingly fails to comply with that duty and that non-compliance causes a specified serious risk.

- (2) A person who commits an offence against this section is liable on conviction,—
- (a) for an individual, to a fine not exceeding \$20,000;
  - (b) for a body corporate, to a fine not exceeding \$200,000.
- 410 Failure to comply with rule relating to equipment or device** 5
- (1) ~~A person commits an offence if the person—~~
- (a) ~~has a duty under a rule relating to equipment or devices under **section 275(2)(a)(ii)**; and~~
  - (b) ~~fails to comply with that duty.~~
- (1) A person commits an offence against this section if the person— 10
- (a) has a duty under a rule under **section 274(1)(c)** relating to equipment or devices; and
  - (b) knowingly fails to comply with that duty and that non-compliance causes a serious specified risk.
- (2) A person who commits an offence against this section is liable on conviction,— 15
- (a) for an individual, to a fine not exceeding \$20,000;
  - (b) for a body corporate or an unincorporated body, to a fine not exceeding \$200,000.
- 411 Failure to notify water services entity of notifiable risk or hazard** 20
- (1) ~~A person commits an offence if the person—~~
- (a) ~~has a duty to notify a water services entity of a notifiable risk or hazard in a rule made under **section 275(2)(b)**; and~~
  - (b) ~~fails to comply with that duty.~~
- (1) A person commits an offence against this section if the person— 25
- (a) has a duty to notify a water services entity of a notifiable risk or hazard in a rule made under **section 274(1)(d)**; and
  - (b) knowingly fails to comply with that duty and that non-compliance causes a specified serious risk.
- (2) A person who commits an offence against this section is liable on conviction,— 30
- (a) for an individual, to a fine not exceeding \$50,000;
  - (b) for a body corporate or unincorporated body, to a fine not exceeding \$200,000.
- 411A Failure to comply with water use restriction or limit** 35
- (1) A person commits an offence against this section if the person—

- (a) is subject to a water use restriction or limit set out in rules made under **section 274**; and
- (b) knowingly fails to comply with that restriction or limit and causes a specified serious risk.
- (2) A person who commits an offence against this section is liable on conviction,— 5
- (a) for an individual, to a fine not exceeding \$20,000:
- (b) for a body corporate or an unincorporated body, to a fine not exceeding \$100,000.
- 411B Breach of rule relating to undertaking specified classes of work near, under, or above water supply system, wastewater network, or stormwater network** 10
- (1) A person commits an offence against this section if the person knowingly fails to comply with a rule made under **section 285** regulating, restricting, or prohibiting the undertaking of specified classes of work near, under, or above a water supply system, a wastewater network, or a stormwater network. 15
- (2) A person does not commit an offence against this section if the work is undertaken in accordance with a statutory authorisation.
- (3) It is a defence against this section if the defendant proves that—
- (a) the action or event to which the prosecution relates was necessary for the purposes of preventing, avoiding, or mitigating a specified serious risk; and 20
- (b) the conduct of the defendant was reasonable in the circumstances; and
- (c) the defendant took steps that were reasonable in all the circumstances to mitigate or remedy the effects of the action or event after it occurred. 25
- (4) A person who commits an offence against this section is liable on conviction,—
- (a) for an individual, to a fine not exceeding \$20,000:
- (b) for a body corporate or an unincorporated body, to a fine not exceeding \$200,000. 30
- (5) Nothing in this section applies to work undertaken on, in relation to, or near any green stormwater infrastructure, overland flow path, or watercourse that is part of, or relates to, a stormwater network.
- 412 Failure to comply with direction issued by compliance officer**
- (1) A person commits an offence against this section if the person fails to comply with a direction issued by a compliance officer under **section 364 or 365(2)(b)**. 35

- (2) A person who commits an offence against this section is liable on conviction,—
- (a) for an individual, to a fine not exceeding \$75,000:
  - (b) for a body corporate or an unincorporated body, to a fine not exceeding \$300,000. 5
- 413 Failure to comply with compliance order or court order**
- (1) A person commits an offence against this section if the person fails to comply with a compliance order issued under **section 380** or an order of the court made under this Act.
- (2) A person who commits an offence against this section is liable on conviction,— 10
- (a) for an individual, to a fine not exceeding \$75,000:
  - (b) for a body corporate or an unincorporated body, to a fine not exceeding \$300,000.
- Offences relating to water use restrictions and tampering with water meters* 15
- ~~**414 Failure to comply with water use restriction or limit**~~
- (1) ~~A person commits an offence if the person—~~
- ~~(a) is subject to a water use restriction or limit set out in rules made under **section 274 or 275**; and~~
  - ~~(b) fails to comply with that restriction or limit.~~ 20
- (2) ~~A person who commits an offence against this section is liable on conviction,—~~
- ~~(a) for an individual, to a fine not exceeding \$20,000:~~
  - ~~(b) for a body corporate or an unincorporated body, to a fine not exceeding \$100,000.~~ 25
- ~~**415 Wasting drinking water**~~
- (1) ~~A person commits an offence if the person wastes drinking water in a way that causes risk to the water supply of a water services entity.~~
- (2) ~~A person who commits an offence against this section is liable on conviction,—~~ 30
- ~~(a) for an individual, to a fine not exceeding \$20,000:~~
  - ~~(b) for a body corporate or an unincorporated body, to a fine not exceeding \$100,000.~~
- 416 Tampering with water meter**
- (1) A person commits an offence against this section if the person, without the prior written authorisation of a water services entity,— 35

|  |           |
|--|-----------|
| <ul style="list-style-type: none"> <li>(a) alters the index of, or in any other manner tampers with, a water meter; or</li> <li>(b) alters the position of a water meter.</li> </ul>   |           |
| <ul style="list-style-type: none"> <li>(2) A person who commits an offence against this section is liable on conviction,—</li> </ul>   | 5         |
| <ul style="list-style-type: none"> <li>(a) for an individual, to a fine not exceeding \$50,000;</li> <li>(b) for a body corporate or an unincorporated body, to a fine not exceeding \$200,000.</li> </ul>   |           |
| <i>Offences relating to duties associated with administration of Act</i>   |           |
| <b>417</b>   | <b>10</b> |
| <b>Hindering or obstructing employee or agent of water services entity</b>   |           |
| <ul style="list-style-type: none"> <li>(1) A person commits an offence <u>against this section</u> if the person intentionally hinders or obstructs an employee or agent of a water services entity who is performing a duty or function, or exercising a power, under this Act.</li> </ul>  |           |
| <ul style="list-style-type: none"> <li>(2) A person who commits an offence against this section is liable on conviction,—</li> </ul>   | 15        |
| <ul style="list-style-type: none"> <li>(a) for an individual, to imprisonment for a term not exceeding 3 months and a fine not exceeding \$10,000;</li> <li>(b) for a body corporate or an unincorporated body, to a fine not exceeding \$250,000.</li> </ul>                                |           |
| <b>418</b>   | <b>20</b> |
| <b>Threatening or assaulting employee or agent of water services entity</b>  |           |
| <ul style="list-style-type: none"> <li>(1) A person commits an offence <u>against this section</u> if the person intentionally threatens or assaults an employee or agent of a water services entity who is performing a duty or function, or exercising a power, under this Act.</li> </ul> |           |
| <ul style="list-style-type: none"> <li>(2) A person who commits an offence against this section is liable on conviction,—</li> </ul>   | 25        |
| <ul style="list-style-type: none"> <li>(a) for an individual, to imprisonment for a term not exceeding 3 months and a fine not exceeding \$50,000;</li> <li>(b) for a body corporate or an unincorporated body, to a fine not exceeding \$250,000.</li> </ul>                                |           |
| <b>419</b>   | <b>30</b> |
| <b>Pretending to be compliance officer, employee, or agent of water services entity</b>  |           |
| <ul style="list-style-type: none"> <li>(1) A person commits an offence <u>against this section</u> if, with intent to deceive, the person pretends to be—</li> </ul>   |           |
| <ul style="list-style-type: none"> <li>(a) an employee or agent of a water services entity; or</li> <li>(b) a person who has been appointed as a compliance officer under <b>section 357</b>.</li> </ul>   | 35        |

- (2) A person who commits an offence against this section is liable on conviction,—
- (a) for an individual, to a fine not exceeding \$50,000:
  - (b) for a body corporate or an unincorporated body, to a fine not exceeding \$250,000.

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### Subpart 5—Infringement offences

#### 420 Interpretation

In this **subpart**,—

**infringement fee**, in relation to an infringement offence, means the infringement fee for the offence specified in regulations made under **section 474(1)(g)**

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**infringement offence** means—

- (a) an offence against the following sections:
  - (i) ~~section 408~~ (breach of controlled drinking water catchment management plan):
  - (ii) ~~section 409~~ (breach of requirement, condition, authorisation, or prohibition in stormwater network rule):
  - (iii) ~~section 410~~ (failure to comply with rule relating to equipment or device):
  - (iv) ~~section 414~~ (failure to comply with water use restriction or limit):
  - (v) ~~section 416~~ (tampering with water meter):
- (b) an offence against this Act or regulations made under this Act that is declared by regulations made under **section 474(1)(e)** to be an infringement offence for the purposes of this Act.

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**infringement offence** means one of the following that is declared by regulations made under **section 474(1)(e)** to be an infringement offence for the purposes of this Act:

- (a) an offence against a provision in **subpart 4 of Part 12**, other than an offence against **section 391, 393, 396, 400, 402, 405, 406, 409, 410, 411, 411A, 411B, 417, 418, or 419**:
- (b) an offence against any secondary legislation made under this Act.

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Compare: 2015 No 70 s 136; 2021 No 36 s 149

#### 421 Infringement offences

- (1) A person who is alleged to have committed an infringement offence may—
- (a) be proceeded against by the filing of a charging document under section 14 of the Criminal Procedure Act 2011; or

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- (b) be issued with an infringement notice under **section 422**.
- (2) Proceedings commenced in the way described in **subsection (1)(a)** do not require the leave of a District Court Judge or Registrar under section 21(1)(a) of the Summary Proceedings Act 1957.
- (3) *See* section 21 of the Summary Proceedings Act 1957 for the procedure that applies if an infringement notice is issued. 5  
Compare: 2015 No 70 s 137; 2021 No 36 s 150
- 422 When infringement notice may be issued**
- The Director of Compliance and Enforcement or a compliance officer may issue an infringement notice to a person if they believe on reasonable grounds that the person is committing, or has committed, an infringement offence. 10  
Compare: 2021 No 36 s 151
- 423 How infringement notice may be served**
- (1) The Director of Compliance and Enforcement or a compliance officer may serve an infringement notice on the person alleged to have committed an infringement offence by— 15
- (a) delivering it to the person or, if the person refuses to accept it, bringing it to the person's notice; or
- (b) leaving it for the person at the person's last known place of residence with another person who appears to be of or over the age of 14 years; or 20
- (c) leaving it for the person at the person's place of business or work with another person; or
- (d) sending it to the person by prepaid post addressed to the person's last known place of residence or place of business or work; or
- (e) sending it to an electronic address of the person in any case where the person does not have a known place of residence or business in New Zealand. 25
- (2) Unless the contrary is shown,—
- (a) an infringement notice (or a copy of it) sent by prepaid post to a person under **subsection (1)(d)** is to be treated as having been served on that person on the fifth working day after the date on which it was posted; and 30
- (b) an infringement notice sent to a valid electronic address under **subsection (1)(e)** is to be treated as having been served at the time the electronic communication first entered an information system that is outside the control of the ~~chief executive~~ Director of Compliance and Enforcement or the compliance officer. 35

- (3) In this section, **information system** means a system for producing, sending, receiving, storing, displaying, or otherwise processing electronic communications.
- Compare: 2021 No 36 s 152
- 424 What infringement notice must contain** 5
- (1) An infringement notice must be in the form prescribed in the regulations and must contain the following particulars:
- (a) details of the alleged infringement offence that fairly inform a person of the time, place, and nature of the alleged offence: 10
  - (b) the amount of the infringement fee: 10
  - (c) the address of the place at which the infringement fee may be paid:
  - (d) how the infringement fee may be paid:
  - (e) the time within which the infringement fee must be paid:
  - (f) a summary of the provisions of section 21(10) of the Summary Proceedings Act 1957: 15
  - (g) a statement that the person served with the notice has a right to request a hearing:
  - (h) a statement of what will happen if the person served with the notice neither pays the infringement fee nor requests a hearing:
  - (i) any other particulars prescribed in the regulations. 20
- (2) If an infringement notice has been issued under this section, the procedure under section 21 of the Summary Proceedings Act 1957 may be used in respect of the offence to which the infringement notice relates and, in that case, the provisions of that section apply with all necessary modifications. 25
- Compare: 2015 No 70 s 138; 2021 No 36 s 153
- 425 Revocation of infringement notice before payment is made**
- (1) The Director of Compliance and Enforcement or a compliance officer may revoke an infringement notice issued under **section 422** before—
- (a) the infringement fee is paid; or
  - (b) an order for payment of a fine is made or deemed to be made by a court under section 21 of the Summary Proceedings Act 1957. 30
- (2) The Director of Compliance and Enforcement or a compliance officer must take reasonable steps to ensure that the person to whom the notice was issued is made aware of the revocation of the notice.
- (3) The revocation of an infringement notice before the infringement fee is paid is not a bar to any further action as described in **section 421(1)(a) or (b)** against the person to whom the notice was issued in respect of the same matter. 35
- Compare: 2015 No 70 s 139; 2021 No 36 s 154

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|------------|--|----------|
| <b>426</b> | <b>Payment of infringement fees</b>  |          |
|            | All infringement fees paid for infringement offences must be paid to the water services entity that issued the infringement notice.  |          |
|            | Compare: 2015 No 70 s 140; 2021 No 36 s 155  |          |
| <b>427</b> | <b>Reminder notices</b>  | 5        |
|            | A reminder notice must be in the form prescribed in the regulations and must include the same particulars, or substantially the same particulars, as the infringement notice.  |          |
|            | Compare: 2021 No 36 s 156  |          |
|            | <b>Subpart 6—Criminal proceedings</b>  | 10       |
| <b>428</b> | <b>Meaning of enforcement action</b>   |          |
|            | In this <b>subpart</b> , unless the context otherwise requires, <b>enforcement action</b> means—   |          |
|            | (a) the filing of a charging document by the Director of Compliance and Enforcement under section 14 of the Criminal Procedure Act 2011, or the issuing of an infringement notice by the Director of Compliance and Enforcement or a compliance officer in respect of an offence under this Act; and   | 15       |
|            | (b) the filing of a charging document by a person other than the Director of Compliance and Enforcement under section 14 of the Criminal Procedure Act 2011 in respect of an offence under this Act.   | 20       |
|            | Compare: 2015 No 70 s 141; 2021 No 36 s 157  |          |
| <b>429</b> | <b>Person may notify Director of Compliance and Enforcement of interest in knowing of enforcement action</b>   |          |
| (1)        | A person may notify the <del>chief executive of a water services entity</del> <u>Director of Compliance and Enforcement</u> in the manner determined by the <del>chief executive Director</del> that the person has an interest in knowing whether a particular incident, situation, or set of circumstances has been, is, or is to be subject to the taking of enforcement action by the <del>chief executive Director</del> or a compliance officer. | 25<br>30 |
| (2)        | If the <del>chief executive of a water services entity</del> <u>Director of Compliance and Enforcement</u> receives a notification under <b>subsection (1)</b> , they must notify the person in writing—   |          |
|            | (a) whether any enforcement action in respect of the incident, situation, or set of circumstances has been taken; and  | 35       |
|            | (b) if enforcement action has not been taken, whether the <del>chief executive</del> <u>Director of Compliance and Enforcement</u> of the water services entity or   |          |

compliance officer intends to take enforcement action in respect of the incident, situation, or set of circumstances.

Compare: 2015 No 70 s 142; 2021 No 36 s 158

#### **430 Prosecutions by Director of Compliance and Enforcement**

Subject to **section 431**, a prosecution for an offence under this Act may be brought only by the Director of Compliance and Enforcement. 5

Compare: 2015 No 70 s 143; 2021 No 36 s 159

#### **431 Private prosecutions**

(1) A person other than the Director of Compliance and Enforcement may file a charging document in respect of an offence under this Act if— 10

(a) the Director of Compliance and Enforcement or a compliance officer has not taken, and does not intend to take, enforcement action against any person in respect of the same incident, situation, or set of circumstances; and

(b) the person has received notification from the water services entity under **section 429(2)** that the Director of Compliance and Enforcement or a compliance officer— 15

(i) has not taken enforcement action or prosecution action against any person in respect of the same incident, situation, or set of circumstances; and 20

(ii) does not intend to take any enforcement action.

(2) For the purposes of **subsection (1)**, if enforcement action or prosecution action cannot be taken against any person in respect of the same incident, situation, or set of circumstances because the person is dead, the Director of Compliance and Enforcement or compliance officer must be treated as intending to take enforcement action or prosecution action. 25

Compare: 2015 No 70 s 144; 2021 No 36 s 160

#### **432 Continuing or repeated matters**

Nothing in this Act prevents the ~~chief executive of a water services entity~~ Director of Compliance and Enforcement or another person from taking enforcement action in respect of an incident, situation, or set of circumstances, despite enforcement action having been taken in respect of that incident, situation, or set of circumstances, if the incident, situation, or set of circumstances is continuing or repeated. 30

Compare: 2015 No 70 s 145; 2021 No 36 s 161 35

## Subpart 7—Limitation periods

**433 Limitation period for prosecutions brought by Director of Compliance and Enforcement**

- (1) Despite section 25 of the Criminal Procedure Act 2011, proceedings for an offence under this Act may be brought by the Director of Compliance and Enforcement within the later of the following periods to occur: 5
- (a) within 12 months after the date on which the incident, situation, or set of circumstances to which the offence relates first became known, or ought reasonably to have become known, to ~~the chief executive~~ the Director of Compliance and Enforcement: 10
- (b) within 6 months after the date on which a coroner completes and signs a certificate of findings under section 94 of the Coroners Act 2006 if it appears from the certificate of findings (or the proceedings of an inquiry) that an offence has been committed under this Act.
- (2) **Subsection (1)** applies subject to **section 435**. 15  
Compare: 2015 No 70 s 146; 2021 No 36 s 162

**434 Extension of time if Director of Compliance and Enforcement needs longer to decide whether to bring prosecution**

- (1) This section applies if a Director of Compliance and Enforcement considers that they will not be able to file a charging document by the end of the period specified in **section 433(1)(a) or (b)**. 20
- (2) The District Court may, on application by ~~the chief executive of the water services entity~~ Director of Compliance and Enforcement made before the end of the relevant period specified in **section 433(1)(a) or (b)**, extend the time available for filing a charging document for a further period not exceeding 12 months from the date of expiry of that relevant specified period. 25
- (3) The court must not grant an extension under **subsection (2)** unless it is satisfied that—
- (a) ~~the chief executive of the water services entity~~ Director of Compliance and Enforcement reasonably requires longer than the relevant specified period to decide whether to file a charging document; and 30
- (b) the reason for requiring the longer period is that the investigation of the events and issues surrounding the alleged offence is complex or time-consuming; and
- (c) it is in the public interest in the circumstances that a charging document is able to be filed after the relevant specified period expires; and 35
- (d) filing the charging document after the relevant specified period expires will not unfairly prejudice the proposed defendant in defending the charge.

- (4) The court must give the following persons an opportunity to be heard:
- (a) ~~the chief executive of the water services entity~~ Director of Compliance and Enforcement;
  - (b) the proposed defendant;
  - (c) any other person who has an interest in whether a charging document should be filed, being a person described in **section 429(1)**.

Compare: 2015 No 70 s 147; 2021 No 36 s 163

**435 Certain proceedings may be brought after end of limitation period if fresh evidence discovered**

Despite anything in **section 433 or 434**, the proceedings for an offence against this Act may be brought after the end of the applicable limitation period if fresh evidence relevant to the offence is discovered and the court is satisfied that the evidence could not reasonably have been discovered within that period.

Compare: 2015 No 70 s 149; 2021 No 36 s 164

**Subpart 8—Defences for strict liability offences**

**436 Defences in prosecution for strict liability offence**

- (1) This section applies in a prosecution for an offence against a section of this Act listed in the following table:

| <b>Section</b> | <b>Description</b>   |
|----------------|--|
| <del>392</del> | <del>Negligently engaging in conduct relating to water supply network that causes specified serious risk</del> |
| <b>394</b>     | <u>Negligently</u> disposing of materials or substances into wastewater network                                |
| <b>395</b>     | Connecting to, disconnecting from, or discharging into wastewater network without authorisation                |
| <del>397</del> | <del>Negligently engaging in conduct relating to wastewater network that causes specified serious risk</del>   |
| <b>398</b>     | Discharging trade waste without trade waste permit   |
| <b>399</b>     | Breach of trade waste permit   |
| <del>403</del> | <del>Negligently engaging in conduct relating to stormwater network that causes specified serious risk</del>   |
| <b>404</b>     | Discharging into water supply network without authorisation  |
| <b>408</b>     | Breach of controlled drinking water catchment management plan  |
| <b>409</b>     | <del>Breach of requirement, condition, authorisation, or prohibition in stormwater network rule</del>          |
| <b>440</b>     | <del>Failure to comply with rule relating to equipment or device</del>   |

|   |   |    |
|---|---|----|
| <b>411</b>  | <del>Failure to notify water services entity of notifiable risk or hazard</del>   |    |
| <b>412</b>  | Failure to comply with direction issued by compliance officer   |    |
| <b>413</b>  | Failure to comply with compliance order or court order  |    |
| <b>414</b>  | <del>Failure to comply with water use restriction or limit</del>  |    |
| <b>415</b>  | <del>Wasting drinking water</del>   |    |
| <b>416</b>  | Tampering with water meter  |    |
| (2)   | The defendant has a defence if the defendant proves that—   |    |
| (a)   | the commission of the offence was due to—   |    |
| (i)   | the act or omission of another person; or   |    |
| (ii)  | an accident; or   |    |
| (iii)   | some other cause outside the defendant’s control; and   | 5  |
| (b)   | the defendant took all reasonable precautions and exercised due diligence to avoid the commission of the offence or offences of the same kind.  |    |
| (3)   | The defendant has a defence if the defendant proves that—   |    |
| (a)   | <del>the action or event to which the prosecution relates was necessary for the purposes of saving or protecting life or health, or preventing serious damage to property or avoiding an actual or likely adverse effect on the environment</del> preventing, avoiding, or mitigating a specified serious risk; and | 10 |
| (b)   | the conduct of the defendant was reasonable in the circumstances; and   | 15 |
| (c)   | the defendant took steps that were reasonable in all the circumstances to mitigate or remedy the effects of the action or event after it occurred.  |    |
| (4)   | For the purposes of this section, the court may take into account all relevant matters, including—  |    |
| (a)   | the likelihood of the hazard or risk concerned, including a specified serious risk, occurring; and  | 20 |
| (b)   | the degree of harm that might result from the hazard or risk; and   |    |
| (c)   | what the person concerned knows, or ought reasonably to know, about—  |    |
| (i)   | the hazard or risk; and   |    |
| (ii)  | ways of eliminating or minimising the risk; and   | 25 |
| (d)   | the availability and suitability of ways to eliminate or minimise the risk.   |    |
| Compare: 1996 No 30 s 117(2)(a); 2014 No 32 s 251; 2021 No 36 s 165 |   |    |

## Subpart 9—Liability of certain persons

**437 Liability of body corporate or unincorporated body**

- (1) This section applies when—
- (a) a body corporate or an unincorporated body is charged with an offence against this Act; and 5
  - (b) for the purpose of the prosecution, it is necessary to establish the body corporate’s or unincorporated body’s state of mind.
- (2) It is sufficient to show that an officer, employee, or agent of the body corporate or unincorporated body, acting within the scope of their actual or apparent authority, had the state of mind. 10
- Compare: 2014 No 32 s 245; 2021 No 36 s 166

**438 Liability of body corporate, unincorporated body, principal, or individual**

- (1) This section applies when—
- (a) a body corporate or an unincorporated body is charged with an offence against this Act for an action or omission of an officer, employee, or agent: 15
  - (b) a principal is charged with an offence against this Act for an action or omission of an agent:
  - (c) an individual is charged with an offence against this Act for an action or omission of an employee or agent. 20
- (2) The action or omission is treated as also the action or omission of the body corporate, unincorporated body, principal, or individual. 25
- Compare: 2014 No 32 s 246; 2021 No 36 s 167

**439 Defence in prosecution of body corporate, principal, or individual**

- (1) This section applies when a defendant’s liability to prosecution arises under **section 438**. 25
- (2) The defendant has a defence if the defendant proves that the defendant took all reasonable steps to prevent the commission of—
- (a) the particular offence; or
  - (b) all offences of the class committed. 30
- (3) However, the defence set out in **subsection (2)** is available to a defendant only to the extent that it can be proved in relation to the action or omission of the relevant other person referred to in **section 438**, unless the court is satisfied that it would be repugnant to justice for that defence to be so limited, having regard to— 35
- (a) any likely or possible benefit accruing to, or detriment suffered by, the person or body corporate from the action or omission in respect of which

the proceedings are brought if the alleged offence had remained undetected; and

- (b) the purpose or motive of the relevant other person; and
- (c) the relationship between the defendant and the relevant other person, or between the defendant and any person appearing or likely to benefit from the alleged offence; and 5
- (d) if the defendant is a body corporate, whether any person responsible for, or closely associated with, the management of the body corporate appears to have benefited from the action or omission, or would have been likely to benefit if the alleged offence had remained undetected; and 10
- (e) whether the defendant had taken all reasonable steps and exercised due diligence to control the activities of the relevant other person to ensure that the action or omission did not occur. 15

Compare: 2004 No 32 s 254

### Subpart 10—Sentencing for offences

#### 440 Application of this subpart

This **subpart** applies if a court convicts a person (an **offender**) or finds an offender guilty of an offence under this Act or regulations made under this Act.

Compare: 2015 No 70 s 150; 2021 No 36 s 193

#### 441 Sentencing criteria

- (1) This section applies when a court is determining how to sentence or otherwise deal with an offender convicted of an offence against this Act.
- (2) The court must apply the Sentencing Act 2002 and must have particular regard to— 25
  - (a) sections 7 to 10 of that Act; and
  - (b) the risk of, and the potential for, illness, injury, or death that could have occurred; and
  - (c) whether death, serious injury, or serious illness occurred or could reasonably have been expected to have occurred; and 30
  - (d) the risk of, and potential for damage to, the natural or a built environment that could have occurred; and
  - (e) whether the damage to the natural or a built environment occurred or could reasonably have been expected to have occurred; and
  - (f) the compliance record of the person (including, without limitation, any 35
    - warning, direction, infringement notice, or compliance order issued to

the person) to the extent that it shows whether any aggravating factor is present.

Compare: 2015 No 70 s 151; 2021 No 36 s 194

#### **442 Order for payment of costs in bringing prosecution**

- (1) On the application of the ~~chief executive of a water services entity~~ Director of Compliance and Enforcement, the court may order the offender to pay to the chief executive a sum that it thinks just and reasonable towards the costs of the prosecution (including the costs of investigating the offending and any associated costs). 5
- (2) If the court makes an order under **subsection (1)**, it must not make an order under section 4 of the Costs in Criminal Cases Act 1967. 10
- (3) If the court makes an order under **subsection (1)** in respect of a Crown organisation, any costs and fees awarded must be paid from the funds of that organisation. 15

Compare: 2015 No 70 s 152; 2021 No 36 s 195

#### **443 Injunctions**

If a court finds a person guilty of an offence against this Act, the court may issue an injunction requiring the offender to cease any particular conduct or action that constitutes a contravention of this Act or regulations made under this Act. 20

Compare: 2015 No 70 s 157; 2021 No 36 s 197

#### **444 Supervision and training orders**

- (1) The court may make an order requiring an offender to work under supervision for a period that the court specifies in the order.
- (2) The court may make an order requiring an offender to undertake, or arrange for 1 or more employees to undertake, a specified course of training. 25

Compare: 2015 No 70 s 158; 2021 No 36 s 198

#### **445 Restriction or prohibition order**

- (1) The court may make—
- (a) a restriction order, which specifies the ways in which ~~the person an offender~~ is restricted in relation to the delivery of water services; or 30
- (b) a prohibition order, which prohibits ~~the person an offender~~ from taking any action in relation to the delivery of water services.
- (2) The following provisions apply if the ~~person~~ offender wants a restriction order or prohibition order to be cancelled: 35
- (a) ~~the person~~ offender may apply to the court to cancel the order:
- (b) the application must be served on the ~~chief executive of the water services entity~~ Director of Compliance and Enforcement:

- (c) an employee or agent of the water services entity may appear and be heard to help the court to determine whether to grant the application.
- (3) The court may—
- (a) cancel the order from the date stated in the order; or
  - (b) change the order from the date stated in the order; or
  - (c) change a prohibition order to a restriction order; or
  - (d) refuse the application, in which case the court may specify the earliest date on which the ~~person~~ offender may make a further application for cancellation.
- (4) The court must take into account—
- (a) the nature of the offence of which the ~~person~~ offender was convicted; and
  - (b) the steps taken (if any) to remedy the problem that resulted in the order; and
  - (c) the ~~person's~~ offender's conduct since the order was made; and
  - (d) the ~~person's~~ offender's character; and
  - (e) any other circumstances of the case.
- (5) If the court changes the order or refuses the application, the ~~person~~ offender may again apply for cancellation—
- (a) once the date that the court specified under **subsection (3)(d)** has passed; or
  - (b) once there has been a material change in the ~~person's~~ offender's circumstances.

Compare: 2014 No 32 s 273; 2021 No 36 s 199

## Subpart 11—Review and appeals

### *Internal review*

#### **446 Application for internal review**

- (1) This section applies in relation to the following directions or decisions:
- (a) any directions issued by a compliance officer appointed by a water services entity;
  - (b) a decision relating to a permit for a controlled catchment area, including any conditions or requirements of the permit;
  - (c) a decision relating to a trade waste permit, including any conditions or requirements of the permit;:
  - (d) a decision relating to the application of a water infrastructure contributions policy:

- (e) a decision to restrict water supply to land or a building.
- (2) A person affected by a direction or decision to which this section applies (a **reviewable decision**) or their representative may apply to the water services entity responsible for the direction or decision for an internal review of the directions or decision within— 5
- (a) 20 working days after the day on which the directions or decision first came to the affected person’s notice; or
- (b) any longer period that the water services entity allows.
- (3) The application must be made in the manner and form required by the water services entity. 10
- Compare: 2015 No 70 s 131; 2021 No 36 s 89
- 447 Decision of water services entity**
- (1) A water services entity must, on application under **section 446(2)**, review the reviewable decision and make a decision—
- (a) as soon as practicable; and 15
- (b) in any case, within 20 working days after the application for internal review is received.
- (2) However, the individual who made the reviewable decision must not review the decision.
- (3) The water services entity’s decision may— 20
- (a) confirm or vary the reviewable decision; or
- (b) set aside the reviewable decision; or
- (c) set aside the reviewable decision and substitute another decision that the water services entity considers appropriate.
- (4) The water services entity may seek further information from the applicant, and, if it does,— 25
- (a) the applicant must provide the information within the period (not less than 7 working days) specified by the water services entity in the request for information; and
- (b) the period specified in **subsection (1)(b)** ceases to run until the applicant provides the information to the water services entity. 30
- (5) If the applicant does not provide the further information within the required time, the water services entity may make a decision on the internal review on the basis of the information it holds.
- (6) If the reviewable decision is not varied or set aside within the period specified in **subsection (1)(b)**, the decision is to be treated as having been confirmed by the water services entity. 35
- Compare: 2015 No 70 s 132; 2021 No 36 s 90

**448 Notice of decision on internal review**

As soon as practicable after making a decision in accordance with **section 447**, the water services entity must give the applicant in writing—

- (a) the decision on the internal review; and
- (b) the reasons for the decision.

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Compare: 2015 No 70 s 133; 2021 No 36 s 91

**449 Stay of reviewable decision on internal review**

(1) If an application is made for an internal review of a decision, a water services entity may stay the operation of the decision.

(2) The water services entity may stay the operation of a decision—

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- (a) on its own initiative; or
- (b) on the application of the applicant for review.

(3) A water services entity must make a decision on an application for a stay within 3 working days after the date on which it receives the application.

(4) If the water services entity has not made a decision on an application under **subsection (2)(b)** within the time specified in **subsection (3)**, the water services entity is to be treated as having made a decision to grant a stay.

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(5) A stay of the operation of a decision pending a decision on an internal review continues until the reviewer has made a decision on the review.

Compare: 2015 No 70 s 134; 2021 No 36 s 92

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*Appeals***450 Appeal**

(1) A person may appeal to the District Court against any of the following on the grounds that it is unreasonable:

(a) the water services entity's decision under **section 447** on an internal review:

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(b) the whole or any part of a compliance order issued under **section 380**.

(2) The appeal must be lodged within 20 working days after the day on which the decision first came to the person's notice or the compliance order was served on the person.

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(3) On an appeal under **subsection (1)**, the court must inquire into the decision or compliance order and may—

(a) confirm or vary the decision or compliance order; or

(b) in the case of a decision,—

(i) set aside the decision; or

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(ii) set aside the decision and substitute another decision that the court considers appropriate; or

|   |  |
|---|--|
| <p>(c) in the case of a compliance order,—</p> <p style="padding-left: 2em;">(i) cancel the compliance order; or</p> <p style="padding-left: 2em;">(ii) cancel the compliance order and substitute another compliance order that the court considers appropriate; or</p> <p>(d) refer the decision or compliance order back to the decision maker with the court’s opinion, together with any directions as to how the matter should be dealt with.</p> <p><b>(4) <u>An internal review of a decision to restrict water supply to land or a building may not be appealed to the District Court.</u></b></p> <p>Compare: 2015 No 70 s 135; 2021 No 36 s 93</p> <p><b>451 Interim order by District Court</b></p> <p>(1) At any time before the final determination of an appeal, the District Court may make an interim order.</p> <p>(2) An interim order may be subject to any conditions that the District Court thinks fit.</p> <p>(3) If the District Court makes an interim order, the Registrar of that court must send a copy of the order to the water services entity that made the reviewable decision or issued the compliance order.</p> <p>Compare: 2013 No 148 s 23; 2021 No 36 s 94</p> <p><b>452 Appeal to High Court</b></p> <p>(1) A person may appeal to the High Court on a question of law only against a decision by the District Court that determines an appeal under <b>section 450(3)</b>.</p> <p>(2) An appeal must be made by giving notice of appeal not later than 20 working days after the date on which notice of the decision was communicated to the appellant, or any further time that the High Court may allow.</p> <p>(3) However, nothing in this section affects the right of any person to apply for judicial review.</p> <p>Compare: 2013 No 148 s 22; 2021 No 36 s 95</p> <p><b>453 Appeals to Court of Appeal or Supreme Court</b></p> <p>(1) A party to an appeal under <b>section 452</b> may appeal to the Court of Appeal or the Supreme Court against any determination of the High Court on a question of law arising in that appeal, with the leave of the court appealed to.</p> <p>(2) The Court of Appeal or the Supreme Court hearing an appeal under this section has the same power to adjudicate on the appeal as the High Court had.</p> <p>(3) <b>Subsection (1)</b> is subject to section 75 of the Senior Courts Act 2016 (which provides that the Supreme Court must not give leave to appeal directly to it against a decision made in a court other than the Court of Appeal unless it is</p> | <p>5</p> <p>10</p> <p>15</p> <p>20</p> <p>25</p> <p>30</p> <p>35</p> |
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satisfied that there are exceptional circumstances that justify taking the proposed appeal directly to the Supreme Court).

Compare: 2021 No 36 s 96

#### **454 Effect of appeal against compliance order**

An appeal under **sections 450 to 453** against a compliance order has the following effects: 5

- (a) ~~the chief executive of the water services entity or~~ the Director of Compliance and Enforcement whose compliance order is appealed against must not revoke or amend the order while the order is the subject of an appeal or while the time for the person's appeal rights is running; and 10
- (b) an appeal against a compliance order does not operate as a stay of that order unless the court orders otherwise.

Compare: 1999 No 142 s 156H; 2021 No 36 s 97

### **Part 13**

#### **Miscellaneous provisions** 15

##### **Subpart 1—Reviews**

#### **455 Interim review of governance and accountability arrangements under Act**

- (1) The Minister must, in the relevant period, commission a review of the need for, and the operation and effectiveness of, the governance and accountability arrangements under this Act. 20
- (2) The **relevant period** starts on the fifth anniversary, and ends on the sixth anniversary, of the establishment date (as defined in clause 1 of Schedule 1).
- (3) The interim review required by this section must include consideration of the following matters:
  - (a) governance structures, and related roles and responsibilities, under this Act: 25
  - (b) the interaction of each water services entity's regional representative group with the following:
    - (i) the water services entity's board: 30
    - (ii) territorial authority owners: 30
    - (iii) mana whenua in the water services entity's service area: 30
    - (iv) consumers and communities in the water services entity's service area: 30
  - (c) the interaction of each water services entity with the following:
    - (i) territorial authority owners: 35
    - (ii) mana whenua in the water services entity's service area: 35

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| (iii)      | consumers and communities in the <u>water services</u> entity's service area:  |    |
| (iv)       | the <u>water services</u> entity's consumer forums:  |    |
| (d)        | each water services entity's—  |    |
| (i)        | relationships with financiers; and   | 5  |
| (ii)       | financing arrangements:  |    |
| (e)        | accountability, strategic direction, or planning or reporting mechanisms, including each—  |    |
| (i)        | Government policy statement:   |    |
| (ii)       | regional representative group's statement of strategic and performance expectations:   | 10 |
| (iii)      | Te Mana o te Wai statement for water services:   |    |
| (iv)       | statement of intent:   |    |
| (v)        | other planning or reporting document under this Act:   |    |
| (f)        | each water services entity's constitution, including amendments to it, or its replacement:   | 15 |
| (g)        | any other relevant matters identified by the Minister.   |    |
| (4)        | Before commissioning the review required by this section, the Minister must consult any other Ministers of the Crown (for example, any whose portfolio responsibilities are affected by or relevant to the review) that the Minister thinks fit. | 20 |
| <b>456</b> | <b>Comprehensive review of water services legislation</b>  |    |
| (1)        | The Minister must, in the relevant period, commission a review of the need for, and operation and effectiveness of, water services legislation.  |    |
| (2)        | The <b>relevant period</b> starts on the ninth anniversary, and ends on the tenth anniversary, of the establishment date (as defined in clause 1 of Schedule 1).   | 25 |
| (3)        | The comprehensive review required by this section must include consideration of the following:   |    |
| (a)        | this Act and any legislation made under it, plus each water services entity's constitution:  | 30 |
| (b)        | the Taumata Arowai—the Water Services Regulator Act 2020 and any legislation made under that Act:  |    |
| (c)        | the Water Services Act 2021 and any legislation made under that Act:   |    |
| (d)        | any legislation relating to the economic regulation of, or to consumer protection in respect of, water services:   | 35 |
| (e)        | the interaction of relevant regulators and relevant regulatory systems:  |    |
| (f)        | oversight, monitoring, and stewardship arrangements:   |    |

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| (g)        | any other relevant matters identified by the Minister.   |    |
| (4)        | Before commissioning the review required by this section, the Minister must consult any other Ministers of the Crown (for example, any whose portfolio responsibilities are affected by or relevant to the review) that the Minister thinks fit. | 5  |
| <b>457</b> | <b>Reviewer</b>  |    |
|            | A review required by this subpart must be done by the following reviewer:  |    |
| (a)        | the monitor, if the monitor is asked by the Minister to do the review:   |    |
| (b)        | in any other case, a review panel commissioned by or on behalf of the Minister.  | 10 |
| <b>458</b> | <b>Reviewer’s power to request information</b>   |    |
| (1)        | The reviewer may, by notice in writing, require a water services entity or other relevant person ( <u>other than an officer of Parliament</u> ); to provide the reviewer with information the reviewer thinks necessary to do the review.        |    |
| (2)        | The <u>water services</u> entity or other relevant person must provide the requested information by the reasonable date that the reviewer has specified for that purpose in the notice.  | 15 |
| (3)        | Sections 176 to 178 apply, with all necessary modifications, to a request under this section.  |    |
| <b>459</b> | <b>Report</b>  | 20 |
| (1)        | The reviewer must prepare a report on a review required by this subpart.   |    |
| (2)        | The report must include at least the following:  |    |
| (a)        | any terms of reference, consistent with <b>section 457 or 458</b> :  |    |
| (b)        | the process that was followed:   |    |
| (c)        | the issues that were examined:   | 25 |
| (d)        | the key findings:  |    |
| (e)        | any recommendations arising out of the review, including—  |    |
| (i)        | whether any amendments to any of the legislation reviewed are necessary or desirable:  |    |
| (ii)       | any other matters that the reviewer recommends be considered by the Minister.  | 30 |
| (3)        | The reviewer must ensure that the people and organisations that the reviewer thinks appropriate are consulted, during the preparation of the report, about the matters to be considered in the report.   |    |
| (4)        | The reviewer must, after completing the report, promptly present the report to the Minister.   | 35 |

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| (5)        | The Minister must, after receiving the report, promptly present a copy to the House of Representatives.  |    |
| <b>460</b> | <b>Repeal of this subpart</b>  |    |
|            | This <b>subpart</b> is repealed on the 15th anniversary of the establishment date (as defined in clause 1 of Schedule 1).                          | 5  |
|            | Subpart 2—Engagement, publication, and review requirements   |    |
| <b>461</b> | <b>Engagement requirements</b>   |    |
| (1)        | This section applies to engagement that a water services entity or the Minister must undertake in accordance with any of the following provisions: |    |
| (a)        | section 120(2) (relating to joint arrangements, or joint water services entity arrangements, for the purpose of providing water services):         | 10 |
| (b)        | section 134(b) (relating to preparation or review of a Government policy statement):   |    |
| (c)        | section 145(1)(b) (relating to preparation of a response to a Te Mana o te Wai statement for water services):                                      | 15 |
| (ca)       | <u>section 153 (relating to asset management plans):</u>   |    |
| (cb)       | <u>section 156 (relating to funding and pricing plans):</u>  |    |
| (cc)       | <u>section 159 (relating to infrastructure strategies):</u>  |    |
| (d)        | <del>section 232</del> <b>section 232A</b> (relating to controlled drinking water catchment management plans):                                     | 20 |
| (da)       | <u>section 247 (relating to water services assessments):</u>   |    |
| (e)        | <del>section 257 (relating to stormwater management plans):</del>  |    |
| (f)        | <del>section 262 (relating to stormwater network rules):</del>   |    |
| (g)        | <b>section 271</b> (relating to trade waste plans):  |    |
| (h)        | <del>section 277</del> <b>section 277</b> (relating to water restrictions and consumer behaviour supply and wastewater services rules):            | 25 |
| (i)        | <del>section 281</del> (relating to service agreements):   |    |
| (j)        | <del>section 286</del> <b>section 286</b> (relating to specified classes of work):   |    |
| (k)        | <del>section 295</del> <b>section 295</b> (relating to water infrastructure connection and disconnection requirements):                            | 30 |
| (l)        | <del>section 347 (relating to water infrastructure contribution charges):</del>  |    |
| (m)        | <b>section 355</b> (relating to compliance and enforcement strategy):  |    |
| (n)        | <del>section 473</del> <b>section 473A</b> (relating to reporting and record-keeping rules):   |    |
| (o)        | <b>section 474(1)(a) and (2)</b> (relating to regulations providing for a model constitution):   | 35 |

- (p) clauses 1, 7, 14, and 19 of Schedule 3 (relating to statements of intent, asset management plans, funding and pricing plans, and infrastructure strategies).
- (2) **Engagement** requires that a water services entity or the Minister do either or both of the following before deciding on a matter: 5
- (a) consult on a proposal:
- (b) seek input, on an iterative basis, during the formulation of a proposal, or feedback on a proposal.
- (3) Input or feedback may be sought via hui or meetings, social media, or any other forum that the water services entity or the Minister thinks appropriate. 10
- (4) In undertaking an approach to engagement on a matter, a water services entity or the Minister—
- (a) must consider the purpose of the engagement; and
- (b) must consider the needs of the particular person or persons with whom the water services entity is engaging; and 15
- (c) must allow adequate time for engagement to occur and for a response or responses from the particular person or persons with whom the water services entity or the Minister is engaging; and
- (d) may consider the relevance and sufficiency of any earlier engagement.
- (5) In addition, the water services entity and the Minister must ensure that engagement has been carried out before secondary legislation referred to in **subsection (1)(d) to (n)** is made. 20
- (6) For the purposes of **subsection (5)**, the engagement must include—
- (a) giving adequate and appropriate notice of the content of the proposed instrument; and 25
- (b) providing a reasonable opportunity for interested persons to make submissions on the proposed instrument; and
- (c) appropriate consideration of any submissions received.
- (7) Despite **subsection (6)**, the water services entity and the Minister need not conduct engagement if satisfied that— 30
- (a) the instrument needs to be made urgently; or
- (b) an amendment to the instrument is minor and will not adversely and substantially affect the interests of any person.
- Compare: 2020 No 42 s 22
- 462 Principles of engagement with consumers** 35
- (1) This section applies when a water services entity is performing its functions under any of the following:

- (a) sections 151 to 159 (relating to planning: asset management plan, funding and pricing plan, and infrastructure strategy):
- (b) **section 232** (relating to controlled drinking water catchment management plans):
- (ba) **section 247** (relating to water services assessments): 5
- (e) ~~**section 257**~~ (relating to stormwater management plans):
- (d) ~~**section 262**~~ (relating to stormwater network rules):
- (e) **section 271** (relating to trade waste plans):
- (f) **section 277** (relating to water usage restrictions rules and consumer behaviour rules): 10
- (g) **sections 281 and 282** (relating to consultation and publication requirements for service agreements):
- (h) **section 286** (relating to rules that regulate specified classes of work):
- (i) **section 295** (relating to water services infrastructure connection requirements): 15
- (j) ~~**section 347**~~ (relating to consultation requirements for proposed water infrastructure contribution charges: policies):
- (k) **section 464** (relating to consumer engagement stocktake):
- (l) **section 473** (relating to reporting and record-keeping rules).
- (2) The water services entity must be guided and informed by the following principles: 20
- (a) the water services entity's communication to consumers and communities should be clear and appropriate and recognise the different communication needs of consumers and communities:
- (b) the water services entity should be openly available for consumer and community feedback and seek a diversity of consumer voices: 25
- (c) the water services entity should clearly identify and explain the role of consumers and communities in the engagement process:
- (d) the water services entity should consider the changing needs of consumers and communities over time; and ensure that engagement will be effective in the future: 30
- (e) the water services entity should prioritise the importance of consumer and community issues to ensure that the water services entity is engaging with issues that are important to its consumers and communities.
- Consumer engagement* 35
- 463 Consumer forum**
- (1) The chief executive of a water services entity must establish a consumer forum.

- (2) The purposes of a consumer forum are to—
- (a) assist with effective and meaningful consumer and community engagement; and
  - (b) gather and compile consumer views; and
  - (c) assist the water services entity to understand consumer needs, ~~expectations~~, expectations, and service requirements; and
  - (d) reflect and represent the interests and diversity of consumers throughout the water services entity's region.
- (3) A consumer forum may be established under this section—
- (a) for the whole or part of a service area; and
  - (b) in relation to all, or a particular class of, consumers.
- (4) The chief executive of the water services entity must provide a guidance document to each consumer forum established under this section that provides for the composition and procedures of the forum, including—
- (a) the intervals between meetings; and
  - (b) the number of members that may be on the forum; and
  - (c) the method of selecting forum members; and
  - (d) any purposes additional to those set out in **subsection (2)**; and
  - (e) the roles and responsibilities of forum members; and
  - (f) the term of membership of the forum; and
  - (g) any other matters not inconsistent with the purposes of a consumer forum under this section.
- (5) The chief executive must ensure that each consumer forum established has a guidance document.
- 464 Consumer engagement stocktake**
- (1) The chief executive of a water services entity must prepare a consumer engagement stocktake annually, and no later than 3 months before the end of a financial year, in respect of consumers and communities in the service area of the water services entity.
- (2) The purpose of a consumer engagement stocktake is to—
- (a) ~~receive~~ capture consumer and community feedback on, and satisfaction with, how the water services entity is performing; and
  - (b) set out how the water services entity is to respond to consumer and community needs and address consumer and community concerns.
- (3) A consumer engagement stocktake must cover,—
- (a) for the first consumer engagement stocktake, the period from the establishment date (as defined in clause 1 of Schedule 1); and

- (b) for later consumer engagement stocktakes, the period since the last consumer engagement stocktake.
- (4) A consumer engagement stocktake must contain a report from the Auditor-General on—
- (a) whether the stocktake gives effect to its purpose stated in **subsection (2)**; and
- (b) whether the water services entity, in preparing the stocktake, has given effect to the principles of engagement in **section 462**.
- (5) The chief executive must, by the end of a financial year, make the consumer engagement stocktake publicly available as soon as practicable after it is issued by publishing a copy on an Internet site maintained by, or on behalf of, the water services entity in a format that is readily accessible.

*Publication requirements*

**465 Publication requirements**

- (1) ~~The chief executive of a water services entity must, as soon as practicable after finalising a specified document,—~~
- (a) ~~give public notice of the specified document; and~~
- (b) ~~prepare and publish a report on how—~~
- (i) ~~input into, and feedback on, the specified document was considered and incorporated into the specified document;~~
- (ii) ~~each specified document gives effect to—~~
- (A) ~~the principles of te Tiriti o Waitangi/the Treaty of Waitangi; and~~
- (B) ~~Te Mana o te Wai (to the extent that Te Mana o te Wai applies to the relevant duties, functions, and powers);~~
- (c) ~~make the specified document and the report available by publishing them on an Internet site maintained by, or on behalf of, the entity in a format that is readily accessible.~~
- (2) ~~In this section, **specified document** means any rule, requirement, restriction, plan, strategy, or other instrument specified in this Act to be published in accordance with this section.~~

*Report on engagement*

**465 Report on engagement**

- (1) This section applies when a water services entity or the Minister is undertaking engagement in accordance with a provision referred to in **section 461(1)**.

- (2) The water services entity or the Minister must, as soon as practicable after finalising any relevant statement, response, plan, strategy, or secondary legislation (**specified document**),—
- (a) prepare a report on how input into, and feedback on, the specified document was considered and incorporated into the specified document; and 5
- (b) publish the report on an Internet site maintained by, or on behalf of, the water services entity in a format that is readily accessible.

*Review requirements*

**466 Review requirements**

- (1) The board of a water services entity must review a specified document within 5 years from the date on which the specified document is finalised and at least once every 5 years after a previous review. 10
- (2) The board may amend or replace a specified document at any time.

**Subpart 3—Relationship agreements**

**467 Requirement to enter into relationship agreement** 15

- (1) A water services entity and each of the following must enter into a relationship agreement under this section:
- (a) a territorial authority owner;
- (b) a regional council whose boundary is inside, or overlaps with, the water services entity's service area; 20
- (c) a transport corridor manager whose jurisdiction overlaps with the water services entity's service area.
- (2) ~~The relationship agreement may be entered into by a water services entity with—~~
- (a) ~~any 1 of the parties listed in **subsection (1)**; or~~ 25
- (b) ~~any 2 or more of the parties listed in **subsection (1)**.~~
- (3) ~~A relationship agreement under this section remains in force until the agreement is replaced by another agreement.~~
- (4) ~~A relationship agreement must be reviewed—~~
- (a) ~~within 5 years of the date on which the agreement is made; and~~ 30
- (b) ~~at intervals of not more than 5 years after the first review.~~
- (5) ~~Nothing in this section precludes a water services entity from entering a relationship agreement with any other party relating to the provision of water services, and nothing in this subpart applies to any such agreement.~~

**468 Contents of relationship agreement** 35

- (1) A relationship agreement under **section 467** must —

- (a) ~~be in writing; and~~
- (b) ~~identify the parties to the agreement; and~~
- (c) ~~set out—~~
- (i) ~~the general principles governing the relationship between the parties; and~~ 5
- (ii) ~~how the parties are to deal with disputes; and~~
- (iii) ~~how the parties are to work to develop, operate, maintain, and enforce their respective roles in operating stormwater, land drainage, or related services and report on compliance; and~~
- (iv) ~~how the parties are to engage with each other and work together in relation to strategic planning and forward planning in respect of the provision of water services; and~~ 10
- (v) ~~how the parties are to work with each other in relation to the performance or exercise of their functions, duties, or powers under the Civil Defence Emergency Management Act 2002; and~~ 15
- (d) ~~set out any information-sharing arrangements agreed between the parties; and~~
- (e) ~~set out the service-level agreements agreed by the parties in relation to their respective roles in operating stormwater, land drainage, or related systems, including (without limitation) by identifying—~~ 20
- (i) ~~mixed-use water services assets; and~~
- (ii) ~~the respective responsibilities for the management, operation, and maintenance of the systems, including responsibilities for compliance with regulatory obligations (for example, consent conditions); and~~ 25
- (iii) ~~how the parties intend to allocate those responsibilities between them; and~~
- (iv) ~~how activities relating to the system will be funded; and~~
- (f) ~~set out any arrangements with hapū or iwi relating to the provision of water services for which the parties have obligations; and~~ 30
- (g) ~~set out the process for engaging in the water services entity's assessment of water services in the district or service area (whichever is applicable); and~~
- (h) ~~in respect of a territorial authority owner, set out how the territorial authority owner is to work with the water services entity when the territorial authority owner is performing or exercising its functions, duties, or powers under the Building Act 2004; and~~ 35
- (i) ~~in respect of a territorial authority owner or a regional council, set out how the territorial authority owner or the regional council is to work~~

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|            | with the water services entity in relation to planning processes, including (without limitation) in relation to —   |    |
|            | (i) the preparation by the territorial authority of standards, policy statements, or plans required by Part 5 of the Resource Management Act 1991:  | 5  |
|            | (ii) resource consents issued under Part 6 of the Resource Management Act 1991:   |    |
|            | (iii) when the territorial authority owner is performing or exercising its functions, duties, or powers under Part 10 of the Resource Management Act 1991.  | 10 |
| (2)        | The relationship agreement may provide for any other matters that the parties consider appropriate.   |    |
| (3)        | <b>Subsection (4)</b> applies if a territorial authority that is a party to a relationship agreement is also a transport corridor manager.  |    |
| (4)        | The water services entity may enter into a single relationship agreement with the territorial authority that relates to the role of the territorial authority in each capacity.                               | 15 |
| (5)        | A relationship agreement must not limit any compliance or enforcement powers or obligations that the parties to the agreement have in relation to each other and has no effect to the extent that it does so. | 20 |
| <b>469</b> | <b>Further provisions relating to relationship agreements</b>   |    |
| (1)        | Each party to a relationship agreement must act in good faith in giving effect to the agreement.  |    |
| (2)        | A relationship agreement is not enforceable in any civil proceedings and there is no right of appeal against, or review of, the relationship agreement.   | 25 |
|            | <b>Subpart 4—Financial arrangements</b>   |    |
| <b>469</b> | <b><u>Charges as security</u></b>   |    |
| (1)        | <u>This section applies if—</u>   |    |
|            | (a) <u>a water services entity has granted a security interest over a charge or charging revenue as security for any loan or the performance of any obligations under an incidental arrangement; and</u>      | 30 |
|            | (b) <u>a receiver has been appointed under section 40A or 40B of the Receiverships Act 1993 in respect of that loan or arrangement; and</u>   |    |
|            | (c) <u>the monitor has been informed of the appointment.</u>  |    |
| (2)        | <u>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—</u>                              | 35 |

- (a) the payment of the water services entity'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. 5
- (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 the service area; or
- (b) if the water services entity 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. 10
- (5) A charge under this section over any 1 or more of the assets of a water services entity is subject to section 40D(5) and (6) of the Receiverships Act 1993. 15  
 Compare: 2002 No 84 ss 114, 115
- 470 Crown may lend money to water services entity**
- (1) The Minister, on behalf of the Crown, may lend money to a water services entity if—
- (a) the Minister considers that—
- (i) it is necessary or expedient in the public interest to do so; and 20
- (ii) it is necessary to meet an exceptional and temporary liquidity shortfall affecting the water services entity; and
- (b) the money is lent on commercial terms.
- (2) The Minister may lend money under **subsection (1)** without further appropriation than this section. 25
- (3) In this section, **Minister** has the meaning given by section 2(1) of the Public Finance Act 1989.  
 Compare: 2011 No 77 s 15
- Subpart 5—Information provisions**
- 471 Requirement to provide information to territorial authority for purposes of land information memorandum** 30
- (1) This section applies for the purposes of enabling a territorial authority to issue a land information memorandum under section 44A of the Local Government Official Information and Meetings Act 1987 in relation to any land in the district of the authority. 35
- (2) A water services entity must, as soon as is reasonably practicable, provide a territorial authority with all information the water services entity holds relating

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|            | to the matters set out in section 44A(2)(b) and (2)(bb)(i) of that Act in relation to the land.  |          |
| (3)        | A water services entity must notify the territorial authority of any change in the information provided under this section as soon as practicable after it changes.  |          |
| <b>472</b> | <b>Requirement to provide information to territorial authority for purposes of project information memorandum</b>  | <b>5</b> |
| (1)        | This section applies for the purposes of enabling a territorial authority to issue a project information memorandum under section 34 of the Building Act 2004.   |          |
| (2)        | A water services entity must provide a territorial authority with all information the <u>water services</u> entity holds relating to the matters set out in section 35(1)(c) of that Act.  | 10       |
| (3)        | A water services entity must notify the territorial authority of any change in the information provided under this section as soon as practicable after it changes.  |          |
| <b>473</b> | <b>Reporting and record-keeping rules</b>  |          |
| (1)        | The board of a water services entity may make reporting and record-keeping rules.  | 15       |
| (2)        | The rules may specify reporting and recording keeping obligations that must be met to verify a person's compliance with—   |          |
|            | (a) a direction issued under this Act by a compliance officer:   |          |
|            | (b) an order issued under this Act by the chief executive of a water services entity or a court:   | 20       |
|            | (c) a trade waste permit:  |          |
|            | (d) a controlled drinking water catchment management plan:   |          |
|            | (e) an authorisation that the water services entity has given under this Act:  |          |
|            | (f) this Act and regulations or rules made under this Act.   | 25       |
| (3)        | <del>The board of the water services entity must, when developing (or considering changes to) rules made under this section, engage with the territorial authorities, mana whenua, regional councils, consumers and communities and any other interested party in the service area of the water services entity in accordance with <b>section 461</b>.</del> | 30       |
| (4)        | The board of a water services entity must—   |          |
|            | (a) <del>publish the rules in accordance with <b>section 465</b>; and</del>  |          |
|            | (b) <del>review the rules in accordance with <b>section 466</b>.</del>   |          |
| (5)        | Rules made under this section are secondary legislation ( <i>see</i> Part 3 of the Legislation Act 2019 for publication requirements).   | 35       |

**473A Engagement on reporting and record-keeping rules**

- (1) The board of the water services entity must, when developing (or considering changes to) reporting and record-keeping rules, engage with interested persons.
- (2) In conducting the engagement, the board of a water services entity must—
- (a) comply with **section 461**; and 5
  - (b) be guided and informed by the principles set out in **section 462**.
- (3) The board of a water services entity must—
- (a) prepare and publish a report on how feedback was incorporated into the rules in accordance with **section 465**; and
  - (b) review the rules in accordance with **section 466**. 10

## Subpart 6—Regulations

**474 Regulations: general**

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations for all or any of the following purposes:
- Model constitution* 15
  - (a) providing for a model constitution for the purposes of section 96:
  - Disclosure requirements*
  - (b) providing for financial and non-financial disclosure requirements relating to the statement of intent, asset management plan, funding and pricing plan, and infrastructure strategy that are consistent with generally accepted accounting practice: 20
  - Agreements with mana whenua*
  - (c) ~~providing for the transfer from local authorities to water services entities of contracts, arrangements, and understandings between local authorities and mana whenua relating to water services:~~ 25
  - Waivers and refunds*
  - (d) providing a framework for the waiver or refund by the chief executive of a water services entity of any water service debt due under this Act, including (without limitation)—
    - (i) prescribing or determining any class or classes of persons eligible for a waiver or refund: 30
    - (ii) setting the criteria for granting a waiver or refund:  - Infringement offences*
  - (e) ~~declaring offences against this Act or regulations made under this Act to be infringement offences for the purposes of this Act:~~ 35

- (e) identifying the offences against this Act or obligations specified in or under secondary legislation made under this Act that are infringement offences for the purposes of this Act:
- (f) prescribing infringement notices, infringement reminder notices, and infringement forms of any other kind: 5
- (g) prescribing the amounts, up to a maximum of \$1,000 for an individual and \$3,000 for a body corporate or an unincorporated body, of infringement fees that are payable for infringement offences, including different fees for a first offence, a second offence, and subsequent offences:
- Updating Schedule 2* 10
- (h) changing the name of a water services entity by amending or replacing the references to that water services entity in Schedule 2:
- General*
- (i) providing for anything this Act says may or must be provided for by regulations: 15
- (j) providing for anything incidental that is necessary for carrying out, or giving full effect to, this Act.
- (2) The Minister must, before recommending the making of regulations under **subsection (1)(a)** in relation to a water services entity, engage in accordance with **section 461** in relation to the regulations with the territorial authority owners of the water services entity and mana whenua of the service area. 20
- (3) Regulations made under **subsection (1)(a)** in relation to a water services entity must, despite sections 27(2) and 93(a)(i), provide that the water services entity's regional representative group consists of a number of regional representatives that is— 25
- (a) at least 12; and
- (b) no more than 18.
- (4) However, **subsection (3)** does not limit sections 27(2) and 93(a)(i) when the water services entity's model constitution is amended or replaced under section 97. 30
- (5) Regulations made under **subsection (1)(b)** may include requirements relating to—
- (a) the type of information that must be provided; and
- (b) the frequency of the reporting.
- (5A) The Minister must, as soon as practicable after the end of each period of 5 years after the commencement of this section,— 35
- (a) commence a review of regulations made under **subsection (1)(d)**; and
- (b) consider whether amendments to the regulations are necessary or desirable.

|            |  |    |
|------------|--|----|
| (6)        | The Minister must, before recommending the making of regulations under <b>subsection (1)(c)</b> , engage with the local authority and mana whenua who would be affected by the transfer.   |    |
| (7)        | Regulations made under this section are secondary legislation ( <i>see</i> Part 3 of the Legislation Act 2019 for publication requirements).   | 5  |
| <b>475</b> | <b>Regulations: volumetric charging</b>  |    |
| (1)        | The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations for 1 or both of the following purposes:  |    |
| (a)        | prohibiting or limiting the use of a variable volumetric charge for residential consumers:   | 10 |
| (b)        | setting, on or after <b>1 July 2027</b> , the maximum proportion of total revenues for the provision of water supply or wastewater services to residential consumers that may be recovered by a water services entity through volumetric charging. |    |
| (2)        | The Minister must, before recommending the making of regulations under this section, be satisfied that appropriate consultation has taken place with—  | 15 |
| (a)        | the boards of the relevant water services entities:  |    |
| (b)        | relevant regional representative groups:   |    |
| (c)        | the Commission.  |    |
| (3)        | Regulations made under this section may apply to 1 or more water services entities.  | 20 |
| (4)        | Regulations made under this section are secondary legislation ( <i>see</i> Part 3 of the Legislation Act 2019 for publication requirements).   |    |
|            | <u>Subpart 7—Other matters</u>   |    |
| <b>476</b> | <b><u>Relationship with local Acts</u></b>   | 25 |
|            | <u>If there is any inconsistency between the provisions of this Act and the provisions of any local Act, this Act prevails.</u>  |    |

## 23 Schedule 1 amended

|      |  |    |
|------|--|----|
| (1)  | In Schedule 1, clause 3(b), replace “section 210(1)(a)” with “ <b>section 474(1)(a)</b> ”.   | 30 |
| (1)  | <u>In Schedule 1, clause 3(b), delete “(because only after that period will a model constitution for the purposes of section 96 be provided for by regulations made under section 210(1)(a))”.</u> |    |
| (1A) | <u>In Schedule 1, clause 5(3)(a) and (b), after “assets, liabilities, and other matters”, insert “(or categories of assets, liabilities, and other matters)”.</u>                                  | 35 |
| (1B) | <u>In Schedule 1, clause 5(4), replace “assets, liabilities, and other matters (whether specified in subclause (3)(a) and (b) or otherwise)” with “assets,</u>                                     |    |

- liabilities, and other matters (or categories of assets, liabilities, and other matters), whether specified in subclause (3)(a) and (b) or otherwise.”.
- (1C) In Schedule 1, after clause 5(7), insert:
- (8) However, the chief executive may redact any information from the allocation schedule that the chief executive considers is commercially sensitive. 5
- (2) In Schedule 1, replace clause 7(2) with:
- (2) The Minister’s additional role includes functions and powers to—
- (a) appoint and remove members of the board of each water services entity under this schedule; and
- (b) approve an allocation schedule for a water services entity prepared under this schedule. 10
- (3) In Schedule 1, clause 8(3), replace “section 206” with “**section 461**”.
- (4) In Schedule 1, clause 19(1), replace “section 210(1)(b)” with “**section 474(1)(b)**”.
- (4A) In Schedule 1, after clause 23(1), insert: 15
- (1A) However, the chief executive of the department may authorise 1 or more of the following to offer an employment position under subclause (1):
- (a) the chief executive of a subsidiary;
- (b) the chief executive of an entity (other than an entity described in subclause (1)). 20
- (4B) In Schedule 1, clause 36(1), replace “On or before the establishment date,” with “After the establishment date but by no later than the fifth anniversary of that date.”.
- (5) In Schedule 1,—
- (a) insert the Part set out in ~~Schedule 1~~ **Schedule 1** of this Act as the last Part; and 25
- (b) make all necessary consequential amendments.
- 24 Schedule 3 amended**
- (1) In Schedule 3, clause 1(3), replace “section 206” with “**section 461**”.
- (2) In Schedule 3, clause 7, replace “section 206” with “**section 461**”. 30
- (3) ~~In Schedule 3, clause 7, insert as subclause (2):~~
- (2) ~~The chief executive of a water services entity must publish the asset management plan in accordance with **section 465**.~~
- (4) In Schedule 3, clause 8(2)(a), replace “section 206” with “**section 461**”.
- (5) In Schedule 3, clause 13, replace “section 206” with “**section 461**”. 35
- (6) ~~In Schedule 3, clause 13, insert as subclause (2):~~

- (2) ~~The chief executive of a water services entity must publish the funding and pricing plan in accordance with **section 465**.~~
- (7) In Schedule 3, clause 14(2)(a), replace “section 206” with “**section 461**”.
- (8) In Schedule 3, clause 19, replace “section 206” with “**section 461**”.
- (9) ~~In Schedule 3, clause 19, insert as subclause (2):~~ 5
- (2) ~~The chief executive of a water services entity must publish the infrastructure strategy in accordance with **section 465**.~~
- (10) In Schedule 3, clause 20(2)(a), replace “section 206” with “**section 461**”.
- 25 Schedule 5 replaced**
- Replace Schedule 5 with the ~~Schedule~~ **Schedules 5 and 6** set out in **Schedule 2** of this Act. 10

## Part 2

### Amendments to and repeal of other legislation

- Subpart 1—Amendments to Civil Defence Emergency Management Act 2002 15
- 26 Principal Act**
- This subpart amends the Civil Defence Emergency Management Act 2002.
- 27 Section 94A amended (Minister may give notice of national transition period)**
- In section 94A(3)(c), replace “Group and any local authority” with “Group, local authority, and water services entity”. 20
- 28 Section 94B amended (Notice of local transition period)**
- In section 94B(6), replace “Group and any local authority” with “Group, local authority, and water services entity”.
- 29 Section 94D amended (Extension of transition periods)** 25
- In section 94D(4), replace “Group and any local authority” with “Group, local authority, and water services entity”.
- 30 Section 115A amended (Permanent legislative authority for payment of certain expenses)**
- In section 115A,— 30
- (a) after “reimburse a local authority”, insert “or water services entity”;
- (b) replace “by a local authority” with “by the local authority or the water services entity”.

## Subpart 2—Amendment to Climate Change Response Act 2002

**31 Principal Act**

This subpart amends the Climate Change Response Act 2002.

**32 Section 5ZW amended (Minister or Commission may request certain organisations to provide information on climate change adaptation) 5**

After section 5ZW(8)(c), insert:

(ca) water services entities established under section 11 of the Water Services Entities Act 2022:

(cb) a subsidiary (as defined in **section 6(1)** of the Water Services Entities Act 2022): 10

## Subpart 3—Amendments to Crown Organisations (Criminal Liability) Act 2002

**33 Principal Act**

This subpart amends the Crown Organisations (Criminal Liability) Act 2002.

**34 Section 4 amended (Interpretation) 15**

In section 4, definition of **government-related organisation**, after paragraph (j), insert:

(k) a water services entity (as defined in **section 6(1)** of the Water Services Entities Act 2022)

**35 Section 6 amended (Prosecutions against Crown organisations) 20**

After section 6(1)(e), insert:

(f) an offence against the Water Services Act 2021.

**36 Section 7 amended (Legal status of certain Crown organisations)**

In section 7(a), replace “or Part 3 of the Children’s Act 2014” with “Part 3 of the Children’s Act 2014, or the Water Services Act 2021”. 25

## Subpart 4—Amendment to Financial Markets Conduct Act 2013

**37 Principal Act**

This subpart amends the Financial Markets Conduct Act 2013.

**38 Schedule 1 amended**

In Schedule 1, after clause 40(c), insert: 30

(ca) a water services entity established under section 11 of the Water Services Entities Act 2022:

## Subpart 5—Amendment to Fire and Emergency New Zealand Act 2017

**39 Principal Act**

This subpart amends the Fire and Emergency New Zealand Act 2017.

**40 Section 73 amended (Duty to develop, consult on, recommend the approval of, and publish and notify code of practice for firefighting water supplies)** 5

Replace section 73(2) with:

- (2) FENZ must develop a code of practice in consultation with—
- (a) local advisory committees; and
  - (b) water services entities established under section 11 of the Water Services Entities Act 2022 or any other appropriate authorities or organisations. 10

## Subpart 6—Amendments to Goods and Services Tax Act 1985

**41 Principal Act**

This subpart amends the Goods and Services Tax Act 1985.

**42 Section 2 amended (Interpretation)**

In section 2(1), insert in its appropriate alphabetical order: 15  
**water services entity** means a water services entity as defined in **section 6(1)** of the Water Services Entities Act 2022

**42A Section 5 amended (Meaning of term supply)**

- (1) After section 5(7B)(b), insert:
- (c) a water infrastructure contribution under the Water Services Entities Act 2022. 20
- (2) After section 5(7C)(b), insert:
- (c) a water infrastructure contribution under the Water Services Entities Act 2022.

**43 Section 6 amended (Meaning of term taxable activity)** 25

In section 6(1)(b), replace “or any local authority or” with “, local authority, water services entity, or”.

**43A Section 9 amended (Time of supply)**

In section 9(8), after “local authority”, insert “or a water services entity”.

**43B Section 11B amended (Zero-rating of some supplies by territorial authorities, some supplies involving contributions to local authorities)** 30

- (1) In section 11B(1B),—
- (a) after “a local authority”, insert “or a water services entity”:

- (b) after “the local authority”, insert “or the water services entity”.
- (2) In section 11B(1C),—
- (a) after “a local authority”, insert “or a water services entity”;
- (b) after “the local authority”, insert “or the water services entity”.
- Subpart 7—Amendment to Government Roding Powers Act 1989 5
- 44 Principal Act**  
This subpart amends the Government Roding Powers Act 1989.
- 45 Section 52 amended (Notice to be given of local authority works)**  
In section 52(4), replace “or the Telecommunications Act 2001” with “the Telecommunications Act 2001, or the Water Services Entities Act 2022”. 10
- Subpart 8—Amendments to Health Act 1956
- 46 Principal Act**  
This subpart amends the Health Act 1956.
- 47 Section 2 amended (Interpretation)**  
In section 2(1), insert in their appropriate alphabetical order: 15
- Taumata Arowai** means Taumata Arowai—the Water Services Regulator established by section 8 of the Taumata Arowai—the Water Services Regulator Act 2020
- water services entity** means a water services entity established under section 11 of the Water Services Entities Act 2022 20
- 48 Section 25 amended (Local authority to provide sanitary works)**
- (1) In the heading to section 25, after “**authority**”, insert “**or water services entity**”.
- (2) Replace section 25(1)(a) and (b) with: 25
- (a) water supply reticulation and treatment;
- (b) wastewater reticulation, treatment and disposal;
- (ba) stormwater reticulation, treatment and disposal;
- (3) In section 25(2), after “such sanitary works”, insert “(other than those specified in **subsection (1)(a), (b), or (ba)**)”.
- (4) After section 25(3), insert: 30
- (3A) The Minister may, by notice in the *Gazette*, require any water services entity to provide for the benefit of its service area, whether within or beyond the boundaries of its service area, a sanitary work specified in **subsection (1)(a), (b),**

- or (ba)** that the Minister may specify in the requisition or to alter or extend any works previously provided by the water services entity.
- (3B) Before issuing a requisition under **subsection (3A)**, the Minister must consult Taumata Arowai.
- (3C) A requisition issued under **subsection (3A)** may specify a time, which must not be less than 3 months after the requisition is served, within which proposals for the carrying out of the work may be submitted to the Director-General under this section, and may contain any general directions relating to the carrying out of the work, including a direction as to the amount of expenditure to be incurred, that the Director-General thinks fit.
- (3D) Any 2 or more water services entities may, with the Director-General’s approval, and must, if required by the Director-General, combine for the purpose of providing, altering, or extending any works specified under **subsection (3A)**; and if they have combined, or have been required to combine for that purpose, a requisition under **subsection (3A)** may be issued to them jointly, and any reference in subsections (4) to (9) to a water services entity must be construed accordingly.
- (5) In section 25(4), after “authority”, insert “or water services entity”.
- (6) In section 25(5)(a), after “authority”, insert “or water services entity” in each place.
- (7) In section 25(6), after “authority”, insert “or water services entity”.
- (8) After section 25(6), insert:
- (6A) Before approving a proposal under subsection (6), the Director-General must consult Taumata Arowai.
- (9) In section 25(7), after “authority”, insert “or water services entity”.
- (10) In section 25(8) and (9), after “authority”, insert “or water services entity” in each place.
- (11) In section 25(10),—
- (a) after “authority”, insert “or water services entity”; and
  - (b) after “local authorities”, insert “or water services entities”; and
  - (c) after “those authorities”, insert “or entities”.
- (12) In section 25(11), after “authorities”, insert “or water services entity or entities”.
- (13) In section 25(12),—
- (a) after “authority”, insert “or water services entity” in each place; and
  - (b) after “authority’s”, insert “or water services entity’s”.
- (14) In section 25(13), after “authority”, insert “or water services entity” in each place.

- 49 Section 27A amended (Grants and subsidies for refuse disposal works, sewerage works, and water supplies)**
- (1) In the heading to section 27A, delete “, sewerage works, and water supplies”.
  - (2) In section 27A(1), replace “public water supplies, refuse disposal works, sewerage works, and works for the disposal of sewage” with “refuse disposal works”. 5
- 50 Section 33 amended (Proceedings in respect of nuisances)**
- (1) In section 33(6), after “on behalf of the local authority,”, insert “or, if the nuisance concerns water supply or stormwater drainage, the water services entity,”.
  - (2) In section 33(7), after “health”, insert “or, if the nuisance concerns water supply or stormwater drainage, the water services entity,”. 10
  - (3) In section 33(8), after “local authority”, insert “or water services entity” in each place.
  - (4) In section 33(9), replace “local authority or the medical officer of health” with “local authority, medical officer of health, or water services entity” in each place. 15
  - (5) In section 33(9), replace “funds of the local authority” with “funds of the local authority or water services entity”.
- 51 Section 34 amended (Power to abate nuisance without notice)**
- Replace section 34(2) with: 20
- (2) Nothing in subsection (1) applies to a nuisance wholly or partly caused by water supply or stormwater drainage.
  - (3) All expenses incurred in the abatement of a nuisance under this section may be recovered from the owner or the occupier of the premises in respect of which they are incurred, as a debt due to,— 25
    - (a) in the case of a nuisance wholly or partly caused by water supply or stormwater drainage, the water services entity:
    - (b) in any other case, the local authority.
- 52 Section 35 amended (Proceedings when nuisance caused by default outside district)** 30
- In section 35, insert as subsection (2):
- (2) Nothing in subsection (1) applies to a nuisance wholly or partly caused by water supply or stormwater drainage.
- 53 Section 64 amended (Bylaws)**
- (1) In section 64(1)(g), replace “drainage” with “private drains”. 35
  - (2) In section 64(1)(v), delete “and of any water supply”.

- 54 Section 116C amended (Purpose)**
- In section 116C, replace “local authority” with “water services entity” in each place.
- 55 Section 116D amended (Interpretation)**
- (1) In section 116D, repeal the definition of **local authority supply**. 5
- (2) In section 116D, insert in its appropriate alphabetical order:
- ~~**water services entity supply** means the infrastructure and processes that —~~
- (a) ~~are used by a water services entity to abstract, store, treat, transmit, or transport water supply to consumers; and~~
- (b) ~~are controlled by a water services entity~~ 10
- water services entity supply** means the infrastructure owned or operated, or processes used by, for, or on behalf of a water services entity to abstract, store, treat, transmit, or transport water supply to consumers
- 56 Section 116E amended (Director-General may direct local authority to add or not to add fluoride to drinking water)** 15
- (1) In the heading to section 116E, replace “local authority” with “**water services entity**”.
- (2) In section 116E(1) and (3)(b)(i) and (ii), replace “local authority” with “water services entity” in each place.
- 57 Section 116F amended (Contents of direction)** 20
- In section 116F(1) and (3), replace “local authority” with “water services entity” in each place.
- 58 Section 116G amended (Engagement with local authority)**
- (1) In the heading to section 116G, replace “local authority” with “**water services entity**”. 25
- (2) In section 116G(1), (2), and (3), replace “local authority” with “water services entity” in each place.
- 59 Section 116H amended (Local authority not required to consult)**
- (1) In the heading to section 116H, replace “Local authority” with “**Water services entity**”. 30
- (2) In section 116H, replace “local authority” with “water services entity”.
- 60 Section 116I amended (Local authority must comply with direction)**
- (1) In the heading to section 116I, replace “Local authority” with “**Water services entity**”.

- (2) In section 116I(1) and (2), replace “local authority” with “water services entity” in each place.
- 61 Section 116J amended (Offence to contravene or permit contravention of section 116I)**
- In section 116J(1), replace “local authority” with “water services entity”. 5
- 62 Schedule 1AA amended**
- (1) In Schedule 1AA, heading to clause 1, replace “**Local authority**” with “**Water services entity**”.
- (2) In Schedule 1AA, clause 1, replace “local authority” with “water services entity” in each place. 10
- (3) In Schedule 1AA, heading to clause 2, replace “**Local authority**” with “**Water services entity**”.
- (4) In Schedule 1AA, clause 2, replace “local authority” with “water services entity” in each place.
- Subpart 9—Amendments to Income Tax Act 2007 15
- 63 Principal Act**
- This subpart amends the Income Tax Act 2007.
- 64 New section CW 38C inserted (Water services entities)**
- After section CW 38B, insert:
- CW 38C Water services entities** 20
- Exempt income: sinking funds*
- (1) An amount of income derived from sinking funds relating to the debt of a water services entity is exempt income.
- Exempt income: other income*
- (2) Any other amount of income derived by a water services entity is exempt income. 25
- Exclusion: amounts received in trust*
- (3) **Subsection (2)** does not apply to an amount of income that a water services entity derives as a trustee.
- 65 Section YA 1 amended (Definitions)** 30
- In section YA 1, insert in its appropriate alphabetical order:  
**water services entity** means a water services entity as defined in **section 6(1)** of the Water Services Entities Act 2022

## Subpart 10—Amendments to Infrastructure Funding and Financing Act 2020

### 66 **Principal Act**

This subpart amends the Infrastructure Funding and Financing Act 2020.

### 67 **Section 3 amended (Purpose)**

5

In section ~~3(b)~~ 3(1)(b), after “constraints”, insert “~~and~~ or supports water services entity financing and funding”.

### 68 **Section 7 amended (Interpretation)**

- (1) In section 7(1), definition of **responsible infrastructure authority**, after paragraph (c), insert:

10

(ca) a water services entity:

- (2) In section 7(1), insert in its appropriate alphabetical order:

**water services entity** means a water services entity established under section 11 of the Water Services Entities Act 2022

## Subpart 10A—Amendments to Land Drainage Act 1908

15

### 68A **Principal Act**

This subpart amends the Land Drainage Act 1908.

### 68B **New section 2B inserted (Relationship to Water Services Entities Act 2022)**

After section 2A, insert:

### 2B **Relationship to Water Services Entities Act 2022**

20

- (1) If any stormwater network would be affected by any action authorised by this Act, the local authority must obtain the agreement of the relevant water services entity before exercising those powers.

- (2) In this section,—

**stormwater network** has the same meaning as in section 6(1) of the Water Services Entities Act 2022

25

**water services entity** means a water services entity established by section 11 of the Water Services Entities Act 2022.

## Subpart 11—Amendments to Local Government Act 1974

### 69 **Principal Act**

30

This subpart amends the Local Government Act 1974.

- 70 Section 2 amended (Interpretation)**  
In section 2(1), insert in its appropriate alphabetical order:  
~~water services entity~~ **water services entity** means a water services entity established under section 11 of the Water Services Entities Act 2022
- 71 Section 319 amended (General powers of councils in respect of roads)** 5  
In section 319(2), replace “wastewater” with “wastewater, stormwater.”
- 71A Section 334A amended (Council may light roads, etc)**  
After section 334A(3), insert:  
(4) Before exercising a power under this section to do anything that will or is likely to interfere with any pipe, line, or other work associated with wastewater, stormwater, or the supply of water, the council must give the water services entity not less than 10 working days’ notice in writing of the proposed interference, except in the case of any emergency or danger. 10
- 71B Section 337 amended (Alteration of pipes and drains)**  
In section 337, insert as subsection (2): 15  
(2) Before exercising a power under this section to do anything that will or is likely to interfere with any pipe, line, or other work associated with wastewater, stormwater, or the supply of water, the council must give the water services entity not less than 10 working days’ notice in writing of the proposed interference, except in the case of any emergency or danger. 20
- 72 Section 338 amended (Council may grant right to lay conduit pipes along or under road)**  
After section 338(2), insert:  
(3) Nothing in this section limits or affects the right of a water services entity to lay conduit pipes along or under any roads. 25
- 73 New Part 25A inserted**  
Before Part 26, insert:
- Part 25A**  
**Role of water services entities in respect of Parts 26 and 29**
- 439A Local authorities must obtain agreement of water services entities to exercise certain powers affecting stormwater network ~~or management plans~~** 30  
If a stormwater network ~~or a stormwater management plan~~ would be affected, a local authority must obtain the agreement of the relevant water services entity

before exercising 1 or more of the powers under the following provisions of this Act:

- (a) section 446(1) (the power to cover watercourses, making them public drains):
- (b) section 451(1)(b) (the power to enter into agreements regarding how drainage works are to be diverted, altered, protected, or replaced): 5
- (c) section 459 (the power to require the owners to provide private drains):
- (d) section 460 (the power to enter premises to lay private drains):
- (e) section 462 (the power to declare specified private drains to be public drains): 10
- (f) section 517ZM (the power to declare the whole or a defined part of a district in which a land drainage scheme or water race scheme is situated to be constituted a drainage area or a water race area).

**439B Local authorities must provide notice to water services entities in certain circumstances** 15

A local authority must provide reasonable notice to the relevant water services entity in the following circumstances:

- (a) before the local authority exercises the power under section 319(1)(h) or 342 to stop a road or close any road on a temporary basis if doing so would affect a water services entity's stormwater network: 20
- (b) before the local authority exercises the power under section 446(9) to undertake temporary work for abating a nuisance in a watercourse:
- (c) as soon as practicable after the local authority receives notice under section 451(1)(a) that a person proposes to erect a building or carry out any work that would affect drainage that the local authority considers essential. 25

**439C Local authorities must consult water services entities before applying for declaration under section 507**

A local authority must—

- (a) consult the relevant water services entity before applying to the Minister under section 507 for a declaration that a drainage channel should be subject to Part 29; and 30
- (b) advise the Minister of the water services entity's views before the Minister makes a decision.

**74 New section 468A inserted (Contracts relating to provision of drains)** 35

After section 468, insert:

**468A Contracts relating to provision of drains**

- (1) A council may enter into a contract for a term not longer than ~~35~~ 15 years in respect of 1 or more of the following matters:
- (a) covering a watercourse under section 446:
  - (b) replacing or repairing property under section 467(2): 5
  - (c) removing or altering a private drain under section 467(2):
  - (d) removing, cutting down, or grubbing up a tree under section 468(6):
  - (e) doing anything that a council may do under Part 29.
- (2) If a council enters into a contract under **subsection (1)**, it must—
- (a) continue to be legally responsible for providing the ~~water~~ relevant services; and 10
  - (b) maintain ownership of the infrastructure and assets relating to the ~~water~~ relevant services.
- (3) This section does not prevent a council from entering into a contract with 1 or more water services entities if the purpose of the contract relates solely to water services. 15
- Compare: 2002 No 84 s 136(1)–(3)

**75 Section 510 amended (Inspection of private dams, etc)**

In section 510, replace “mill race,” with “mill race that affects a council-owned land drainage scheme,”. 20

**76 Section 517J amended (Service of transfer proposal)**

After section 517J(c), insert:

- (d) the water services entity within whose service area the scheme to which the transfer proposal relates is wholly or partly situated or that is otherwise likely to be affected by the transfer of that scheme. 25

**77 Section 517K replaced (Right to object to transfer proposal)**

Replace section 517K with:

**517K Right to object to transfer proposal**

The following may, in accordance with this Part, object to a transfer proposal filed under section 517E in relation to any land drainage scheme or water race scheme: 30

- (a) any scheme user who is the operator of a drainage system or water supply system that utilises the scheme to which the transfer proposal relates:
- (b) any other scheme user in relation to the scheme to which the transfer proposal relates: 35

- (c) any local authority within whose district the scheme to which the transfer proposal relates is wholly or partly situated or that is otherwise likely to be affected by the transfer of that scheme (including the local authority that has control of that scheme):
- (d) the water services entity within whose service area the scheme to which the transfer proposal relates is wholly or partly situated or that is otherwise likely to be affected by the transfer of that scheme. 5
- 78 Section 517L replaced (Notice of right to object)**  
Replace section 517L with:
- 517L Notice of right to object** 10  
Subject to section 517F(3), a local authority that receives a transfer petition and transfer proposal under section 517E must, as soon as practicable after receiving it, forward a notice that complies with section 517M to—
- (a) every scheme user who is the operator of a drainage system or water supply system that utilises the scheme to which the transfer proposal relates; and 15
- (b) every other scheme user in relation to the scheme to which the transfer proposal relates; and
- (c) every local authority entitled under **section 517K(c)** to object to the transfer proposal; and 20
- (d) every water services entity entitled under **section 517K(d)** to object to the transfer proposal.
- 79 Section 517M amended (Contents of notice of right to object)**  
After section 517M(d)(i), insert:
- (ia) a water services entity entitled under **section 517K(d)** to object to the transfer proposal; or 25
- 80 Section 517P amended (Notification by local authority of receipt of objections)**  
After section 517P(a)(i), insert:
- (ia) a water services entity entitled under **section 517K(d)** to object to the transfer proposal; or 30
- 81 Section 517S amended (Procedure on receipt of objections)**  
After section 517S(1)(a), insert:
- (aa) an objection from a water services entity entitled under **section 517K(d)** to object to the transfer proposal; or 35

- 82 Section 517U amended (Relevant criteria)**  
 After section 517U(e), insert:
- (f) the extent to which the transfer of the scheme would affect the duties, functions, or powers of any water services entity under the Water Services Entities Act 2022. 5
- 83 Section 517V amended (Notice of Commission’s determination)**  
 In section 517V(1)(a), after “local authority”, insert “and water services entity”.
- 84 Section 647 repealed (Fire hydrants)**  
 Repeal section 647. 10
- 85 Section 648 repealed (Pipes to be kept charged with water)**  
 Repeal section 648.
- 86 Schedule 14 amended**
- (1) Replace the Schedule 14 heading with:
- Schedule 14** 15  
**Provisions relating to drainage works and drainage channels on roads and works not under control of council**
- (2) In Schedule 14, replace clauses 1 to 4 with:
- 1 Before interfering with any road or other work that is not under the control of the council for the purposes of constructing or maintaining drainage works or drainage channels, the council must give not less than 1 month’s notice in writing to the local authority, water services entity, or body having control of the road or work. 20
- 2 If that local authority, water services entity, or body objects to the interference, the matter must be referred to the District Court, whose decision is final. 25
- 3 The council may at any time interfere with the road or work, so far as may be necessary to effect all necessary repairs in the drainage works or drainage channels, on giving to that local authority, water services entity, or body not less than 3 days’ previous notice in writing of its intention to do so.
- 4 In any sudden emergency or danger to the drainage works or drainage channels or property adjoining, the council may, without any previous notice, proceed to carry out the necessary repairs, but must as soon as practicable after carrying out the repairs inform the local authority, water services entity, or body. 30

## Subpart 12—Amendments to Local Government Act 2002

**87 Principal Act**

This subpart amends the Local Government Act 2002.

**88 Section 5 amended (Interpretation)**

In section 5(1), insert in its appropriate alphabetical order:

5

**agricultural water supply—**

- (a) means water supplied by a local authority for agricultural or horticultural purposes; and
- (b) includes a water race; but
- (c) does not include—
  - (i) drinking water within the meaning of section 6(a) of the Water Services Act 2021;
  - (ii) firefighting water supplies (as defined in section 6 of the Fire and Emergency New Zealand Act 2017)

10

**89 Section 17 amended (Transfer of responsibilities)**

15

After section 17(4A), insert:

(4B) A local authority may not agree to or accept a proposed transfer under this section that has an actual or a potential impact on a stormwater network or a stormwater management plan, unless—

- (a) the local authority has given written notice to the relevant water services entity of the proposed transfer; and
- (b) the water services entity approves the transfer.

20

**90 Section 17A amended (Delivery of services)**

After section 17A(4)(b)(ii), insert:

- (ia) a water services entity; or

25

**91 Section 101A amended (Financial strategy)**

In section 101A(3)(a)(ii), replace “network infrastructure,” with “provision of roads and other transport (including transport stormwater systems),”.

**92 Section 101B amended (Infrastructure strategy)**

Replace section 101B(6)(a) with:

30

- (a) existing or proposed assets to be used to provide services by or on behalf of the local authority in relation to the following groups of activities:
  - (i) flood protection and control works:

- (ii) ~~the provision of roads and footpaths (including transport storm-water systems); and~~

**93 Section 123 amended (Outline of Part)**

Repeal section 123(a) and (b).

**94 Subpart 1 heading in Part 7 replaced**

5

In Part 7, replace the subpart 1 heading with:

Subpart 1—Obligations in respect of water services and sanitary services

**95 Sections 124 and 125 replaced**

Replace sections 124 and 125 with:

**124 Territorial authorities and regional councils must consider findings and implications of water services assessment**

10

(1) A territorial authority must consider the findings and implications of any water services assessment under **section 245** of the Water Services Entities Act 2022 in relation to—

- (a) its current and future infrastructure strategy and long-term plan; and 15  
 (b) its district plan prepared under the Resource Management Act 1991; and  
 (c) its broader duty to improve, promote, and protect public health within its district in accordance with section 23 of the Health Act 1956.

(2) A regional council must consider the findings and implications of any water services assessment under **section 245** of the Water Services Entities Act 2022 when approving a regional plan under Schedule 1 of the Resource Management Act 1991. 20

**125 Requirement to assess sanitary services**

(1) A territorial authority must assess the adequacy of the sanitary services provided within its district from a public health perspective and in the light of— 25

- (a) the health risks to communities arising from any absence of, or deficiency in, the services; and  
 (b) the quality of the services currently available to communities within the district; and  
 (c) the current and estimated future demands for any of those services. 30

(2) A territorial authority may assess 1 or more sanitary services at a time.

(3) A territorial authority must take the assessment into account in its infrastructure strategy and its long-term plan.

(4) In this section,—

|   |    |
|---|----|
| <b>assessment</b> , in relation to sanitary services,—  |    |
| (a) means an assessment of the sanitary services available to communities in the district of a territorial authority; but   |    |
| (b) does not include assessments in relation to individual properties   |    |
| <b>sanitary services</b> means—   | 5  |
| (a) sanitary conveniences for the use of the public:  |    |
| (b) cemeteries:   |    |
| (c) crematoria.   |    |
| <b>96 Sections 126 to 128 repealed</b>  |    |
| Repeal sections 126 to 128.   | 10 |
| <b>97 Subpart 2 of Part 7 repealed</b>  |    |
| Repeal subpart 2 of Part 7.   |    |
| <b>98 Section 143 amended (Outline of Part)</b>   |    |
| Repeal section 143(d).  |    |
| <b>99 Section 146 replaced (Specific bylaw-making powers of territorial authorities)</b>  | 15 |
| Replace section 146 with:   |    |
| <b>146 Specific bylaw-making powers of territorial authorities</b>  |    |
| (1) Without limiting section 145, a territorial authority may make bylaws for its district for the purposes of—   | 20 |
| (a) regulating 1 or more of the following:  |    |
| (i) waste management:   |    |
| (ii) on-site wastewater disposal systems:   |    |
| (iii) solid wastes:   |    |
| (iv) keeping of animals, bees, and poultry:   | 25 |
| (v) trading in public places:   |    |
| (b) managing, regulating, or protecting from damage, misuse, or loss, or preventing the use of, the land, structures, or infrastructure associated with 1 or more of the following: |    |
| (i) agricultural water <u>supply</u> :  | 30 |
| (ii) drainage and sanitation:   |    |
| (iii) land drainage:  |    |
| (iv) <del>stormwater drainage provided by the territorial authority:</del>  |    |
| (v) cemeteries:   |    |

|            |   |    |
|------------|---|----|
|            | (vi) reserves, recreation grounds, or other land under the control of the territorial authority.  |    |
|            | (2) <u>If a territorial authority makes bylaws under this Act, the Reserves Act 1977, or the Land Transport Act 1998 relating to a stormwater network, the bylaws must give effect to any stormwater environmental performance standards made under <b>section 139A</b> of the Water Services Act 2021.</u> | 5  |
|            | (3) <b>Subsection (2)</b> applies to bylaws made on and after the commencement of <b>section 139A</b> of the Water Services Act 2021.   |    |
| <b>100</b> | <b>Section 148 repealed (Special requirements for bylaws relating to trade wastes)</b>  | 10 |
|            | Repeal section 148.   |    |
| <b>101</b> | <b>Section 149 amended (Power of regional councils to make bylaws)</b>  |    |
|            | Repeal section 149(1)(d).   |    |
| <b>102</b> | <b>Section 153 amended (The Crown bound by certain bylaws)</b>  | 15 |
|            | Replace section 153(1) with:  |    |
|            | (1) The Crown is bound by bylaws made by a local authority under any of the following provisions:   |    |
|            | (a) <b>section 146(a)(iii)</b> , in relation to solid wastes:   |    |
|            | (b) <b>section 146(b)(i)</b> , in relation to agricultural water <u>supply</u> :  |    |
|            | (c) <b>section 146(b)(iv)</b> , in relation to <del>stormwater</del> <u>land</u> drainage.  | 20 |
| <b>103</b> | <b>Section 181 amended (Construction of works on private land)</b>  |    |
|            | (1) Replace section 181(1) with:  |    |
|            | (1) A local authority may construct works on or under private land or under a building on private land that it considers necessary for—   |    |
|            | (a) <del>the supply of</del> agricultural water <u>supply</u> :   | 25 |
|            | (b) land drainage and rivers clearance.   |    |
|            | (2) Repeal section 181(2).  |    |
|            | (3) In section 181(3), delete “or subsection (2)”.  |    |
| <b>104</b> | <b>Section 182 replaced (Power of entry to check utility services)</b>  | 30 |
|            | Replace section 182 with:   |    |
| <b>182</b> | <b>Power of entry to check utility services</b>   |    |
|            | (1) An enforcement officer of a local authority may enter any land or building (but not a dwelling house) for the purpose of ascertaining whether—  |    |
|            | (a) any <del>supply of</del> agricultural water <u>supply</u> is being misused; or  |    |
|            | (b) any land drainage works are being misused; or   | 35 |

- (c) any appliance or equipment associated with a local authority utility service on the land is in a condition that makes it dangerous to life or property.
- (2) The power under **subsection (1)** may only be exercised if the enforcement officer— 5
- (a) believes on reasonable grounds that the circumstances in **subsection (1)(a), (b), or (c)** exist; and
- (b) the local authority gives reasonable notice to the occupier of the land or building of the intention to exercise the power.
- 105 Section 193 replaced (Power to restrict water supply)** 10
- Replace section 193 with:
- 193 Power to restrict agricultural water supply**
- The supply of agricultural water to a person’s land may be restricted by a local authority in any manner it thinks fit if the person—
- (a) fails or refuses to do anything required by this Part in respect of agricultural water supplied by the local authority; or 15
- (b) fails to comply with any bylaw of a local authority that relates—
- (i) to agricultural water supplied by the local authority; and
- (ii) to the person’s land; or
- (c) fails or refuses to do anything that the person has undertaken or agreed to do in respect of the agricultural water supply to his or her land; or 20
- (d) refuses entry to, or obstructs, an enforcement officer under section 182.
- 106 Section 197 amended (Interpretation)**
- In section 197(2), replace the definition of **network infrastructure** with:
- network infrastructure** means the provision of agricultural water supply, land drainage, and roads and other transport (including transport stormwater systems) 25
- 106A Section 199F amended (Appointment and register of development contributions commissioners)**
- (1) In section 199F(1), after “objections”, insert “under this Act and the Urban Development Act 2020 and water infrastructure contribution objections under the Water Services Entities Act 2022”. 30
- (2) In section 199F(5), after “objections”, insert “or water infrastructure contribution objections”.

- 106B Section 199L amended (Liability of development contributions commissioners)**  
 In section 199L, after “this Act”, insert “or any other enactment”.
- 107 Sections 224 to 227 and cross-headings repealed**  
 Repeal sections 224 to 227 and the cross-headings above sections 224 and 227. 5
- 108 Section 232 amended (Damage to local authority works or property)**  
 Repeal section 232(1)(b).
- 109 Section 242 amended (Penalties for offences)**
- (1) In section 242(1), delete “section 225,”.
  - (2) In section 242(2), replace “section 224, sections 229 to 231, or” with “sections 229 to 231 or”. 10
  - (3) In section 242(4), delete “(other than a bylaw made under Part 8 referred to in subsection (5))”.
  - (4) Repeal section 242(5).
- 110 Section 261B amended (Secretary must make rules specifying performance measures)** 15  
 Replace section 261B(1) with:
- (1) ~~The Secretary must, as soon as is reasonably practicable, make rules specifying performance measures in relation to the following groups of activities:~~
    - (a) ~~flood protection and control works:~~ 20
    - (b) ~~the provision of roads and footpaths (including transport stormwater systems):~~
- 111 Schedule 1AA amended**
- (1) In Schedule 1AA, clause 27(2), after “water services”, insert “other than land drainage or agricultural water supply”. 25
  - (2) In **Schedule 1AA**,—
    - (a) insert the Part set out in **Schedule 3** of this Act as the last Part; and
    - (b) make all necessary consequential amendments.
- 112 Schedule 8 amended** 30  
 In Schedule 8, replace clause 8(1) with:
- (1) ~~This clause applies to a council-controlled organisation that provides services, other than under a contract or similar arrangement, in relation to the following groups of activities:~~
    - (a) ~~flood protection and control works:~~

- (b) the provision of roads and footpaths (including transport stormwater systems).

### 113 Schedule 10 amended

- (1) In Schedule 10, replace clause 2(2) with:
- (2) In this schedule, each of the following activities is a **group of activities**: 5
- (a) flood protection and control works:
- (b) the provision of roads and footpaths (including transport stormwater systems).
- In Schedule 10, replace clause 6(a) with:
- (a) assessment of sanitary services under **section 125**: 10

## Subpart 13—Amendments to Local Government (Auckland Council) Act 2009

### 114 Principal Act

This subpart amends the Local Government (Auckland Council) Act 2009.

### 115 Section 3 amended (Purpose) 15

Replace section 3(d) with:

- (d) to establish arrangements for the management of transport for Auckland; and

### 116 Section 4 amended (Interpretation)

In section 4(1), repeal the definition of **Auckland water organisation**. 20

### 117 Part 5 repealed

Repeal Part 5.

## Subpart 14—Amendments to Local Government (Auckland Transitional Provisions) Act 2010

### 118 Principal Act 25

This subpart amends the Local Government (Auckland Transitional Provisions) Act 2010.

### 119 Sections 17 to 27 and cross-heading above section 17 repealed

Repeal sections 17 to 27 and the cross-heading above section 17.

### 120 Section 34 repealed (Wastewater rate for 2011/2012 financial year) 30

Repeal section 34.

- 121 Sections 55 and 56 repealed**  
Repeal sections 55 and 56.
- 122 Section 58 amended (Financial contributions already made or owed to existing local authorities)**  
Repeal section 58(3). 5
- 123 Sections 59 and 60 repealed**  
Repeal sections 59 and 60.
- 124 Section 67 amended (Statutory warrants relating to law other than transport law)**
- (1) Replace section 67(1)(b) with: 10  
(b) they were issued by an existing local authority to an employee of, or a contractor to, the existing local authority:
- (2) In section 67(3)(a), delete “or Watercare Services Limited, as the case may be”.
- 125 Section 83 amended (Tax)**
- (1) In section 83(3)(b), delete “or Watercare Services Limited”. 15  
(2) Repeal section 83(19).
- 126 Section 98 amended (Interpretation)**  
In section 98(1), definition of **new employer**, repeal paragraph (a)(iii).
- Subpart 15—Amendments to Local Government Official Information and Meetings Act 1987** 20
- 127 Principal Act**  
This subpart amends the Local Government Official Information and Meetings Act 1987.
- 128 Section 2 amended (Interpretation)**  
In section 2(1), insert in its appropriate alphabetical order: 25  
**water services entity** means a water services entity established under section 11 of the Water Services Entities Act 2022
- 129 Section 44A amended (Land information memorandum)**
- (1) Replace section 44A(2)(b) with:  
(b) information on private and public stormwater drainage as shown on the territorial authority’s and relevant water services entity’s records: 30
- (2) In section 44A(2)(bb)(ii), after “conditions”, insert “(other than conditions imposed by a water services entity)”.

- (3) Replace section 44A(3) with:
- (3) In addition to the information provided under subsection (2), a territorial authority may provide in the memorandum,—
- (a) at the request of the relevant water services entity, any other information relating to water services infrastructure in or on the land: 5
- (b) any other information concerning the land that the authority considers, at its discretion, to be relevant.
- 130 Schedule 1 amended**
- In Schedule 1, Part 1, insert in its appropriate alphabetical order:
- Water services entities established under section 11 of the Water Services Entities Act 2022 10
- 131 Schedule 2 amended**
- In Schedule 2, Part 1, insert in their appropriate alphabetical order:
- Boards of water services entities established under section 11 of the Water Services Entities Act 2022 15
- Regional advisory panels for regional representative groups established under subpart 5 of Part 2 of the Water Services Entities Act 2022
- Regional representative groups established under subpart 4 of Part 2 of the Water Services Entities Act 2022
- Subpart 16—Amendments to Local Government (Rating) Act 2002 20
- 132 Principal Act**
- This subpart amends the Local Government (Rating) Act 2002.
- 133 Section 9 amended (Non-rateable land liable for certain rates)**
- Replace section 9(a) with:
- (a) the rate is set solely for agricultural water supply or refuse collection; and 25
- 134 Section 19 amended (Targeted rate for water supply)**
- (1) In the heading to section 19, before “water”, insert “agricultural”.
- (2) In section 19(1) and (2)(a), before “water”, insert “agricultural” in each place.
- 135 Section 19A amended (Rates not to overlap with targeted rates under Urban Development Act 2020)** 30
- (1) In section 19A(2), examples, replace “Examples” with “Example”.
- (2) In section 19A(2), examples, delete “Example 1”.
- (3) In section 19A(2), repeal example 2.

- 136 Section 21 amended (Certain rates must not exceed 30% of total rates revenue)**  
Repeal section 21(3).
- 137 ~~Schedule 1 amended~~**  
In Schedule 1, after clause 3(3)(d), insert: 5  
(e) ~~the water services entities in whose service area the local authority is located.~~
- 138 Schedule 3 amended**  
(1) In Schedule 3, repeal item 12.  
(2) In Schedule 3, notes, repeal item 4. 10
- Subpart 16A—Amendment to Ngati Tuwharetoa, Raukawa, and Te Arawa River Iwi Waikato River Act 2010
- 138A Principal Act**  
This subpart amends the Ngati Tuwharetoa, Raukawa, and Te Arawa River Iwi Waikato River Act 2010. 15
- 138B Section 18 amended (Duty to have particular regard to vision and strategy)**  
After section 18(7), insert:  
(8) **Subsection (9)** applies to a person carrying out functions or exercising powers under an enactment specified in **subsection (10)** if the functions or powers relate to— 20  
(a) the Waikato River; or  
(b) activities in the catchment that affect the Waikato River.  
(9) Except as otherwise expressly provided in this Act, the person must have particular regard to the vision and strategy in addition to any requirement specified in the enactment for the carrying out of the functions or the exercise of the powers. 25  
(10) The enactments are—  
(a) the Taumata Arowai—the Water Services Regulator Act 2020; and  
(b) the Water Services Act 2021; and 30  
(c) the Water Services Entities Act 2022.
- Subpart 17—Amendment to Ombudsmen Act 1975
- 139 Principal Act**  
This subpart amends the Ombudsmen Act 1975.

**140 Schedule 1 amended**

In Schedule 1, Part 3, insert in their appropriate alphabetical order:

Regional advisory panels for regional representative groups established under subpart 5 of Part 2 of the Water Services Entities Act 2022

Regional representative groups established under subpart 4 of Part 2 of the Water Services Entities Act 2022 5

Water services entities established under section 11 of the Water Services Entities Act 2022

Subpart 18—Amendment to Public Audit Act 2001

**141 Principal Act** 10

This subpart amends the Public Audit Act 2001.

**142 Schedule 1 amended**

In Schedule 1, insert in its appropriate alphabetical order:

Water services entities established under section 11 of the Water Services Entities Act 2022 15

Subpart 19—Amendment to Public Records Act 2005

**143 Principal Act**

This subpart amends the Public Records Act 2005.

**144 Section 4 amended (Interpretation)**

In section 4, definition of local authority, after paragraph (b), insert: 20

(c) includes a water services entity as defined in **section 6(1)** of the Water Services Entities Act 2022

Subpart 20—Amendments to Public Works Act 1981

**145 Principal Act**

This subpart amends the Public Works Act 1981. 25

**146 Section 2 amended (Interpretation)**

In section 2, definition of **local authority**, after paragraph (a), insert:

(aa) a water services entity established under section 11 of the Water Services Entities Act 2022:

Subpart 21—Amendment to Rates Rebate Act 1973 30

**147 Principal Act**

This subpart amends the Rates Rebate Act 1973.

**148 Section 2 amended (Interpretation)**

- (1) In section 2(1), definition of **rates**, after “property”, insert “or a charge for water services under **section 321** of the Water Services Entities Act 2022”.
- (2) In section 2(1), definition of **rates**, after paragraph (d), insert:
- (e) water infrastructure contributions payable under the Water Services Entities Act 2022 5

Subpart 21A—Amendments to Receiverships Act 1993**148A Principal Act**

This subpart amends the Receiverships Act 1993.

**148B Cross-heading above section 40A amended** 10

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

**148C Section 40A amended (Instrument may provide for appointment of receiver)**

In section 40A, after “local authority”, insert “or a water services entity”. 15

**148D Section 40B replaced (Power of court to appoint receiver)**

Replace section 40B with:

**40B Power of court to appoint receiver**

- (1) Subject to sections 40D and 40E and this section, the High Court may,—
- (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; 20
- (b) on the application of any creditor of the water services entity, appoint a receiver of any asset of the water services entity or appoint a receiver for the purposes of **section 469** of the Water Services Entities Act 2022. 25
- (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.
- (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— 30
- (a) take account of the interests of both the secured and non-secured creditors of the local authority, as against—
- (i) the interests of the local authority itself; and 35

- (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 5
- (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.
- (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 a water services entity, the court must— 10
- (a) take account of the interests of both the secured and non-secured creditors of the water services entity, as against—
- (i) the interests of the water services entity itself; and 15
- (ii) the requirement of the water services entity to provide those services that are essential for the maintenance of public health and safety; and
- (iii) the interests of consumers with property within the service area of the water services entity; and 20
- (iv) the interests of the general public living with the service area of the water services entity; and
- (b) take account of the interests of secured creditors as against the interests of non-secured creditors of the water services entity.
- 148E Section 40C amended (Powers and duties of receivers)** 25
- (1) In section 40C(1),—
- (a) after “a local authority”, insert “or a water services entity”:
- (b) after “the local authority”, insert “or the water services entity”.
- (2) In section 40C(2), after “a local authority”, insert “or a water services entity”.
- 148F Section 40D amended (Constraints on receiver)** 30
- (1) In section 40D(1), replace “local authority must ensure that no action of the receiver prevents the provision of those services of the local authority” with “local authority or a water services entity must ensure that no action of the receiver prevents the provision of those services of the local authority or the water services entity”. 35
- (2) In section 40D(3), after “the local authority”, insert “or the water services entity”.

- (3) In section 40D(4), after “local authority’s”, insert “or the water services entity’s”.
- (4) Replace section 40D(5) with:
- (5) Subject to subsection (6), if any land vested in a local authority or a water services entity is— 5
- (a) a reserve under the Reserves Act 1977; or
- (b) land over which the local authority or water services entity has no power of disposition; or
- (c) land in respect of which the local authority’s or water services entity’s power of disposition is conditional,— 10
- the power of disposition that a receiver of that local authority or water services entity has in respect of that 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.
- (5) In section 40D(6), after “the local authority”, insert “or the water services entity”. 15

**148G Section 40E amended (Protection for receiver)**

- (1) In section 40E(1) and (2), after “a local authority”, insert “or a water services entity”.
- (2) In section 40E(3)(a), after “the local authority”, insert “or the water services entity”. 20

**148H Schedule 1 amended**

- (1) In Schedule 1, heading, after “local authorities”, insert “and water services entities”.
- (2) In Schedule 1, replace clause 2 with:

**2 References to directors** 25

Every reference to a director or the directors must be read as if it were a reference,—

- (a) in the case of a local authority, to a member or the members of the local authority;
- (b) in the case of a water services entity, to a member or the members of the board of a water services entity. 30

- (3) In Schedule 1, replace clause 7 with:

**7 Exception in relation to obligations of grantor**

The obligation of a local authority or a water services entity to comply with section 12 is subject to section 40D(4), in that the local authority or water services entity may be required to comply with section 12 only to the extent that any such compliance will not, in the reasonable opinion of the local authority 35

- or water services entity, interfere with its ability to exercise or perform its rights, powers, and duties in relation to those assets not charged in favour of the appointor of the receiver or not the subject of the receivership.
- (4) In Schedule 1, clause 8, after “a local authority”, insert “or a water services entity”. 5
- (5) In Schedule 1, replace clause 11(2) and (3) with:
- (2) If the receiver prepares a report under section 23 or 24, the receiver must make that report available for public inspection,—
- (a) in the case of a local authority, at the offices and libraries of the local authority and must make copies of any such report available to the public free of charge or at a reasonable charge: 10
- (b) in the case of a water services entity, on an Internet site maintained by, or on behalf of, the water services entity.
- (3) Section 26(1) applies as if it required the receiver to send a copy of every report prepared under section 23 or 24 to,— 15
- (a) in the case of a local authority, the Secretary for Local Government, the Controller and Auditor-General, and the Parliamentary Library:
- (b) in the case of a water services entity, to the chief executive of the water services entity, the chief executive of the department that is for the time being responsible for the administration of the Water Services Entities Act 2022, the Controller and the Auditor-General, and the Parliamentary Library. 20
- (6) In Schedule 1, clause 12, after “Local Authorities (Members’ Interests) Act 1968”, insert “or the Water Services Entities Act 2022”.
- (7) In Schedule 1, clause 13(1), after “local authority”, insert “or water services entity”. 25
- (8) In Schedule 1, clause 15, insert as subclause (2):
- (2) If a Crown observer has been appointed under section 182 of the Water Services Entities Act 2022 or a Crown manager has been appointed under section 184 of that Act, the High Court may order that any receiver so appointed may not, until the High Court so orders, exercise any of the rights, powers, and duties of a receiver. 30
- (9) In Schedule 1, replace clause 16 with:
- 16 Power make certain applications**
- Sections 34(3), 35(2), and 37(1) apply as if the following were specified in those sections as persons entitled to make applications under those sections: 35
- (a) in the case of a local authority, the Secretary for Local Government and the Controller and Auditor-General:

|            |  |    |
|------------|--|----|
| (b)        | <u>in the case of a water services entity, the chief executive of the department that is for the time being responsible for the administration of the Water Services Entities Act 2022 and the Controller and Auditor-General.</u> |    |
| (10)       | <u>In Schedule 1, replace clause 18 with:</u>  | 5  |
| <b>18</b>  | <b><u>Copies of documents</u></b>  |    |
|            | <u>Copies of the documents required by sections 8(3), 11(4), 28(1), and 29(1) to be sent to the Registrar must be sent to,—</u>  |    |
| (a)        | <u>in the case of a local authority, the Secretary for Local Government and the Controller and Auditor-General:</u>  | 10 |
| (b)        | <u>in the case of a water services entity, the chief executive of the department that is for the time being responsible for the administration of the Water Services Entities Act 2022 and the Controller and Auditor-General.</u> |    |
|            | Subpart 22—Amendments to Resource Management Act 1991  | 15 |
| <b>149</b> | <b>Principal Act</b>   |    |
|            | This subpart amends the Resource Management Act 1991.  |    |
| <b>150</b> | <b>Section 2 amended (Interpretation)</b>  |    |
|            | In section 2(1), insert in their appropriate alphabetical order:   |    |
|            | <b>water services entity</b> means a water services entity established under section 11 of the Water Services Entities Act 2022  | 20 |
|            | <b>water services infrastructure</b> has the same meaning as in <b>section 6(1)</b> of the Water Services Entities Act 2022  |    |
| <b>151</b> | <b>Section 95B amended (Limited notification of consent applications)</b>  |    |
|            | After section 95B(2)(b), insert:   | 25 |
| (c)        | affected water services entities.  |    |
| <b>152</b> | <b>New section 95H inserted (Meaning of affected water services entity)</b>  |    |
|            | After section 95G, insert:   |    |
| <b>95H</b> | <b>Meaning of affected water services entity</b>   |    |
|            | A water services entity is an <b>affected water services entity</b> , in relation to an activity in the service area of the water services entity, if—   | 30 |
| (a)        | the activity is the subject of a consent application and may have adverse effects in the service area of the water services entity; and  |    |
| (b)        | the water services entity has not given written approval for the activity or has withdrawn approval for the activity in a written notice received by   | 35 |

the consent authority before the authority has made a decision under this section.

**153 Section 104 amended (Consideration of applications)**

After section 104(2D), insert:

- (2E) When considering a resource consent application that relates to a stormwater network, as defined in section 5 of the Water Services Act 2021, a consent authority—
- (a) must not grant the consent contrary to a stormwater environmental performance standard made under **section 139A** of that Act; and
  - (b) must include, as a condition of granting the consent, requirements that are no less restrictive than is necessary to give effect to the stormwater environmental performance standard.

**154 Section 108AA amended (Requirements for conditions of resource consents)**

After section 108AA(1)(b)(iii), insert:

- (iv) a stormwater environmental performance standard made under **section 139A** of the Water Services Act 2021; or

**155 Section 166 amended (Definitions)**

In section 166, definition of **requiring authority**, after paragraph (c), insert:

- (d) a water services entity established under section 11 of the Water Services Entities Act 2022

**156 Section 220 amended (Condition of subdivision consents)**

After section 220(1)(g), insert:

- (h) a condition requiring the vesting of ownership of water services infrastructure in accordance with section 126 of the Water Services Entities Act 2022;
- (i) a condition requiring the granting of the relevant approvals for infrastructure connections by the relevant water services entity under **Part 10** of the Water Services Entities Act 2022.

**157 Section 224 amended (Restrictions upon deposit of survey plan)**

After section 224(e), insert:

- ~~(ea) in relation to any connections to water services infrastructure, the requirements of **Part 10** of the Water Services Entities Act 2022 relating to obtaining stage 3 approval have been complied with; and~~
- (ea) there is lodged with the Registrar-General of Land a certificate signed by the chief executive or other authorised officer of the water services entity

stating that a stage 3 approval has been granted under **section 311** of the Water Services Entities Act 2022 and—

- (i) no conditions were imposed; or
- (ii) all or some of the conditions of the stage 3 approval have been complied with and, in relation to any conditions that have not been complied with, a consent notice has been issued in relation to the conditions to which **section 316** of that Act applies; and

5

**158 Schedule 1 amended**

In Schedule 1, after clause 3(1)(e), insert:

- (f) the water services entities in whose service area the local authority is located.

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**159 Schedule 4 amended**

In Schedule 4, after clause 4(g), insert:

- (h) the stage 1 approvals obtained under **Part 10** of the Water Services Entities Act 2022.

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Subpart 23—Amendments to Search and Surveillance Act 2012

**160 Principal Act**

This subpart amends the Search and Surveillance Act 2012.

**161 Schedule amended**

- (1) In the Schedule, after the item relating to section 110 of the Water Services Act 2021, insert:

20

|            |  |  |
|------------|--|--|
| <u>111</u> | <u>Compliance officer may enter and inspect place and may exercise powers under section 107 of the Water Services Act 2021 for purposes of section 103(a) to (e) of that Act</u> | <u>All (other than subparts 2, 3, 6, and 8 and sections 118 and 119)</u> |
|------------|--|--|

- (2) In the Schedule, after the item relating to section 112 of the Water Services Act 2021, insert:

|            |   |   |
|------------|---|---|
| <u>114</u> | <u>Specified person may enter and search place, vehicle, or other thing to ascertain whether person has engaged in or is engaging in conduct that contravenes legislative requirement or drinking water safety plan</u> | <u>Subpart 2 of Part 3 and Part 4 (except sections 118 and 119)</u> |
| <u>116</u> | <u>Conditions of entry, search, and seizure</u>   | <u>Section 110(e)</u>   |

- (3) In the Schedule, insert in ~~its~~ their appropriate alphabetical order:

|                                  |            |   |   |
|----------------------------------|------------|---|---|
| Water Services Entities Act 2022 | <b>368</b> | Compliance officer may inspect and copy documents and direct person to produce documents, and may take photographs and make recordings and electronic records   | Subpart 5   |
|                                  | <b>369</b> | Compliance officer may require person to provide person's name and residential address  | Subpart 5   |
|                                  | <b>370</b> | Compliance officer may direct person to answer questions  | Subpart 5   |
|                                  | <b>371</b> | Compliance officer may enter and inspect place and may exercise powers under <b>section 367</b> of that Act for purposes of <b>section 362(a) to (c)</b> of that Act  | All (other than subparts 2, 3, 6, and 8 and sections 118 and 119) |
|                                  | <b>372</b> | Compliance officer may, without warrant, enter and search place and may exercise powers under <b>sections 364 to 370</b> of that Act if officer believes, on reasonable grounds, that is required in relation to a specified serious risk | All (other than subparts 2, 3, 6, and 8 and sections 118 and 119) |
|                                  | <b>374</b> | Specified person may enter and search place, vehicle, or other thing to ascertain whether person has engaged in or is in engaging in conduct that contravenes compliance requirement  | Subparts 3 and 4 (except sections 118 and 119)                    |

## Subpart 24—Amendments to Social Security Act 2018

### 162 Principal Act

This subpart amends the Social Security Act 2018.

### 163 Section 65 amended (Accommodation supplement: discretionary grant)

- (1) In section 65(2), definition of **accommodation costs**, paragraph (a), replace “premises,” with “premises and any charges for water services that a tenant is responsible for,”. 5
- (2) In section 65(2), definition of **accommodation costs**, paragraph (b), replace “and house insurance premiums,” with “house insurance premiums, and charges for water services,”. 10

Subpart 24A—Amendments to Taumata Arowai—the Water Services  
Regulator Act 2020

**163A Principal Act**

This subpart amends the Taumata Arowai—the Water Services Regulator Act 2020.

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**163B Section 4 amended (Interpretation)**

(1) In section 4, replace the definition of **stormwater network** with:

**stormwater network**—

- (a) means the infrastructure and processes that—
- (i) are used to collect, treat, drain, store, reuse, or discharge stormwater in an urban area; and 10
  - (ii) are operated by, for, or on behalf of one of the following:
    - (A) a water services entity;
    - (B) a department;
    - (C) the New Zealand Defence Force; and 15
- (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)(i)** 20

(2) In section 4, replace the definition of **stormwater network operator** with:

**stormwater network operator** means—

- (a) each of the following, to the extent that a stormwater network is operated, or its operation or aspects of its operations are supervised by, for, or on behalf of: 25
- (i) a water services entity;
  - (ii) a department listed in Part 1 of Schedule 2 of the Public Service Act 2020;
  - (iii) the New Zealand Defence Force; and 30
- (b) any person who operates a stormwater network, or any aspect of a stormwater network, for, or on behalf of, an organisation specified in **paragraph (a)**

(3) In section 4, replace the definition of **urban area** with:

**urban area** has the same meaning as in **section 6(1)** of the Water Services Entities Act 2022 35

- (4) In section 4, definition of **wastewater network**, replace paragraph (b)(i) with:
- (i) a water services entity:
- (5) In section 4, replace the definition of **wastewater network operator** with:
- wastewater network operator** means—
- (a) each of the following, to the extent that a wastewater network is operated, or its operation or aspects of its operations are supervised by, for, or on behalf of:
- (i) a water services entity:
- (ii) a department listed in Part 1 of Schedule 2 of the Public Service Act 2020:
- (iii) the New Zealand Defence Force; and
- (b) any person who operates a wastewater network, or any aspect of a wastewater network, for, or on behalf of, an organisation specified in **paragraph (a)**; and
- (c) an organisation or individual involved in the operation of a wastewater network if the organisation or individual is authorised or included on a register in accordance with regulations made under section 200 of the Water Services Act 2021
- (6) In section 4, insert in their appropriate alphabetical order:
- green water services infrastructure** has the same meaning as in **section 6(1)** of the Water Services Entities Act 2022
- overland flow path** has the same meaning as in **section 6(1)** of the Water Services Entities Act 2022
- water services entity** means a water services entity established under section 11 of the Water Services Entities Act 2022

### Subpart 24B—Amendments to Te Awa Tupua (Whanganui River Claims Settlement) Act 2017

#### **163C Principal Act**

This subpart amends the Te Awa Tupua (Whanganui River Claims Settlement) Act 2017.

#### **163D Schedule 2 amended**

- (1) In Schedule 2, after clause 1(u), insert:
- (ua) Taumata Arowai—the Water Services Regulator Act 2020:
- (2) In Schedule 2, after clause (1)(w), insert:
- (wa) Water Services Act 2021:
- (wb) Water Services Entities Act 2022:

## Subpart 25—Amendment to Te Ture Whenua Maori Act 1993

**164 Principal Act**

This subpart amends Te Ture Whenua Maori Act 1993.

**165 New section 26AAA and cross-heading inserted**

After section 26, insert:

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*Jurisdiction of court under Water Services Entities Act 2022*

**26AAA Jurisdiction of court under Water Services Entities Act 2022**

The court has exclusive jurisdiction to hear and determine all disputes or questions arising under **Part 6** of the Water Services Entities Act 2022, and to make orders under that Act, where the land to which the dispute, question, or order relates is Maori land.

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## Subpart 26—Amendments to Urban Development Act 2020

**166 Principal Act**

This subpart amends the Urban Development Act 2020.

**167 Section 9 amended (Interpretation)**

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- (1) In section 9, repeal the definition of **wastewater services**.
- (2) In section 9, insert in their appropriate alphabetical order:

**stormwater network** has the same meaning as in section 5 of the Water Services Act 2021

**wastewater network** has the same meaning as in section 5 of the Water Services Act 2021

20

**water services entity** means a water services entity established under section 11 of the Water Services Entities Act 2022

**water services infrastructure** has the same meaning as in **section 6(1)** of the Water Services Entities Act 2022

25

**168 Section 23 amended (Duty to co-operate)**

After section 23(1)(c), insert:

(d) water services entities.

**168A Section 62 amended (Further contents of development plan: funding)**

After section 62(1), insert:

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- (1A) If the sources of funding include a water infrastructure contribution, the development plan must refer to a water infrastructure contributions policy prepared

- by the water services entity under **section 346** of the Water Services Entities Act 2022.
- 169 Section 68 amended (Documents and other matters relevant to preparation of development plan)**
- After section 68(1)(b)(vii), insert: 5
- (viii) water services infrastructure connection requirements made under **Part 10** of the Water Services Entities Act 2022.
- 170 Section 142 amended (Interpretation for this subpart)**
- (1) In section 142(1), definition of **controlling authority**, replace “territorial authority” with “territorial authority, water services entity,”. 10
- (2) In section 142(1), replace the definition of **water-related infrastructure** with: 15
- water-related infrastructure** means infrastructure associated with, or necessary for, any of the following:
- (a) three waters services:
- (b) the supply of water through water races:
- (c) drainage and rivers clearance.
- 171 Section 160 amended (Kāinga Ora responsible for costs of construction)**
- ~~In section 160(2)(a), replace “territorial authority” with “water services entity”.~~
- In section 160(2)(a), replace “territorial authority” with “territorial authority or water services entity”. 20
- 172 Section 161 amended (Limitations on power to alter water-related infrastructure Kāinga Ora does not control)**
- In section 161(3)(d), replace “relates to the quality of services” with “relates to Te Mana o te Wai or the quality of services”.
- 173 Section 164 amended (Ongoing application of section 181(4) of Local Government Act 2002 to transferred water-related infrastructure)** 25
- (1) In the heading to section 164, replace “**section 181(4) of Local Government Act 2002**” with “**section 200 of Water Services Entities Act 2022**”.
- (2) Replace section 164(2) with:
- (2) **Section 200** of the Water Services Entities Act 2022 applies as if that infrastructure were work constructed under that section. 30
- 174 Section 167 amended (Power of Kāinga Ora to propose bylaw change)**
- Replace section 167(1) with:

- (1) Once the development plan for a specified development project becomes operative, Kāinga Ora may propose a bylaw change that relates to roads, or junctions with roads, that are within the project area.
- 175 Section 179 amended (Bylaw-making authorities must consult Kāinga Ora on certain proposals)** 5  
 In section 179, replace “that would affect roads or water-related infrastructure, or the construction of new roads or new water-related infrastructure,” with “that would affect roads, or the construction of new roads,”.
- 176 Section 186 amended (Order in Council may authorise Kāinga Ora to set rates)** 10  
 In section 186(2), example 2, delete “A portion of the general rate set by a local authority is used to fund a wastewater system that serves the authority’s entire district.”.
- 177 Section 189 amended (Procedure for setting rates)** 15  
 Repeal section 189(5)(b) and (7).
- 178 Section 219 amended (Principles for development contributions)**  
 In section 219, insert as subsection (2):
- (2) ~~Section 344 of the Water Services Entities Act 2022 (which sets out the principles relating to infrastructure contribution charges under that Act) applies to this subpart, with all necessary modifications, as if Kāinga Ora were a water services entity.~~ 20
- 179 Section 221 amended (Kāinga Ora may require development contributions)**  
 After section 221(1)(c)(ii), insert:
- (iii) ~~is liable to pay a water infrastructure contribution charge to a relevant water services entity.~~ 25
- 180 Section 224 amended (Limits on power to require development contributions)**  
 In section 224(1)(e), after “territorial authority”, insert “or a water services entity”. 30
- 181 Section 237 amended (Transfer of previous development contributions to Kāinga Ora)**  
 (1) After section 237(1)(a), insert:
- (aa) ~~a relevant water services entity has received or is owed a water infrastructure contribution charge under the Water Services Entities Act 2022; and~~ 35

- (2) ~~In section 237(2)(a), replace “development contribution that” with “development contribution or water infrastructure contribution charge that”.~~
- (3) ~~After section 237(2), insert:~~
- (2A) ~~The relevant water services entity may transfer either or both of the following to Kāinga Ora:~~ 5
- (a) ~~any amount of the water infrastructure contribution charge that has been paid to the water services entity;~~
- (b) ~~the right to be paid any amount of the water infrastructure contribution charge that is yet to be paid to the water services entity.~~

### **177A New subpart 3A of Part 4 inserted** 10

After section 237, insert:

#### Subpart 3A—Water infrastructure contributions

### **237A Principles of water infrastructure contributions**

**Section 344** of the Water Services Entities Act 2022 applies to this subpart, with all necessary modifications, as if Kāinga Ora were a water services entity. 15

### **237B Meaning of development**

In this subpart, **development** means any subdivision, building (within the meaning of section 8 of the Building Act 2004), land use, or work that generates a demand for water services infrastructure.

### **237C Kāinga Ora may require water infrastructure contributions** 20

- (1) Kāinga Ora may require a water infrastructure contribution from the person undertaking a development if—
- (a) the development plan for the project authorises Kāinga Ora to require water infrastructure contributions; and
- (b) the effect of the development is to require new or additional assets or assets of increased capacity— 25
- (i) in a project area; or
- (ii) outside a project area if the assets directly benefit, or are required for, a development in the project area; and
- (c) as a consequence, Kāinga Ora— 30
- (i) incurs capital expenditure to provide appropriately for water services infrastructure; or
- (ii) is liable to pay a water infrastructure contribution to the relevant water services entity.

(2) This section does not prevent Kāinga Ora from requiring a water infrastructure contribution that is to be used to pay, in full or in part, for capital expenditure already incurred by Kāinga Ora in anticipation of the development.

(3) In **subsection (1), effect** includes the cumulative effects that a development may have in combination with other developments. 5

Compare: 2002 No 84 s 199

### **237D Determining amount of water infrastructure contributions**

Kāinga Ora must determine the amount of a water infrastructure contribution in accordance with the relevant water infrastructure contributions policy.

Compare: 2002 No 84 s 197(2) 10

### **237E When Kāinga Ora may charge for water infrastructure contribution**

(1) Kāinga Ora may charge a person who owns property in its project area for water infrastructure contributions required under **section 237C** when—

(a) the person is granted—

(i) a resource consent under the Resource Management Act 1991 for a development within its project area; or 15

(ii) a building consent under the Building Act 2004 for a development within its project area:

(b) the person's property is connected to a water service:

(c) an increase in commercial demand for water services occurs: 20

(d) a stage 1, 2, or 3 approval is granted under **Part 10** of the Water Services Entities Act 2022.

(2) However, Kāinga Ora may charge a person who owns property for a water infrastructure contribution only if it is consistent with the relevant water infrastructure contributions policy adopted under **section 346** of the Water Services Entities Act 2022 that was in force at the time— 25

(a) the person submitted an application (with all of the required information) for a resource consent, building consent, or stage 1, 2, or 3 approval; or

(b) the person's property was connected to a water service; or

(c) the increase in commercial demand for water services occurred. 30

(3) A person who owns property and Kāinga Ora may agree that—

(a) any unpaid water infrastructure contributions may be paid off in quarterly or annual instalments over an agreed period (not exceeding 50 years):

(b) Kāinga Ora may charge an agreed rate of interest on any unpaid balance. 35

(4) Kāinga Ora may refuse to connect a property to water services if the person who owns property has not—

(a) paid their water infrastructure contribution; or

- (b) agreed to an instalment plan.
- (5) Kāinga Ora may charge a rate of interest on the unpaid balance with the rate agreed with the person who owns property when the agreement is put in place.
- (6) Kāinga Ora must register any unpaid balance against the relevant land under the Land Transfer Act 2017 on the title of the land in respect of which the water infrastructure contribution was required. 5
- (7) If the property subject to the agreement is sold, the new owner of the property is liable to pay the unpaid water infrastructure contributions in accordance with the agreement under **subsection (3)**.
- (8) A person who Kāinga Ora charges for a water infrastructure contribution may apply to Kāinga Ora under **section 446** of the Water Services Entities Act 2022 for a review of the decision to charge that person on any ground set out in **section 237H**. 10
- (9) For the purposes of **subsection (8)**, **sections 446 to 449** of the Water Services Entities Act 2022 apply as if Kāinga Ora were a water services entity. 15
- (10) A person who has paid all or part of a water infrastructure contribution is entitled to a refund of the payment from Kāinga Ora if—
- (a) Kāinga Ora does not use the water infrastructure contribution for the purpose for which it was charged; or
- (b) the relevant resource consent or building consent lapses; or 20
- (c) the development does not proceed.
- (11) Despite anything in **subsection (10)**, Kāinga Ora may retain any portion of a water infrastructure contribution that is equivalent in value to the costs incurred by Kāinga Ora in relation to a development that does not proceed.
- (12) A relevant water services entity may, as appropriate and by agreement with Kāinga Ora, exercise the powers under **subsection (1)** on Kāinga Ora's behalf. 25
- (13) For the purposes of this section, a **person who owns property** includes a person who leases property under a lease that requires the person to pay charges to a water services entity that the owner of the property would otherwise pay. 30

Compare: 2002 No 84 s 198

*Use of water infrastructure contributions*

**237F Use of water infrastructure contributions by Kāinga Ora**

- (1) If a water infrastructure contribution is required by Kāinga Ora under **section 237C(1)(c)(i)**, the contribution must be used for or towards the capital expenditure on the water services infrastructure. 35
- (2) If a water infrastructure contribution is required by Kāinga Ora under **section 237C(1)(c)(ii)**, the contribution must be used for or towards the payment of the water infrastructure contribution for which it was required.

(3) **Subsection (1)** is subject to **section 237G**.

Compare: 2002 No 84 s 204

*Objections to water infrastructure contributions*

**237G Right to object to assessed amount of water infrastructure contribution**

- (1) A person may object, on any ground set out in **section 237H**, to the assessed amount of the water infrastructure contribution that Kāinga Ora has charged the person under **section 237E**, advised in—
- (a) a notice given to the person for that purpose by Kāinga Ora; or
  - (b) if notice has not been given, such other formal advice of the requirement that Kāinga Ora has given to the person.
- (2) The right of objection conferred by this section does not apply to challenges to the content of a water infrastructure contributions policy prepared in accordance with **section 346** of the Water Services Entities Act 2022.

**237H Scope of water infrastructure contribution objections**

- (1) An objection under **section 237G** may be made only on the ground that—
- (a) Kāinga Ora has—
    - (i) failed to properly take into account features of the objector’s development or increased commercial demand that, on their own or cumulatively with those of other developments or increased commercial demand from other properties, would substantially reduce the impact of the development or increased demand on requirements for assets in Kāinga Ora’s project area or parts of that project area; or
    - (ii) required a water infrastructure contribution for assets not required by, or related to, the objector’s development or increased commercial demand, whether on its own or cumulatively with other developments or increased commercial demand from other properties; or
    - (iii) already required a water infrastructure contribution for the same purpose in respect of the same development or increased commercial demand; or
    - (iv) incorrectly applied the relevant water infrastructure contributions policy to the objector’s development or increased commercial demand;
  - (b) the objector will fund or otherwise provide for the same assets for which the water infrastructure contribution had been required.
- (2) However, an objection may not be made on the ground outlined in **subsection (1)(a)(iii)** if Kāinga Ora has required an additional water infrastructure contribution to reflect an increase in the scale or intensity of the development or fur-

ther increase in commercial demand since the original contribution was required.

**237I Procedure for water infrastructure contribution objections**

Sections 199H, 199I, 199K, 199L, 199M, 199N, and 199O and Schedule 13A of the Local Government Act 2002 apply to objections under **section 237G** with all necessary modifications, including the following:

- (a) a reference to a territorial authority must be read as a reference to Kāinga Ora (except in clause 9(4)(c) of Schedule 13A of that Act):
- (b) a reference to a district must be read as a reference to a project area:
- (c) a reference to a development contribution must be read as a reference to a water infrastructure contribution:
- (d) a reference to a development contribution objection must be read as a reference to a water infrastructure contribution objection:
- (e) a reference to a development contributions policy must be read as a reference to a relevant water infrastructure contributions policy:
- (f) the right to lodge a development contribution objection under section 199C of that Act must be read as the right to lodge a water infrastructure contribution objection under **section 237G** of this Act:
- (g) the notice of the outcome of a reconsideration under section 199B of the Local Government Act 2002 must be read as the notice of decision on internal review under **section 448** of the Water Services Act 2022:
- (h) a reference to section 150A of the Local Government Act 2002 must be read as a reference to **section 237L** of this Act.

**237J Consideration of water infrastructure contribution objection**

When considering a water infrastructure contribution objection and any evidence provided in relation to that objection, development contributions commissioners must give due consideration to the following:

- (a) the grounds on which the water infrastructure contribution objection was made:
- (b) the purpose and principles of water infrastructure contributions under **sections 343 and 344** of the Water Services Entities Act 2022:
- (c) the provisions of the water infrastructure contributions policy under which the water infrastructure contribution that is the subject of the objection was, or is, required:
- (d) the cumulative effects of the objector's development or increased commercial demand in combination with the other developments or increased commercial demand in a project area or parts of a project area, on the requirement to provide the assets that the water infrastructure contribution is to be used for or toward:

- (e) any other relevant factor associated with the relationship between the objector's development or increased commercial demand and the water infrastructure contribution to which the objection relates.

**237K Interim effect of water infrastructure contribution objection**

- (1) If a water infrastructure contribution objection is lodged, Kāinga Ora may still require the water infrastructure contribution to be made, but must not use it until the objection has been determined. 5
- (2) If Kāinga Ora does not require a water infrastructure contribution to be made pending the determination of an objection, Kāinga Ora may withhold granting a service connection until the objection has been determined. 10

**237L Costs of water infrastructure contribution objections**

- (1) If a person objects to Kāinga Ora's requirement that a water infrastructure contribution be made, Kāinga Ora may recover from the person its actual and reasonable costs in respect of the objection.
- (2) The costs that Kāinga Ora may recover under this section are the costs incurred by it in respect of— 15
- (a) selecting, engaging, and employing the development contributions commissioners; and
- (b) the secretarial and administrative support of the objection process; and
- (c) preparing for, organising, and holding the hearing. 20
- (3) Kāinga Ora may, in any particular case and in its absolute discretion, waive or remit the whole or any part of any costs that would otherwise be payable under this section.
- (4) Kāinga Ora's actual and reasonable costs in respect of objections are recoverable as a debt due to Kāinga Ora in a court of competent jurisdiction. 25

*Other matters*

**237M Consequences if water infrastructure contribution unpaid**

- (1) Until a water infrastructure contribution required by Kāinga Ora has been paid, Kāinga Ora may,—
- (a) in the case of a water infrastructure contribution required when a resource consent is granted,— 30
- (i) withhold a certificate under section 224(c) of the Resource Management Act 1991; or
- (ii) prevent the commencement of a resource consent under that Act; or 35

- (b) in the case of a water infrastructure contribution required when a building consent is granted, require that a code compliance certificate under section 95 of the Building Act 2004 be withheld; or
- (c) in the case of a water infrastructure contribution required when an authorisation for a service connection is granted, withhold a service connection to the development. 5
- (2) A relevant territorial authority, a water services entity, or a building consent authority may, as appropriate and by agreement with Kāinga Ora, exercise the powers under **subsection (1)** on Kāinga Ora’s behalf. 10  
 Compare: 2002 No 84 s 208
- 237N Development agreements**
- (1) Kāinga Ora may enter into a development agreement instead of, or in addition to, requiring a water infrastructure contribution.
- (2) The development agreement must include—
- (a) a description of the land to which the agreement relates, including its legal description; and 15
- (b) details of the water services infrastructure that each party will pay for or provide.
- (3) The development agreement is a legally enforceable contract once it is signed by all parties who will be bound by the agreement. 20
- (4) The development agreement must not require a person to—
- (a) grant a resource consent; or
- (b) issue a building consent under the Building Act 2004; or
- (c) issue a code of compliance under the Building Act 2004; or
- (d) grant a certificate under section 224 of the Resource Management Act 1991; or 25
- (e) issue an authorisation for a service connection.
- (5) A person may not refuse to grant or issue anything referred to in **subsection (4)** on the basis that a development agreement has not been entered into under this section. 30
- 237O Transfer of previous water infrastructure contributions to Kāinga Ora**
- (1) This section applies if—
- (a) a water services entity has received or is owed a water infrastructure contribution under the Water Services Entities Act 2022; and
- (b) Kāinga Ora becomes responsible for capital expenditure on the asset for which the contribution was required. 35
- (2) A relevant water services entity may transfer either or both of the following to Kāinga Ora:

- (a) any amount of the water infrastructure contribution that has been paid to the water services entity:
- (b) the right to be paid any amount of the water infrastructure contribution that is yet to be paid to the water services entity.
- (3) Any amount of a water infrastructure contribution that is transferred to Kāinga Ora, or that Kāinga Ora receives under a right to be paid, must be treated as if it were part of a water infrastructure contribution that was required by Kāinga Ora under this subpart. 5

### 182 Schedule 2 amended

In Schedule 2, clause 2, definition of **transferee**, after paragraph (c), insert: 10

- (ca) a water services entity:

#### Subpart 27—Amendments to Utilities Access Act 2010

### 183 Principal Act

This subpart amends the Utilities Access Act 2010.

### 184 Section 4 amended (Interpretation) 15

- (1) In section 4, definition of **utility operator**, replace paragraph (d) with:

- (d) in relation to water services infrastructure,—
- (i) a water services entity established under section 11 of the Water Services Entities Act 2022; or
- (ii) a responsible SPV that is responsible for the construction of eligible infrastructure under the Infrastructure Funding and Financing Act 2020: 20

- (2) In section 4, insert in its appropriate alphabetical order:

**water services** has the same meaning as in **section 6(1)** of the Water Services Entities Act 2022 25

#### Subpart 27A—Amendment to Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010

### 184A Principal Act

This subpart amends the Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010. 30

### 184B Section 17 amended (Duty to have particular regard to vision and strategy)

After section 17(7), insert:

- (8) **Subsection (9)** applies to a person carrying out functions or exercising powers under an enactment specified in **subsection (10)** if the functions or powers relate to—
- (a) the Waikato River; or
  - (b) activities in the catchment that affect the Waikato River. 5
- (9) Except as otherwise expressly provided in this Act, the person must have particular regard to the vision and strategy in addition to any requirement specified in the enactment for the carrying out of the functions or the exercise of the powers.
- (10) The enactments are— 10
- (a) the Taumata Arowai—the Water Services Regulator Act 2020; and
  - (b) the Water Services Act 2021; and
  - (c) the Water Services Entities Act 2022.

## Subpart 28—Amendments to Water Services Act 2021

### 185 Principal Act 15

This subpart amends the Water Services Act 2021.

#### 185A Section 2 replaced (Commencement)

Replace section 2 with:

- 2 Commencement**
- (1) Sections 185, 186, 188, 191, 192, 193, 196, and 200 come into force on the date on which the Water Services Legislation Act 2022 receives the Royal assent. 20
  - (2) Sections 187, 194, 195, 198, 199, and 201 come into force on **1 July 2024**.
  - (3) Section 197 comes into effect on **4 October 2023**.
  - (4) The rest of this Act comes into force on the earlier of— 25
    - (a) a date appointed by the Governor-General by Order in Council; and
    - (b) the date that is 2 years after the date on which this Act receives the Royal assent.
  - (5) One or more Orders in Council may be made under **subsection (4)(a)** appointing different dates for different provisions. 30
  - (6) An Order in Council made under this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

#### 186 Section 3 amended (Purpose of this Act)

After section 3(2)(b), insert:

- (ba) to ensure that a quantity of drinking water sufficient to support the ordinary drinking water and sanitary needs of consumers is provided to each point of supply; and

### 187 Section 5 amended (Interpretation)

- (1) In section 5, replace the definition of **stormwater network** with: 5
- stormwater network**—
- (a) means the infrastructure and processes that—
- (i) are used to collect, treat, drain, store, reuse, or discharge stormwater in an urban area; and
- (ii) are owned or operated by, for, or on behalf of one of the following: 10
- (A) ~~a local authority, council-controlled organisation, or subsidiary of a council-controlled organisation;~~
- (B) a water services entity;
- (C) a department: 15
- (D) the New Zealand Defence Force; and
- (b) includes—
- (i) an overland flow path;
- (ii) green water services infrastructure that delivers stormwater services; 20
- (iii) watercourses that are part of, or related to, the infrastructure described in **paragraph (a)**
- (1A) In section 5, replace the definition of **stormwater network operator** with:
- stormwater network operator** means—
- (a) each of the following, to the extent that a stormwater network is operated, or its operation or aspects of its operations are supervised by, for, or on behalf of: 25
- (i) a water services entity;
- (ii) a department;
- (iii) the New Zealand Defence Force; and 30
- (b) any person who operates a stormwater network, or any aspect of a stormwater network, for, or on behalf of, an organisation specified in **paragraph (a)**
- (2) In section 5, replace the definition of **urban area** with: 35
- urban area** has the same meaning as in **section 6(1)** of the Water Services Entities Act 2022
- (3) In section 5, definition of **wastewater network**, replace paragraph (b)(i) with:

- (i) a water services entity:
- (4) In section 5, definition of **wastewater network operator**, replace paragraph (a)(i) with:
- (i) a water services entity:
- (4) In section 5, replace the definition of **wastewater network operator** with: 5
- wastewater network operator** means—
- (a) each of the following, to the extent that a wastewater network is operated, or its operation or aspects of its operations are supervised by, for, or on behalf of:
- (i) a water services entity: 10
- (ii) a department:
- (iii) the New Zealand Defence Force; and
- (b) any person who operates a wastewater network, or any aspect of a wastewater network, for, or on behalf of, an organisation specified in **paragraph (a)**; and 15
- (c) an organisation or individual involved in the operation of a wastewater network if the organisation or individual is authorised or included on a register in accordance with regulations made under section 200
- (5) In section 5, insert in their appropriate alphabetical order:
- green water services infrastructure** has the same meaning as in **section 6(1)** of the Water Services Entities Act 2022 20
- marae** includes the area of land on which all buildings such as wharenuī, wharekai, wharepaku, papakāinga, and any other associated buildings are situated
- overland flow path** has the same meaning as in **section 6(1)** of the Water Services Entities Act 2022 25
- trade waste** has the same meaning as in **section 6(1)** of the Water Services Entities Act 2022
- water services entity** means a water services entity established under section 11 of the Water Services Entities Act 2022
- 188 Section 25 amended (Duty to provide sufficient quantity of drinking water)** 30
- (1) In section 25(2)(a), after “ordinary drinking water”, insert “and sanitary”.
- (2) After section 25(8), insert:
- (9) Nothing in this section limits or affects the power of a compliance officer appointed under the Water Services Entities Act 2022 to restrict the water supply to land or a building under **section 363** of that Act. 35

- 189 Section 26 amended (Duties where sufficient quantity of drinking water at imminent risk)**
- (1) In section 26(1)(a), replace “local authorities” with “water services entities and regional councils”.
- (2) Replace section 26(1)(b) with: 5
- (b) request that the water services entities responsible for the area exercise their powers under any legislation (for example, by setting and implementing a water restriction in the area) to assist that supplier to continue to provide a sufficient quantity of drinking water; and
- 190 Section 29 amended (Duty of officers, employees, and agents to exercise due diligence)** 10
- In section 29(3), replace “council-controlled organisation complies with its duties under legislative requirements, unless that member is also an officer of that council-controlled organisation” with “water services entity complies with its legislative requirements”. 15
- 191 Section 33 amended (Planned events)**
- After section 33(5)(b), insert:
- (c) any directions issued by a compliance officer under section 104.
- 192 Section 34 amended (Unplanned supply of drinking water)**
- In section 34(3)(b), replace “issued by Taumata Arowai” with “issued by a compliance officer”. 20
- 193 New section 35A inserted (Water services entity or regional council may be required to warn users of domestic self-supply about contamination)**
- After section 35, insert:
- 35A Water services entity or regional council may be required to warn users of domestic self-supply about contamination** 25
- (1) This section applies if a medical officer of health or Taumata Arowai believes that a source of water for domestic self-supply is contaminated in a way that affects, or is likely to affect, that domestic self-supply.
- (2) The medical officer of health or Taumata Arowai may issue a notice to the water services entity responsible for the ~~supply~~ service area or to the regional council responsible for the area to which water is supplied from that source, or to both. 30
- (3) A water services entity or regional council that receives a notice under **subsection (2)** must— 35

|  |                     |
|--|---------------------|
| <p>(a) ensure that an assessment is made as to whether any domestic self-supply is abstracting or otherwise receiving unsafe water from the source specified in the notice; and</p> <p>(b) if that assessment so requires, take all practicable steps—</p> <p style="padding-left: 2em;">(i) to warn users of that supply—</p> <p style="padding-left: 4em;">(A) that drinking water must not be used for domestic use and food preparation; or</p> <p style="padding-left: 4em;">(B) that drinking water may only be used for domestic use and food preparation if certain steps are first taken (for example, boiling the water); and</p> <p style="padding-left: 2em;">(ii) to exercise any other power or take any action to remedy the situation.</p> | <p>5</p> <p>10</p>  |
| <br>   |                     |
| <b>194 Section 49 amended (Compliance rules)</b>   |                     |
| <p>(1) In section 49(1)(b), delete “(for example, local authorities)”.</p> <p>(2) In section 49(4)(b), replace “individual water supply or local authority” with “individual drinking water supply or supplier”.</p>   | <p>15</p>           |
| <br>   |                     |
| <b>195 Section 62 amended (Special powers of Taumata Arowai during drinking water emergency)</b>   |                     |
| <p>(1) In section 62(2)(f), replace “territorial authority” with “water services entity”.</p> <p>(2) Replace section 62(2)(g) with:</p> <p style="padding-left: 2em;">(g) direct a water services entity to supply drinking water to affected persons (whether in the service area of that entity authority or the service area of another water services entity):</p>   | <p>20</p>           |
| <br>   |                     |
| <b>196 Section 104 amended (Directions)</b>  |                     |
| <p>In section 104(1), replace “section 34” with “section 33 or 34”.</p>  | <p>25</p>           |
| <br>   |                     |
| <b>197 New subpart 7A heading in Part 3 and new section 139A inserted</b>  |                     |
| <p>After section 139, insert:</p> <p style="text-align: center; padding: 10px 0;">Subpart 7A—Provisions relating to stormwater networks</p> <p><b>139A Stormwater environmental performance standards</b></p> <p>(1) <del>Taumata Arowai may, after carrying out consultation under section 53 with each stormwater network operator, regional councils, mana whenua, and any other person it considers appropriate, make stormwater environmental performance standards.</del></p> <p>(2) <del>Stormwater environmental performance standards may include (without limitation) requirements, limits, conditions, or prohibitions relating to—</del></p>   | <p>30</p> <p>35</p> |

- (a) ~~the environmental performance of the stormwater network, including the quality and quantity of stormwater:~~
- (b) ~~inundation of people and property as a result of the performance of the stormwater networks:~~
- (c) ~~discharges to air, water, or land.~~ 5
- (1) Taumata Arowai may, after carrying out consultation under section 53 with each stormwater network operator, regional council, mana whenua, and any other person it considers appropriate, make stormwater environmental performance standards, including (without limitation) standards relating to—
- (a) the environmental performance of the stormwater network, including the quality and quantity of stormwater: 10
- (b) inundation of people and property as a result of the performance of the stormwater networks:
- (c) discharges to air, water, or land.
- (2) Stormwater environmental performance standards may include (without limitation) requirements, limits, conditions, or prohibitions. 15
- (3) Stormwater environmental performance standards—
- (a) may apply—
- (i) to all stormwater networks and their operators; or
- (ii) to classes of stormwater network and their operators; but 20
- (b) must not apply to an individual stormwater network or stormwater network operator.
- (4) Stormwater environmental performance standards made under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements). 25

### 198 Section 140 amended (Interpretation)

- (1) ~~In section 140, definition of **drinking water network**, replace paragraph (a) with:~~
- (a) ~~a water services entity:~~
- (2) ~~In section 140, definition of **drinking water network operator**, replace paragraph (a)(i) with:~~ 30
- (i) ~~a water services entity:~~
- (1) In section 140, replace the definition of **drinking water network** with:
- drinking water network** means a drinking water supply that is operated by, for, or on behalf of, or whose operation or aspects of whose operation are supervised by, one of the following: 35
- (a) a water services entity:
- (b) a department:

- (c) the New Zealand Defence Force
- (2) In section 140, replace the definition of **drinking water network operator** with:
- drinking water network operator** means—
- (a) each of the following, to the extent that a drinking water network is operated, or its operation or aspects of its operations are supervised by, for, on behalf of: 5
- (i) a water services entity:
- (ii) a department:
- (iii) the New Zealand Defence Force; and 10
- (b) any person who operates a drinking water network, or any aspect of a drinking water network, for, or on behalf of, an organisation specified in **paragraph (a)**
- 199 Section 148 amended (Further provisions relating to reporting)**
- (1) In section 148(1), replace “141” with “147”. 15
- (2) In section 148(2), replace “141” with “137”.
- 200 Section 205 amended (Publication of instruments)**
- Replace section 205(1) with:
- (1) Taumata Arowai must ensure that the following instruments are published in accordance with subsection (2): 20
- (a) templates and models issued under section 52:
- (b) a drinking water compliance, monitoring, and enforcement strategy prepared under section 136:
- (c) an annual drinking water regulation report prepared under section 137:
- (d) environmental performance measures or targets for networks developed under section 145: 25
- (e) an annual report on networks under section 147.
- 201 Section 211 repealed (Section 146 amended (Specific bylaw-making powers of territorial authorities))**
- Repeal section 211. 30
- Subpart 29—Amendments to secondary legislation
- 202 Amendments to secondary legislation**
- Amend the secondary legislation specified in **Schedule 3 4** as set out in that schedule.

## Subpart 30—Repeals

**203 Repeals**

- (1) ~~The Wellington Regional Council (Water Board Functions) Act 2005 (2005 No 1) (L) is repealed.~~
- (2) ~~The Wellington Regional Water Board Act 1972 (1972 No 3) (L) is repealed.~~ 5

**203 Repeals**

The following are repealed:

- (a) Dunedin City (Suburban Water Charges) Empowering Act 1937 (1937 No 9 L):
- (b) Eltham Borough Drainage and Water-supply Empowering Act 1905 (1905 No 4 L): 10
- (c) Hauraki Plains County Council Empowering (Kerepehi Sewerage Works) Act 1975 (1975 No 13 L):
- (d) Hauraki Plains County Eastern Water-supply Empowering Act 1935 (1935 No 3 L): 15
- (e) Hawera Borough Drainage Empowering Act 1900 (1900 No 21 L):
- (f) Makerua Drainage Board Empowering Act 1952 (1952 No 8 L):
- (g) Nelson Waterworks Act 1863 (1863 No 1 L):
- (h) Nelson Waterworks Extension Act 1935 (1935 No 5 L):
- (i) Onerahi Water Reserve Enabling Act 1928 (1928 No 9 L): 20
- (j) Paeroa Borough Water-supply Empowering Act 1947 (1947 No 5 L):
- (k) Paeroa Water-supply Transfer Validation Act 1922 (1922 No 23 L):
- (l) Tararua District Council (Rates Validation and Empowering) Act 1996 (1996 No 7 L):
- (m) Thames Water Supply Transfer Act 1880 (1880 No 7 L): 25
- (n) Timaru Borough Drainage, Sewerage, and Loans Act 1905 (1905 No 5 L):
- (o) Timaru Water-Race Reserve Act 1881 (1881 No 11 L):
- (p) Wellington Regional Council (Water Board Functions) Act 2005 (2005 No 1 L): 30
- (q) Wellington Regional Water Board Act 1972 (1972 No 3 L).

**Schedule 1**  
**New Part 2 inserted into Schedule 1 of Water Services Entities Act**  
**2022**

s 23

|   |    |
|---|----|
| <b>Part 2</b>   | 5  |
| <b>Provisions relating to Water Services Legislation Act 2022</b>   |    |
| <b>38 Interpretation</b>  |    |
| In this <b>Part</b> , unless the context otherwise requires,—   |    |
| <b>Act</b> means the Water Services Entities Act 2022   |    |
| <b>allocation schedule</b> <del>means a schedule prepared under clause 5</del> <u>has the meaning given in clause 6(3)</u>  | 10 |
| <b>amendment Act</b> means the <b>Water Services Legislation Act 2022</b>   |    |
| <b>assets, liabilities, and other matters</b> has the meaning given in clause 1   |    |
| <b>bylaw</b> has the same meaning as in section 5(1) of the Local Government Act 2002 and includes—   | 15 |
| (a) a set of bylaws; and  |    |
| (b) an individual bylaw in a set of bylaws; and   |    |
| (c) a provision within an individual bylaw  |    |
| <b>council-controlled organisation</b> <u>has the meaning given in clause 1</u>   |    |
| <b>development contribution</b> has the same meaning as in section 197(2) of the Local Government Act 2002  | 20 |
| <b>development contributions requirements</b> means the requirements established under subpart 5 of Part 8 of the Local Government Act 2002                                       |    |
| <b>establishment chief executive</b> means a person appointed under clause 4  |    |
| <b>establishment date</b> has the meaning given in clause 1   | 25 |
| <b>establishment period</b> has the meaning given in clause 1   |    |
| <b>financial contributions requirements</b> means the requirements established under sections 77E, 77T, 80E, 108, 110, 111, 222, 409, and 411 of the Resource Management Act 1991 |    |
| <b>local government organisation</b> has the meaning given in clause 1  | 30 |
| <b>mixed-use water services asset or property</b> , of a local government organisation,—  |    |
| (a) means any asset or property that has more than 1 purpose or use but whose primary purpose or predominant use is the delivery of water services; but                           | 35 |

(b) does not include a transport stormwater system

**relationship agreement** means an agreement entered into under **section 199A**

**relevant water services entity**, in relation to a territorial authority, means the water services entity named in Schedule 2 whose service area includes the district of that territorial authority

**territorial authority owners** has the meaning given in **section 6(1)**

**transport stormwater system** has the meaning given in **section 6(1)**.

*Further provisions relating to allocation schedule*

**39 Consultation on allocation schedule**

Before finalising an allocation schedule ~~for~~ of a water services entity, an establishment chief executive must—

- (a) provide each local government organisation in the service area of the water services entity with a copy of a draft allocation schedule; and
- (b) give those local government organisations a reasonable opportunity to make written comments on the draft; and
- (c) consider any comments received and make any amendments to the draft that the establishment chief executive considers appropriate; and
- (d) inform each local government organisation in writing of the reasons for any amendments made to the draft as a result of any comments received.

**40 Ministerial approval of allocation schedule**

(1) After complying with **clause 39**, ~~an~~ the establishment chief executive must submit the draft allocation schedule for the water services entity to the Minister for approval.

(2) The Minister may approve the allocation schedule after making any amendments that the Minister considers appropriate.

(3) Before amending a draft allocation schedule, the Minister must—

- (a) provide a copy of the proposed amendment to each local government organisation in the service area of the water services entity to which the schedule applies; and
- (b) give those local government organisations a reasonable opportunity to make written comments on the proposed amendment; and
- (c) inform those local government organisations in writing of the reasons for any changes made to the proposed amendment as a result of any comments received.

(4) However, the Minister need not comply with **subclause (3)** if the amendment—

- (a) has no more than a minor effect; or
- (b) corrects errors or makes similar technical alterations.

*Application of certain provisions of this Schedule*

**40A Application of certain provisions of this Schedule to council-controlled organisations and subsidiaries**

5

*Citycare*

(1) On and after the commencement of this clause, the following provisions of this schedule do not apply to Citycare:

- (a) clause 5 (establishment chief executive must prepare allocation schedule) and related provisions:
- (b) clauses 22 to 29 (review of employment positions):
- (c) clauses 30 to 33 (oversight powers of department):
- (d) **clauses 42 to 47** (transfer of assets, liabilities, and other matters of local government organisation to water services entity):
- (e) **clauses 52 and 53** (directions).

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15

*Other council-controlled organisations and their subsidiaries*

(2) On and after the commencement of this clause, the provisions specified in **subclause (1)(a) to (e)** apply to a council-controlled organisation (other than Citycare) or a subsidiary of that council-controlled organisation (other than a subsidiary of Citycare) only if its predominant purpose is providing services to a territorial authority that support the delivery of water services by the territorial authority.

20

(3) The Governor-General may, by Order in Council made on the recommendation of the Minister, specify the council-controlled organisations or the subsidiaries of the council-controlled organisations to be excluded from the application of the provisions specified in **subclause (1)(a) to (e)**.

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(4) An order under this clause may be made before the establishment date.

(5) For the purposes of **subclause (2)**, **predominant purpose** means 85% or more of the council-controlled organisation's or subsidiary's revenue is attributable to providing those services.

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(6) An order made under this clause is secondary legislation (see Part 3 of the Legislation Act 2019 for publication requirements).

(7) In this clause, **Citycare** means Citycare Limited and each of its subsidiaries.

*Transfer of assets, liabilities, and other matters of local government organisation to water services entity*

- 41 Application of clauses 42 to 47**
- Clauses 42 to 47** apply in respect of a local government organisation within the service area of a water services entity. 5
- 42 Transfer of assets, liabilities, and other matters to water services entity by Order in Council**
- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister,—
- (a) vest in a water services entity or any subsidiary any specified assets, liabilities, and other matters of a local government organisation that— 10
- (i) are identified in the allocation schedule for the water services entity; and
- (ii) relate wholly to the provision of water services by the local government organisation: 15
- (b) vest in a water services entity or any subsidiary any specified assets, liabilities, and other matters of a local government organisation that—
- (i) are identified in the allocation schedule for the water services entity; and
- (ii) relate partly to the provision of water services by the organisation and partly to the provision of other services by the local government organisation: 20
- (c) vest in a water services entity assets that are wholly related to the provision of rural mixed-use drinking water-supplies:
- (d) vest in a water services entity or any subsidiary any specified assets, liabilities, and other matters owned by a local government organisation that are located outside that service area of the water services entity: 25
- (e) specify assets, liabilities, and other matters of a local government organisation that are identified in the allocation schedule for the water services entity that do not vest in the water services entity: 30
- (f) subdivide the land to be transferred to a water services entity and to create titles for the subdivisions of that land.
- (2) For the purposes of **subclause (1)(c)**, **assets that are wholly related to the provision of rural mixed-use drinking water-supplies** means assets that provide— 35
- (a) drinking water; and
- (b) 1 or both of the following:
- (i) agricultural water:

|           |  |    |
|-----------|--|----|
|           | (ii) horticultural water.  |    |
| (3)       | Nothing in section 11 or Part 10 of the Resource Management Act 1991 or section 348 of the Local Government Act 1974 applies to the transfer of land or an interest in land to a water services entity by an order made under <b>subclause (1)</b> .   | 5  |
| (4)       | An order made under this clause must be made on or before the establishment date.  |    |
| (5)       | An order made under this clause is secondary legislation ( <i>see</i> Part 3 of the Legislation Act 2019 for publication requirements).  | 10 |
|           | Compare: 2009 No 13 s 36   |    |
| <b>43</b> | <b>Transfer of other assets, liabilities, and other matters to water services entity</b>   |    |
| (1)       | On the establishment date,—  |    |
|           | (a) all assets owned or controlled by the local government organisation that are wholly related to the provision of water services vest in the water services entity:  | 15 |
|           | (b) all property owned or controlled by a local government organisation that is wholly related to the provision of water services vest in the water services entity:   |    |
|           | (c) all mixed-use water services assets or property owned or controlled by the local government organisation vest in the water services entity:  | 20 |
|           | (d) all assets that are wholly related to the provision of rural mixed-use drinking water supplies by the local government organisation vest in the water services entity:   |    |
|           | (e) all rights, liabilities, contracts, information, interests, entitlements, and engagements of the local government organisation that are wholly related to the provision of water services become rights, liabilities, contracts, information, interests, entitlements, and engagements of the water services entity: | 25 |
|           | (f) all statutory approvals and consents (for example, resource consents) granted or issued to the local government organisation wholly related to the provision of water services vest in the water service entity:   | 30 |
|           | (g) all easements, encumbrances, access licences, and leases granted or issued to the local government organisation wholly related to the provision of water services vest in the water services entity.   | 35 |
| (2)       | <b>Subclause (1)</b> —   |    |
|           | (a) applies in respect of assets, liabilities, and other matters of a local government organisation except to the extent that an Order in Council made under this <b>Part</b> provides otherwise:  |    |
|           | (b) does not apply in respect of—  | 40 |

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|           | (i) a transport stormwater system:   |    |
|           | (ii) any assets, liabilities, and other matters of a local government organisation that relate to the provision of stormwater services outside of an urban area:   |    |
|           | (iii) any charges or debts payable to or by a local government organisation in respect of the provision of water services before the establishment date:   | 5  |
|           | (iv) assets, liabilities, and other matters of a local government organisation specified in an order made under <b>clause 42(1)(d)</b> .   |    |
| <b>44</b> | <b>Dispute resolution relating to transfer of assets, liabilities, and other matters under clause 43</b>   | 10 |
| (1)       | This clause applies if a dispute arises in relation to the transfer, or proposed transfer, of any asset, liability, or other matter of a local government organisation to a water services entity under <b>clause 43</b> . |    |
| (2)       | Either or both of the parties may refer the dispute to arbitration under the Arbitration Act 1996.   | 15 |
| (3)       | The arbitration decision is binding on both parties and determines who owns the asset, liability, or other matter.   |    |
| <b>45</b> | <b>Exception to clause 43 relating to shares in council-controlled organisations</b>   | 20 |
| (1)       | This clause applies to any council-controlled organisation involved in the provision of water services in which—   |    |
|           | (a) at least 1 of the shareholders of the council-controlled organisation is a local government organisation; and  |    |
|           | (b) at least 1 of the shareholders of the council-controlled organisation is not a local government organisation.  | 25 |
| (2)       | <del>If this clause applies,—</del>  |    |
|           | (a) <b>clause 42</b> does not apply; and   |    |
|           | (b) <del>on the establishment date, the shares in the council-controlled organisation that a local government organisation holds vest in the relevant water services entity.</del>   | 30 |
| (2)       | <u>If this clause applies,—</u>  |    |
|           | (a) <u><b>clause 42</b> applies to the transfer of the shares in the council-controlled organisation that a local government organisation holds in the relevant water services entity:</u>                                 | 35 |
|           | (b) <b>clause 43</b> does not apply.   |    |
| (3)       | <del>In this section, <b>council-controlled organisation</b> has the same meaning as in section 6 of the Local Government Act 2002.</del>  |    |

**46 Effect of transfers under clause 42 or 43***Application of Public Works Act 1981*

- (1) Despite section 4(4) of the Finance Act 1990 and section 24(4) of the State-Owned Enterprises Act 1986, nothing in sections 40 and 41 of the Public Works Act 1981 applies to the transfer of assets, liabilities, and other matters from a local government organisation to a water services entity under **clause 42 or 43**. 5
- (2) However, after that transfer, sections 40 and 41 of the Public Works Act 1981 apply to those assets, liabilities, and other matters as if the transfer from the local government organisation to the water services entity had not taken place. 10
- (3) If any land transferred to a water services entity under **clause 42 or 43** is a reserve under the Reserves Act 1977,—
- (a) the reservation classification of the land is deemed to be revoked on the transfer date; and
  - (b) the land is to be treated as being held by the water services entity under the Public Works Act 1981 for water services purposes on and after that date. 15

*General*

- (4) Nothing effected or authorised by **clause 42 or 43**—
- (a) is to be treated as placing a person in breach of, or in default under, any contract, or in breach of trust, or in breach of confidence, or as otherwise making the person guilty of a civil wrong; or 20
  - (b) gives rise to a right for a person to—
    - (i) terminate, cancel, or modify a contract, an agreement, or an arrangement; or 25
    - (ii) enforce or accelerate the performance of an obligation; or
    - (iii) require the performance of an obligation not otherwise arising for performance; or
  - (c) releases a surety wholly or in part from all or any obligation; or
  - (d) invalidates or discharges any contract or security. 30

**47 Existing proceedings and other matters**

- (1) On and after the establishment date,—
- (a) any existing debts, penalties, charges, fines, fees, or obligations to do or not to do anything wholly related to the provision of water services arising from an act or omission by, or in relation to, a local government organisation, that are due and payable before the establishment date, remain due and payable by the local government organisation; and 35
  - (b) any proceedings by or against a local government organisation that are wholly related to the provision of water services by that organisation

- must be continued or enforced by or against the water services entity without amendment to the proceedings; and
- (c) a matter or thing that would, but for this clause, have been completed by the local government organisation relating to the provision of water services must be completed by the water services entity; and 5
- (d) anything done, or omitted to be done, or that is to be done in relation to, a local government organisation and that is wholly related to the provision of water services by that organisation is to be treated as having been done, or having been omitted to be done, or to be done by the water services entity. 10
- (2) In **subclause (1)(b), proceedings**—
- (a) means civil and criminal proceedings; and
- (b) includes any enforcement or compliance action against the local government organisation.
- Compare: 2020 No 38 Schedule 1 cl 36 15
- 48 Updating titles to land**
- (1) The Registrar-General of Land must, on written application by any person authorised by a water services entity and on payment of any prescribed fee,—
- (a) register the water services entity, in substitution for the local government organisation, as the proprietor of the estate or the interest of the local government organisation in any registered land or interest in registered land transferred to the water services entity under this Act; and 20
- (b) make the entries in the register and generally do all the things as may be necessary to give effect to this clause.
- (2) The Registrar-General of Land or any other person charged with keeping books or registers is not required to change, in those books or registers or in a document, the name of the local government organisation to the water services entity solely because of **clause 42 or 43**. 25
- (3) If a water services entity presents an instrument referred to in **subclause (4)** to a Registrar or another person, the presentation of that instrument by the water services entity, in the absence of proof to the contrary, sufficient evidence that the property is vested in the water services entity. 30
- (4) For the purposes of this clause, the instrument need not be an instrument of transfer, but must—
- (a) be executed or purport to be executed by the water services entity; and 35
- (b) relate to a property held by the local government organisation immediately before the establishment date; and

- (c) be accompanied by a certificate by the water services entity that the property became vested in the water services entity because of the provisions of this Act.

Compare: 2010 No 37 s 85; 2019 No 50 Schedule 1 cl 17

*Transfer of specified assets*

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**49 Transfer of specified assets to water services entity by Order in Council**

- (1) This clause applies in relation to an asset that is used wholly or partly for the provision of water services in the service area of a water services entity (a **specified asset**) and—

(aaa) that is owned by a local government organisation in the service area of the water services entity; or

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(a) that is not owned by a local government organisation in the service area of the water services entity; or

(b) whose ownership is undocumented or unknown.

- (2) The Governor-General may, by Order in Council made on the recommendation of the Minister, vest the specified asset in the water services entity if all interested parties agree in writing to the vesting.

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- (3) For the purposes of **subclause (2)**, **interested parties** means,—

(a) for a specified asset to which **subclause (1)(aaa) or (a)(1)(a)** applies, the water services entity and any party claiming a right of ownership of the specified asset:

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(b) for a specified asset to which **subclause (1)(b)** applies, the local government organisation, the water services entity, and any other party claiming a right of ownership of the specified asset.

- (4) An order under this clause may be made before, on, or after the establishment date.

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- (5) An order made under this clause is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

*Financial contributions transferred to Watercare Services Limited*

**50 Financial contributions for water supply or wastewater services infrastructure payable to Watercare Services Limited**

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- (1) This clause applies to any financial contribution (or any part of a financial contribution) for water supply or wastewater services infrastructure that, before the establishment date, was required to be transferred by Auckland Council to Watercare Services Limited under section 59 of the Local Government (Auckland Transitional Provisions) Act 2010.

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- (2) On and after the establishment date, the financial contribution must be transferred to the Northern Water Services Entity and used by that entity in reasonable

accordance with the purposes for which the money was received by Auckland Council.

### *Other agreements*

#### **51 Transfer of specified agreements by Order in Council**

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, transfer specified agreements entered into by the department relating to ~~establishment of~~ a water services entity to the water services entity. 5
- (2) An order under this clause may only be made on or before the establishment date.
- (3) An order made under this clause is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements). 10

#### **52 Reconfiguration of existing agreements**

- (1) This clause applies to the following existing agreements entered into by a local government organisation:
- (a) an existing agreement— 15
- (i) that is specified in an allocation schedule; and
- (ii) that partly relates to the provision of water services by the local government organisation and partly relates to the provision of other services by the organisation:
- (b) an existing agreement that the Minister is satisfied should be subject to a direction under this clause for the effective and efficient transition of water services. 20
- (2) The Minister may give 1 or more of the following directions to the local government organisation and the board of a water services entity in relation to the existing agreement: 25
- (a) a direction requiring the local government organisation and the board of the water services entity to negotiate the retention or transfer, or the sharing or splitting (as the case may be), of the existing agreement:
- (b) a direction requiring either the local government organisation or the board of the water services entity, or both, to offer to any other parties that have rights or obligations under the existing agreements (**third parties**) 1 or more replacement contracts: 30
- (c) dates by which things must be completed, for example,—
- (i) dates by which replacement contracts must be offered:
- (ii) dates by which choices must be made under **subclause (3) or (11)**. 35
- (3) A third party that has rights or obligations under an existing agreement must choose, by the establishment date,—

- (a) to enter into any replacement contract that is offered; or
- (b) for the existing agreement to continue in accordance with a direction to be given under **subclause (6)**; or
- (c) to terminate the existing agreement.
- (4) However, if a third party chooses to terminate the existing agreement under **subclause (3)(c)** no compensation is payable in respect of the termination. 5
- (5) If a third party chooses to enter into any replacement contract that is offered, the existing agreement ceases to have effect to the extent that it is replaced by the replacement contract.
- (6) If a replacement contract has not been entered into by the establishment date, the Minister may give the local government organisation and the board of the water services entity a further direction specifying— 10
- (a) which existing agreements the local government organisation must remain a party to; and
- (b) which existing agreements the board of the water services entity must become a party to; and 15
- (c) which agreements are to be split, by the local government organisation remaining a party in relation to certain provisions and the board of the water services entity replacing the local government organisation as a party in relation to other provisions; and 20
- (d) which agreements (if any) will be shared between local government organisations and the water services entity.
- (7) If a direction is given under **subclause (6)(a)** in respect of an existing agreement, the local government organisation and the third parties to the agreement remain subject to the agreement as if the amendment Act had not been passed. 25
- (8) If a direction is given under **subclause (6)(b)** in respect of an existing agreement, all rights and obligations of the local government organisation under the agreement become the rights and obligations of the water services entity on the date specified in the direction.
- (9) If a direction is given under **subclause (6)(c)** in respect of an existing agreement, on the date specified in the direction the rights and obligations of the relevant local government organisation under the agreement remain with the organisation except to the extent that any of those rights and obligations are transferred to the board of the water services entity. 30
- (10) If a direction is given under **subclause (6)(d)** in respect of an existing agreement, all rights and obligations of the local government organisation under the agreement become the joint and several rights and obligations of the local government organisation and the relevant water services entity on the date specified in the direction. 35

- (11) However, a party to an existing agreement in respect of which a direction is given under **subclause (6)** (other than the local government organisation or the board of the water services entity) may choose to terminate the party's involvement in the agreement, by giving written notice to the relevant local government organisation or board of the water services entity on or before the establishment date. 5
- (12) A replacement contract entered into under **subclause (3)** or any existing agreement continued under **subclause (6)** is deemed to comply with the Act.  
Compare: 2010 No 116 s 124
- 53 Process for giving directions under clause 52** 10
- (1) The Minister—
- (a) may at any time advise the board of the water services entity of the Minister's intentions or expectations with regard to directions to be given under **clause 52**; and
- (b) must advise the board of the water services entity to be referred to in a direction to be given under **clause 52** at least 14 days before the direction is given; and 15
- (c) must consider any comments that the board of the water services entity makes to the Minister relating to the direction within 10 days after the date on which the board receives the advice under **paragraph (b)**. 20
- (2) A direction given under **clause 52** must be in writing.
- (3) The Minister must—
- (a) present a copy of any direction given under **clause 52** to the House of Representatives within 12 sitting days after the direction is given to the board; and 25
- (b) publish a copy of it in the *Gazette* as soon as practicable after giving the direction.
- (4) However, the Minister—
- (a) ~~may withhold from disclosure under **subclause (3)** any part of a direction that the Minister considers could be withheld under the Official Information Act 1982;~~ 30
- (b) ~~must not disclose any personal information that forms part of a direction, except as provided for under the Privacy Act 2020.~~
- (4) However, the Minister may withhold from disclosure under **subclause (3)** any part of a direction that the Minister considers is commercially sensitive. 35
- (5) If **subclause (4)** applies, the Minister must substitute a note of explanation for the parts withheld.  
Compare: 2010 No 116 s 118

*Payment for water services infrastructure debt***54 Payment by water services entity to territorial authority for water services infrastructure debt**

- (1) ~~A water services entity must pay each territorial authority whose district is included in its service area an amount determined by the chief executive of the department that is equivalent to the total debt owed by that territorial authority in respect of any water services infrastructure wholly or partly used in the provision of water services and transferred to the entity under this Act.~~ 5
- (2) ~~A payment under **subclause (1)** must be made on the date and in the manner (including by instalments) agreed by the chief executive of the department and the territorial authority.~~ 10
- (1) A water services entity must pay a local government organisation the amount prescribed under **subclause (2A)** that is equivalent to the total debt owed by the organisation in relation to water services infrastructure that—
- (a) is wholly or partly used in the provision of water services by the territorial authority whose district is included in the entity's service area; and 15
- (b) is transferred to the water services entity under this Part.
- (2) The payment—
- (a) may be made by instalments; but
- (b) must be paid in full no later than the close of the day that is 5 years after the establishment date. 20
- (2A) For the purposes of this clause, the Governor-General may, by Order in Council made on the recommendation of the Minister, set out a debt payment schedule that—
- (a) prescribes the amount payable by a water services entity to each local government organisation under this clause; and 25
- (b) prescribes the date (or dates) on which the amount (or amounts) must be paid.
- (2B) Before making a recommendation under **subclause (2A)**, the Minister must—
- (a) provide the establishment chief executive and the relevant local government organisation with a copy of a draft debt payment schedule; and 30
- (b) give the establishment chief executive and relevant local government organisation an opportunity to make written comments on the draft; and
- (c) consider any comments received from an establishment chief executive and have particular regard to any comments received from a local government organisation; and 35
- (d) inform the establishment chief executive and relevant local government organisation in writing of the reasons for any amendments made to the draft as a result of any comments received.

- (3) This clause applies despite anything in section 171(1) or **clause 42 or 43**.
- (4) This clause is repealed on the close of the day that is 5 years after the establishment date.
- (5) An order made under this clause is secondary legislation (see Part 3 of the Legislation Act 2019 for publication requirements). 5

*Transitional stormwater management strategies*

**54A Transitional stormwater management strategies**

- (1) The chief executive of a water services entity must prepare a transitional stormwater management strategy that the chief executive must put in place on or before the establishment date that includes (without limitation) a transitional stormwater plan that— 10
- (a) identifies the geographical zones (on a catchment-level basis), and sets out the areas, that each stormwater network serves; and
- (b) provides the relevant details of each stormwater network in the service area of the water services entity, including maps of each stormwater network; and 15
- (c) provides the relevant details about any wastewater networks that are part of, or related to, a stormwater network; and
- (d) specifies the bylaws or water services instruments that are made under **clause 58** relating to stormwater networks that apply in the service area of the water services entity. 20
- (2) The chief executive of the water services entity may amend the transitional stormwater management strategy at any time.

*Relationship agreements*

**55 Requirement to enter into relationship agreements** 25

- (1) A relationship agreement required by ~~section 467~~ **section 199A** must be entered into ~~on or~~ not later than 3 months before the establishment date.
- (2) If the parties are unable to agree on the terms and conditions of a relationship agreement no later than 3 months before the establishment date, the terms and conditions of the agreement are— 30
- (a) the terms and conditions as agreed between the parties, to the extent that they are agreed; and
- (b) the terms and conditions (if any) determined by the Minister.
- (3) Any terms and conditions determined under **subclause (2)(b)** are binding on the parties and enforceable as if they were an agreement between the parties that was freely and voluntarily entered into. 35

*Specified instruments*

- 56 Board may make specified instruments during establishment period**
- (1) During the establishment period, the board of a water services entity may make all or any of the following instruments under this Act:
- (a) controlled drinking water catchment management plans: 5
  - (b) stormwater network rules:
  - (c) trade waste plans:
  - (d) water usage restrictions:
  - (e) consumer behaviour rules:
  - (f) service agreements: 10
  - (g) rules that regulate specified classes of work:
  - (h) water services infrastructure connection requirements:
  - (i) reporting and record-keeping rules.
- (2) However, no instrument made under **subclause (1)** may come into force before the establishment date. 15
- (3) An instrument made under **subclause (1)(d), (e), or (f)** need not comply with any consultation requirements under this Act relating to a consumer forum or a consumer dispute resolution scheme.
- (4) When making an instrument referred to in **subclause (1)**, the board may adopt (with or without modification) or consolidate the provisions of any 1 or more existing bylaws relating to water services made by a local authority under section 146 of the Local Government Act 2002 (**existing bylaw**). 20
- (5) **Subclauses (6) and (7)** apply if a water services entity makes an instrument under **subclause (1)** that adopts an existing bylaw.
- (6) The water services entity must publish the instrument on a Internet site maintained by or on behalf of the entity. 25
- (7) The water services entity need not comply with the engagement requirements that would otherwise apply to the instrument but only if the instrument applies to the same area and has the same material effect as the existing bylaw.
- 57 Review of instruments made under clause 56** 30
- The board of a water services entity must review an instrument made under **clause 56**—
- (a) by no later than 30 June 2027 (the **initial review**); and
  - (b) in accordance with the timeframe set out **section 466(1)** for a review conducted after the initial review. 35

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| <b>58</b> | <b><del>Adoption of existing controlled drinking water catchment management plan</del></b>   |    |
| (1)       | <del>This clause applies to a controlled catchment management plan in force immediately before the establishment date.</del>   |    |
| (2)       | <del>The controlled catchment management plan continues in force on and after the establishment date and may be adopted by the board of a water services entity as a controlled drinking water catchment management plan under this Act as if—</del> | 5  |
|           | <del>(a) the plan were issued by the water services entity; and</del>  |    |
|           | <del>(b) the land to which the plan relates were designated as a controlled drinking water catchment area.</del>   | 10 |
| (3)       | <del>For land owned by—</del>  |    |
|           | <del>(a) the Crown or a local authority, the designation of the area to which the plan relates as a controlled drinking catchment area continues indefinitely;</del>   | 15 |
|           | <del>(b) any other person, the designation of the area to which the plan relates as a controlled drinking catchment area remains in force until the close of the day that is 5 years after the date on which the plan was adopted.</del>             |    |
| (4)       | <del>A plan to which this clause applies must be reviewed by no later <b>30 June 2029</b>.</del>   | 20 |
| (5)       | <del><b>Subclause (4)</b> overrides <b>clause 57</b>.</del>  |    |
|           | <i>Model instruments</i>   |    |
| <b>59</b> | <b><del>Chief executive of department may issue model instruments</del></b>  |    |
| (1)       | <del>The chief executive of the department may issue a template or model for the following instruments under this Act:</del>   | 25 |
|           | <del>(a) a controlled drinking water catchment management plan;</del>  |    |
|           | <del>(b) stormwater network rules;</del>   |    |
|           | <del>(c) a trade waste plan;</del>   |    |
|           | <del>(d) consumer behaviour rules;</del>   |    |
|           | <del>(e) rules regulating specified classes of work;</del>   | 30 |
|           | <del>(f) a service agreement;</del>  |    |
|           | <del>(g) water usage restrictions;</del>   |    |
|           | <del>(h) infrastructure connection requirements;</del>   |    |
|           | <del>(i) reporting and record-keeping rules.</del>   |    |
| (2)       | <del>The board of a water services entity may make an instrument based on a template or model issued under <b>subclause (1)</b>, subject to any procedural, engagement, or consultation requirements that apply to the instrument.</del>             | 35 |

*Transition from former water services bylaws to water services instruments***56** **Definitions and application**

- (1) In this clause and **clauses 57 to 59**, unless the context otherwise requires,—
- corresponding water services instrument**, in relation to a former water services bylaw, means a water services instrument that replaces, or is to the same material effect as, the former water services bylaw 5
- former water services bylaw** or **bylaw** means a bylaw made by a local authority that relates to water services and was in force immediately before the commencement of this clause
- relevant water services entity**, in relation to a former water services bylaw, means the water services entity in whose service area the former water services bylaw previously applied 10
- transition period** means the period beginning on the establishment date and ending on the third anniversary of the commencement of that date
- water services instrument** means any of the following instruments that may be made by a water services entity under this Act: 15
- (a) a controlled drinking water catchment management plan:
  - (b) stormwater network rules:
  - (c) a trade waste plan:
  - (d) water supply or wastewater services rules: 20
  - (e) consumer behaviour rules:
  - (f) a service agreement:
  - (g) rules regulating specified classes of work:
  - (h) water services infrastructure connection requirements:
  - (i) reporting and record-keeping rules. 25
- (2) This clause and **clauses 57 to 59** apply during the transition period.

**57** **Temporary saving of former water services bylaws**

- (1) Despite anything in **Part 2** of the amendment Act, a former water services bylaw continues in force, and must be treated as if it were made by the relevant water services entity under this Act, until the earlier of the following: 30
- (a) the date on which a corresponding water services instrument made by the relevant water services entity takes effect:
  - (b) the end of the transition period.
- (2) During the period that the former water services bylaw remains in force, the bylaw— 35
- (a) may be amended by the relevant water services entity under the corresponding empowering provision (if any) in this Act or (if there is no cor-

|           |   |    |
|-----------|---|----|
|           | <u>responding empowering provision) as if this clause contained the relevant empowering provision; and</u>  |    |
|           | (b) <u>may be enforced by the relevant water services entity in the same way as if all references in the bylaw to the local authority were references to the relevant water services entity.</u>  | 5  |
| (3)       | <u>To avoid doubt, nothing in sections 158 to 160A of the Local Government Act 2002 applies to a former water services bylaw during the period that it remains in force under this clause.</u>  |    |
| <b>58</b> | <b><u>Process for making water services instruments during transition period</u></b>  |    |
| (1)       | <u>When making a water services instrument under this Act, the board of a relevant water services entity—</u>   | 10 |
|           | (a) <u>may—</u>   |    |
|           | (i) <u>adopt (with or without modification) or consolidate the provisions of any 1 or more former water services bylaws; and</u>  |    |
|           | (ii) <u>base the instrument on any template or model instrument issued by the chief executive of the department for the purpose:</u>  | 15 |
|           | (b) <u>must revoke the former water services bylaw (if any) superseded by the instrument in the water services instrument:</u>  |    |
|           | (c) <u>must otherwise comply with any procedural, engagement, or consultation requirements that apply to the making of the instrument.</u>  | 20 |
| (2)       | <u>Despite <b>subclause (1)(c)</b>, when making water supply or wastewater services rules, the board of the relevant water services entity need not engage with or consult (as the case may be) its consumer forum or the provider of the consumer dispute resolution scheme.</u>   |    |
| <b>59</b> | <b><u>Requirement to enter relationship agreement relating to transition</u></b>  | 25 |
|           | <u>During the transition period, a relevant water services entity and a relevant local authority must enter into a relationship agreement under <b>Part 5A</b> setting out how the parties will work together in relation to the transition of former water services bylaws to water services instruments under this Act.</u> |    |
|           | <i>Charging matters</i>   | 30 |
| <b>60</b> | <b><u>Chief executive of water services entity may adopt existing growth charges policies</u></b>   |    |
| (1)       | <u>Despite anything in <b>Part 11</b>, the chief executive of a water services entity may adopt as the water infrastructure contributions policy of the water services entity the relevant parts of—</u>  | 35 |
|           | (a) <u>the development contributions requirements and the financial contributions requirements of the relevant territorial authority or authorities:</u>  |    |

|           |  |    |
|-----------|--|----|
| (b)       | the infrastructure growth charge requirements of Watercare Services Limited set out in any of its consumer contracts in effect on <b>30 June 2024</b> .  |    |
| (1A)      | <u>If <b>subclause (1)(a)</b> applies, the relevant territorial authority or authorities are not liable or responsible for any outstanding refunds, legal challenges, objections, reconsiderations, or disputed charges relating to the adopted parts of the policy.</u>   | 5  |
| (2)       | A policy adopted under <b>subclause (1)</b> expires on the earlier of the following:   |    |
| (a)       | a date that the chief executive specifies in the adopted policy:   |    |
| (b)       | the close of <b>30 June 2027</b> .   | 10 |
| (3)       | This clause is repealed on <b>1 July 2027</b> .  |    |
| <b>61</b> | <b>Water services entity may adopt and use existing tariff or charging structures</b>  |    |
| (1)       | Despite anything in <b>Part 11</b> , a water services entity may adopt and use the existing tariff or charging structures of the relevant territorial authority or authorities <u>or a local government organisation.</u>  | 15 |
| (2)       | A tariff or charging structure adopted under <b>subclause (1)</b> expires on the earlier of the following:   |    |
| (a)       | a date that the chief executive specifies:   |    |
| (b)       | the close of <b>30 June 2027</b> .   | 20 |
| (3)       | This clause is repealed on <b>1 July 2027</b> .  |    |
| <b>62</b> | <b>Transfer of development contribution or financial contribution required for water services infrastructure to water services entity</b>  |    |
| (1)       | <del>On the establishment date, a territorial authority must transfer to a relevant water services entity any unpaid or unaccounted for development contribution or financial contribution (or any part of a development contribution or financial contribution) that was required by the territorial authority in respect of the development of its water services infrastructure.</del>  | 25 |
| (1)       | <u>On the establishment date, a territorial authority must transfer to a relevant water services entity any development contribution or financial contribution (or any part of a development contribution or financial contribution), with all relevant information (including the purpose for which the contribution was required), that the territorial authority received in respect of the development of its water services infrastructure where those infrastructure costs are yet to be incurred.</u> | 30 |
| (1A)      | <u>A territorial authority must, as soon as is reasonably practicable, transfer to a relevant water services entity any development contribution or financial contribution that the territorial authority receives after the establishment date that it has required in respect of the development of its water services infrastructure.</u>   | 35 |

|           |  |    |
|-----------|--|----|
|           | <u>in relation to a development where the resource or building consent or service connection application was submitted (with all required information) prior to the establishment date.</u>  |    |
| (1B)      | <u>For the purposes of assisting a transfer under this clause, the Governor-General may, by Order in Council made on the recommendation of the Minister, set out a transfer schedule that—</u>   | 5  |
|           | (a) <u>prescribes the amounts of the development contributions and financial contributions that—</u>   |    |
|           | (i) <u>a territorial authority has received or is to receive; and</u>  |    |
|           | (ii) <u>are to be transferred to the relevant water services entity:</u>   | 10 |
|           | (b) <u>prescribes the date (or dates) on which the development contributions and financial contributions under <b>subclause (1A)</b> are to be transferred to the relevant water services entity, which must be no later than the close of the day that is 5 years after the establishment date.</u> |    |
| (1C)      | <u>Before making a recommendation under <b>subclause (1B)</b>, the Minister must—</u>  | 15 |
|           | (a) <u>provide the chief executives of the relevant water services entity and territorial authorities with a copy of a draft transfer schedule; and</u>  |    |
|           | (b) <u>give the chief executives a reasonable opportunity to make written comments on the draft; and</u>   |    |
|           | (c) <u>consider any comments received and make any amendments to the draft that the Minister considers appropriate; and</u>  | 20 |
|           | (d) <u>inform the chief executives in writing of the reasons for any amendments made to the draft as a result of any comments received.</u>  |    |
| (2)       | Sections 204 and 209 of the Local Government Act 2002 apply in relation to the development contribution or financial contribution as if—   | 25 |
|           | (a) the contribution were paid or made to the relevant water services entity; and  |    |
|           | (b) the capital expenditure of the territorial authority were the capital expenditure of the relevant water services entity.   |    |
| (3)       | The relevant water services entity must use any development contribution or financial contribution transferred to it under this clause for the purposes for which the contribution was required by the territorial authority concerned.  | 30 |
| (4)       | <u>An order made under this clause is secondary legislation (see Part 3 of the Legislation Act 2019 for publication requirements).</u>   |    |
| <b>63</b> | <b>Charges for stormwater services</b>   | 35 |
| (1)       | <del>On and after the establishment date, a water service entity may bill a territorial authority directly for all the stormwater services that the water services entity provides within the boundaries of the territorial authority.</del>   |    |

- (2) ~~A water services entity that bills a territorial authority under **subclause (1)** may not bill any of its consumers within the boundaries of the territorial authority for stormwater services.~~
- (3) ~~This clause is repealed on **1 July 2027**.~~
- 64 Water services entity not eligible for certain contributions** 5
- (1) A water services entity is not eligible to receive or use—
- (a) development contributions collected under the Local Government Act 2002; or
- (b) financial contributions collected under the Resource Management Act 1991. 10
- (1A) Nothing in **subclause (1)** applies to development contributions or financial contributions that have been transferred to the water services entity under **clause 62**.
- (2) Nothing in **subclause (1)** applies to development contributions or financial contributions collected before the establishment date that are transferred to the water services entity by or under this Act. 15
- 65 Requirement of territorial authority to amend policy on development contributions or financial contributions**
- (1) This clause applies in relation to a policy on development contributions or financial contributions adopted by a territorial authority under section 102 of the Local Government Act 2002 and a district plan prepared under the Resource Management Act 1991. 20
- (2) Each policy or plan must be amended to remove any power of the territorial authority to require a development contribution or a financial contribution for stormwater networks, water supply, or wastewater services infrastructure, in accordance with the following procedure: 25
- (a) the amendment must be made by resolution of the governing body of the territorial authority;
- (b) the amendment is not required to be made ~~as described in section 106(2) of using the process in the Local Government Act 2002 or the Resource Management Act 1991:~~ 30
- (c) the amendment must have effect from the establishment date.
- (3) Nothing in this clause limits or affects the ability of a territorial authority to require a development contribution for agricultural water supply or land drainage. 35
- (4) Nothing in this clause prohibits a territorial authority from requiring development contributions or financial contributions after the establishment date for water services infrastructure under a policy in place prior to 1 July 2024 where

a resource consent, building consent, or service connection application was lodged prior to 1 July 2024.

Compare: 2010 No 37 s 54

*Transitional collection of water services charges*

- 65A Chief executive of water services entity may require local authorities to collect water services charges** 5
- (1) The chief executive of a water services entity may require the local authority or authorities in its service area to collect water services charges on behalf of the water services entity.
- (2) Before relying on **subclause (1)**, the chief executive and the local authority or authorities must take all reasonable steps to enter into a water services charges collection agreement that provides the local authority or authorities with reasonable compensation for collecting water services charges on behalf of the water services entity. 10
- (3) If the chief executive and the local authority or authorities are unable to agree on all the terms of a water services charges collection agreement, they must refer the matter to the Minister. 15
- (4) The Minister must determine all outstanding terms of the water services charges collection agreement within 20 working days.
- Compare: 2020 No 47 ss 54–56 20
- 65B Terms of water services charges collection agreements**
- (1) The terms of a water services charges collection agreement are—
- (a) as agreed between the parties, to the extent that they are agreed; and
- (b) otherwise, as the Minister has determined; and
- (c) binding on the parties. 25
- (2) A water services charges collection agreement, if still in force, expires with the close of 30 June 2027 unless the parties to the agreement agree to extend it.
- Compare: 2020 No 47 s 56
- 65C Local authorities not responsible for collecting unpaid charges**
- (1) This clause applies if— 30
- (a) a water services charges collection agreement is in force; and
- (b) charges to be collected under the agreement are unpaid.
- (2) The local authority responsible for the collection of the charge—
- (a) must notify the chief executive of the relevant water services entity that— 35
- (i) a charge is unpaid; and
- (ii) the local authority is not going to collect the unpaid charge; and

|            |  |    |
|------------|--|----|
|            | (b) <u>is not required to collect that unpaid charge on behalf of the relevant water services entity if notification is given under <b>paragraph (a)</b>.</u>  |    |
| (3)        | <u>This clause, the cross-heading above <b>clause 65A</b>, and <b>clauses 65A and 65B</b> are repealed on 1 July 2027.</u>   |    |
|            | <u>Compare: 2020 No 47 s 57</u>  | 5  |
|            | <i>Water services infrastructure connection applications</i>   |    |
| <b>65D</b> | <b><u>Existing water services infrastructure connection applications</u></b>   |    |
| (1)        | <u>This clause applies to a water services infrastructure connection application that was lodged with a territorial authority, but not determined by the territorial authority, before the commencement of this clause.</u>  | 10 |
| (2)        | <u>The territorial authority must assess and determine the application as if the amendment Act had not been enacted.</u>   |    |
|            | <i>Transitional provisions relating to Local Government Act 2002</i>   |    |
| <b>66</b>  | <b><u>Requirement of local authority to amend or revoke spent water services bylaws</u></b>  | 15 |
| (1)        | <del>A local authority must amend or revoke a spent water services bylaw that the local authority is satisfied has ceased to have effect.</del>  |    |
| (2)        | <del>For the purposes of <b>subclause (1)</b>, the local authority need not comply with the consultation requirements set out in section 156(1) of the Local Government Act 2002 that apply to the amendment or revocation of bylaws made under that Act.</del>                  | 20 |
| (3)        | <del>In this clause and <b>clauses 67 to 69</b>, <b>spent water services bylaw</b> means a bylaw that was—</del>   |    |
|            | <del>(a) made by a territorial authority under section 146 of the Local Government Act 2002 in relation to water services; and</del>   | 25 |
|            | <del>(b) in force immediately before that section was replaced by <b>section 99</b> of the <b>Water Services Legislation Act 2022</b>.</del>   |    |
| (4)        | <del>To avoid doubt, nothing in this clause applies to a water services-related bylaw that a local authority may continue to make under section 146 of the Local Government Act 2002 (as replaced by <b>section 99</b> of the <b>Water Services Legislation Act 2022</b>).</del> | 30 |
| <b>67</b>  | <b><u>Power to revoke spent water services bylaws by Order in Council</u></b>  |    |
| (1)        | <del>The Governor-General may, by Order in Council made on the recommendation of the Minister, revoke a spent water services bylaw.</del>  |    |
| (2)        | <del>Before recommending that a bylaw be revoked under <b>subclause (1)</b>, the Minister must be satisfied that the bylaw has ceased to have effect.</del>  | 35 |

- (3) ~~To avoid doubt, nothing in this clause applies to a water services-related bylaw that a local authority may continue to make under section 146 of the Local Government Act 2002 (as replaced by **section 99** of the **Water Services Legislation Act 2022**).~~
- (4) ~~An order made under this clause is secondary legislation (see Part 3 of the Legislation Act 2019 for publication requirements).~~ 5
- 68 Local authority resolutions relating to spent water services bylaws**
- (1) ~~This clause applies to a resolution that was made by a local authority under section 151(2) of the Local Government Act 2002 for the purposes of a spent water services bylaw and that is secondary legislation in accordance with section 161A(2) of that Act~~ 10
- (2) ~~Unless otherwise provided in this Act, the resolution is revoked on the date on which the spent water services bylaw is revoked under **clause 66 or 67**.~~
- 69 Instruments made under spent water services bylaws**
- (1) ~~This clause applies to any instrument issued under a spent water services bylaw and in force immediately before the commencement of this clause, including (without limitation) any consents, permits, or authorisations (including any imposed conditions or restrictions).~~ 15
- (2) ~~On and after the commencement of this clause, an instrument pertaining to—~~
- (a) ~~a controlled drinking water catchment or to trade waste continues in force as if it were issued under this Act until the earliest of the following:~~ 20
- (i) ~~the close of **30 June 2029**;~~
- (ii) ~~the date on which it is replaced under this Act;~~
- (iii) ~~the expiry date specified in the instrument:~~ 25
- (b) ~~any other water services matter continues in force as if were issued under this Act until the earlier of the following:~~
- (i) ~~1 year after the establishment date;~~
- (ii) ~~the expiry date specified in the instrument.~~
- 70 Trade waste consents** 30
- (1) ~~This clause applies to a trade waste consent granted under a bylaw made under section 145, 146(1)(a)(iii), or 148 of the Local Government Act 2002 (including any conditions or restrictions imposed on the consent) and in force immediately before the establishment date.~~
- (2) ~~On and after the establishment date, the consent (and any conditions or restrictions imposed on it) continues in force as if were a trade waste permit issued under **section 267** until the earlier of the following:~~ 35
- (a) ~~the close of **30 June 2029**;~~

|           |  |    |
|-----------|--|----|
|           | (b) the date on which it is replaced under <b>section 267</b> .  |    |
| <b>71</b> | <b>Enforcement officers</b>  |    |
| (1)       | This clause applies to a person—   |    |
|           | (a) who, immediately before the establishment date, held office as an enforcement officer appointed under section 177 of the Local Government Act 2002; and  | 5  |
|           | (b) who, on and from the establishment date, becomes an employee of a water services entity.   |    |
| (2)       | On and after the establishment date, the person must be treated as if they had been appointed as a compliance officer under <b>section 357</b> .   | 10 |
| <b>72</b> | <b>Offences under former provisions of Local Government Act 2002</b>   |    |
| (1)       | This clause applies to an offence committed before the establishment date against a provision of the Local Government Act 2002 (a <b>former provision</b> ) repealed by <b>subpart 12 of Part 2</b> of the <del>Water Services Legislation Act 2022</del> <b>amendment Act</b> . | 15 |
| (2)       | The former provision continues to have effect as if the amendments set out in <b>subpart 12 of Part 2</b> of the <del>Water Services Legislation Act 2022</del> <b>amendment Act</b> not been enacted for the purposes of—   |    |
|           | (a) investigating the offence to which this clause applies:  |    |
|           | (b) commencing or completing proceedings for the offence to which this clause applies:   | 20 |
|           | (c) imposing a penalty or other remedy, or making an order, in relation to an offence to which this clause applies.  |    |
|           | <i>Transitional provisions relating to Resource Management Act 1991</i>  |    |
| <b>73</b> | <b>Applications for resource consent</b>   | 25 |
| (1)       | This clause applies to an application for a resource consent under section 88 of the Resource Management Act 1991 made by a territorial authority in relation to water services before the establishment date.   |    |
| (2)       | The application continues in effect on and after the establishment date as if it were made by the water services entity whose service area includes the district of that territorial authority.  | 30 |
| <b>74</b> | <b>Representation at proceedings</b>   |    |
| (1)       | This clause applies to any proceedings before the Environment Court relating to water services that were lodged before the establishment date but not completed by the close of the day before that date.  | 35 |
| (2)       | For the purposes of section 274(1) of the Resource Management Act 1991, the water services entity whose service area includes the district of a territorial  |    |

authority that is a party to those proceedings is to be treated as a party in place of that territorial authority.

## **75 Local authority designations relating to water services**

- (1) This clause applies to a designation of a local authority that wholly relates to the provision of water services and for which a water services entity has assumed financial responsibility by operation of this **Part** or an Order in Council made under this **Part**. 5
- (2) On and after the establishment date, the designation is deemed to have been transferred to the water services entity for the purposes of ~~section 180~~ section 180(2) and clause 76 of Schedule 1 of the Resource Management Act 1991. 10
- (3) In this clause, **designation** has the same meaning as in section 166 of the Resource Management Act 1991.

### *Pre-commencement engagement and consultation*

## **76 Pre-commencement engagement and consultation**

Engagement and consultation carried out at any time before the establishment date about a matter requiring engagement or consultation under the Act (as amended by the amendment Act) is to be treated as engagement or consultation for the purposes of the Act. 15

Compare: 2014 No 32 s 423

### *Treaty settlement obligations* 20

## **77 Treaty settlement obligations**

- (1) This clause applies to a person who performs or exercises a function, duty, or power under this Part.
- (2) The person must, in performing or exercising the function, duty, or power, uphold the integrity, intent, and effect of Treaty settlement obligations. 25
- (3) This clause does not affect or limit how section 9 (Treaty settlement obligations prevail) applies to this Part.

## **77A Process for upholding Treaty settlement obligations**

- (1) This clause applies in respect of any Treaty settlement obligations that are, or may be, directly affected by this Act, the Taumata Arowai—the Water Services Regulator Act 2020, or the Water Services Act 2021. 30
- (2) The Crown must uphold the integrity, intent, and effect of Treaty settlement obligations in accordance with this clause.
- (3) The Crown must, unless otherwise agreed with the post-settlement governance entity for the Treaty settlement,— 35
  - (a) discuss with the post-settlement governance entity, for the purpose of agreeing, how the integrity, intent, and effect of the Treaty settlement

|           |  |    |
|-----------|--|----|
|           | <u>obligations will be upheld in relation to this Act, the Taumata Arowai—<br/>the Water Services Regulator Act 2020, or the Water Services Act 2021;<br/>and</u>  |    |
|           | (b) <u>support the capacity of the post-settlement governance entity to partici-<br/>pate effectively in those discussions, including by providing appropriate<br/>resources; and</u>  | 5  |
|           | (c) <u>enter into any agreements with the post-settlement governance entity<br/>that are necessary to uphold the Treaty settlement obligations, including<br/>by entering into a deed to amend the entity’s Treaty settlement deed.</u>  |    |
| (4)       | <u>If necessary to give effect to an agreement relating to Treaty settlement obliga-<br/>tions, the Crown must—</u>  | 10 |
|           | (a) <u>take all necessary steps within the Crown’s authority to introduce a Bill<br/>to the House of Representatives that—</u>   |    |
|           | (i) <u>amends the post-settlement governance entity’s Treaty settlement<br/>Act or any other Act; and</u>  | 15 |
|           | (ii) <u>is in a form that has been agreed by the post-settlement govern-<br/>ance entity; and</u>  |    |
|           | (b) <u>use the Crown’s best endeavours to promote the enactment of the Bill no<br/>later than 18 months after the commencement of this clause.</u>   |    |
| (5)       | <u>The Crown must also—</u>  | 20 |
|           | (a) <u>monitor progress of the matters set out in <b>subclauses (2) and (3)</b>; and</u>   |    |
|           | (b) <u>every 3 months, make a report on the progress available to the post-<br/>settlement governance entity.</u>  |    |
| (6)       | <u>In this clause,—</u>  |    |
|           | <b><u>claimant group</u></b> has the meaning given in <b>section 6(1)</b>  | 25 |
|           | <b><u>post-settlement governance entity</u></b> —  |    |
|           | (a) <u>means a body corporate or the trustees of a trust established by a claim-<br/>ant group for the purposes of receiving redress or participating in<br/>arrangements established under a Treaty settlement Act; and</u>   |    |
|           | (b) <u>includes an entity established to represent a collective or combination of<br/>claimant groups.</u>   | 30 |
|           | <i>Agreements, etc, with mana whenua</i>   |    |
| <b>78</b> | <b><del>Water services entities responsible for agreements etc with mana whenua<br/>regulations made under section 474(1)(c) come into force</del></b>   |    |
| (1)       | <del>Until the date on which regulations made under <b>section 474(1)(c)</b> come into<br/>force, the relevant water services entity is to be treated as being responsible for<br/>performing or exercising any functions, duties, or powers relating to water ser-<br/>vices in an agreement, arrangement, or understanding between a local authority</del> | 35 |

|           |  |    |
|-----------|--|----|
|           | <del>and mana whenua, either in place of the local authority or as a party to the agreement, arrangement, or understanding.</del>  |    |
| (2)       | <del>This clause is repealed on the close of the day immediately before the date on which regulations made under <b>section 474(1)(c)</b> come into force.</del>   |    |
| <b>78</b> | <b><u>Water services entities to be responsible for agreements, etc, with mana whenua</u></b>  | 5  |
| (1)       | <u>On and after the establishment date, a relevant water services entity is to be treated as being responsible for performing or exercising any functions, duties, or powers relating to water services that are set out in any agreement, arrangement, or understanding between a local authority and mana whenua that was entered into before that date, either—</u> | 10 |
|           | (a) <u>in place of the local authority; or</u>   |    |
|           | (b) <u>as a party to the agreement, arrangement, or understanding in addition to the local authority.</u>  |    |
| (2)       | <u>By, or as soon as practicable after, the establishment date, an establishment chief executive must—</u>   | 15 |
|           | (a) <u>identify the agreements, arrangements, and understandings between local authorities and mana whenua relating to water services that are not to be subject to the process in <b>clause 77A</b>; and</u>  |    |
|           | (b) <u>work together with the relevant local authority, and mana whenua to prepare for the assumption by the water services entity of any responsibility set out in the agreements, arrangements, and understandings under <b>sub-clause (1)</b>.</u>  | 20 |
| (3)       | <u>In this clause, <b>relevant water services entity</b> means the water services entity in whose district the agreement, arrangement, or understanding applied immediately before the establishment date.</u>   | 25 |
|           | <i>Transitional regulations</i>  |    |
| <b>79</b> | <b><u>Transitional regulations relating to tariff or charging structures</u></b>   |    |
| (1)       | The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations prescribing transitional or savings provisions for 1 or more of the following purposes:   | 30 |
|           | (a) maintaining the methodology or methodologies to be used to determine the tariff or charging structures that are to apply to residential consumers for the water services that water services entities provide and growth in demand for those water services (for example, per property, per unit of capital value, or per volume of water consumed or discharged): | 35 |
|           | (b) determining the rate of change in the amounts that residential consumers are charged for water services:   |    |

|           |  |    |
|-----------|--|----|
| (c)       | determining the overall level of revenue that a water services entity may receive from a particular residential service or residential consumer group.   |    |
| (1A)      | <u>Regulations made under this clause may apply to 1 or more water services entities.</u>  | 5  |
| (2)       | The Minister may not recommend the making of regulations unless the Minister has—  |    |
| (a)       | provided the Commission with a copy of the proposed regulations; and   |    |
| (b)       | sought feedback from the Commission on the proposed regulations; and   |    |
| (c)       | considered the feedback (if any) that the Commission has given.  | 10 |
| (3)       | In this clause,—   |    |
|           | <b>residential consumer</b> —  |    |
| (a)       | means a person who owns residential land; and  |    |
| (b)       | includes a person who leases residential land under a lease that requires the person to pay charges to a water services entity that the owner of the property would otherwise pay                  | 15 |
|           | <b>residential land</b> has the same meaning as in section YA 1 of the Income Tax Act 2007.  |    |
| (4)       | Regulations made under this clause are secondary legislation ( <i>see</i> Part 3 of the Legislation Act 2019 for publication requirements).  | 20 |
| (5)       | Regulations made under this clause expire on the close of <b>30 June 2027</b> .  |    |
| (6)       | This clause is repealed on <b>1 July 2027</b> .  |    |
| <b>80</b> | <b>Other transitional regulations</b>  |    |
| (1)       | The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations prescribing transitional or savings provisions for 1 or more of the following purposes: | 25 |
| (a)       | prescribing matters in respect of the establishment of a water services entity which may be in addition to, or in place of, the provisions of this Act:  |    |
| (b)       | providing for transitional reporting obligations to apply to local government organisations or water services entities:  | 30 |
| (c)       | extending the time for completing an action, a step, or a procedure that is required by or under this Act and that is not done or cannot be done by the time required:                             |    |
| (d)       | making provision for a situation for which no or insufficient provision is made by or under this Act.  | 35 |

- 
- (2) The Minister must not recommend the making of regulations unless the Minister is satisfied that to do so is necessary for the effective and efficient transition of water services from local authorities to water services entities.
  - (3) Regulations made under this clause are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).
  - (4) Regulations made under this clause expire on the establishment date.
  - (5) This clause is repealed on the close of the day immediately before the establishment date.

5

**Schedule 2**  
**Schedule 5 of Water Services Entities Act 2022 replaced**

s 25

**Schedule 5**  
**Subsidiaries**

5

s 18(3)

**1 Application**

This schedule applies to—

- (a) a water services entity that establishes, owns, or operates a subsidiary or jointly establishes, owns, or operates a subsidiary: 10
- (b) a subsidiary that a water services entity has, or water services entities have, established, own, or operate.

**2 Water services entity may establish, own, or operate subsidiaries under certain conditions**

A water services entity may establish, own, or operate a subsidiary if that subsidiary— 15

- (a) complies with the requirements of this schedule; and
- (b) carries out 1 or more of the functions that are incidental and related to, or consequential on, the functions of a water services entity set out in **section 13(a)**. 20

**3 Subsidiaries must have constitutions**

- (1) Each subsidiary of a water services entity must have a constitution that is not inconsistent with—

- (a) the constitution of the water services entity; or
- (b) the water services entity's functions, duties, and powers under this Act. 25

- (2) **Subclause (1)(a)** does not apply to a company that is defined as a subsidiary under **paragraph (b)** of the definition of subsidiary in **section 6(1)**.

- (3) The constitution of a subsidiary must, to the extent relevant to its activities, include the objectives set out in section 12 and the operating principles set in section 14. 30

**4 Appointment of directors**

- (1) A water services entity must adopt a policy that sets out an objective and transparent process for—

- (a) the identification and consideration of the skills, knowledge, and experience required of directors of a subsidiary; and 35

|   |    |
|---|----|
| <ul style="list-style-type: none"> <li>(b) the appointment of directors to a subsidiary; and</li> <li>(c) the remuneration of directors of a subsidiary.</li> </ul>   |    |
| <ul style="list-style-type: none"> <li>(2) A water services entity may appoint a person to be a director of a subsidiary only if the person has, in the opinion of the water services entity, the skills, knowledge, or experience to—</li> </ul>   | 5  |
| <ul style="list-style-type: none"> <li>(a) guide the subsidiary, given the nature and scope of its activities; and</li> <li>(b) contribute to the achievement of the objectives of the subsidiary.</li> </ul>   |    |
| <ul style="list-style-type: none"> <li>(3) When identifying the skills, knowledge, and experience required of directors of a subsidiary, the water services entity must consider whether knowledge of tikanga Māori may be relevant to the governance of that subsidiary.</li> </ul>          | 10 |
| <ul style="list-style-type: none"> <li>(4) In the case of company that is defined as a subsidiary under <b>paragraph (b)</b> of the definition of subsidiary in <b>section 6(1)</b>, the obligations in this clause apply jointly to each water services entity.</li> </ul>                   |    |
| <p>Compare: 2002 No 84 s 57</p>   |    |
| <p><b>5 Role of directors of subsidiaries</b></p>   | 15 |
| <ul style="list-style-type: none"> <li>(1) The role of a director of a subsidiary is to assist the subsidiary to meet its objectives and any other requirements in its statement of intent.</li> </ul>  |    |
| <ul style="list-style-type: none"> <li>(2) This clause does not limit or affect the other duties that a director of a subsidiary has.</li> </ul>  |    |
| <p>Compare: 2002 No 84 s 58</p>   | 20 |
| <p><b>6 Objectives of subsidiaries</b></p>  |    |
| <ul style="list-style-type: none"> <li>(1) The main objectives of a subsidiary are to—</li> </ul>   |    |
| <ul style="list-style-type: none"> <li>(a) achieve the objectives of its shareholders, both commercial and non-commercial, as specified in its statement of intent and its constitution; and</li> </ul>   | 25 |
| <ul style="list-style-type: none"> <li>(b) be a good employer; and</li> <li>(c) deliver services in an efficient and financially sustainable manner; and</li> <li>(d) if the subsidiary is a trading organisation, conduct its affairs in accordance with sound business practice.</li> </ul> |    |
| <ul style="list-style-type: none"> <li>(2) In this clause, <b>good employer</b> has the same meaning as in section 122(2).</li> </ul>   | 30 |
| <p>Compare: 2002 No 84 s 59</p>   |    |
| <p><b>7 Decisions relating to operation of subsidiaries</b></p>   |    |
| <p>All decisions relating to the operation of a subsidiary must be made by, or under the authority of, the board of the subsidiary in accordance with—</p>  |    |
| <ul style="list-style-type: none"> <li>(a) its statement of intent; and</li> <li>(b) its constitution.</li> </ul>   | 35 |
| <p>Compare: 2002 No 84 s 60</p>   |    |

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|-----------|--|----|
| <b>8</b>  | <b>Obligations of subsidiaries</b>   |    |
| (1)       | A subsidiary must, when performing or exercising its duties, functions, or powers under this Act, give effect to Treaty settlement obligations to the extent that the obligations—   |    |
|           | (a) apply to the performance or exercise of the duties, functions, and powers of a water services entity that owns shares in the subsidiary; and   | 5  |
|           | (b) are relevant to the purpose and objectives of the subsidiary as specified in its constitution and statement of intent.   |    |
| (2)       | <u>A subsidiary must, when performing a function of a water services entity that requires engagement under <b>section 461</b>, comply with the engagement requirements set out in <b>sections 461 and 462</b>.</u>   | 10 |
| <b>9</b>  | <b>Activities undertaken on behalf of water services entity</b>  |    |
|           | A subsidiary may undertake any activities on behalf of a water services entity apart from those activities specified in sections 118 and 119.  |    |
| <b>10</b> | <b>Prohibition on guarantees, etc</b>  | 15 |
| (1)       | A water services entity may not give any guarantee, indemnity, or security in respect of the performance of any obligation by a subsidiary.  |    |
| (2)       | However, a water services entity may give a guarantee, an indemnity, or a security in respect of the performance of any obligation of a company that is defined as subsidiary under <b>paragraph (b)</b> of the definition of subsidiary in <b>section 6(1)</b> if the company has been established for the purpose of—  | 20 |
|           | (a) undertaking borrowing for the shareholding water services entities; or   |    |
|           | (b) managing for the shareholding water services entities financial and other risks that could give rise to contingent or uncertain losses.  |    |
| (3)       | An indemnity, guarantee, or a security referred to in <b>subclause (2)</b> may only be given in respect of a matter specified in that subclause.   | 25 |
|           | Compare: 2002 No 84 s 62   |    |
| <b>11</b> | <b>Restriction on lending</b>  |    |
|           | A water services entity may not lend money, or provide any other financial accommodation, to a subsidiary on terms and conditions that are more favourable to the subsidiary than those that would apply if the water services entity were (without charging any rate or rate revenue as security) borrowing the money or obtaining the financial accommodation. | 30 |
|           | Compare: 2002 No 84 s 63   |    |
| <b>12</b> | <b>Statements of intent</b>  | 35 |
| (1)       | Every subsidiary must prepare and adopt a statement of intent in accordance with Part 1 of Schedule 8 of the Local Government Act 2002.  |    |
| (2)       | The purpose of a statement of intent is to—  |    |

- (a) state publicly the activities and intentions of the subsidiary for the year and the objectives to which those activities will contribute; and
- (b) provide an opportunity for shareholders to influence the direction of the subsidiary; and
- (c) provide a basis for the accountability of the directors to their shareholders for the performance of the subsidiary. 5
- (3) The statement of intent must not be inconsistent with the constitution of the subsidiary.
- (4) All information that is included in a statement of intent under this clause must be prepared in accordance with generally accepted accounting practice if that information is of a form or nature for which generally accepted accounting practice has developed standards. 10
- (5) Despite this clause, an organisation that becomes a subsidiary not more than 6 months before the end of a financial year is not required to prepare a statement of intent for that financial year. 15
- (6) Each shareholding water services entity must publish the adopted statement of intent on an Internet site maintained by, or on behalf of, the water services entity within 1 month of its adoption, and must maintain the statement of intent on the Internet site for a period of not less than 7 years.
- (7) A failure by a subsidiary to comply with any requirement of this clause, or with any statement in the subsidiary's statement of intent, does not affect the validity or enforceability of any deed, agreement, right, or obligation entered into, obtained, or incurred by the subsidiary. 20
- (8) For the purposes of this clause, in Part 1 of Schedule 8 of the Local Government Act 2002,— 25
- (a) references to a local authority must be read as references to a water services entity; and
- (b) references to a council-controlled organisation must be read as references to a subsidiary of a water services entity.
- Compare: 2002 No 84 s 64 30
- 13 Contents of statements of intent**
- The statement of intent for a subsidiary must include—
- (a) the objectives of the subsidiary (or the group if the subsidiary has a related party as defined in section 291A of the Companies Act 1993):
- (b) a statement by the subsidiary's board indicating the board's approach to governance: 35
- (c) the nature and scope of the activities that the subsidiary is to deliver:

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| (d)       | the non-financial performance targets and other performance measures by which to assess whether the objectives of the subsidiary are being or have been met:               |    |
| (e)       | the main accounting policies of the subsidiary:  |    |
| (f)       | if the subsidiary is a trading subsidiary,—  | 5  |
| (i)       | the ratio of consolidated shareholders' funds to total assets and the definitions of those terms:  |    |
| (ii)      | an estimate of the amount or proportion of accumulated profits and capital reserves that is intended to be distributed to the shareholders:                                | 10 |
| (iii)     | the board's estimate of the commercial value of the shareholders' investment in the group and the manner in which, and the times at which, that value is to be reassessed: |    |
| (g)       | if the subsidiary is not a trading subsidiary, forecast financial statements for the next 3 years:   | 15 |
| (h)       | if water services are provided (other than under a contract or similar arrangement), the performance measures and targets for each of the water services provided.         |    |
|           | Compare: 2002 No 84 Schedule 8 Parts 2–4   |    |
| <b>14</b> | <b>Consultation regarding statement of intent</b>  | 20 |
|           | Before adopting a statement of intent, the board of a subsidiary must—   |    |
| (a)       | provide a draft of the statement of intent to its shareholders; and  |    |
| (b)       | have regard to any feedback received from its shareholders.  |    |
| <b>15</b> | <b>Shareholders may require additional plans</b>   |    |
| (1)       | The shareholders of a subsidiary may require the subsidiary to prepare and deliver additional plans, including—  | 25 |
| (a)       | an asset management plan:  |    |
| (b)       | a plan setting out the subsidiary's long-term objectives and priorities:   |    |
| (c)       | 1 or more thematic plans (for example, a climate change mitigation plan).  | 30 |
| (2)       | A requirement to provide a plan must be notified to the subsidiary in writing and must specify—  |    |
| (a)       | the date by which the plan must be delivered to the shareholders; and  |    |
| (b)       | the matters to be addressed in the plan; and   |    |
| (c)       | the time period that the plan is to cover.   | 35 |
| (3)       | A requirement to provide a plan may also specify a date or dates by which, or intervals at which, the subsidiary must report on its progress against the plan.             |    |

- (4) The board of a subsidiary must deliver plans, and reports against those plans, in accordance with the terms of the requirement.  
Compare: 2002 No 84 s 64A
- 16 Statement of expectations**
- (1) The shareholders in a subsidiary may prepare a statement of expectations that— 5
- (a) specifies how the organisation is to conduct its relationships with stakeholders, including iwi, hapū, and other Māori organisations; and
  - (b) requires the subsidiary to act in a manner that is consistent with— 10
    - (i) the statutory obligations of the shareholders:
    - (ii) the shareholders' obligations pursuant to agreements with third parties (including with iwi, hapū, or other Māori organisations).
- (2) A statement of expectations may include other shareholder expectations (for example, expectations in relation to community engagement and collaboration with shareholders and others in the delivery of services). 15
- (3) A statement of expectations must be published on an Internet site maintained by, or on behalf of, each water services entity that is a shareholder of the organisation.  
Compare: 2002 No 84 s 64B
- 17 Performance monitoring** 20
- (1) A water services entity that is a shareholder in a subsidiary must regularly undertake performance monitoring of the subsidiary to evaluate its contribution to the achievement of—
- (a) the water services entity's objectives for the subsidiary; and
  - (b) (if applicable) the desired results, as set out in the subsidiary's statement of intent; and 25
  - (c) the overall aims and outcomes of the water services entity.
- (2) A water services entity must, as soon as practicable after a statement of intent of a subsidiary is delivered to it,—
- (a) agree to the statement of intent; or 30
  - (b) if it does not agree, take all practicable steps under clause 6 of Schedule 8 of the Local Government Act 2002 to require the statement of intent to be modified.
- (3) In the case of a company that is defined as a subsidiary under **paragraph (b)** of the definition of subsidiary in **section 6(1)**, the obligations in this clause apply jointly to each water services entity. 35

- (4) For the purposes of this clause, in clause 6 of Schedule 8 of the Local Government Act 2002, references to a **council-controlled organisation** must be read as references to a subsidiary of a water services entity.  
Compare: 2002 No 84 s 65
- 18 Half-yearly or quarterly reports** 5
- (1) During each financial year, the board of a subsidiary must report on the subsidiary's operations—
- (a) to its shareholders; and
  - (b) in the case of a subsidiary that is indirectly controlled by 1 or more water services entities (for example, a subsidiary of a holding company owned by a water services entity), to each water services entity that indirectly controls the subsidiary. 10
- (2) A half-yearly report must be delivered within 2 months after the end of the first half of each financial year.
- (3) If the shareholders of the subsidiary notify the subsidiary that they require quarterly reporting, quarterly reports must also be delivered within 2 months after the end of the first and third quarters of each financial year. 15
- (4) Each report must include the information required to be included by the subsidiary's statement of intent.
- (5) Each water services entity that receives a report under this clause must publish the report on an Internet site maintained by, or on behalf of, the water services entity within 1 month of receiving it and must maintain the report on that site for a period of no less than 7 years. 20  
Compare: 2002 No 84 s 66
- 19 Annual report** 25
- (1) Within 3 months after the end of each financial year, the board of a subsidiary must—
- (a) complete a report on the subsidiary's operations during that year; and
  - (b) deliver the report to its shareholders and, in the case of a subsidiary that is indirectly controlled by 1 or more water services entities (for example, a subsidiary of a holding company owned by a water services entity), to each water services entity that indirectly controls the subsidiary; and 30
  - (c) make the report available to the public.
- (2) The report must include the information required to be included by—
- (a) **clauses 20 and 21**; and 35
  - (b) its statement of intent.
- (3) If a subsidiary has undertaken to obtain or has obtained compensation from its shareholders in respect of any activity, the undertaking or the amount of compensation obtained must be recorded in the annual report of the subsidiary.

- (4) Each water services entity that receives an annual report under this clause must publish the annual report on an Internet site maintained by, or on behalf of, the water services entity within 1 month of receiving it, and must maintain the report on that site for a period of not less than 7 years.  
Compare: 2002 No 84 s 67 5
- 20 Contents of ~~report on operations of subsidiaries~~ annual report**
- (1) ~~A~~ An annual report on the operations of a subsidiary under **clause 19** must—
- (a) contain the information that is necessary to enable an informed assessment of the operations of that subsidiary and its subsidiaries, including— 10
- (i) a comparison of the performance of the subsidiary and its subsidiaries with the statement of intent; and
- (ii) an explanation of any material variances between that performance and the statement of intent; and
- (b) state the dividend, if any, authorised to be paid or the maximum dividend proposed to be paid by that organisation for its equity securities (other than fixed interest securities) for the financial year to which the report relates. 15
- (2) In addition, the report may include any information required by a water services entity to enable the entity to meet its statutory obligations under the Water Services Act 2021. 20  
Compare: 2002 No 84 s 68
- 21 Financial statements and auditor's report**
- (1) A report on the operations of a subsidiary under **clause 19** must include—
- (a) audited consolidated financial statements for that financial year for the subsidiary and its subsidiaries; and 25
- (b) an auditor's report on—
- (i) those financial statements; and
- (ii) the performance targets and other measures by which to assess whether the objectives of the subsidiary are being or have been met. 30
- (2) The audited financial statements under **subclause (1)(a)** must be prepared in accordance with generally accepted accounting practice.  
Compare: 2002 No 84 s 69
- 22 Auditor-General is auditor of subsidiaries** 35
- Despite sections 207P to 207V of the Companies Act 1993, a subsidiary or a subsidiary of a subsidiary is a public entity as defined in section 4 of the Public

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|           | Audit Act 2001 and, in accordance with that Act, the Auditor-General is its auditor.  |    |
|           | Compare: 2002 No 84 s 70  |    |
| <b>23</b> | <b>Protection from disclosure of sensitive information</b>  |    |
|           | Nothing in this Act requires the inclusion in any statement of intent, annual report, financial statement, half-yearly report, or quarterly report required to be produced under this Act by a subsidiary of any information that may be properly withheld if a request for that information were made under the Local Government Official Information and Meetings Act 1987. | 5  |
|           | Compare: 2002 No 84 s 71  | 10 |
| <b>24</b> | <b>Listed subsidiaries</b>  |    |
| (1)       | This clause applies to a subsidiary if the shares of any of the following are quoted on a licensed market (within the meaning of section 6(1) of the Financial Markets Conduct Act 2013):   |    |
|           | (a) the subsidiary:   | 15 |
|           | (b) a holding company of the subsidiary:  |    |
|           | (c) controlling companies of the subsidiary.  |    |
| (2)       | If <b>subclause (1)</b> applies, the subsidiary is not required to—   |    |
|           | (a) have a statement of intent under <b>clause 12</b> :   |    |
|           | (b) deliver a half-yearly report or quarterly report under <b>clause 18</b> :   | 20 |
|           | (c) deliver an annual report under <b>clause 19</b> .   |    |
| (3)       | In this clause,—  |    |
|           | <b>controlling companies</b> means 2 or more companies whose degree of control over a subsidiary, if exercisable by a notional company, would make the notional company a holding company of the subsidiary   | 25 |
|           | <b>holding company</b> has the same meaning as in section 5(2) of the Companies Act 1993.   |    |
|           | Compare: 2002 No 84 s 71A   |    |
| <b>25</b> | <b>Official information</b>   |    |
| (1)       | Parts 1 to 6 of the Local Government Official Information and Meetings Act 1987 apply to a subsidiary as if the subsidiary were a local authority.  | 30 |
| (2)       | The Ombudsmen Act 1975 applies to a subsidiary as if the subsidiary were listed in Part 3 of Schedule 1 of that Act.  |    |
| (3)       | The Public Records Act 2005 applies to a subsidiary as if the subsidiary were a water services entity.  | 35 |
|           | Compare: 2002 No 84 s 74  |    |

**26 Related companies**

The provisions in this schedule apply to a company as if it were a subsidiary of a water services entity or water services entities if the company—

- (a) is a related company (within the meaning of section 2(3) and (4) of the Companies Act 1993) of a subsidiary; or
- (b) is defined as a subsidiary under **paragraph (b)** of the definition of subsidiary in **section 6(1)**.

Compare: 2002 No 84 s 72

**27 Relationship with other enactments**

- (1) The provisions in this schedule are in addition to the provisions in any other enactments that apply to subsidiaries.
- (2) However, if a conflict arises between a provision in this schedule and a provision in another enactment, the provision in this schedule prevails.

**Schedule 6**  
**Transfer of small mixed-use rural water supplies**

s 6

*Eligibility to transfer*

- 1** **Eligibility for transfer of small mixed-use rural water supply** 5
- A small mixed-use rural water supply may be transferred under this schedule only if—
- (a) the supply meets the criteria of a small mixed-use rural water supply (as defined in **section 6(1)**); and
  - (b) the transfer of the supply does not breach any Treaty settlement obligations. 10

*Requirement to transfer*

- 2** **When requirement to transfer applies**
- (1) A water services entity must transfer all the assets and liabilities of, and interests relating to, a small mixed-use rural water supply owned by the entity to an alternative operator if— 15
- (a) the water services entity has received from the alternative operator—
    - (i) a proposal to transfer the supply to the operator (a **transfer proposal**); and
    - (ii) a business plan prepared by the operator relating to the transfer proposal; and 20
  - (b) the water services entity has determined through engagement with mana whenua in the area of the supply that the transfer proposal does not breach any Treaty settlement obligations; and
  - (c) an assessment by a panel of experts appointed under **clause 4** concludes that the proposed transfer is viable; and 25
  - (d) the transfer proposal is supported, in a binding referendum conducted under section 9 of the Local Electoral Act 2001 using the First Past the Post electoral system, by 75% or more of the votes cast in accordance with **clause 9**. 30
- (2) All the costs associated with a transfer of the assets and liabilities of, and interests relating to, a small mixed-use rural water supply under this clause must be shared equally between the water services entity and the alternative operator.

Compare: 2002 No 84 s 131

*Preparation and assessment of transfer proposal***3 Obligations relating to transfer proposal**

- (1) A transfer proposal prepared by an alternative operator must—
- (a) include information that demonstrates that the supply in respect of which the proposal is made meets the criteria of a small mixed-use rural water supply (as defined in **section 6(1)**); and 5
  - (b) confirm that the proposed transfer does not breach any Treaty settlement obligations; and
  - (c) confirm that the alternative operator has consulted, and had regard to the views of, Taumata Arowai on the transfer proposal; and 10
  - (d) confirm that the alternative operator has complied with **subclause (2)(a)**; and
  - (e) confirm that the alternative operator is able to meet the costs specified in **subclause (2)(b)**.
- (2) An alternative operator who makes a transfer proposal under **clause 2(1)(a)** must— 15
- (a) make publicly available a summary of the transfer proposal that contains sufficient information to enable a reasonable person to understand the material aspects of the proposal; and
  - (b) pay all the costs associated with an independent assessment of the proposal under **clause 4**. 20

**4 Assessment of whether proposal breaches Treaty settlement obligations**

- (1) This clause applies if a water services entity receives a transfer proposal from an alternative operator under **clause 2(1)(a)**.
- (2) The water services entity must, through engagement with mana whenua in the area of the supply, assess and determine whether the transfer proposal breaches any Treaty settlement obligations. 25
- (3) If, following engagement under **subclause (2)**, the water services entity determines the transfer proposal breaches a Treaty settlement obligation, it must inform the alternative operator that the proposal cannot proceed to independent assessment. 30

**5 Independent assessment of transfer proposal**

- (1) This clause applies if, following engagement with mana whenua, a water services entity determines under **clause 4(2)** that a transfer proposal does not breach any Treaty settlement obligations. 35
- (2) The water services entity and the alternative operator must jointly appoint a panel of experts (a **panel**) to assess the viability of the proposed transfer of the

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|          | <u>assets and liabilities of, and interests relating to, the supply to the alternative operator.</u>   |    |
| (3)      | <u>In appointing the panel, the water services entity and the alternative operator must ensure that the panel has, collectively from its members, sufficient skills and experience to assess all of the components of the business plan prepared by the alternative operator to support the transfer proposal.</u> | 5  |
| (4)      | <u>The panel may determine its own procedure in assessing the transfer proposal, including (without limitation) holding hearings and inviting submissions, as it thinks fit.</u>   |    |
| <b>6</b> | <b><u>Alternative operator must prepare business plan</u></b>  | 10 |
| (1)      | <u>The alternative operator must prepare a business plan relating to its transfer proposal.</u>  |    |
| (2)      | <u>The business plan must—</u>   |    |
|          | (a) <u>provide information about the long-term governance arrangements of the alternative operator; and</u>  | 15 |
|          | (b) <u>identify the assets and liabilities of, and interests relating to, the supply that will transfer to the alternative operator if the transfer proposal is supported in a referendum conducted on the proposal; and</u>   |    |
|          | (c) <u>include any comments received from Taumata Arowai relating to the transfer proposal; and</u>  | 20 |
|          | (d) <u>be accompanied by each of the following in relation to the small mixed-use rural water supply:</u>  |    |
|          | (i) <u>an asset management plan that complies with <b>subclause (3)</b>:</u>   |    |
|          | (ii) <u>a funding and pricing plan that complies with <b>subclause (4)</b>:</u>  | 25 |
|          | (iii) <u>a drinking water safety plan prepared by the alternative operator as if the operator were the owner of the supply; and</u>  |    |
|          | (e) <u>include any other information that sets out how the alternative operator will comply with all applicable regulatory requirements under the Water Services Act 2021; and</u>   |    |
|          | (f) <u>include any other relevant information relating to the supply.</u>  | 30 |
| (3)      | <u>An asset management plan referred to in <b>subclause (2)(d)(i)</b> must—</u>  |    |
|          | (a) <u>cover a period of not less than 10 consecutive financial years; and</u>   |    |
|          | (b) <u>set out—</u>  |    |
|          | (i) <u>investment priorities for the infrastructure assets of the supply; and</u>  | 35 |
|          | (ii) <u>how the alternative operator will—</u>   |    |
|          | (A) <u>operate, maintain, and renew the infrastructure assets of the supply; and</u>   |    |

- (B) provide new infrastructure assets for the supply.
- (4) The funding and pricing plan referred to in **subclause (2)(d)(ii)** must—
- (a) cover a period of not less than 10 consecutive financial years; and
- (b) set out—
- (i) the sources of, and the alternative operator’s intended approach to, funding, revenue, and pricing; and 5
- (ii) the alternative operator’s intended approach to pricing its services and charging consumers; and
- (iii) a financial strategy in respect of all of the financial years covered by the plan that includes a statement of the factors that are expected to have a significant impact on the alternative operator during those financial years, including— 10
- (A) the expected changes in population and the use of land in the service area, and the capital and operating costs of providing for those changes; and 15
- (B) the expected capital expenditure on network infrastructure that is required to maintain current levels of service; and
- (C) other significant factors affecting the alternative operator’s ability to maintain current levels of service and to meet additional demands for services. 20
- (5) For the purposes of this clause, the water services entity must provide the alternative operator with relevant information held by the entity, and reasonably requested by the operator, relating to the supply.
- (6) The business plan must not contain any information that may be reasonably regarded as confidential or commercially sensitive. 25
- 7 Assessment by panel**
- (1) The panel must assess the transfer proposal and decide whether the proposed transfer of the assets and liabilities of, and interests relating to, the small mixed-use rural water supply to the alternative operator is viable.
- (2) In making a decision, the panel must take into account— 30
- (a) whether the alternative operator has sustainable governance arrangements; and
- (b) whether the alternative operator is likely to have long-term consent to take the water; and
- (c) whether the alternative operator is sufficiently trained to support the ongoing operations and maintenance of the supply; and 35
- (d) whether the alternative operator will be able to keep the supply in operation, including by assessing the operator’s proposed asset management plan; and

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| (e)       | <u>whether the alternative operator will be able to fund the total costs of running the supply over the long term; and</u>  |    |
| (f)       | <u>whether the alternative operator will be able to provide a service that is cost-effective for consumers generally, including by reference to the operator's proposed funding and pricing plan; and</u>   | 5  |
| (g)       | <u>whether the alternative operator will ensure that the drinking water is safe and meets drinking water standards on an ongoing basis, including by assessing the operator's proposed drinking water safety plan; and</u>  |    |
| (h)       | <u>whether the alternative operator will be able to comply with all applicable regulatory requirements.</u>   | 10 |
| (3)       | <u>The panel may take any steps it considers necessary to confirm the accuracy or reliability of the information set out in the business plan.</u>  |    |
| <b>8</b>  | <b><u>Decision on transfer proposal</u></b>   |    |
| (1)       | <u>The panel must issue a written decision on the viability of the transfer proposal and provide a copy of its decision to the water services entity and alternative operator.</u>  | 15 |
| (2)       | <u>If the panel unanimously agrees that the proposed transfer is viable, the transfer proposal may proceed to a referendum under <b>clause 9</b>.</u>   |    |
|           | <i>Referendum</i>   |    |
| <b>9</b>  | <b><u>Referendum on transfer proposal</u></b>   | 20 |
| (1)       | <u>If a panel of experts decides under <b>clause 8</b> that the proposed transfer of the small mixed-use rural water supply is viable, the relevant territorial authority must appoint an electoral officer to conduct a referendum on the transfer proposal.</u> |    |
| (2)       | <u>The electoral officer who is responsible for conducting the referendum must prepare a special roll of the persons eligible under <b>clause 10</b> to vote in the referendum.</u>   | 25 |
| (3)       | <u>The Local Electoral Act 2001 applies, with any necessary modifications, to a referendum on the transfer proposal.</u>  |    |
| (4)       | <u>In this clause, <b>relevant territorial authority</b> means the territorial authority in whose district the majority of persons eligible to vote in the referendum are on the roll of electors of that territorial authority.</u>                              | 30 |
|           | <u>Compare: 2002 No 84 s 133</u>  |    |
| <b>10</b> | <b><u>Eligibility to vote in referendum</u></b>   |    |
|           | <u>A person is <b>eligible to vote</b> in a referendum on a transfer proposal if the person—</u>  | 35 |
| (a)       | <u>is qualified as a residential elector under section 23 of the Local Electoral Act 2001 or a ratepayer elector under section 24 of that Act; and</u>  |    |

(b) is a consumer of water services from the small mixed-use rural water supply.

Compare: 2002 No 84 s 132

## **11 Referendum documentation**

A referendum petition for a referendum on a transfer proposal must— 5

(a) specify the question that the water services entity proposes be put to the voters in the referendum; and

(b) be accompanied by documentation that—

(i) provides a summary of the transfer proposal that contains sufficient information to enable a reasonable person to understand the material aspects of the transfer proposal; and 10

(ii) states where a copy of the transfer proposal may be accessed; and

(iii) states that the costs associated with the conduct of the referendum are to be met by the alternative operator; and

(iv) states that, if the referendum is successful,— 15

(A) the ownership of the small mixed-use rural water supply, and all assets and liabilities of, and interests relating to, the supply will transfer to the alternative operator; and

(B) the operation of the small mixed-use rural water supply (including the obligation to supply drinking water) will transfer to the alternative operator and the water services entity will no longer be required to supply drinking water to the consumers who access water services from the supply. 20

## **12 Costs of referendum**

(1) All the costs of conducting a referendum on a transfer proposal must be paid by the water services entity. 25

(2) However, if the referendum is successful, the water services entity may recover 50% of the costs from the alternative operator as a debt due to the water services entity.

*Repeal* 30

## **13 Repeal of this schedule**

This schedule is repealed on **1 July 2034**.

**Schedule 3**  
**New Part 7 inserted into Schedule 1AA of Local Government Act**  
**2002**

s 111

|   |    |
|---|----|
| <b>Part 7</b>   | 5  |
| <b>Provision relating to Water Services Legislation Act 2022</b>  |    |
| <b>28 Transitional provision relating to certain annual reports required under Part 3 of Schedule 10</b>  |    |
| (1) This clause applies to an annual report for the 2023/2024 financial year prepared in accordance with Part 3 of Schedule 10, and adopted in accordance with section 98.  | 10 |
| (2) A local authority must prepare and adopt the annual report in accordance with Schedule 10 as it read immediately before the commencement of this clause, and include the information on groups of activities required by clause 23 of Schedule 10 in relation to the following: | 15 |
| (a) water supply:   |    |
| (b) sewerage and the treatment and disposal of sewage:  |    |
| (c) stormwater drainage.  |    |

## Schedule 4

### Amendments to secondary legislation

s 202

|   |    |
|---|----|
| <b>Local Government (Financial Reporting and Prudence) Regulations 2014 (LI 2014/76)</b>  | 5  |
| In regulation 3, replace the definition of <b>network services</b> with:  |    |
| <b>network services</b> means infrastructure related to—  |    |
| (aaa) <u>agricultural water supply</u> :  |    |
| (aab) <u>land drainage</u> :  |    |
| (a) flood protection and control works:   | 10 |
| (b) the provision of roads and footpaths  |    |
| Revoke regulation 5(5).   |    |
| Replace regulation 6(2) with:   |    |
| (2) The notes to a local authority’s financial statements must disclose the financial information listed in subclause (3) in relation to the following assets:  | 15 |
| (aaa) <u>agricultural water supply</u> :  |    |
| (aab) <u>land drainage</u> :  |    |
| (a) flood protection and control works:   |    |
| (b) roads and footpaths (including transport stormwater systems).   |    |
| <b>National Civil Defence Emergency Management Plan Order 2015 (LI 2015/140)</b>  | 20 |
| In the Schedule, clause 2(1), insert in its appropriate alphabetical order:   |    |
| <b>water services entity</b> means a water services entity established under section 11 of the Water Services Entities Act 2022   |    |
| In the Schedule, after clause 74(4)(a), insert:   |    |
| (aa) water services entities, to participate in a disaster relief fund trust (if such a trust has been established in the region); and  | 25 |
| In the Schedule, clause 75(5), after “authorities”, insert “and water services entities”.   |    |
| In the Schedule, clause 75(6), after “authorities”, insert “and water services entities”.   |    |
| In the Schedule, clause 85(4), replace “Regional councils and some territorial authorities” with “Regional councils, some territorial authorities, and water services entities”.                                  | 30 |
| In the Schedule, clause 156(3), replace “local authorities and CDEM Groups” with “local authorities, water services entities (if a substantial part of the recovery relates to water services), and CDEM Groups”. |    |
| In the Schedule, Part 10 heading, after “ <b>authorities</b> ”, insert “ <b>and water services entities</b> ”.  | 35 |

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

In the Schedule, clause 159(1), after “authorities”, insert “and water services entities”.

In the Schedule, clause 159(4) after “authorities”, insert “and water services entities”.

In the Schedule, clause 160, after “authorities”, insert “and water services entities”.

In the Schedule, clause 161(2), after “authorities”, insert “and water services entities”.

In the Schedule, clause 161(4), after “authorities”, insert “and water services entities”. 5

In the Schedule, clause 161(5), after “authorities,”, insert “water services entities,”.

In the Schedule, clause 161(6), replace “and local authorities” with “local authorities, and water services entities”.

In the Schedule, clause 161(7), replace “and local authorities” with “local authorities, and water services entities”. 10

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

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

In the Schedule, clause 162(b), before “take”, insert “by local authorities and water services entities to”.

In the Schedule, clause 162(c), before “take”, insert “by local authorities and water services entities to”. 15

In the Schedule, clause 163(1), after “authorities”, insert “and water services entities”.

In the Schedule, clause 163(2)(b), after “authorities”, insert “and water services entities”.

**Legislative history**

8 December 2022  
13 December 2022

Introduction (Bill 210–1)  
First reading and referral to Finance and Expenditure Committee