

**Version
as at 17 February 2024**



Water Services Entities Act 2022

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Commencement see section 2

Water Services Entities Act 2022: repealed, on 17 February 2024, by section 8 of the Water Services Acts Repeal Act 2024 (2024 No 2).

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Note

The Parliamentary Counsel Office has made editorial and format changes to this version using the powers under subpart 2 of Part 3 of the Legislation Act 2019.

Note 4 at the end of this version provides a list of the amendments included in it.

This Act is administered by the Department of Internal Affairs.

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Water Services Entities Act 2022.

2 Commencement

15 December 2022

- (1) The following provisions come into force on the day after the date of Royal assent:
- (a) sections 3, 4, 5(a), (b), (c), and (f), and 6 to 10 (preliminary provisions):
 - (b) subparts 1 to 3, 6, and 8 of Part 2 (which relate to the establishment of water services entities and the roles of the Minister, Crown monitor, and board):
 - (c) sections 121 and 122 (which relate to the employment of the chief executive and other employees):
 - (d) sections 132 to 137 (which relate to a Government policy statement on water services) and section 206 so far as it relates to a Government policy statement issued under clause 8 of Schedule 1:
 - (e) section 210 (which contains regulation-making powers) and section 206 so far as it relates to regulations made under section 210(1)(a):
 - (f) section 218 (which ensures that a support package payment made by a water services entity is charged with GST at the rate of 0%):
 - (g) section 223 (which amends the Local Government Act 2002 in respect of matters related to water services):
 - (h) section 234 (which amends the Taumata Arowai—the Water Services Regulator Act 2020 in respect of te Mana o te Wai):
 - (i) sections 236 and 237 (which amend the Water Services Act 2021 in respect of—
 - (i) te Mana o te Wai; and
 - (ii) consultation on, and accounting for and banking of, cost-recovery levies):
 - (j) Schedule 1 (which contains transitional, savings, and related provisions).

Commencement of Water Services Entities Amendment Act 2023

- (1A) The following provisions come into force on the day after the date of Royal assent of the Water Services Entities Amendment Act 2023:
- (a) section 27 (establishment and membership of regional representative group):
 - (b) section 93 (what constitution must contain) so far as it relates to regulations made under section 484(1)(a):
 - (c) section 97 (process for amending or replacing constitution) so far as it relates to regulations made under section 210(1)(a):
 - (d) section 117(4) (directions for shared services not subject to section 117):
 - (e) sections 123 to 128 (protections from liability):
 - (f) section 129 (method of contracting):
 - (g) section 131(2A) (directions for shared services):
 - (h) subpart 2A of Part 4 (directions for shared services):
 - (i) section 206 (engagement requirements).

Commencement of Water Services Legislation Act 2023

- (1B) The following provisions come into force on the day after the date of Royal assent of the Water Services Legislation Act 2023:
- (a) sections 472 and 476 so far as they relate to—
 - (i) an Order in Council made under section 6A setting establishment dates for 1 or more water services entities:
 - (ii) regulations made under section 484(1)(a):
 - (iii) a Government policy statement issued under clause 8 of Schedule 1:
 - (iv) a direction for shared services given under clause 8A of Schedule 1:
 - (b) section 484(1)(a), (2), (3), (4), (5), and (8) (which contain regulation-making powers):
 - (c) section 486 (which relates to delegations by the chief executive of a water services entity).

1 July 2024

- (2) The rest of this Act comes into force on 1 July 2024.
- (3) *[Repealed]*

Section 2(1) heading: inserted, on 23 August 2023, by section 4(1) of the Water Services Entities Amendment Act 2023 (2023 No 44).

Section 2(1A) heading: inserted, on 23 August 2023, by section 4(2) of the Water Services Entities Amendment Act 2023 (2023 No 44).

Section 2(1A): inserted, on 23 August 2023, by section 4(2) of the Water Services Entities Amendment Act 2023 (2023 No 44).

Section 2(1A)(b): amended, on 31 August 2023, by section 4(1) of the Water Services Legislation Act 2023 (2023 No 52).

Section 2(1B) heading: inserted, on 31 August 2023, by section 4(2) of the Water Services Legislation Act 2023 (2023 No 52).

Section 2(1B): inserted, on 31 August 2023, by section 4(2) of the Water Services Legislation Act 2023 (2023 No 52).

Section 2(2) heading: inserted, on 23 August 2023, by section 4(2) of the Water Services Entities Amendment Act 2023 (2023 No 44).

Section 2(2): replaced, on 23 August 2023, by section 4(2) of the Water Services Entities Amendment Act 2023 (2023 No 44).

Section 2(3): repealed, on 23 August 2023, by section 4(2) of the Water Services Entities Amendment Act 2023 (2023 No 44).

Part 1

Preliminary provisions

3 Purpose

- (1) The purpose of this Act is to enable long-term, sustainable improvements in the safety, quality, resilience, accessibility, affordability, efficiency, and performance of—
 - (a) water services; and
 - (b) water services infrastructure.
- (2) This Act seeks to achieve that purpose by—
 - (a) establishing 10 water services entities to provide water services in New Zealand:
 - (aa) ensuring that this Act applies to a water services entity, and its service area, only on and after that entity's operational establishment date (*see* section 6A):
 - (b) providing for their service delivery areas and for their governance, reporting, and accountability arrangements (for example, shared services arrangements, community priority statements, a funding agency, and protected transactions):
 - (c) providing for their objectives, operating principles, and duties, functions, and powers (*see* sections 12 to 14):
 - (d) requiring them to give effect to the principles of te Tiriti o Waitangi/the Treaty of Waitangi and Te Mana o Te Wai (*see* section 4):
 - (da) providing a locally led process enabling them to merge if their regional representative groups decide to do so (*see* section 19A):
 - (e) providing for monitoring and oversight arrangements:
 - (f) ensuring water services infrastructure is retained in public ownership:
 - (g) ensuring water services infrastructure is not operated for the purpose of generating profit for shareholders.

Section 3(2)(a): amended, on 23 August 2023, by section 5(1) of the Water Services Entities Amendment Act 2023 (2023 No 44).

Section 3(2)(aa): inserted, on 23 August 2023, by section 5(2) of the Water Services Entities Amendment Act 2023 (2023 No 44).

Section 3(2)(b): amended, on 23 August 2023, by section 5(3) of the Water Services Entities Amendment Act 2023 (2023 No 44).

Section 3(2)(da): inserted, on 23 August 2023, by section 5(4) of the Water Services Entities Amendment Act 2023 (2023 No 44).

4 Te Tiriti o Waitangi/the Treaty of Waitangi and Te Mana o Te Wai

Duties to give effect

- (1) All persons performing or exercising duties, functions, or powers under this Act—
 - (a) must give effect to the principles of te Tiriti o Waitangi/the Treaty of Waitangi; and
 - (b) must give effect to Te Mana o te Wai, to the extent that Te Mana o te Wai applies to those duties, functions, or powers.

Interaction with other provisions on te Tiriti/the Treaty

- (2) Subsection (1)(a) is not limited by subsection (1)(b) or section 5.
- (3) This section is subject to section 9 (Treaty settlement obligations prevail).

5 Provisions on Te Tiriti o Waitangi/the Treaty of Waitangi

In order to recognise and respect the Crown's responsibility to give effect to the principles of te Tiriti o Waitangi/the Treaty of Waitangi, this Act provides,—

- (a) in section 4(1)(a), that all persons performing or exercising duties, functions, or powers under this Act must give effect to the principles of te Tiriti o Waitangi/the Treaty of Waitangi:
- (b) in section 4(1)(b), that all persons performing or exercising duties, functions, or powers under this Act must give effect to Te Mana o te Wai, to the extent that Te Mana o te Wai applies to those duties, functions, or powers:
- (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:
- (c) in section 14, that the operating principles of a water services entity include—
 - (i) partnering and engaging early and meaningfully with Māori; and
 - (ii) giving effect to Treaty settlement obligations to the extent that the obligations apply to the performance or exercise of the duties, functions, or powers of the entity:
- (d) in section 27, that there must be mana whenua representation on each entity's regional representative group:

- (e) in sections 38 and 59, that the board appointment committee of each regional representative group and the board of each entity must include members who, collectively, have knowledge and expertise in relation to—
 - (i) the principles of te Tiriti o Waitangi/the Treaty of Waitangi; and
 - (ii) perspectives of mana whenua, mātauranga, tikanga, and te ao Māori:
- (f) in section 76, that the board of each water services entity must—
 - (i) ensure that the water services entity maintains systems and processes to ensure that, for the purpose of carrying out its functions, it has the capacity and capability to—
 - (A) give effect to the principles of te Tiriti o Waitangi/the Treaty of Waitangi; and
 - (B) engage with, and understand perspectives of, mana whenua; and
 - (ii) maintain systems and processes for the continuing education of all board members to gain knowledge of, and experience and expertise in relation to, the principles of te Tiriti o Waitangi/the Treaty of Waitangi:
- (g) in section 144, that the board of each water services entity must respond to Te Mana o te Wai statements for water services issued to the entity by mana whenua:
- (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:
- (i) in section 484(2), that there must be engagement with mana whenua:
- (j) in clauses 37 and 81 of Schedule 1, that all persons performing or exercising duties, functions, or powers under Part 1 or 2 of Schedule 1 must uphold the integrity, intent, and effect of Treaty settlement obligations:
- (k) in clause 82 of Schedule 1, that the Crown must uphold the integrity, intent, and effect of Treaty settlement obligations in accordance with that clause:
- (l) in clause 83 of Schedule 1, that relevant water services entities are to be responsible for agreements, arrangements, or understandings that local authorities have entered with mana whenua relating to water services:
- (m) in clause 28 of Schedule 2A, that all persons performing or exercising duties, functions, or powers under Schedule 2A must uphold the integrity, intent, and effect of Treaty settlement obligations:

- (n) in clause 29 of Schedule 2A, that the water services entity established by a merger order is to be responsible for agreements, arrangements, or understandings that water services entities disestablished by the merger order have entered with mana whenua relating to water services:
- (o) 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.

Section 5(ba): inserted, on 31 August 2023, by section 5(1) of the Water Services Legislation Act 2023 (2023 No 52).

Section 5(h): inserted, on 31 August 2023, by section 5(2) of the Water Services Legislation Act 2023 (2023 No 52).

Section 5(i): inserted, on 31 August 2023, by section 5(2) of the Water Services Legislation Act 2023 (2023 No 52).

Section 5(j): inserted, on 31 August 2023, by section 5(2) of the Water Services Legislation Act 2023 (2023 No 52).

Section 5(k): inserted, on 31 August 2023, by section 5(2) of the Water Services Legislation Act 2023 (2023 No 52).

Section 5(l): inserted, on 31 August 2023, by section 5(2) of the Water Services Legislation Act 2023 (2023 No 52).

Section 5(m): inserted, on 31 August 2023, by section 5(2) of the Water Services Legislation Act 2023 (2023 No 52).

Section 5(n): inserted, on 31 August 2023, by section 5(2) of the Water Services Legislation Act 2023 (2023 No 52).

Section 5(o): inserted, on 31 August 2023, by section 5(2) of the Water Services Legislation Act 2023 (2023 No 52).

6 Interpretation

- (1) In this Act, unless the context otherwise requires,—

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 supply, means any of the following who has submitted a transfer proposal under clause 2 of Schedule 6 in respect of the supply:

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

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

board appointment committee means a committee of a regional representative group appointed under section 38

board member—

- (a) means a member of the board appointed under section 59; but

- (b) for the purposes of sections 124 to 128, has the meaning set out in section 123

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

chairperson,—

- (a) of a regional representative group, means—
 - (i) its chairperson (*see* section 41); or
 - (ii) if section 42(2)(c) applies, both of its co-chairpersons:
- (b) of a regional advisory panel, means—
 - (i) its chairperson (*see* section 55); or
 - (ii) if section 56(2)(c) applies, both of its co-chairpersons

claimant group, in relation to the definitions of Treaty settlement Act and Treaty settlement deed, means a group of Māori with Treaty of Waitangi claims against the Crown, whether or not those claims have been lodged with, or heard by, the Waitangi Tribunal under the Treaty of Waitangi Act 1975

Commission—

- (a) means the Commerce Commission established by section 8 of the Commerce Act 1986; but
- (b) in Schedule 4, means the Local Government Commission continued under section 28 of the Local Government Act 2002 (*see* clause 1 of Schedule 4)

committee means,—

- (a) in relation to a regional advisory panel, a committee or subcommittee appointed under the constitution; and
- (b) in relation to a regional representative group, a committee or subcommittee appointed under the constitution (including the board appointment committee); and
- (c) in relation to a board, a committee or subcommittee appointed under the constitution

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

compliance officer means a person appointed under section 367

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 374:
- (b) an order issued under this Act by the Director of Compliance and Enforcement or a court in accordance with section 372:
- (c) a trade waste permit in accordance with section 266:

- (d) a controlled drinking water catchment management plan in accordance with section 235:
- (e) stormwater network rules in accordance with section 261:
- (f) rules relating to specified classes of work in certain places in accordance with section 283:
- (g) an offence provision or an infringement offence provision in or under this Act in accordance with sections 419 to 427:
- (h) a set of powers under this Act relating to a water supply network (in accordance with section 403), a wastewater network (in accordance with sections 405 and 406), or a stormwater network (in accordance with section 283) and the protection of that network

constitution means, in relation to a water services entity,—

- (a) the entity's first constitution as provided for in section 96; or
- (b) if the regional representative group has amended the entity's first constitution or adopted a new constitution under section 97 or 98, the constitution as adopted or amended under that section

consumer—

- (a) means a person who acquires, consumes, or is provided with water services by a water services entity; and
- (b) includes a person who owns property that is not connected to water services infrastructure

department means the department for the time being responsible for the administration of this Act

deputy chairperson,—

- (a) of a regional representative group, means—
 - (i) its deputy chairperson (*see* section 41); or
 - (ii) if section 42(2)(c) applies, both of its deputy co-chairpersons:
- (b) of a regional advisory panel, means—
 - (i) its deputy chairperson (*see* section 55); or
 - (ii) if section 56(2)(d) applies, both of its deputy co-chairpersons

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 362

drinking water has the meaning set out in section 6 of the Water Services Act 2021

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

employee, in relation to a water services entity,—

- (a) includes the chief executive of the entity other than for the process of determining terms and conditions under section 121; and
- (b) for the purposes of sections 124 to 128, has the meaning set out in section 123

environmental contribution has the same meaning as in section 11(1) of the Natural and Built Environment Act 2023

establishment date, for a water services entity, means the water services entity's establishment date under section 6A(4) or (5)

establishment period, for a water services entity, means the period—

- (a) starting on the date on which the water services entity is established under section 11 (as inserted by the Water Services Entities Amendment Act 2023); and
- (b) ending on the water services entity's establishment date (as defined in this section)

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

financial year means the 12 months ending on the close of 30 June

funding and pricing plan means the funding and pricing plan prepared by the board under section 154

generally accepted accounting practice has the meaning set out in section 8 of the Financial Reporting Act 2013

green water services infrastructure—

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

Government policy statement means a Government policy statement on water services issued by the Minister under section 132

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 meaning set out in section 5 of the Local Government Act 2002

long-term plan 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

mana whenua panel member means a mana whenua panel member appointed to a regional advisory panel (*see* section 53)

mana whenua representative means a mana whenua representative appointed to a regional representative group under section 33

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

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

ministerial appointee means a person appointed under subpart 2 of Part 5 as a member of a Crown review team, as a Crown observer, or as a Crown manager

ministerial body means a Crown review team, a Crown observer, or a Crown manager appointed under subpart 2 of Part 5

monitor means the department appointed under section 174

natural person act has the meaning set out in section 25

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

operator, in relation to a drinking water supply, wastewater network, or stormwater network,—

- (a) means the person who operates the drinking water supply, wastewater network, or stormwater network or supervises its operation or aspects of its operation; and
- (b) includes—
 - (i) a water services entity, a public stormwater network owner or operator, and a private stormwater network owner or operator:
 - (ii) an organisation or individual involved in the operation of the drinking water supply, wastewater network, or stormwater network if the organisation or individual is authorised to be involved in its operation in accordance with any agreement or arrangement, including any shared services agreement or subsidiary arrangement

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

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 advisory panel means, in relation to a water services entity, a regional advisory panel established by the constitution

regional advisory panel member means—

- (a) a territorial authority panel member; or
- (b) a mana whenua panel member

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

regional planning committee has the same meaning as in section 11(1) of the Natural and Built Environment Act 2023

regional representative means a territorial authority representative or mana whenua representative

regional representative group means, in relation to a water services entity, the regional representative group established for the entity under section 27

regulations means regulations made under section 484 or section 485 (as the case may be)

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

resource consent has the same meaning as in section 11(1) of the Natural and Built Environment Act 2023

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 Roading 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 Roading 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

service area means, in relation to a water services entity, the area identified in Schedule 2 as the service area of the entity

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

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

stormwater network—

- (a) means the infrastructure owned or operated by, or processes used by, a water services entity to collect, treat, drain, store, reuse, or discharge stormwater in an urban area; and
- (b) includes—
 - (i) an overland flow path (as defined in this section):
 - (ii) green water services infrastructure that delivers stormwater water services (as defined in this section):
 - (iii) watercourses that are part of, or related to, the infrastructure described in paragraph (a); but
- (c) does not include a transport stormwater system

subsidiary, in relation to a water services entity,—

- (a) means a company or body corporate in which 1 or more water services entities—
 - (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 half the maximum number of votes that can be exercised at a meeting of the company or body corporate; or
 - (iii) hold more than 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
 - (iv) are entitled to receive more than 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—
 - (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)

Te Mana o te Wai—

- (a) has the meaning set out in the National Policy Statement for Freshwater Management issued in 2020 under section 52 of the Resource Management Act 1991 and any statement issued under that section that amends or replaces the 2020 statement (*see also* sections 4, 5, and 14 of this Act); and
- (b) applies, for the purposes of this Act, to water (as that term is defined in this section)

Te Mana o te Wai statement for water services means a statement provided by mana whenua to a water services entity under section 143

territorial authority has the meaning set out in section 5 of the Local Government Act 2002

territorial authority owners means, in relation to a water services entity, the territorial authorities listed in the part of Schedule 2 that relates to the entity

territorial authority panel member means a territorial authority panel member appointed to a regional advisory panel (*see* section 52)

territorial authority representative means a territorial authority representative appointed to a regional representative group under section 32

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
- (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 269(2)

trade waste carrier means a person that transports trade waste (other than by reticulation)

trade waste permit means a permit issued under section 266

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;
- (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 as defined in section 315(1) of the Local Government Act 1974, jurisdiction over the road

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 relating to a transport corridor; and
- (b) includes—

- (i) an overland flow path (as defined in this section):
- (ii) green water services infrastructure that delivers stormwater services (as defined in this section)

Treaty of Waitangi claim means a claim within the meaning of section 6 of the Treaty of Waitangi Act 1975, whether that claim was submitted or not to the Waitangi Tribunal

Treaty settlement Act means—

- (a) an Act listed in Schedule 3 of the Treaty of Waitangi Act 1975; and
- (b) any other Act that provides redress for Treaty of Waitangi claims, including Acts that provide collective redress or participation arrangements for claimant groups whose claims are, or are to be, settled by another Act

Treaty settlement deed means a deed or other agreement—

- (a) that is signed for and on behalf of the Crown by 1 or more Ministers of the Crown and by representatives of a claimant group; and
- (b) that is in settlement of the Treaty of Waitangi claims of the members of that group, or in express anticipation, or on account, of that settlement

Treaty settlement obligations means obligations under any of the following:

- (a) Treaty settlement Acts;
- (b) Treaty settlement deeds

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
- (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

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)

wastewater network means the infrastructure owned or operated by, or processes used by, a water services entity to collect, store, transmit through reticulation, treat, or discharge wastewater

water—

- (a) has the same meaning as in section 11(1) of the Natural and Built Environment Act 2023; but

(b) includes water in any form while in any pipe, tank, or cistern

water body—

(a) has the same meaning as in section 11(1) of the Natural and Built Environment Act 2023; but

(b) includes water—

(i) in, or in any part of, a river, lake, stream, pond, wetland, or aquifer; and

(ii) that is located within the coastal marine area (as that term is defined in that section 11(1))

watercourse means a watercourse that is part of, or related to, the drainage or discharge of stormwater in an urban area

water services means services relating to water supply, wastewater, and stormwater

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

water services entity or **entity** means a water services entity established under section 11

water services infrastructure—

(a) means infrastructure owned or operated by a water services entity for the purposes of the delivery of water services; and

(b) includes—

(i) a water supply network:

(ii) a wastewater network:

(iii) a stormwater network; and

(c) for the purposes of section 118 and Schedule 4, includes existing or proposed assets used or proposed to be used by the water services entity to provide water services

water supply includes—

(a) drinking water supply as defined in section 9 of the Water Services Act 2021; and

(b) firefighting water supplies as defined in section 6 of the Fire and Emergency New Zealand Act 2017; and

(c) a small mixed-use rural water supply

water supply network—

(a) means the infrastructure owned or operated by, or processes used by, for, or on behalf of, a water services entity to abstract, store, treat, transmit, or transport water as part of a water supply; and

(b) includes—

- (i) the point of supply:
 - (ii) any end-point treatment device:
 - (iii) any backflow prevention device.
- (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.

Section 6(1) **administering body**: inserted, on 31 August 2023, by section 6(10) of the Water Services Legislation Act 2023 (2023 No 52).

Section 6(1) **alternative operator**: inserted, on 31 August 2023, by section 6(10) of the Water Services Legislation Act 2023 (2023 No 52).

Section 6(1) **board**: amended, on 31 August 2023, by section 6(1) of the Water Services Legislation Act 2023 (2023 No 52).

Section 6(1) **building**: inserted, on 31 August 2023, by section 6(10) of the Water Services Legislation Act 2023 (2023 No 52).

Section 6(1) **company**: inserted, on 31 August 2023, by section 6(10) of the Water Services Legislation Act 2023 (2023 No 52).

Section 6(1) **compliance officer**: inserted, on 31 August 2023, by section 6(10) of the Water Services Legislation Act 2023 (2023 No 52).

Section 6(1) **compliance requirement**: inserted, on 31 August 2023, by section 6(10) of the Water Services Legislation Act 2023 (2023 No 52).

Section 6(1) **consumer**: inserted, on 31 August 2023, by section 6(10) of the Water Services Legislation Act 2023 (2023 No 52).

Section 6(1) **determination**: inserted, on 31 August 2023, by section 6(10) of the Water Services Legislation Act 2023 (2023 No 52).

Section 6(1) **Director of Compliance and Enforcement**: inserted, on 31 August 2023, by section 6(10) of the Water Services Legislation Act 2023 (2023 No 52).

Section 6(1) **drinking water safety plan**: inserted, on 31 August 2023, by section 6(10) of the Water Services Legislation Act 2023 (2023 No 52).

Section 6(1) **environmental contribution**: inserted, on 31 August 2023, by section 6(10) of the Water Services Legislation Act 2023 (2023 No 52).

Section 6(1) **establishment date**: inserted, on 31 August 2023, by section 6(10) of the Water Services Legislation Act 2023 (2023 No 52).

Section 6(1) **establishment period**: inserted, on 31 August 2023, by section 6(10) of the Water Services Legislation Act 2023 (2023 No 52).

Section 6(1) **farmland**: inserted, on 31 August 2023, by section 6(10) of the Water Services Legislation Act 2023 (2023 No 52).

Section 6(1) **home**: inserted, on 31 August 2023, by section 6(10) of the Water Services Legislation Act 2023 (2023 No 52).

Section 6(1) **level crossing**: inserted, on 31 August 2023, by section 6(10) of the Water Services Legislation Act 2023 (2023 No 52).

Section 6(1) **long-term plan**: inserted, on 31 August 2023, by section 6(10) of the Water Services Legislation Act 2023 (2023 No 52).

Section 6(1) **Maori customary land**: inserted, on 31 August 2023, by section 6(10) of the Water Services Legislation Act 2023 (2023 No 52).

Section 6(1) **Maori freehold land**: inserted, on 31 August 2023, by section 6(10) of the Water Services Legislation Act 2023 (2023 No 52).

Section 6(1) **Maori land**: inserted, on 31 August 2023, by section 6(10) of the Water Services Legislation Act 2023 (2023 No 52).

Section 6(1) **Maori land with more than 10 owners**: inserted, on 31 August 2023, by section 6(10) of the Water Services Legislation Act 2023 (2023 No 52).

Section 6(1) **Maori reservation**: inserted, on 31 August 2023, by section 6(10) of the Water Services Legislation Act 2023 (2023 No 52).

Section 6(1) **marae**: inserted, on 31 August 2023, by section 6(10) of the Water Services Legislation Act 2023 (2023 No 52).

Section 6(1) **officer of Parliament**: inserted, on 31 August 2023, by section 6(10) of the Water Services Legislation Act 2023 (2023 No 52).

Section 6(1) **operator**: inserted, on 31 August 2023, by section 6(10) of the Water Services Legislation Act 2023 (2023 No 52).

Section 6(1) **public conservation land**: inserted, on 31 August 2023, by section 6(10) of the Water Services Legislation Act 2023 (2023 No 52).

Section 6(1) **rating information database**: inserted, on 31 August 2023, by section 6(10) of the Water Services Legislation Act 2023 (2023 No 52).

Section 6(1) **regional council**: inserted, on 31 August 2023, by section 6(10) of the Water Services Legislation Act 2023 (2023 No 52).

Section 6(1) **regional planning committee**: inserted, on 31 August 2023, by section 6(10) of the Water Services Legislation Act 2023 (2023 No 52).

Section 6(1) **regional spatial strategy**: repealed, on 23 December 2023, by section 6 of the Resource Management (Natural and Built Environment and Spatial Planning Repeal and Interim Fast-track Consenting) Act 2023 (2023 No 68).

Section 6(1) **regional spatial strategy**: repealed, on 23 December 2023, by section 6 of the Resource Management (Natural and Built Environment and Spatial Planning Repeal and Interim Fast-track Consenting) Act 2023 (2023 No 68).

Section 6(1) **regulations**: amended, on 31 August 2023, by section 6(2) of the Water Services Legislation Act 2023 (2023 No 52).

Section 6(1) **reserve**: inserted, on 31 August 2023, by section 6(10) of the Water Services Legislation Act 2023 (2023 No 52).

Section 6(1) **resource consent**: inserted, on 31 August 2023, by section 6(10) of the Water Services Legislation Act 2023 (2023 No 52).

Section 6(1) **road**: inserted, on 31 August 2023, by section 6(10) of the Water Services Legislation Act 2023 (2023 No 52).

Section 6(1) **sitework**: inserted, on 31 August 2023, by section 6(10) of the Water Services Legislation Act 2023 (2023 No 52).

Section 6(1) **small mixed-use rural water supply**: inserted, on 31 August 2023, by section 6(10) of the Water Services Legislation Act 2023 (2023 No 52).

Section 6(1) **specified serious risk**: inserted, on 31 August 2023, by section 6(10) of the Water Services Legislation Act 2023 (2023 No 52).

Section 6(1) **stormwater network** paragraph (b)(iii): inserted, on 31 August 2023, by section 6(3) of the Water Services Legislation Act 2023 (2023 No 52).

Section 6(1) **stormwater network** paragraph (c): inserted, on 31 August 2023, by section 6(4) of the Water Services Legislation Act 2023 (2023 No 52).

Section 6(1) **subsidiary**: inserted, on 31 August 2023, by section 6(10) of the Water Services Legislation Act 2023 (2023 No 52).

Section 6(1) **Te Mana o te Wai**: replaced, on 23 December 2023, by section 6 of the Resource Management (Natural and Built Environment and Spatial Planning Repeal and Interim Fast-track Consenting) Act 2023 (2023 No 68).

Section 6(1) **trade waste**: inserted, on 31 August 2023, by section 6(10) of the Water Services Legislation Act 2023 (2023 No 52).

Section 6(1) **trade waste carrier**: inserted, on 31 August 2023, by section 6(10) of the Water Services Legislation Act 2023 (2023 No 52).

Section 6(1) **trade waste permit**: inserted, on 31 August 2023, by section 6(10) of the Water Services Legislation Act 2023 (2023 No 52).

Section 6(1) **trade waste premises**: inserted, on 31 August 2023, by section 6(10) of the Water Services Legislation Act 2023 (2023 No 52).

Section 6(1) **trading subsidiary**: inserted, on 31 August 2023, by section 6(10) of the Water Services Legislation Act 2023 (2023 No 52).

Section 6(1) **transport corridor manager**: inserted, on 31 August 2023, by section 6(10) of the Water Services Legislation Act 2023 (2023 No 52).

Section 6(1) **transport stormwater system**: inserted, on 31 August 2023, by section 6(10) of the Water Services Legislation Act 2023 (2023 No 52).

Section 6(1) **urban area**: inserted, on 31 August 2023, by section 6(10) of the Water Services Legislation Act 2023 (2023 No 52).

Section 6(1) **utility operator**: inserted, on 31 August 2023, by section 6(10) of the Water Services Legislation Act 2023 (2023 No 52).

Section 6(1) **variable volumetric charge**: inserted, on 31 August 2023, by section 6(10) of the Water Services Legislation Act 2023 (2023 No 52).

Section 6(1) **water**: inserted, on 23 August 2023, by section 6(2) of the Water Services Entities Amendment Act 2023 (2023 No 44).

Section 6(1) **water** paragraph (a): amended, on 31 August 2023, by section 6(6) of the Water Services Legislation Act 2023 (2023 No 52).

Section 6(1) **water body**: inserted, on 23 August 2023, by section 6(2) of the Water Services Entities Amendment Act 2023 (2023 No 44).

Section 6(1) **water body** paragraph (a): amended, on 31 August 2023, by section 6(7)(a) of the Water Services Legislation Act 2023 (2023 No 52).

Section 6(1) **water body** paragraph (b)(ii): amended, on 31 August 2023, by section 6(7)(b) of the Water Services Legislation Act 2023 (2023 No 52).

Section 6(1) **watercourse**: inserted, on 31 August 2023, by section 6(10) of the Water Services Legislation Act 2023 (2023 No 52).

Section 6(1) **water services debt**: inserted, on 31 August 2023, by section 6(10) of the Water Services Legislation Act 2023 (2023 No 52).

Section 6(1) **water supply** paragraph (c): replaced, on 31 August 2023, by section 6(8) of the Water Services Legislation Act 2023 (2023 No 52).

Section 6(1) **water supply network**: amended, on 31 August 2023, by section 6(9) of the Water Services Legislation Act 2023 (2023 No 52).

Section 6(2): inserted, on 31 August 2023, by section 6(11) of the Water Services Legislation Act 2023 (2023 No 52).

6A Act applies to water services entity, and its service area, only on and after that entity's establishment date

General rule

- (1) This Act, and secondary legislation made under this Act, apply to a water services entity, and its service area, only on and after that entity's establishment date.

- (2) Before the entity's establishment date, local government organisations provide water services in their districts (to the extent that they are part of the entity's service area) under the law in force immediately before 1 July 2024.

Exception

- (3) However, subsections (1) and (2) do not affect or limit the operation, during a water service's entity's establishment period, of the following:
- (a) this section:
 - (b) Schedule 1 of this Act:
 - (c) Schedule 1AA of the Local Government Act 2002:
 - (d) Schedule 1AA of the Local Government (Rating) Act 2002:
 - (e) Schedule 1 of the Local Government (Financial Reporting and Prudence) Regulations 2014.

Establishment date

- (4) The Northland and Auckland Water Services Entity's **establishment date** is 1 July 2024.
- (5) Any other water services entity's **establishment date** is an establishment date for the entity that is set by an Order in Council made under this section on the recommendation of the Minister, and that is one of the following dates:
- (a) 1 July 2024:
 - (b) 1 October 2024:
 - (c) 1 January 2025:
 - (d) 1 April 2025:
 - (e) 1 July 2025:
 - (f) 1 October 2025:
 - (g) 1 January 2026:
 - (h) 1 April 2026:
 - (i) 1 July 2026.

Order in Council setting establishment date

- (6) The power under this section to set an establishment date for an entity is capable of being exercised more than once to amend, revoke, or replace an Order in Council made in a previous exercise of the power, but only so long as each re-exercise of the power—
- (a) takes effect before the previous establishment date; and
 - (b) is recommended due to exceptional circumstances (for example, an emergency) arising only after the previous exercise of the power.
- (7) Within 6 months of this section's commencement, the Minister must recommend, and the Governor-General in Council must make, 1 or more Orders in Council—

- (a) made under this section; and
 - (b) setting establishment dates for all the water services entities whose establishment dates are to be set by Order in Council.
- (8) Before recommending an Order in Council setting a water services entity's establishment date, the Minister must engage in accordance with section 472 with territorial authority owners and mana whenua in the entity's service area.
- (9) An Order in Council made under this section may contain, or be amended so that it contains, establishment dates for all or any of the water services entities whose establishment dates are set by Order in Council.
- (10) An Order made under this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Merger of water services entities

- (11) However, for a water services entity whose establishment is provided for by an Order in Council made under clause 24(1) of Schedule 2A (Order in Council to give effect to requested merger),—
- (a) the rest of this Act, and secondary legislation made under the rest of this Act, applies to that water services entity, and its service area, only on and after the date on which the provisions of that order establishing that water services entity have effect; and
 - (b) subsections (1) to (10), and the transitional provisions specified in subsection (3)(b) to (e), of this section do not apply to the entity.
- (12) However, subsection (11) does not limit the application of section 19A and Schedule 2A to a water services entity—
- (a) that is proposed to be part of a requested merger; and
 - (b) to which section 19A and Schedule 2A apply under subsection (1).

Legislation Act 2019 requirements for secondary legislation made under this section

Publication	PCO must publish it on the legislation website and notify it in the <i>Gazette</i>	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 6A: inserted, on 23 August 2023, by section 7 of the Water Services Entities Amendment Act 2023 (2023 No 44).

Section 6A(8): amended, on 31 August 2023, by section 7 of the Water Services Legislation Act 2023 (2023 No 52).

7 Transitional, savings, and related provisions

The transitional, savings, and related provisions set out in Schedule 1 have effect according to their terms.

8 Act binds the Crown

This Act binds the Crown.

9 Treaty settlement obligations prevail

If a provision of this Act is inconsistent with a Treaty settlement obligation, the Treaty settlement obligation prevails.

10 Rights or interests in water preserved

Purpose

- (1) The purpose of this section is to achieve both of the following outcomes:
- (a) any rights or interests in water are preserved, consistent with assurances—
 - (i) given by the Crown to the Supreme Court in 2012; and
 - (ii) recorded in *New Zealand Māori Council v Attorney-General* [2013] NZSC 6, [2013] 3 NZLR 31 at [145];
 - (b) this Act, and duties, functions, and powers under this Act, operate effectively.

Act does not create, transfer, extinguish, or limit rights or interests

- (2) No legislation in or made under this Act—
- (a) creates or transfers any proprietary right or interest in water:
 - (b) extinguishes or limits any customary right or interest (for example, one founded on, or arising from, aboriginal title or customary law) any iwi or hapū may have in water.

Nothing in section affects duties, functions, and powers under Act

- (3) Nothing in this section affects, or affects the lawfulness or validity of the performance or exercise by any person of, any duty, function, or power under this Act.

Compare: 2010 No 24 s 90(1)(a); 2014 No 74 s 15(5)(a); 2017 No 7 s 46(1), (2)(b)

Part 2

Water services entities

Subpart 1—Establishment of water services entities

11 Water services entities established

Entities established

- (1) This section (as inserted by the Water Services Entities Amendment Act 2023) establishes the water services entities named in Parts 1 to 10 of Schedule 2.

When each water services entity established

- (2) Each water services entity is established on the date on which the appointment of the entity's establishment board under clause 3 of Schedule 1 takes effect.

When new entity resulting from merger established

- (3) However, a water services entity whose establishment is provided for by an Order in Council made under clause 24(1) of Schedule 2A (Order in Council to give effect to requested merger) is established when the provisions of that order establishing that water services entity have effect.

Changing entity's name, mergers, and local government reorganisation

- (4) This section does not limit—
- (a) section 484(1)(g) of this Act; or
 - (b) clause 24(1) of Schedule 2A of this Act; or
 - (c) section 25(4) of the Local Government Act 2002.

Section 11: replaced, on 23 August 2023, by section 8 of the Water Services Entities Amendment Act 2023 (2023 No 44).

Section 11(4)(a): amended, on 31 August 2023, by section 8 of the Water Services Legislation Act 2023 (2023 No 52).

12 Objectives of water services entities

The objectives of each water services entity are to—

- (a) own and operate water services infrastructure, and deliver water services, in an efficient and financially sustainable manner:
- (b) protect and promote public health:
- (c) protect and promote the environment:
- (d) support and enable planning processes, growth, and housing and urban development:
- (e) operate in accordance with best commercial and business practices:
- (f) act in the best interests of present and future consumers and communities:
- (g) deliver water services in a sustainable and resilient manner that seeks to—
 - (i) mitigate the effects of climate change and natural hazards; and
 - (ii) support and enable climate change adaptation.

Compare: 2020 No 52 s 8

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 enter into shared services arrangements related to all or any activities specified in section 137A(5) (for example, related to debt funding and management), whether or not those shared services arrangements are required to give effect to a direction given under section 137A; and
- (c) to own or operate water services infrastructure; and
- (d) to partner and engage with its territorial authority owners; and
- (e) to partner and engage with mana whenua in its service area; and
- (f) to engage with consumers and communities in its service area; and
- (g) 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
- (h) 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
- (i) to charge for services that a water services entity provides to consumers in accordance with section 326 and any other legislation; and
- (j) to administer regulatory requirements (for example, rules or plans) relating to water services that a water services entity is responsible for; and
- (k) to collaborate with other agencies, organisations, and individuals in the water services sector; and
- (l) 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
- (m) to build, maintain, and support the capability of the water services sector; and
- (n) to facilitate, promote, and support research, education, and training relating to water services; and
- (o) to provide guidance, advice, and information on matters relating to water services; and
- (p) to mitigate the effects of climate change and natural hazards, and support and enable climate change adaptation; and
- (q) to identify hazards relating to water services, assess risks relating to those hazards, and manage, control, monitor, or eliminate those risks; and
- (r) to ensure that communities have access to drinking water if existing suppliers are facing significant problems; and

- (s) 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 (t); and
- (t) to perform or exercise the duties, functions, or powers conferred or imposed on it by this Act or any other legislation; and
- (u) any functions that are incidental and related to, or consequential on, its functions set out in paragraphs (a) to (t).

Section 13: replaced, on 31 August 2023, by section 9 of the Water Services Legislation Act 2023 (2023 No 52).

14 Operating principles

The operating principles of a water services entity for the purposes of section 75 are—

- (a) developing and sharing capability and technical expertise with other water services entities and throughout the water services sector; and
- (b) being innovative in the design and delivery of water services and water services infrastructure; and
- (c) having regard in the delivery of water services to—
 - (i) green water services infrastructure (as defined in section 6); and
 - (ii) water-sensitive design; and
- (d) in their employment, and in their procurement (including by way of contractual arrangements, joint arrangements, or joint water services entity arrangements),—
 - (i) having regard to the areas where services are delivered to consumers and communities; and
 - (ii) ensuring there is capability in, and an understanding of the local cultural or environmental factors in, those areas; and
- (e) taking a whole-of-catchment approach to the delivery of water services, and to the identification and management of risks and hazards relating to water services; and
- (f) being open and transparent, including in relation to—
 - (i) the calculation and setting of prices; and
 - (ii) determining levels of service delivery to consumers and communities; and
 - (iii) reporting on the performance of the water services entity; and
- (g) partnering and engaging early and meaningfully with Māori, including to inform how the water services entity can—
 - (i) give effect to Te Mana o te Wai; and

- (ii) understand, support, and enable the exercise of mātauranga Māori, tikanga Māori, and kaitiakitanga; and
- (h) giving effect to Treaty settlement obligations to the extent that the obligations apply to the performance or exercise of the duties, functions, or powers of the entity; and
- (i) partnering and engaging early and meaningfully with territorial authorities and their communities; and
- (j) co-operating with, and supporting, other water services entities, infrastructure providers, local authorities, and the transport sector.

15 Status of water services entities

Body corporate and separate legal entity

- (1) A water services entity—
 - (a) is a body corporate; and
 - (b) is accordingly a legal entity separate from the entity's board members, the entity's employees, the Crown, the entity's regional representative group and any regional advisory panel for that group, and the entity's territorial authority owners; and
 - (c) continues in existence until it is dissolved by an Act.

Co-owned in shares by territorial authority owners

- (2) A water services entity is co-owned—
 - (a) by the territorial authorities in its service area; and
 - (b) in shares allocated and reallocated under section 16.
- (3) Shares allocated or reallocated to, and held by, a territorial authority owner cannot, for any reason, be sold, or otherwise transferred (*see also* section 171).
- (4) Subsection (3) overrides any legislation to the contrary.

Not company, council organisation, council-controlled organisation, etc

- (5) Despite subsections (1) to (4), a water services entity is not—
 - (a) a company; or
 - (b) a council organisation or a council-controlled organisation as those terms are defined in section 6 of the Local Government Act 2002; or
 - (c) a local government organisation as defined in section 124 of the Local Government Act 2002.

Compare: 2004 No 115 s 15

Section 15(5)(a): amended, on 31 August 2023, by section 10 of the Water Services Legislation Act 2023 (2023 No 52).

16 Shares in water services entities

- (1) Shares in a water services entity are, on each relevant date, allocated or reallocated to each territorial authority owner based on the population of its district or part district.
- (2) The allocation or reallocation is as follows:
 - (a) if that population is not more than 50,000 people, 1 share:
 - (b) if that population is more than 50,000 people,—
 - (i) 1 share for every 50,000 people in that district or part district; and
 - (ii) 1 share for a group of fewer than 50,000 people, additional to those 1 or more multiples of 50,000 people, in that district or part district.

- (3) In this section,—

population, of a district or part district of a territorial authority owner, means that population as determined by the most recent available census of population and dwellings carried out by Statistics New Zealand under the Data and Statistics Act 2022

relevant date, for an allocation or a reallocation to the territorial authority owners of shares in a water services entity, means a date that is—

- (a) 1 July 2026; or
 - (b) the date immediately after a 5-year period that started on—
 - (i) 1 July 2026; or
 - (ii) a fifth anniversary of the establishment date (as so defined); or
 - (c) a date on which a territorial authority owner, or its district, is created, adjusted, altered, or abolished in or under the Local Government Act 2002 in a way that affects one or both of the following:
 - (i) territorial authority owners named in Parts 1 to 10 of Schedule 2:
 - (ii) their districts or part districts specified in those Parts; or
 - (ca) a date on which a merger proposal (*see* section 19A) that affects the water services entities named in Parts 1 to 10 of Schedule 2, or their service areas, or both, takes effect; or
 - (d) a date on which a divestment proposal (as defined in clause 1 of Schedule 4) that affects the water services entities named in Parts 1 to 10 of Schedule 2, or their service areas, or both, takes effect.
- (4) The monitor must notify every allocation or reallocation, as soon as practicable, to the Minister, the water services entity, and every territorial authority owner.
 - (5) The monitor must also make every allocation or reallocation publicly available, as soon as practicable, by publishing a copy on an Internet site maintained by, or on behalf of, the department in a format that is readily accessible.

Section 16(3) **relevant date** paragraph (a): amended, on 23 August 2023, by section 10(1) of the Water Services Entities Amendment Act 2023 (2023 No 44).

Section 16(3) **relevant date** paragraph (b)(i): amended, on 23 August 2023, by section 10(2) of the Water Services Entities Amendment Act 2023 (2023 No 44).

Section 16(3) **relevant date** paragraph (c)(i): amended, on 23 August 2023, by section 10(3) of the Water Services Entities Amendment Act 2023 (2023 No 44).

Section 16(3) **relevant date** paragraph (ca): inserted, on 23 August 2023, by section 10(4) of the Water Services Entities Amendment Act 2023 (2023 No 44).

Section 16(3) **relevant date** paragraph (d): amended, on 23 August 2023, by section 10(3) of the Water Services Entities Amendment Act 2023 (2023 No 44).

17 Core things water services entities can do

A water services entity may do anything that is authorised by this Act.

Compare: 2004 No 115 s 16

18 Other things water services entities can do

- (1) A water services entity may do anything that a natural person of full age and capacity may do.
- (2) Subsection (1) applies except as provided in this Act or another Act or rule of law.
- (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 set out in sections 8 and 9 of the Partnership Law Act 2019.

Compare: 2004 No 115 s 17

Section 18(3): inserted, on 31 August 2023, by section 11 of the Water Services Legislation Act 2023 (2023 No 52).

Section 18(4): inserted, on 31 August 2023, by section 11 of the Water Services Legislation Act 2023 (2023 No 52).

19 Acts must be for purpose of functions

A water services entity may do an act under section 17 or 18 only for the purpose of performing its functions.

Compare: 2004 No 115 s 18

Subpart 1A—Merger of water services entities

Subpart 1A: inserted, on 23 August 2023, by section 11 of the Water Services Entities Amendment Act 2023 (2023 No 44).

19A Merger of water services entities

Water services entities may merge in accordance with Schedule 2A.

Section 19A: inserted, on 23 August 2023, by section 11 of the Water Services Entities Amendment Act 2023 (2023 No 44).

Subpart 2—Validity of acts

20 Acts in breach of statute are invalid

- (1) An act of a water services entity is invalid, unless section 21 applies, if it is—
 - (a) an act that is contrary to, or outside the authority of, an Act; or
 - (b) an act that is done otherwise than for the purpose of performing the entity's functions.
- (2) Subsection (1) does not limit any discretion of a court to grant relief in respect of a minor or technical breach.

Compare: 2004 No 115 s 19

21 Some natural person acts protected

- (1) Section 20, or any rule of law to similar effect, does not prevent a person dealing with a water services entity from enforcing a transaction that is a natural person act unless the person dealing with the entity had, or ought reasonably to have had, knowledge—
 - (a) of an express restriction in an Act that makes the act contrary to, or outside the authority of, the Act; or
 - (b) that the act is done otherwise than for the purpose of performing the entity's functions.
- (2) A person who relies on subsection (1) has the onus of proving that they did not have, and ought not reasonably to have had, the knowledge referred to in that subsection.
- (3) A water services entity must report, in its annual report, each transaction that the entity has performed in the year to which the report relates that was invalid under section 20 but enforced in reliance on this section.
- (4) This section does not affect any person's other remedies (for example, remedies in contract) under the general law.

Compare: 2004 No 115 s 20

22 Limits on protection of natural person acts

Section 21 does not limit—

- (a) section 86 (which provides for orders to require or restrain acts); or
- (b) the board of a water services entity bringing an action against a board member who voted for or otherwise authorised the act for breach of their individual duties as a board member; or
- (c) a board member who voted for or otherwise authorised the act being removed from office for breach of the individual duties of board members or the collective duties of the board; or

- (d) an application, in accordance with the law, for judicial review; or
- (e) section 111 (which allows a water services entity to avoid certain acts done in breach of conflict of interest rules).

Compare: 2004 No 115 s 21

23 Acts that are not in best interests of water services entity

It is irrelevant to the validity of an act that the act is not, or would not be, in the best interests of a water services entity.

Compare: 2004 No 115 s 22

24 Dealings between water services entities and other persons

- (1) A water services entity may not assert against a person dealing with the entity that—
 - (a) a person held out by the water services entity to be a board member, an employee, or an agent of the entity (as the case may be)—
 - (i) has not been duly appointed in that capacity or has ceased to be appointed in that capacity; or
 - (ii) does not have the authority to exercise a power which, given the nature of the entity, a person appointed to that capacity customarily has authority to exercise; or
 - (iii) does not have the authority to exercise a power that the entity holds them out as having; or
 - (b) a document issued on behalf of the water services entity by a board member, an employee, or an agent of the entity with actual or usual authority to issue the document is not valid or genuine.
- (2) However, a water services entity may assert any of those matters if the person dealing with the entity had, or ought reasonably to have had, knowledge of the matter.
- (3) Nothing in this section affects a person's right to apply, in accordance with the law, for judicial review.

Compare: 2004 No 115 s 23

25 Interpretation for sections 15 to 24

In sections 15 to 24, unless the context otherwise requires,—

act includes a transfer of property, rights, or interests to or by a water services entity

do includes—

- (a) to do an act; and
- (b) to have a capacity; and
- (c) to have or exercise a power, right, or privilege

natural person act—

- (a) means an act that a natural person of full age and capacity can do (whether or not the act is something that is also authorised by an Act); and
- (b) includes entry into a contract for, or relating to,—
 - (i) acquisition of financial products or borrowing:
 - (ii) the purchase, leasing, or sale of, or other dealings with, property:
 - (iii) the employment, or engagement of the services, of a person

person dealing—

- (a) means the other party to the transaction, if the act of the water services entity is a transaction; and
- (b) includes a person who has acquired property, rights, or interests from a water services entity.

Compare: 2004 No 115 s 24

Subpart 3—Minister’s role

26 **Minister’s role**

The role of the Minister is to oversee and manage the Crown’s interests in, and relationship with, the water services entities, and—

- (a) to issue a Government policy statement on water services under section 132:
- (b) to appoint a Crown review team to perform functions under section 180 in relation to a water services entity in the circumstances described in that section:
- (c) to appoint a Crown observer to perform functions under section 182 in relation to a water services entity in the circumstances described in that section:
- (d) to appoint a Crown manager to perform functions under section 184 in relation to a water services entity in the circumstances described in that section:
- (e) to perform or exercise any other duties, functions, or powers the Minister has, in respect of the entities, under legislation.

Subpart 4—Regional representative groups

Establishment, role, and decision making of regional representative group

27 **Establishment and membership of regional representative group**

- (1) This section establishes a regional representative group for each water services entity.

- (2) Each regional representative group consists of the number of regional representatives that is provided for in the constitution (*see* section 93(a)(i)).
- (3) Each entity's regional representative group must include an equal number of—
 - (a) territorial authority representatives; and
 - (b) mana whenua representatives.
- (4) Each entity's regional representative group must include at least 1 representative from each territorial authority owner in the entity's service area.

Section 27(2): replaced, on 23 August 2023, by section 12(1) of the Water Services Entities Amendment Act 2023 (2023 No 44).

Section 27(4): inserted, on 23 August 2023, by section 12(2) of the Water Services Entities Amendment Act 2023 (2023 No 44).

28 Role of regional representative group

The role of a water services entity's regional representative group is—

- (a) appointing and removing the entity's board members under this Part; and
- (b) participating in the process of setting the entity's strategic direction and performance expectations under subpart 5 of Part 4; and
- (c) reviewing the performance of the entity under section 142; and
- (d) approving the appointment and remuneration policy prepared by its board appointment committee under section 40; and
- (e) performing or exercising any other duties, functions, or powers it has under legislation.

29 Collective duty of regional representative group

The regional representative group of a water services entity must perform or exercise its duties, functions, and powers under legislation—

- (a) wholly or mostly for the benefit of all consumers and communities in the entity's service area; and
- (b) taking into account the diversity of the consumers and communities, and the diversity of the consumers' and communities' interests, in that area; and
- (c) taking into account the interests of future as well as current consumers and communities in that area.

Compare: 2002 No 84 s 14

30 Decision making by regional representative group

Decisions made by a regional representative group of a water services entity must be made—

- (a) by consensus if consensus can be reached by regional representatives taking all reasonably practicable steps to reach consensus in accordance

with a procedure, and within a time frame, specified in the constitution; and

- (b) in any other case, by 75% of the regional representatives present and voting.

31 Group may regulate its own procedure if none specified

A regional representative group of a water services entity may regulate its own procedure for a matter if this Act and the constitution do not specify a procedure for the matter.

Appointment of regional representatives

32 Method of appointing territorial authority representatives to regional representative group

- (1) The territorial authority owners of a water services entity must appoint territorial authority representatives to the regional representative group of the water services entity in accordance with section 27(2) and (3) and the constitution.
- (2) The territorial authority owners must appoint only persons who are—
 - (a) elected members or chief executives of a territorial authority owner of the water services entity; or
 - (b) senior managers of a territorial authority owner that, in the collective opinion of the territorial authority owners, have the appropriate knowledge, skills, and experience to assist the regional representative group in performing its role (*see* section 28).

33 Method of appointing mana whenua representatives to regional representative group

Mana whenua whose rohe or takiwā is within the service area of a water services entity must appoint mana whenua representatives to the regional representative group of the water services entity in accordance with section 27(2) and (3) and the constitution.

34 Requirements before appointment as regional representative

- (1) Before a person is appointed as a regional representative, the person must—
 - (a) consent in writing to the appointment; and
 - (b) certify that they are not disqualified from being a regional representative (*see* section 99); and
 - (c) disclose the nature and extent (including monetary value, if quantifiable) of all interests that the person has at that time, or is likely to have, in matters relating to the water services entity (if the person is, or is to be, interested, as defined in section 102, in those matters).
- (2) A disclosure under subsection (1)(c) must be made,—

- (a) in the case of a proposed appointment as a territorial authority representative, to the entity's territorial authority owners:
 - (b) in the case of a proposed appointment as a mana whenua representative, to the mana whenua whose rohe or takiwā is within the entity's service area.
- (3) As soon as practicable after becoming aware of a failure to comply with subsection (1)(c), the regional representative group must notify the monitor.

Compare: 2004 No 115 s 31

35 Validity of regional representatives' acts

The acts of a person as a regional representative, chairperson, or deputy chairperson of the regional representative group are valid even though—

- (a) a defect existed in the appointment of the person; or
- (b) the person is or was disqualified from being a regional representative; or
- (c) the occasion for the person acting, or for their appointment, had not arisen or had ended.

Compare: 2004 No 115 s 34

36 Validity of appointments

- (1) The appointment of a person as a regional representative, chairperson, or deputy chairperson of a regional representative group is not invalid only because a defect existed in the appointment of the person.
- (2) This section does not apply to a defect in the qualifications for appointment of a regional representative, chairperson, or deputy chairperson (if any).

Compare: 2004 No 115 s 35(1), (2)(a)

37 Resignation of regional representatives

- (1) A territorial authority representative may resign from office by written notice to the entity's territorial authority owners signed by the territorial authority representative.
- (2) A mana whenua representative may resign from office by written notice to the mana whenua whose rohe or takiwā is within the entity's service area signed by the mana whenua representative.
- (3) A resignation under subsection (1) or (2) is effective—
- (a) on receipt of the notice by the territorial owners or mana whenua (as applicable); or
 - (b) at any later time specified in the notice.

Compare: 2004 No 115 s 44

*Board appointment committee***38 Regional representative group must appoint board appointment committee**

- (1) Each regional representative group must appoint a board appointment committee.
- (2) The regional representative group must appoint members to the board appointment committee who, collectively, have knowledge of, and experience and expertise in relation to,—
 - (a) performance monitoring and governance; and
 - (b) network infrastructure industries (for example, water services network infrastructure industries); and
 - (c) the principles of te Tiriti o Waitangi/the Treaty of Waitangi; and
 - (d) public health; and
 - (e) the environment; and
 - (f) perspectives of mana whenua, mātauranga, tikanga, and te ao Māori; and
 - (g) perspectives of consumers and communities; and
 - (h) perspectives of local government.
- (3) The regional representative group must not appoint a person as a member of the board appointment committee unless,—
 - (a) before appointment, the person discloses to the regional representative group the details of any interest the person may have if they were a member of that committee; and
 - (b) the person is a regional representative.

39 Functions of board appointment committee

The functions of the board appointment committee are—

- (a) to appoint and remove members of the board of a water services entity; and
- (b) to prepare and maintain an appointment and remuneration policy for the board; and
- (c) to perform or exercise any of the regional representative group's functions and powers that are delegated to the committee in relation to appointing and removing board members.

40 Board appointment committee must prepare board appointment and remuneration policy

- (1) The board appointment committee must prepare and maintain an appointment and remuneration policy that provides for—

- (a) the collective or individual experience, qualifications, skills, or expertise required of members of the water services entity's board in addition to those required by section 65(2); and
 - (b) a remuneration and expenses framework for members of the entity's board.
- (2) The regional representative group must—
 - (a) review the policy prepared by the board appointment committee; and
 - (b) if satisfied with the policy, approve it.
- (3) The regional representative group must, at least once every 3 years, review the policy, and approve any amendments to it the group considers necessary or desirable.
- (4) The regional representative group must copy to the board of the water services entity every policy, or amended policy, as soon as practicable after it is approved under this section.
- (5) The board of the water services entity must make every policy, or amended policy, publicly available as soon as practicable after it is approved under this section by publishing a copy on an Internet site maintained by, or on behalf of, the entity in a format that is readily accessible.

Chairperson and deputy chairperson

41 Appointment of chairperson and deputy chairperson

- (1) Each regional representative group must elect or appoint, in accordance with the constitution (*see* section 93(a)(x)),—
 - (a) 1 of its regional representatives as chairperson of the group; and
 - (b) 1 of its regional representatives as deputy chairperson of the group.
- (2) However, this section does not apply if the constitution provides that the group has co-chairpersons and deputy co-chairpersons, in accordance with section 42.

42 Co-chairpersons and deputy co-chairpersons

- (1) The constitution may provide that a regional representative group must elect or appoint, in accordance with the constitution (*see* section 93(a)(x)),—
 - (a) 2 of its regional representatives as co-chairpersons of the group; and
 - (b) 2 of its regional representatives as deputy co-chairpersons of the group.
- (2) If the constitution provides for, and requires, a regional representative group to elect or appoint co-chairpersons and deputy co-chairpersons of the group,—
 - (a) 1 co-chairperson and 1 deputy co-chairperson must be elected or appointed by the group's territorial authority representatives; and
 - (b) 1 co-chairperson and 1 deputy co-chairperson must be elected or appointed by the group's mana whenua representatives; and

- (c) references in legislation, other than this section, to the group's chairperson are taken to be references to both of its co-chairpersons; and
- (d) references in legislation, other than this section, to the group's deputy chairperson are taken to be references to both of its deputy co-chairpersons.

Disputes

43 Disputes between regional representatives

- (1) This section applies if a dispute arises between regional representatives on a matter that they are required under this Act to work together on, jointly develop, or agree.
- (2) The regional representatives—
 - (a) may by agreement undertake a binding process of dispute resolution; but
 - (b) if they do not reach agreement on a binding process, must undertake a non-binding process of dispute resolution.
- (3) Whether the regional representatives choose a binding process or a non-binding process, each regional representative must—
 - (a) jointly appoint an arbitrator or a mediator; and
 - (b) meet that regional representative's own costs of the process (so they are not met by the represented territorial authority or mana whenua).
- (4) If the dispute remains unresolved after a non-binding process has been undertaken, the regional representatives may individually or jointly seek the assistance of the Minister.
- (5) The Minister, with a view to assisting the regional representatives to resolve the dispute, may—
 - (a) appoint, and meet the costs of, a Crown facilitator:
 - (b) direct the regional representatives to use a particular alternative dispute resolution process for that purpose.

Compare: 1991 No 69 s 58S

Obligation for regional representative group to hold at least 2 public meetings each financial year

44 Regional representative group must hold at least 2 public meetings each financial year

- (1) The regional representative group of a water services entity must hold at least 2 meetings during each financial year that are open to members of the public (the **group public meetings**).
- (2) The group must—

- (a) give public notice of the details of a group public meeting at least 1 month before the meeting; and
 - (b) allocate a reasonable amount of time for members of the public attending a group public meeting to address the group in relation to the subject matter of the meeting.
- (3) Part 7 of the Local Government Official Information and Meetings Act 1987 applies to the group public meetings (*see* section 45).

Official information

45 Application of Local Government Official Information and Meetings Act 1987 to regional representative group

- (1) Part 7 of the Local Government Official Information and Meetings Act 1987 applies to the regional representative group of a water services entity.
- (2) This section does not limit—
 - (a) section 44 (which requires the group to hold 2 public meetings each financial year to which Part 7 of that Act applies); or
 - (b) section 46 (which requires the entity’s shareholders to hold at least 1 public meeting each financial year to which Part 7 of that Act applies); or
 - (c) section 57 (which relates to the application of Part 7 of that Act to a regional advisory panel for the group); or
 - (d) section 62(6) (which relates to the application of Part 7 of that Act to the entity’s board); or
 - (e) section 63 (which relates to the application of Parts 1 to 6 of that Act to the water services entity).

Obligation for entity’s shareholders to hold at least 1 public meeting each financial year

46 Shareholders must hold at least 1 public meeting each financial year

- (1) The territorial authority owners of a water services entity that are shareholders of the entity (*see* sections 15 and 16) must hold at least 1 shareholders’ meeting during each financial year that is open to members of the public (the **shareholders’ public meeting**).
- (2) The territorial authority owners must—
 - (a) give public notice of the details of the shareholders’ public meeting at least 1 month before the meeting; and
 - (b) allocate a reasonable amount of time for members of the public attending a shareholders’ public meeting to address the shareholders in relation to the subject matter of the meeting.

- (3) Part 7 of the Local Government Official Information and Meetings Act 1987 applies to the shareholders' public meeting (*see* section 45).

Subpart 5—Regional advisory panels

Establishment, role, and decision making of regional advisory panels

47 Establishment and membership of regional advisory panels

- (1) The constitution of a water services entity may establish 1 or more regional advisory panels.
- (2) Each regional advisory panel must include an equal number of—
- (a) territorial authority panel members; and
 - (b) mana whenua panel members.

48 Role of regional advisory panel

- (1) The role of a regional advisory panel is to provide advice to a regional representative group about that group's performance or exercise of, or about how the panel considers that group should perform or exercise, its duties, functions, or powers (*see* section 28) in respect of, or otherwise affecting, a particular geographic area—
- (a) in the service area of the water services entity; and
 - (b) for which the panel is responsible under the constitution (*see* section 93(g)(ii)).
- (2) For example, a regional advisory panel's role includes providing advice by way of input under—
- (a) section 138(5) (statement of strategic and performance expectations);
 - (b) clause 9(2) of Schedule 3 (asset management plan);
 - (c) clause 15(2) of Schedule 3 (funding and pricing plan);
 - (d) clause 21(2) of Schedule 3 (infrastructure strategy).

49 Collective duty of regional advisory panel

A regional advisory panel for a regional representative group of a water services entity must, in performing or exercising its duties, functions, and powers under legislation, take into account—

- (a) that the panel should, whenever reasonably practicable, perform or exercise them wholly or mostly for the benefit of all consumers and communities in the entity's service area; and
- (b) the diversity of the consumers and communities, and the diversity of the consumers' and communities' interests, in that area; and

- (c) the interests of present and future consumers and communities in that area.

Compare: 2002 No 84 s 14

50 Decision making by regional advisory panel

Decisions made by a regional advisory panel for a regional representative group of a water services entity must be made—

- (a) by consensus if consensus can be reached by regional advisory panel members taking all reasonably practicable steps to reach consensus in accordance with a procedure, and within a time frame, specified in the constitution; and
- (b) in any other case, by 75% of the regional advisory panel members present and voting.

51 Panel may regulate its own procedure if none specified

A regional advisory panel for a regional representative group of a water services entity may regulate its own procedure for a matter if this Act and the constitution do not specify a procedure for the matter.

Appointment of regional advisory panel members

52 Method of appointing territorial authority panel members

The territorial authority owners of a water services entity may appoint territorial authority panel members to a regional advisory panel in accordance with section 47(2) and the constitution.

53 Method of appointing mana whenua panel members

Mana whenua whose rohe or takiwā is within the service area of a water services entity may appoint mana whenua representatives to a regional advisory panel in accordance with section 47(2) and the constitution.

54 Requirements before appointment as regional advisory panel member

- (1) Before a person is appointed as a regional advisory panel member, the person must—
 - (a) consent in writing to the appointment; and
 - (b) certify that they are not disqualified from being a regional representative (*see* section 99); and
 - (c) disclose the nature and extent (including monetary value, if quantifiable) of all interests that the person has at that time, or is likely to have, in matters relating to the water services entity (if the person is, or is to be, interested, as defined in section 102, in those matters).
- (2) A disclosure under subsection (1)(c) must be made,—

- (a) in the case of a proposed appointment as a territorial authority panel member, to the entity's territorial authority owners;
 - (b) in the case of a proposed appointment as a mana whenua panel member, to the mana whenua whose rohe or takiwā is within the entity's service area.
- (3) As soon as practicable after becoming aware of a failure to comply with subsection (1)(c), the regional advisory panel must notify the monitor.

Compare: 2004 No 115 s 31

Chairperson and deputy chairperson

55 Appointment of chairperson and deputy chairperson

- (1) Each regional advisory panel must elect or appoint, in accordance with the constitution (*see* section 93(g)(x)),—
- (a) 1 of its regional advisory panel members as chairperson of the panel; and
 - (b) 1 of its regional advisory panel members as deputy chairperson of the panel.
- (2) However, this section does not apply if the constitution provides for the panel to have co-chairpersons and deputy co-chairpersons, in accordance with section 56.

56 Co-chairpersons and deputy co-chairpersons

- (1) The constitution may provide that a regional advisory panel must elect or appoint, in accordance with the constitution (*see* section 93(g)(x)),—
- (a) 2 of its regional advisory panel members as co-chairpersons of the panel; and
 - (b) 2 of its regional advisory panel members as deputy co-chairpersons of the panel.
- (2) If the constitution provides for, and requires, a regional advisory panel to elect or appoint co-chairpersons and deputy co-chairpersons of the panel,—
- (a) 1 co-chairperson and 1 deputy co-chairperson must be elected or appointed by the panel's territorial authority panel members; and
 - (b) 1 co-chairperson and 1 deputy co-chairperson must be elected or appointed by the panel's mana whenua panel members; and
 - (c) references in legislation, other than this section, to the panel's chairperson are taken to be references to both of its co-chairpersons; and
 - (d) references in legislation, other than this section, to the panel's deputy chairperson are taken to be references to both of its deputy co-chairpersons.

Official information

57 Application of Local Government Official Information and Meetings Act 1987 to regional advisory panel

- (1) Part 7 of the Local Government Official Information and Meetings Act 1987 applies to a regional advisory panel for the regional representative group of a water services entity.
- (2) This section does not limit—
 - (a) section 45 (which relates to the application of Part 7 of that Act to the regional representative group); or
 - (b) section 62(6) (which relates to the application of Part 7 of that Act to the entity's board); or
 - (c) section 63 (which relates to the application of Parts 1 to 6 of that Act to the water services entity).

Subpart 6—Boards of water services entities

Role, membership, and accountability

58 Board's role

- (1) The board is the governing body of a water services entity, with the authority, in the entity's name, to exercise the powers and perform the functions of the entity.
- (2) All decisions relating to the operation of a water services entity must be made by, or under the authority of, the board in accordance with this Act.

Compare: 2004 No 115 s 25

59 Membership of board

- (1) The board of a water services entity consists of no fewer than 6, and no more than 10, members.
- (2) The board appointment committee must appoint board members who, collectively, have knowledge of, and experience and expertise in relation to,—
 - (a) performance monitoring and governance; and
 - (b) network infrastructure industries (for example, water services network infrastructure industries); and
 - (c) the principles of te Tiriti o Waitangi/the Treaty of Waitangi; and
 - (d) public health; and
 - (e) the environment; and
 - (f) perspectives of mana whenua, mātauranga, tikanga, and te ao Māori; and
 - (g) perspectives of consumers and communities; and
 - (h) perspectives of local government.

60 Chairperson and deputy chairperson

The board of a water services entity must have a chairperson and a deputy chairperson appointed by the regional representative group, or by its board appointment committee, in accordance with the constitution.

61 Accountability of board members to regional representative group

- (1) Board members must comply with—
 - (a) the board’s collective duties (*see* sections 75 and 76); and
 - (b) their individual duties as board members (*see* sections 77 to 81).
- (2) Board members of an entity are accountable to the entity’s regional representative group for performing their duties as board members.

Compare: 2004 No 115 s 26

*Obligation to hold specified meetings in public***62 Board must hold 2 public meetings each financial year**

- (1) The board of a water services entity must hold at least 2 meetings during each financial year that are open to members of the public (the **public board meetings**).
- (2) At least 1 of the public board meetings must be held after 1 July each year for the purpose of considering the entity’s performance under its statement of intent in the previous financial year.
- (3) The board must—
 - (a) give public notice of the details of the public meeting at least 1 month before the meeting; and
 - (b) allocate a reasonable amount of time for members of the public attending a public board meeting to address the board in relation to the subject matter of the meeting.
- (4) To the extent consistent with the requirements of this section, a public board meeting is subject to the rules and requirements that normally apply to the meetings of the board.
- (5) This section prevails in the event of any conflict between this section and the rules and requirements that normally apply to meetings of the board.
- (6) Part 7 of the Local Government Official Information and Meetings Act 1987 applies to the board.

*Official information***63 Application of Local Government Official Information and Meetings Act 1987 to water services entity**

- (1) Parts 1 to 6 of the Local Government Official Information and Meetings Act 1987 apply to a water services entity.

- (2) This section does not limit—
- (a) section 45 (which relates to the application of Part 7 of that Act to the entity’s regional representative group); or
 - (b) section 57 (which relates to the application of Part 7 of that Act to a regional advisory panel for that regional representative group); or
 - (c) section 62(6) (which relates to the application of Part 7 of that Act to the entity’s board).

Appointment, removal, and conditions of board members

64 Method of appointing board members

- (1) Board members are appointed by a board appointment committee.
- (2) The appointment must be made by written notice to the board member (with a copy to the water services entity).
- (3) The notice must—
 - (a) state the date on which the appointment takes effect, which must not be earlier than the date on which the board member receives the notice; and
 - (b) state the term of the appointment.

Compare: 2004 No 115 s 28(2)

65 Criteria for appointments by board appointment committee

- (1) A board appointment committee must appoint board members under section 64 in accordance with the criteria for board members and the process for appointment under this Act (including the appointment and remuneration policy (if any) approved by the regional representative group under section 40).
- (2) The board appointment committee may only appoint a person who, in the committee’s opinion, has the appropriate knowledge, skills, and experience to assist the water services entity to achieve its objectives and perform its functions.
- (3) In making an appointment, the board appointment committee must take into account the desirability of promoting diversity in the membership of the board.

Compare: 2004 No 115 s 29

66 Requirements before appointment as board member

- (1) Before a person is appointed as a board member of a water services entity, the person must—
 - (a) consent in writing to the appointment; and
 - (b) certify that they are not disqualified from being a board member (*see* section 99); and
 - (c) disclose to the chairperson of the entity’s regional representative group the nature and extent (including monetary value, if quantifiable) of all interests that the person has at that time, or is likely to have, in matters

relating to the entity (if the person is, or is to be, interested, as defined in section 102, in those matters).

- (2) The board of a water services entity must notify the chairperson of the entity's regional representative group of a failure to comply with subsection (1)(c) as soon as practicable after becoming aware of the failure.

Compare: 2004 No 115 s 31

67 Term of office of board members

- (1) A board member holds office for 5 years or any shorter period stated in the notice of appointment.
- (2) A board member may be reappointed.
- (3) A board member continues in office despite the expiry of their term of office until—
 - (a) the board member is reappointed; or
 - (b) the board member's successor is appointed; or
 - (c) the board appointment committee informs the board member by written notice (with a copy to the water services entity) that the board member is not to be reappointed and no successor is to be appointed at that time.

- (4) This section is subject to section 74.

Compare: 2004 No 115 s 32

68 Validity of board members' acts

The acts of a person as a member, chairperson, or deputy chairperson of the board are valid even if—

- (a) a defect existed in the appointment of the person; or
- (b) the person is or was disqualified from being a board member; or
- (c) the occasion for the person acting, or for their appointment, had not arisen or had ended.

Compare: 2004 No 115 s 34

69 Validity of appointments of board members

- (1) The appointment of a person as a member, chairperson, or deputy chairperson of the board is not invalid only because a defect existed in the appointment of the person.
- (2) This section does not apply to a defect in the qualifications for appointment of a member, chairperson, or deputy chairperson (if any).

Compare: 2004 No 115 s 35(1), (2)(a)

70 Removal of board members

- (1) The board appointment committee may, at any time for just cause, remove a board member from office.

- (2) The removal must be made by written notice to the board member (with a copy to the water services entity).
- (3) The notice must state—
 - (a) the date on which the removal takes effect which must not be earlier than the date on which the board member receives the notice; and
 - (b) the reasons for the removal.
- (4) In this section, **just cause** includes misconduct, inability to perform the functions of office, neglect of duty, and breach of any of the collective duties of the board or the individual duties of members (depending on the seriousness of the breach).

Compare: 2004 No 115 ss 37, 39(1)–(3), 40

71 Process for removal

The board appointment committee may remove a board member with as little formality and technicality, and as much expedition, as is permitted by—

- (a) the principles of natural justice; and
- (b) a proper consideration of the matter.

Compare: 2004 No 115 s 41(a), (b)

72 No compensation for board member's loss of office

A board member is not entitled to any compensation or other payment or benefit relating to them ceasing, for any reason, to hold office as a board member.

Compare: 2004 No 115 s 43

73 Resignation of board members

- (1) A board member may resign from office by giving written notice to the board appointment committee (with a copy to the water services entity) signed by the board member.
- (2) The resignation is effective on receipt of the notice by the board appointment committee or at any later time specified in the notice.

Compare: 2004 No 115 s 44

74 Board members ceasing to hold office

A board member ceases to hold office if the board member—

- (a) resigns in accordance with section 73; or
- (b) is removed from office in accordance with section 70; or
- (c) becomes disqualified from being a member under section 99(2).

Compare: 2004 No 115 s 45

*Collective duties of board***75 Board must act consistently with objectives, functions, operating principles, and statement of intent**

The board of a water services entity must ensure that the entity acts in a manner consistent with its objectives, functions, operating principles, and current statement of intent.

Compare: 2004 No 115 s 49

76 Collective duties relating to te Tiriti o Waitangi/the Treaty of Waitangi

The board of a water services entity must—

- (a) ensure that the entity maintains systems and processes to ensure that, for the purpose of carrying out its functions, the entity has the capacity and capability to—
 - (i) give effect to the principles of te Tiriti o Waitangi/the Treaty of Waitangi; and
 - (ii) engage with, and understand perspectives of, mana whenua; and
- (b) maintain systems and processes for the continuing education of all board members to gain knowledge of, and experience and expertise in relation to, the principles of te Tiriti o Waitangi/the Treaty of Waitangi.

*Individual duties of board members***77 Duty of board members to comply with relevant legislation**

A board member of a water services entity must not contravene, or cause the contravention of, or agree to the entity contravening, this Act or the Water Services Act 2021.

Compare: 2004 No 115 s 53

78 Duty of board members to act with honesty and integrity

A board member of a water services entity must, when acting as a board member, act with honesty and integrity.

Compare: 2004 No 115 s 54

79 Duty of board members to act in good faith and not at expense of water services entity's interests

- (1) A board member of a water services entity must, when acting as a board member, act in good faith and not pursue their own interests at the expense of the entity's interests.
- (2) A board member of a water services entity commits an offence if the board member performs or exercises a duty, function, or power of a board member of the entity—
 - (a) in 1 or both of the following ways:

- (i) other than in good faith:
 - (ii) knowingly pursuing their own interests at the expense of the entity's interests; and
 - (b) knowing that their performance or exercise of the duty, function, or power will, or is likely to, cause the entity serious loss.
- (3) A person convicted of an offence against subsection (2) is liable to imprisonment for a term not exceeding 5 years or to a fine not exceeding \$200,000.

Compare: 1993 No 105 ss 138A, 373(4); 2004 No 115 s 55

80 Duty of board members to act with reasonable care, diligence, and skill

A board member of a water services entity must, when acting as a board member, exercise the care, diligence, and skill that a reasonable person would exercise in the same circumstances, taking into account (without limitation)—

- (a) the nature of the entity; and
- (b) the nature of the action.

Compare: 2004 No 115 s 56

81 Duty not to disclose information

A board member of a water services entity who has information in their capacity as a board member that would not otherwise be available to them must not disclose that information to any person or make use of, or act on, that information, except—

- (a) in the performance of the entity's functions; or
- (b) as required or permitted by law; or
- (c) in complying with the requirements for board members to disclose interests.

Compare: 2004 No 115 s 57(1)

Effect of non-compliance with duties

82 Accountability for collective board duties

- (1) The duties of the board and board members of a water services entity under sections 75 and 76 (**collective duties**) are duties owed to the entity's regional representative group.
- (2) If a board does not comply with any of its collective duties, the board appointment committee may remove all or any of the board members from office.
- (3) However, subsection (2) does not apply to a board member if—
 - (a) the board member did not know, and could not reasonably be expected to know, that the duty was to be or was being breached; or
 - (b) the board member took all reasonable steps in the circumstances to prevent the duty being breached.

- (4) The taking of reasonable steps does not require a board member to apply to a court for an order under section 86.
- (5) This section and section 83 do not affect any other ground for removing a board member from office.
Compare: 2004 No 115 s 58(1)–(4), (7)

83 Board member’s liability for breach of collective duty

- (1) A board member of a water services entity is not liable for a breach of a collective duty under this Act.
- (2) However, subsection (1) does not limit section 82(2).
- (3) Subsection (1) does not affect—
 - (a) anything else for which the board member may be liable under any other Act or rule of law arising from the act or omission that constitutes the breach; or
 - (b) the right to apply for a court order under section 86.
Compare: 2004 No 115 s 58(5), (6), (8)

84 Accountability of board members for individual duties

- (1) The duties of the board members of a water services entity under sections 77 to 81 (**individual duties**) are duties owed to the entity and the entity’s regional representative group.
- (2) If a board member does not comply with their individual duties, that board member may be removed from office (subject to any requirements in sections 70 and 71 that are applicable to the board member).
- (3) A water services entity may bring an action against a board member for breach of any individual duty.
- (4) This section and section 85 do not affect any other ground for removing a board member from office.
Compare: 2004 No 115 s 59(1)–(3), (5)

85 Board member’s liability for breach of individual duty

- (1) A board member of a water services entity is not liable for a breach of an individual duty under this Act except as provided in section 84(2) and (3).
- (2) Subsection (1)—
 - (a) does not affect anything else for which the board member may be liable under any other Act or rule of law arising from the act or omission that constitutes the breach; or
 - (b) the right to apply for a court order under section 86.
Compare: 2004 No 115 s 59(4), (6)

86 Court actions requiring or restraining board or board members

- (1) The Minister or a regional representative may apply to a court for an order—
 - (a) restraining the board or a board member of a water services entity from engaging in conduct that would contravene any requirement under this Act; and
 - (b) granting any consequential relief.
- (2) The court may make an order on the application subject to the following rules:
 - (a) an order may be made only if it is just and equitable to do so:
 - (b) no order may be made in respect of conduct that has been completed.
- (3) The court may, at any time before the final determination of an application under this section, make as an interim order any order that it is empowered to make as a final order.
- (4) This section is subject to section 117.
Compare: 2004 No 115 s 60(1), (3)–(5)

Delegation

87 Board's ability to delegate

- (1) The board of a water services entity may delegate any of the functions or powers of the entity or the board, either generally or specifically, to any of the following persons by resolution and written notice to the person or persons:
 - (a) a board member:
 - (b) the chief executive or any employee of the entity:
 - (c) a committee of the board:
 - (d) any class of persons comprising any of the persons listed in paragraphs (a) to (c).
- (2) Subsection (1) does not apply to any functions or powers specified in this Act as not being capable of delegation.
- (3) The board must not delegate the general power of delegation.
Compare: 2004 No 115 s 73

88 Powers of delegate

- (1) A delegate to whom any functions or powers of a water services entity or its board are delegated—
 - (a) may, unless the delegation provides otherwise, perform the function or exercise the power in the same manner, subject to the same restrictions, and with the same effect as if the delegate were the entity or the board; and
 - (b) may delegate the function or power only—
 - (i) with the prior written consent of the board; and

- (ii) subject to the same restrictions, and with the same effect, as if the subdelegate were the delegate.
- (2) A delegate who purports to perform a function or exercise a power under a delegation—
- (a) is, in the absence of proof to the contrary, presumed to do so in accordance with the terms of that delegation; and
 - (b) must produce evidence of their authority to do so, if reasonably requested to do so.

Compare: 2004 No 115 s 74

89 Effect of delegation on water services entity or board

No delegation in accordance with this Act—

- (a) affects or prevents the performance of any function or the exercise of any power by a water services entity or its board; or
- (b) affects the responsibility of the board for the actions of any delegate acting under the delegation; or
- (c) is affected by any change in the membership of the board, or of any committee or class of persons, or by any change in a chief executive or other employee.

Compare: 2004 No 115 s 75

90 Revocations of delegations

- (1) A delegation under section 87 may be revoked at will by—
- (a) resolution of the board and written notice to the delegate; or
 - (b) any other method provided for in the delegation.
- (2) A delegation under section 88(1)(b) may be revoked at will by written notice of the delegate to the subdelegate.

Compare: 2004 No 115 s 76

Board procedure

91 Board may regulate its own procedure if none specified

The board may regulate its own procedure for a matter if this Act and the constitution do not specify a procedure for the matter.

Subpart 7—Constitutions of water services entities

92 Entity must have constitution

Each water services entity must have a constitution that complies with the requirements of this Act.

93 What constitution must contain

The constitution of a water services entity must provide for the following matters:

Composition of regional representative group

- (a) the composition of the regional representative group, including—
 - (i) the group’s number (which must be a whole number and an even number) of regional representatives (*see* section 27(2) to (4)); and
 - (ii) the procedures for the appointment of territorial authority representatives to the group (*see* section 32), which must include procedures for ensuring that appointed representatives achieve equitable and reasonable representation of relevant metropolitan, provincial, and rural authorities; and
 - (iii) the procedures for the appointment of mana whenua representatives to the group (*see* section 33); and
 - (iv) the requirements before appointment to the group, including disclosure of interests (*see* section 34); and
 - (v) the procedures for the appointment of regional representatives to the board appointment committee (*see* section 38); and
 - (vi) the composition of any other committees; and
 - (vii) the term of office of regional representatives; and
 - (viii) how a person ceases to be a regional representative; and
 - (ix) the process and grounds for removing regional representatives; and
 - (x) how the group’s chairperson and deputy chairperson are elected or appointed or, if the constitution provides that the group has co-chairpersons and deputy co-chairpersons, how they are elected or appointed (*see* sections 41 and 42):

Procedures for regional representative group

- (b) how the group will perform or exercise its functions, powers, and duties:
- (c) procedures to enable or support effective decision making by the group:
- (d) arrangements and requirements for meetings of the group and of committees (including the board appointment committee) of the group, including—
 - (i) the intervals between meetings; and
 - (ii) the information that must be presented at meetings; and
 - (iii) when minutes are required to be kept; and
 - (iv) the manner of calling meetings; and

- (v) the time within which, and manner in which, notices of meetings (including public meetings) and notices of motion must be notified; and
- (vi) the quorum and procedure for meetings, including decision-making procedures:
- (e) if the constitution provides for the group to have co-chairpersons and deputy co-chairpersons (*see* section 42),—
 - (i) the procedure, for a regional representative to disclose details of an interest, required for the purposes of section 104(4)(c):
 - (ii) the procedure, for the board to notify a failure by a board member to comply with section 103 or 107(1), and the acts affected, required for the purposes of section 108(1)(b):
 - (iii) the procedure, for giving a permission for 1 or more regional representatives, or regional representatives with a specified class of interest, to do anything otherwise prohibited by section 107, required for the purposes of section 109(5):
- (f) procedures and time frames for making decisions by consensus (*see* section 30):

Composition of regional advisory panel

- (g) the composition of a regional advisory panel, including—
 - (i) the total number of regional advisory panel members (*see* section 47(2)); and
 - (ii) the particular geographic area for which the panel is responsible (*see* section 48); and
 - (iii) the procedures for the appointment of territorial authority panel members to the panel (*see* section 52); and
 - (iv) the procedures for the appointment of mana whenua panel members to the panel (*see* section 53); and
 - (v) the requirements before appointment as a regional advisory panel member, including disclosure of interests (*see* section 54); and
 - (vi) the composition of any committees; and
 - (vii) the term of office of regional advisory panel members; and
 - (viii) how a person ceases to be a regional advisory panel member; and
 - (ix) the process and grounds for removing regional advisory panel members; and
 - (x) how the panel's chairperson and deputy chairperson are elected or appointed or, if the constitution provides that the panel has co-chairpersons and deputy co-chairpersons, how they are elected or appointed (*see* sections 55 and 56):

Procedures for regional advisory panel

- (h) arrangements and requirements for meetings of a regional advisory panel and of committees of the panel, including—
 - (i) the intervals between meetings; and
 - (ii) the information that must be presented at meetings; and
 - (iii) when minutes are required to be kept; and
 - (iv) the manner of calling meetings; and
 - (v) the time within which, and manner in which, notices of meetings (including public meetings) and notices of motion must be notified; and
 - (vi) the quorum and procedure for meetings, including decision-making procedures:
- (i) if the constitution provides for the panel to have co-chairpersons and deputy co-chairpersons (*see* section 56),—
 - (i) the procedure, for a regional advisory panel member to disclose details of an interest, required for the purposes of section 105(4)(c):
 - (ii) the procedure, for giving a permission for 1 or more regional advisory panel members, or regional advisory panel members with a specified class of interest, to do anything otherwise prohibited by section 107, required for the purposes of section 109(8):
- (j) procedures and time frames for making decisions by consensus (*see* section 50):

Procedures for performing duty to provide funding for specified remuneration, expenses, or costs

- (k) procedures for the entity to perform its duty under section 116(1) to provide funding to its regional representative group and a regional advisory panel for that group or, as the case requires, to its territorial authority owners and to mana whenua, for the following remuneration, expenses, or costs:
 - (i) remuneration for, and reasonable expenses of,—
 - (A) regional representatives:
 - (B) regional advisory panel members:
 - (ii) reasonable administrative costs of each meeting of that group or panel:
 - (iii) reasonable costs of that group or panel performing or exercising its duties, functions, or powers under this Act or the constitution:

- (iv) reasonable costs related to that group or panel establishing or operating committees:
 - (v) reasonable costs of territorial authority owners and mana whenua related to participating in appointment procedures for that group or panel:
 - (vi) reasonable costs for that group or panel obtaining advice to enable it to perform or exercise effectively its duties, functions, or powers under this Act or the constitution:
 - (vii) reasonable costs of training, or capacity building, for that group or panel:
 - (viii) other reasonable costs related to that group or panel performing or exercising its duties, functions, or powers under this Act or the constitution:
 - (ix) any unforeseen costs incurred with the prior approval of the board of the entity:
- (l) procedures for the entity to perform its duty under section 116(2) to provide funding to mana whenua to—
- (i) support and enable mana whenua to provide Te Mana o te Wai statements for water services; and
 - (ii) monitor any plan of the entity, or actions that the entity takes, as part of the entity's response to a Te Mana o te Wai statement for water services:

Composition of board

- (m) the composition of the board, including—
- (i) the procedures for the appointment of board members by the board appointment committee (*see* sections 64 and 65); and
 - (ii) the requirements before appointment to the board, including disclosure of interests (*see* section 66); and
 - (iii) the term of office of board members (*see* section 67); and
 - (iv) how a person ceases to be a board member (*see* section 74); and
 - (v) how the chairperson and deputy chairperson of the board will be appointed and their term of office:

Procedures for board

- (n) the procedures for the board, including—
- (i) the intervals between meetings; and
 - (ii) the information that must be presented at meetings; and
 - (iii) when minutes are required to be kept; and
 - (iv) the manner of calling meetings; and

- (v) the time within which, and manner in which, notices of meetings (including public meetings) and notices of motion must be notified; and
- (vi) the quorum and procedure for meetings:
- (o) decision-making procedures, including any requirements relating to voting or consensus decision making:
Procedures for dispute resolution
- (p) procedures for dispute resolution (in addition to those in section 43(4) and (5)), including procedures for resolving—
 - (i) disputes within a regional representative group (that is, between regional representatives); and
 - (ii) disputes between the regional representative group and the board; and
 - (iii) disputes between parties that are able to appoint regional representatives and that are disputes about appointment processes:
Procedures for reviewing, amending, or replacing the constitution
- (q) procedures for reviewing, amending, or replacing the constitution (*see* sections 97 and 98).

Section 93(a)(i): amended, on 23 August 2023, by section 13 of the Water Services Entities Amendment Act 2023 (2023 No 44).

94 Constitution may contain other matters not inconsistent with Act

- (1) The constitution of a water services entity may provide for any other matters that are not inconsistent with this Act or any other legislation.
- (2) In particular, the constitution may provide for—
 - (a) collective or individual experience, expertise, qualifications, or skills required of a regional representative group, its committees, or its regional representatives (in addition to those required by section 38(2) for members of a board appointment committee):
 - (b) collective or individual experience, expertise, qualifications, or skills required of any regional advisory panel, its committees, or its members:
 - (c) collective experience, qualifications, skills or expertise required of the board (in addition to those required by section 59(2) for board members):
 - (d) additional reporting and monitoring requirements imposed on the board by the regional representative group, over and above requirements in the statement of strategic and performance expectations, statement of intent, annual report, asset management plan, funding and pricing plan, and infrastructure strategy:

- (e) reviews, done by the regional representative group, of the board's performance, including the intervals between those reviews.
- (3) Subsection (2) does not limit subsection (1).

95 Effect of constitution

- (1) A constitution of a water services entity has no effect to the extent that it contravenes, or is inconsistent with, this Act or any other legislation.
- (2) The constitution cannot—
 - (a) delegate or transfer duties, functions, or powers imposed or conferred by this Act:
 - (b) confer decision-making rights weighted by shares held by a territorial authority owner for any matter:
 - (c) confer on a territorial authority owner (in its capacity as a holder of shares in a water services entity, or any other capacity), a regional representative group, or a regional representative any right, title, or interest (legal or equitable) in the assets, security, debts, or liabilities of a water services entity (*see also* sections 15(3) and 171(1)(a)):
 - (d) confer a power of direction contrary to section 117.
- (3) The constitution is binding, in accordance with its terms, as between—
 - (a) the regional representative group, its regional representatives, and its committees; and
 - (b) the regional representative group, and the territorial authority owners and mana whenua who, under this Act (*see* sections 32 and 33) and the constitution, appoint and remove regional representatives; and
 - (c) any regional advisory panel, its members, and its committees; and
 - (d) the board, its members, and its committees.
- (4) Subsection (2) is subject to the rest of this Act (for example, to the board's ability under sections 87 to 90 to delegate the functions or powers of the entity or the board).

96 First constitution of water services entity

- (1) The first constitution of a water services entity is the model constitution for the entity set out in regulations.
- (2) But, when that model constitution is first amended or replaced under section 97 or 98,—
 - (a) that model constitution as so amended or replaced must set out all provisions of the entity's constitution (including any unchanged from that model constitution); and
 - (b) the regulations setting out the model constitution for the entity are revoked.

97 Process for amending or replacing constitution

- (1) A regional representative group may propose to amend the water services entity's constitution or adopt a new constitution for the entity in the manner provided in this section.
- (2) A proposed amendment to the entity's constitution or a proposed new constitution for the entity must be approved by the Minister before it is effective.
- (3) A draft constitution, or a proposed amendment to the entity's constitution, must be—
 - (a) in writing; and
 - (b) approved at a general meeting of the group by a resolution passed by a 75% majority of all of the group's regional representatives; and
 - (c) otherwise proposed in accordance with the constitution.
- (4) The regional representative group must ensure that written notice of the draft constitution or proposed amendment is—
 - (a) provided to the Minister; and
 - (b) published, for at least 20 working days, on an Internet site maintained by, or on behalf of, the entity in a format that is readily accessible.
- (5) The Minister may, after that 20-working-day period, approve or reject the amendment or proposed new constitution.
- (6) If the Minister approves the amendment or proposed new constitution, the amendment or replacement constitution is effective—
 - (a) on the day immediately after the date of that approval; or
 - (b) on a later date that is specified in the amendment or replacement, and that is in accordance with the terms of the resolution of the group under subsection (3)(b).
- (7) A proposed amendment to the entity's constitution or a proposed new constitution for the entity has no effect if rejected by the Minister.
- (8) The constitution as amended or replaced under this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).
- (9) For that Act, the regional representative group is, despite the Minister's approval, taken to be the maker of the constitution.
- (10) This section applies, without limitation, to an amendment or new constitution increasing the number of regional representatives (*see* section 484(5)), but does not apply to an amendment of a type described in section 98(1).

Legislation Act 2019 requirements for secondary legislation made under this section		
Publication	The maker must publish it in accordance with the Legislation (Publication) Regulations 2021	LA19 s 74(1)(aa)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 97(10): amended, on 31 August 2023, by section 12 of the Water Services Legislation Act 2023 (2023 No 52).

98 Minor or technical amendments

- (1) A regional representative group may, in the manner provided by the constitution, amend the water services entity's constitution under this section if the amendment—
 - (a) has no more than a minor effect; or
 - (b) corrects errors or makes similar technical alterations.
- (2) The regional representative group must, in accordance with the constitution, ensure that written notice of the amendment is sent to the monitor.
- (3) If no objection from the monitor is received within 20 working days after the date on which the notice is served (or any longer period specified in the entity's constitution), the regional representative group may make the amendment.
- (4) If the group makes the amendment, the amendment is effective—
 - (a) on the day immediately after the date on which the group makes the amendment; or
 - (b) on a later date that is specified in the amendment.
- (5) The constitution as amended under this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Legislation Act 2019 requirements for secondary legislation made under this section		
Publication	The maker must publish it in accordance with the Legislation (Publication) Regulations 2021	LA19 s 74(1)(aa)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Subpart 8—General provisions relating to regional representatives,
regional advisory panel members, and board members

Qualifications

99 Qualifications of regional representatives, regional advisory panel members, and board members

- (1) A natural person who is not disqualified by this section may be a regional representative, a regional advisory panel member, or a board member of a water services entity.
- (2) The following persons are disqualified from being a regional representative, regional advisory panel member, or board member:
 - (a) a person who is an undischarged bankrupt;
 - (b) a person who is prohibited from being a director or promoter of, or being concerned or taking part in the management of, an incorporated or unincorporated body under the Companies Act 1993, or the Financial Markets Conduct Act 2013, or the Takeovers Act 1993;
 - (c) a person who is subject to a property order under the Protection of Personal and Property Rights Act 1988;
 - (d) a person in respect of whom a personal order has been made under the Protection of Personal and Property Rights Act 1988 that reflects adversely on the person's—
 - (i) competence to manage their own affairs in relation to their property; or
 - (ii) capacity to make or to communicate decisions relating to any particular aspect or aspects of their personal care and welfare;
 - (e) a person who has been convicted of an offence punishable by imprisonment for a term of 2 years or more, or who has been sentenced to imprisonment for any other offence, unless that person has obtained a pardon, served the sentence, or otherwise suffered the penalty imposed on the person;
 - (f) a member of Parliament.
- (3) The following persons are also disqualified from being a board member:
 - (a) a regional representative;
 - (b) a regional advisory panel member;
 - (c) a member—
 - (i) of a territorial authority; and
 - (ii) elected under section 19B or 19C of the Local Electoral Act 2001.

Compare: 2004 No 115 s 30

*Reliance on information and advice***100 When regional representatives, regional advisory panel members, and board members may rely on certain information and advice**

- (1) A regional representative, regional advisory panel member, or board member of a water services entity may, when acting as a regional representative, regional advisory panel member, or board member, rely on reports, statements, financial data, and other information prepared or supplied, and on professional or expert advice given, by any of the following persons:
- (a) an employee of a water services entity whom the regional representative, regional advisory panel member, or board member believes on reasonable grounds to be reliable and competent in relation to the matters concerned;
 - (b) a professional adviser or expert in relation to matters that the regional representative, regional advisory panel member, or board member believes on reasonable grounds to be within the person's professional or expert competence;
 - (c) any other regional representative, regional advisory panel member, or board member or a committee on which the regional representative, regional advisory panel member, or board member did not serve in relation to matters within the designated authority of the regional representative, regional advisory panel member, board member, or committee (as applicable).
- (2) This section applies to a regional representative, regional advisory panel member, or board member only if they—
- (a) act in good faith; and
 - (b) make proper inquiry if the need for inquiry is indicated by the circumstances; and
 - (c) have no knowledge that the reliance is unwarranted.

Compare: 2004 No 115 s 61(1), (3)

*Conflict of interest disclosure rules***101 Water services entity must keep interest registers for entity, regional representative group, and regional advisory panel**

A water services entity must keep a separate interest register for each of the following:

- (a) interests of board members;
- (b) interests of regional representatives;
- (c) interests of regional advisory panel members.

102 When person is interested

- (1) A person is **interested** in a matter if the person—
 - (a) may derive a financial benefit from the matter; or
 - (b) is the spouse, civil union partner, de facto partner, child, or parent of a person who may derive a financial benefit from the matter; or
 - (c) may have a financial interest in a person to whom the matter relates; or
 - (d) is a partner, director, officer, board member, or trustee of a person who may have a financial interest in a person to whom the matter relates; or
 - (e) is otherwise directly or indirectly interested in the matter.
- (2) However, a person is not interested in a matter—
 - (a) because the person receives an indemnity, insurance cover, remuneration, or other benefits authorised under this Act or another Act; or
 - (b) if their interest is so remote or insignificant that it cannot reasonably be regarded as likely to influence them in carrying out their responsibilities under this Act or another Act; or
 - (c) only because they have past or current involvement in the relevant sector, industry, or practice.
- (3) In this section, **matter** means,—
 - (a) in relation to a board member,—
 - (i) a water services entity’s performance of its functions or exercise of its powers; or
 - (ii) an arrangement, agreement, or contract made or entered into, or proposed to be entered into, by the entity:
 - (b) in relation to a regional representative,—
 - (i) a regional representative group’s performance of its functions or exercise of its powers; or
 - (ii) a board appointment committee’s performance of its functions or exercise of its powers:
 - (c) in relation to a regional advisory panel member, a regional advisory panel’s performance of its functions or exercise of its powers.

Compare: 2004 No 115 s 62

103 Obligation of board member to disclose interest

- (1) A board member who is interested in a matter relating to a water services entity must disclose details of the interest in accordance with subsection (4) as soon as practicable after the board member becomes aware that they are interested.
- (2) A general notice of an interest in a matter relating to a water services entity, or in a matter that may in future relate to the entity, that is disclosed in accordance

with subsection (4) is a standing disclosure of that interest for the purposes of this section.

- (3) A standing disclosure ceases to have effect if the nature of the interest materially alters or the extent of the interest materially increases.
- (4) A board member must disclose details of an interest in the interests register kept by the water services entity, and to—
 - (a) the chairperson of the board or, if there is no chairperson or if the chairperson is unavailable or interested, the deputy chairperson of the board; or
 - (b) the regional representative group, if there is neither a chairperson nor a deputy chairperson of the board, or if both the chairperson and the deputy chairperson of the board are unavailable or interested.

Compare: 2004 No 115 ss 63, 64

104 Obligation of regional representative to disclose interest

- (1) A regional representative who is interested in a matter relating to an entity's regional representative group must disclose details of the interest in accordance with subsection (4) as soon as practicable after the member becomes aware that they are interested.
- (2) A general notice of an interest in a matter relating to a regional representative group, or in a matter that may in future relate to the group, that is disclosed in accordance with subsection (4) is a standing disclosure of that interest for the purposes of this section.
- (3) A standing disclosure ceases to have effect if the nature of the interest materially alters or the extent of the interest materially increases.
- (4) A regional representative must disclose details of an interest in the interests register kept by the water services entity, and—
 - (a) to the chairperson of the regional representative group or, if there is no chairperson or if the chairperson is unavailable or interested, the deputy chairperson of the group; or
 - (b) to the monitor, if there is neither a chairperson nor a deputy chairperson of the regional representative group, or if both the chairperson and the deputy chairperson of the group are unavailable or interested; or
 - (c) in accordance with the procedure specified for the purposes of this paragraph in the constitution if it provides for the group to have co-chairpersons and deputy co-chairpersons (*see* sections 42 and 93(e)).

Compare: 2004 No 115 ss 63, 64

105 Obligation of regional advisory panel member to disclose interest

- (1) A regional advisory panel member who is interested in a matter relating to a regional advisory panel for an entity's regional representative group must dis-

close details of the interest in accordance with subsection (4) as soon as practicable after the member becomes aware that they are interested.

- (2) A general notice of an interest in a matter relating to a regional advisory panel, or in a matter that may in future relate to the panel, that is disclosed in accordance with subsection (4) is a standing disclosure of that interest for the purposes of this section.
- (3) A standing disclosure ceases to have effect if the nature of the interest materially alters or the extent of the interest materially increases.
- (4) A regional advisory panel member must disclose details of an interest in the interests register kept by the water services entity, and—
 - (a) to the chairperson of the regional advisory panel or, if there is no chairperson or if the chairperson is unavailable or interested, the deputy chairperson of the panel; or
 - (b) to the monitor, if there is neither a chairperson nor a deputy chairperson of the regional advisory panel, or if both the chairperson and the deputy chairperson of the panel are unavailable or interested; or
 - (c) in accordance with the procedure specified for the purposes of this paragraph in the constitution if it provides for the panel to have co-chairpersons and deputy co-chairpersons (*see* sections 56 and 93(i)).

Compare: 2004 No 115 ss 63, 64

106 What must be disclosed

The details that must be disclosed under sections 103, 104, and 105 are—

- (a) the nature of the interest and the monetary value of the interest (if the monetary value can be quantified); or
- (b) the nature and extent of the interest (if the monetary value cannot be quantified).

Compare: 2004 No 115 s 65

107 Consequences of being interested in matter

Board member

- (1) A board member who is interested in a matter relating to a water services entity—
 - (a) must not vote or take part in any discussion or decision of the board or otherwise participate in any activity of the entity that relates to the matter; and
 - (b) must not sign any document relating to the entry into a transaction or the initiation of the matter; and
 - (c) is to be disregarded for the purpose of forming a quorum for that part of a meeting of the board during which a discussion or decision relating to the matter occurs or is made.

Regional representative

- (2) A regional representative who is interested in a matter relating to a regional representative group—
- (a) must not vote or take part in any discussion or decision of the group or otherwise participate in any activity of the group that relates to the matter; and
 - (b) is to be disregarded for the purpose of forming a quorum for that part of a meeting of the group during which a discussion or decision relating to the matter occurs or is made.

Regional advisory panel member

- (3) A regional advisory panel member who is interested in a matter relating to a regional advisory panel—
- (a) must not vote or take part in any discussion or decision of the panel or otherwise participate in any activity of the panel that relates to the matter; and
 - (b) is to be disregarded for the purpose of forming a quorum for that part of a meeting of the panel during which a discussion or decision relating to the matter occurs or is made.

Compare: 2004 No 115 s 66

108 Consequences of failing to disclose interest*Board*

- (1) As soon as practicable after becoming aware of a failure by a board member to comply with section 103 or 107(1), the board must notify the failure and the acts affected—
- (a) to the chairperson of the regional representative group (if the constitution does not provide for the group to have co-chairpersons and deputy co-chairpersons); or
 - (b) in accordance with the procedure specified for the purposes of this paragraph in the constitution if it provides for the group to have co-chairpersons and deputy co-chairpersons (*see* sections 42 and 93(e)).

Regional representative group

- (2) The regional representative group must notify the monitor of a failure by a regional representative to comply with section 104 or 107(2), and the acts affected, as soon as practicable after becoming aware of the failure.

Regional advisory panel

- (3) The regional advisory panel must notify the monitor of a failure by a regional advisory panel member to comply with section 105 or 107(3), and the acts affected, as soon as practicable after becoming aware of the failure.

Validity of act or matter

- (4) A failure to comply with section 103, 104, 105, or 107 does not affect the validity of an act or a matter.
- (5) However, subsection (4) does not limit the right of any person to apply, in accordance with law, for judicial review.

Compare: 2004 No 115 s 67

109 Permission to act despite being interested in matter

Board

- (1) The chairperson of the board may, by prior written notice to the board, permit 1 or more board members, or board members with a specified class of interest, to do anything otherwise prohibited by section 107 if the chairperson is satisfied that it is in the public interest to do so.
- (2) The deputy chairperson (if any) of the board may give a permission if there is no chairperson, or if the chairperson is unavailable or interested.

Regional representative group

- (3) The chairperson of a regional representative group may, by prior written notice to the regional representative group, permit 1 or more regional representatives, or regional representatives with a specified class of interest, to do anything otherwise prohibited by section 107 if the co-chairperson is satisfied that it is in the public interest to do so.
- (4) The deputy chairperson of a regional representative group may give a permission if there is no chairperson, or if the chairperson is unavailable or interested.
- (5) Despite subsections (3) and (4), if the constitution provides for the group to have co-chairpersons and deputy co-chairpersons (*see* section 42), a permission may be given only in accordance with the procedure specified, for the purposes of this subsection, in the constitution (*see* section 93(e)).

Regional advisory panel

- (6) The chairperson of a regional advisory panel may, by prior written notice to the regional advisory panel, permit 1 or more regional advisory panel members, or regional advisory panel members with a specified class of interest, to do anything otherwise prohibited by section 107 if the co-chairperson is satisfied that it is in the public interest to do so.
- (7) The deputy chairperson of a regional advisory panel may give a permission if there is no chairperson, or if the chairperson is unavailable or interested.
- (8) Despite subsections (6) and (7), if the constitution provides for the panel to have co-chairpersons and deputy co-chairpersons (*see* section 55), a permission may be given only in accordance with the procedure specified, for the purposes of this subsection, in the constitution (*see* section 93(i)).

Permission

- (9) A permission may state conditions that the board member, regional representative, or regional advisory panel member must comply with.
- (10) A permission may be amended or revoked in the same way as it may be given.
Compare: 2004 No 115 s 68(1)–(5)

110 Permission must be disclosed in annual report

The water services entity must disclose an interest to which a permission under section 109 relates in its annual report, together with a statement of who gave the permission and any conditions or amendments to, or revocation of, the permission.

Compare: 2004 No 115 s 68(6)

111 Entity may avoid certain acts done in breach of conflict of interest rules

- (1) A water services entity may avoid a natural person act done by the entity in respect of which a board member was in breach of section 107.
- (2) However, the act of a board member—
 - (a) may be avoided only within 3 months of the affected act being notified—
 - (i) to the chairperson of the regional representative group, under section 108(1)(a); or
 - (ii) under section 108(1)(b), and in accordance with the procedure specified, for the purposes of section 108(1)(b), in the constitution; and
 - (b) cannot be avoided if the entity receives fair value in respect of the act.
- (3) An act in which a board member is interested can be avoided on the ground of the board member's interest only in accordance with this section.

Compare: 2004 No 115 s 69

112 What is fair value

- (1) A water services entity is presumed to receive fair value in respect of an act that is done by the entity in the ordinary course of its business and on usual terms and conditions.
- (2) Whether a water services entity receives fair value in respect of an act must be determined on the basis of the information known to the entity and to the interested board member at the time the act is done.

Compare: 2004 No 115 s 70

113 Onus of proving fair value

- (1) A person who is seeking to prevent an act from being avoided, and who knew, or ought reasonably to have known, of the board member's interest at the time the act was done, has the onus of establishing fair value.

- (2) In any other case, a water services entity has the onus of establishing that it did not receive fair value.

Compare: 2004 No 115 s 71

114 Effect of avoidance on third parties

The avoidance of an act under section 111 does not affect the title or interest of a person to or in property that the person has acquired if the property was acquired—

- (a) from a person other than the water services entity; and
- (b) for valuable consideration; and
- (c) without knowledge of the circumstances of the act under which the person referred to in paragraph (a) acquired the property from the entity.

Compare: 2004 No 115 s 72

Vacancies in membership

115 Vacancies in membership of board, regional representative group, or regional advisory panel

- (1) The powers and functions of a water services entity are not affected by any vacancy in the membership of—
- (a) its board; or
 - (b) its regional representative group; or
 - (c) a regional advisory panel for that group.
- (2) The powers and functions of a water services entity's regional representative group are not affected by any vacancy in the membership of—
- (a) the entity's board; or
 - (b) the regional representative group; or
 - (c) a regional advisory panel for that group.
- (3) The powers and functions of a regional advisory panel for the regional representative group of a water services entity are not affected by any vacancy in the membership of—
- (a) the regional advisory panel; or
 - (b) the regional representative group; or
 - (c) the entity's board.

Compare: 2004 No 115 s 77

*Duties to provide funding and information***116 Duties to provide funding and information***Duty to provide funding for remuneration, expenses, or costs*

- (1) A water services entity must provide funding, in accordance with the procedures specified in its constitution (*see* section 93(k)), to its regional representative group and a regional advisory panel for that group or, as the case requires, to its territorial authority owners and to mana whenua, for the remuneration, expenses, or costs specified in section 93(k).

Duty to provide funding for Te Mana o te Wai statements for water services

- (2) A water services entity must provide funding, in accordance with the procedures specified in its constitution (*see* section 93(l)), to mana whenua to—
- (a) support and enable mana whenua to provide Te Mana o te Wai statements for water services; and
 - (b) monitor any plan of the entity, or actions that the entity takes, as part of the entity's response to a Te Mana o te Wai statement for water services.

Duty to provide information

- (3) A water services entity must provide information that the entity holds if that information is required—
- (a) by any territorial authority owner, any mana whenua in the service area, the entity's regional representative group, or a regional advisory panel for that group; and
 - (b) to help the territorial authority owner, mana whenua, group, or panel perform or exercise its duties, functions, or powers under this Act.
- (4) But personal information within the meaning of the Privacy Act 2020 may be provided under subsection (3) only in accordance with that Act.

Part 3**Operation of water services entities***Independence of water services entities***117 Safeguarding independence of water services entities**

- (1) The Minister, a territorial authority owner, a regional representative, or a regional representative group cannot direct a water services entity or a board member or an employee of a water services entity—
- (a) in relation to the performance or exercise of a duty, function, or power under this Act; or

- (b) to require the performance or non-performance of a particular act, or the bringing about of a particular result, in respect of a particular person or persons.
- (2) This section applies to all Government policy statements and statements of strategic and performance expectations issued under this Act.
- (3) This section also prevents a constitution of a water services entity from conferring a power of direction that would contravene this section.
- (4) However, nothing in this section affects the following:
 - (a) the giving of a direction under section 137A (directions for shared services):
 - (b) the performance or exercise of a territorial authority's regulatory duties, functions, or powers under legislation other than this Act.

Compare: 2004 No 115 s 113

Section 117(4): replaced, on 23 August 2023, by section 14 of the Water Services Entities Amendment Act 2023 (2023 No 44).

Obligation to maintain ownership and control of water services and significant assets

118 Obligation to maintain water services

- (1) A water services entity must continue to provide water services and maintain its capacity to perform or exercise its duties, functions, or powers under this Act.
- (2) In order to perform or exercise its duties, functions, or powers under this Act, a water services entity must not do any of the following:
 - (a) use water services infrastructure as security for any purpose:
 - (b) divest its ownership or other interest in any water services except in accordance with Part 8 or Schedule 4:
 - (c) lose control of, sell, or otherwise dispose of, the significant infrastructure necessary for providing water services in its service area except—
 - (i) in accordance with Part 8 or Schedule 4; or
 - (ii) if, in doing so, the entity retains its capacity to perform or exercise its duties, functions, or powers:
 - (d) transfer any of its significant infrastructure to a subsidiary that the water services entity owns or operates.
- (3) In this section,—
significant infrastructure means any of the following:
 - (a) water services infrastructure that—

- (i) is owned or operated by a water services entity for the purposes of the delivery of water services to consumers or communities in any part of the entity's service area; and
- (ii) a water services entity needs to retain to—
 - (A) maintain its capacity to achieve its objectives; or
 - (B) perform or exercise its duties, functions, or powers; or
 - (C) promote an outcome that the entity has identified as important to the current or future well-being of consumers or communities in the entity's service area; and
- (b) infrastructure that is identified by the water services entity as being material to its operations and that is included in the entity's current statement of intent.

Compare: 2002 No 84 s 130(2), (3)(a), (b), (c)

Section 118(2)(b): amended, on 31 August 2023, by section 13(1) of the Water Services Legislation Act 2023 (2023 No 52).

Section 118(2)(c)(i): amended, on 31 August 2023, by section 13(1) of the Water Services Legislation Act 2023 (2023 No 52).

Section 118(2)(d): inserted, on 31 August 2023, by section 13(2) of the Water Services Legislation Act 2023 (2023 No 52).

Contracting out of water services

119 Contracts relating to provision of water services

- (1) Despite section 118 or anything in the Infrastructure Funding and Financing Act 2020, a water services entity may enter into a contract for any aspect of the operation of all or part of water services for a term not longer than 15 years.
- (2) If a water services entity enters into a contract under subsection (1) with any person (including a subsidiary that it owns or operates), it must—
 - (a) continue to be legally responsible for providing the water services; and
 - (b) maintain ownership of the infrastructure and assets relating to the water services; and
 - (c) retain control over—
 - (i) the pricing of water services; and
 - (ii) developing policy related to the delivery of water services.
- (3) This section does not prevent a water services entity from entering into a contract with 1 or more other water services entities if the purpose of the contract relates solely to water services.

Compare: 2002 No 84 s 136

Section 119(1): amended, on 31 August 2023, by section 14(1) of the Water Services Legislation Act 2023 (2023 No 52).

Section 119(2): amended, on 31 August 2023, by section 14(2) of the Water Services Legislation Act 2023 (2023 No 52).

120 Joint arrangements for purpose of providing water services

- (1) Nothing in section 118 or the Infrastructure Funding and Financing Act 2020 prevents a water services entity from entering into, for the purpose of providing water services, a joint arrangement or joint water services entity arrangement for a term not longer than 15 years (except a concession or other franchise agreement relating to the provision of the water services or any aspect of the water services).
- (2) Before a water services entity enters into a joint arrangement or joint water services entity arrangement, it must have engaged in relation to the arrangement with the following:
 - (a) the territorial authority owners in whose district services will be delivered, or other arrangements made, as part of the arrangement; and
 - (b) the consumers and communities, and mana whenua, in the entity's service area; and
 - (c) any other interested persons that the board considers appropriate.
- (2A) In conducting the engagement, the board of the water services entity must—
 - (a) comply with the requirements set out in section 472; and
 - (b) be guided and informed by the principles set out in section 473; and
 - (c) prepare and publish a report on the engagement in accordance with section 476.
- (3) If a water services entity enters into a joint arrangement under subsection (1), it must—
 - (a) continue to be legally responsible for providing the water services; and
 - (b) retain control over—
 - (i) the pricing of water services; and
 - (ii) developing policy related to water services; and
 - (c) after the end of the joint arrangement, retain ownership of all the infrastructure associated with the water services, whether or not the infrastructure was—
 - (i) provided by the water services entity at the beginning of the joint arrangement; or
 - (ii) developed or purchased during the joint arrangement; and
 - (d) not sell or transfer ownership of any existing infrastructure associated with the water services, unless the water services entity reasonably believes that the sale is—
 - (i) incidental to the joint arrangement; and
 - (ii) desirable for the success of the joint arrangement.
- (4) In this section,—

concession or other franchise agreement means an agreement under which a person other than a water services entity is entitled to receive a payment from any person other than the water services entity for the supply of the water services

joint arrangement means an arrangement entered into by 1 or more water services entities with 1 or more bodies that are not water services entities for the purpose of providing water services or any aspect of a water service

joint water services entity arrangement means an arrangement entered into by 2 or more water services entities for the purpose of providing water services or any aspect of a water service.

Compare: 2002 No 84 ss 136, 137

Section 120(1): amended, on 31 August 2023, by section 15(1) of the Water Services Legislation Act 2023 (2023 No 52).

Section 120(2): amended, on 31 August 2023, by section 15(2) of the Water Services Legislation Act 2023 (2023 No 52).

Section 120(2A): inserted, on 31 August 2023, by section 15(3) of the Water Services Legislation Act 2023 (2023 No 52).

Employees of water services entities

121 Employment of chief executive

- (1) A chief executive of a water services entity is appointed by the entity's board.
- (2) The terms and conditions of employment of a chief executive must be agreed between the board and the chief executive.
- (3) When considering the terms and conditions of a chief executive, the board must have regard to all of the following (among any other relevant factors):
 - (a) the legal, commercial, and operational context of the entity;
 - (b) the person's knowledge, skills, experience, and performance;
 - (c) the public interest in prudent stewardship of public resources;
 - (d) relevant market information.
- (4) A failure to comply with this section does not invalidate the acts of a chief executive of a water services entity.

Compare: 2004 No 115 s 117

122 Water services entity to be good employer

- (1) A water services entity must, if it employs employees,—
 - (a) operate a personnel policy that complies with the principle of being a good employer; and
 - (b) make the policy (including the equal employment opportunities programme) available to its employees; and

- (c) ensure its compliance with the policy (including its equal employment opportunities programme) and report in its annual report on the extent of its compliance.
- (2) For the purposes of this section, a **good employer** is an employer who operates a personnel policy that contains provisions generally accepted as necessary for the fair and proper treatment of employees in all aspects of their employment, including provisions requiring—
- (a) good and safe working conditions; and
 - (b) an equal employment opportunities programme; and
 - (c) the impartial selection of suitably qualified persons for appointment; and
 - (d) recognition of—
 - (i) the aims and aspirations of Māori; and
 - (ii) the employment requirements of Māori; and
 - (iii) the need for involvement of Māori as employees of the entity; and
 - (e) opportunities for enhancing the abilities of individual employees; and
 - (f) recognition of the aims and aspirations, employment requirements, and cultural differences of ethnic or minority groups; and
 - (g) recognition of the employment requirements of women; and
 - (h) recognition of the employment requirements of persons with disabilities; and
 - (i) recognition of the importance of achieving pay equity between female and male employees; and
 - (j) recognition of the importance of decisions about remuneration being free from bias including, but not limited to, gender bias.
- (3) For the purposes of this section, an **equal employment opportunities programme** means a programme that is aimed at identifying and eliminating all aspects of policies, procedures, and other institutional barriers that cause or perpetuate, or tend to cause or perpetuate, inequality in respect of the employment of any persons or group of persons.

Compare: 2004 No 115 s 118

Protections from liability

123 Definitions for protections from liability

In sections 124 to 128,—

board member—

- (a) means a member of the board appointed under section 59; and
- (b) includes a board member who is a board member at any time after the commencement of this section but who ceases to be a board member

effect insurance includes to pay, whether directly or indirectly, the costs of the insurance

employee, in relation to a water services entity,—

- (a) includes the chief executive of the entity other than for the process of determining terms and conditions under section 121; and
- (b) includes a person who is an employee at any time after the commencement of this section but who ceases to be an employee

entity's functions includes any function that an Act confers separately on a board member or employee of the entity

excluded act or omission means an act or omission by the board member or employee in good faith and in performance or intended performance of the entity's functions

indemnify includes to relieve or excuse from liability, whether before or after the liability arises, and **indemnity** has a corresponding meaning.

Compare: 2004 No 115 s 126

124 Protections for board members and employees from liabilities of water services entity

A board member or an employee of a water services entity is not liable for any liability of the entity by reason only of being a board member or an employee.

Compare: 2004 No 115 s 120

125 Immunity from civil liability

- (1) A board member of a water services entity is not liable, in respect of an excluded act or omission,—
 - (a) to the entity, unless the excluded act or omission is also a breach of an individual duty under any of sections 77 to 81;
 - (b) to any other person.
- (2) An employee of a water services entity is not liable to any person in respect of an excluded act or omission.
- (3) Nothing in this section affects—
 - (a) the making of an order under section 86;
 - (b) the liability of any person that is not a civil liability;
 - (c) the right of any person to apply, in accordance with the law, for judicial review.

Compare: 2004 No 115 s 121

126 Indemnities in relation to excluded act or omission

A water services entity may only indemnify a board member or an employee in respect of an excluded act or omission (including costs incurred in defending or settling any claim or proceeding relating to that excluded act or omission).

Compare: 2004 No 115 s 122

127 Insurance for liability of board member or employee

A water services entity may effect insurance cover for a board member or an employee of the entity in relation to their acts or omissions, except an act or omission that is—

- (a) in bad faith; or
- (b) not in the performance or intended performance of the entity's functions.

Compare: 2004 No 115 s 123

128 Breach of indemnity and insurance limits

- (1) A board member or an employee who is indemnified or insured by a water services entity in breach of this Act must repay to the entity the cost of providing or effecting that indemnity or insurance cover, to the extent that the indemnity or insurance cover exceeds that which could have been provided or effected under this Act.
- (2) The water services entity may recover the amount as a debt due in a court of competent jurisdiction.

Compare: 2004 No 115 s 125

Dealings with third parties by water services entities

129 Method of contracting

- (1) A contract or other enforceable obligation may be entered into by a water services entity as provided in this section.
- (2) An obligation that, if entered into by an individual, is required to be by deed may be entered into on behalf of a water services entity in writing, signed under the name of the entity, by 2 or more of its board members.
- (3) An obligation that, if entered into by an individual, is required to be in writing may be entered into on behalf of a water services entity in writing by a person acting under the entity's express or implied authority.
- (4) An obligation that, if entered into by an individual, is not required to be in writing may be entered into on behalf of a water services entity in writing or orally by a person acting under the entity's express or implied authority.
- (5) This section applies to a contract or other obligation—
 - (a) whether or not that obligation was entered into in New Zealand; and

- (b) whether or not the law governing that obligation is the law of New Zealand.

Compare: 2004 No 115 s 127

130 Address for service and location of head office

- (1) The address for service in respect of a water services entity is the address of the head office of the entity.
- (2) The head office of a water services entity must be located within its service area.

Compare: 2004 No 115 s 130

Part 4

Financial and accountability matters

Subpart 1—Outline of Part

131 Outline of Part (financial and accountability matters)

Planning, performance, and reporting continuous, and integrated with engagement

- (1) Subparts 2 to 5 provide for a cycle of planning, performance, and reporting that is continuous, and that is integrated with engagement requirements (*see* sections 472 to 475).

Government policy statement on water services

- (2) Subpart 2 is about a Government policy statement on water services that—
- (a) states the Government’s overall direction and priorities for water services; and
- (b) informs and guides agencies involved in, and the activities necessary or desirable for, water services.

Directions for shared services

- (2A) Subpart 2A is about directions to require entities to share services provided to those entities.

Statement of strategic and performance expectations

- (3) Subpart 3 is about a regional representative group’s statement of strategic and performance expectations that—
- (a) states the regional representative group’s objectives and priorities for water services in the entity’s service area; and
- (b) informs and guides the decisions and actions of the board of the entity.

Te Mana o te Wai statement for water services

- (4) Subpart 4 is about a Te Mana o te Wai statement for water services provided to a water services entity by mana whenua. The entity must prepare, in accord-

ance with engagement requirements (*see* sections 472 to 475), a response to the statement. That response must include a plan that sets out how the entity intends to give effect to Te Mana o te Wai, to the extent that it applies to the entity's duties, functions, and powers.

Community priority statements for water services

- (4A) Subpart 4A is about a community priority statement for water services made—
- (a) about a water body in the service area of a water services entity; and
 - (b) by an eligible person (*see* section 145AB); and
 - (c) to the entity's regional representative group; and
 - (d) by any current deadline for community priority statements that has been set by the group and notified to the public (*see* section 145AC); and
 - (e) to state to the group the person's views about, and priorities for, how water services provided by, or other activities of, the entity do or could affect or relate to the water body.

Reporting obligations

- (5) Subpart 5 provides for reporting obligations of a water services entity, through the following documents which, except for an annual report, are also prepared in accordance with engagement requirements (*see* sections 472 to 475):
- (a) a statement of intent:
 - (b) an asset management plan:
 - (c) a funding and pricing plan:
 - (d) an infrastructure plan:
 - (e) an annual report.

Financial management and independence, accounting, and borrowing

- (6) Subpart 6 provides further for financial management and independence.
- (7) Subpart 7 contains provisions about accounting records.
- (8) Subpart 8 contains provisions about borrowing.

Funding Agency and protected transactions

- (9) Subpart 9 contains provisions related to the Water Services Entities Funding Agency.
- (10) Subpart 10 contains provisions related to protected transactions.

Status of outline

- (11) This outline is only a guide to this Part's general scheme and effect.

Section 131(1): amended, on 31 August 2023, by section 16 of the Water Services Legislation Act 2023 (2023 No 52).

Section 131(2A) heading: inserted, on 23 August 2023, by section 15(1) of the Water Services Entities Amendment Act 2023 (2023 No 44).

Section 131(2A): inserted, on 23 August 2023, by section 15(1) of the Water Services Entities Amendment Act 2023 (2023 No 44).

Section 131(4): amended, on 31 August 2023, by section 16 of the Water Services Legislation Act 2023 (2023 No 52).

Section 131(4A) heading: inserted, on 23 August 2023, by section 15(2) of the Water Services Entities Amendment Act 2023 (2023 No 44).

Section 131(4A): inserted, on 23 August 2023, by section 15(2) of the Water Services Entities Amendment Act 2023 (2023 No 44).

Section 131(5): amended, on 31 August 2023, by section 16 of the Water Services Legislation Act 2023 (2023 No 52).

Section 131(9) heading: replaced, on 23 August 2023, by section 15(3) of the Water Services Entities Amendment Act 2023 (2023 No 44).

Section 131(9): replaced, on 23 August 2023, by section 15(3) of the Water Services Entities Amendment Act 2023 (2023 No 44).

Section 131(10): inserted, on 23 August 2023, by section 15(3) of the Water Services Entities Amendment Act 2023 (2023 No 44).

Section 131(11) heading: inserted, on 23 August 2023, by section 15(3) of the Water Services Entities Amendment Act 2023 (2023 No 44).

Section 131(11): inserted, on 23 August 2023, by section 15(3) of the Water Services Entities Amendment Act 2023 (2023 No 44).

Subpart 2—Government policy statement on water services

132 Minister may issue Government policy statement on water services

- (1) The Minister may issue a Government policy statement on water services.
- (2) The Minister must review a Government policy statement no later than 3 years after the date on which it is issued and later at intervals of no more than 3 years after the most recent review.
- (3) A Government policy statement may be issued under subsection (1) if—
 - (a) the Government policy statement is consistent with the objectives of water services entities under section 12; and
 - (b) the Minister has complied with section 134(b).
- (4) A Government policy statement issued under this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Compare: 2019 No 50 s 22

Legislation Act 2019 requirements for secondary legislation made under this section

Publication	The maker must publish it in accordance with the Legislation (Publication) Regulations 2021	LA19 s 74(1)(aa)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

133 Purpose and content of Government policy statement

- (1) The purpose of a Government policy statement is to—

- (a) state the Government's overall direction and priorities for water services; and
 - (b) inform and guide agencies involved in, and the activities necessary or desirable for, water services.
- (2) A Government policy statement must include the following:
- (a) the Government's overall direction for water services, which must include a multi-decade outlook;
 - (b) the Government's priorities for water services;
 - (c) how the Government expects other agencies to support that direction and those priorities;
 - (d) the Government's expectations in relation to Māori interests, partnering with mana whenua, and giving effect to Te Mana o te Wai;
 - (e) how the Government expects water services entities to take into account the well-being of consumers and communities.
- (3) A Government policy statement may also include—
- (a) the Government's expectations in relation to the contribution of water services entities to the outcomes sought by the Government in the following areas:
 - (i) public health;
 - (ii) the environment;
 - (iii) planning processes, growth, and housing and urban development;
 - (iv) climate change mitigation and adaptation;
 - (v) water security;
 - (vi) resilience to natural hazards;
 - (vii) local procurement, employment, joint arrangements, and joint water services entity arrangements;
 - (viii) geographic averaging of residential water supply and residential wastewater service prices across each water services entity's service area;
 - (ix) redressing historical service inequities;
 - (x) overall direction and priorities for charging arrangements for water services;
 - (b) any other matters the Minister considers relevant.
- (4) Subsection (3)(a)(viii) applies only to a Government policy statement issued on and after 1 July 2029.
- (5) Subsection (3)(a)(x) and this subsection are repealed on 1 July 2029.

Compare: 2019 No 50 s 23

Section 133(3)(a)(viii): inserted, on 31 August 2023, by section 17(1) of the Water Services Legislation Act 2023 (2023 No 52).

Section 133(3)(a)(ix): inserted, on 31 August 2023, by section 17(1) of the Water Services Legislation Act 2023 (2023 No 52).

Section 133(3)(a)(x): inserted, on 31 August 2023, by section 17(1) of the Water Services Legislation Act 2023 (2023 No 52).

Section 133(4): inserted, on 31 August 2023, by section 17(2) of the Water Services Legislation Act 2023 (2023 No 52).

Section 133(5): inserted, on 31 August 2023, by section 17(2) of the Water Services Legislation Act 2023 (2023 No 52).

134 Preparation or review of Government policy statement

- (1) When preparing or reviewing a Government policy statement, the Minister must—
 - (a) be satisfied that it promotes a water services system that contributes to the current and future well-being of New Zealanders; and
 - (b) engage in relation to the preparation or review of the Government policy statement with—
 - (i) the water services entities; and
 - (ii) the regional representative group of each water services entity; and
 - (iii) Taumata Arowai—the Water Services Regulator; and
 - (iv) other persons, and representative groups of persons, who have an interest in water services in New Zealand.
- (2) In conducting the engagement, the Minister must—
 - (a) comply with the requirements set out in section 472; and
 - (b) be guided and informed by the principles set out in section 473; and
 - (c) prepare and publish a report on the engagement in accordance with section 476.

Compare: 2019 No 50 s 24

Section 134(1)(b): amended, on 31 August 2023, by section 18(1) of the Water Services Legislation Act 2023 (2023 No 52).

Section 134(2): inserted, on 31 August 2023, by section 18(2) of the Water Services Legislation Act 2023 (2023 No 52).

135 Water services entities to give effect to Government policy statement

A water services entity must give effect to any Government policy statement (as that term is defined in section 6) when performing its functions.

Compare: 2019 No 50 s 26

136 Amending Government policy statement

- (1) The Minister may amend a Government policy statement at any time.

- (2) Sections 134 and 137 (which relate to the preparation and availability of a Government policy statement)—
- (a) apply with the necessary modifications to an amendment to the Government policy statement; but
 - (b) do not apply if the amendment to the Government policy statement is not significant.

Compare: 2019 No 50 s 29

137 Obligation to publish and present Government policy statement

- (1) As soon as practicable after issuing a Government policy statement, the Minister must—
- (a) present a copy to the House of Representatives; and
 - (b) arrange for a copy to be given to each water services entity.
- (2) The department must make the Government policy statement 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 department in a format that is readily accessible.

Compare: 2019 No 50 s 28

Subpart 2A—Directions for shared services

Subpart 2A: inserted, on 23 August 2023, by section 16 of the Water Services Entities Amendment Act 2023 (2023 No 44).

137A Directions for shared services

Purposes for which direction may be given

- (1) The Minister may direct water services entities to comply with specified requirements to share services provided to those entities and that are requirements for all or any of the following purposes:
- (a) to improve (directly or indirectly) the provision of water services;
 - (b) to develop expertise and capability;
 - (c) to ensure business continuity;
 - (d) to manage risks to the water services entities' financial position, the Government's financial position, or both.

Entities to which direction may be given

- (2) The direction may be given only to 2 or more entities each of which is—
- (a) a water services entity; or
 - (b) a subsidiary of a water services entity.

Requirements for direction

- (3) The direction must not be inconsistent with the operating principles of water services entities set out in section 14.

- (4) The direction may direct 2 or more entities to which it may be given about how to give effect to it, but only in respect of any 1 or more specified periods—
- (a) after it comes into force; and
 - (b) before 1 July 2026.
- (5) The direction must be limited to all or any of the following activities:
- (a) debt funding and management (for example, through the Water Services Entities Funding Agency):
 - (b) information and communication technology, and digital infrastructure procurement and management:
 - (c) other procurement, and supply chain management:
 - (d) risk management and insurance:
 - (e) workforce development and employment relations.
- (6) However, a direction to which subsection (5)(a) applies may only be given (despite subsection (1)) jointly by the Minister and the Minister of Finance.
- (7) A direction given under this section must include the reasons why it is given and a statement of its purposes.

Commencement

- (8) A direction given under this section comes into force on the commencement date stated in it (which must be not earlier than the day after the date on which it is given).

Direction is secondary legislation

- (9) Directions given under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Compare: 2004 No 115 s 107

Legislation Act 2019 requirements for secondary legislation made under this section

Publication	The maker must publish it in accordance with the Legislation (Publication) Regulations 2021	LA19 s 74(1)(aa)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 137A: inserted, on 23 August 2023, by section 16 of the Water Services Entities Amendment Act 2023 (2023 No 44).

137B Process for giving directions under section 137A

Engagement

- (1) The Minister must, before giving a direction under section 137A, engage in accordance with section 472 in relation to the proposed direction with—
- (a) the water services entities; and
 - (b) the regional representative group of each water services entity; and

- (c) Taumata Arowai—the Water Services Regulator; and
 - (d) the Commission; and
 - (e) other persons, and representative groups of persons, who have an interest in water services in New Zealand.
- (2) The Minister must, in giving a direction under section 137A, consider—
- (a) the input or feedback provided through the engagement in accordance with section 472 in relation to the proposed direction; and
 - (b) whether and how the proposed direction should respond to any issues or concerns raised by that input or feedback.
- (3) Subsection (2) does not limit or affect section 476.

Notification

- (4) The Minister must, as soon as practicable after giving a direction under section 137A, notify the entities to which the direction will apply that the direction—
- (a) has been given; and
 - (b) will come into force on the commencement date stated in it.

Shared services directions related to debt finding and management

- (5) However, for a direction to which section 137A(5)(a) applies, references in this section to the Minister are to be treated as references to the Minister acting jointly with the Minister of Finance (and sections 472 to 476 apply accordingly).

Exception for amendments or replacements with limited effect

- (6) Subsections (1) and (4) do not apply to any amendment or replacement of the direction (*see* section 48 of the Legislation Act 2019) if that amendment or replacement has only a minor effect and does not adversely and substantially affect the interests of any person.

Compare: 2004 No 115 s 108

Section 137B: inserted, on 23 August 2023, by section 16 of the Water Services Entities Amendment Act 2023 (2023 No 44).

Section 137B(1): amended, on 31 August 2023, by section 19(1) of the Water Services Legislation Act 2023 (2023 No 52).

Section 137B(2)(a): amended, on 31 August 2023, by section 19(1) of the Water Services Legislation Act 2023 (2023 No 52).

Section 137B(3): amended, on 31 August 2023, by section 19(2) of the Water Services Legislation Act 2023 (2023 No 52).

Section 137B(5): amended, on 31 August 2023, by section 19(3) of the Water Services Legislation Act 2023 (2023 No 52).

137C Obligation to give effect to direction

- (1) This section applies to an entity to which a direction under section 137A is given, but only while the direction is in force.

- (2) The entity must give effect to the direction when performing its functions.

Compare: 2004 No 115 s 110

Section 137C: inserted, on 23 August 2023, by section 16 of the Water Services Entities Amendment Act 2023 (2023 No 44).

137D Certain arrangements or agreements exempt from specified sections of Commerce Act 1986

Any arrangement or agreement is exempt from sections 27, 30, 30C, 36, and 36A of the Commerce Act 1986 if the arrangement or agreement is—

- (a) entered into by parties that are or include 1 or more entities to which a direction under section 137A is given; and
- (b) entered into by those 1 or more entities in order to give effect to the direction when performing their functions (in accordance with section 137C).

Section 137D: inserted, on 23 August 2023, by section 16 of the Water Services Entities Amendment Act 2023 (2023 No 44).

Subpart 3—Regional representative group’s
statement of strategic and performance expectations

138 Regional representative group must issue and review, and may replace, statement of strategic and performance expectations

- (1) The regional representative group of a water services entity must issue a statement of strategic and performance expectations for the entity.
- (2) The regional representative group must, at least once during every year after the year in which a statement of strategic and performance expectations is issued, review the statement.
- (3) The regional representative group may, following a review, issue a new statement of strategic and performance expectations that replaces the statement of strategic and performance expectations that was reviewed, in which case, the reviewed statement expires when it is replaced.
- (4) A statement of strategic and performance expectations must relate to at least 10 financial years.
- (5) Before issuing a statement or new statement, the regional representative group must seek, and consider, input from any regional advisory panel for the group—
 - (a) on the statement or new statement; and
 - (b) in respect of, or otherwise affecting, a particular geographic area for which the panel is responsible under the constitution (*see* section 93(g)(ii)).

139 Purpose and content of statement of strategic and performance expectations

- (1) The purpose of a statement of strategic and performance expectations for a water services entity is to—
 - (a) state the regional representative group’s objectives and priorities for water services in the entity’s service area; and
 - (b) inform and guide the decisions and actions of the board of the entity.
- (2) A statement of strategic and performance expectations for a water services entity must—
 - (a) include the following matters:
 - (i) the regional representative group’s expectations and strategic priorities for the entity:
 - (ii) the outcomes the group expects to be achieved through the delivery of water services by the entity:
 - (iii) how the group expects the water services entity to respond to any advice—
 - (A) provided to the group by a regional advisory panel; and
 - (B) about how the entity should perform or exercise its duties, functions, or powers in a particular geographic area (*see* section 48):
 - (iv) how the group expects the water services entity to meet its objectives, perform or exercise its duties, functions, and powers, and comply with its operating principles:
 - (v) how the group expects the water services entity to give effect to Te Mana o te Wai, to the extent that Te Mana o te Wai applies to the entity’s duties, functions, and powers; and
 - (b) require the entity to give effect to the objective under section 12(a) of delivering water services and related infrastructure in an efficient and financially sustainable manner; and
 - (c) consider the needs and concerns of consumers and communities, as articulated in the latest consumer engagement stocktake under section 475.
- (3) A matter under subsection (2)(a) must not be inconsistent with the direction and priorities for water services in the Government policy statement (if any) issued under section 132.

Section 139(2)(c): amended, on 31 August 2023, by section 20 of the Water Services Legislation Act 2023 (2023 No 52).

140 Water services entity to give effect to statement of strategic and performance expectations

The board of a water services entity must give effect to the statement of strategic and performance expectations for the entity when performing its functions.

Compare: 2019 No 50 s 26

141 Obligation to publish statement of strategic and performance expectations

- (1) The regional representative group of a water services entity must provide a copy of a statement of strategic and performance expectations to the board of the entity as soon as practicable after issuing it.
- (2) The board must make the statement of strategic and performance expectations 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 entity in a format that is readily accessible.

142 Obligation of regional representative group to review board performance

The regional representative group of a water services entity must annually review the performance of the board in giving effect to the statement of strategic and performance expectations.

Subpart 4—Te Mana o te Wai statements for water services**143 Mana whenua may provide Te Mana o te Wai statements for water services**

- (1) A Te Mana o te Wai statement for water services may be provided to a water services entity by mana whenua—
 - (a) whose rohe or takiwā includes a water body in the service area; or
 - (b) whose interests in the service area are recognised in a Treaty settlement Act.
- (2) A Te Mana o te Wai statement for water services provided under subsection (1) may—
 - (a) be provided by an individual iwi or hapū, or by a group of iwi or hapū;
 - (b) relate to 1 water body, or to multiple water bodies.
- (3) Mana whenua who have provided a Te Mana o te Wai statement for water services under subsection (1)—
 - (a) may review the statement at any time; and
 - (b) following a review, may provide a new statement that replaces the statement that was reviewed, in which case the reviewed statement expires when it is replaced.
- (4) A statement provided under subsection (1) or (3)(b) expires after 10 years.

144 Water services entity must respond to Te Mana o te Wai statement for water services

- (1) As soon as practicable after receiving a Te Mana o te Wai statement for water services under section 143, the board of a water services entity must—
- (a) acknowledge receipt of the statement; and
 - (b) engage with the mana whenua who provided the statement in relation to the preparation of a response to the Te Mana o te Wai statement for water services.
- (1A) In conducting the engagement, the board of the water services entity must—
- (a) comply with the requirements set out in section 472; and
 - (b) be guided and informed by the principles set out in section 473; and
 - (c) prepare and publish a report on the engagement in accordance with section 476.
- (2) A response to a Te Mana o te Wai statement for water services must include 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.

Section 144(1)(b): amended, on 31 August 2023, by section 21(1) of the Water Services Legislation Act 2023 (2023 No 52).

Section 144(1A): inserted, on 31 August 2023, by section 21(2) of the Water Services Legislation Act 2023 (2023 No 52).

145 Obligation to publish response to Te Mana o te Wai statement for water services

The board of a water services entity must make its response to a Te Mana o te Wai statement for water services publicly available by publishing a copy on an Internet site maintained by, or on behalf of, the entity in a format that is readily accessible—

- (a) as soon as practicable after issuing the response; and
- (b) in any event, within 2 years after receiving the statement to which it relates.

Subpart 4A—Community priority statements for water services

Subpart 4A: inserted, on 23 August 2023, by section 17 of the Water Services Entities Amendment Act 2023 (2023 No 44).

145A Making of statement

A community priority statement for water services may be made—

- (a) about a water body in the service area of a water services entity; and
- (b) by a person who is an eligible person (*see* section 145AB); and
- (c) to the entity’s regional representative group; and

- (d) by any current deadline for community priority statements that has been set by the group and notified to the public (*see* section 145AC); and
- (e) to state to the group the person's views about, and priorities for, how water services provided by, or other activities of, the entity do or could affect or relate to the water body.

Section 145A: inserted, on 23 August 2023, by section 17 of the Water Services Entities Amendment Act 2023 (2023 No 44).

145AB Who is eligible person

Meaning of eligible person

- (1) An **eligible person**, for the purposes of section 145A(b), means a person who—
 - (a) has a connection with the entity's service area (*see* subsection (2)); and
 - (b) has an interest in how water services are provided in that service area, or in how other activities of the entity do or could affect or relate to the water body, or in both.

When person has connection with entity's service area

- (2) A person **has a connection with the entity's service area** for the purposes of subsection (1)(a) only if the person is—
 - (a) an individual who ordinarily resides in that service area; or
 - (b) a corporation sole or a body corporate (including, without limitation, a local authority that is a body corporate with perpetual succession under section 12(1) of the Local Government Act 2002) whose registered office, or whose main place of activities, is in that service area; or
 - (c) an unincorporated body, or any other person of any kind,—
 - (i) whose main place of activities is in that service area; and
 - (ii) whose purpose is, or includes, for any reason, any matter related to a water body in that service area; or
 - (d) a corporation sole, a body corporate, any unincorporated body, or any other person of any kind,—
 - (i) whose registered office, or whose main place of activities, is not in that service area; and
 - (ii) who is a regional, national, or international organisation, of any kind, that carries out all or any of its activities in any place or places in New Zealand; and
 - (iii) whose purpose is, or includes, for any reason, any matter related to a water body in that service area.

Section 145AB: inserted, on 23 August 2023, by section 17 of the Water Services Entities Amendment Act 2023 (2023 No 44).

145AC Regional representative group may set, and notify publicly, current deadline for statements

- (1) A water services entity's regional representative group may set, and notify publicly, a current deadline for community priority statements.
- (2) In setting a current deadline for community priority statements, the group must consider when it may next have regard to those statements (*see* section 145C(3) and (4))—
 - (a) in preparing, issuing, or reviewing the group's statement of strategic and performance expectations under section 139; and
 - (b) as part of any comments the group makes on the water services entity's planning and reporting documents under subpart 5.
- (3) A current deadline for community priority statements is notified publicly for the purposes of this section if the deadline is published—
 - (a) on an Internet site maintained by, or on behalf of, the entity; and
 - (b) in any other ways that the group thinks are reasonable in the circumstances.

Section 145AC: inserted, on 23 August 2023, by section 17 of the Water Services Entities Amendment Act 2023 (2023 No 44).

145B Other requirements for making statement

- (1) A community priority statement for water services must be made in writing.
- (2) A community priority statement for water services must state—
 - (a) the person's interest in how water services are provided in the entity's service area, or in how other activities of the entity do or could affect or relate to the water body, or in both; and
 - (b) the person's views about, and priorities for, how water services provided by, or other activities of, the entity do or could affect or relate to the water body.
- (3) A community priority statement must be made by any current deadline for community priority statements that has been set by the regional representative group and notified to the public (*see* section 145AC).
- (4) However, a community priority statement made after any current deadline of that kind must be treated as having been received before the next current deadline of that kind (if any).

Section 145B: inserted, on 23 August 2023, by section 17 of the Water Services Entities Amendment Act 2023 (2023 No 44).

145C What regional representative group must or may do in response to statement

- (1) This section applies to a water services entity's regional representative group to which a community priority statement for water services is made.

- (2) The group must forward the statement to a consumer forum established by the water services entity under section 474.
- (3) The group may consider the statement in preparing, issuing, or reviewing the group's statement of strategic and performance expectations under section 139.
- (4) The group may consider the statement as part of any comments the group makes on the water services entity's planning and reporting documents under subpart 5.

Section 145C: inserted, on 23 August 2023, by section 17 of the Water Services Entities Amendment Act 2023 (2023 No 44).

Section 145C(2): amended, on 31 August 2023, by section 22 of the Water Services Legislation Act 2023 (2023 No 52).

Subpart 5—Reporting obligations

Forecasting assumptions and risks

146 Forecasting assumptions and risks to be identified

- (1) This section applies to a reporting obligations document that must—
 - (a) be prepared under this subpart; and
 - (b) include forecast financial statements.
- (2) The document must identify clearly—
 - (a) all significant forecasting assumptions and risks underlying the financial estimates:
 - (b) in particular the following assumptions on which the financial estimates are based:
 - (i) the entity's assumptions about the life cycle of significant assets; and
 - (ii) the entity's assumptions about sources of funds for the future replacement of significant assets:
 - (c) for significant forecasting assumptions and risks that involve a high level of uncertainty,—
 - (i) the fact of that uncertainty; and
 - (ii) an estimate of the potential effects of that uncertainty on the estimates provided in the document.

Compare: 2002 No 84 Schedule 10 cl 17

Planning: statement of intent

147 Purpose of statement of intent

The purpose of a statement of intent is to promote the public accountability of a water services entity by—

- (a) setting out the entity's strategic intentions; and
- (b) providing a base against which the water services entity's actual performance can later be assessed.

Compare: 2004 No 115 s 138

148 Board must prepare statement of intent

- (1) The board of a water services entity must provide to the regional representative group a statement of intent that complies with this section and section 149.
- (2) The board must provide a statement of intent annually.
- (3) A statement of intent must—
 - (a) relate to at least the following 10 financial years; and
 - (b) be prepared in accordance with Part 1 of Schedule 3.
- (4) A statement of intent must contain a report from the Auditor-General on—
 - (a) whether the statement gives effect to its purpose stated in section 147; and
 - (b) whether the statement provides a reasonable basis for long-term integrated planning and accountability; and
 - (c) the reasonableness of assumptions, and information, underlying the forecast information provided in the statement; and
 - (d) whether required disclosures have been made.
- (4A) However, subsection (4) does not apply to a statement of intent modified in accordance with clause 6 of Schedule 3 if the modification—
 - (a) has no more than a minor effect; or
 - (b) corrects errors or makes similar technical alterations.
- (5) A statement of intent must also describe the significant longer-term issues, risks, and challenges that the entity may face over a 30-year period, consistent with the entity's infrastructure strategy adopted under section 157.
- (6) A statement of intent must include the information in section 149(2)(f) and (3)(a) and (c)—
 - (a) in detail for each of the first 3 financial years covered by the statement; and
 - (b) in outline for each of the later financial years covered by the statement.
- (7) *[Repealed]*

Section 148(4A): inserted, on 31 August 2023, by section 23 of the Water Services Legislation Act 2023 (2023 No 52).

Section 148(7): repealed, on 23 December 2023, by section 6 of the Resource Management (Natural and Built Environment and Spatial Planning Repeal and Interim Fast-track Consenting) Act 2023 (2023 No 68).

149 Content of statement of intent*Strategic elements*

- (1) A statement of intent for a water services entity must, for the period to which it relates, set out—
- (a) how the entity intends to meet its objectives, perform or exercise its duties, functions, and powers, and comply with its operating principles; and
 - (b) the outcomes the board expects to achieve through the delivery of water services; and
 - (c) how the entity intends to give effect to—
 - (i) the expectations, strategic priorities, and outcomes outlined in the statement of strategic and performance expectations for the entity; and
 - (ii) the direction and priorities in the Government policy statement; and
 - (d) how the statement relates to engagement requirements and will respond to or reflect the results of engagement; and
 - (e) an explanation of how the proposals in the statement are linked to the matters raised in, and the findings from, consumer engagement stock-takes.

Operational elements

- (2) A statement of intent for a water services entity must, for the period to which it relates, set out—
- (a) the nature and scope of the activities the entity proposes to undertake; and
 - (b) significant work that the entity proposes to undertake; and
 - (c) any actions the entity intends to take in a particular geographic area (consistent with the statement of strategic and performance expectations) in response to advice provided (to the entity's regional representative group) by a regional advisory panel; and
 - (d) any actions the entity intends to take (consistent with its plan under section 144(2)) relating to water services as part of its response to a Te Mana o te Wai statement for water services; and
 - (e) how the entity proposes to approach consumer and community engagement; and
 - (f) a forecast statement of service delivery performance for water supply, wastewater, and stormwater services, including non-financial performance measures and targets about the quality of the services to be delivered.

Financial elements

- (3) A statement of intent must also include—
- (a) the forecast financial statements for each financial year in the period to which the statement of intent relates; and
 - (b) the forecast financial statements for the financial year immediately preceding the period to which the statement of intent relates; and
 - (c) a forecast of expenditure to be applied to—
 - (i) meet additional demand for water supply, wastewater, and storm-water services; and
 - (ii) improve the level of the service delivery performance; and
 - (iii) replace existing assets.
- (4) For the purposes of this section, budgeted expenditure applied for 2 or all of the purposes in subsection (3) may be treated as if it were applied solely in relation to the primary purpose of the expenditure.

Section 149(3)(b): amended, on 31 August 2023, by section 24 of the Water Services Legislation Act 2023 (2023 No 52).

150 Board must publish statement of intent

The board of a water services entity must, as soon as practicable after providing a statement of intent to the entity's regional representative group,—

- (a) provide the statement to the entity's territorial authority owners; and
- (b) make the statement publicly available by publishing a copy on an Internet site maintained by, or on behalf of, the entity in a format that is readily accessible.

Planning: asset management plan

151 Board must prepare asset management plan

- (1) The board of a water services entity must provide an asset management plan to the entity's regional representative group at least once in every 3-year period.
- (2) The asset management plan must—
- (a) cover a period of not less than 10 consecutive financial years; and
 - (b) comply with section 152; and
 - (c) be prepared in accordance with Part 2 of Schedule 3.

152 Content of asset management plan

- (1) An asset management plan for a water services entity must, for the period to which it relates, set out—
- (a) the investment priorities for the infrastructure assets of the entity; and
 - (b) how the entity will—

- (i) operate, maintain, and renew its infrastructure assets; and
- (ii) provide new infrastructure assets; and
- (c) how the plan meets the proposed activities and intention of the entity set out in its statement of intent; and
- (d) any actions the entity intends to take in a particular geographic area (consistent with its statement of intent) in response to advice provided (to the entity's regional representative group) by a regional advisory panel; and
- (e) how the plan relates to any actions the entity intends to take (consistent with its plan under section 144(2)) as part of its response to a Te Mana o te Wai statement for water services.

(2) *[Repealed]*

Section 152(2): repealed, on 23 December 2023, by section 6 of the Resource Management (Natural and Built Environment and Spatial Planning Repeal and Interim Fast-track Consenting) Act 2023 (2023 No 68).

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 on an Internet site maintained by, or on behalf of, the water services entity in a format that is readily accessible.

Section 153: replaced, on 31 August 2023, by section 25 of the Water Services Legislation Act 2023 (2023 No 52).

Planning: funding and pricing plan

154 Board must prepare funding and pricing plan

- (1) The board of a water services entity must provide a funding and pricing plan to the entity's regional representative group at least once in every 3-year period.
- (2) The funding and pricing plan must—
 - (a) cover a period of not less than 10 consecutive financial years; and
 - (b) comply with section 155; and
 - (c) be prepared in accordance with Part 3 of Schedule 3.

(3) *[Repealed]*

Section 154(3): repealed, on 23 December 2023, by section 6 of the Resource Management (Natural and Built Environment and Spatial Planning Repeal and Interim Fast-track Consenting) Act 2023 (2023 No 68).

155 Content of funding and pricing plan

- (1) A funding and pricing plan for a water services entity must, for the period to which it relates, set out—

- (a) the sources of, and the entity's intended approach to, funding, revenue, and pricing; and
 - (b) the water services entity's intended approach to—
 - (i) pricing its services and charging consumers; and
 - (ii) complying with the charging principles specified in section 336; and
 - (c) a financial strategy for all of the consecutive financial years covered by the funding and pricing plan; and
 - (d) the water infrastructure contribution policy of the water services entity.
- (2) A financial strategy must—
- (a) include a statement of the factors that are expected to have a significant impact on the water services entity during the consecutive financial years covered by the strategy, including—
 - (i) the expected changes in population and the use of land in the entity's service area, and the capital costs and operating costs of providing for those changes; and
 - (ii) any actions the entity intends to take in a particular geographic area (consistent with its statement of intent) in response to advice provided (to the entity's regional representative group) by a regional advisory panel; and
 - (iii) the expected capital expenditure and operating expenditure on network infrastructure that is required to maintain existing levels of service currently provided by the entity; and
 - (iv) other significant factors affecting the entity's ability to maintain existing levels of service and to meet additional demands for services; and
 - (b) specify the entity's policy on the giving of security for its borrowing; and
 - (c) specify the entity's objectives for holding and managing financial investments and equity securities and its quantified targets for returns on those investments and equity securities.

Compare: 2002 No 84 s 101A(1), (3)(a), (c), (d)

Section 155(1)(b): replaced, on 31 August 2023, by section 26(1) of the Water Services Legislation Act 2023 (2023 No 52).

Section 155(1)(d): inserted, on 31 August 2023, by section 26(2) of the Water Services Legislation Act 2023 (2023 No 52).

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 on an Internet site maintained by, or on behalf of, the water services entity in a format that is readily accessible.

Section 156: replaced, on 31 August 2023, by section 27 of the Water Services Legislation Act 2023 (2023 No 52).

Planning: infrastructure strategy

157 Board must prepare and adopt infrastructure strategy

- (1) The board of a water services entity must provide an infrastructure strategy to the entity's regional representative group at least once in every 3-year period.
- (2) The purpose of an infrastructure strategy is to identify—
 - (a) significant infrastructure issues for the water services entity over the period covered by the strategy; and
 - (b) the main options for managing those issues and the implications of those options.
- (3) The strategy must—
 - (a) cover a period of at least 30 consecutive financial years; and
 - (b) comply with section 158; and
 - (c) be prepared in accordance with Part 4 of Schedule 3.

158 Content of infrastructure strategy

- (1) An infrastructure strategy must identify—
 - (a) significant infrastructure issues for the water services entity over the period covered by the strategy; and
 - (b) the main options for managing those issues and the implications of those options.
- (2) An infrastructure strategy must also, for the period to which it relates, outline how the water services entity intends to operate, maintain, and renew its existing infrastructure assets and provide for new infrastructure over the period covered by the strategy.
- (3) An infrastructure strategy must also set out any actions the entity intends to take in a particular geographic area (consistent with its statement of intent) in response to advice provided (to the entity's regional representative group) by a regional advisory panel.
- (4) An infrastructure strategy must outline how the water services entity intends to manage its infrastructure assets, taking into account the need to—
 - (a) renew or replace existing assets; and
 - (b) respond to growth or decline in the demand for services reliant on those assets; and

- (c) allow for planned increases or decreases in levels of service provided through those assets; and
 - (d) maintain or improve public health and environmental outcomes, or mitigate adverse effects on them; and
 - (e) provide for the resilience of infrastructure assets by identifying and managing risks relating to natural hazards and by making appropriate financial provision for those risks.
- (5) An infrastructure strategy must outline the most likely scenario for the management of the water services entity's infrastructure assets over the period of the strategy and, in that context, must—
- (a) show indicative estimates of the projected capital expenditure and operating expenditure associated with the management of those assets—
 - (i) in each of the first 10 years covered by the strategy; and
 - (ii) in each later period of 5 years covered by the strategy; and
 - (b) identify—
 - (i) the significant decisions about capital expenditure the entity expects it will be required to make; and
 - (ii) when the entity expects those decisions will be required; and
 - (c) include the following assumptions on which the scenario is based:
 - (i) the entity's assumptions about the life cycle of significant infrastructure assets;
 - (ii) the entity's assumptions about growth or decline in the demand for relevant services;
 - (iii) the entity's assumptions about increases or decreases in relevant levels of service; and
 - (d) if assumptions referred to in paragraph (c) involve a high level of uncertainty,—
 - (i) identify the nature of that uncertainty; and
 - (ii) include an outline of the potential effects of that uncertainty.
- (6) An infrastructure strategy must also, for the period to which it relates, outline 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 Te Mana o te Wai applies to the entity's duties, functions, and powers.
- (7) An infrastructure strategy must also contain a report from the Auditor-General on—
- (a) whether the strategy gives effect to its purpose stated in section 157; and
 - (b) the quality of the information and assumptions underlying the forecast information provided in the strategy.

- (7A) However, subsection (7) does not apply to an infrastructure strategy modified in accordance with clause 24 of Schedule 3 if the modification—
- (a) has no more than a minor effect; or
 - (b) corrects errors or makes similar technical alterations.
- (8) An infrastructure strategy for a water services entity must also identify and explain any significant connections with, or interdependencies between, the matters included in—
- (a) that infrastructure strategy; and
 - (b) the infrastructure strategies prepared and adopted (under section 101B of the Local Government Act 2002) by local authorities in the entity's service area.

(9) *[Repealed]*

Compare: 2002 No 84 s 101B

Section 158(7A): inserted, on 31 August 2023, by section 28 of the Water Services Legislation Act 2023 (2023 No 52).

Section 158(9): repealed, on 23 December 2023, by section 6 of the Resource Management (Natural and Built Environment and Spatial Planning Repeal and Interim Fast-track Consenting) Act 2023 (2023 No 68).

159 Obligation to publish infrastructure strategy

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 on an Internet site maintained by, or on behalf of, the water services entity in a format that is readily accessible.

Section 159: replaced, on 31 August 2023, by section 29 of the Water Services Legislation Act 2023 (2023 No 52).

Reporting: annual report

160 Obligation to prepare and publish annual report

- (1) A water services entity must,—
- (a) as soon as practicable after the end of, and within 4 months after, each financial year, prepare a report (with the contents required by section 161) on the affairs of the water services entity in the financial year to which the report relates; and
 - (b) provide the report to its regional representative group no later than 15 working days after receiving the audit report provided under section 165.
- (2) A water services entity must publish a copy of its annual report on an Internet site maintained by, or on behalf of, the entity—
- (a) as soon as practicable after it has been provided to the regional representative group; and

- (b) in any event, no later than 20 working days after receiving the audit report.
- (3) When publishing the annual report, the entity must also consider whether to take additional or specific steps to ensure it is appropriately available to interested people.

Compare: 2004 No 115 s 150(1)

161 Form and content of annual report

- (1) An annual report of a water services entity must contain the following information and reports in respect of the financial year to which it relates:
 - (a) information on operations that complies with subsection (2):
 - (b) a statement of service delivery performance in accordance with section 162:
 - (c) the annual financial statements for the entity in accordance with section 163:
 - (d) a statement of responsibility in accordance with section 164:
 - (e) an audit report in accordance with section 165:
 - (f) information on compliance with its obligation to be a good employer, including its equal employment opportunities programme (*see* section 122):
 - (g) information required by section 166 (which relates to payments in respect of board members, chief executives, and employees during that financial year):
 - (h) information on responses the board has made to Te Mana o te Wai statements for water services during that financial year (*see* section 144):
 - (i) information on any action that the entity has taken (consistent with its plan under section 144(2)) as part of its response to a Te Mana o te Wai statement for water services (*see* section 144):
 - (ia) 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)):
 - (j) information required by section 21(3) (which relates to the enforcement of certain natural person transactions):
 - (k) information required by section 110 (which relates to permission to act despite being interested in a matter):
 - (ka) 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:

- (1) any matters that relate to or affect the entity's operations that the entity is otherwise required, or has undertaken, or wishes to report on in its annual report.
- (2) The annual report must provide the information that is necessary to enable an informed assessment to be made of the entity's operations for that financial year, including—
 - (a) an assessment of the entity's progress in relation to—
 - (i) the strategic elements as set out in the most recent statement of intent (*see* section 149(1)); and
 - (ii) the most recent asset management plan; and
 - (iii) the most recent funding and pricing plan; and
 - (b) an assessment of whether the entity is complying with its operating principles set out in section 14.
- (3) The annual report must also set out any actions the entity has taken in a particular geographic area (consistent with its statement of intent) in response to advice provided (to the entity's regional representative group) by a regional advisory panel.
- (4) The annual report must present information about entity progress and performance in a clear manner that is accessible to, and easy to comprehend by, consumers and communities.

Compare: 2004 No 115 s 151(1)(a)–(e), (g)–(k), (2)

Section 161(1)(ia): inserted, on 31 August 2023, by section 30(1) of the Water Services Legislation Act 2023 (2023 No 52).

Section 161(1)(ka): inserted, on 31 August 2023, by section 30(2) of the Water Services Legislation Act 2023 (2023 No 52).

162 Form and content of statement of service delivery performance

- (1) A statement of service delivery performance must, in relation to a water services entity and a financial year, contain the following information:
 - (a) a comparison of the actual performance achieved with the forecast statement of service delivery performance in the statement of intent (*see* section 149(2)(f)):
 - (b) whether any intended changes to the level of service delivery have been achieved:
 - (c) the reasons for any significant variation between the level of service delivery achieved and the intended level of service delivery:
 - (d) whether proposed activities, work, and actions have been undertaken or taken as set out in the statement of intent (*see* section 149(2)(a), (b), and (d)):

- (e) the reasons for any significant variation between proposed activities, work, and actions, and actual activities, work, and actions undertaken or taken:
 - (f) the actual revenue, capital expenditure, and operating expenditure for water supply, wastewater, and stormwater services, compared to the revenue, capital expenditure, and operating expenditure budgeted for those services in the statement of intent:
 - (g) information on consumer engagement stocktakes, including any relevant metrics, and a progress update on how the entity has been addressing and responding to consumer and community concerns.
- (2) For the purposes of subsection (1)(f), the statement must separately provide for actual and budgeted expenditure applied to—
- (a) meet additional demand for the water supply, wastewater, and stormwater services:
 - (b) improve the level of service delivery performance:
 - (c) replace existing assets.
- (3) For the purposes of this section, actual or budgeted expenditure for 2 or all of the purposes in subsection (2) may be treated as if it were made solely in relation to the primary purpose of the expenditure.

Compare: 2004 No 115 s 153

163 Annual financial statements

- (1) As soon as practicable after the end of each financial year, a water services entity must prepare financial statements in relation to the entity for that financial year.
- (2) The financial statements must—
- (a) include any information or explanations needed to fairly reflect the financial operations and financial position; and
 - (b) include the forecast financial statements prepared at the start of the financial year for comparison with the actual financial statements.

Compare: 2004 No 115 s 154

164 Statement of responsibility

The statement of responsibility must—

- (a) contain a statement of the signatories' responsibility for the preparation of the financial statements and statement of performance and for the judgments in them; and
- (b) contain a statement of the signatories' responsibility for establishing and maintaining a system of internal control designed to provide reasonable assurance as to the integrity and reliability of financial reporting; and

- (c) contain a statement of the signatories' responsibility for establishing and maintaining a system of internal control designed to provide reasonable assurance as to the integrity and reliability of performance reporting; and
- (d) contain a statement that, in the opinion of the signatories, the financial statements and statement of performance for the financial year fairly reflect the financial position and operations of the water services entity; and
- (e) be dated and signed—
 - (i) by 2 board members on behalf of the board; and
 - (ii) by the chief executive.

Compare: 2004 No 115 s 155

165 Audit report

- (1) A water services entity must forward to the Auditor-General—
 - (a) the entity's annual financial statements and statement of service delivery performance; and
 - (b) any other information that the Auditor-General has agreed, or is required, to audit.
- (2) The Auditor-General must, within 4 months after the end of a financial year,—
 - (a) audit the statements and information referred to in subsection (1); and
 - (b) provide an audit report on those statements and that information to the water services entity.
- (3) The audit report must indicate whether those statements and that information—
 - (a) *[Repealed]*
 - (b) comply with generally accepted accounting practice; and
 - (c) are free from material misstatement.

Compare: 2004 No 115 s 156(1), (2)

Section 165(2): amended, on 31 August 2023, by section 31(1) of the Water Services Legislation Act 2023 (2023 No 52).

Section 165(3)(a): repealed, on 31 August 2023, by section 31(2) of the Water Services Legislation Act 2023 (2023 No 52).

166 Disclosure of payments in respect of board members and employees

- (1) The annual report must include, in respect of the water services entity,—
 - (a) a report on the remuneration that, in the financial year to which the report relates, was received by, or was payable to, the chief executive and each board member of the water services entity; and
 - (b) a report on the number of employees who were employed by the entity—

- (i) on the last day of the financial year to which the report relates; and
 - (ii) on the last day of the immediately preceding financial year; and
 - (c) the amount of any severance payments made in the financial year to any person who vacated office as the chief executive; and
 - (d) the number of employees of the entity to whom, in the financial year, severance payments were made and the amount of each severance payment (if any); and
 - (e) the details of any indemnity provided by the entity during the financial year to the chief executive, any board member, or any employee; and
 - (f) the details of any insurance cover effected by the entity during the financial year in respect of the liability or the costs of the chief executive, any board member, or any employee.
- (2) The report under subsection (1)(a) must include, in relation to the chief executive and each board member, the total annual remuneration (including the value of any non-financial benefits) that was paid to the person, or was payable to the person, in their capacity as a chief executive or as a board member of the entity during the financial year.
- (3) The report must state, as at the last day of the financial year,—
- (a) the number of full-time employees; and
 - (b) the full-time equivalent number of all other employees; and
 - (c) the number of employees receiving total annual remuneration of less than \$100,000; and
 - (d) the number of employees receiving total annual remuneration of \$100,000 or more, expressed in bands of \$10,000.
- (4) If the number of employees in any band to which subsection (3)(d) applies is 5 or fewer, the number for that band must be combined with the next-highest band and the statement in the report in relation to that subsection must be adjusted accordingly.
- (5) In this section,—
- board member, chief executive, and employee** include a person who was a board member, the chief executive, or an employee at any time after the commencement of this section but who is no longer a board member, the chief executive, or an employee
- severance payment** means any consideration that a water services entity has agreed to provide to an employee in respect of that employee's agreement to the termination of their employment, being consideration, whether of a monetary nature or otherwise, additional to any entitlement of that employee to—
- (a) any final payment of salary; or
 - (b) any holiday pay; or

(c) any superannuation contributions

total annual remuneration, in relation to an employee, a board member, or the chief executive of a water services entity, includes the value of any non-financial benefit that, during the year, was paid to the employee, board member, or chief executive, or was payable to the employee, board member, or chief executive, by the water services entity.

Compare: 2002 No 84 Schedule 10 cls 32, 32A, 33; 2004 No 115 s 152

167 Information to be prepared in accordance with generally accepted accounting practice

All information that is required by any provision of this subpart to be included in a statement of intent, a funding and pricing plan, an asset management plan, an infrastructure strategy, or an annual report 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.

Compare: 2002 No 84 s 111

168 Insurance of assets

An annual report must state, as at the end of the financial year,—

- (a) the total value of all assets of the water services entity that are covered by insurance contracts and the maximum amount to which they are insured; and
- (b) the total value of all assets of the water services entity that are covered by financial risk sharing arrangements and the maximum amount available to the water services entity under those arrangements; and
- (c) the total value of all assets of the water services entity that are self-insured and the value of any fund maintained by the water services entity for that purpose.

Compare: 2002 No 84 Schedule 10 cl 31A

Subpart 6—Other provisions for financial management and independence

Major transactions

169 Major transactions

- (1) A water services entity must not enter into a major transaction unless the transaction is approved by, or contingent on approval by, a special resolution.
- (2) In this section,—
assets includes property of any kind, whether tangible or intangible

major transaction, in relation to a water services entity, means—

- (a) the acquisition of, or an agreement to acquire, whether contingent or not, assets the value of which is more than 25% of the value of the entity's assets before the acquisition; or
- (b) the disposition of, or an agreement to dispose of, whether contingent or not, assets of the entity the value of which is more than 25% of the value of the entity's assets before the disposition; or
- (c) a transaction that has or is likely to have the effect of the entity acquiring rights or interests or incurring obligations or liabilities, including contingent liabilities, the value of which is more than 25% of the value of the entity's assets before the transaction

special resolution means a resolution—

- (a) presented to all the entity's regional representative group's regional representatives in writing before that group's meeting in which the resolution will be voted on; and
 - (b) approved by a majority of 75% of those representatives voting on the resolution.
- (3) In assessing the value of any contingent liability for the purposes of paragraph (c) of the definition of major transaction in subsection (2), the entity's board members—
- (a) must have regard to all circumstances that the board members know, or ought to know, affect, or may affect, the value of the contingent liability; and
 - (b) may rely on estimates of the contingent liability that are reasonable in the circumstances; and
 - (c) may take account of—
 - (i) the likelihood of the contingency occurring; and
 - (ii) any claim the entity is entitled to make and can reasonably expect to be met to reduce or extinguish the contingent liability.

- (4) This section does not affect or limit section 118 and Schedule 4.

Compare: 1993 No 105 s 129

Bank accounts

170 Bank accounts of water services entities

- (1) A water services entity must ensure that all money received by the entity is paid, as soon as practicable after it is received, into 1 or more bank accounts that are established, maintained, and operated by the entity at 1 or more of the following:

- (a) a registered bank or registered building society that satisfies a relevant credit-rating test specified in a notice in the *Gazette* published by the Minister of Finance; or
 - (b) a registered bank or registered building society that meets the conditions of any relevant approval given by the Minister of Finance by notice in the *Gazette*; or
 - (c) a bank outside New Zealand that meets the conditions of any relevant approval given by the Minister of Finance by notice in the *Gazette*.
- (2) A water services entity must ensure that it does not establish, maintain, or operate a bank account other than as provided for in subsection (1).
- (3) A water services entity must properly authorise the withdrawal or payment of money from a bank account of the entity.
- (4) There is a period of grace if a bank account ceases to qualify under subsection (1) and,—
- (a) during that period, the water services entity may continue to pay money into the bank account; but
 - (b) by the end of the period, the water services entity must have closed the account and paid all the money in the account into another bank account that qualifies under subsection (1).
- (5) The period of grace ends on the earlier of—
- (a) the date that is 2 months after the bank account ceases to qualify under subsection (1); and
 - (b) the date that is specified by the Minister of Finance and notified to the water services entity.

Compare: 2004 No 115 s 158

Financial independence

171 Financial independence

- (1) A territorial authority owner (in its capacity as a holder of shares in a water services entity, or any other capacity), a regional representative group, or a regional representative—
- (a) has no right, title, or interest (legal or equitable) in the assets, security, debts, or liabilities of a water services entity (and the constitution cannot confer any such right, title, or interest—*see also* sections 15(3) and 95(2)(c)); and
 - (b) must not receive any equity return, directly or indirectly, from a water services entity; and
 - (c) must not give a water services entity any financial support or capital; and
 - (d) must not lend money or provide credit to a water services entity; and

- (e) must not give any person any guarantee, indemnity, or security in relation to the performance of any obligation by a water services entity.
- (2) However, nothing in subsection (1) or (3) limits or affects—
 - (a) the allocation or reallocation of shares under sections 15(2) and 16; or
 - (b) the holding of those shares by the relevant territorial authority owner; or
 - (c) voting under Schedule 4 on a divestment proposal.
- (3) In this section,—
 - equity return** means—
 - (a) profits of the entity; or
 - (b) distributions from the entity; or
 - (c) any benefit derived, directly or indirectly, from a water services entity that represents, is calculated by reference to, or is determined by,—
 - (i) a share in or proportion of the entity’s capital; or
 - (ii) the entity’s surplus or residual economic value (after satisfying prior contractual claims); or
 - (iii) the entity’s profitability or any other indicator of its success
 - give financial support or capital** does not include to sell or supply goods or services on credit—
 - (a) in the ordinary course of the territorial authority owner’s, or the water services entity’s, performance of its lawful responsibilities; and
 - (b) on terms and conditions generally available to other parties of equivalent creditworthiness
 - lend money or provide credit**—
 - (a) includes, without limiting the generality of that expression,—
 - (i) to defer payment for any goods or services supplied or works constructed for any person, organisation, or government; and
 - (ii) to enter into hire purchase agreements or agreements that are of the same or a substantially similar nature; and
 - (iii) to enter into finance lease arrangements or arrangements that are of the same or a substantially similar nature; and
 - (iv) to subscribe for any debt securities or uncalled capital; but
 - (b) does not include to sell or supply goods or services on credit—
 - (i) in the ordinary course of the territorial authority owner’s, or the water services entity’s, performance of its lawful responsibilities; and
 - (ii) on terms and conditions generally available to other parties of equivalent creditworthiness

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

Compare: 2010 No 116 Schedule 2 cl 6; 2020 No 47 s 114

Subpart 7—Accounting records

172 Board must ensure that proper accounting records are kept

- (1) The board of a water services entity must cause accounting records to be kept that—
 - (a) correctly record and explain the transactions of the entity; and
 - (b) will, at any time, enable the financial position of the entity to be determined with reasonable accuracy; and
 - (c) will enable the board members of the entity to ensure that the financial statements of the entity comply with sections 163 and 167; and
 - (d) will enable the financial statements of the water services entity to be readily and properly audited.
- (2) The accounting records must be in written form or in a manner in which they are easily accessible and convertible into written form.

Compare: 2004 No 115 s 168

Subpart 8—Borrowing

173 Borrowing in foreign currency

A water services entity may borrow or enter into incidental arrangements within or outside New Zealand in currency other than New Zealand currency.

Subpart 9—Water Services Entities Funding Agency

Subpart 9: inserted, on 23 August 2023, by section 18 of the Water Services Entities Amendment Act 2023 (2023 No 44).

Preliminary provisions

Heading: inserted, on 23 August 2023, by section 18 of the Water Services Entities Amendment Act 2023 (2023 No 44).

173A Purpose

- (1) The purpose of this subpart is to facilitate the operation of the Funding Agency.
- (2) To achieve that purpose, this subpart—
 - (a) exempts the Funding Agency from certain regulatory or taxation criteria that would otherwise apply to it; and
 - (b) applies to the Funding Agency certain regulatory or taxation criteria that would otherwise not apply to it; and

- (c) authorises water services entities to deal with the Funding Agency in a manner in which they would otherwise not be authorised to do so; and
- (d) authorises or requires water services entities, in certain situations, to act in a manner in which they would otherwise not be authorised or required to act.

Compare: 2011 No 77 s 3

Section 173A: inserted, on 23 August 2023, by section 18 of the Water Services Entities Amendment Act 2023 (2023 No 44).

173B Definitions

In this subpart, unless the context otherwise requires,—

borrowing has the same meaning as in section 173K

Funding Agency means a limited liability company—

- (a) registered under Part 2 of the Companies Act 1993; and
- (b) approved for the purposes of this subpart by the Minister by notice in the *Gazette*

incidental arrangement has the same meaning as in section 173K

loan has the same meaning as in section 173K

Minister has the meaning given by section 2(1) of the Public Finance Act 1989

protected transaction has the same meaning as in section 173K.

Compare: 2011 No 77 s 4

Section 173B: inserted, on 23 August 2023, by section 18 of the Water Services Entities Amendment Act 2023 (2023 No 44).

173C Application

This subpart applies to the Funding Agency only while the Funding Agency is a subsidiary of 1 or more water services entities.

Compare: 2011 No 77 s 5

Section 173C: inserted, on 23 August 2023, by section 18 of the Water Services Entities Amendment Act 2023 (2023 No 44).

Application of Non-bank Deposit Takers Act 2013

Heading: inserted, on 23 August 2023, by section 18 of the Water Services Entities Amendment Act 2023 (2023 No 44).

173D Funding Agency not non-bank deposit taker

The Funding Agency is not an NBDT (a non-bank deposit taker) for the purposes of the Non-bank Deposit Takers Act 2013.

Compare: 2011 No 77 s 7

Section 173D: inserted, on 23 August 2023, by section 18 of the Water Services Entities Amendment Act 2023 (2023 No 44).

Application of Financial Markets Conduct Act 2013

Heading: inserted, on 23 August 2023, by section 18 of the Water Services Entities Amendment Act 2023 (2023 No 44).

173E Financial Markets Conduct Act 2013 applies to Funding Agency as if it were local authority

The Financial Markets Conduct Act 2013 applies to the Funding Agency as if it were a local authority.

Compare: 2011 No 77 s 8

Section 173E: inserted, on 23 August 2023, by section 18 of the Water Services Entities Amendment Act 2023 (2023 No 44).

Prohibitions and restrictions relating to subsidiaries

Heading: inserted, on 23 August 2023, by section 18 of the Water Services Entities Amendment Act 2023 (2023 No 44).

173F Exemptions from prohibitions and restrictions applying to subsidiaries

- (1) This section applies to a water services entity only while the Funding Agency is a subsidiary of 1 or more water services entities (*see* section 173C).
- (2) A water services entity may give a guarantee, an indemnity, or a security in respect of the performance of any obligation by the Funding Agency.
- (3) A water services entity may lend money, or provide any other financial accommodation, to the Funding Agency on terms and conditions that are more favourable to the Funding Agency than those that would apply if the water services entity were borrowing the money or obtaining the financial accommodation.
- (4) Subsection (5) applies if the water services entity gives a guarantee, an indemnity, or a security, or lends money or provides any other financial accommodation, under subsection (2) or (3) while the Funding Agency is a subsidiary of a water services entity and, subsequently, the Funding Agency ceases to be a subsidiary of a water services entity.
- (5) The guarantee, indemnity, security, loan, or other financial accommodation continues subject to its terms, and the obligations and rights of the water services entity in respect of the guarantee, indemnity, security, loan, or other financial accommodation continue to apply, despite the Funding Agency no longer being a subsidiary of a water services entity.

Compare: 2011 No 77 s 9

Section 173F: inserted, on 23 August 2023, by section 18 of the Water Services Entities Amendment Act 2023 (2023 No 44).

Additional requirements for water services entity's funding and pricing plan

Heading: inserted, on 23 August 2023, by section 18 of the Water Services Entities Amendment Act 2023 (2023 No 44).

173G Additional requirements to be specified in water services entity's funding and pricing plan

- (1) This section applies to a water services entity if it has prepared and provided to its regional representative group a funding and pricing plan and it gives a guarantee in relation to either or both of the following:
 - (a) any indebtedness of the Funding Agency:
 - (b) another water services entity's indebtedness to the Funding Agency.
- (2) The water services entity must specify in its funding and pricing plan its policy on the giving of any securities that secure obligations under the guarantee.

Compare: 2011 No 77 s 10

Section 173G: inserted, on 23 August 2023, by section 18 of the Water Services Entities Amendment Act 2023 (2023 No 44).

Protected transactions

Heading: inserted, on 23 August 2023, by section 18 of the Water Services Entities Amendment Act 2023 (2023 No 44).

173H Certain kinds of arrangements and transactions to be treated as protected transactions

- (1) This section applies to arrangements of any of the following kinds:
 - (a) a guarantee by a water services entity of any indebtedness owed by another water services entity to the Funding Agency:
 - (b) a guarantee by a water services entity of any indebtedness of the Funding Agency:
 - (c) a commitment by a water services entity to contribute equity to the Funding Agency:
 - (d) a commitment by a water services entity to lend money to the Funding Agency.
- (2) Those arrangements are to be treated as protected transactions for the purposes of sections 173L to 173O.
- (3) This section does not limit the generality of sections 173L to 173O.

Compare: 2011 No 77 s 12

Section 173H: inserted, on 23 August 2023, by section 18 of the Water Services Entities Amendment Act 2023 (2023 No 44).

Crown relationship with Funding Agency

Heading: inserted, on 23 August 2023, by section 18 of the Water Services Entities Amendment Act 2023 (2023 No 44).

173I Crown may lend money to Funding Agency

- (1) The Minister, on behalf of the Crown, may lend money to the Funding Agency if—
 - (a) the Minister considers that it is necessary or expedient in the public interest to do so; and
 - (b) the money is lent on commercial terms.
- (2) The Minister may lend money under subsection (1) without further appropriation than this section.

Compare: 2011 No 77 s 15(1)

Section 173I: inserted, on 23 August 2023, by section 18 of the Water Services Entities Amendment Act 2023 (2023 No 44).

173J No Crown guarantee for debts of Funding Agency

- (1) No debt of the Funding Agency is guaranteed by the Crown.
- (2) If the Funding Agency enters into any loan agreement or incidental arrangement, the agreement or arrangement must include a statement that the loan or liability under the agreement or arrangement is not guaranteed by the Crown.
- (3) However, subsections (1) and (2) do not apply if the Crown is liable (for example, the Crown is liable to pay a debt) under a guarantee or an indemnity given by the Minister, on behalf of the Crown, under section 65ZD of the Public Finance Act 1989.

Compare: 2011 No 77 s 16(1), (2)

Section 173J: inserted, on 23 August 2023, by section 18 of the Water Services Entities Amendment Act 2023 (2023 No 44).

Subpart 10—Protected transactions

Subpart 10: inserted, on 23 August 2023, by section 18 of the Water Services Entities Amendment Act 2023 (2023 No 44).

173K Definitions

In this subpart, unless the context otherwise requires,—

borrowing—

- (a) means the incurring by any means of debt to raise money; and
- (b) includes the incurring of debt—
 - (i) under any contract or arrangement for hire purchase, deferred payment, instalment payment, sale and lease-back or buy-back, financial lease, loan, overdraft, or other arrangement for obtaining debt finance; or

- (ii) by the drawing, acceptance, making, endorsement, issue, or sale of bills of exchange, promissory notes, and other negotiable instruments and debt securities; or
- (iii) by the use, for any purpose, of funds received or invested by a water services entity for any other purpose if the water services entity has resolved to repay, with or without interest, the funds used; but
- (c) does not include debt incurred in connection with the hire purchase of goods, the deferred purchase of goods or services, or the giving of credit for the purchase of goods or services if—
 - (i) the period for which the indebtedness is outstanding is less than 91 days and the indebtedness is not incurred again promptly after payment; or
 - (ii) the goods or services are obtained in the ordinary course of the water services entity's performance of its lawful responsibilities, on terms and conditions available generally to parties of equivalent creditworthiness, for amounts not exceeding in aggregate an amount—
 - (A) determined by resolution of the water services entity as not being so significant as to require specific authorisation; or
 - (B) recorded for the purposes of this subparagraph in the then current borrowing management policy of the water services entity

charge includes a mortgage, a floating charge, and any other non-possessory security interest deliberately created by the water services entity concerned

incidental arrangement means—

- (a) a contract or an arrangement for the management, reduction, sharing, limiting, assumption, offset, or hedging of financial risks and liabilities in relation to any investment or investments or any loan or loans or other incidental arrangement, whether or not that contract or arrangement involves—
 - (i) the expenditure, borrowing, or lending of money; or
 - (ii) a water services entity undertaking to make payments in exchange for another person undertaking to make payments to the water services entity; or
 - (iii) the creation or acquisition or disposal of any property or right; or
- (b) a contract or an arrangement with any bank, financial institution, or other person providing for any person to act as underwriter, broker, indemnifier, guarantor, accommodation party, manager, dealer, trustee, registrar, or paying, fiscal, or other agent for, or in connection with, any loan or investment; or

- (c) the creation of a charge

loan includes the amounts raised or indebtedness incurred, as the context may require, as a result of borrowing

protected transaction means (subject to section 173H, which requires specified arrangements to be treated as protected transactions for the purposes of sections 173L to 173O) all or any of the following:

- (a) any deed, agreement, right, or obligation constituting, relating to, or for the purpose of any borrowing or incidental arrangement:
- (b) any charge, guarantee, or security for the payment of any amount (including any loan) payable in relation to, or for the purpose of any borrowing or incidental arrangement:
- (c) any conveyance or transfer of any property in relation to, or for the purpose of any borrowing or incidental arrangement.

Compare: 2002 No 84 s 112

Section 173K: inserted, on 23 August 2023, by section 18 of the Water Services Entities Amendment Act 2023 (2023 No 44).

173L Protected transactions

- (1) Every protected transaction entered into, or purportedly entered into, by or on behalf of a water services entity is valid and enforceable despite—
- (a) the water services entity failing to comply with any provision of this Act in any respect; or
- (b) the entry into, or performance of, the protected transaction being outside the capacity, rights, or powers of the water services entity; or
- (c) a person held out by the water services entity as being a member of the establishment board, member of the board, or an employee, agent, or attorney, of the water services entity—
- (i) not having been validly appointed as such; or
- (ii) not having the authority to exercise any power or to do anything either that the person is held out as having or that a person appointed to such a position would customarily have; or
- (d) a document issued, or purporting to be issued, on behalf of the water services entity by a person with actual or customary authority, or held out as having such authority, to issue the document not being valid or not being genuine.
- (2) However, nothing in this subpart overrides section 118 (obligation to maintain water services).

Compare: 2002 No 84 s 117

Section 173L: inserted, on 23 August 2023, by section 18 of the Water Services Entities Amendment Act 2023 (2023 No 44).

173M Certificate of compliance

- (1) This section applies to a certificate—
 - (a) signed, or purporting to be signed, by the chief executive of a water services entity; and
 - (b) to the effect that the water services entity has complied with this Act in connection with a protected transaction.
- (2) The certificate is conclusive proof for all purposes that the water services entity has so complied.

Compare: 2002 No 84 s 118

Section 173M: inserted, on 23 August 2023, by section 18 of the Water Services Entities Amendment Act 2023 (2023 No 44).

173N Good faith in relation to protected transactions

- (1) Sections 173L and 173M apply in relation to a protected transaction even though a person of the kind referred to in section 173L(1)(c) or (d) or 173M acts fraudulently or forges a document that appears to have been signed on behalf of the water services entity, unless any person dealing with the water services entity in relation to the protected transaction or a person who had acquired property, rights, or interests from the water services entity acts in bad faith.
- (2) A person may not rely on section 173L or 173M in relation to a protected transaction if that person has dealt in bad faith with a water services entity in relation to the protected transaction.
- (3) For the purpose of subsections (1) and (2),—
 - (a) a person is not regarded as acting in bad faith by reason only of the fact that, in relation to any protected transaction, the person knew or ought to have known of the existence of any of the states of affairs referred to in paragraphs (a) to (d) of section 173L(1); and
 - (b) a person must be presumed to have acted in good faith unless the contrary is proved.

Compare: 2002 No 84 s 119

Section 173N: inserted, on 23 August 2023, by section 18 of the Water Services Entities Amendment Act 2023 (2023 No 44).

173O Savings provision in respect of power of court

Nothing in sections 173K to 173N affects the ability of any person to obtain from a court any remedy that has the effect of preventing or restraining temporarily or permanently a water services entity from doing any act or thing in the future (other than an act or a thing necessary for the performance of a protected transaction that has already been entered into).

Compare: 2002 No 84 s 120

Section 173O: inserted, on 23 August 2023, by section 18 of the Water Services Entities Amendment Act 2023 (2023 No 44).

Part 5 Monitoring

Subpart 1—Monitor

Appointment and role of monitor

174 Appointment and role of monitor

- (1) The Minister must appoint a department to be the monitor.
- (2) The role of the monitor is—
 - (a) to act as a steward to provide oversight of the water services system from a whole of government perspective; and
 - (b) to assist the Minister to carry out the Minister’s role (which is described in section 26); and
 - (c) to perform or exercise any or all of the following functions or powers:
 - (i) administering appropriations:
 - (ii) administering legislation:
 - (iii) tendering advice to Ministers:
 - (iv) any other functions or powers in this Act or another Act that may, or must, be performed by the monitor.
- (3) The monitor may exercise all powers that are—
 - (a) conferred on the monitor by this Act; or
 - (b) reasonably necessary for performing the monitor’s functions and duties.

Compare: 2021 No 31 s 80

Monitor’s information-gathering power

175 Monitor’s power to request information

- (1) The monitor may, by notice in writing, require a water services entity, or any other relevant person, to provide it with information the monitor considers necessary to carry out its role under section 174.
- (2) The entity or other relevant person must provide the information—
 - (a) by the date specified in the notice; or
 - (b) by any other date the monitor has agreed to.
- (3) For the purposes of this section, **relevant person** excludes an officer of Parliament.

Section 175(3): inserted, on 31 August 2023, by section 32 of the Water Services Legislation Act 2023 (2023 No 52).

176 Good reason for refusing to supply requested information

- (1) A request for information made under section 175 may be refused if—
 - (a) the withholding of the information is necessary to protect the privacy of a living natural person; or
 - (b) the supply of the information would limit the ability of the water services entity, or of any of its employees or board members, to perform or exercise duties, functions, or powers under this Act in relation to a particular matter.
- (2) A reason in subsection (1)(a) applies only if it is not outweighed by the monitor's need to have the information in order to exercise or perform its duties, functions, or powers under this Act.
- (3) The information cannot be withheld other than for the reasons in subsection (1), and cannot be withheld at all if it could not properly be withheld under the Local Government Official Information and Meetings Act 1987.

Compare: 2004 No 115 s 134

177 Civil proceedings relating to non-compliance with information request

- (1) The monitor may apply to the High Court for an order if an entity, or other relevant person, does not comply with section 175.
- (2) If the court is satisfied that the entity, or other relevant person, has not complied with section 175, the court may make either or both of the following:
 - (a) an order directing the entity, or other relevant person, to comply with section 175:
 - (b) an order imposing a civil pecuniary penalty not exceeding \$50,000.
- (3) In addition to the orders referred to in subsection (2), the court may make any other order that it considers appropriate in the circumstances, including an order directing the entity, or other relevant person, to pay to the monitor the reasonable costs of the proceedings.

Compare: 2021 No 36 s 143

178 Content of notice

- (1) A notice under section 175 must state—
 - (a) the information required by the monitor; and
 - (b) the form in which the water services entity, or other relevant person, must provide the information; and
 - (c) the date by which the water services entity, or other relevant person, must provide the information.

- (2) The notice may require a water services entity, or other relevant person, to provide information—
- (a) by instalments on specified dates:
 - (b) by instalments at specified intervals.

Compare: 2002 No 84 s 257(3), (5)

Subpart 2—Minister’s powers to intervene

179 Meaning of problem for purposes of subpart

In this subpart, **problem** means a matter, circumstance, or failure (for example, any of the following matters, circumstances, or failures) that has actual or probable adverse consequences for consumers or communities in a water services entity’s service area:

- (a) a matter or circumstance relating to the management or governance of the entity that detracts from, or is likely to detract from, its ability to give effect to its purpose; and
- (b) a significant or persistent failure by the entity—
 - (i) to perform 1 or more of its functions or duties under this Act; or
 - (ii) to give effect to a Government policy statement issued by the Minister under section 132; and
- (c) the consequences of a state of emergency (within the meaning of section 4 of the Civil Defence Emergency Management Act 2002) affecting, or recently affecting, the entity’s service area; and
- (d) a failure by the entity to demonstrate prudent management of its revenues, expenses, assets, liabilities, investments, or general financial dealings; and
- (e) a potential problem that relates to a matter, circumstance, or failure specified in paragraph (a), (b), or (d).

Crown review team

180 Minister may appoint Crown review team

- (1) The Minister may appoint a Crown review team to perform functions under this section if—
- (a) the water services entity has received a notice under section 175 and, without good reason, has not provided the information required by the notice by the stated or agreed date; or
 - (b) the Minister believes on reasonable grounds that a problem relating to the water services entity or the entity’s regional representative group may exist and—

- (i) the water services entity or the entity's regional representative group is unable or unwilling to effectively address the problem; or
 - (ii) a ministerial body currently or previously appointed in relation to the water services entity or the entity's regional representative group has recommended the appointment; or
 - (c) the Minister has received a written request to do so from the water services entity, the entity's regional representative group, or all or any of the entity's territorial authority owners, and the Minister believes on reasonable grounds that a problem relating to the entity or the entity's regional representative group may exist.
- (2) Before appointing a Crown review team, the Minister must give notice of the proposed appointment in accordance with section 190.
- (3) Before the Crown review team begins its review, the Minister must give notice of the appointment in accordance with section 191.
- (4) A Crown review team must, to the extent authorised by its terms of reference,—
- (a) investigate and report on the nature and extent of the problem or failure to provide information; and
 - (b) make recommendations to the water services entity and the Minister on how the water services entity or the entity's regional representative group could address the problem (if any); and
 - (c) make recommendations to the Minister on whether the Minister should take further action in relation to the water services entity or the entity's regional representative group, including whether the Minister should appoint any other ministerial body in relation to the entity or the entity's regional representative group; and
 - (d) ensure, as far as practicable, that the existing organisational capability of the water services entity or the entity's regional representative group is not diminished.
- (5) To the extent authorised by its terms of reference, a Crown review team may also investigate, and report on, any related matter recommended by a ministerial body currently or previously appointed in relation to the water services entity or the entity's regional representative group.
- (6) A water services entity or the entity's regional representative group must—
- (a) co-operate with a Crown review team so that it may comply with its terms of reference; and
 - (b) comply with any reasonable request of the Crown review team to provide any relevant information that the water services entity or the entity's regional representative group holds.

- (7) A Crown review team must produce a final report that complies with section 193 as soon as practicable after completing a review.

Compare: 2002 No 84 s 258

181 Appointment of Crown review team

- (1) A Crown review team comprises 1 or more members.
- (2) If a Crown review team comprises 2 or more members, the Minister must appoint 1 member as the chairperson.
- (3) The Minister must appoint each member by notice in writing.
- (4) Each notice of appointment must include—
- (a) the terms of reference of the Crown review team, including—
 - (i) an outline of the reason it has been appointed to perform functions under section 180; and
 - (ii) the extent of its authority; and
 - (b) the start and end dates of each member’s appointment; and
 - (c) the start and end dates of the review period.

Compare: 2002 No 84 s 258A

Crown observer

182 Minister may appoint Crown observer

- (1) The Minister may appoint a Crown observer to perform functions under this section if—
- (a) the Minister believes, on reasonable grounds, that a problem relating to a water services entity or the entity’s regional representative group exists and—
 - (i) the appointment of a Crown observer is necessary to enable, or better enable, the water services entity or the entity’s regional representative group to effectively address the problem; or
 - (ii) the appointment of a Crown observer is necessary to enable, or better enable, the Minister to monitor the water services entity’s or the entity’s regional representative group’s progress in addressing the problem; or
 - (iii) a ministerial body currently or previously appointed in relation to the water services entity or the entity’s regional representative group has recommended the appointment; or
 - (b) the Minister has received a written request to do so from the water services entity, the entity’s regional representative group, or all or any of the entity’s territorial authority owners, and the Minister believes, on reasonable grounds, that a problem relating to the entity or the entity’s regional representative group exists.

- (2) Before appointing a Crown observer, the Minister must give notice of the proposed appointment in accordance with section 190.
- (3) Before the Crown observer begins their observation period, the Minister must give notice of the appointment in accordance with section 191.
- (4) A Crown observer must, to the extent authorised by the Crown observer's terms of reference,—
 - (a) assist the water services entity or the entity's regional representative group to address the problem; and
 - (b) monitor the water services entity's or the entity's regional representative group's progress in relation to the problem; and
 - (c) make recommendations to the Minister on whether the Minister should take further action in relation to the water services entity or the entity's regional representative group, including whether the Minister should appoint any other ministerial body in relation to the entity or the entity's regional representative group; and
 - (d) ensure, as far as practicable, that the existing organisational capability of the water services entity or the entity's regional representative group is not diminished; and
 - (e) assist the water services entity or the entity's regional representative group with, and monitor progress on, any related matter as recommended by a ministerial body currently or previously appointed in relation to the entity or the entity's regional representative group.
- (5) A water services entity or the entity's regional representative group must—
 - (a) co-operate with a Crown observer so that it may comply with its terms of reference; and
 - (b) comply with any reasonable request of the Crown observer to provide any relevant information that the water services entity or the entity's regional representative group holds.
- (6) A Crown observer must produce a final report that complies with section 193 as soon as practicable after its observation period ends.

Compare: 2002 No 84 s 258B

183 Appointment of Crown observer

- (1) The Minister must appoint a Crown observer by notice in writing.
- (2) Each notice of appointment must include—
 - (a) the terms of reference of the Crown observer, including—
 - (i) an outline of the problem that the Crown observer has been appointed to observe; and
 - (ii) the extent of the Crown observer's authority; and
 - (b) the start and end dates of the Crown observer's appointment; and

- (c) the start and end dates of the observation period.

Compare: 2002 No 84 s 258C

Crown manager

184 Minister may appoint Crown manager

- (1) The Minister may appoint a Crown manager to perform functions under this section if—
- (a) the Minister believes, on reasonable grounds, that a problem relating to the water services entity or the entity's regional representative group exists and—
- (i) the nature and extent of the problem is such that the water services entity or the entity's regional representative group is unlikely to effectively address the problem without the appointment of a Crown manager; or
- (ii) the water services entity or the entity's regional representative group has not, without good reason, adequately implemented a recommendation of any other ministerial body in relation to the problem; or
- (iii) a ministerial body currently or previously appointed in relation to the water services entity or the entity's regional representative group has recommended the appointment; or
- (b) the Minister has received a written request to do so from the water services entity, the entity's regional representative group, or all or any of the entity's territorial authority owners, and the Minister believes, on reasonable grounds, that a problem relating to the entity or the entity's regional representative group exists.
- (2) Before appointing a Crown manager, the Minister must give notice of the proposed appointment in accordance with section 190.
- (3) Before the Crown manager begins their management period, the Minister must give notice of the appointment in accordance with section 191.
- (4) A Crown manager must, to the extent authorised by their terms of reference,—
- (a) direct the water services entity, or the board of the water services entity, or the entity's regional representative group to act to address the problem; and
- (b) make recommendations to the Minister on whether the Minister should take further action in relation to the water services entity or the entity's regional representative group, including whether the Minister should appoint any other ministerial body in relation to the entity or the entity's regional representative group; and

- (c) ensure, as far as practicable, that the existing organisational capability of the water services entity or the entity's regional representative group is not diminished; and
 - (d) direct the water services entity or the entity's regional representative group on any related matter as recommended by a ministerial body currently or previously appointed in relation to the entity or the entity's regional representative group.
- (5) A Crown manager may work together with, or apart from, the board of a water services entity, or the entity's regional representative group.
- (6) A water services entity or the entity's regional representative group must—
- (a) co-operate with a Crown manager so that it may comply with its terms of reference; and
 - (b) comply with the directions of a Crown manager; and
 - (c) comply with any reasonable request of a Crown manager to provide any relevant information that the water services entity or the entity's regional representative group holds.
- (7) A Crown manager must produce a final report that complies with section 193 as soon as practicable after their management period ends.

Compare: 2002 No 84 s 258D

185 Appointment of Crown manager

- (1) The Minister must appoint a Crown manager by notice in writing.
- (2) Each notice of appointment must include—
- (a) the terms of reference of the Crown manager, including—
 - (i) an outline of the problem it has been appointed to manage; and
 - (ii) the extent of the Crown manager's authority; and
 - (b) the start and end dates of the Crown manager's appointment; and
 - (c) the start and end dates of the management period.

Compare: 2002 No 84 s 258E

Subpart 3—General provisions applying to Minister's powers to intervene

186 Application

This subpart applies in relation to any appointment the Minister makes under subpart 2.

187 Minister may consult

The Minister may consult any person, organisation, or group—

- (a) when determining what action, if any, to take under subpart 2:

- (b) when appointing a ministerial body:
- (c) when formulating the terms of reference for a ministerial body.

Compare: 2002 No 84 s 258N

188 Minister must publish list of matters

- (1) The Minister must publish a list of matters relevant to determining what action, if any, the Minister will take under subpart 2.
- (2) Without limiting subsection (1), the list must include the following matters:
 - (a) guiding principles that the Minister is likely to adopt when making decisions under this Part:
 - (b) matters or circumstances relating to the management or governance of a water services entity that the Minister considers are likely to detract from the ability of the entity to give effect to its objectives or undertake its functions:
 - (c) the types and sources of information that the Minister is likely to consider when making decisions under this Part.
- (3) The Minister must review the list no later than 5 years after the date on which it is published and later at intervals of no more than 5 years after the most recent review.
- (4) The Minister must republish the list after each review.
- (5) Before publishing or republishing a list, the Minister—
 - (a) must consult Local Government New Zealand; and
 - (b) may consult any other person, organisation, or group.
- (6) In this section, **publish** and **republish** mean to publish in the *Gazette* and on an Internet site maintained by, or on behalf of, the monitor.

Compare: 2002 No 84 s 258O

189 Minister must have regard to published list

- (1) The Minister must, when determining what action, if any, to take under subpart 2, have regard to the list published under section 188.
- (2) However, the Minister may act under subpart 2 and appoint a ministerial body in relation to a water services entity even if the problem in relation to the water services entity does not relate to a matter on the list.

Compare: 2002 No 84 s 258P

190 Notice of proposed appointment of ministerial body

- (1) Before appointing a ministerial body to perform functions under this subpart in relation to a water services entity, the Minister must—
 - (a) give the entity and the entity's regional representative group notice that the Minister intends to make the appointment; and

- (b) state—
 - (i) the reasons for the proposed appointment; and
 - (ii) the proposed terms of reference; and
- (c) give the entity an opportunity to satisfy the Minister of the following matters, as applicable, by a date specified in the notice, which must be no earlier than 10 working days after the date on which the Minister gives the notice to the entity:
 - (i) that the reasons for the Minister to make the appointment do not exist;
 - (ii) that the water services entity is acting effectively to address the problem (if any) or the reasons for the proposed appointment;
 - (iii) that, for any other reason, the Minister should not make the appointment;
 - (iv) that the Minister should appoint a different ministerial body.
- (2) The Minister must notify a water services entity, in writing, if the Minister decides not to appoint a ministerial body.
- (3) This section does not apply if—
 - (a) the water services entity has requested the Minister to make the appointment; or
 - (b) the problem in relation to which the Minister intends to make the appointment relates to the consequences of a state of emergency and the Minister believes, on reasonable grounds, that the public health or safety of the people within the water services entity's service area is, or is likely to be, endangered.

Compare: 2002 No 84 s 258Q

191 Notice of appointment of ministerial body

- (1) A notice of appointment of a ministerial body under section 180(3), 182(3), or 184(3) must—
 - (a) be in writing; and
 - (b) be given as soon as is reasonably practicable after the Minister makes the appointment; and
 - (c) be sent to the relevant water services entity and the entity's regional representative group; and
 - (d) be published in the *Gazette*; and
 - (e) be publicly notified.
- (2) A notice of appointment must include—
 - (a) a statement that the Minister has appointed a ministerial body in relation to the relevant water services entity; and

- (b) the type of ministerial body appointed; and
 - (c) the terms of reference; and
 - (d) the start and end dates of the ministerial body's appointment; and
 - (e) the name of each member of the ministerial body; and
 - (f) if applicable, the name of the chairperson of the ministerial body.
- (3) The Minister must notify any change in the membership of a ministerial body by notice in the *Gazette*.
- (4) In this section, **publicly notify** means to publish—
- (a) a notice on an Internet site maintained by, or on behalf of, the monitor; and
 - (b) any other notice that the Minister thinks desirable in the circumstances.

Compare: 2002 No 84 ss 258S, 258T

192 Information to Minister

A ministerial body must inform the Minister about—

- (a) the steps it is taking to address the problem; and
- (b) the progress of those steps.

Compare: 2020 No 47 s 128(1)

193 Final report of ministerial body

- (1) A final report produced by a ministerial body under section 180(7), 182(6), or 184(7) must include—
- (a) a narrative description of the activities of the ministerial body in relation to its terms of reference; and
 - (b) in respect of the problem in relation to which the ministerial body was appointed, an assessment of progress in addressing the problem; and
 - (c) any final recommendations of the ministerial body to all or any of the Minister, the water services entity, and the entity's regional representative group; and
 - (d) without limiting paragraph (c), any final recommendations of the ministerial body to the Minister on whether the Minister should take further action in relation to the water services entity or the entity's regional representative group, including whether the Minister should appoint any other ministerial body in relation to the entity or the entity's regional representative group; and
 - (e) any other matter required by the ministerial body's terms of reference.
- (2) The Minister must, as soon as practicable,—
- (a) give a copy of the report to the relevant water services entity and the entity's regional representative group; and

- (b) make the report publicly available, excluding any information that it is necessary to withhold for any of the reasons stated in section 6 or 7 of the Local Government Official Information and Meetings Act 1987.

Compare: 2002 No 84 s 258U

194 Remuneration and expenses of ministerial appointees

- (1) A ministerial appointee is entitled—
 - (a) to receive remuneration for services as a member of a ministerial body as determined by the Minister in accordance with the fees framework; and
 - (b) to be reimbursed for actual and reasonable travelling and other expenses incurred in providing the services as a member in accordance with the fees framework.
- (2) In this section, **fees framework** means the framework determined by the Government from time to time for the classification and remuneration of statutory and other bodies in which the Crown has an interest.

Compare: 2002 No 84 s 258V

195 Recovery of expenses from water services entity

- (1) A water services entity owes, as a debt to the Crown, any expenses that the Crown incurs for the appointment of a Crown manager in relation to the entity, including the payment of remuneration and expenses to the Crown manager.
- (2) Any expenses that the Crown incurs for the appointment of a Crown observer or a Crown review team in relation to a water services entity, including the payment of remuneration and expenses to the Crown observer or any member of the Crown review team, may be recovered by the Crown from the entity if—
 - (a) the Minister decides that it is reasonable to do so in the circumstances; and
 - (b) the terms of reference authorise the recovery.

Compare: 2002 No 84 s 258W

196 Minister may terminate appointment of ministerial body or ministerial appointee

- (1) The Minister may terminate the appointment of a ministerial body or ministerial appointee at any time by notice in writing.
- (2) The Minister must give notice of the termination of a ministerial body—
 - (a) in writing to the water services entity and the entity's regional representative group; and
 - (b) by notice in the *Gazette*; and
 - (c) by public notice.

- (3) The Minister must give notice of the termination of the appointment of a ministerial appointee in writing to the appointee, the water services entity, and the entity's regional representative group.
- (4) No compensation is payable to a ministerial appointee as a result of the appointee's termination.

Compare: 2002 No 84 s 258X

197 Protection from liability for ministerial appointees

- (1) A ministerial appointee is not liable for any act done or omitted to be done by the appointee in good faith in the performance or intended performance of the appointee's functions, responsibilities, and duties, or the exercise of the appointee's powers as a ministerial appointee.
- (2) The protection from liability in subsection (1) includes protection in relation to acts done or omitted to be done by a Crown manager when directing a water services entity to act.

Compare: 2002 No 84 s 258Y

198 Disclosure of information held by water services entity

- (1) For the purposes of this Part, information held by a water services entity may be disclosed to the Minister or a ministerial body despite anything to the contrary in the Official Information Act 1982, the Local Government Official Information and Meetings Act 1987, or the Privacy Act 2020.
- (2) However, the Minister, the ministerial body, or a ministerial appointee must not publish or disclose the information to any other person except in accordance with those Acts.

Compare: 2002 No 84 s 258Z

199 Decisions and directions of Crown manager remain in force

On and from the expiry of the term of a Crown manager appointed in relation to a water services entity,—

- (a) a direction given to the water services entity by the Crown manager ceases to have effect; and
- (b) despite paragraph (a), any decision made by the water services entity giving effect to the direction continues in force unless and until the board of the entity revokes or amends the decision.

Compare: 2002 No 84 s 258ZA(1), (2), (3)

Part 5A

Relationship agreements

Part 5A: inserted, on 31 August 2023, by section 33 of the Water Services Legislation Act 2023 (2023 No 52).

199A Requirement to enter into relationship agreement

- (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;
 - (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
 - (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).

Section 199A: inserted, on 31 August 2023, by section 33 of the Water Services Legislation Act 2023 (2023 No 52).

199B Contents of relationship agreement

- (1) A relationship agreement 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 (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
 - (iii) how the parties will engage with each other, and work together, in relation to the provision of, and planning for, water services; and

- (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.
- (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.

Section 199B: inserted, on 31 August 2023, by section 33 of the Water Services Legislation Act 2023 (2023 No 52).

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 244.
- (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 the Natural and Built Environment Act 2023; and
 - (b) resource consents issued under Part 6 of the Natural and Built Environment Act 2023; and
 - (c) when the territorial authority is performing or exercising its functions, duties, or powers under Part 10 of the Natural and Built Environment Act 2023.

Section 199C: inserted, on 31 August 2023, by section 33 of the Water Services Legislation Act 2023 (2023 No 52).

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.

Section 199D: inserted, on 31 August 2023, by section 33 of the Water Services Legislation Act 2023 (2023 No 52).

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.

Section 199E: inserted, on 31 August 2023, by section 33 of the Water Services Legislation Act 2023 (2023 No 52).

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.

Section 199F: inserted, on 31 August 2023, by section 33 of the Water Services Legislation Act 2023 (2023 No 52).

Part 6

Provisions relating to water services infrastructure

Part 6: replaced, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

Subpart 1—Water services infrastructure on, over, or under land

Subpart 1: replaced, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

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) 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
 - (b) if it has complied with section 203.
- (3) A water services entity must exercise the power to carry out work specified in subsection (1)(b), (c), or (d) 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).
- (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—
 - (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.

Compare: 2001 No 103 s 135

Section 200: replaced, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

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—
 - (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 30 working days before the proposed work is to start; 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
 - (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).

Section 201: replaced, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

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).
- (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

Section 202: replaced, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

203 Process if consent to carry out work under section 200(1)(a) refused or granted subject to unreasonable conditions

- (1) This section applies if an owner of land has received a notice under section 201 that a water services entity proposes to carry out work specified in section 200(1)(a) and the owner of land—

- (a) has not granted consent to the work being carried out within 30 working days of receiving the notice from the water services entity under section 201; or
 - (b) has notified the water services entity that the owner consents to the work being carried out subject to conditions but the water services entity considers those conditions to be unreasonable.
- (2) The water services entity must—
- (a) appoint a day for a hearing in relation to the matter; and
 - (b) give the owner reasonable notice of the day, time, and place of hearing so as to enable the owner to attend the hearing; and
 - (c) hold a meeting on the day appointed, and may, after hearing any matters raised by the owner, if present, determine—
 - (i) to abandon the works proposed; or
 - (ii) to proceed with the works proposed, with or without any alterations that the water services entity thinks fit.
- (3) A person who is aggrieved by a determination of the water services entity under subsection (2)(c)(ii) to proceed with the proposed works (with or without alterations) may appeal to the District Court under section 229.
- (4) Pending the decision of the court on the appeal, the water services entity must not proceed with the proposed works.

Compare: 2002 No 84 Schedule 12 cl 1(d), (e), (2), (3)

Section 203: replaced, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

204 Application to District Court if consent to carry out work under section 200(1)(b) to (d) refused or granted subject to unreasonable conditions

- (1) This section applies if an owner of land has received a notice under section 201 that a water services entity proposes to carry out work specified in any of section 200(1)(b) to (d) and the owner of land—
- (a) has not granted consent to the work being carried out within 30 working days of receiving the notice from the water services entity under section 201; or
 - (b) has notified the water services entity that the owner consents to the work being carried out subject to conditions but the water services entity considers those conditions to be unreasonable.
- (2) The water services entity may apply to the District Court for an order under this section 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.

- (4) The District Court may, if satisfied that the requirements in subsection (5) 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;
 - (b) carry out the work.
- (5) The requirements are that—
- (a) carrying out the work is necessary or desirable for the provision of water services; and
 - (b) the water services entity has taken reasonable steps to 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.
- (6) An order made under subsection (4) must specify—
- (a) how and when entry may be made; and
 - (b) the specific powers that may be exercised; and
 - (c) any other conditions (including conditions relating to the payment of compensation under the Public Works Act 1981) that the District Court thinks fit to impose.
- (7) Before making an order under subsection (4), the District Court must have regard to the particulars of any applicable resource consent or building consent.

Compare: 2001 No 103 ss 121, 122

Section 204: replaced, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

205 Service of order

Before exercising any powers authorised by an order made under section 204, the water services entity must serve a copy of the order on the owner and occupier of the land to which the order relates.

Compare: 2001 No 103 s 123

Section 205: replaced, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

206 Requirement to produce evidence of authority and identity

An officer, employee, or agent of a water services entity acting under an order made under section 204 must produce evidence of their authority and identity—

- (a) on initial entry; and
- (b) after the initial entry, on request.

Compare: 2001 No 103 s 124

Section 206: replaced, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

206A Report on engagement

[Repealed]

Section 206A: repealed, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

Specific requirements for carrying out work in relation to water services infrastructure on or under Maori land

Heading: replaced, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

207 Specific requirements for carrying out work under section 200(1) in relation to land on which marae or urupā is situated or that is Maori reservation

- (1) This section applies if a water services entity wishes to carry out any work described in section 200(1) in relation to water services infrastructure on, over, or under the following:
 - (a) land on which a marae or an urupā is situated;
 - (b) land that is a Maori reservation.
- (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 to carry out the work; and
 - (b) at least 30 working days before commencing the work, it has given notice to the owners and any occupier of the land of its intention to enter the land and carry out the work.
- (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.

Section 207: replaced, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

208 Specific requirements for carrying out work under section 200(1)(a) in relation to Maori land with more than 10 owners

- (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, over, or under Maori land with more than 10 owners; or
 - (b) work described in any of section 200(1)(b) to (d) in relation to water services infrastructure on, over, or under land—
 - (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:
 - (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;
 - (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.
- (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.

Section 208: replaced, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

209 Specific requirements for carrying out work under section 200(1)(b) to (d) in relation to Maori land with more than 10 owners

- (1) This section applies if a water services entity wishes to carry out any work described in any of section 200(1)(b) to (d) in relation to water services infrastructure on, over, or under land—
- (a) that is Maori land with more than 10 owners; and
 - (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:
- (a) obtained the consent of the owners of the land;
 - (b) 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;
 - (c) 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;
 - (d) 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.

Section 209: replaced, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

210 Notice required before carrying out work on or under reserve vested in post-settlement governance entity

- (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
 - (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.
- (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.

Section 210: replaced, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

Subpart 2—Water services infrastructure on or under roads

Subpart 2: replaced, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

Amendments to Crown Organisations (Criminal Liability) Act 2002

[Repealed]

Heading: repealed, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

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;
 - (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;
 - (c) for the purposes of paragraphs (a) and (b),—
 - (i) working in any road:

- (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.
- (2) A water services entity must exercise the powers specified in subsection (1) 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.

Compare: 2001 No 103 s 135

Section 211: replaced, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

212 Notice required before carrying out work on or under road

- (1) Before a water services entity proceeds to carry out any work under section 211(1), the water services 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.
- (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; and
 - (c) specify—
 - (i) the location of the proposed work; and
 - (ii) the date and time when the proposed work is to start; and
 - (iii) the nature of the work to be carried out and the reasons for it; and
 - (iv) the length of time the water services entity expects the work to continue.

Compare: 2001 No 103 s 136

Section 212: replaced, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

213 Water services entity to be notified of conditions

- (1) Not later than 15 working days after receiving notice of a water services entity's intention to carry out work under section 211(1), 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 section 211(2).
- (2) If a person 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

Section 213: replaced, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

Subpart 3—Level crossings

Subpart 3: replaced, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

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
 - (b) has been unable to negotiate an agreement for entry 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 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.
- (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:
 - (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
 - (b) the water services entity has taken all reasonable steps to negotiate an agreement for entry onto the land; and
 - (c) in relation to the construction or placement of the water services infrastructure, no practical alternative route exists.
- (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:
 - (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
 - (ii) the specific powers that may be exercised; and

- (iii) any other conditions (including conditions relating to the payment of compensation) that the District Court thinks fit to impose.

Compare: 1992 No 122 s 31; 1992 No 124 s 32

Section 214: replaced, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

Amendments to Goods and Services Tax Act 1985

[Repealed]

Heading: repealed, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

215 Service of order

Before exercising any powers authorised by an order made under section 214(3), the water services entity must serve a copy of the order on the owner of the level crossing to which the order relates.

Compare: 2001 No 103 s 123

Section 215: replaced, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

216 Requirement to produce evidence of authority and identity

An officer, employee, or agent of a water services entity acting under an order made under section 214(3) must carry and produce evidence of their authority and identity—

- (a) on initial entry; and
- (b) after the initial entry, on request.

Compare: 2001 No 103 s 124

Section 216: replaced, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

Subpart 4—Further provisions relating to water services infrastructure

Subpart 4: replaced, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

Immediate action in emergency

Heading: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

217 Power to take immediate action in case of emergency or specified serious risk

- (1) This section applies if—
 - (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 immediate action is necessary to respond to the emergency; or

- (b) an officer, employee, or agent of a water services entity believes, on reasonable grounds, that a specified serious risk exists.
- (2) An officer, employee, or agent of a water services entity—
 - (a) may take immediate action to carry out any work described in—
 - (i) section 200(1)(a) or 207(1) without complying with the requirement to obtain consent before entering the land; and
 - (ii) section 200(1)(b) or (c) or 211(1) without complying with the requirement to give notice before entering the land; and
 - (b) must give the information required by section 201(2)(c) or 212(2)(c) as soon as practicable after commencing the work, including by providing information about the action taken and the reasons for taking the action.
- (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.

Section 217: replaced, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

Compensation

Heading: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

218 Compensation

- (1) The exercise of a power set out in section 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.

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

Section 218: replaced, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

Protection and maintenance of water services infrastructure

Heading: replaced, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

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

- (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.

Compare: 2001 No 103 s 155

Section 219: replaced, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

220 Management and maintenance of water services infrastructure

- (1) A water services entity must manage and maintain the water services infrastructure in its service area (including meeting the costs of doing so).
- (2) 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 corridor manager) within the meaning of section 253.
- (3) 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.
- (4) However, if the owner or occupier has—
 - (a) impaired or altered a stormwater network (including, without limitation, any overland flow path or watercourse) on their land in breach of a stormwater network rule made under section 261, the owner or occupier must—
 - (i) carry out remedial work to eliminate the impairment or reinstate 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 reinstate the stormwater network to the state it was in before its impairment or alteration; or
 - (b) otherwise breached a stormwater network rule made under section 261, the owner or occupier must meet the reasonable costs of eliminating any impairment to a stormwater network that the breach has caused.
- (5) 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.

- (6) 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.
- (7) Nothing in subsections (1) to (5) 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

Section 220: replaced, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

221 Remedial work must meet certain requirements

- (1) Remedial work carried out under section 220 in respect of a stormwater network (including, without limitation, carried out in respect of any overland flow path or watercourse) must—
 - (a) be carried out as soon as is reasonably practicable; and
 - (b) comply with any relevant restrictions, requirements, conditions, standards, authorisations, or prohibitions in a stormwater network rule.
- (2) If an owner or occupier of land carries out work to eliminate an impairment to, or to reinstate, a stormwater network on their land under section 220(4)(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
 - (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)

Section 221: replaced, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

Moving water services infrastructure

Heading: replaced, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

222 Owner or occupier of land may require water services infrastructure to be moved

- (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—
 - (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.
- (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.
- (5) A notice under subsection (4) must—
 - (a) be in writing; and
 - (b) be given at least 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—
 - (a) advising whether it consents to the work; and
 - (b) stating any reasonable conditions it wishes to specify for the work.

Compare: 1992 No 122 s 35; 1992 No 124 s 36

Section 222: replaced, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

223 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.
- (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
 - (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.

- (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—
 - (a) by agreement between the parties; or
 - (b) failing that agreement, by arbitration under the Arbitration Act 1996.

Compare: 1992 No 122 s 33

Section 223: replaced, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

Information and approval

Heading: replaced, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

224 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.
- (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.
- (5) The water services entity must update the information provided under this section annually.

Section 224: replaced, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

225 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.
- (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) An application under subsection (2) must—
 - (a) be in the form approved by the chief executive of the water services entity for the purpose; and
 - (b) be accompanied by the application fee (if any) set by the chief executive of the water services entity.

- (4) 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.
- (5) 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:
 - (b) decline the application if it reasonably considers that no other practical alternative is available.
- (6) 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.

Section 225: replaced, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

Miscellaneous

Heading: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

226 Prohibition on charging for access to certain water services infrastructure

- (1) A water services entity is not required to pay rent to the Crown in relation to any land in 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.

Compare: 2009 No 32 s 59

Section 226: replaced, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

Amendment to Ombudsmen Act 1975

[Repealed]

Heading: repealed, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

227 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.

Section 227: replaced, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

228 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.
- (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.

Section 228: replaced, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

Subpart 5—Appeals

Subpart 5: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

Amendment to Public Audit Act 2001

[Repealed]

Heading: repealed, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

229 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—
- (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) a determination made by a water services entity under section 203(3):
 - (b) a refusal of a water services entity to consent to the owner or occupier moving water services infrastructure under section 222:
 - (c) all or any of the conditions on carrying out work imposed by a water services entity under section 225(5).

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 determination, refusal, or conditions imposed (as the case may be); or
 - (b) within any further time that the District Court may allow.
- (4) The District Court may, in relation to an appeal made under subsection (1), do 1 or more of the following:
- (a) confirm, modify, or cancel all or any of the conditions imposed:
 - (b) impose new conditions.
- (5) The District Court may, in relation to an appeal made under subsection (2)(a) or (b), confirm or reverse the determination or decision.
- (6) The District Court may, in relation to an appeal made under subsection (2)(c),—
- (a) confirm, modify, or cancel all or any of the conditions imposed:
 - (b) impose new conditions.

Compare: 2001 No 103 s 141

Section 229: replaced, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

230 Appeals to High Court

- (1) A person may appeal to the High Court on a question of law only in relation to—
- (a) an order made by the District Court under section 204; or
 - (b) a decision of the District Court made under section 229.
- (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
 - (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

Section 230: replaced, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

*Amendment to Public Records Act 2005**[Repealed]*

Heading: repealed, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

231 Appeals to Court of Appeal or Supreme Court

- (1) A party to an appeal under section 230 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.
- (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).

Compare: 2021 No 36 s 96

Section 231: replaced, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

232 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 any work described in section 200(1) in respect of any Maori land.
- (2) An appeal must be made by giving notice of appeal—
 - (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.

Section 232: replaced, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

*Amendments to Taumata Arowai—the Water Services Regulator Act 2020**[Repealed]*

Heading: repealed, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

233 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 232.
- (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
 - (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.

Section 233: replaced, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

Part 7

Controlled drinking water catchments

Part 7: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

234 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:
- (a) a geographic area that surrounds surface water:
 - (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.
- (3) A notice made under subsection (1) is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Legislation Act 2019 requirements for secondary legislation made under this section

Publication	The maker must— <ul style="list-style-type: none">• notify it in the <i>Gazette</i>• publish it on an Internet site maintained by, or on behalf of, the water services entity	LA19 ss 73, 74(1)(a), Sch 1 cl 14
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 234: replaced, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

*Amendments to Water Services Act 2021**[Repealed]*

Heading: repealed, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

235 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 drinking water in the area.
- (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—
 - (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
 - (d) may specify 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.
- (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.
- (5) The board of the water services entity must review its controlled drinking water catchment management plan in accordance with section 477.
- (6) A notice made under subsection (1) is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Legislation Act 2019 requirements for secondary legislation made under this section

Publication	The maker must— <ul style="list-style-type: none">• notify it in the <i>Gazette</i>• publish it on an Internet site maintained by, or on behalf of, the water services entity	LA19 ss 73, 74(1)(a), Sch 1 cl 14
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 235: replaced, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

236 Chief executive of water services entity may issue permit relating to activities in controlled drinking water catchment area

- (1) 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.
- (2) A permit must give effect to any relevant requirements relating to permits set out in a controlled drinking water catchment management plan issued under section 235.

Section 236: replaced, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

237 Engagement on controlled drinking water catchment management plan

- (1) 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.
- (2) In conducting the engagement, the board of a water services entity must—
 - (a) comply with the requirements set out in section 472; and
 - (b) be guided and informed by the principles set out in section 473; and
 - (c) prepare and publish a report on the engagement in accordance with section 476.

Section 237: replaced, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

Part 8

Small mixed-use rural water supplies

Part 8: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

238 Requirement to prepare rural supply plan for small mixed-use rural water supplies

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

- (2) The chief executive of a water services entity must publish a rural supply plan prepared under this section on an Internet site maintained by, or on behalf of, the water services entity in a format that is readily accessible.

Section 238: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

239 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
- (c) provide the water services entity with a means to engage with consumers about supply arrangements.

Section 239: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

240 Contents of rural supply plan

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

- (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
- (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.

Section 240: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

241 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—
 - (a) comply with section 472; and
 - (b) be guided and informed by the principles set out in section 473; and
 - (c) prepare and publish a report on the engagement in accordance with section 476.

Section 241: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

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

The chief executive of a water services entity must—

- (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.

Compare: 2021 No 36 s 136(7)

Section 242: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

243 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)

Section 243: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

Part 9

Service provider and water services assessment obligations

Part 9: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

Subpart 1—Water services assessments

Subpart 1: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

244 Access to 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 water services by undertaking an assessment of those services under this section (a **water services assessment**).
- (2) A water services assessment must—
 - (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—
 - (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
- (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
- (e) assess the adequacy of 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
 - (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 stormwater and sewage discharges within its service area; and
- (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—
 - (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 water services, including (without limitation) for Māori; and
- (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),—
 - (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

- (ii) consider communities or populations that might have deficient water services or no services; and
 - (iii) outline a plan that provides for the ongoing access of those communities and populations to the services; and
 - (iv) have regard to the water services entity's asset management plan and infrastructure strategy.
- (3) A water services assessment,—
 - (a) in relation to water supply, does not include assessments in relation to domestic self-suppliers:
 - (b) in relation to wastewater, does not include assessments in relation to properties with on-site wastewater services arrangements (for example, septic tanks).

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

Section 244: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

245 When water services assessments must be conducted

- (1) The board of a water services entity—
 - (a) must conduct its first water services assessment before 1 July 2029:
 - (b) must, after it completes its first water services assessment, conduct 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):
 - (c) may conduct 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 stormwater services).
- (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 stormwater services for a community or population within territorial authority district boundaries in its service area.

Compare: 2002 No 84 s 125

Section 245: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

246 Additional considerations for water services assessments

- (1) The board of a water services entity—
 - (a) must invite 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

- (b) must take the water services assessment into account in its asset management plans, funding and pricing plans, and stormwater management plans.
- (2) In complying with subsection (1), the board of a water services entity must—
 - (a) comply with section 472; and
 - (b) be guided and informed by the principles set out in section 473; and
 - (c) prepare and publish a report on the engagement in accordance with section 476.
- (3) For the purposes of this section and sections 244 and 245,—
 - (a) **water services assessment** includes—
 - (i) assessing a service for the first time; and
 - (ii) reviewing and updating an existing assessment:
 - (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
 - (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 a water services assessment water supply services that are owned or operated by the Crown:
 - (d) a water services 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—
 - (i) an iwi or Māori organisation:
 - (ii) a relevant territorial authority or regional council.

Compare: 2002 No 84 ss 14(1)(c), 125

Section 246: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

247 Regional representative group review of proposed water services assessments

Before finalising a water services assessment, the board of a water services entity must—

- (a) provide its regional representative group with a copy of the proposed water services assessment; and
- (b) give the group 2 months to review and comment on the proposed water services assessment; and
- (c) take into account the group's comments (if any) before finalising the water services assessment.

Section 247: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

248 Requirements following water services assessments

- (1) On completion of a water services assessment, the chief executive of a water services entity must—
 - (a) make the water services 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 water services assessment in electronic form.
- (2) The chief executive must also notify Taumata Arowai about—
 - (a) any drinking water suppliers 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 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
 - (ii) a drinking water supplier that is at risk of ceasing to provide a service.

Compare: 2002 No 84 s 126

Section 248: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

249 Duty to ensure communities have access to drinking water if existing supplier faces significant problems

- (1) Subsection (2) applies if—
 - (a) a water services entity's or Taumata Arowai's assessment of drinking water is that the supplier (not being the water services entity) is facing a significant problem or potential problem with its drinking water, and the water services entity has notified Taumata Arowai of those concerns and discussed them with Taumata Arowai; or
 - (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:
 - (i) an immediate solution to the problem;
 - (ii) a temporary solution to the problem;
 - (iii) a long-term, permanent solution to the problem; and
 - (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.
- (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
 - (b) there is a serious risk to public health relating to the drinking water 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—
- (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.
- (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—
- (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

- (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 that 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—
 - (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 funding and pricing plan; and
 - (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).

Compare: 2002 No 84 s 127

Section 249: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

Fire hydrant provisions

Heading: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

250 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 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

Section 250: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

251 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 250.
- (2) Subsection (1) does not apply—
- (a) in the case of an unusual drought, an accident, or 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

Section 251: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

Subpart 2—Stormwater provisions

Subpart 2: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

252 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
 - (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

- (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
- (e) provide Taumata Arowai with oversight of the stormwater management of water services entities.

Section 252: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

253 Interpretation

In this subpart, unless the context otherwise requires,—

private stormwater network—

- (a) means the infrastructure owned or operated by, or processes used by, a private stormwater network owner or operator to collect, treat, drain, store, reuse, or discharge stormwater in an urban area that connects or discharges to a stormwater network of a water services entity; and
- (b) includes—
 - (i) an overland flow path:
 - (ii) green water services infrastructure that delivers stormwater water services

private stormwater network owner or operator means a person who—

- (a) owns or operates a private stormwater network in an urban area that connects or discharges to a stormwater network of a 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:
- (b) a department:
- (c) the New Zealand Defence Force:
- (d) a transport corridor manager:
- (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 (c)

public stormwater network—

- (a) means the infrastructure owned or operated by, or processes used by, a public stormwater network owner or operator to collect, treat, drain,

store, reuse, or discharge stormwater in an urban area that connects or discharges to a stormwater network of a water services entity; and

- (b) includes—
 - (i) an overland flow path:
 - (ii) green water services infrastructure that delivers stormwater water services

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 a water services entity.

Section 253: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

Stormwater management strategies

Heading: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

254 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
 - (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
 - (c) any stormwater network rules that apply to 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.
- (2) Before issuing or amending its stormwater management strategy, the board of the 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
 - (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

- (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.
- (3) The chief executive of the water services entity must publish the final stormwater management strategy on an Internet site maintained by, or on behalf of, the water services entity in a format that is readily accessible.
- (4) 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.
- (5) The board of a water services entity must—
 - (a) review its stormwater management strategy at least once every 5 years:
 - (b) provide Taumata Arowai with its updated stormwater management strategy as soon as practicable following the review.

Section 254: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

255 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 472; and
 - (b) be guided and informed by the principles set out in section 473; and
 - (c) prepare and publish a report on the engagement in accordance with section 476.

Section 255: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

Stormwater management plans

Heading: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

256 Stormwater management plans

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

Compare: 2021 No 36 s 139(1)

Section 256: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

257 Purpose of stormwater management plans

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

- (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.

Section 257: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

258 Contents of stormwater management plans

- (1) A stormwater management plan must—

Outcomes

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

Information

- (b) identify the geographical zones (on a catchment-level basis) and set out the areas that each stormwater network serves; and
- (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
- (e) specify any statutory requirements that relate to the stormwater networks (for example, stormwater environmental performance standards or conditions in resource consents); and
- (f) provide the relevant details about any wastewater networks that are part of, or related to, a stormwater network; and
- (g) 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

- (h) state how the stormwater management plan relates to any actions the water services entity is to take (consistent with its plan under section 144(2)) as part of its response to a Te Mana o te Wai statement for water services; and

Roles and responsibilities

- (i) 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).
- (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.

Section 258: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

Stormwater network risk management plans

Heading: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

259 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—

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

Section 259: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

260 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
- (b) assess any risks that are associated with those hazards; and
- (c) identify how those risks are to be managed, controlled, monitored, or eliminated.

Section 260: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

Stormwater network rules

Heading: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

261 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) set restrictions, requirements, conditions, standards, authorisations, or prohibitions relating to—

- (i) discharges to a stormwater network:
- (ii) the volume of stormwater in a stormwater network:
- (iii) risks and hazards identified in a stormwater network risk management plan relating to—
 - (A) activities in the service area of a water services entity:
 - (B) overland flow paths and watercourses in the service area of an entity:
- (b) set notification requirements (for example, notification of hazards or risks relating to a stormwater network).
- (2) Rules made under this section must specify the geographic area in the water services entity's service area to which the rules apply.
- (3) 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 road owners under section 222 or 223 or other utility operators under the Telecommunications Act 2001, the Electricity Act 1992, or the Gas Act 1992.
- (4) Rules made under this section must not be inconsistent with—
 - (a) the national planning framework or a plan made under the Natural and Built Environment Act 2023; or
 - (b) any relevant regional spatial strategy made for a region under the Spatial Planning Act 2023.
- (5) 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—
 - (a) an act or omission of another person in respect of other land; or
 - (b) a breach of a rule made under this Act by another person in respect of other land; or
 - (c) a natural disaster.
- (6) Stormwater network rules are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Legislation Act 2019 requirements for secondary legislation made under this section

Publication	The maker must— <ul style="list-style-type: none"> • notify it in the <i>Gazette</i> • publish it on an Internet site maintained by, or on behalf of, the water services entity 	LA19 ss 73, 74(1)(a), Sch 1 cl 14
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 261: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

262 Stormwater network rules may apply to various networks

Stormwater network rules may apply to a part, or the whole, of 1 or more of the following:

- (a) the stormwater networks of the water services entity;
- (b) subject to paragraph (d), the networks of a public stormwater network owner or operator;
- (c) the networks of a private stormwater network owner or operator;
- (d) the networks of a transport corridor manager that has agreed to the stormwater network rules in writing.

Section 262: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

263 Stormwater management of overland flow paths and watercourses

- (1) If a stormwater network risk management plan identifies a hazard or risk relating to an overland flow path or a watercourse on land that is not owned by a water services entity, the water services entity must work collaboratively with the owner or occupier of the land to implement a solution to ensure the risk is managed, controlled, monitored, or eliminated.
- (2) If a collaborative approach cannot be agreed with the owner or occupier of the land under subsection (1) in a reasonable time frame, or the owner or occupier of the 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.
- (3) Despite anything in subsection (1) or (2), any obligations imposed by a stormwater network rule made under section 261(1)(a) continue to apply to an owner or occupier of land.
- (4) However, nothing in this section overrides the responsibility of a water services entity under section 220 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).

Section 263: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

Stormwater environmental performance standards

Heading: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

264 Requirement to give effect to stormwater environmental performance standards

If the board of a water services entity makes stormwater network rules under section 261 relating to a stormwater network, the rules must give effect to any

stormwater environmental performance standards made under section 139A of the Water Services Act 2021.

Compare: 2002 No 84 s 146(2)

Section 264: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

Subpart 3—Trade waste provisions

Subpart 3: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

Trade waste permits

Heading: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

265 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.
- (2) The application must be made in the manner and in the form that the chief executive of the water services entity specifies.

Section 265: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

266 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:
 - (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):
 - (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.

Section 266: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

267 Persons may discharge trade waste into wastewater networks only if complying with trade waste permits

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.

Section 267: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

Trade waste plans

Heading: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

268 Board must have trade waste plan

- (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
 - (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 section 269.
- (3) A trade waste plan made under this Act is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Legislation Act 2019 requirements for secondary legislation made under this section

Publication	The maker must— <ul style="list-style-type: none">• notify it in the <i>Gazette</i>• publish it on an Internet site maintained by, or on behalf of, the water services entity	LA19 ss 73, 74(1)(a), Sch 1 cl 14
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)

Disallowance It may be disallowed by the House of Representatives LA19 ss 115, 116
This note is not part of the Act.

Section 268: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

269 Contents of trade waste plans

- (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—
 - (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:
 - (iii) to determining the qualification, training, and supervision requirements that are to apply to persons who are granted trade waste permits:
 - (iv) to determining the considerations that are to apply when the water services entity sets fees or charges in relation to trade waste permits.
- (2) A trade waste plan may specify the classes of waste or material that are not trade waste.
- (3) 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.

Compare: 2021 No 36 s 136(6)

Section 269: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

270 Engagement on trade waste plans

- (1) The board of a water services entity must, when developing (or considering changes to) its trade waste plan, 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 472; and
 - (b) be guided and informed by the principles set out in section 473; and
 - (c) prepare and publish a report on the engagement in accordance with section 476.

Section 270: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

271 Chief executive of water services entity must give effect to trade waste plans

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.

Compare: 2021 No 36 s 136(7)

Section 271: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

272 Review of trade waste plan

The board of a water services entity must review its trade waste plan in accordance with section 477.

Compare: 2021 No 36 s 136(2), (3)

Section 272: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

Subpart 4—Water supply and wastewater services rules

Subpart 4: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

273 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—
 - (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;
 - (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).
- (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
 - (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 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).
- (5) Rules made under subsection (1) with respect to wastewater do not apply to a person who holds a trade waste permit.
- (6) Rules made under subsection (1) are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Legislation Act 2019 requirements for secondary legislation made under this section

Publication	The maker must— • notify it in the <i>Gazette</i> • publish it on an Internet site maintained by, or on behalf of, the water services entity	LA19 ss 73, 74(1)(a), Sch 1 cl 14
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 273: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

274 Requirements for water supply and wastewater services rules

Water supply and wastewater services rules made under section 273—

- (a) must give effect to any relevant wastewater environmental performance standard made under section 138 of the Water Services Act 2021; and
- (b) must not be inconsistent with any of the following:
 - (i) section 25 of the Water Services Act 2021;
 - (ii) compliance rules made under section 49 of the Water Services Act 2021;
 - (iii) codes or determinations set or made by the Commission; and
- (c) must not cause a building to become an insanitary building within the meaning of section 123 of the Building Act 2004.

Section 274: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

275 Engagement on water supply and wastewater services rules

- (1) The board of a water services entity must, when developing (or considering changes to) water supply and wastewater services rules, 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 472; and
 - (b) be guided and informed by the principles set out in section 473; and

- (c) prepare and publish a report on the engagement in accordance with section 476.

Section 275: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

276 Review of rules made under section 273

The board of a water services entity must review the rules that it makes under section 273 in accordance with section 477.

Section 276: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

Subpart 5—Service agreements

Subpart 5: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

277 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 326 or 327.
- (2) Each service agreement—
 - (a) must include the matters specified in section 278:
 - (b) must specify any other terms and conditions of the water services to be provided:
 - (c) must comply with the requirements specified in sections 279 and 280:
 - (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—
 - (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—
 - (a) on and after the date on which they are published in accordance with section 280(2):
 - (b) on or after the date on which services are supplied and liability for charges commences.

Section 277: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

278 Matters that must be specified in service agreements

- (1) Each service agreement—

- (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
 - (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
 - (b) must, in the case of agreements that concern water supply services or wastewater 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
 - (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 1986.

Section 278: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

279 Engagement on service agreements

- (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 services entity with an opportunity to provide feedback on any of those documents by complying with section 280; and
 - (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
 - (d) have regard to any feedback received from the parties specified in paragraphs (a) and (b); and
 - (e) notify its bill payers of any changes that are made; and
 - (f) comply with section 472; and
 - (g) be guided and informed by the principles set out in section 473; and

- (h) prepare and publish a report on the engagement in accordance with section 476.
- (2) Subsection (1) does not apply if—
 - (a) a proposed change to the agreement is minor or technical:
 - (b) the water services entity is amending the agreement to give effect to changes required under section 281.

Section 279: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

280 Publication requirements

- (1) A water services entity to which section 279 applies must ensure that the following documents are published in draft before they are finalised:
 - (a) service agreements:
 - (b) amendments to service agreements:
 - (c) replacement service agreements.
- (2) After the documents are finalised, the chief executive of the water services entity must publish the documents on an Internet site maintained by, or on behalf of, the water services entity.

Compare: 2021 No 36 s 205

Section 280: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

281 Other requirements

- (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.
- (2) The board of a water services entity must review the water services entity's service agreement in accordance with section 477.
- (3) The Commission may review a water services entity's service agreement at any time.
- (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.
- (5) A service agreement may not include anything that is inconsistent with any codes or determinations made by the Commission.

Section 281: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

282 Application of certain legislation

The following legislation, to the extent that it is relevant, applies to service agreements:

- (a) the Contract and Commercial Law Act 2017, except for the following provisions:
 - (i) sections 21 to 32:
 - (ii) sections 35 and 36 to 49:
 - (iii) sections 54 to 57:
 - (iv) sections 341 to 344:
- (b) the Fair Trading Act 1986.

Section 282: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

Subpart 6—Rules regulating specified classes of work

Subpart 6: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

283 Board may regulate specified classes of work in certain places

- (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.
- (2) The rules may—
 - (a) specify the class or classes of work that are subject to the rules:
 - (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:
 - (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 222 or 223, or other utility operators under the Telecommunications Act 2001, the Electricity Act 1992, or the Gas Act 1992.
- (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).

Legislation Act 2019 requirements for secondary legislation made under this section

Publication	The maker must—	LA19 ss 73, 74(1)(a), Sch 1 cl 14
	• notify it in the <i>Gazette</i>	
	• publish it on an Internet site maintained by, or on behalf of, water services entity	

Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 283: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

284 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.
- (2) In conducting the engagement, the board of a water services entity must—
 - (a) comply with the requirements set out in section 472; and
 - (b) be guided and informed by the principles set out in section 473; and
 - (c) prepare and publish a report on the engagement in accordance with section 476.

Section 284: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

285 Review of rules that regulate specified classes of work

The board of a water services entity must review its rules that regulate specified classes of work in accordance with section 477.

Section 285: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

Part 10

Water services infrastructure connections and development code

Part 10: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

286 Overview of Part

- (1) This Part sets out the approval process by which a person may apply—
 - (a) to be connected to, or disconnected from, water services infrastructure or stormwater services; or
 - (b) to make structural changes that would affect water services infrastructure or stormwater services; or
 - (c) to make changes to the management of the effects of stormwater as part of a development that would affect water services infrastructure.
- (2) The approval process consists of the following 3 stages:
 - (a) stage 1 provides for approval of concept plans:
 - (b) stage 2 provides for approval of engineering plans:

- (c) stage 3 provides for approval sign-off.

Section 286: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

287 Application of 3-stage approval process

- (1) The 3-stage approval process set out in this Part applies to a person who wishes to—
- (a) connect or disconnect a pipe or infrastructure to or from water services infrastructure or stormwater services:
 - (b) make structural changes to premises that would affect the flow rate through an existing connection to water services infrastructure or stormwater services (for example, when a house is replaced with an apartment block or an existing dwelling increases its ground floor area by more than 25 m²):
 - (c) make changes to the management of the effects of stormwater as part of a development that would affect water services infrastructure.
- (2) This section does not apply if—
- (a) a land owner or a road owner—
 - (i) is moving works under section 222 without proposing any additional connections to the existing water services infrastructure or stormwater services; or
 - (ii) is requiring works to be moved under section 223:
 - (b) a land owner—
 - (i) is moving works under section 222; and
 - (ii) is not adding any additional connections to the existing water services infrastructure or stormwater services:
 - (c) another utility operator is acting in accordance with a statutory authorisation to move works.

Section 287: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

288 Applications may be concurrent

- (1) A person may make an application for any stage or stages of the 3-stage approval process at the same time.
- (2) 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.
- (3) 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.

Section 288: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

289 Applications may be amended

- (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.

Section 289: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

290 Obligation to publish water services infrastructure plan

A water services entity must—

- (a) publish a plan of its water services infrastructure that shows the location of the connection points and pipes in the infrastructure on an Internet site maintained by, or on behalf of, the water services entity in a format that is readily accessible; and
- (b) update the plan as soon as practicable after any changes in the location of the connection points or pipes.

Section 290: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

291 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 Natural and Built Environment Act 2023.

Section 291: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

Development code

Heading: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

292 Development code

- (1) The board of a water services entity must prepare a development code and obtain approval for it from the Commission, in accordance with sections 293 to 296 and 299.
- (2) Each development code is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Legislation Act 2019 requirements for secondary legislation made under this section

Publication	The maker must— <ul style="list-style-type: none">• notify it in the <i>Gazette</i>• publish it on an Internet site maintained by, or on behalf of, the water services entity	LA19 ss 73, 74(1)(a), Sch 1 cl 14
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Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 292: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

293 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—
 - (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
 - (iii) the water services entity does not act in a way that is inconsistent with any long-term plan, plan made under the Natural and Built Environment Act 2023, or relevant regional spatial strategy for a region under the Spatial Planning Act 2023;
- (b) the draft development code includes, in the second part, provisions in respect of the following water services infrastructure connection or disconnection matters:
 - (i) specifying application forms:
 - (ii) specifying the information that needs to be provided by applicants for the infrastructure connection process:
 - (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:
 - (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:
 - (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 Natural and Built Environment Act 2023:

- (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:
- (xi) providing a process for—
 - (A) prioritising water services connections (in accordance with the sequencing of the stages 1, 2, and 3 processes, as set out in sections 301 to 320); and
 - (B) estimating when water services connection or disconnection requirements will be implemented:
- (xii) prescribing the fees for applying for—
 - (A) a stage 1 approval of concept plans:
 - (B) a stage 2 approval of engineering plans:
 - (C) a stage 3 approval sign-off:
 - (D) a multistage approval (which may be different for different combinations of stages).

Section 293: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

294 Process for preparing Part 1 of draft development code

- (1) 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.
- (2) The board must prepare a draft Part 1 of the water services entity's development code dealing with the matters in section 293(a)(i) to (iii).
- (3) The board must ensure that the 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.
- (4) The board of each water services entity that prepares a draft Part 1 of its development code must send it to—
 - (a) the board of other water services entities; and
 - (b) the Commission.
- (5) 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.

Section 294: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

295 Approval of Part 1 of draft development code

- (1) This section applies in relation to a draft Part 1 of a development code received by the Commission under section 294(5).
- (2) The Commission must consider if the purpose set out in section 3(1) of this Act would be better promoted if the draft Part 1 of the development code were approved and whether section 293(a)(i) to (iii) has been complied with.
- (3) The Commission must approve the draft Part 1 of the code if the Commission is satisfied that the purpose set out in section 3(1) of this Act would be better promoted if the draft Part 1 of the development code were approved and section 293(a)(i) to (iii) has been complied with.
- (4) If the Commission considers that the draft Part 1 does not comply with section 293(a)(i) to (iii) or is inconsistent with the better promotion of the purpose set out in section 3(1) of this Act, the Commission must require the board of the water services entity to—
 - (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.

Section 295: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

296 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 a draft Part 2 of the entity's development code.
- (2) After the 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—
 - (a) complies with section 293(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 entity must then ensure that—
 - (a) there is engagement on the draft Part 2 of the entity's development code in accordance with section 299; 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.
- (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 293(b)(i) to (xii).

- (6) If the draft Part 2 of the development code gives effect to those principles and complies with section 293(b)(i) to (xii), the Commission must approve the code.
- (7) If the Commission considers that the draft Part does not comply with section 293(b)(i) to (xii) or does not give effect to those principles, the Commission must require the board of the water services entity to—
 - (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.

Section 296: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

297 Compliance with development code

Each water services entity must comply with its own development code.

Section 297: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

298 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 292 and 293 to 295 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 292, 293, and 296 apply with any necessary modifications.

Section 298: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

299 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 472; and
 - (b) be guided and informed by the principles set out in section 473; and
 - (c) prepare and publish a report on the engagement in accordance with section 476.

Section 299: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

300 Review of development code

The chief executive of a water services entity must review the entity's development code in accordance with section 477.

Section 300: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

Process for stage 1 approval of concept plans

Heading: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

301 Stage 1 approval of concept plans: application of sections 302 to 307

Sections 302 to 307 apply if a person applies for a stage 1 approval of concept plans to be connected to or disconnected from water services infrastructure.

Section 301: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

302 Stage 1 approval of concept plans: information required for applications

- (1) When making an application for a stage 1 approval of concept plans, the applicant must provide—
 - (a) all of the information that the water services entity’s development code requires 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.
- (3) If an application is incomplete, the water services entity may decline the application.

Section 302: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

303 Stage 1 approval of concept plans: timing of approval of applications

- (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,—
 - (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—
 - (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.
- (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.

Section 303: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

304 Stage 1 approval of concept plans: approvals may be subject to conditions

A water services entity may approve an application for a stage 1 approval of concept plans subject to any conditions it considers appropriate.

Section 304: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

305 Stage 1 approval of concept plans: grounds for declining applications

If a water services entity receives an application for a stage 1 approval of concept plans, it may decline the application if—

- (a) the water services infrastructure that is to be connected to or disconnected from lacks the capacity to handle the likely increase in demand for water services; or
- (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 entity's development code that warrant declining the application.

Section 305: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

306 Stage 1 approval of concept plans: period of validity for approval

- (1) A stage 1 approval of concept plans is valid for 1 year.
- (2) However, a stage 1 approval of concept plans may be valid for a period longer than 1 year if—
 - (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—
 - (a) in accordance with any requirements specified in the water services entity's development code; and
 - (b) subject to any conditions the water services entity considers appropriate; and
 - (c) for a specified period.
- (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

- (b) ends with the date specified in the extension.

Section 306: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

Process for stage 2 approval of engineering plans

Heading: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

307 Stage 2 approval of engineering plans: application of sections 308 to 312

Sections 308 to 312 apply if—

- (a) the water services entity’s development code requires a person to apply for a stage 2 approval of engineering plans; and
- (b) the person applies to be connected to or disconnected from the water services infrastructure.

Section 307: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

308 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 entity’s development code requires for stage 2 applications, including (without limitation)—
- (a) all information specified in the development code; and
- (b) an engineering plan that is prepared—
- (i) in accordance with any engineering design standards specified in the development code; or
- (ii) by a suitably qualified person specified in the development code; 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.
- (3) If an application is incomplete, the water services entity may decline the application.

Section 308: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

309 Stage 2 approval of engineering plans: timing of approval of applications

- (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—
 - (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.
- (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.

Section 309: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

310 Stage 2 approval of engineering plans: approvals may be subject to conditions

A water services entity may approve an application for a stage 2 approval of engineering plans subject to any conditions it considers appropriate.

Section 310: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

311 Stage 2 approval of engineering plans: grounds for declining applications

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 entity’s development code, the water services entity determines that the engineering plan—
 - (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 entity’s development code, the water services entity determines that—
 - (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:
- (c) there are circumstances specified in the development code that warrant declining the application.

Section 311: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

312 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.
- (2) An extension may be granted—
 - (a) in accordance with any requirements specified in the water services entity's development code; 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 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.

Section 312: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

Process for stage 3 approval sign-off

Heading: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

313 Stage 3 approval sign-off: application of sections 314 to 320

Sections 314 to 320 apply if—

- (a) the water services entity's development code requires a person to apply for a stage 3 approval sign-off to connect to or disconnect from a water services network; and
- (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.

Section 313: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

314 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 entity's development code requires for stage 3 applications, including (without limitation)—

- (a) all information specified in the development code; and
 - (b) evidence that work undertaken complies with any relevant requirements and conditions of the approval process; 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, including (without limitation) any information it may gather when undertaking site visits to inspect the work undertaken.
- (3) If an application is incomplete, the water services entity may decline the application.

Section 314: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

315 Stage 3 approval sign-off: timing of approval of applications

- (1) A water services entity must, within 30 working days of receiving an application for a stage 3 approval sign-off, give the applicant,—
- (a) in the case of an approval, its decision in writing; and
 - (b) in the case of an approval with conditions or an initial decision to decline the application, its decision in writing along with—
 - (i) the reasons for its 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.
- (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.

Section 315: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

316 Stage 3 approval sign-off may be subject to conditions

A water services entity may approve an application for a stage 3 approval sign-off subject to any conditions it considers appropriate.

Section 316: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

317 Stage 3 approval sign-off: approval to connect or disconnect

- (1) If a water services entity approves an application for a stage 3 approval sign-off, 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.

- (2) An approval issued under subsection (1) must—
- (a) contain the information required to be provided in the approval in the water services entity's development code and include (without limitation) the date on which the water services entity's approved 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.

Section 317: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

318 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 entity's development code.

Section 318: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

319 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—

- (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).

Section 319: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

320 Stage 3 approval sign-off: period of validity for approval

- (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 entity's development code; 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.

Section 320: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

Continuing conditions

Heading: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

321 Registration of continuing conditions approval notices

- (1) 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.
- (2) If a water services entity decides to grant 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 584 of the Natural and Built Environment Act 2023, issue a written approval notice that specifies the condition to—
 - (i) the applicant;
 - (ii) the Registrar-General of Land to be lodged for registration under section 589A of that Act;
 - (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 approval.
- (3) For the purposes of section 584 of the Natural and Built Environment Act 2023, written approval issued under subsection (2) is written consent.
- (4) The approval notice must be signed by a person that the water services entity has authorised to sign approval notices.
- (5) At any time after the approval notice is issued,—
- (a) the owner may apply to the water services entity to vary or cancel any condition specified in the approval notice;
 - (b) the water services entity may review any condition specified in the approval notice and vary or cancel the condition.

- (6) The 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
 - (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.
- (7) If a registered 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.
- (8) 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

Section 321: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

Vesting

Heading: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

322 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 development code 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.

- (4) 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.
- (5) In this section, **person** means the owner of the water services infrastructure.
Section 322: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

Part 11

Charging

Part 11: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

Rates rebate scheme

Heading: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

323 Charging information needed by territorial authorities

- (1) 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.
- (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

Section 323: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

Sharing rating information

Heading: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

324 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.
- (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.
- (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

Section 324: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

325 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.
- (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.

Section 325: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

Liability for water services charges

Heading: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

326 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
 - (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
 - (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) occupies public conservation land or Crown land in accordance with a lease, licence, permit, easement, or other similar authority.

- (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—
 - (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 327 provides).

Section 326: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

327 Liability for water services charges in respect of Maori land

- (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.
- (4) 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.
- (5) 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 services 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.
- (6) If subsection (3), (4), or (5) 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:
 - (b) for Maori land vested in trustees, the trustees.
- (7) 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.
- (8) In this section,—

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.

Compare: 2002 No 6 s 92

Section 327: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

328 Limitation on trustee liability

- (1) If trustees are liable to pay water services charges in respect of Maori land under section 327,—
 - (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
 - (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.

Compare: 2002 No 6 s 93

Section 328: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

329 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—
 - (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.

Compare: 2014 No 32 s 211

Section 329: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

330 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 (2), 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—
 - (a) the Commission in the service quality code; or
 - (b) the calculation method that the Commission has specified in the service quality code.

- (2) 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.
- (3) 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.
- (4) This section applies only in respect of water services debts that first arise after the commencement of this Act.

Compare: 2014 No 32 s 215

Section 330: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

331 Waiver or refund of debt

The chief executive of a water services entity may, in relation to a debt due under section 329,—

- (a) waive all or any part of a debt:
- (b) refund all or any part of any payment of the debt.

Section 331: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

332 Waiver of penalty

- (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 330 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:
 - (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 330 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

Section 332: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

333 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

Section 333: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

334 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 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.

Section 334: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

Framework for setting water services charges

Heading: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

335 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 (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 (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.
- (3) A charge set under this section must be set in accordance with the funding and pricing plan of the water services entity.

Compare: 2004 No 72 s 281A(2)

Section 335: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

336 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 335:
 - (a) charges should reflect the costs of service provision, including (without limitation) by—
 - (i) promoting the efficient use of resources:
 - (ii) charging different groups of consumers differently only if—

- (A) those groups receive different levels or types of services; or
 - (B) the cost of providing services to those groups is different; and
- (b) charges should be simple, transparent, and easy for consumers to understand; and
- (c) charges should be consistent with the input methodologies and determinations that the Commission issues or makes.
- (2) However, the board may consider any other matters it considers appropriate when setting charges or requiring water infrastructure contributions under section 335.
- (3) Despite subsection (1), 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 1 July 2029.
- (4) When the board is assessing the application of the principle specified in subsection (1)(a)(ii)(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.

Example

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.

- (5) Subsection (1) does not override section 339.
- (6) Nothing in this section limits the power in section 340 to charge geographically averaged prices for water services.
- (7) This section applies only on the earlier of the following:
- (a) a date appointed by the Governor-General by Order in Council;
 - (b) 1 July 2029.
- (8) An Order in Council made under subsection (7)(a) is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Legislation Act 2019 requirements for secondary legislation made under this section

Publication	PCO must publish it on the legislation website and notify it in the <i>Gazette</i>	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 336: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

337 Obligation to publish tariff lists

- (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
 - (b) must 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 335.

Section 337: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

338 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—
 - (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.
- (3) The discount policy must not apply to water infrastructure contributions.

Section 338: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

339 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; and
 - (b) offer a discount to any class of consumers or individual consumers that takes measures to reduce the burden on water services.
- (2) A discount given under this section must be consistent with the policy for discounting charges adopted under section 338.

Section 339: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

Geographical averaging

Heading: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

340 Charges for water services may be averaged geographically

- (1) The board of a water services entity may—
 - (a) charge geographically averaged prices for water services;
 - (b) geographically average prices at different scales for different service types and different classes of consumers.
- (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
 - (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
 - (d) a water supply charge has a volumetric component and the difference in charges is only a difference in that component.
- (3) 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;
 - (b) the Commission may not override the decision.
- (4) This section does not apply to water infrastructure contributions.

Compare: 2001 No 103 s 201

Section 340: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

Changing contracted prices

Heading: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

341 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

- (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
 - (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.

Section 341: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

Charging unconnected properties

Heading: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

342 Liability for certain charges in respect of properties not connected to water supply or wastewater networks

- (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
 - (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.
- (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.
- (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.

Section 342: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

Stormwater charging

Heading: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

343 Requirements for charges for stormwater services

- (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—
 - (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—
 - (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 258(1)(b).
- (3) The chief executive of a water services entity must—
 - (a) publish the water services entity's stormwater services recoverable cost calculations and recoverable cost apportionment determinations on an Internet site maintained by, or on behalf of, the water services entity in a format that is readily accessible; and
 - (b) review the calculations and determinations in accordance with section 477.
- (4) This section applies on and after the earliest of the following:
 - (a) the date on which the Commission has put in place the relevant input methodologies;
 - (b) a date appointed by the Governor-General by Order in Council;
 - (c) 1 July 2026.
- (5) An Order in Council made under subsection (4)(b) is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Legislation Act 2019 requirements for secondary legislation made under this section

Publication	PCO must publish it on the legislation website and notify it in the <i>Gazette</i>	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 343: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

344 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.
- (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 343(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.
- (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.

Section 344: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

345 Water services entity not liable for rates in certain cases

A water services entity is not liable to pay rates to any local authority in respect of—

- (a) any pipes that it owns and that run through property that it does not own; or
- (b) any assets that it owns and that are located on property that it does not own.

Section 345: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

Water infrastructure contributions

Heading: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

346 Basis on which water infrastructure contributions may be required

- (1) The purposes of water infrastructure contributions are to enable a water services entity—
 - (a) 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—
 - (i) undertaking development; or

- (ii) placing increased commercial demand on water services; and
 - (b) to meet the water services entity's obligations under section 220(2) and 263 relating to the management and maintenance of overland flow paths and watercourses.
- (2) The board of a water services entity may require water infrastructure contributions 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.
- (3) This section does not prevent the board of a water services entity from setting water infrastructure contributions 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 water services entity's establishment date, in anticipation of development or increased commercial demand.
- (4) All water infrastructure contributions must be consistent with the policy adopted under section 349.
- (5) In subsection (2), **effect** includes the cumulative effect that a development or increased commercial demand may have in combination with other developments or increased commercial demand.

Section 346: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

347 Principles for setting water infrastructure contributions or policies

- (1) When the board of a water services entity adopts a water infrastructure contributions policy under section 349 or requires water infrastructure contributions under section 346, the board should take into account the following principles:
 - (a) water infrastructure contributions 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;
 - (b) water infrastructure contributions should be determined in a manner that has regard to the capacity life of the assets or groups of assets for which they are intended to be used and in a way that avoids over-recovery of costs allocated to water infrastructure contributions funding;
 - (c) cost allocations used to establish water infrastructure contributions 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;
 - (d) water infrastructure contributions should be used only for the benefit of the area or the part of the area that is identified in the water infrastruc-

ture contributions policy in which the water infrastructure contributions are required:

- (e) water services entities should make sufficient information available to demonstrate what water infrastructure contributions are being used for and why they are being used;
 - (f) when calculating and requiring water infrastructure contributions, 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.
- (2) Water infrastructure contributions must be consistent with the input methodology or methodologies and determinations that the Commission issues or makes.

Section 347: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

348 Board may discount water infrastructure contributions in certain circumstances

- (1) The board of a water services entity may discount water infrastructure contributions (including by charging no contributions) for a person who—
- (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.
- (2) Subsection (1) applies despite anything in section 336.

Section 348: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

349 Board must adopt water infrastructure contributions policy

- (1) The board of a water services entity must adopt a water infrastructure contributions policy.
- (2) A water infrastructure contributions 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 policy; and
 - (c) a schedule of the water infrastructure contributions 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 contributions in line with the principles specified in section 347; and

- (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.

Section 349: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

350 Review of water infrastructure contributions policy

The board of a water services entity must review its water infrastructure contributions policy in accordance with section 477.

Section 350: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

351 Crown exempt from water infrastructure contributions

- (1) The Crown is exempt from paying any water infrastructure contributions.
- (2) However, this section does not apply to Kāinga Ora.

Section 351: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

352 When water services entity may charge for water infrastructure contributions

- (1) A water services entity may charge a person who owns property in its service area for water infrastructure contributions required under section 346 when—
 - (a) the person is granted—
 - (i) a resource consent under the Natural and Built Environment Act 2023 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;
 - (c) an increase in commercial demand for water services occurs;
 - (d) a stage 1, 2, or 3 approval is granted under Part 10.
- (2) 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 section 349.
- (3) For the purposes of subsection (2), a water infrastructure contribution must be consistent with the content of the water infrastructure contributions policy adopted under section 349 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.
- (4) A person who owns property and a water services entity 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) the water services entity may charge an agreed rate of interest on any unpaid balance.
- (5) A water services entity 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.
- (6) A water services entity may charge an agreed rate of interest on the unpaid balance with the rate agreed with the person who owns property when the agreement is put in place.
- (7) 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.
- (8) 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 reached under subsection (4).
- (9) 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.

Section 352: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

353 Review of decisions to charge water infrastructure contributions

A person who is charged for a water infrastructure contribution may apply under section 457 for a review of the decision to charge that person on any ground set out in section 356.

Section 353: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

354 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
 - (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.

Section 354: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

Objections to water infrastructure contributions

Heading: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

355 Right to object to assessed amount of water infrastructure contribution

- (1) A person may object, on any ground set out in section 356, to the assessed amount of the water infrastructure contribution that a water services entity has charged the person under section 352, advised in—
 - (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.
- (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 457.
- (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 349.

Section 355: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

356 Scope of water infrastructure contribution objections

- (1) An objection under section 355 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
 - (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 its 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 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.

Section 356: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

357 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 355 with all necessary modifications, including the following:

- (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:
- (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 water infrastructure contributions policy:
- (f) 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 section 355 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 this Act:
- (h) a reference to section 150A must be read as a reference to section 360 of this Act.

Section 357: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

358 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 set out in sections 346 and 347;
- (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 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;
- (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.

Section 358: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

359 Interim effect of water infrastructure contribution objection

- (1) 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.
- (2) 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 may withhold granting a service connection under Part 10 until the objection has been determined.

Section 359: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

360 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.
- (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
 - (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.
- (4) A water services entity's actual and reasonable costs in respect of objections are recoverable under section 329.

Section 360: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

Territorial authorities

Heading: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

361 Territorial authorities may no longer use certain contributions

- (1) Despite anything in the Local Government Act 2002 or the Natural and Built Environment Act 2023, on or after 1 July 2026, a territorial authority—
 - (a) may not require development contributions under the Local Government Act 2002 or environmental contributions under the Natural and Built Environment Act 2023 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;
 - (b) may not use development contributions collected under the Local Government Act 2002 or environmental contributions collected under the Natural and Built Environment Act 2023 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.
- (2) Nothing in this section prevents a territorial authority from requiring development contributions or environmental contributions to fund water services infrastructure where applications for a resource consent, building consent, or service connection have been lodged prior to the water services entity's establishment date.

Section 361: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

Part 12

Compliance and enforcement

Part 12: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

Subpart 1—Director of Compliance and Enforcement

Subpart 1: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

362 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.
- (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
 - (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
 - (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).

Section 362: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

363 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.
- (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).

Section 363: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

364 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.
- (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.

Section 364: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

Subpart 2—Compliance and enforcement strategy

Subpart 2: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

365 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—
 - (a) provide transparency about the water services entity's intended approach for achieving compliance with this Act or secondary legislation made (or treated as if it were made) under 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.
- (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.
- (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.
- (7) As soon as practicable after issuing a compliance and enforcement strategy, the board must publish a copy of the strategy on an Internet site maintained by, or on behalf of, the water services entity in a format that is readily accessible.
- (8) The Director of Compliance and Enforcement must have regard to the strategy when performing their functions, duties, and powers.

Section 365: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

366 Engagement on compliance and enforcement strategy

- (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—
 - (a) comply with the requirements set out in section 472; and
 - (b) be guided and informed by the principles set out in section 473; and
 - (c) prepare and publish a report on the engagement in accordance with section 476.

Section 366: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

Subpart 3—Compliance and enforcement provisions

Subpart 3: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

Compliance officers

Heading: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

367 Appointment of compliance officers

- (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—
 - (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.
- (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 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.

Compare: 2015 No 70 s 163; 2021 No 36 s 98

Section 367: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

368 Identity cards

- (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.
- (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

Section 368: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

369 Suspension and ending of appointment of compliance officers

- (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

Section 369: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

370 Compliance officer subject to Director of Compliance and Enforcement's directions

- (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.
- (2) A direction under subsection (1) 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 subsection (1) does not invalidate the exercise of a compliance officer's compliance powers.
- (4) 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.

Compare: 2015 No 70 s 166; 2021 No 36 s 101

Section 370: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

371 Director of Compliance and Enforcement has powers of compliance officer

The Director of Compliance and Enforcement has all the powers that a compliance officer has under this Act.

Compare: 2015 No 70 s 167; 2021 No 36 s 102

Section 371: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

Compliance powers

Heading: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

372 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:
- (b) to investigate serious risks relating to water services:
- (c) to respond to specified serious risks:
- (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.

Compare: 2021 No 36 s 103

Section 372: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

373 Power to restrict water supply

- (1) If a compliance officer exercises a power for a purpose specified in section 372(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,—
 - (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
 - (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
 - (e) refuses entry to, or obstructs, 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.

Compare: 2002 No 84 s 193

Section 373: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

374 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.
- (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 376.

Compare: 2021 No 36 s 104

Section 374: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

375 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.
- (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.
- (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 376.

Compare: 2021 No 36 s 105

Section 375: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

376 Requirements for directions

- (1) A direction issued under section 374 or 375(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
 - (c) must state that a person has a right of review under section 457 or a right of appeal under section 461; and
 - (d) may be addressed to any person under the person's legal name or usual business name or style.

- (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:
 - (ii) email address:
 - (iii) physical or postal address.

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

Section 376: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

Power to take and test samples

Heading: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

377 Power to take and test samples

- (1) A compliance officer may, for a purpose specified in section 372, take and test a sample of any material, substance, or thing for analysis.
- (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.
- (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

Section 377: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

Power to obtain information

Heading: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

378 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
 - (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
 - (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.
- (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.

Compare: 2021 No 36 s 108

Section 378: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

379 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.
- (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
 - (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.
- (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.

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

Section 379: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

380 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 a specified serious risk.
- (2) The person must answer the questions, subject to subsections (3) and (4).
- (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.

Compare: 2021 No 36 s 110

Section 380: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

381 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 372(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 377 (power to take and test samples).
- (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.
- (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.
- (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.

- (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.
- (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.
- (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

Section 381: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

382 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,—
 - (a) enter the place without a search warrant; and
 - (b) search the place; and
 - (c) exercise any of the powers in sections 374 to 380.
- (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.
- (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.
- (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.

- (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.
- (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.
- (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: 2014 No 32 s 311; 2021 No 36 s 112

Section 382: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

383 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—
 - (a) the officer’s identity; and
 - (b) the officer’s contact information; and
 - (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:
 - (i) phone number;
 - (ii) email address;
 - (iii) physical or postal address.

Compare: 2015 No 70 s 171; 2021 No 36 s 113

Section 383: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

384 Power of Director of Compliance and Enforcement to authorise making of applications for search warrants

- (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—
- (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.
- (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).
- (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—
- (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.
- (4) In this section, **specified person** means—
- (a) a compliance officer; or
 - (b) an employee of the water services entity; or
 - (c) any other person who the Director of Compliance and Enforcement is satisfied is suitably qualified and trained.
- (5) Despite subsection (4), a constable may apply for a warrant to be issued under subsection (3) without an authorisation from the Director of Compliance and Enforcement.
- (6) The provisions of Part 4 of the Search and Surveillance Act 2012 (except sections 118 and 119) apply, with any necessary modifications.

Compare: 2015 No 70 s 173; 2021 No 36 s 114

Section 384: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

385 Continuation of powers of entry and inspection without search warrants

A compliance officer who, in the course of exercising a power under section 382, finds evidence of contravention of a relevant compliance requirement is

not required to obtain a search warrant under section 384 to continue exercising powers under section 382.

Compare: 2015 No 70 s 174; 2021 No 36 s 115

Section 385: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

386 Conditions of entry, search, and seizure

- (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.

Compare: 2014 No 32 s 299; 2021 No 36 s 116

Section 386: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

387 Compliance with Building Act 2004

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.

Compare: 1956 No 65 s 128A; 2021 No 36 s 117

Section 387: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

388 Power to ask for assistance

- (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.
- (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.

Compare: 2014 No 32 s 297; 2021 No 36 s 118

Section 388: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

389 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:

- (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 384.
- (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
 - (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
- Section 389: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

Compliance orders

Heading: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

390 Power to issue compliance order

- (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,—
 - (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—
 - (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.
- Compare: 2021 No 36 s 120
- Section 390: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

391 Compliance with compliance order

- (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.
- (2) This section is subject to sections 461 to 465 (which set out rights of appeal).

Compare: 2021 No 36 s 121

Section 391: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

392 Form and content of compliance order

A compliance order must state—

- (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.

Compare: 2021 No 36 s 122

Section 392: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

393 Director may vary or cancel order

Except as provided in section 465, a compliance order may be amended or revoked by the Director of Compliance and Enforcement at any time.

Compare: 2015 No 70 ss 114, 124; 2021 No 36 s 123

Section 393: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

394 Formal irregularities or defects in order

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.

Compare: 2015 No 70 s 115; 2021 No 36 s 124

Section 394: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

395 When Director of Compliance and Enforcement may take remedial action

- (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—
 - (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 subsection (2) after giving written notice to the person of—
 - (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

Section 395: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

396 Power of Director of Compliance and Enforcement to take other remedial action

- (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.
- (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
 - (b) prevent, reduce, or eliminate a specified serious risk.

Compare: 2015 No 70 s 120; 2021 No 36 s 127

Section 396: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

397 Costs of remedial or other action

- (1) A water services entity may recover as a debt due to the water services entity the reasonable costs of any remedial action taken under—
 - (a) section 395 from the person to whom a compliance order is issued; or
 - (b) section 396 from any person to whom a compliance order could have been issued in relation to the matter.
- (2) This section is subject to section 398.

Compare: 2015 No 70 s 121; 2021 No 36 s 128

Section 397: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

398 Protection of Maori land against execution for debt

- (1) This section applies in relation to—
 - (a) a judgment for the payment of costs of remedial or other action under section 397:

- (b) a fine imposed for an offence against this Act.
- (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 subsection (2)—
 - (a) limits or affects the operation of any mortgage or charge to which any Maori land is subject:
 - (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—
 - (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.

Compare: 1993 No 4 s 342

Section 398: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

Water meters

Heading: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

399 Chief executive of water services entity may authorise persons to read water meters

- (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—
 - (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—
 - (a) must be in writing; and
 - (b) may not be granted to a person who is appointed as a compliance officer under this Act.

Section 399: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

400 Authorised persons may access properties under certain conditions

- (1) A person authorised under section 399 may access the property of a consumer only—
 - (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 273; and
 - (b) in accordance with the process set out in the relevant service agreement.
- (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)

Section 400: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

Subpart 4—Offences

Subpart 4: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

Offence relating to water services infrastructure

Heading: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

401 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.
- (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.

Section 401: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

Offences relating to water supply network

Heading: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

402 Intentionally or recklessly 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—
 - (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.
- (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.

Section 402: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

403 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.
- (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.

Section 403: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

Offences relating to wastewater network

Heading: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

404 Intentionally or recklessly disposing of materials or substances into wastewater network

- (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

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

Section 404: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

405 Negligently disposing of materials or substances into wastewater network

- (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.
- (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.

Section 405: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

406 Connecting to, disconnecting from, or discharging into wastewater network without authorisation

- (1) A person commits an offence against this section if the person connects to, disconnects from, or discharges material or substances into a wastewater network without the authorisation of a water services entity.
- (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.

Section 406: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

407 Intentionally or recklessly engaging in conduct relating to wastewater network that causes specified serious risk

- (1) A person commits an offence against this section if the person—
 - (a) engages in conduct relating to a wastewater network that causes a specified serious risk; and
 - (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:
 - (b) for a body corporate or an unincorporated body, to a fine not exceeding \$1.5 million.

Section 407: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

408 Negligently engaging in conduct relating to wastewater 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 wastewater network that 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 \$100,000:
 - (b) for a body corporate or an unincorporated body, to a fine not exceeding \$600,000.

Section 408: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

409 Discharging trade waste without trade waste permit

- (1) A person commits an offence against this section if the person discharges trade waste into a wastewater network without a trade waste permit issued under section 266.
- (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.

Section 409: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

410 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 266.
- (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.

Section 410: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

Offences relating to stormwater network

Heading: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

411 Intentionally or recklessly disposing of or discharging materials or substances into stormwater network causing specified serious risk

- (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.
- (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.

Section 411: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

412 Negligently disposing of or discharging substances or materials into stormwater network

- (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,—
 - (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.

Section 412: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

413 Intentionally or recklessly engaging in conduct relating to stormwater network that causes 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
 - (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:
- (b) for a body corporate or an unincorporated body, to a fine not exceeding \$1.5 million.

Section 413: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

414 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,—
 - (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,—
 - (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.

Section 414: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

415 Negligently engaging in conduct relating to stormwater 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 stormwater network that 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 \$100,000:
 - (b) for a body corporate or an unincorporated body, to a fine not exceeding \$600,000.

Section 415: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

Other offences relating to water supply network, wastewater network, and stormwater network

Heading: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

416 Discharging into water supply network without authorisation

- (1) A person commits an offence against this section if the person discharges anything into a water supply network without written authorisation from a water services entity.

- (2) A person who commits an offence against subsection (1) 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.

Section 416: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

417 Connecting to or disconnecting from water supply network or supplying water to another person without authorisation

- (1) A person commits an offence against this section 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
 - (b) 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.
- (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;
 - (b) for a body corporate or an unincorporated body, to a fine not exceeding \$500,000.

Section 417: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

418 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—
- (a) notifying the water services 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.
- (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.
- (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.
- (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.

Section 418: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

Offence relating to plans, rules, directions, and compliance orders

Heading: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

419 Breach of controlled drinking water catchment management plan or permit

- (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 235; or
 - (b) breaches a prohibition, restriction, or requirement in a permit issued under section 236.
- (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.

Section 419: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

420 Breach of requirement, condition, authorisation, or prohibition in stormwater network rule

- (1) A person commits an offence against this section if the person—
 - (a) has a duty under a stormwater network rule made under section 261; 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,—

- (a) for an individual, to a fine not exceeding \$20,000:
- (b) for a body corporate, to a fine not exceeding \$200,000.

Section 420: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

421 Failure to comply with rule relating to equipment or device

- (1) A person commits an offence against this section if the person—
 - (a) has a duty under a rule made under section 273(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,—
 - (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.

Section 421: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

422 Failure to notify water services entity of notifiable risk or hazard

- (1) A person commits an offence against this section 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 273(1)(c); 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,—
 - (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.

Section 422: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

423 Failure to comply with water use restriction or limit

- (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 273; 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,—

- (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.

Section 423: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

424 Breach of rule relating to undertaking specified classes of work near, under, or above water supply system, wastewater network, or stormwater network

- (1) A person commits an offence against this section if the person knowingly fails to comply with a rule made under section 283 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.
- (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
 - (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.
- (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.
- (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.

Section 424: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

425 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 374 or 375(2)(b).
- (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.

Section 425: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

426 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 390 or an order of the court made under this Act.
- (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.

Section 426: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

Offences relating to tampering with water meters

Heading: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

427 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,—
 - (a) alters the index of, or in any other manner tampers with, a water meter; or
 - (b) alters the position of a water meter.
- (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 \$200,000.

Section 427: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

Offences relating to duties associated with administration of Act

Heading: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

428 Hindering or obstructing employee or agent of water services entity

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

- (a) for an individual, to imprisonment for a term not exceeding 3 months and a fine not exceeding \$10,000:
- (b) for a body corporate or an unincorporated body, to a fine not exceeding \$250,000.

Section 428: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

429 Threatening or assaulting employee or agent of water services entity

- (1) A person commits an offence against this section 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.
- (2) A person who commits an offence against this section is liable on conviction,—
 - (a) for an individual, to imprisonment for a term not exceeding 3 months and a fine not exceeding \$50,000:
 - (b) for a body corporate or an unincorporated body, to a fine not exceeding \$250,000.

Section 429: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

430 Pretending to be compliance officer, employee, or agent of water services entity

- (1) A person commits an offence against this section if, with intent to deceive, the person pretends to be—
 - (a) an employee or agent of a water services entity; or
 - (b) a person who has been appointed as a compliance officer under section 367.
- (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.

Section 430: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

Subpart 5—Infringement offences

Subpart 5: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

431 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 484(1)(f)

infringement offence means one of the following that is declared by regulations made under section 484(1)(d) 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 402, 404, 407, 411, 413, 417, 418, 420, 421, 422, 423, 424, 428, 429, or 430;
- (b) an offence against any secondary legislation made under this Act.

Compare: 2015 No 70 s 136; 2021 No 36 s 149

Section 431: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

432 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
 - (b) be issued with an infringement notice under section 433.
- (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.

Compare: 2015 No 70 s 137; 2021 No 36 s 150

Section 432: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

433 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.

Compare: 2021 No 36 s 151

Section 433: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

434 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—
 - (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
 - (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.
- (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
 - (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 Director of Compliance and Enforcement or the compliance officer.
- (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

Section 434: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

435 What infringement notice must contain

- (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:
 - (b) the amount of the infringement fee:
 - (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:
 - (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.
- (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.

Compare: 2015 No 70 s 138; 2021 No 36 s 153

Section 435: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

436 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 433 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.
- (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 432(1)(a) or (b) against the person to whom the notice was issued in respect of the same matter.

Compare: 2015 No 70 s 139; 2021 No 36 s 154

Section 436: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

437 Payment of infringement fees

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

Section 437: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

438 Reminder notices

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

Section 438: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

Subpart 6—Criminal proceedings

Subpart 6: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

439 Meaning of enforcement action

In this subpart, unless the context otherwise requires, **enforcement action** 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
- (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.

Compare: 2015 No 70 s 141; 2021 No 36 s 157

Section 439: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

440 Person may notify Director of Compliance and Enforcement of interest in knowing of enforcement action

- (1) A person may notify the Director of Compliance and Enforcement in the manner determined by the Director 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 Director or a compliance officer.
- (2) If the Director of Compliance and Enforcement receives a notification under subsection (1), 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
 - (b) if enforcement action has not been taken, whether the Director of Compliance and Enforcement 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

Section 440: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

441 Prosecutions by Director of Compliance and Enforcement

Subject to section 442, a prosecution for an offence under this Act may be brought only by the Director of Compliance and Enforcement.

Compare: 2015 No 70 s 143; 2021 No 36 s 159

Section 441: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

442 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—
- (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 440(2) that the Director of Compliance and Enforcement or a compliance officer—
 - (i) has not taken enforcement action or prosecution action against any person in respect of the same incident, situation, or set of circumstances; and
 - (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.

Compare: 2015 No 70 s 144; 2021 No 36 s 160

Section 442: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

443 Continuing or repeated matters

Nothing in this Act prevents the 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.

Compare: 2015 No 70 s 145; 2021 No 36 s 161

Section 443: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

Subpart 7—Limitation periods

Subpart 7: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

444 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:
 - (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 Director of Compliance and Enforcement;
 - (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 446.

Compare: 2015 No 70 s 146; 2021 No 36 s 162

Section 444: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

445 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 444(1)(a) or (b).
- (2) The District Court may, on application by the Director of Compliance and Enforcement made before the end of the relevant period specified in section 444(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.
- (3) The court must not grant an extension under subsection (2) unless it is satisfied that—
 - (a) the Director of Compliance and Enforcement reasonably requires longer than the relevant specified period to decide whether to file a charging document; and
 - (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

- (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 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 440(1).

Compare: 2015 No 70 s 147; 2021 No 36 s 163

Section 445: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

446 Certain proceedings may be brought after end of limitation period if fresh evidence discovered

Despite anything in section 444 or 445, 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

Section 446: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

Subpart 8—Defences for strict liability offences

Subpart 8: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

447 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:

Section	Description
405	Negligently disposing of materials or substances into wastewater network
406	Connecting to, disconnecting from, or discharging into wastewater network without authorisation
409	Discharging trade waste without trade waste permit
410	Breach of trade waste permit
416	Discharging into water supply network without authorisation
419	Breach of controlled drinking water catchment management plan
425	Failure to comply with direction issued by compliance officer
426	Failure to comply with compliance order or court order

427

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
 - (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) the action or event to which the prosecution relates was necessary for the purposes of preventing, avoiding, or mitigating a specified serious risk; and
 - (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.
- (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
 - (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
 - (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

Section 447: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

Subpart 9—Liability of certain persons

Subpart 9: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

448 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
 - (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.

Compare: 2014 No 32 s 245; 2021 No 36 s 166

Section 448: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

449 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:
 - (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.

- (2) The action or omission is treated as also the action or omission of the body corporate, unincorporated body, principal, or individual.

Compare: 2014 No 32 s 246; 2021 No 36 s 167

Section 449: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

450 Defence in prosecution of body corporate, principal, or individual

- (1) This section applies when a defendant's liability to prosecution arises under section 449.
- (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.
- (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 449, unless the court is satisfied that it would be repugnant to justice for that defence to be so limited, having regard to—
- (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
- (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
- (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.

Compare: 2004 No 32 s 254

Section 450: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

Subpart 10—Sentencing for offences

Subpart 10: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

451 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

Section 451: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

452 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—
 - (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
 - (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 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

Section 452: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

453 Order for payment of costs in bringing prosecution

- (1) On the application of the 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).
- (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.
- (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.

Compare: 2015 No 70 s 152; 2021 No 36 s 195

Section 453: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

454 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.

Compare: 2015 No 70 s 157; 2021 No 36 s 197

Section 454: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

455 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.

Compare: 2015 No 70 s 158; 2021 No 36 s 198

Section 455: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

456 Restriction or prohibition order

- (1) The court may make—
 - (a) a restriction order, which specifies the ways in which an offender is restricted in relation to the delivery of water services; or

- (b) a prohibition order, which prohibits an offender from taking any action in relation to the delivery of water services.
- (2) The following provisions apply if the offender wants a restriction order or prohibition order to be cancelled:
- (a) the offender may apply to the court to cancel the order:
 - (b) the application must be served on the 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 offender may make a further application for cancellation.
- (4) The court must take into account—
- (a) the nature of the offence of which the offender was convicted; and
 - (b) the steps taken (if any) to remedy the problem that resulted in the order; and
 - (c) the offender’s conduct since the order was made; and
 - (d) the offender’s character; and
 - (e) any other circumstances of the case.
- (5) If the court changes the order or refuses the application, the 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 offender’s circumstances.

Compare: 2014 No 32 s 273; 2021 No 36 s 199

Section 456: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

Subpart 11—Review and appeals

Subpart 11: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

Internal review

Heading: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

457 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—
 - (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.

Compare: 2015 No 70 s 131; 2021 No 36 s 89

Section 457: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

458 Decision of water services entity

- (1) A water services entity must, on application under section 457(2), review the reviewable decision and make a decision—
 - (a) as soon as practicable; and
 - (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—

- (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,—
- (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.
- (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.

Compare: 2015 No 70 s 132; 2021 No 36 s 90

Section 458: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

459 Notice of decision on internal review

As soon as practicable after making a decision in accordance with section 458, the water services entity must give the applicant in writing—

- (a) the decision on the internal review; and
- (b) the reasons for the decision.

Compare: 2015 No 70 s 133; 2021 No 36 s 91

Section 459: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

460 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—
 - (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.

- (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

Section 460: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

Appeals

Heading: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

461 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 458 on an internal review;
 - (b) the whole or any part of a compliance order issued under section 390.
- (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.
- (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
 - (ii) set aside the decision and substitute another decision that the court considers appropriate; or
 - (c) in the case of a compliance order,—
 - (i) cancel the compliance order; or
 - (ii) cancel the compliance order and substitute another compliance order that the court considers appropriate; or
 - (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.
- (4) An internal review of a decision to restrict water supply to land or a building may not be appealed to the District Court.

Compare: 2015 No 70 s 135; 2021 No 36 s 93

Section 461: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

462 Interim order by District Court

- (1) At any time before the final determination of an appeal, the District Court may make an interim order.
- (2) An interim order may be subject to any conditions that the District Court thinks fit.
- (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.

Compare: 2013 No 148 s 23; 2021 No 36 s 94

Section 462: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

463 Appeal to High Court

- (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 section 461(3).
- (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.
- (3) However, nothing in this section affects the right of any person to apply for judicial review.

Compare: 2013 No 148 s 22; 2021 No 36 s 95

Section 463: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

464 Appeals to Court of Appeal or Supreme Court

- (1) A party to an appeal under section 463 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.
- (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).

Compare: 2021 No 36 s 96

Section 464: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

465 Effect of appeal against compliance order

An appeal under sections 461 to 464 against a compliance order has the following effects:

- (a) 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
- (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

Section 465: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

Part 13

Miscellaneous provisions

Part 13: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

Subpart 1—Reviews

Subpart 1: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

466 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.
- (2) The **relevant period** starts on 1 July 2030 and ends on 1 July 2031.
- (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:
 - (b) the interaction of each water services entity's regional representative group with the following:
 - (i) the water services entity's board:
 - (ii) territorial authority owners:
 - (iii) mana whenua in the water services entity's service area:
 - (iv) consumers and communities in the water services entity's service area:
 - (c) the interaction of each water services entity with the following:
 - (i) territorial authority owners:
 - (ii) mana whenua in the water services entity's service area:
 - (iii) consumers and communities in the water services entity's service area:

- (iv) the water services entity's consumer forums:
 - (d) each water services entity's—
 - (i) relationships with financiers; and
 - (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:
 - (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:
 - (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.

Section 466: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

467 Comprehensive review of water services legislation

- (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 **relevant period** starts on 1 July 2035 and ends on 1 July 2036.
- (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:
 - (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:
 - (e) the interaction of relevant regulators and relevant regulatory systems:
 - (f) oversight, monitoring, and stewardship arrangements:
 - (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.

Section 467: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

468 Reviewer

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.

Section 468: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

469 Reviewer's power to request information

- (1) The reviewer may, by notice in writing, require a water services entity or other relevant person (other than an officer of Parliament) to provide the reviewer with information the reviewer thinks necessary to do the review.
- (2) The water services 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.
- (3) Sections 176 to 178 apply, with all necessary modifications, to a request under this section.

Section 469: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

470 Report

- (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 section 468 or 469:
 - (b) the process that was followed:
 - (c) the issues that were examined:
 - (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.

- (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.
- (5) The Minister must, after receiving the report, promptly present a copy to the House of Representatives.

Section 470: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

471 Repeal of this subpart

This subpart is repealed on 1 July 2041.

Section 471: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

Subpart 2—Engagement, publication, and review requirements

Subpart 2: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

472 Engagement requirements

- (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 6A(8) (relating to setting by Order in Council establishment dates under section 6A for 1 or more water services entities):
 - (b) section 120(2) (relating to joint arrangements, or joint water services entity arrangements, for the purpose of providing water services):
 - (c) section 134(b) (relating to preparation or review of a Government policy statement):
 - (d) section 137B(1) (relating to giving a direction under section 137A for shared services):
 - (e) section 144(1)(b) (relating to preparation of a response to a Te Mana o te Wai statement for water services):
 - (f) section 153 (relating to asset management plans):
 - (g) section 156 (relating to funding and pricing plans):
 - (h) section 159 (relating to infrastructure strategies):
 - (i) section 236 (relating to controlled drinking water catchment management plans):
 - (j) section 241 (relating to rural supply plans for small mixed-use rural water supplies):
 - (k) section 246 (relating to water services assessments):
 - (l) section 255 (relating to stormwater management strategies):

- (m) section 270 (relating to trade waste plans):
 - (n) section 275 (relating to water supply and wastewater services rules):
 - (o) section 279 (relating to service agreements):
 - (p) section 284 (relating to specified classes of work):
 - (q) section 299 (relating to development codes):
 - (r) section 366 (relating to compliance and enforcement strategy):
 - (s) section 483 (relating to reporting and record-keeping rules):
 - (t) section 484(1)(a) and (2) (relating to regulations providing for a model constitution):
 - (u) clause 14 of Schedule 2A (relating to whether a finalised merger proposal should be implemented):
 - (v) 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:
- (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.
- (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
 - (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)(i) to (s) is made.
- (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
 - (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—
 - (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

Section 472: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

473 Principles of engagement with consumers and communities

- (1) This section applies when a water services entity is performing its functions under any of the following:
 - (a) section 120 (relating to joint arrangements):
 - (b) section 134 (relating to Government policy statements):
 - (c) sections 151 to 159 (relating to planning: asset management plans, funding and pricing plans, and infrastructure strategies):
 - (d) section 235 (relating to controlled drinking water catchment management plans):
 - (e) section 241 (relating to rural supply plans for small mixed-use rural water supplies):
 - (f) section 255 (relating to stormwater management strategies):
 - (g) section 246 (relating to water services assessments):
 - (h) section 270 (relating to trade waste plans):
 - (i) section 275 (relating to water supply and wastewater services rules):
 - (j) sections 279 and 280 (relating to consultation and publication requirements for service agreements):
 - (k) section 284 (relating to rules that regulate specified classes of work):
 - (l) section 299 (relating to development codes):
 - (m) section 366 (relating to compliance and enforcement strategies):
 - (n) section 475 (relating to consumer engagement stocktake):
 - (o) section 482 (relating to reporting and record-keeping rules).
- (2) The water services entity must be guided and informed by the following principles:
 - (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:
- (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:
- (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.

Section 473: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

Consumer engagement

Heading: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

474 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, and service requirements; and
 - (d) assist the water services entity’s regional representative group and, through that group, the entity, to understand views and priorities—
 - (i) about 1 or more water bodies in the entity’s service area; and
 - (ii) stated in 1 or more community priority statements for water services (*see* subpart 4A of Part 4); and
 - (e) 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 a water services entity must ensure that each of its consumer forums achieves equitable and reasonable representation of metropolitan, provincial, and rural communities, and mana whenua in its service area.

- (5) 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.
- (6) The chief executive must ensure that each consumer forum established has a guidance document.

Section 474: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

475 Consumer engagement stocktake

- (1) The chief executive of a water services entity must prepare a consumer engagement stocktake annually, and not 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) 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; and
 - (c) set out how the water services entity will respond to views and priorities—
 - (i) about 1 or more water bodies in the water services entity’s service area; and
 - (ii) stated in 1 or more community priority statements for water services (*see* subpart 4A of Part 4).
- (3) A consumer engagement stocktake must cover,—
- (a) for the first consumer engagement stocktake, the period from the water services entity’s establishment date; 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 473.
- (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.

Section 475: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

Report on engagement

Heading: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

476 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 472(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
 - (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.

Section 476: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

Review requirements

Heading: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

477 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.
- (2) The board may amend or replace a specified document at any time.

Section 477: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

Subpart 3—Financial arrangements

Subpart 3: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

478 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
 - (b) a receiver has been appointed under section 40A or 40B of the Receiverships Act 1993 in respect of that loan or arrangement; and
 - (c) the monitor has been informed of the appointment.
- (2) The receiver may, without further authority than this section, assess and collect in each financial year a charge under this section to recover sufficient funds to meet—
 - (a) the payment of the 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.
- (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.
- (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.

Compare: 2002 No 84 ss 114, 115

Section 478: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

479 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
 - (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.
- (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

Section 479: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

Subpart 4—Information provisions

Subpart 4: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

480 Requirement to provide information to territorial authority for purposes of land information memorandum

- (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.
- (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 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.

Section 480: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

481 Requirement to provide information to territorial authority for purposes of project information memorandum

- (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 water services entity holds relating to the matters set out in section 35(1)(c) of that Act.
- (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.

Section 481: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

482 Reporting and record-keeping rules

- (1) The board of a water services entity may make reporting and record-keeping rules.

- (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;
 - (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.
- (3) Rules made under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Legislation Act 2019 requirements for secondary legislation made under this section

Publication	The maker must—	LA19 ss 73, 74(1)(a), Sch 1 cl 14
	• notify it in the <i>Gazette</i>	
	• publish it on an Internet site maintained by, or on behalf of, the water services entity	

Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
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Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116
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This note is not part of the Act.

Section 482: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

483 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 472; and
 - (b) be guided and informed by the principles set out in section 473.
- (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 476; and
 - (b) review the rules in accordance with section 477.

Section 483: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

Subpart 5—Regulations

Subpart 5: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

484 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

- (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:

Waivers and refunds

- (c) 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:
- (ii) setting the criteria for granting a waiver or refund:

Infringement offences

- (d) 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:
- (e) prescribing infringement notices, infringement reminder notices, and infringement forms of any other kind:
- (f) 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

- (g) changing the name of a water services entity by amending or replacing the references to that water services entity in Schedule 2:

General

- (h) providing for anything this Act says may or must be provided for by regulations:
- (i) 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 relation to the regulations with the territorial authority owners of the water services entity and mana whenua of the service area.
- (3) In conducting the engagement, the Minister must—
 - (a) comply with section 472; and
 - (b) prepare and publish a report on the engagement in accordance with section 476.
- (4) Regulations made under subsection (1)(a) in relation to the Northland and Auckland Water Services Entity must, despite sections 27(2) and (4) and 93(a)(i), provide that the entity’s regional representative group consists of only the following regional representatives:
 - (a) 4 Auckland Council representatives;
 - (b) 4 mana whenua representatives appointed in respect of Tāmaki Makaurau (and that area, in this paragraph, means the district of the territorial authority in paragraph (a));
 - (c) 1 representative each from Far North District Council, Kaipara District Council, and Whangarei District Council;
 - (d) 3 mana whenua representatives appointed in respect of Te Tai Tokerau (and that area, in this paragraph, means the districts of the territorial authorities in paragraph (c)).
- (5) However, subsection (4) does not limit sections 27(2) and (4) and 93(a)(i) when the water services entity’s model constitution is amended or replaced under section 97.
- (6) 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.
- (7) The Minister must, as soon as practicable after the end of each period of 5 years after the commencement of this section,—
 - (a) commence a review of regulations made under subsection (1)(c) (relating to waivers and refunds); and
 - (b) consider whether amendments to the regulations are necessary or desirable.
- (8) Regulations made under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Legislation Act 2019 requirements for secondary legislation made under this section

Publication PCO must publish it on the legislation website and notify LA19 s 69(1)(c) it in the *Gazette*

Presentation	The Minister must present it to the House of Representatives	LA19 s 114
Disallowance	It may be disallowed by the House of Representatives <i>This note is not part of the Act.</i>	LA19 ss 115, 116

Section 484: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

485 Regulations: volumetric charging

- (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:
 - (b) setting, on or after 1 July 2029, 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—
 - (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.
- (4) Regulations made under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Legislation Act 2019 requirements for secondary legislation made under this section

Publication	PCO must publish it on the legislation website and notify it in the <i>Gazette</i>	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114
Disallowance	It may be disallowed by the House of Representatives <i>This note is not part of the Act.</i>	LA19 ss 115, 116

Section 485: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

Subpart 6—Other matters

Subpart 6: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

486 Delegation by chief executive of water services entity

- (1) The chief executive of a water services entity may delegate any of their functions or powers under this Act to any employee of the water services entity.

- (2) A person to whom any functions or powers are delegated may perform those functions or exercise those powers in the same manner and with the same effect as if they had been conferred on that person directly by this Act and not by delegation (subject to any general or special directions given or conditions imposed by the chief executive of the water services entity).
- (3) A delegation under this section—
 - (a) must be in writing signed by the chief executive of the water services entity; and
 - (b) is revocable at will in writing signed by the chief executive of the water services entity.
- (4) A person purporting to act under a delegation is, in the absence of proof to the contrary, presumed to be acting in accordance with the terms of the delegation.
- (5) A delegation does not prevent the chief executive of the water services entity from performing any function or exercising any power or affect the chief executive's responsibility for the actions of any person acting under the delegation.
- (6) If the chief executive of the water services entity ceases to hold office, the delegation continues to have effect as if it were made by their successor in office.
- (7) The chief executive of the water services entity must not delegate the power of delegation under this section.

Compare: 2021 No 36 s 203

Section 486: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

487 Application of Schedule 6

Schedule 6 applies to the transfer of small mixed-use rural water supplies.

Section 487: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

488 Relationship with local Acts

If there is any inconsistency between the provisions of this Act and the provisions of any local Act, this Act prevails.

Section 488: inserted, on 31 August 2023, by section 34 of the Water Services Legislation Act 2023 (2023 No 52).

Schedule 1 Transitional, savings, and related provisions

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Part 1

Provisions relating to this Act as enacted

1 Interpretation

In this Part, unless the context otherwise requires,—

assets, liabilities, and other matters, of a local government organisation, include, without limitation, the organisation's—

- (a) assets (for example, infrastructure assets):
- (b) contracts, engagements, or information:
- (c) benefits, entitlements, interests, rights, powers, or privileges (including, without limitation, in relation to any moneys payable, proceedings, statutory approvals or consents, easements, encumbrances, leases, or licences (including, without limitation, access licences)):
- (d) other property (which, in this paragraph, means—
 - (i) any other thing that is capable of being owned, whether it is real or personal property, and whether it is tangible or intangible property; or
 - (ii) any estate or interest in any thing specified in subparagraph (i)):
- (e) eligibility for benefits, entitlements, interests, rights, powers, or privileges:
- (f) duties or liabilities (including, without limitation, in relation to any moneys payable, proceedings, or statutory approvals or consents):
- (g) ineligibility for benefits, entitlements, interests, rights, powers, or privileges

council-controlled organisation has the same meaning as in section 6 of the Local Government Act 2002

decision has the meaning set out in clause 30

establishment chief executive means a chief executive—

- (a) of a water services entity; and
- (b) appointed under clause 4

establishment date, for a water services entity, has the meaning set out in section 6(1)

establishment period, for a water services entity, has the meaning set out in section 6(1)

existing employer has the meaning set out in clause 22

infrastructure assets includes—

- (a) existing or proposed assets to be used to provide services by, or on behalf of, the water services entity in relation to water services; and
- (b) water supply networks, wastewater networks, and stormwater networks; and
- (c) any other assets that the water services entity wishes to include in the strategy

local government organisation means any of the following that provides water services:

- (a) a local authority;
- (b) a council-controlled organisation;
- (c) a subsidiary of a council-controlled organisation

mixed-shareholder CCO means a council-controlled organisation in which—

- (a) 1 or more of the shareholders is a local government organisation; and
- (b) at least 1 of the shareholders is not a local government organisation

water services reform means—

- (a) the establishment of water services entities to deliver water services in accordance with this Act; and
- (b) the transfer of interests in, and the ownership of, infrastructure assets from local government organisations to the water services entities.

Schedule 1 clause 1 **establishment date**: replaced, on 31 August 2023, by section 35(1) of the Water Services Legislation Act 2023 (2023 No 52).

Schedule 1 clause 1 **establishment period**: replaced, on 31 August 2023, by section 35(1) of the Water Services Legislation Act 2023 (2023 No 52).

Subpart 1A—Disestablishment of former entities

Subpart 1A: inserted, on 23 August 2023, by section 27(2) of the Water Services Entities Amendment Act 2023 (2023 No 44).

1A Disestablishment of former entities

Disestablishment

- (1) This clause disestablishes the 4 water services entities established on 15 December 2022 by section 11 of this Act as enacted.

Effect on former entity's establishment chief executive

- (2) After the disestablishment of an entity mentioned in subclause (1), its establishment chief executive appointed under clause 4(4) of this schedule (in this Act as enacted)—
- (a) no longer holds that position; but
 - (b) continues to be an employee of the department on the terms and conditions of employment mentioned in clause 4(4) of this schedule (in this Act as enacted), except to the extent (if any) that those terms and conditions are varied or replaced by agreement between the chief executive of the department and the establishment chief executive.

References to water services entities established under section 11 of this Act

- (3) After the commencement of this clause, references in other legislation to water services entities under section 11 of this Act are, unless the context otherwise requires, references to water services entities under section 11 of this Act (as inserted by the Water Services Entities Amendment Act 2023).
- (4) Subclause (3) applies even if the other legislation was enacted before the commencement of the Water Services Entities Amendment Act 2023.

Schedule 1 clause 1A: inserted, on 23 August 2023, by section 27(2) of the Water Services Entities Amendment Act 2023 (2023 No 44).

Subpart 1—Transitional provisions relating to establishment and governance of water services entities

2 Establishment functions and objectives of water services entities

During the establishment period,—

- (a) section 12 must be read as if—
- (i) the objective set out in paragraph (a) of that section were to ensure that, by the establishment date, the water services entity will deliver water services and related infrastructure in an efficient and financially sustainable manner; and
 - (ii) the objective set out in paragraph (g) of that section were to ensure that, by the establishment date, the water services entity will deliver water services in a sustainable and resilient manner

that seeks to mitigate the effects of climate change and natural hazards; and

- (b) section 13 must be read as if the function described in paragraph (a) of that section were to ensure that, by the establishment date, the water services entity will have sufficient capacity and capability to provide safe, reliable, and efficient water services in its area.

3 Establishment board of water services entity

During the establishment period, subparts 6 and 8 of Part 2 of this Act apply with the following modifications:

- (a) section 59(1) must be read as if it required the board to consist of no fewer than 3, and no more than 6, members; and
- (b) all references to the constitution (for example, in section 60) do not apply; and
- (c) section 62 (board must hold 2 public meetings each financial year) does not apply; and
- (d) all references to the regional representative group and the board appointment committee of the regional representative group in subpart 6 of Part 2 of this Act must be read as if they were references to the Minister; and
- (da) the Minister must, after the commencement of this paragraph and before 1 July 2026, and subject to paragraph (dc), appoint an establishment board for each water services entity; and
- (db) the Minister's appointment under paragraph (da) of the entity's establishment board—
 - (i) may take effect before or on the entity's establishment date; but
 - (ii) must take effect on or after 1 July 2024 and before or on 1 July 2026; and
- (dc) any establishment board appointed, before this paragraph's commencement, for the Northern Water Services Entity (as established on 15 December 2022 by section 11 of this Act as enacted) is, after that commencement, taken to have been appointed on that commencement, under paragraph (da), and on equivalent terms and conditions, as the establishment board for the Northland and Auckland Water Services Entity (as established under section 11 of this Act (as inserted by the Water Services Entities Amendment Act 2023));
- (e) subpart 8 of Part 2 of this Act applies only in relation to board members, and all references in that subpart to the regional representative group and the board appointment committee of the regional representative group in relation to an obligation of the board or members of the board must be read as if they were references to the Minister; and

- (f) section 67 must be read as if it provided that a member of the board of a water services entity appointed by the Minister during the establishment period holds office until the second anniversary of the establishment date unless earlier ceasing to hold office under section 74, for example, because of being removed from office under section 70 by—
 - (i) the Minister (*see* paragraph (d) of this clause), during the establishment period; or
 - (ii) the board appointment committee, on or after the entity's establishment date.

Schedule 1 clause 3(b): amended, on 31 August 2023, by section 35(2) of the Water Services Legislation Act 2023 (2023 No 52).

Schedule 1 clause 3(da): inserted, on 23 August 2023, by section 27(3) of the Water Services Entities Amendment Act 2023 (2023 No 44).

Schedule 1 clause 3(db): inserted, on 23 August 2023, by section 27(3) of the Water Services Entities Amendment Act 2023 (2023 No 44).

Schedule 1 clause 3(dc): inserted, on 23 August 2023, by section 27(3) of the Water Services Entities Amendment Act 2023 (2023 No 44).

Schedule 1 clause 3(f): replaced, on 23 August 2023, by section 27(4) of the Water Services Entities Amendment Act 2023 (2023 No 44).

4 Appointment of establishment chief executive

General

- (1) The establishment board of a water services entity must appoint an establishment chief executive of the entity.
- (2) The appointment required by subclause (1)—
 - (a) must be made in the entity's establishment period; and
 - (b) must take effect in the entity's establishment period; and
 - (c) is subject to section 121.
- (3) The establishment chief executive is appointed for a term of office that ends at the close of the day that is 24 months after the entity's establishment date, unless the entity's establishment chief executive's term of office is earlier terminated by—
 - (a) the entity's establishment board, during the entity's establishment period; or
 - (b) the entity's board, on or after the entity's establishment date.
- (4) Subclauses (1) to (3) are subject to subclauses (5) and (6).

Exception: Northland and Auckland Water Services Entity

- (5) The Northland and Auckland Water Services Entity's establishment chief executive is the person who, immediately before the commencement of this clause, held under clause 4 of this schedule (in this Act as enacted) the position of the Northern Water Services Entity's establishment chief executive.

- (6) Subclause (5) does not—
- (a) prevent that person from ceasing to hold the position of Northland and Auckland Water Services Entity’s establishment chief executive; or
 - (b) affect or limit clause 1A(2)(b) (under which that person continues to be an employee of the department on the terms and conditions of employment mentioned in clause 4(4) of this schedule (in this Act as enacted)), except to the extent (if any) that those terms and conditions are varied or replaced by agreement between the chief executive of the department and the establishment chief executive.

Schedule 1 clause 4: replaced, on 23 August 2023, by section 27(5) of the Water Services Entities Amendment Act 2023 (2023 No 44).

5 Establishment board must prepare allocation schedule

- (1) During the establishment period, the establishment board of a water services entity must prepare, and may update, an allocation schedule for the entity.
- (2) A local government organisation must, under clause 17(1) and (2)(c), co-operate with a relevant water services entity to facilitate the water services reform and, in particular, must comply with any reasonable request by the entity for information that—
 - (a) the organisation holds; and
 - (b) is or may be necessary or desirable for preparing the allocation schedule for the entity.
- (3) The allocation schedule for a water services entity must—
 - (a) specify assets, liabilities, and other matters (or categories of assets, liabilities, and other matters) that relate wholly to the provision of water services by relevant local government organisations;
 - (b) specify assets, liabilities, and other matters (or categories of assets, liabilities, and other matters) that relate—
 - (i) partly to the provision of water services by relevant local government organisations; and
 - (ii) partly to the provision of other services by relevant local government organisations.
- (4) The allocation schedule for a water services entity may also specify assets, liabilities, and other matters (or categories of assets, liabilities, and other matters), whether specified in subclause (3)(a) and (b) or otherwise, that—
 - (a) relate wholly to 1 or more relevant local government organisations; and
 - (b) in the opinion of the establishment board of the entity, should not transfer to the entity (*see also* clause 6).
- (5) The allocation schedule for a water services entity must be not inconsistent with a plan approved under clause 9(1) (*see* clause 9(4)(a) and (b)).

- (6) The allocation schedule for a water services entity—
- (a) must not specify assets, liabilities, or other matters that belong to any mixed-shareholder CCO; but
 - (b) must list the shares in that mixed-shareholder CCO that are held by the 1 or more shareholders that are local government organisations.
- (7) Subclause (6) overrides subclauses (1) to (5) and clause 6.
- (8) However, the establishment board may redact any information from the allocation schedule that it considers is commercially sensitive.

Schedule 1 clause 5 heading: amended, on 23 August 2023, by section 27(6) of the Water Services Entities Amendment Act 2023 (2023 No 44).

Schedule 1 clause 5(1): amended, on 23 August 2023, by section 27(7) of the Water Services Entities Amendment Act 2023 (2023 No 44).

Schedule 1 clause 5(3)(a): amended, on 31 August 2023, by section 35(3) of the Water Services Legislation Act 2023 (2023 No 52).

Schedule 1 clause 5(3)(b): amended, on 31 August 2023, by section 35(3) of the Water Services Legislation Act 2023 (2023 No 52).

Schedule 1 clause 5(4): amended, on 31 August 2023, by section 35(4) of the Water Services Legislation Act 2023 (2023 No 52).

Schedule 1 clause 5(4)(b): amended, on 23 August 2023, by section 27(7) of the Water Services Entities Amendment Act 2023 (2023 No 44).

Schedule 1 clause 5(8): inserted, on 31 August 2023, by section 35(5) of the Water Services Legislation Act 2023 (2023 No 52).

6 Guiding principle for treatment in allocation schedule of secondary water services assets or property

- (1) The establishment board of a water services entity must, in preparing or updating the entity's allocation schedule, have regard to the principle stated in this clause.
- (2) The principle is that secondary water services assets or property of a local government organisation should be specified in the should-not-transfer part of the entity's allocation schedule, unless the organisation and the establishment board agree otherwise.
- (3) In this clause,—

allocation schedule, of a water services entity, means the allocation schedule prepared or updated for the entity under clause 5

secondary water services assets or property, for a local government organisation, means any assets or property—

- (a) of the local government organisation; and
- (b) that have or has more than 1 purpose or use (*see also* clause 5(3)(b)); and
- (c) whose primary purpose or predominant use is not the delivery of water services

should-not-transfer part, of a water services entity's allocation schedule, means the part of that schedule that—

- (a) is prepared under clause 5(4); and
- (b) specifies assets, liabilities, or other matters that, in the opinion of the establishment board of the entity, should not transfer to the entity.

Schedule 1 clause 6(1): amended, on 23 August 2023, by section 27(8) of the Water Services Entities Amendment Act 2023 (2023 No 44).

Schedule 1 clause 6(2): amended, on 23 August 2023, by section 27(8) of the Water Services Entities Amendment Act 2023 (2023 No 44).

Schedule 1 clause 6(3) **should-not-transfer part** paragraph (b): amended, on 23 August 2023, by section 27(9) of the Water Services Entities Amendment Act 2023 (2023 No 44).

7 Role of Minister during establishment period

- (1) During the establishment period, in addition to the Minister's role under section 26, the Minister has the additional role of overseeing the establishment of the water services entities.
- (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.
- (3) The Minister's additional role also includes issuing, amending, and replacing Government policy statements under clause 8.

Schedule 1 clause 7(2): replaced, on 31 August 2023, by section 35(6) of the Water Services Legislation Act 2023 (2023 No 52).

8 Government policy statement during establishment period

- (1) The purpose of a Government policy statement on water services issued during the establishment period (despite section 133(1)) is to—
 - (a) state the Government's overall direction and priorities for water services during the establishment period; and
 - (b) inform and guide the activities involved in establishing the water services entities and preparing them for operation.
- (2) During the establishment period, the Minister may issue a Government policy statement on water services—
 - (a) with any content that the Minister considers necessary or desirable in the establishment period, after having had regard to—
 - (i) the Minister's additional role under clause 7; and
 - (ii) the statement's purpose (as stated in subclause (1)); and
 - (iii) content required or permitted by section 133(2) and (3), so far as that content is relevant to that purpose; and

- (b) if the statement is consistent with the objectives of water services entities under section 12; and
 - (c) if the Minister has complied with section 134(a).
- (3) When preparing or reviewing a Government policy statement during the establishment period, the Minister is not required to comply with section 134(b) but must instead engage in relation to the statement with—
 - (a) establishment boards of water services entities; and
 - (b) Taumata Arowai—the Water Services Regulator.
- (3A) In conducting the engagement, the Minister must—
 - (a) comply with section 472; and
 - (b) be guided and informed by the principles set out in section 473; and
 - (c) prepare and publish a report on the engagement in accordance with section 476.
- (4) Section 135, without limiting the generality of that section,—
 - (a) applies to a Government policy statement issued during the establishment period; and
 - (b) requires a water services entity, when performing its functions during that period, to give effect to that statement.
- (5) A Government policy statement issued during the establishment period—
 - (a) may be amended or replaced under section 136; and
 - (b) must be presented and published under section 137; and
 - (c) is not required to be reviewed under section 132(2); and
 - (d) that is in force immediately before the end of that period, is revoked at the end of that period.

Schedule 1 clause 8(3): amended, on 31 August 2023, by section 35(7) of the Water Services Legislation Act 2023 (2023 No 52).

Schedule 1 clause 8(3A): inserted, on 31 August 2023, by section 35(8) of the Water Services Legislation Act 2023 (2023 No 52).

8A Directions for shared services

- (1) A direction under section 137A may be given by being approved by the Minister before or during a water services entity's establishment period, and may come into force at the start of, or otherwise during, that period, if it is or is to be given to entities that are or include (or, when established under section 11 or by the water services entity, will be) either or both of—
 - (a) the water services entity;
 - (b) a subsidiary of the water services entity.
- (2) A direction to which this clause applies—

- (a) must be copied to the establishment board of the water services entity as soon as is practicable after whichever is the later of the time that the direction is approved by the Minister and the time that the entity is established under section 11; and
 - (b) is subject to sections 117(4), 137A to 137D, 472(1)(d) and 476.
- (3) However, for a direction that is to be approved by the Minister before or during a water services entity's establishment period, section 137B(1) only requires engagement in accordance with section 472 with—
- (a) the establishment boards of the water services entities, but only if those boards have been appointed under clause 3(da); and
 - (b) Taumata Arowai—the Water Services Regulator; and
 - (c) the Commission.
- (4) A direction to which this clause applies that is approved by the Minister before a water services entity's establishment period expires and is revoked on 1 July 2027.

Schedule 1 clause 8A: inserted, on 23 August 2023, by section 27(10) of the Water Services Entities Amendment Act 2023 (2023 No 44).

Schedule 1 clause 8A(2)(b): amended, on 31 August 2023, by section 35(9) of the Water Services Legislation Act 2023 (2023 No 52).

Schedule 1 clause 8A(3): amended, on 31 August 2023, by section 35(10) of the Water Services Legislation Act 2023 (2023 No 52).

Subpart 2—Transitional arrangements relating to reporting obligations

9 Chief executive of department must prepare and approve establishment water services plan

- (1) The chief executive of the department must prepare and approve an establishment water services plan for a water services entity.
- (2) An establishment water services plan for the entity takes the place of a statement of intent for the period to which that plan applies, which—
 - (a) starts on the day after the date of publication of that plan; and
 - (b) ends at the first end of a financial year after the establishment date.
- (3) *[Repealed]*
- (4) A plan approved under subclause (1) for a water services entity must include—
 - (a) the processes, policies, and guidance for identifying the functions, staff, and assets, liabilities, and other matters to be transferred to the entity; and
 - (b) the proposed timing for the transfer of functions, staff, and assets, liabilities, and other matters to the entity; and
 - (c) the processes, and required timing, for preparing and adopting for the entity, under clauses 10 to 13 of this schedule, the following:

- (i) an initial asset management plan; and
 - (ii) an initial funding and pricing plan; and
- (d) performance expectations for the period to which it applies; and
- (e) the reporting requirements for the quarterly reports to be provided to the chief executive of the department under clause 14 of this schedule.
- (5) The plan may include any other matters that the Minister considers relevant and asks the chief executive of the department to include in the plan.
- (6) The chief executive of the department must make the plan publicly available, as soon as practicable, by publishing a copy on an Internet site maintained by, or on behalf of, the department in a format that is readily accessible.

Schedule 1 clause 9(3): repealed, on 23 August 2023, by section 27(11) of the Water Services Entities Amendment Act 2023 (2023 No 44).

10 Chief executive must prepare draft initial asset management plan and draft initial funding and pricing plan

- (1) During the establishment period, the chief executive of the department must prepare, for each water services entity,—
 - (a) a draft initial asset management plan; and
 - (b) a draft initial funding and pricing plan.
- (2) Each draft initial plan must—
 - (a) cover a period of not less than 10 consecutive financial years; and
 - (b) if it is a draft initial asset management plan, be prepared as required by clause 12.
- (3) The chief executive of the department must—
 - (a) send each draft initial plan to relevant local government organisations and the Commission; and
 - (b) give them a reasonable time within the establishment period to review, and provide comment to the chief executive of the department on, the draft initial plan; and
 - (c) have regard to any comments they provide in response, and make any changes to the draft initial plan; and
 - (d) forward the draft initial plan to the entity’s establishment board.

11 Role of entity’s establishment board in respect of initial asset management plan and initial funding and pricing plan

- (1) A water services entity’s establishment board must, in accordance with the processes and required timing in the entity’s establishment water services plan (*see* clause 9(4)(c)),—
 - (a) review the draft initial plans forwarded under clause 10 to the establishment board and the Commission; and

- (b) before adopting for the entity a final initial asset management plan or final initial funding and pricing plan,—
 - (i) send to the Commission a draft of the plan (being a draft of the plan that reflects any changes the chief executive of the department has made in response to comment on the draft plan provided by the Commission under clause 13(2)); and
 - (ii) give the Commission a reasonable time within the establishment period to scrutinise, and report to the entity, the Minister, and the public on, the draft of the plan under clause 13(3); and
 - (iii) have regard to any report under clause 13(3) of the Commission, and to any recommendations made to the establishment board in the report; and
 - (c) adopt for the entity, with or without modifications from the draft initial plans forwarded under clause 10 to the establishment board, and in accordance with clause 12 (if applicable), the entity's—
 - (i) final initial asset management plan; and
 - (ii) final initial funding and pricing plan.
- (2) A final initial asset management plan, or final initial funding and pricing plan, adopted under this clause—
- (a) is, after the commencement of section 151 or 154, as applicable, taken to be the entity's asset management plan or funding and pricing plan prepared and provided in accordance with that section and with Part 2 or 3 of Schedule 3; and
 - (b) must, as soon as practicable after the commencement of section 153(a) or 156(a), as applicable, be made publicly available in accordance with that section; and
 - (c) must be replaced under section 151 or 154, as applicable, within 3 years after the commencement of that section.

12 Additional requirements for draft and final initial asset management plans

- (1) This clause applies to a plan that is—
- (a) a draft initial asset management plan prepared for a water services entity by the chief executive of the department under clause 10; or
 - (b) a final initial asset management plan to be adopted for the water services entity by its establishment board under clause 11.
- (2) The plan must indicate—
- (a) the investment priorities for the entity's infrastructure assets;
 - (b) how the entity will operate, maintain, and renew its infrastructure assets;

- (c) how it incorporates any commitments that relevant local government organisations have made to mana whenua relating to water services infrastructure;
 - (d) how the entity will provide new infrastructure assets.
- (3) The chief executive of the department when preparing the plan under clause 10, and the entity's establishment board when adopting the plan under clause 11, must also have regard to—
 - (a) information that local government organisations provide to the chief executive of the department or to the water services entity in response to requests for information made under clause 17; and
 - (b) the initial funding and pricing plan being prepared or, as the case requires, that has been adopted, for the entity; and
 - (c) the entity's ability to deliver the matters proposed for inclusion in the initial asset management plan.

13 Commission's functions and powers in establishment period

- (1) During the establishment period, the Commission has, in respect of the preparation of an initial asset management plan or an initial funding and pricing plan, the functions and powers in this clause.
- (2) The Commission may review, and provide comments to the chief executive of the department on, the draft of the plan sent under clause 10 to the Commission.
- (3) The Commission may scrutinise, and report to the establishment board of the entity, the Minister, and the public on, the draft of the plan sent under clause 11 to the Commission.
- (4) The purpose of the Commission's review and provision of comments, or scrutiny and reporting, under subclause (2) or (3) is to help to optimise—
 - (a) the plan; and
 - (b) decisions covered by the plan.
- (5) During the establishment period, a local government organisation, or an establishment chief executive or establishment board of a water services entity, must co-operate with the Commission to facilitate the Commission's review and provision of comments, or scrutiny and reporting, under this clause.
- (6) In particular, a local government organisation, or an establishment chief executive or establishment board of a water services entity, must comply with any reasonable request by the Commission for information that the local government organisation or the water services entity holds (for example, information about current or indicative water charges).
- (7) The obligation to comply with a request under subclause (6) includes a requirement to comply with any reasonable request to—

- (a) collate information; or
 - (b) provide information in a particular format.
- (8) Subclause (6) does not limit the generality of subclause (5), and subclause (7) does not limit the generality of subclause (6).

Schedule 1 clause 13(3): amended, on 23 August 2023, by section 27(12) of the Water Services Entities Amendment Act 2023 (2023 No 44).

14 Quarterly reports

- (1) The board of a water services entity must, during the establishment period, provide a quarterly report to the chief executive of the department.
- (2) The report must include any information required by an establishment water services plan approved under clause 9 of this schedule.
- (3) Nothing in this clause requires a quarterly report to be provided in respect of any period before the date on which the appointment of the entity's establishment board under clause 3 of this schedule takes effect.

Schedule 1 clause 14(3): inserted, on 23 August 2023, by section 27(13) of the Water Services Entities Amendment Act 2023 (2023 No 44).

15 Accountability arrangements for establishment period

- (1) A water services entity must produce an establishment period annual report for, and within 4 months after the end of, a financial year, if—
- (a) the establishment period starts before or during that financial year; and
 - (b) some or all of that financial year is before the establishment date.
- (2) However, if the period from the start of the establishment period to the end of the financial year is less than 4 months, that period must be covered in the entity's next establishment period annual report.
- (2A) Nothing in this clause requires an establishment period annual report to be provided in respect of any period before the date on which the appointment of the entity's establishment board under clause 3 of this schedule takes effect.
- (3) The establishment period annual report referred to in subclause (1) must—
- (a) describe, accessibly, the entity's activities during the relevant period; and
 - (b) report on performance against the entity's performance expectations set out in the establishment water services plan (*see* clause 9); and
 - (c) report on compliance with this schedule in respect of the entity; and
 - (d) include financial statements for the entity; and
 - (e) contain information 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; and
 - (f) include an audit report in accordance with subclause (5); and

- (g) be made publicly available, as soon as practicable and no later than 4 months after the end of the financial year concerned, by publishing a copy on an Internet site maintained by, or on behalf of, the entity in a format that is readily accessible.
- (4) A water services entity must forward to the Auditor-General—
 - (a) the entity’s annual financial statements; and
 - (b) any other information for the establishment period annual report that the Auditor-General has agreed, or is required, to audit.
- (5) The Auditor-General must, within 4 months after the end of the financial year concerned,—
 - (a) audit the statements and information referred to in subclause (4); and
 - (b) provide an audit report on those statements and that information to the water services entity.
- (6) The audit report must indicate whether those statements and that information—
 - (a) *[Repealed]*
 - (b) comply with generally accepted accounting practice; and
 - (c) are free from material misstatement.

Schedule 1 clause 15(2A): inserted, on 23 August 2023, by section 27(14) of the Water Services Entities Amendment Act 2023 (2023 No 44).

Schedule 1 clause 15(6)(a): repealed, on 31 August 2023, by section 35(11) of the Water Services Legislation Act 2023 (2023 No 52).

16 First infrastructure strategy of water services entity

A water services entity must provide its first infrastructure strategy (despite sections 2(2) and 157 to 159) on a date that is 1 July in any of the 3 years that start on the entity’s establishment date.

Schedule 1 clause 16: amended, on 23 August 2023, by section 27(15) of the Water Services Entities Amendment Act 2023 (2023 No 44).

16A First consumer engagement stocktake of water services entity

- (1) This clause applies if a water services entity’s establishment date is 1 January 2025 or 1 January 2026.
- (2) A consumer stocktake is not required under section 475 for the entity’s first financial year.

Schedule 1 clause 16A: inserted, on 23 August 2023, by section 27(16) of the Water Services Entities Amendment Act 2023 (2023 No 44).

Schedule 1 clause 16A(2): amended, on 31 August 2023, by section 35(12) of the Water Services Legislation Act 2023 (2023 No 52).

16B Clauses 17, 18, and 22 apply only for specified period

- (1) This clause applies to powers or functions conferred, or duties imposed, by clauses 17, 18, and 22.

- (2) Those powers or functions may be exercised, and those duties may be carried out, only for the period that—
- (a) starts on the day after the date of Royal assent of the Water Services Legislation Act 2023; and
 - (b) ends on 1 July 2026.
- (3) This clause does not limit any duty to carry out, on or after 1 July 2026, those duties to be carried out during that specified period.

Schedule 1 clause 16B: inserted, on 31 August 2023, by section 35(13) of the Water Services Legislation Act 2023 (2023 No 52).

17 Duty of local government organisations to co-operate with department and water services entities

- (1) During the period specified in clause 16B(2), a local government organisation must co-operate with the department and any relevant water services entity to facilitate the water services reform.
- (2) Without limiting subclause (1), a local government organisation must—
- (a) comply with any reasonable request by the chief executive of the department or the water services entity for employees of the local government organisation to be seconded to the department or the water services entity; and
 - (b) co-operate to enable employees to whom clause 23 applies, whenever it is reasonably practicable for them to do so, to remain in their current locality; and
 - (c) comply with any reasonable request by the chief executive of the department or the water services entity for information that the local government organisation holds (for example, information of the kind specified in clause 5(2), or information about current or indicative water charges, or both).
- (3) The obligation to comply with a request under subclause (2)(c) includes a requirement to comply with any reasonable request to—
- (a) collate information; or
 - (b) provide information in a particular format; or
 - (c) disclose to the public, as requested, and in a manner and format requested, by the department and by any relevant water services entity, the information provided; or
 - (d) enable assurance processes for checking the completeness, integrity, and reliability of the information provided.
- (4) A local government organisation may only provide personal information under subclause (2)(c) if the information relates to all or any of the following:
- (a) employment matters:

- (b) persons actually using land or persons actually using a rating unit, or liability for rates, under the Local Government (Rating) Act 2002.
- (5) However, the obligation to comply with a request under subclause (2)(c) in respect of preparation under clause 10, and during the period specified in clause 16B(2), of an initial asset management plan or an initial funding and pricing plan, does not include a requirement that a local government organisation do any of the following:
 - (a) carry out, or have carried out for it, a revaluation of its assets:
 - (b) undertake any public consultation or engagement.
- (6) In this clause, **relevant water services entity** means the water services entity whose service area includes the district or region that the local government organisation services.

Schedule 1 clause 17(1): amended, on 31 August 2023, by section 35(14) of the Water Services Legislation Act 2023 (2023 No 52).

Schedule 1 clause 17(5): amended, on 31 August 2023, by section 35(14) of the Water Services Legislation Act 2023 (2023 No 52).

18 Duty of water services entity to co-operate

- (1) During the period specified in clause 16B(2), a water services entity must co-operate with the department and with its territorial authority owners to facilitate the water services reform.
- (2) Without limiting subclause (1), a water services entity must comply with any reasonable request by the chief executive of the department for information that the water services entity holds that is relevant to the water services reform.

Schedule 1 clause 18(1): amended, on 31 August 2023, by section 35(15) of the Water Services Legislation Act 2023 (2023 No 52).

19 Chief executive of department may issue direction of non-compliance

- (1) The chief executive of the department may issue a non-compliance direction to a local government organisation if they fail to comply with clause 13 or 17 or any disclosure requirements required by regulations made under section 484(1)(b).
- (2) The non-compliance direction must—
 - (a) identify the local government organisation to which it relates; and
 - (b) specify the non-compliance (for example, non-compliance with clause 17 in respect of a request for information of the kind specified in clause 5(2)); and
 - (c) specify the action required to comply with the non-compliance direction.
- (3) The chief executive of the department may apply to the District Court for an order to compel a local government organisation to comply with a non-compliance direction.

- (4) The District Court may make an order to compel a local government organisation to comply with a non-compliance direction if satisfied that the local government organisation has failed to comply with the non-compliance direction.
- (5) The chief executive of the department may withdraw a non-compliance direction issued under this clause at any time.
- (6) An order of the District Court to compel a local government organisation to comply with a non-compliance direction under subclause (4) ceases to apply if the non-compliance order is withdrawn.

Schedule 1 clause 19(1): amended, on 31 August 2023, by section 35(17) of the Water Services Legislation Act 2023 (2023 No 52).

20 Relationship of this Part with Local Government Act 2002

The following provisions of the Local Government Act 2002 do not apply to any actions taken by a local government organisation in order to comply with this schedule or facilitate the water services reform:

- (a) section 95(2) (relating to the requirement for a local authority to consult on significant or material variations from its annual plan):
- (b) section 97 (which requires certain decisions to be taken only if provided for in a long-term plan):
- (c) section 130(3) (relating to certain obligations to maintain water services).

Subpart 3—Transitional provisions relating to employment

Application of subpart

21 Subpart does not apply to mixed-shareholder CCOs

- (1) This subpart does not apply to any mixed-shareholder CCO.
- (2) This clause overrides clauses 22 to 29.

Review of employment positions

22 Review of employment positions by chief executive of department during specified period

- (1) The chief executive of the department must, during the period specified in clause 16B(2),—
 - (a) review, in consultation with the persons affected, the positions of persons employed by existing employers; and
 - (b) determine, in relation to each employee, whether in the chief executive's reasonable opinion—

- (i) the purpose, duties, and responsibilities of the employee's role primarily relate to, or primarily support, the delivery of water services; and
 - (ii) the employee has a senior management role.
- (2) In making a determination under subclause (1)(b), the chief executive must consider—
 - (a) whether more than half the employee's time is spent undertaking duties and responsibilities that primarily relate to, or primarily support, the delivery of water services; and
 - (b) whether the removal of duties and responsibilities that do not primarily relate to, or primarily support, the delivery of water services would result in a substantial change to the employee's role.
- (3) The chief executive of the department must, before the establishment date, notify in writing each employee and their existing employer of the determination made in relation to the employee under subclause (1)(b).
- (4) In this subpart, **existing employer**, in relation to a water services entity, means a local government organisation that—
 - (a) provides water services in the service area of the water services entity before the establishment date; and
 - (b) employs employees.

Schedule 1 clause 22 heading: amended, on 31 August 2023, by section 35(16)(a) of the Water Services Legislation Act 2023 (2023 No 52).

Schedule 1 clause 22(1): amended, on 31 August 2023, by section 35(16)(b) of the Water Services Legislation Act 2023 (2023 No 52).

23 Obligation to offer employees position if role primarily relates to, or primarily supports, delivery of water services

- (1) The chief executive of a water services entity must offer an employee of an existing employer an employment position if the chief executive of the department determines under clause 22 that—
 - (a) the purpose, duties, and responsibilities of the employee's role primarily relate to, or primarily support, the delivery of water services; and
 - (b) the employee does not have a senior management role.
- (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)).
- (1B) The chief executive of a water services entity may, with the prior written approval of the chief executive of the department, offer an employment position under subclause (1) to an employee of another water services entity if the

- employee works at all or any times in the service area of the entity with which the position will be offered.
- (1C) This clause, and clauses 24 to 30, apply to an employee of another water services entity offered under subclause (1B) an employment position under subclause (1) as if—
- (a) a reference to an existing employer (as that term is defined in clause 22) includes a reference to that other water services entity; and
 - (b) a reference to any kind of employment agreement includes a reference to that employee’s employment agreement with that other water services entity.
- (1D) Sections 19 to 25 of the Employment Relations Act 2000 apply to the workplace of an employee who is or may be offered an employment position under subclause (1).
- (2) If the employee is covered by an individual employment agreement, the employee may—
- (a) choose to remain on the terms of their existing agreement; or
 - (b) accept any new agreement offered by the water services entity.
- (3) If the employee is covered by a collective employment agreement, their terms and conditions are covered by clauses 28 and 29.
- (4) The chief executive of the relevant water services entity must, before the establishment date, notify each employee who is being offered a position with the water services entity—
- (a) that the employee is being offered a position with the same or similar duties and responsibilities with the water services entity; and
 - (b) of the terms and conditions of employment of the position being offered; and
 - (c) of the date by which the employee is to notify the chief executive as to whether the employee accepts or declines the offer.
- (5) The position offered or, as the case requires, its terms and conditions must—
- (a) be in substantially the same general locality; and
 - (b) be within a reasonable commuting distance; and
 - (c) recognise the employee’s employment with the existing employer as if it were continuous service with the water services entity.
- (6) Whether the position offered is within a reasonable commuting distance must be decided in consultation with the employee, and after considering all relevant factors, including—
- (a) the distance between the old and new location, and the distances between them and the employee’s place of residence; and

- (b) the time required to travel between the old and new locations and the employee's place of residence; and
 - (c) the employee's usual travel arrangements; and
 - (d) how often the employee is required to work at the new location; and
 - (e) access to transport (for example, a vehicle) provided to the employee by the water services entity; and
 - (f) availability of public transport; and
 - (g) any relevant terms of the employee's current employment agreement.
- (7) Nothing in this clause—
- (a) imposes any obligation on an employee of an existing employer to accept an offer under this schedule; or
 - (b) prevents the chief executive of a water services entity from offering a position to any other employee of the existing employer on any terms and conditions the chief executive considers appropriate.

Schedule 1 clause 23(1A): inserted, on 31 August 2023, by section 35(18) of the Water Services Legislation Act 2023 (2023 No 52).

Schedule 1 clause 23(1B): inserted, on 23 August 2023, by section 27(17) of the Water Services Entities Amendment Act 2023 (2023 No 44).

Schedule 1 clause 23(1C): inserted, on 23 August 2023, by section 27(17) of the Water Services Entities Amendment Act 2023 (2023 No 44).

Schedule 1 clause 23(1D): inserted, on 23 August 2023, by section 27(17) of the Water Services Entities Amendment Act 2023 (2023 No 44).

24 Compensation if employee accepts position at new location

- (1) If an employee referred to in clause 23 takes up a position at a new location, the employee is entitled to—
- (a) any compensation otherwise payable under the terms and conditions of employment applicable immediately before the establishment date as if the employee had continued to be employed by their existing employer; but
 - (b) if no compensation is payable under paragraph (a), or any compensation payable under paragraph (a) is less favourable than the compensation provided in the following table, compensation by way of a single amount in accordance with the following table:

Distance differential	Amount payable (\$)
Less than 2 kms	Nil
2 kms or more, but less than 8 kms	600
8 kms or more, but less than 12 kms	1,080
12 kms or more, but less than 20 kms	1,620
20 kms or more	2,400

- (2) In the table in subclause (1)(b),—

distance means the shortest distance by road

distance differential means the difference derived by subtracting the distance referred to in paragraph (a) from the difference referred to in paragraph (b):

- (a) the distance as on the establishment date from the employee's normal residence to the employee's place of work with their existing employer; and
 - (b) the distance as on the establishment date (or as on any later date on which the employee's place of work shifts to the new location) from the employee's normal residence to the employee's place of work with their new employer.
- (3) However, an amount payable in the table in subclause (1)(b)—
- (a) is for an employee who is required to travel the additional distance on each of 5 working days per week; and
 - (b) must be adjusted, on a pro-rata basis, if, and to the extent that, an employee is required to travel the additional distance on each of fewer, or of more, than 5 working days per week.

Compare: 2010 No 37 s 105

25 Transfer of employment positions

- (1) An employee who accepts an offer of employment made under clause 23(4) becomes an employee of the water services entity, on and from the establishment date, on the terms and conditions offered under that subclause.
- (2) The terms and conditions of employment continue to apply in relation to the employee until—
 - (a) the terms and conditions are varied—
 - (i) by agreement between the employee and the relevant water services entity; or
 - (ii) in accordance with the employee's terms and conditions of employment; or
 - (iii) because of the application of section 61(1)(b) of the Employment Relations Act 2000; or
 - (b) the employee accepts a later position with the water services entity or the employee resigns or has their employment terminated.
- (3) To avoid doubt, subclause (2) applies,—
 - (a) in the case of an employee bound by an applicable collective agreement, subject to section 61(1)(b) of the Employment Relations Act 2000 and, without limiting this paragraph, subject to an applicable collective agreement that comes into force on the establishment date; and
 - (b) in the case of an employee not bound by an applicable collective agreement, subject to any variation in terms and conditions of employment

agreed to before the establishment date but to come into force on that date.

- (4) This clause applies only if the employee continues to be an employee of the existing employer at the close of the day before the establishment date.

Compare: 2010 No 37 s 101

26 Employees not entitled to redundancy or other compensation just because position or employer ceases to exist

- (1) This clause applies to an employee of an existing employer who—
- (a) is notified of an offer in accordance with clause 23(4); or
 - (b) otherwise accepts a position with the water services entity.
- (2) An employee to whom this clause applies is not entitled to receive any payment or any other benefit (**compensation**) for any of the following reasons:
- (a) the position held by the employee with an existing employer ceases to exist;
 - (b) the employee ceases to be an employee of an existing employer;
 - (c) the employee's employer ceases to exist.
- (3) This clause is subject to clause 27.

Compare: 2010 No 37 s 103

27 Compensation deferred, and may cease to be payable, if permanent employee accepts fixed term employment with water services entity

- (1) This clause applies to an employee who is a permanent employee of an existing employer and accepts a position with a new employer that is a water services entity, but only if that position with a new employer is—
- (a) not one as an establishment chief executive (as defined in clause 1); and
 - (b) for a fixed term (within the meaning of section 66 of the Employment Relations Act 2000).
- (2) Any compensation payable to the employee in relation to the employee's permanent employment is not to be paid until the conclusion of their fixed term employment.
- (3) Subclause (2) applies subject to subclauses (4) and (5).
- (4) Compensation deferred under subclause (2) ceases to be payable to the employee if the employee, before the end of their fixed term employment with the new employer, accepts an offer of permanent employment with the new employer.
- (5) Subclause (4) applies whether the permanent employment begins before or after the end of the fixed term employment.

Compare: 2010 No 37 s 106(1)–(4)

27A Staff retention payment

- (1) This clause applies to an employee who has accepted an offer of employment from the chief executive of a water services entity under clause 23(4).
- (2) The water services entity may, on or after its establishment date, make a payment to the employee for the purpose of facilitating staff retention.
- (3) The payment may be made subject to lawful conditions to help achieve that purpose.
- (4) This clause does not limit a water services entity's ability to—
 - (a) initiate, enter into, and carry out bargaining for, or vary or renegotiate, an employment agreement; or
 - (b) provide payments, or other benefits of any kind, to employees.

Schedule 1 clause 27A: inserted, on 23 August 2023, by section 27(18) of the Water Services Entities Amendment Act 2023 (2023 No 44).

27B References in conditions on visas granted under Immigration Act 2009

- (1) This clause applies to a reference to a local authority in a condition imposed on a visa granted under the Immigration Act 2009 to a person who has accepted an offer of employment from the chief executive of a water services entity under clause 23(4).
- (2) On and after the entity's establishment date, the reference must be read as a reference to the entity.

Schedule 1 clause 27B: inserted, on 23 August 2023, by section 27(18) of the Water Services Entities Amendment Act 2023 (2023 No 44).

*Collective bargaining and collective agreements***27C Collective bargaining on behalf of water services entity with no establishment chief executive or chief executive**

- (1) This clause applies to a water services entity—
 - (a) that has not yet, or has, been established under section 11; and
 - (b) whose establishment chief executive has not been appointed (*see also* clause 4); and
 - (c) whose chief executive has not been appointed.
- (2) The chief executive of the department may appoint in writing a person (a **bargaining agent**) to represent the entity by carrying out, on behalf of the entity, collective bargaining—
 - (a) under Part 5 of the Employment Relations Act 2000; and
 - (b) with 1 or more unions; and
 - (c) initiated by 1 or more unions under clause 28.
- (3) The bargaining agent may, in or after the collective bargaining, enter into a collective employment agreement—

- (a) on behalf of the entity (and, if applicable, on behalf of any 1 or more other entities also represented under this clause by the bargaining agent (*see* subclause (8))); and
 - (b) the parties to which may include 1 or more other entities represented under this clause by 1 or more other bargaining agents.
- (4) Subclause (3) does not limit the generality of subclause (2).
- (5) Nothing in this clause applies to any terms or conditions of employment of—
 - (a) an establishment chief executive of a water services entity; or
 - (b) a chief executive of a water services entity.
- (6) After the appointment of an establishment chief executive of a water services entity takes effect, a bargaining agent appointed under this clause may continue to represent that entity under this clause only if, and only to the extent that, the bargaining agent has a written authorisation to do so given by the establishment chief executive.
- (7) Any employment agreement negotiated and entered into by a bargaining agent who is representing a water services entity under this clause—
 - (a) binds a represented water services entity on and after its establishment date; but
 - (b) does not prevent the parties from varying or renegotiating the agreement, under this Act and the general law relating to employment relations.
- (8) A bargaining agent may under this clause be appointed for, and represent, 2 or more water services entities if the requirements of this clause are met for each entity.

Schedule 1 clause 27C: inserted, on 23 August 2023, by section 27(18) of the Water Services Entities Amendment Act 2023 (2023 No 44).

28 Collective bargaining before establishment date for new collective agreement to come into force on that date

- (1) Subclause (2) applies if an employee whose position is subject to review under clause 22 is a member of a union that enters into bargaining for a collective agreement to come into force on the establishment date.
- (2) For the purposes of the bargaining during the establishment period,—
 - (a) the employees are to be treated as if they were employees of the water services entity; and
 - (b) section 41 of the Employment Relations Act 2000 does not apply in relation to the bargaining; and
 - (c) the other provisions of the Employment Relations Act 2000 apply accordingly with any necessary modifications.
- (3) For the purposes of ratifying a collective agreement, a person is to be treated as an employee of the entity only if—

- (a) the person—
 - (i) has accepted an offer of a position; or
 - (ii) has neither accepted nor declined an offer notified under clause 23; or
 - (iii) has not received notice of an offer under clause 23; and
 - (b) the following work comes within the coverage clause in the collective agreement:
 - (i) work to be done by the person for the water services entity (if paragraph (a)(i) applies);
 - (ii) work done by the person for their existing employer (if paragraph (a)(ii) or (iii) applies).
- (4) A person ceases to be an employee for the purposes of this clause if—
- (a) the person declines an offer of a position with the water services entity; or
 - (b) the person is notified that their employment is to be terminated on and from the establishment date; or
 - (c) the person's employment is terminated before that date or the person resigns before that date.

Compare: 2010 No 37 s 111

29 Application of existing collective agreements on and from establishment date

- (1) Subclause (2) applies if—
- (a) an employee of an existing employer—
 - (i) has received and accepted an offer of employment with a water services entity; or
 - (ii) has received notification of an offer under clause 23(4) and neither accepted nor declined the offer; or
 - (iii) has not been notified in accordance with clause 23(4) as to whether they are being offered a position with a water services entity or their employment with an existing employer is to be terminated; and
 - (b) the employees are bound by a collective agreement under the Employment Relations Act 2000 in relation to their employment with their existing employer; and
 - (c) the collective agreement does not expire until after the establishment date.
- (2) On and from the establishment date,—

- (a) the collective agreement is to be treated as a separate collective agreement in relation to the water services entity; and
 - (b) the water services entity is to be treated as a party to the collective agreement in place of the previous employer; and
 - (c) the collective agreement continues to apply to and bind only the employees referred to in subclause (1) to the extent that the nature of the work they undertake for the water services entity comes within the coverage clause of the collective agreement.
- (3) Subclause (2) applies only if the collective agreement is not replaced on the establishment date by a collective agreement in accordance with clause 28.
- (4) A union that is a party to a separate collective agreement under this clause may, by notice in writing to the relevant water services entity, specify a date on which the agreement is to expire, being a date that is earlier than a date on which the agreement would otherwise expire under section 52(3) of the Employment Relations Act 2000.
- (5) Section 58 of the Employment Relations Act 2000 (which is a section about an employee who resigns as a member of a union but does not resign as an employee) does not apply to any employees who transfer to a water services entity under subclause (2).

Compare: 2010 No 37 s 112

Subpart 4—Oversight powers of department

30 Decisions subject to department's oversight powers

Definition

- (1) In this subpart, **decision** means a decision that—
- (a) relates to, or may affect, the provision of water services; and
 - (b) is not excluded by subclause (4).

Examples

- (2) Examples of a decision that complies with subclause (1)(a) include a decision that relates to, or may affect, the provision of water services, and that is a decision—
- (a) by a local authority to adopt an annual plan or to adopt or amend a long-term plan; or
 - (b) by a local authority to adopt a policy required by the Local Government Act 2002; or
 - (c) by a local authority that is significantly inconsistent with, or is anticipated to have consequences that will be significantly inconsistent with, a policy or plan adopted by the local authority under the Local Government Act 2002; or

- (d) by a local authority to purchase or dispose of assets other than in accordance with its long-term plan; or
 - (e) by a local government organisation to purchase or dispose of an asset; or
 - (f) by any local government organisation to enter into a contract.
- (3) In subclause (2), **annual plan**, of a local authority, has the same meaning as in section 5(1) of the Local Government Act 2002.

Exclusion of certain decisions by local government organisations

- (4) However, in this subpart, a **decision** excludes (*see* subclause (1)(b)) a decision that complies with subclause (1)(a) and that is a decision by a local government organisation to enter into an excluded contract.
- (5) An **excluded contract**, in subclause (4), means a contract—
- (a) that is an employment agreement; or
 - (b) that is not an employment agreement, and that imposes an obligation on a local government organisation only before a date determined by the chief executive of the department for the purposes of this paragraph; or
 - (c) that is not an employment agreement, and that is a contract for which the consideration is less than an amount set by the chief executive of the department for the purposes of this paragraph.

Compare: 2009 No 13 s 31(4), (5)

Schedule 1 clause 30(3): replaced, on 31 August 2023, by section 35(19) of the Water Services Legislation Act 2023 (2023 No 52).

30A Clauses 31 to 33 apply only for specified period

- (1) This clause applies to powers or functions conferred, or duties imposed, by clauses 31 to 33.
- (2) Those powers or functions may be exercised, and those duties may be carried out, only for the period that—
- (a) starts on the day after the date of Royal assent of the Water Services Legislation Act 2023; and
 - (b) ends on 1 July 2026.
- (3) This clause does not limit any duty to carry out, on or after 1 July 2026, those duties to be carried out during that specified period.

Schedule 1 clause 30A: inserted, on 23 August 2023, by section 27(20) of the Water Services Entities Amendment Act 2023 (2023 No 44).

Schedule 1 clause 30A heading: amended, on 31 August 2023, by section 35(20)(a) of the Water Services Legislation Act 2023 (2023 No 52).

Schedule 1 clause 30A(2)(a): amended, on 31 August 2023, by section 35(20)(b) of the Water Services Legislation Act 2023 (2023 No 52).

Schedule 1 clause 30A(3): amended, on 31 August 2023, by section 35(20)(c) of the Water Services Legislation Act 2023 (2023 No 52).

31 Review of local government organisation decisions and meeting agendas during specified period

- (1) During the period specified in clause 30A(2), each local government organisation must provide the department with information about an intended decision.
- (2) The chief executive of the department may review any decision made by, or on behalf of, a local government organisation during that specified period.
- (3) Despite subclause (2), the department must not review a decision under this clause that it has confirmed under clause 33(2)(a).
- (4) The department must, without delay, notify a local government organisation if it—
 - (a) reviews a decision of the organisation under subclause (2); and
 - (b) considers, on reasonable grounds, that the decision is a decision to which clause 32 applies.

Compare: 2009 No 13 s 20

Schedule 1 clause 31 heading: amended, on 31 August 2023, by section 35(21)(a) of the Water Services Legislation Act 2023 (2023 No 52).

Schedule 1 clause 31(1): amended, on 31 August 2023, by section 35(21)(b) of the Water Services Legislation Act 2023 (2023 No 52).

Schedule 1 clause 31(1): amended, on 23 August 2023, by section 27(21)(b) of the Water Services Entities Amendment Act 2023 (2023 No 44).

Schedule 1 clause 31(2): amended, on 31 August 2023, by section 35(21)(c) of the Water Services Legislation Act 2023 (2023 No 52).

Schedule 1 clause 31(2): amended, on 23 August 2023, by section 27(21)(c) of the Water Services Entities Amendment Act 2023 (2023 No 44).

32 Decision making during specified period

- (1) The chief executive of a local government organisation must ensure that, before implementing a decision to which this clause applies, the department has confirmed the decision in writing.
- (2) A decision to which this clause applies is void and of no effect until it is confirmed by the chief executive of the department.
- (3) This clause applies to a decision of a local government organisation that is made during the period specified in clause 30A(2) and that may, directly or because of its consequences,—
 - (a) significantly prejudice the water services reform; or
 - (b) significantly constrain the powers or capacity of a water services entity following the water services reform; or
 - (c) have a significant negative impact on the assets, liabilities, or other matters that are transferred to a water services entity as a result of the water services reform.
- (4) However, if the decision is to adopt or amend a plan or policy under, or required by, the Local Government Act 2002, the department may—

- (a) confirm under subclause (2)(a) the decision, to the extent that it is to adopt or amend 1 or more parts of the plan or policy; and
- (b) decline to confirm under subclauses (2)(b) and (3) the decision, or require further information under subclause (2)(c) and then act under subclause (2)(a) or (b) in respect of the decision, to the extent that it is to adopt or amend 1 or more other parts of the plan or policy.

Compare: 2009 No 13 s 31(1), (6), (7)

Schedule 1 clause 32 heading: amended, on 31 August 2023, by section 35(22)(a) of the Water Services Legislation Act 2023 (2023 No 52).

Schedule 1 clause 32(3): amended, on 31 August 2023, by section 35(22)(b) of the Water Services Legislation Act 2023 (2023 No 52).

Schedule 1 clause 32(3): amended, on 23 August 2023, by section 27(22)(b) of the Water Services Entities Amendment Act 2023 (2023 No 44).

Schedule 1 clause 32(3)(b): amended, on 23 August 2023, by section 27(23) of the Water Services Entities Amendment Act 2023 (2023 No 44).

Schedule 1 clause 32(3)(c): amended, on 23 August 2023, by section 27(23) of the Water Services Entities Amendment Act 2023 (2023 No 44).

Schedule 1 clause 32(4): inserted, on 23 August 2023, by section 27(24) of the Water Services Entities Amendment Act 2023 (2023 No 44).

33 Confirmation of decisions of local government organisations

- (1) This clause applies to the department if a local government organisation seeks confirmation of a decision to which clause 32 applies.
- (2) The department must, as soon as practicable and in writing,—
 - (a) confirm the decision; or
 - (b) decline to confirm the decision and give reasons for doing so (with reference to the matters in clause 32(3)); or
 - (c) if it considers that it has insufficient information to make a decision, request further information from the chief executive and then act under paragraph (a) or (b), as applicable.
- (3) The chief executive of the department may decline to confirm a decision if they determine that 1 or more of the following criteria are met:
 - (a) the decision will significantly prejudice the water services reform:
 - (b) the decision will significantly constrain the powers or capacity of a water services entity following the water services reform:
 - (c) the decision will have a significant negative impact on the assets, liabilities, or other matters that are transferred to a water services entity as a result of the water services reform.

Compare: 2009 No 13 s 21

Subpart 5—Transitional tax relief, and recovery of costs

34 Transitional tax relief

No water services entity or local government organisation will have any tax liability under the Income Tax Act 2007 or the Goods and Services Tax Act 1985 arising from the vesting of assets, liabilities, or other matters in, or the transfer of employees from a local government organisation to, a water services entity.

35 Crown expenses and capital expenditure recoverable from water services entity

- (1) This clause applies to any expenses or capital expenditure incurred by the Crown—
 - (a) before, on, or after the commencement of this clause; and
 - (b) before the establishment date; and
 - (c) in relation to establishing a water services entity.
- (2) The expenses or capital expenditure must be reimbursed—
 - (a) by the water services entity to the Crown; and
 - (b) on the terms and conditions agreed between—
 - (i) the Minister; and
 - (ii) the Minister of Finance.
- (3) The terms and conditions may, for example, specify, or specify classes, descriptions, or kinds of, all or any of the expenses or capital expenditure.
- (4) The duty to reimburse the expenses or capital expenditure is not the Crown lending money for the purposes of the Public Finance Act 1989.

Compare: 1989 No 44 ss 4, 65K, 65L, 65O, 65P, 65Q; 2009 No 13 s 23

Subpart 6—Payment provisions

36 Support package payment made by water services entity

- (1) After a water services entity's establishment date but by no later than the fifth anniversary of that date, a water services entity must pay each local authority whose district is included in its service area an amount, if any, determined by the chief executive of the department relating to the support package payment made by a water services entity.
- (2) In subclause (1), **support package payment made by a water services entity** means a payment—
 - (a) made by a water services entity to a local authority; and
 - (b) made under the Three Waters Reforms Programme—Support package (announced in July 2021); and

- (c) made under that package’s “no worse off” component; and
- (d) arising from a funding proposal made or finalised before, on, or after the commencement of this clause.

Schedule 1 clause 36(1): amended, on 31 August 2023, by section 35(23) of the Water Services Legislation Act 2023 (2023 No 52).

Schedule 1 clause 36(2)(c): replaced, on 23 August 2023, by section 27(25) of the Water Services Entities Amendment Act 2023 (2023 No 44).

Subpart 7—Treaty settlement obligations

37 Treaty settlement obligations

- (1) This clause applies to a person who performs or exercises a duty, function, or power under this Part.
- (2) The person must, in performing or exercising the duty, function, or power, uphold the integrity, intent, and effect of Treaty settlement obligations.
- (3) This clause does not affect or limit how section 9 (Treaty settlement obligations prevail) applies to this Part.

Part 2

Provisions relating to Water Services Legislation Act 2023

Schedule 1 Part 2: inserted, on 31 August 2023, by section 35(24)(a) of the Water Services Legislation Act 2023 (2023 No 52).

38 Interpretation

In this Part, unless the context otherwise requires,—

Act means the Water Services Entities Act 2022

allocation schedule has the meaning given in clause 6(3)

amendment Act means the Water Services Legislation Act 2023

assets, liabilities, and other matters has the meaning given in clause 1

bylaw has the same meaning as in section 5(1) of the Local Government Act 2002 and includes—

- (a) a set of bylaws; and
- (b) an individual bylaw in a set of bylaws; and
- (c) a provision within an individual bylaw

council-controlled organisation has the meaning given in clause 1

development contribution has the same meaning as in section 197(2) of the Local Government Act 2002

development contributions requirements means the requirements established under subpart 5 of Part 8 of the Local Government Act 2002

establishment chief executive means a person appointed under clause 4(1)

establishment date, for a water services entity, has the meaning set out in section 6(1)

establishment period, for a water services entity, has the meaning set out in section 6(1)

local government organisation has the meaning given in clause 1

mixed-use water services asset or property, 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
- (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).

Schedule 1 clause 38: inserted, on 31 August 2023, by section 35(24)(a) of the Water Services Legislation Act 2023 (2023 No 52).

39 References to Natural and Built Environment Act 2023 where provision not yet in force

- (1) This clause applies to any reference in this Act or other legislation (as amended by the amendment Act) to a provision (or provisions) of the Natural and Built Environment Act 2023 (the **NBEA**) where the relevant provision of the NBEA—
 - (a) is not in force; or
 - (b) does not yet apply in relation to a region (for example, because a plan under that Act for the region has not been made or does not yet have effect).
- (2) Until the relevant provision of the NBEA is in force or applies in relation to the relevant region, the reference must be read as if the amendment had not been made and the corresponding provision (or provisions) in the Resource Management Act 1991 (if any) applies.

Compare: 2023 No 46 Schedule 1 cl 85

Schedule 1 clause 39: inserted, on 31 August 2023, by section 35(24)(a) of the Water Services Legislation Act 2023 (2023 No 52).

Further provisions relating to allocation schedule

Heading: inserted, on 31 August 2023, by section 35(24)(a) of the Water Services Legislation Act 2023 (2023 No 52).

40 Consultation on allocation schedule

Before finalising an allocation schedule of a water services entity, the board of the water services entity 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 board 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.

Schedule 1 clause 40: inserted, on 31 August 2023, by section 35(24)(a) of the Water Services Legislation Act 2023 (2023 No 52).

41 Ministerial approval of allocation schedule

- (1) After complying with clause 40, the board of the water services entity 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.

Schedule 1 clause 41: inserted, on 31 August 2023, by section 35(24)(a) of the Water Services Legislation Act 2023 (2023 No 52).

Application of certain provisions of this Schedule

Heading: inserted, on 31 August 2023, by section 35(24)(a) of the Water Services Legislation Act 2023 (2023 No 52).

42 Application of certain provisions of this Schedule to council-controlled organisations and subsidiaries

City Care

- (1) On and after the commencement of this clause, the following provisions of this schedule do not apply to City Care:
- (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 44 to 49 (transfer of assets, liabilities, and other matters of local government organisation to water services entity):
 - (e) clauses 54 and 55 (directions).

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 City Care) or a subsidiary of that council-controlled organisation (other than a subsidiary of City Care) only if its predominant purpose is providing services to a territorial authority that support the delivery of water services by the territorial authority.
- (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).
- (4) An order under this clause may be made before 1 July 2026.
- (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.
- (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, **City Care** means City Care Limited and each of its subsidiaries.

Legislation Act 2019 requirements for secondary legislation made under this clause

Publication	PCO must publish it on the legislation website and notify it in the <i>Gazette</i>	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Schedule 1 clause 42: inserted, on 31 August 2023, by section 35(24)(a) of the Water Services Legislation Act 2023 (2023 No 52).

*Transfer of assets, liabilities, and other matters of local government
organisation to water services entity*

Heading: inserted, on 31 August 2023, by section 35(24)(a) of the Water Services Legislation Act 2023 (2023 No 52).

43 Application of clauses 44 to 49

Clauses 44 to 49 apply in respect of a local government organisation within the service area of a water services entity.

Schedule 1 clause 43: inserted, on 31 August 2023, by section 35(24)(a) of the Water Services Legislation Act 2023 (2023 No 52).

44 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—
 - (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:
 - (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:
 - (c) vest in a water services entity assets that are wholly related to the provision of rural mixed-use drinking water:
 - (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:
 - (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:
 - (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** means assets that provide—
- (a) drinking water; and
 - (b) one or both of the following:
 - (i) agricultural water;
 - (ii) horticultural water.
- (3) Nothing in section 22 or Part 10 of the Natural and Built Environment Act 2023 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 subclause (1).
- (4) An order made under this clause must—
- (a) relate to a particular water services entity; and
 - (b) be made on or before the water services entity’s establishment date.
- (5) An order made under this clause is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Compare: 2009 No 13 s 36

Legislation Act 2019 requirements for secondary legislation made under this clause

Publication	PCO must publish it on the legislation website and notify it in the <i>Gazette</i>	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Schedule 1 clause 44: inserted, on 31 August 2023, by section 35(24)(a) of the Water Services Legislation Act 2023 (2023 No 52).

45 Transfer of other assets, liabilities, and other matters to water services entity

- (1) On a water services entity’s 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;
 - (b) all property owned or controlled by the 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;
 - (d) all assets that are wholly related to the provision of rural mixed-use drinking water 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:
 - (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 services entity:
 - (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.
- (2) Subclause (1)—
- (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 Part provides otherwise:
 - (b) does not apply in respect of—
 - (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 water services entity's establishment date:
 - (iv) assets, liabilities, and other matters of a local government organisation specified in an order made under clause 44(1)(d).

Schedule 1 clause 45: inserted, on 31 August 2023, by section 35(24)(a) of the Water Services Legislation Act 2023 (2023 No 52).

46 Dispute resolution relating to transfer of assets, liabilities, and other matters under clause 45

- (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 clause 45.
- (2) Either or both of the parties may refer the dispute to arbitration under the Arbitration Act 1996.
- (3) The arbitration decision is binding on both parties and determines who owns the asset, liability, or other matter.

Schedule 1 clause 46: inserted, on 31 August 2023, by section 35(24)(a) of the Water Services Legislation Act 2023 (2023 No 52).

47 Exception to clause 45 relating to shares in council-controlled organisations

- (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.
- (2) If this clause applies,—
 - (a) clause 44 applies to the transfer of the shares in the council-controlled organisation that a local government organisation holds in the relevant water services entity:
 - (b) clause 45 does not apply.

Schedule 1 clause 47: inserted, on 31 August 2023, by section 35(24)(a) of the Water Services Legislation Act 2023 (2023 No 52).

48 Effect of transfers under clause 44 or 45

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 44 or 45.
- (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.
- (3) If any land transferred to a water services entity under clause 44 or 45 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.

General

- (4) Nothing effected or authorised by clause 44 or 45—
 - (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
 - (b) gives rise to a right for a person to—

- (i) terminate, cancel, or modify a contract, an agreement, or an arrangement; or
 - (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.

Schedule 1 clause 48: inserted, on 31 August 2023, by section 35(24)(a) of the Water Services Legislation Act 2023 (2023 No 52).

49 Existing proceedings and other matters

- (1) On and after a water services entity's 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 water services entity's establishment date, remain due and payable by the local government organisation; and
 - (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
 - (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.
- (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

Schedule 1 clause 49: inserted, on 31 August 2023, by section 35(24)(a) of the Water Services Legislation Act 2023 (2023 No 52).

50 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
 - (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 44 or 45.
- (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.
- (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
 - (b) relate to a property held by the local government organisation immediately before the water services entity's 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

Schedule 1 clause 50: inserted, on 31 August 2023, by section 35(24)(a) of the Water Services Legislation Act 2023 (2023 No 52).

Transfer of specified assets, liabilities, and other matters

Heading: inserted, on 31 August 2023, by section 35(24)(a) of the Water Services Legislation Act 2023 (2023 No 52).

51 Transfer of specified assets, liabilities, and other matters to water services entity by Order in Council

- (1) This clause applies in relation to an asset, liability, or other matter that is used wholly or partly for the provision of water services in the service area of a water services entity (a **specified asset, liability, or other matter**) and—
- (a) that is owned by a local government organisation in the service area of a water services entity; or
 - (b) that is not owned by a local government organisation in the service area of a water services entity; or
 - (c) 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, liability, or other matter in the water services entity if all interested parties agree in writing to the vesting.
- (3) For the purposes of subclause (2), **interested parties** means,—
- (a) for a specified asset, liability, or other matter to which subclause (1)(a) or (b) applies, the water services entity and any party claiming a right of ownership of the specified asset, liability, or other matter:
- (b) for a specified asset, liability, or other matter to which subclause (1)(c) applies, the local government organisation, the water services entity, and any other party claiming a right of ownership of the specified asset, liability, or other matter.
- (4) An order under this clause may be made before, on, or after the water services entity's establishment date.
- (5) An order made under this clause is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Legislation Act 2019 requirements for secondary legislation made under this clause

Publication	PCO must publish it on the legislation website and notify it in the <i>Gazette</i>	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Schedule 1 clause 51: inserted, on 31 August 2023, by section 35(24)(a) of the Water Services Legislation Act 2023 (2023 No 52).

Financial contributions transferred to Watercare Services Limited

Heading: inserted, on 31 August 2023, by section 35(24)(a) of the Water Services Legislation Act 2023 (2023 No 52).

52 Financial contributions for water supply or wastewater services infrastructure payable to Watercare Services Limited

- (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 Northland and Auckland Water Services Entity's 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.
- (2) On and after the establishment date referred to in subclause (1), the financial contribution must be transferred to the Northland and Auckland Water Services Entity and used by that entity in reasonable accordance with the purposes for which the money was received by Auckland Council.

Schedule 1 clause 52: inserted, on 31 August 2023, by section 35(24)(a) of the Water Services Legislation Act 2023 (2023 No 52).

Other agreements

Heading: inserted, on 31 August 2023, by section 35(24)(a) of the Water Services Legislation Act 2023 (2023 No 52).

53 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 a water services entity to that water services entity.
- (2) An order under this clause may only be made on or before the water services entity's establishment date.
- (3) An order made under this clause is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Legislation Act 2019 requirements for secondary legislation made under this clause

Publication	PCO must publish it on the legislation website and notify it in the <i>Gazette</i>	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Schedule 1 clause 53: inserted, on 31 August 2023, by section 35(24)(a) of the Water Services Legislation Act 2023 (2023 No 52).

54 Reconfiguration of existing agreements

- (1) This clause applies to the following existing agreements entered into by a local government organisation:
 - (a) an existing agreement—
 - (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.
- (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:
 - (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:
- (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).
 - (3) A third party that has rights or obligations under an existing agreement must choose, by the water services entity's 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) 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 water services entity's establishment date, the Minister may give the local government organisation and the board of the water services entity a further direction specifying—
 - (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
 - (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
 - (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 enacted.
 - (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.

- (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.
- (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 the board of the water services entity on or before the water services entity's establishment date.
- (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

Schedule 1 clause 54: inserted, on 31 August 2023, by section 35(24)(a) of the Water Services Legislation Act 2023 (2023 No 52).

55 Process for giving directions under clause 54

- (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 54; and
 - (b) must advise the board of the water services entity to be referred to in a direction to be given under clause 54 at least 14 days before the direction is given; and
 - (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).
- (2) A direction given under clause 54 must be in writing.
- (3) The Minister must—
 - (a) present a copy of any direction given under clause 54 to the House of Representatives within 12 sitting days after the direction is given to the board; and
 - (b) publish a copy of it in the *Gazette* as soon as practicable after giving the direction.
- (4) However, the Minister may withhold from disclosure under subclause (3) any part of a direction that the Minister considers is commercially sensitive.

- (5) If subclause (4) applies, the Minister must substitute a note of explanation for the parts withheld.

Compare: 2010 No 116 s 118

Schedule 1 clause 55: inserted, on 31 August 2023, by section 35(24)(a) of the Water Services Legislation Act 2023 (2023 No 52).

Payment for water services infrastructure debt

Heading: inserted, on 31 August 2023, by section 35(24)(a) of the Water Services Legislation Act 2023 (2023 No 52).

56 Payment by water services entity to territorial authority for water services infrastructure debt

- (1) A water services entity must pay a local government organisation the amount prescribed under subclause (3) 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
 - (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 water services entity’s establishment date.
- (3) 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
 - (b) prescribes the date (or dates) on which the amount (or amounts) must be paid.
- (4) Before making a recommendation under subclause (3), 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
 - (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
 - (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.
- (5) This clause applies despite anything in section 171(1) or clause 44 or 45.

- (6) This clause is repealed on 1 July 2031.
- (7) An order made under this clause is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Legislation Act 2019 requirements for secondary legislation made under this clause

Publication	PCO must publish it on the legislation website and notify it in the <i>Gazette</i>	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Schedule 1 clause 56: inserted, on 31 August 2023, by section 35(24)(a) of the Water Services Legislation Act 2023 (2023 No 52).

Transitional stormwater management strategies

Heading: inserted, on 31 August 2023, by section 35(24)(a) of the Water Services Legislation Act 2023 (2023 No 52).

57 Transitional stormwater management strategies

- (1) The board of a water services entity must prepare a transitional stormwater management strategy that the chief executive must put in place on or before a water services entity's establishment date that includes (without limitation) a transitional stormwater plan that—
- (a) identifies the geographical zones (on a catchment-level basis) of the water services entity's service area that are specified in its stormwater management plan under section 258(1)(b), 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
 - (c) provides the relevant details about any wastewater networks that are part of, or related to, a stormwater network; and
 - (d) specifies the water services bylaws continued under clause 60 or water services instruments made under clause 61 relating to stormwater networks that apply in the service area of the water services entity.
- (2) The board of the water services entity may amend the transitional stormwater management strategy at any time.

Schedule 1 clause 57: inserted, on 31 August 2023, by section 35(24)(a) of the Water Services Legislation Act 2023 (2023 No 52).

Relationship agreements

Heading: inserted, on 31 August 2023, by section 35(24)(a) of the Water Services Legislation Act 2023 (2023 No 52).

58 Requirement to enter into relationship agreements

- (1) A relationship agreement required by section 199A must be entered into not later than 3 months before a water services entity's 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 water services entity's establishment date, the terms and conditions of the agreement are—
 - (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.

Schedule 1 clause 58: inserted, on 31 August 2023, by section 35(24)(a) of the Water Services Legislation Act 2023 (2023 No 52).

Transition from former water services bylaws to water services instruments

Heading: inserted, on 31 August 2023, by section 35(24)(a) of the Water Services Legislation Act 2023 (2023 No 52).

59 Definitions and application

- (1) In this clause and clauses 60 to 62, 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

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

transition period means the period beginning on a water services entity's 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:

 - (a) a controlled drinking water catchment management plan:
 - (b) stormwater network rules:
 - (c) a trade waste plan:

- (d) water supply or wastewater services rules:
 - (e) rules regulating specified classes of work:
 - (f) reporting and record-keeping rules.
- (2) This clause and clauses 60 to 62 apply during the transition period.
- Schedule 1 clause 59: inserted, on 31 August 2023, by section 35(24)(a) of the Water Services Legislation Act 2023 (2023 No 52).

60 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:
- (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 transition period,—
- (a) a bylaw continued by this clause may be amended by the relevant water services entity under the corresponding empowering provision (if any) in this Act or (if there is no corresponding empowering provision) as if this clause contained the relevant empowering provision; and
 - (b) the relevant water services entity may perform and exercise all functions, duties, or powers (including enforcement powers) in relation to the bylaw in the same way as if all references in the bylaw to the local authority were references to the relevant water services entity.
- (3) 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.

Schedule 1 clause 60: inserted, on 31 August 2023, by section 35(24)(a) of the Water Services Legislation Act 2023 (2023 No 52).

61 Process for making water services instruments during transition period

- (1) When making a water services instrument under this Act during the transition period, the board of a relevant water services entity—
- (a) may—
 - (i) adopt (with or without modification) or consolidate the provisions of any 1 or more former water services bylaws; and
 - (ii) base the instrument on any template or model instrument issued by the chief executive of the department for the purpose:
 - (b) must revoke the former water services bylaw (if any) superseded by the instrument in the water services instrument:
 - (c) must otherwise comply with any procedural, engagement, or consultation requirements that apply to the making of the instrument.

- (2) Despite subclause (1)(c), a water services entity need not comply with the procedural, engagement, or consultation requirements that would otherwise apply to the making of the water services instrument if the instrument—
- (a) adopts, with or without modification, any 1 or more former water services bylaws; and
 - (b) applies to the same area and has the same material effect as the former water services bylaws.

Schedule 1 clause 61: inserted, on 31 August 2023, by section 35(24)(a) of the Water Services Legislation Act 2023 (2023 No 52).

62 Requirement to enter relationship agreement relating to transition

During the transition period, a relevant water services entity and a relevant local authority must enter into a relationship agreement under Part 5A 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.

Schedule 1 clause 62: inserted, on 31 August 2023, by section 35(24)(a) of the Water Services Legislation Act 2023 (2023 No 52).

Transitional service agreements and development codes

Heading: inserted, on 31 August 2023, by section 35(24)(a) of the Water Services Legislation Act 2023 (2023 No 52).

63 Transitional service agreement

- (1) The chief executive of the department must, by notice, issue a service agreement (a **transitional service agreement**) that must be treated as if it were made by a water services entity under section 277.
- (2) Before issuing the transitional service agreement, the chief executive of the department must consult the Commission.
- (3) A transitional service agreement remains in force until the earlier of—
 - (a) the date on which a service agreement prepared by the water services entity in accordance with sections 277 to 281 takes effect;
 - (b) 1 July 2027.

Schedule 1 clause 63: inserted, on 31 August 2023, by section 35(24)(a) of the Water Services Legislation Act 2023 (2023 No 52).

64 Transitional development code

- (1) The chief executive of the department must, by notice, issue a development code (a **transitional development code**) that must be treated as if it were prepared by a water services entity and approved by the Commission under Part 10.
- (2) The transitional development code—
 - (a) need not contain the Part 1 matters specified in section 293(a); but
 - (b) must set out the Part 2 matters specified in section 293(b).

- (3) Before issuing the transitional development code, the chief executive of the department must consult the Commission.
- (4) The transitional development code remains in force until the earlier of—
 - (a) the date on which a development code prepared by the water services entity under section 291 and approved by the Commission in accordance with sections 293 to 296 and 299 takes effect:
 - (b) 1 July 2027.
- (5) A water services entity must comply with the transitional development code while it remains in force.
- (6) However, during the period that the transitional development code applies, the water services entity may replace the fees and charges set out in the code prescribed under section 293(b)(xii) by the chief executive of the department with new fees and charges prescribed by the entity without complying with the process set out in section 296.
- (7) A transitional development code issued under this clause is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Legislation Act 2019 requirements for secondary legislation made under this clause

Publication	The maker must— <ul style="list-style-type: none">• notify it in the <i>Gazette</i>• publish it on an Internet site maintained by, or on behalf of, the water services entity	LA19 ss 73, 74(1)(a), Sch 1 cl 14
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Schedule 1 clause 64: inserted, on 31 August 2023, by section 35(24)(a) of the Water Services Legislation Act 2023 (2023 No 52).

Charging matters

Heading: inserted, on 31 August 2023, by section 35(24)(a) of the Water Services Legislation Act 2023 (2023 No 52).

65 Chief executive of water services entity may adopt existing growth charges policies

- (1) Despite anything in Part 11, 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—
 - (a) the development contributions requirements and the environmental contributions requirements of the relevant territorial authority or authorities:
 - (b) the infrastructure growth charge requirements of Watercare Services Limited set out in any of its consumer contracts in effect on 30 June 2024.

- (2) If subclause (1)(a) 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.
- (3) A policy adopted under subclause (1) expires on the earlier of the following:
 - (a) a date that the chief executive specifies in the adopted policy:
 - (b) the close of 30 June 2029.
- (4) This clause is repealed on 1 July 2029.

Schedule 1 clause 65: inserted, on 31 August 2023, by section 35(24)(a) of the Water Services Legislation Act 2023 (2023 No 52).

66 Water services entity may adopt and use existing tariff or charging structures

- (1) Despite anything in Part 11, a water services entity may adopt and use the existing tariff or charging structures of the relevant territorial authority or authorities or a local government organisation.
- (2) A tariff or charging structure adopted under subclause (1) expires on the earlier of the following:
 - (a) a date that the chief executive specifies:
 - (b) the close of 30 June 2029.
- (3) This clause is repealed on 1 July 2029.

Schedule 1 clause 66: inserted, on 31 August 2023, by section 35(24)(a) of the Water Services Legislation Act 2023 (2023 No 52).

67 Transfer of development contribution or environmental contribution required for water services infrastructure to water services entity

- (1) On a water services entity's establishment date, a territorial authority must transfer to the water services entity any development contribution or environmental contribution (or any part of a development contribution or environmental 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.
- (2) A territorial authority must, as soon as is reasonably practicable, transfer to the water services entity any development contribution or environmental contribution that the territorial authority receives after the water services entity's establishment date that it has required in respect of the development of its water services infrastructure, in relation to a development where the resource or building consent or service connection application was submitted (with all required information) prior to the water services entity's establishment date.

- (3) 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—
- (a) prescribes the amounts of the development contributions and environmental contributions that—
 - (i) a territorial authority has received or is to receive; and
 - (ii) are to be transferred to the relevant water services entity;
 - (b) prescribes the date (or dates) on which the development contributions and environmental contributions under subclause (2) 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 water services entity’s establishment date.
- (4) Before making a recommendation under subclause (3), the Minister must—
- (a) provide the chief executives of the relevant water services entity and territorial authorities with a copy of a draft transfer schedule; and
 - (b) give the chief executives 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 Minister considers appropriate; and
 - (d) inform the chief executives in writing of the reasons for any amendments made to the draft as a result of any comments received.
- (5) Sections 204 and 209 of the Local Government Act 2002 apply in relation to the development contribution or environmental contribution as if—
- (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.
- (6) The relevant water services entity must use any development contribution or environmental contribution transferred to it under this clause for the purposes for which the contribution was required by the territorial authority concerned.
- (7) An order made under this clause is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Legislation Act 2019 requirements for secondary legislation made under this clause

Publication	PCO must publish it on the legislation website and notify it in the <i>Gazette</i>	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Schedule 1 clause 67: inserted, on 31 August 2023, by section 35(24)(a) of the Water Services Legislation Act 2023 (2023 No 52).

68 Water services entity not eligible for certain contributions

- (1) A water services entity is not eligible to receive or use—
 - (a) development contributions collected under the Local Government Act 2002; or
 - (b) environmental contributions collected under the Natural and Built Environment Act 2023.
- (2) Nothing in subclause (1) applies to development contributions or environmental contributions that have been transferred to the water services entity under clause 67.

Schedule 1 clause 68: inserted, on 31 August 2023, by section 35(24)(a) of the Water Services Legislation Act 2023 (2023 No 52).

69 Requirement of territorial authority to amend policy on development contributions or environmental contributions

- (1) This clause applies in relation to—
 - (a) a policy on development contributions or environmental contributions adopted by a territorial authority under section 102 of the Local Government Act 2002; and
 - (b) a plan prepared under the Natural and Built Environment Act 2023.
- (2) Each policy or plan must be amended to remove any power of the territorial authority to require a development contribution or an environmental contribution for stormwater networks, water supply, or wastewater services infrastructure, in accordance with the following procedure:
 - (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 using the process in the Local Government Act 2002 or the Natural and Built Environment Act 2023;
 - (c) the amendment must have effect from the water services entity's 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.
- (4) Nothing in this clause prohibits a territorial authority from requiring development contributions or environmental contributions after the water services entity's establishment date for water services infrastructure under a policy in place before the water services entity's establishment date where a resource consent, building consent, or service connection application was lodged prior to that date.

Compare: 2010 No 37 s 54

Schedule 1 clause 69: inserted, on 31 August 2023, by section 35(24)(a) of the Water Services Legislation Act 2023 (2023 No 52).

Transitional collection of water services charges

Heading: inserted, on 31 August 2023, by section 35(24)(a) of the Water Services Legislation Act 2023 (2023 No 52).

70 Chief executive of water services entity may require local authorities to collect water services charges

- (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.
- (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.
- (4) The Minister must determine all outstanding terms of the water services charges collection agreement within 20 working days of the referral.

Compare: 2020 No 47 ss 54–56

Schedule 1 clause 70: inserted, on 31 August 2023, by section 35(24)(a) of the Water Services Legislation Act 2023 (2023 No 52).

71 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.
- (2) A water services charges collection agreement, if still in force, expires with the close of the third anniversary of the relevant water services entity’s establishment date, unless the parties to the agreement agree to extend it.

Compare: 2020 No 47 s 56

Schedule 1 clause 71: inserted, on 31 August 2023, by section 35(24)(a) of the Water Services Legislation Act 2023 (2023 No 52).

72 Local authorities not responsible for collecting unpaid charges

- (1) This clause applies if—
 - (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—
 - (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).
- (3) This clause, the cross-heading above clause 70, and clauses 70 and 71 are repealed on 1 July 2029.

Compare: 2020 No 47 s 57

Schedule 1 clause 72: inserted, on 31 August 2023, by section 35(24)(a) of the Water Services Legislation Act 2023 (2023 No 52).

Water services infrastructure connection applications

Heading: inserted, on 31 August 2023, by section 35(24)(a) of the Water Services Legislation Act 2023 (2023 No 52).

73 Existing water services infrastructure connection applications

- (1) 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 a water services entity's establishment date.
- (2) The territorial authority must assess and determine the application as if the amendment Act had not been enacted.

Schedule 1 clause 73: inserted, on 31 August 2023, by section 35(24)(a) of the Water Services Legislation Act 2023 (2023 No 52).

Transitional provisions relating to Local Government Act 2002

Heading: inserted, on 31 August 2023, by section 35(24)(a) of the Water Services Legislation Act 2023 (2023 No 52).

74 Trade waste consents

- (1) This clause applies to a trade waste consent—
 - (a) granted under a bylaw made under section 146(1)(a)(iii) of the Local Government Act 2002 (including any conditions or restrictions imposed on the consent); and
 - (b) that is in force in the service area of a water services entity immediately before the water services entity's establishment date.
- (2) The trade waste consent (and any conditions or restrictions imposed on it) continues in force on and after the water services entity's establishment date as if it were a trade waste permit issued by the water services entity under section 266 until the earlier of the following:
 - (a) the close of the fifth anniversary of the water services entity's establishment date:

- (b) the date on which it is replaced under section 266.

Schedule 1 clause 74: inserted, on 31 August 2023, by section 35(24)(a) of the Water Services Legislation Act 2023 (2023 No 52).

75 Enforcement officers

- (1) This clause applies to a person—
- (a) who, immediately before a water services entity’s establishment date, held office as an enforcement officer appointed under section 177 of the Local Government Act 2002; and
- (b) who, on and from the water services entity’s establishment date, becomes an employee of the entity.

- (2) On and after the water services entity’s establishment date, the person must be treated as if they had been appointed as a compliance officer under section 367.

Schedule 1 clause 75: inserted, on 31 August 2023, by section 35(24)(a) of the Water Services Legislation Act 2023 (2023 No 52).

76 Offences under former provisions of Local Government Act 2002

- (1) This clause applies to an offence committed in the service area of a water services entity before the water services entity’s establishment date against a provision of the Local Government Act 2002 (a **former provision**) repealed by subpart 14 of Part 2 of the amendment Act.
- (2) The former provision continues to have effect as if the amendments set out in subpart 14 of Part 2 of the amendment Act 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:
- (c) imposing a penalty or other remedy, or making an order, in relation to an offence to which this clause applies.

Schedule 1 clause 76: inserted, on 31 August 2023, by section 35(24)(a) of the Water Services Legislation Act 2023 (2023 No 52).

Transitional provisions relating to Natural and Built Environment Act 2023

Heading: inserted, on 31 August 2023, by section 35(24)(a) of the Water Services Legislation Act 2023 (2023 No 52).

77 Applications for resource consent

- (1) This clause applies to an application for a resource consent under the Natural and Built Environment Act 2023 made by a territorial authority in relation to water services before a water services entity’s establishment date.
- (2) The application continues in effect on and after the water services entity’s establishment date as if it were made by the water services entity whose service area includes the district of that territorial authority.

Schedule 1 clause 77: inserted, on 31 August 2023, by section 35(24)(a) of the Water Services Legislation Act 2023 (2023 No 52).

78 Representation at proceedings

- (1) This clause applies to any proceedings before the Environment Court relating to water services that were lodged before a water services entity's establishment date but not completed by the close of the day before that date.
- (2) For the purposes of clause 53 of Schedule 13 of the Natural and Built Environment Act 2023, 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.

Schedule 1 clause 78: inserted, on 31 August 2023, by section 35(24)(a) of the Water Services Legislation Act 2023 (2023 No 52).

79 Local government organisation designations relating to water services

- (1) This clause applies to a designation of a local government organisation 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.
- (2) On and after the water services entity's establishment date, the designation is deemed to have been transferred to the water services entity for the purposes of section 541 and Schedule 6 of the Natural and Built Environment Act 2023.
- (3) In this clause, **designation** has the same meaning as in section 11(1) of the Natural and Built Environment Act 2023.

Schedule 1 clause 79: inserted, on 31 August 2023, by section 35(24)(a) of the Water Services Legislation Act 2023 (2023 No 52).

Pre-commencement engagement and consultation

Heading: inserted, on 31 August 2023, by section 35(24)(a) of the Water Services Legislation Act 2023 (2023 No 52).

80 Pre-commencement engagement and consultation

Engagement and consultation carried out at any time before a water services entity's establishment date about a matter requiring engagement or consultation under this Act (as amended by the amendment Act) is to be treated as engagement or consultation by the water services entity for the purposes of this Act.

Compare: 2014 No 32 s 423

Schedule 1 clause 80: inserted, on 31 August 2023, by section 35(24)(a) of the Water Services Legislation Act 2023 (2023 No 52).

Treaty settlement obligations

Heading: inserted, on 31 August 2023, by section 35(24)(a) of the Water Services Legislation Act 2023 (2023 No 52).

81 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.
- (3) This clause does not affect or limit how section 9 (Treaty settlement obligations prevail) applies to this Part.

Schedule 1 clause 81: inserted, on 31 August 2023, by section 35(24)(a) of the Water Services Legislation Act 2023 (2023 No 52).

82 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.
- (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,—
 - (a) discuss with the post-settlement governance entity, for the purpose of agreeing, how the integrity, intent, and effect of the Treaty settlement obligations will be upheld in relation to this Act, the Taumata Arowai—the Water Services Regulator Act 2020, or the Water Services Act 2021; and
 - (b) support the capacity of the post-settlement governance entity to participate effectively in those discussions, including by providing appropriate resources; and
 - (c) enter into any agreements with the post-settlement governance entity that are necessary to uphold the Treaty settlement obligations, including by entering into a deed to amend the entity's Treaty settlement deed.
- (4) If necessary to give effect to an agreement relating to Treaty settlement obligations, the Crown must—
 - (a) take all necessary steps within the Crown's authority to introduce a Bill to the House of Representatives that—
 - (i) amends the post-settlement governance entity's Treaty settlement Act or any other Act; and
 - (ii) is in a form that has been agreed by the post-settlement governance entity; and

- (b) use the Crown's best endeavours to promote the enactment of the Bill no later than 18 months after the commencement of this clause.
- (5) The Crown must also—
 - (a) monitor progress of the matters set out in subclauses (2) and (3); and
 - (b) every 3 months, make a report on the progress available to the post-settlement governance entity.
- (6) In this clause,—
 - claimant group** has the meaning given in section 6(1)
 - post-settlement governance entity**—
 - (a) means a body corporate or the trustees of a trust established by a claimant group for the purposes of receiving redress or participating in arrangements established under a Treaty settlement Act; and
 - (b) includes an entity established to represent a collective or combination of claimant groups.

Schedule 1 clause 82: inserted, on 31 August 2023, by section 35(24)(a) of the Water Services Legislation Act 2023 (2023 No 52).

Agreements, etc, with mana whenua

Heading: inserted, on 31 August 2023, by section 35(24)(a) of the Water Services Legislation Act 2023 (2023 No 52).

83 Water services entities to be responsible for agreements, etc, with mana whenua

- (1) On and after a relevant water services entity's establishment date, the 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—
 - (a) in place of the local authority; or
 - (b) as a party to the agreement, arrangement, or understanding in addition to the local authority.
- (2) By, or as soon as practicable after, a relevant water services entity's establishment date, the establishment chief executive must—
 - (a) 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 clause 82; and
 - (b) work together with the relevant local authority and mana whenua to prepare for the assumption by that water services entity of any responsibility set out in the agreements, arrangements, and understandings under subclause (1).

- (3) In this clause, **relevant water services entity** means the water services entity in whose district the agreement, arrangement, or understanding applied immediately before the water services entity's establishment date.

Schedule 1 clause 83: inserted, on 31 August 2023, by section 35(24)(a) of the Water Services Legislation Act 2023 (2023 No 52).

Transitional regulations

Heading: inserted, on 31 August 2023, by section 35(24)(a) of the Water Services Legislation Act 2023 (2023 No 52).

84 Transitional regulations relating to tariff or charging structures

- (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:

- (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);
- (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.

- (2) Regulations made under this clause may apply to 1 or more water services entities.

- (3) 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.

- (4) In this clause,—

residential consumer—

- (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

residential land has the same meaning as in section YA 1 of the Income Tax Act 2007.

- (5) Regulations made under this clause are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

- (6) Regulations made under this clause expire on the close of 30 June 2029.
- (7) This clause is repealed on 1 July 2029.

Legislation Act 2019 requirements for secondary legislation made under this clause

Publication	PCO must publish it on the legislation website and notify it in the <i>Gazette</i>	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Schedule 1 clause 84: inserted, on 31 August 2023, by section 35(24)(a) of the Water Services Legislation Act 2023 (2023 No 52).

85 Other transitional regulations

- (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:
- 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;
 - providing for transitional reporting obligations to apply to local government organisations or water services entities;
 - 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;
 - making provision for a situation for which no or insufficient provision is made by or under this Act.
- (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 close of 30 June 2026.
- (5) This clause is repealed on 1 July 2026.

Legislation Act 2019 requirements for secondary legislation made under this clause

Publication	PCO must publish it on the legislation website and notify it in the <i>Gazette</i>	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Schedule 1 clause 85: inserted, on 31 August 2023, by section 35(24)(a) of the Water Services Legislation Act 2023 (2023 No 52).

Schedule 2

Water services entities and their service areas

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Schedule 2: replaced, on 23 August 2023, by section 28 of the Water Services Entities Amendment Act 2023 (2023 No 44).

Part 1

Northland and Auckland Water Services Entity

Schedule 2 Part 1: replaced, on 23 August 2023, by section 28 of the Water Services Entities Amendment Act 2023 (2023 No 44).

The Northland and Auckland Water Services Entity's service area is the districts of the following territorial authorities:

- Far North District Council:
- Kaipara District Council:
- Whangarei District Council:
- Auckland Council.

Part 2

Waikato Water Services Entity

Schedule 2 Part 2: replaced, on 23 August 2023, by section 28 of the Water Services Entities Amendment Act 2023 (2023 No 44).

The Waikato Water Services Entity's service area is the districts of the following territorial authorities:

- Hamilton City Council:
- Hauraki District Council:
- Matamata-Piako District Council:
- Ōtorohanga District Council:
- South Waikato District Council:
- Taupo District Council:
- Thames-Coromandel District Council:
- Waikato District Council:
- Waipa District Council:
- Waitomo District Council.

Part 3

Bay of Plenty Water Services Entity

Schedule 2 Part 3: replaced, on 23 August 2023, by section 28 of the Water Services Entities Amendment Act 2023 (2023 No 44).

The Bay of Plenty Water Services Entity's service area is the districts of the following territorial authorities:

- Rotorua District Council:
- Kawerau District Council:
- Ōpōtiki District Council:
- Tauranga City Council:
- Western Bay of Plenty District Council:
- Whakatane District Council.

Part 4

Taranaki Water Services Entity

Schedule 2 Part 4: replaced, on 23 August 2023, by section 28 of the Water Services Entities Amendment Act 2023 (2023 No 44).

The Taranaki Water Services Entity's service area is the districts of the following territorial authorities:

- New Plymouth District Council:
- South Taranaki District Council:
- Stratford District Council.

Part 5

Manawatū-Whanganui Water Services Entity

Schedule 2 Part 5: inserted, on 23 August 2023, by section 28 of the Water Services Entities Amendment Act 2023 (2023 No 44).

The Manawatū-Whanganui Water Services Entity's service area is the districts of the following territorial authorities:

- Ruapehu District Council:
- Whanganui District Council:
- Rangitikei District Council:
- Manawatu District Council:
- Palmerston North City Council:
- Tararua District Council:
- Horowhenua District Council.

Part 6

Gisborne and Hawke's Bay Water Services Entity

Schedule 2 Part 6: inserted, on 23 August 2023, by section 28 of the Water Services Entities Amendment Act 2023 (2023 No 44).

The Gisborne and Hawke's Bay Water Services Entity's service area is the districts of the following territorial authorities:

- Gisborne District Council:
- Wairoa District Council:
- Central Hawke's Bay District Council:
- Hastings District Council:
- Napier City Council.

Part 7

Wellington Water Services Entity

Schedule 2 Part 7: inserted, on 23 August 2023, by section 28 of the Water Services Entities Amendment Act 2023 (2023 No 44).

The Wellington Water Services Entity's service area is the districts of the following territorial authorities:

- Wellington City Council:
- Porirua City Council:
- Kapiti Coast District Council:
- South Wairarapa District Council:
- Carterton District Council:
- Masterton District Council:
- Hutt City Council:
- Upper Hutt City Council.

Part 8

Nelson, Tasman, and Marlborough Water Services Entity

Schedule 2 Part 8: inserted, on 23 August 2023, by section 28 of the Water Services Entities Amendment Act 2023 (2023 No 44).

The Nelson, Tasman, and Marlborough Water Services Entity's service area is the districts of the following territorial authorities:

- Tasman District Council (excluding those parts included in the service area of the Canterbury and the West Coast Water Services Entity under Part 9 of this schedule):
- Nelson City Council:

- Marlborough District Council (excluding those parts included in the service area of the Canterbury and the West Coast Water Services Entity under Part 9 of this schedule).

Part 9

Canterbury and the West Coast Water Services Entity

Schedule 2 Part 9: inserted, on 23 August 2023, by section 28 of the Water Services Entities Amendment Act 2023 (2023 No 44).

The Canterbury and the West Coast Water Services Entity's service area is the following:

- the parts of the districts of the following territorial authorities within the boundaries of the takiwā of Ngāi Tahu as described in section 5 of Te Runanga o Ngai Tahu Act 1996:
 - Tasman District Council;
 - Marlborough District Council; and
- the districts of the following territorial authorities:
 - Buller District Council;
 - Grey District Council;
 - Westland District Council;
 - Kaikoura District Council;
 - Hurunui District Council;
 - Waimakariri District Council;
 - Christchurch City Council;
 - Selwyn District Council;
 - Ashburton District Council;
 - Timaru District Council;
 - Waimate District Council;
 - Mackenzie District Council;
 - Waitaki District Council.

Part 10

Otago and Southland Water Services Entity

Schedule 2 Part 10: inserted, on 23 August 2023, by section 28 of the Water Services Entities Amendment Act 2023 (2023 No 44).

The Otago and Southland Water Services Entity's service area is the districts of the following territorial authorities:

- Dunedin City Council:

- Clutha District Council:
- Central Otago District Council:
- Queenstown-Lakes District Council:
- Gore District Council:
- Southland District Council:
- Invercargill City Council.

Schedule 2A

Merger of water services entities

s 19A

Schedule 2A: inserted, on 23 August 2023, by section 29 of the Water Services Entities Amendment Act 2023 (2023 No 44).

Purpose of merger provisions

Heading: inserted, on 23 August 2023, by section 29 of the Water Services Entities Amendment Act 2023 (2023 No 44).

1 Purpose of water services entities merger provisions

The purpose of the water services entities merger provisions of this Act is to help achieve this Act's purpose (*see* section 3) by enabling mergers that improve water services governance.

Schedule 2A clause 1: inserted, on 23 August 2023, by section 29 of the Water Services Entities Amendment Act 2023 (2023 No 44).

Requirement for shared boundaries

Heading: inserted, on 23 August 2023, by section 29 of the Water Services Entities Amendment Act 2023 (2023 No 44).

2 Entities cannot merge unless they have some shared boundaries

- (1) Water services entities cannot merge unless, before their merger, every entity in the merger shares some of its boundary with that of at least 1 other entity in the merger.
- (2) For the purposes of this clause, a water services entity's boundary is the boundary of the area identified in Schedule 2 as the service area of the entity.
- (3) No provision of this schedule permits a merger proposal contrary to this clause.

Schedule 2A clause 2: inserted, on 23 August 2023, by section 29 of the Water Services Entities Amendment Act 2023 (2023 No 44).

Request for merger proposal

Heading: inserted, on 23 August 2023, by section 29 of the Water Services Entities Amendment Act 2023 (2023 No 44).

3 Request to water services entity's regional representative group

A request for a merger proposal may be made to a water services entity's regional representative group.

Schedule 2A clause 3: inserted, on 23 August 2023, by section 29 of the Water Services Entities Amendment Act 2023 (2023 No 44).

4 Who may make request

The request may only be made by all or any of the following:

- (a) the entity's board:

- (b) a territorial authority owner;
- (c) a mana whenua representative on the regional representative group;
- (d) a consumer forum established by the entity;
- (e) a Crown observer, Crown review team, or Crown manager appointed under subpart 2 of Part 5 of this Act, if that observer, team, or manager considers a merger is necessary or desirable to address a problem within the meaning of that term in section 179 of this Act.

Schedule 2A clause 4: inserted, on 23 August 2023, by section 29 of the Water Services Entities Amendment Act 2023 (2023 No 44).

5 Requirements for request

- (1) The request must be made in writing.
- (2) The request must include the following information:
 - (a) the name of each person who made the request;
 - (b) the name of each other water services entity that is proposed to be part of the requested merger, and an explanation of how it complies with clause 2;
 - (c) an explanation of why the merger is being requested.

Schedule 2A clause 5: inserted, on 23 August 2023, by section 29 of the Water Services Entities Amendment Act 2023 (2023 No 44).

6 What group must do after receiving request

Promptly after receiving a request, the regional representative group must—

- (a) notify the entity's board and territorial authority owners that the group has received a request for a merger proposal; and
- (b) publish a notice that the group has received a request for a merger proposal, for at least 20 working days, on an Internet site maintained by, or on behalf of, the entity in a format that is readily accessible; and
- (c) engage with the boards and regional representative groups of every water services entity about the request for a merger proposal; and
- (d) consider any feedback received, and make any changes to the request for a merger proposal that the group considers necessary; and
- (e) make (in accordance with section 30) a decision of the group about whether the entity's board should prepare a merger proposal.

Schedule 2A clause 6: inserted, on 23 August 2023, by section 29 of the Water Services Entities Amendment Act 2023 (2023 No 44).

7 Group's decision on request, and group's reasons, must be notified

- (1) The regional representative group must notify the group's decision on a request, together with the group's reasons for that decision, to—
 - (a) the entity's board and territorial authority owners; and

- (b) the monitor; and
 - (c) the person or people who made the request.
- (2) The regional representative group must also notify publicly the group's decision on a request, together with the group's reasons for that decision, for at least 20 working days, on an Internet site maintained by, or on behalf of, the entity in a format that is readily accessible.

Schedule 2A clause 7: inserted, on 23 August 2023, by section 29 of the Water Services Entities Amendment Act 2023 (2023 No 44).

Preparation of merger proposal

Heading: inserted, on 23 August 2023, by section 29 of the Water Services Entities Amendment Act 2023 (2023 No 44).

8 When entity's board must prepare merger proposal

- (1) This clause applies if a regional representative group's decision under clause 6(e) is that the entity's board should prepare a merger proposal.
- (2) The entity's board must prepare a merger proposal.

Schedule 2A clause 8: inserted, on 23 August 2023, by section 29 of the Water Services Entities Amendment Act 2023 (2023 No 44).

9 Contents of merger proposal

The merger proposal must include the following information:

- (a) information about the underlying problem or opportunity that the merger is proposed to address, supported by available evidence;
- (b) information about all other practical options to address the problem or opportunity the merger is proposed to address;
- (c) information about the costs and benefits associated with the proposed merger;
- (d) information about all material impacts and risks relating to the proposed merger, including possible unintended consequences;
- (e) a recommendation about whether to proceed with the merger proposal.

Schedule 2A clause 9: inserted, on 23 August 2023, by section 29 of the Water Services Entities Amendment Act 2023 (2023 No 44).

10 Engagement

In preparing the merger proposal, the board must engage with any water services entity that is proposed to be part of the requested merger.

Schedule 2A clause 10: inserted, on 23 August 2023, by section 29 of the Water Services Entities Amendment Act 2023 (2023 No 44).

11 Collaboration and information reasonably required

If a water services entity is proposed to be part of the requested merger, the entity's board and chief executive must—

- (a) work collaboratively on preparing the merger proposal with the board that is preparing the merger proposal; and
- (b) provide any information that is reasonably requested by that board to help that board to prepare the merger proposal.

Schedule 2A clause 11: inserted, on 23 August 2023, by section 29 of the Water Services Entities Amendment Act 2023 (2023 No 44).

12 Further requirements for preparing merger proposal

In preparing the merger proposal, the board must—

- (a) provide a draft merger proposal to—
 - (i) the monitor:
 - (ii) Taumata Arowai—the Water Services Regulator:
 - (iii) the Commission:
 - (iv) any water services entity that is proposed to be part of the requested merger:
- (b) consider any feedback received, and make any changes to the draft merger proposal that the board considers necessary:
- (c) finalise the merger proposal:
- (d) notify the finalised merger proposal publicly, for at least 20 working days, on an Internet site maintained by, or on behalf of, the entity in a format that is readily accessible:
- (e) provide the finalised merger proposal to—
 - (i) the monitor:
 - (ii) Taumata Arowai—the Water Services Regulator:
 - (iii) the Commission:
 - (iv) the entity’s regional representative group:
 - (v) the entity’s territorial authority owners:
 - (vi) any water services entity that is proposed to be part of the requested merger.

Schedule 2A clause 12: inserted, on 23 August 2023, by section 29 of the Water Services Entities Amendment Act 2023 (2023 No 44).

Engagement and decision on merger proposal

Heading: inserted, on 23 August 2023, by section 29 of the Water Services Entities Amendment Act 2023 (2023 No 44).

13 Application to water services entity’s regional representative group

Clauses 14 to 17 apply to a water services entity’s regional representative group if a finalised merger proposal is provided to that group and to that entity under clause 12(e)(iv) and (vi).

Schedule 2A clause 13: inserted, on 23 August 2023, by section 29 of the Water Services Entities Amendment Act 2023 (2023 No 44).

14 Engagement on merger proposal

- (1) The group must engage in accordance with sections 472 and 473 with interested persons in the entity's service area in relation to whether the finalised merger proposal should be implemented.
- (2) Sections 472 and 473 apply, for the purposes of this clause, as if the group were the entity.

Schedule 2A clause 14: inserted, on 23 August 2023, by section 29 of the Water Services Entities Amendment Act 2023 (2023 No 44).

Schedule 2A clause 14(1): amended, on 31 August 2023, by section 36(1) of the Water Services Legislation Act 2023 (2023 No 52).

Schedule 2A clause 14(2): amended, on 31 August 2023, by section 36(2) of the Water Services Legislation Act 2023 (2023 No 52).

15 Decision on merger proposal

- (1) After complying with clause 14, the group must (in accordance with section 30) decide whether the proposal should be implemented.
- (2) In deciding under this clause whether the proposal should be implemented, the group must have regard to the factors in clause 16.

Schedule 2A clause 15: inserted, on 23 August 2023, by section 29 of the Water Services Entities Amendment Act 2023 (2023 No 44).

16 Factors group must have regard to when deciding whether proposal should be implemented

In deciding under clause 15 whether the proposal should be implemented, the group must have regard to—

- (a) the purpose of a water services entities merger set out in clause 1; and
- (b) the implications of any changes to governance arrangements that might result from the proposed merger; and
- (c) any problem identified by any Crown observer, Crown review team, or Crown manager who made the request for a merger; and
- (d) any other problems, and any opportunities, to be addressed by the proposed merger; and
- (e) the costs and benefits associated with the proposed merger; and
- (f) the views expressed in engagement by consumers and communities about the proposed merger; and
- (g) any other factor relevant to the purpose set out in clause 1.

Schedule 2A clause 16: inserted, on 23 August 2023, by section 29 of the Water Services Entities Amendment Act 2023 (2023 No 44).

17 Group's decision, and group's reasons, must be notified

- (1) The group must notify the group's decision on a merger proposal, together with the group's reasons for that decision, to—
 - (a) the entity's board and territorial authority owners; and
 - (b) the monitor.
- (2) The group must also notify publicly the group's decision on a merger proposal, together with the group's reasons for that decision, for at least 20 working days, on an Internet site maintained by, or on behalf of, the entity in a format that is readily accessible.

Schedule 2A clause 17: inserted, on 23 August 2023, by section 29 of the Water Services Entities Amendment Act 2023 (2023 No 44).

Implementation of merger

Heading: inserted, on 23 August 2023, by section 29 of the Water Services Entities Amendment Act 2023 (2023 No 44).

18 Implementation of merger

A finalised merger proposal is to be implemented only if every regional representative group to which clauses 14 to 17 apply in relation to that proposal decides to implement the merger proposal.

Schedule 2A clause 18: inserted, on 23 August 2023, by section 29 of the Water Services Entities Amendment Act 2023 (2023 No 44).

19 Merger implementation board and apportionment of costs

If a finalised merger proposal is to be implemented, the board of every water services entity that is proposed to be part of the requested merger must—

- (a) appoint a merger implementation board with at least 2 members from the board of each such entity, together with an independent chairperson; and
- (b) agree how to apportion the costs associated with the merger (including any costs associated with the merger implementation board).

Schedule 2A clause 19: inserted, on 23 August 2023, by section 29 of the Water Services Entities Amendment Act 2023 (2023 No 44).

20 Functions of merger implementation board

The merger implementation board has the following functions:

- (a) to prepare a merger implementation plan;
- (b) to oversee and manage the process for establishing the new entity;
- (c) to perform any other functions agreed by the board of every water services entity that is proposed to be part of the requested merger.

Schedule 2A clause 20: inserted, on 23 August 2023, by section 29 of the Water Services Entities Amendment Act 2023 (2023 No 44).

21 Merger implementation plan

A merger implementation plan must include—

- (a) the anticipated date on which the new entity will be established;
- (b) the processes, policies, and guidance for identifying the functions, staff, and assets, liabilities, and other matters to be transferred to the new entity;
- (c) the proposed timing for the transfer of functions, staff, and assets, liabilities, and other matters to the new entity;
- (d) the processes, and required timing, for preparing and adopting for the new entity the following:
 - (i) an initial asset management plan;
 - (ii) an initial funding and pricing plan;
 - (iii) an initial infrastructure strategy;
 - (iv) a constitution;
 - (v) relationship agreements;
- (e) the processes, policies, and timing for the reconciliation of the finances of the entities to be merged;
- (f) identification of any risks relating to the merger, and of how those risks will be mitigated;
- (g) the processes, policies, and guidance for communication about the merger process;
- (h) any other matters that the merger implementation board considers relevant.

Schedule 2A clause 21: inserted, on 23 August 2023, by section 29 of the Water Services Entities Amendment Act 2023 (2023 No 44).

22 Boards of entities proposed to be part of requested merger must give effect to plan

- (1) This clause applies to—
 - (a) the boards of the water services entities proposed to be part of the requested merger; and
 - (b) the merger implementation plan (as adopted, and amended or replaced, by the merger implementation board).
- (2) Those boards must give effect to that plan.

Schedule 2A clause 22: inserted, on 23 August 2023, by section 29 of the Water Services Entities Amendment Act 2023 (2023 No 44).

23 Quarterly progress report to boards of entities proposed to be part of requested merger

- (1) The merger implementation board must provide a quarterly progress report to the board of each entity proposed to be part of the requested merger.
- (2) The report must include any information required for the report by the merger implementation plan (as adopted, and amended or replaced, by the merger implementation board).

Schedule 2A clause 23: inserted, on 23 August 2023, by section 29 of the Water Services Entities Amendment Act 2023 (2023 No 44).

24 Order in Council to give effect to requested merger

- (1) A merger implementation plan—
 - (a) is given effect to by Order in Council made on the recommendation of the Minister; and
 - (b) has effect on and after the date or dates specified for that purpose by that Order in Council (as required by subclause 4(a)).
- (2) The merger implementation board may recommend to the Minister that the requested merger be given effect to by Order in Council.
- (3) After receiving a recommendation under subclause (2), the Minister must recommend the making of an Order in Council under subclause (1) unless the Minister is satisfied, on reasonable grounds, that the process followed to result in the recommendation under subclause (2) was not in accordance with this Act and the merger implementation plan.
- (4) An Order in Council made under subclause (1)—
 - (a) must specify the date or dates on which its provisions come into effect (and the specified date or dates must not be before 1 July 2026); and
 - (b) must provide for—
 - (i) the establishment of the new water services entity (including, without limitation, the appointment of the establishment board for that entity); and
 - (ii) the disestablishment of the water services entities to be merged; and
 - (c) must amend Schedule 2 to reflect—
 - (i) the name and service area of the new water services entity that is established; and
 - (ii) the disestablishment of the water services entities to be merged; and
 - (d) must amend section 3(2)(a) to reflect the total number of water services entities after the merger; and

- (e) must specify how shares in the new water services entity are to be allocated to each territorial authority owner based on the population of its district or part district (*see also* section 16); and
 - (f) may suspend any statutory requirement that an affected water services entity would otherwise be subject to if the merger would make compliance with the statutory requirement unnecessary or inappropriate; and
 - (g) brings into operation the provisions in clauses 25 to 35.
- (5) An Order in Council giving effect to a merger implementation plan is not invalid merely because it is inconsistent with the provisions of the merger implementation plan if the inconsistency relates to—
- (a) corrections of clerical, grammatical, or typographical errors; or
 - (b) the inclusion of provisions that are necessary to give legal effect to the merger implementation plan; or
 - (c) the omission of explanatory material or other material that is not necessary to give legal effect to the merger implementation plan; or
 - (d) matters of a format or referential nature that do not alter the substance or effect of the merger implementation plan.
- (6) An order made under subclause (1) is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Compare: 2002 No 84 s 25

Legislation Act 2019 requirements for secondary legislation made under subclause (1)

Publication	PCO must publish it on the legislation website and notify it in the <i>Gazette</i>	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Schedule 2A clause 24: inserted, on 23 August 2023, by section 29 of the Water Services Entities Amendment Act 2023 (2023 No 44).

Effect of merger and disestablishment

Heading: inserted, on 23 August 2023, by section 29 of the Water Services Entities Amendment Act 2023 (2023 No 44).

25 Effect of merger

When this clause applies

- (1) This clause applies on and after the commencement of the provisions of an Order in Council made under clause 24(1) establishing the new water services entity and disestablishing the water services entities to be merged.

Assets

- (2) All assets, liabilities, and other matters of the disestablished entities vest in the new entity.

- (3) The **assets, liabilities, and other matters** of a disestablished entity, in subclause (2), include, without limitation, that entity's—
- (a) assets (for example, infrastructure assets):
 - (b) contracts, engagements, or information:
 - (c) benefits, entitlements, interests, rights, powers, or privileges (including, without limitation, moneys payable and, in relation to any moneys payable, proceedings, statutory approvals or consents, easements, encumbrances, leases, or licences (including, without limitation, access licences)):
 - (d) other property (which, in this paragraph, means—
 - (i) any other thing that is capable of being owned, whether it is real or personal property, and whether it is tangible or intangible property; or
 - (ii) any estate or interest in any thing specified in subparagraph (i)):
 - (e) eligibility for benefits, entitlements, interests, rights, powers, or privileges:
 - (f) duties or liabilities (including, without limitation, in relation to any moneys payable, proceedings, or statutory approvals or consents):
 - (g) ineligibility for benefits, entitlements, interests, rights, powers, or privileges.

Information and documents

- (4) All information and documents held by the disestablished entities are held by the new entity.
- (5) Any transfer of information or documents under subclause (4) is not a breach of the following information privacy principles (or IPPs) under the Privacy Act 2020:
- (a) IPP 8 (accuracy, etc, of personal information to be checked before use or disclosure):
 - (b) IPP 11 (limits on disclosure of personal information).

Employees

- (6) Other than the chief executives of the disestablished entities, every employee of a disestablished entity becomes an employee of the new entity.

Acts or omissions

- (7) Anything done, or omitted to be done, or that is to be done, by or in relation to a disestablished entity is treated as having been done, or having been omitted to be done, or to be done, by or in relation to the new entity.

Proceedings, inquiries, and investigations

- (8) Proceedings, inquiries, and investigations under any legislation that may be commenced, continued, or enforced by or against a disestablished entity

(including as an interested party or intervenor) or in relation to a disestablished entity may instead be commenced, continued, or enforced by or against the new entity without amendment to the proceedings.

Matters or things disestablished entity could have done or completed

- (9) A matter or thing that could, but for the entity's disestablishment, have been done or completed by a disestablished entity may be done or completed by the new entity.

Relationship agreements and service-level agreements

- (10) Relationship agreements and service-level agreements of the disestablished entity transfer to the new entity.

Schedule 2A clause 25: inserted, on 23 August 2023, by section 29 of the Water Services Entities Amendment Act 2023 (2023 No 44).

26 Effect of disestablishment of entity

- (1) The disestablishment of a water services entity under an Order in Council made under clause 24(1) does not by itself affect any of the following matters:
- (a) any decision made, or anything done or omitted to be done, by the entity in performing or exercising its functions, powers, or duties under any legislation;
 - (b) any proceedings commenced against the entity (*see also* clause 21A(8));
 - (c) any other matter or thing arising out of a disestablished entity's performance or exercise, or purported performance or exercise, of its functions, powers, or duties under any legislation.
- (2) Any designations, permits, or consents made or issued by a water services entity, and in force immediately before the disestablishment of that water services entity under an Order in Council made under clause 24(1),—
- (a) continue in force after that disestablishment; and
 - (b) are taken, after that disestablishment, to have been made or issued by the new water services entity established by that Order in Council; and
 - (c) may be amended, revoked, or replaced by that new water services entity accordingly.

Schedule 2A clause 26: inserted, on 23 August 2023, by section 29 of the Water Services Entities Amendment Act 2023 (2023 No 44).

Secondary legislation

Heading: inserted, on 23 August 2023, by section 29 of the Water Services Entities Amendment Act 2023 (2023 No 44).

27 Temporary saving for secondary legislation made by disestablished entities

- (1) This clause applies to secondary legislation—
- (a) made under this Act by a water services entity disestablished by an Order in Council made under clause 24(1); and

- (b) in force (in all, or relevant, parts of the service area of the disestablished entity) immediately before that entity was disestablished.
- (2) The secondary legislation continues in force (in all, or relevant, parts of the service area of the disestablished entity), and must be treated as if it were made by the new water services entity established by that Order in Council, until the earlier of the following:
 - (a) the date on which corresponding secondary legislation made by that new water services entity takes effect;
 - (b) the date that is the fifth anniversary of the date on which that new water services entity was established.
- (3) During the period that the secondary legislation remains in force (in all, or relevant, parts of the service area of the disestablished entity), the secondary legislation—
 - (a) may be amended by that new water services entity under the relevant empowering provision (if any) in this Act; and
 - (b) may be enforced by that new water services entity in the same way as if all references in the secondary legislation to a water services entity disestablished by that Order in Council were references to that new water services entity.

Schedule 2A clause 27: inserted, on 23 August 2023, by section 29 of the Water Services Entities Amendment Act 2023 (2023 No 44).

Treaty settlement obligations

Heading: inserted, on 23 August 2023, by section 29 of the Water Services Entities Amendment Act 2023 (2023 No 44).

28 Treaty settlement obligations

- (1) This clause applies to a person who performs or exercises a duty, function, or power under this schedule.
- (2) The person must, in performing or exercising the duty, function, or power, uphold the integrity, intent, and effect of Treaty settlement obligations.
- (3) This clause does not affect or limit how section 9 (Treaty settlement obligations prevail) applies to this schedule.

Schedule 2A clause 28: inserted, on 23 August 2023, by section 29 of the Water Services Entities Amendment Act 2023 (2023 No 44).

Agreements with mana whenua

Heading: inserted, on 23 August 2023, by section 29 of the Water Services Entities Amendment Act 2023 (2023 No 44).

29 New entity to be responsible for existing agreements, etc, with mana whenua

- (1) This clause applies to any agreement, arrangement, or understanding—

- (a) between a water services entity disestablished by an Order in Council made under clause 24(1) and mana whenua; and
 - (b) entered into before the disestablishment of that water services entity; and
 - (c) in force immediately before the disestablishment of that water services entity.
- (2) The water services entity established by that Order in Council is, on and after the date on which it is established, to be treated as being responsible for performing or exercising any functions, duties, or powers relating to water services that are set out in the agreement, arrangement, or understanding in place of the disestablished water services entity (for example, in place of the disestablished water services entity, and as a party to the agreement, arrangement, or understanding).

Schedule 2A clause 29: inserted, on 23 August 2023, by section 29 of the Water Services Entities Amendment Act 2023 (2023 No 44).

Te Mana o te Wai statements

Heading: inserted, on 23 August 2023, by section 29 of the Water Services Entities Amendment Act 2023 (2023 No 44).

30 Te Mana o te Wai statements

- (1) This clause applies to a Te Mana o te Wai statement—
- (a) provided under section 143 to a water services entity that has been disestablished by an Order in Council made under clause 24(1); and
 - (b) in force immediately before the disestablishment of that water services entity.
- (2) The Te Mana o te Wai statement is taken to have been provided to the water services entity established by that Order in Council.

Schedule 2A clause 30: inserted, on 23 August 2023, by section 29 of the Water Services Entities Amendment Act 2023 (2023 No 44).

31 Responses to Te Mana o te Wai statements

- (1) This clause applies to a response to a Te Mana o te Wai statement made under section 145 by a board of a water services entity that has been disestablished by an Order in Council made under clause 24(1).
- (2) After the establishment of the water services entity established by that Order in Council, the response is taken to have been provided by the board of that entity.

Schedule 2A clause 31: inserted, on 23 August 2023, by section 29 of the Water Services Entities Amendment Act 2023 (2023 No 44).

Statement of intent

Heading: inserted, on 23 August 2023, by section 29 of the Water Services Entities Amendment Act 2023 (2023 No 44).

32 First statement of intent of new entity

The board of a water services entity established by an Order in Council made under clause 24(1) must comply with section 148 (statement of intent)—

- (a) as soon as is reasonably practicable after the water services entity is established; and
- (b) by preparing a statement of intent that relates to a period that includes the rest of the financial year in which the entity is established; and
- (c) as if the statement of intent were being prepared before the start of the period to which the draft statement relates.

Schedule 2A clause 32: inserted, on 23 August 2023, by section 29 of the Water Services Entities Amendment Act 2023 (2023 No 44).

Annual reports

Heading: inserted, on 23 August 2023, by section 29 of the Water Services Entities Amendment Act 2023 (2023 No 44).

33 First annual report of new entity

- (1) A water services entity established by an Order in Council made under clause 24(1) must provide a first annual report for the period—
 - (a) starting on the date on which the water services entity is established; and
 - (b) ending at the end of the financial year in which the water services entity is established.
- (2) A report required by this clause must be prepared in accordance with sections 160 to 168, which apply with all necessary modifications.

Schedule 2A clause 33: inserted, on 23 August 2023, by section 29 of the Water Services Entities Amendment Act 2023 (2023 No 44).

34 Final annual reports of disestablished entities

- (1) A water services entity disestablished by an Order in Council made under clause 24(1) must provide a final annual report for the period—
 - (a) starting at the start of the financial year in which the entity is disestablished; and
 - (b) ending on the date on which the Order in Council establishes the new water services entity.
- (2) A report required by this clause must be—
 - (a) prepared in accordance with sections 160 to 168, which apply with all necessary modifications; and

- (b) provided in the 4 months starting on the date on which the entity is dis-established.

Schedule 2A clause 34: inserted, on 23 August 2023, by section 29 of the Water Services Entities Amendment Act 2023 (2023 No 44).

Application of other transitional provisions

Heading: inserted, on 23 August 2023, by section 29 of the Water Services Entities Amendment Act 2023 (2023 No 44).

35 Application of other transitional provisions

The following do not apply to a water services entity established by an Order in Council made under clause 24(1):

- (a) Schedule 1 of this Act:
(b) Schedule 1AA of the Local Government Act 2002.

Schedule 2A clause 35: inserted, on 23 August 2023, by section 29 of the Water Services Entities Amendment Act 2023 (2023 No 44).

Schedule 3 Preparation of planning documents

ss 148, 151, 154, 157, 206

Part 1 Preparation of statement of intent

1 Draft statement of intent

- (1) The board of a water services entity must deliver a draft statement of intent to the entity's regional representative group.
- (2) The draft statement of intent must be delivered on or before 1 March in the year preceding the start of the period to which the draft statement of intent relates.
- (3) Before delivering the draft statement of intent to the entity's regional representative group, the board of the entity must engage with any people the board considers appropriate.
- (4) In conducting the engagement, the board of the water services entity must—
 - (a) comply with section 472; and
 - (b) prepare and publish a report on the engagement in accordance with section 476.

Compare: 2002 No 84 Schedule 8 cl 1

Schedule 3 clause 1(3): amended, on 31 August 2023, by section 37(1) of the Water Services Legislation Act 2023 (2023 No 52).

Schedule 3 clause 1(4): inserted, on 31 August 2023, by section 37(2) of the Water Services Legislation Act 2023 (2023 No 52).

2 Strategic elements must be approved by regional representative group

- (1) The strategic elements (*see* section 149(1)) must, before being set out in the final statement of intent, be—
 - (a) set out in the draft statement; and
 - (b) approved by the water services entity's regional representative group.
- (2) The group may approve those elements with, or without, changes agreed with the entity's board.

3 Board must also consider group's comments on operational and financial elements

The board of a water services entity must consider any comments made—

- (a) on the operational and financial elements (*see* section 149(2) and (3)) of the draft statement of intent; and
- (b) by the regional representative group; and

- (c) at least 2 months before the start of the period to which the draft statement relates.

Compare: 2002 No 84 Schedule 8 cl 2

4 Final statement of intent

The board of a water services entity must deliver the final statement of intent to the entity's regional representative group before the start of the period to which it relates.

Compare: 2002 No 84 Schedule 8 cl 3

5 Regional representative group may extend deadlines by up to 1 month

The regional representative group of a water services entity may, by written notice to the board, extend a deadline specified in clause 1(2), 3, or 4 for a period or periods not exceeding in total 1 calendar month.

Compare: 2002 No 84 Schedule 8 cl 4

6 Modifications of statement of intent

The board of a water services entity may, by written notice to the regional representative group, modify a statement of intent at any time if the board has first—

- (a) given written notice to the regional representative group of the proposed modification; and
- (b) considered any comments made on the proposed modification by the regional representative group within—
- (i) 1 month after the date on which the board gave the notice under paragraph (a); or
- (ii) any shorter period that the regional representative group may agree; and
- (c) obtained the regional representative group's approval of the proposed modification.

Compare: 2002 No 84 Schedule 8 cl 5

Part 2

Preparation of asset management plan

7 Engagement on asset management plan proposals

- (1) The board of a water services entity must engage with territorial authority owners, and with consumers and communities, on proposals to adopt an asset management plan.
- (2) In conducting the engagement, the board of the water services entity must—
- (a) comply with section 472; and

- (b) be guided and informed by the principles set out in section 473; and
- (c) prepare and publish a report on the engagement in accordance with section 476.

Schedule 3 clause 7(1): amended, on 31 August 2023, by section 37(3) of the Water Services Legislation Act 2023 (2023 No 52).

Schedule 3 clause 7(2): inserted, on 31 August 2023, by section 37(4) of the Water Services Legislation Act 2023 (2023 No 52).

8 Draft asset management plan

- (1) The board of a water services entity must deliver a draft asset management plan to the entity's regional representative group.
- (2) The draft asset management plan must include—
 - (a) the results of any engagement with territorial authority owners, and with consumers and communities, under section 461; and
 - (b) a statement summarising the views received on the draft plan from territorial authority owners, and from consumers and communities.
- (3) The draft asset management plan must be accompanied by a statement of asset data quality and confidence ratings.
- (4) The draft asset management plan must be delivered on or before 1 March in the year preceding the financial year to which the draft asset management plan relates.

Compare: 2002 No 84 Schedule 8 cl 1

Schedule 3 clause 8(2)(a): amended, on 31 August 2023, by section 37(5) of the Water Services Legislation Act 2023 (2023 No 52).

9 Consideration of regional representative group comments

- (1) The board of a water services entity must consider any comments on the draft asset management plan that are made by the regional representative group of the entity at least 2 months before the start of the period to which the draft plan relates.
- (2) Before making comments, the regional representative group must seek, and consider, input from any regional advisory panel for the group—
 - (a) on the draft asset management plan; and
 - (b) in respect of, or otherwise affecting, a particular geographic area for which the panel is responsible under the constitution (*see* section 93(g)(ii)).

Compare: 2002 No 84 Schedule 8 cl 2

10 Final asset management plan

- (1) The board of a water services entity must deliver the final asset management plan to the regional representative group of the entity before the commencement of the financial year to which it relates.

- (2) The final asset management plan must include the board's responses to the comments considered under clause 9.

Compare: 2002 No 84 Schedule 8 cl 3

11 Regional representative group may extend deadlines by up to 1 month

The regional representative group of a water services entity may, by written notice, extend a deadline specified in clause 8(4), 9, or 10(1) for a period or periods not exceeding in total 1 calendar month.

Compare: 2002 No 84 Schedule 8 cl 4

12 Modifications of asset management plan

The board of a water services entity may, by written notice, modify an asset management plan at any time if the board has first—

- (a) given written notice to the regional representative group of the entity of the proposed modification; and
- (b) considered any comments made on the proposed modification by the regional representative group of the entity within—
 - (i) 1 month after the date on which the notice under paragraph (a) was given; or
 - (ii) any shorter period that the regional representative group of the entity may agree.

Compare: 2002 No 84 Schedule 8 cl 5

Part 3

Preparation of funding and pricing plan

13 Engagement on funding and pricing plan proposals

- (1) The board of a water services entity must engage with territorial authority owners, and with consumers and communities, on proposals to adopt a funding and pricing plan.
- (2) In conducting the engagement, the board of the water services entity must—
 - (a) comply with section 472; and
 - (b) be guided and informed by the principles set out in section 473; and
 - (c) prepare and publish a report on the engagement in accordance with section 476.

Schedule 3 clause 13(1): amended, on 31 August 2023, by section 37(6) of the Water Services Legislation Act 2023 (2023 No 52).

Schedule 3 clause 13(2): inserted, on 31 August 2023, by section 37(7) of the Water Services Legislation Act 2023 (2023 No 52).

14 Draft funding and pricing plan

- (1) The board of a water services entity must deliver a draft funding and pricing plan to the entity's regional representative group.
- (2) The draft funding and pricing plan should include—
 - (a) the results of any engagement with territorial authority owners, and with consumers and communities, under section 472; and
 - (b) a statement summarising the views received on the draft plan from territorial authority owners, and from consumers and communities.
- (3) The draft funding and pricing plan must be delivered on or before 1 March in the year preceding the financial year to which the draft asset management plan relates.

Schedule 3 clause 14(2)(a): amended, on 31 August 2023, by section 37(8) of the Water Services Legislation Act 2023 (2023 No 52).

15 Consideration of regional representative group comments

- (1) The board of a water services entity must consider any comments on the draft funding and pricing plan that are made by the regional representative group of the entity at least 2 months before the start of the period to which the draft plan relates.
- (2) Before making comments, the regional representative group must seek, and consider, input from any regional advisory panel for the group—
 - (a) on the draft funding and pricing plan; and
 - (b) in respect of, or otherwise affecting, a particular geographic area for which the panel is responsible under the constitution (*see* section 93(g)(ii)).

Compare: 2002 No 84 Schedule 8 cl 2

16 Final funding and pricing plan

- (1) The board of a water services entity must deliver the final funding and pricing plan to the regional representative group of the entity before the commencement of the financial year to which it relates.
- (2) The final funding and pricing plan must include the board's responses to the comments considered under clause 15 of this schedule.

Compare: 2002 No 84 Schedule 8 cl 3

17 Regional representative group may extend deadlines by up to 1 month

The regional representative group of a water services entity may, by written notice, extend a deadline specified in clause 14(3), 15, or 16(1) for a period or periods not exceeding in total 1 calendar month.

Compare: 2002 No 84 Schedule 8 cl 4

18 Modifications of funding and pricing plan

The board of a water services entity may, by written notice, modify a funding and pricing plan at any time if the board has first—

- (a) given written notice to the regional representative group of the entity of the proposed modification; and
- (b) considered any comments made on the proposed modification by the regional representative group of the entity within—
 - (i) 1 month after the date on which the notice under paragraph (a) was given; or
 - (ii) any shorter period that the regional representative group of the entity may agree.

Compare: 2002 No 84 Schedule 8 cl 5

Part 4**Preparation of infrastructure strategy****19 Engagement on infrastructure strategy proposals**

- (1) The board must engage with territorial authority owners, and with consumers and communities, on proposals to adopt an infrastructure strategy.
- (2) In conducting the engagement, the board of the water services entity must—
 - (a) comply with section 472; and
 - (b) be guided and informed by the principles set out in section 473; and
 - (c) prepare and publish a report on the engagement in accordance with section 476.

Schedule 3 clause 19(1): amended, on 31 August 2023, by section 37(9) of the Water Services Legislation Act 2023 (2023 No 52).

Schedule 3 clause 19(2): inserted, on 31 August 2023, by section 37(10) of the Water Services Legislation Act 2023 (2023 No 52).

20 Draft infrastructure strategy

- (1) The board of a water services entity must deliver a draft infrastructure strategy to the entity's regional representative group.
- (2) The draft infrastructure strategy should include—
 - (a) the results of any engagement with territorial authority owners, and with consumers and communities, under section 472; and
 - (b) a statement summarising the views received on the draft plan from territorial authority owners, and from consumers and communities.

- (3) The draft infrastructure strategy must be delivered on or before 1 March in the year preceding the financial year to which the draft infrastructure strategy relates.

Compare: 2002 No 84 Schedule 8 cl 1

Schedule 3 clause 20(2)(a): amended, on 31 August 2023, by section 37(11) of the Water Services Legislation Act 2023 (2023 No 52).

21 Consideration of regional representative group comments

- (1) The board of a water services entity must consider any comments on the draft infrastructure strategy that are made by the regional representative group of the entity at least 2 months before the start of the period to which the draft plan relates.
- (2) Before making comments, the regional representative group must seek, and consider, input from any regional advisory panel for the group—
- (a) on the draft infrastructure strategy; and
 - (b) in respect of, or otherwise affecting, a particular geographic area for which the panel is responsible under the constitution (*see* section 93(g)(ii)).

Compare: 2002 No 84 Schedule 8 cl 2

22 Final infrastructure strategy

- (1) The board of a water services entity must deliver the final infrastructure strategy to the regional representative group of the entity before the commencement of the financial year to which it relates.
- (2) The final infrastructure strategy must include the board's responses to the comments considered under clause 21.

Compare: 2002 No 84 Schedule 8 cl 3

23 Regional representative group may extend deadlines by up to 1 month

The regional representative group of a water services entity may, by written notice, extend a deadline specified in clause 20(3), 21, or 22(1) for a period or periods not exceeding in total 1 calendar month.

Compare: 2002 No 84 Schedule 8 cl 4

24 Modifications of infrastructure strategy

The board may, by written notice, modify an infrastructure strategy at any time if the board has first—

- (a) given written notice to the regional representative group of the entity of the proposed modification; and
- (b) considered any comments made on the proposed modification by the regional representative group of the entity within—

- (i) 1 month after the date on which the notice under paragraph (a) was given; or
- (ii) any shorter period that the regional representative group of the entity may agree.

Compare: 2002 No 84 Schedule 8 cl 5

Schedule 4

Divestment proposals

s 118

1 Interpretation

In this schedule, unless the context otherwise requires,—

affected elector means—

- (a) a person who is a residential elector (within the meaning of section 23 of the Local Electoral Act 2001), if the address in respect of which the person is registered is in an affected area;
- (b) a person who is a ratepayer elector (within the meaning of section 24 of the Local Electoral Act 2001), if the person is qualified as a ratepayer elector in respect of a rating unit in an affected area

divestment proposal means a proposal (*see* section 118(2)(b) or (c)(i)) for a water services entity to do all or any of the following in breach of section 118(1) but in accordance with this schedule:

- (a) divest its ownership or other interest in any water services;
- (b) lose control of, sell, or otherwise dispose of, the significant infrastructure necessary for providing water services in its service area (if, in doing so, the entity does not retain its capacity to perform or exercise its duties, functions, or powers—*see* section 118(2)(c)(ii) and (3))

Local Government Commission or **Commission** means the Local Government Commission continued under section 28 of the Local Government Act 2002

public notice, in relation to a notice of a divestment proposal given by the Local Government Commission,—

- (a) means a notice published—
 - (i) in the *Gazette*; or
 - (ii) in 1 or more newspapers circulating in the affected area; or
 - (iii) on an Internet site maintained by, or on behalf of, the Commission and that is publicly available as far as practicable and free of charge; and
- (b) includes any other notice that the Commission thinks desirable in the circumstances.

Part 1

Divestment proposal

2 Water services entity must refer proposal to regional representative group

- (1) Only the water services entity may make a divestment proposal.
- (2) The water services entity must forward any proposal made under subclause (1) to the regional representative group.

3 Regional representative group may, after consultation, resolve by 75% majority to refer proposal to territorial authority owners

- (1) A regional representative group forwarded a divestment proposal under clause 2 may resolve to refer the divestment proposal to the territorial authority owners.
- (2) Before voting on whether to refer the proposal to a poll, the regional representative group must consult—
 - (a) all of the territorial authority owners of the water services entity; and
 - (b) mana whenua of rohe or takiwā within the area of the water services entity; and
 - (c) the Minister.
- (3) The resolution fails unless supported by a vote of not less than 75% of the regional representatives present and voting.
- (4) A regional representative group that resolves to refer a divestment proposal to territorial authority owners under this clause must notify those owners of the resolution.

4 Territorial authority owners may resolve unanimously to refer proposal to poll

- (1) After receiving notification of a resolution under clause 3, the territorial authority owners may resolve to refer a divestment proposal to a poll.
- (2) The resolution fails unless supported by a unanimous vote of all the territorial authority owners (instead of only all those present and voting).
- (3) Territorial authority owners that resolve to refer a divestment proposal to a poll under this clause must notify the Commission of the resolution.

5 Notification of divestment proposal

- (1) As soon as practicable after receiving notification of a resolution under clause 4, the Commission must—
 - (a) give public notice of the proposal and, in the notice, specify where copies of the proposal may be inspected; and

- (b) provide a balanced assessment of the proposal to persons, bodies, and groups that the Commission identifies as having an interest in the proposal; and
 - (c) take any other action that it considers necessary to inform persons, bodies, and groups that the Commission identifies as having an interest in the proposal.
- (2) The costs incurred by the Commission under subclause (1) are to be apportioned among the affected water services entities according to the number of affected electors on the electoral rolls of the territorial authority owners of the water services entity in the manner set out in regulations.

Compare: 2002 No 84 Schedule 3 cl 13(1)

Part 2

Poll

6 Poll to be held

- (1) A poll of electors on the proposal must be held in the service area.
- (2) Except as otherwise provided in this Part, a poll under this clause must be held under the Local Electoral Act 2001 and the provisions of that Act apply, with any necessary modifications, to the conduct of the poll.
- (3) The Local Government Commission must ensure that 1 electoral officer is designated to conduct the poll and to declare the official result of the poll under clause 8.
- (4) The costs of the poll are to be apportioned among the affected water services entities on the basis of the number of affected electors on the electoral rolls of the water services entity.

Compare: 2002 No 84 Schedule 3 cl 25

7 Timing of poll

- (1) A poll required by clause 6 must be held on a date determined by the Local Government Commission in accordance with this clause.
- (2) In determining the date on which a poll is to be held, the Commission must consult the electoral officer required to conduct the poll.
- (3) The Commission must, as soon as practicable after complying with subclause (2), give written notice of the date determined under subclause (1) to the Secretary, to the chief executive of each affected water services entity, and to the electoral officer required to conduct the poll.
- (4) The electoral officer who receives written notification under subclause (3) must, within 7 days after receiving the notification, give public notice of—
 - (a) the poll; and

- (b) the place or places at which the divestment proposal and the explanatory statement may be inspected.
- (5) The date determined under subclause (1) for the conduct of the poll must,—
- (a) if written notice under subclause (3) is to be given on or after 28 September and before 21 November in any year, be a day no earlier than 17 February and no later than 24 February in the following year; and
 - (b) if written notice under subclause (3) is to be given on or after 21 November and before 16 December in any year, be a day no earlier than 14 March and no later than 21 March in the following year; and
 - (c) if written notice under subclause (3) is to be given on or after 16 December in any year and before 13 January in the following year, be a day no earlier than 11 April and no later than 18 April in that following year; and
 - (d) in any other case, be a day no later than 89 days after the day on which written notice under subclause (3) is given to the electoral officer.

Compare: 2002 No 84 Schedule 3 cl 26

8 Official result of poll

The electoral officer must,—

- (a) when declaring the official result of the poll under section 86 of the Local Electoral Act 2001, include a statement of—
 - (i) the total number of electors on the roll or rolls compiled for the purpose of the poll; and
 - (ii) the total number of valid votes cast:
- (b) as soon as practicable after declaring the result, notify the chief executive of the department, the chief executive of the water services entity and each territorial authority in the service area, and the Local Government Commission of the result:
- (c) if 75% of votes are in favour of the proposal, notify the Minister of the result.

Compare: 2002 No 84 Schedule 3 cl 27

9 Effect of poll

A divestment proposal must not be implemented unless 75% of the votes cast in the poll are in favour of the proposal.

Part 3 Advertising of poll

10 Interpretation

In this subpart, unless the context otherwise requires,—

advertising means advertising in any medium

publish, in relation to advertising,—

- (a) means to bring to the notice of a person in any manner, including (but not limited to)—
 - (i) displaying in any medium:
 - (ii) distributing by any means:
 - (iii) delivering to an address:
 - (iv) leaving at a place:
 - (v) sending by post or otherwise:
 - (vi) printing in a newspaper or other periodical:
 - (vii) broadcasting by any means:
 - (viii) disseminating by means of the Internet or any other electronic medium:
 - (ix) storing electronically in a way that is accessible to the public:
 - (x) incorporating in a device for use with a computer:
 - (xi) inserting in a film or video; but
- (b) excludes addressing 1 or more persons face to face

specified period means the period commencing on the day after the date on which public notice of the proposal is first given under clause 5 and ending with the close of the day on which the poll is held.

Compare: 2002 No 84 Schedule 3 cl 29

11 Advertising in relation to polls

- (1) A local authority or water services entity affected by a divestment proposal may not, at any time in a specified period, do anything (including publishing any advertising) that—
 - (a) involves the expenditure of the authority's or the entity's money or use of the authority's or the entity's resources; and
 - (b) promotes or opposes the implementation of the divestment proposal or a provision of the divestment proposal.
- (2) This clause does not apply to—
 - (a) any investigations or research undertaken by, or on behalf of, the water services entity or local authority that relate to the divestment proposal or its effects; or
 - (b) the making of submissions or other representations to the Commission by the water services entity or local authority; or

- (c) the publication of any news or comment relating to the divestment proposal or the poll in any medium by any person other than the water services entity or local authority; or
- (d) anything done by a water services entity or local authority to comply with the requirements of Part 7 of the Local Government Official Information and Meetings Act 1987.

Compare: 2002 No 84 Schedule 3 cl 30

12 Provision of referential information

- (1) Clause 11 does not preclude a local authority affected by a divestment proposal from publishing material that—
 - (a) does not expressly or impliedly promote or oppose the divestment proposal; but
 - (b) contains factual or referential material presented—
 - (i) in a balanced way; and
 - (ii) to assist electors considering voting in a poll to make a better-informed decision.
- (2) A local authority or water services entity may (but does not have to) seek a ruling from the Local Government Commission that material proposed to be published by the authority or the entity under subclause (1) complies with that subclause.
- (3) If the Local Government Commission provides a ruling that the material complies with subclause (1), then publication of the material by the local authority or water services entity is to be treated as published in accordance with subclause (1).

Compare: 2002 No 84 Schedule 3 cl 31

13 Authorisation of advertising

- (1) A person may not publish advertising that promotes or opposes the implementation of the divestment proposal, or a provision of the divestment proposal, unless the advertising contains a statement setting out the true name and contact details of the person who initiated or instigated the publication of the advertising.
- (2) In this section, **contact details** means 1 or more of the following:
 - (a) a residential or business address:
 - (b) an email address:
 - (c) a post office box number:
 - (d) a phone number:

- (e) a link to a page on an Internet site, if the page contains 1 or more of the contact details specified in paragraphs (a) to (d).

Compare: 2001 No 35 s 113

Offences

14 Offence for publishing advertising in breach of clause 13

- (1) A person commits an offence if the person intentionally fails or refuses to comply with clause 13(1).
- (2) A person who commits an offence against subclause (1) is liable on conviction to a fine not exceeding \$20,000.

Schedule 5

Subsidiaries

s 18(3)

Schedule 5: replaced, on 31 August 2023, by section 38 of the Water Services Legislation Act 2023 (2023 No 52).

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:
- (b) a subsidiary that a water services entity has, or water services entities have, established, own, or operate.

Schedule 5 clause 1: inserted, on 31 August 2023, by section 38 of the Water Services Legislation Act 2023 (2023 No 52).

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—

- (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).

Schedule 5 clause 2: inserted, on 31 August 2023, by section 38 of the Water Services Legislation Act 2023 (2023 No 52).

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.
- (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.

Schedule 5 clause 3: inserted, on 31 August 2023, by section 38 of the Water Services Legislation Act 2023 (2023 No 52).

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
 - (b) the appointment of directors to a subsidiary; and
 - (c) the remuneration of directors of a subsidiary.
- (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—
- (a) guide the subsidiary, given the nature and scope of its activities; and
 - (b) contribute to the achievement of the objectives of the subsidiary.
- (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.
- (4) 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.

Compare: 2002 No 84 s 57

Schedule 5 clause 4: inserted, on 31 August 2023, by section 38 of the Water Services Legislation Act 2023 (2023 No 52).

5 Role of directors of subsidiaries

- (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.
- (2) This clause does not limit or affect the other duties that a director of a subsidiary has.

Compare: 2002 No 84 s 58

Schedule 5 clause 5: inserted, on 31 August 2023, by section 38 of the Water Services Legislation Act 2023 (2023 No 52).

6 Objectives of subsidiaries

- (1) The main objectives of a subsidiary are to—
- (a) achieve the objectives of its shareholders, both commercial and non-commercial, as specified in its statement of intent and its constitution; and
 - (b) be a good employer; and
 - (c) deliver services in an efficient and financially sustainable manner; and
 - (d) if the subsidiary is a trading organisation, conduct its affairs in accordance with sound business practice.
- (2) In this clause, **good employer** has the same meaning as in section 122(2).

Compare: 2002 No 84 s 59

Schedule 5 clause 6: inserted, on 31 August 2023, by section 38 of the Water Services Legislation Act 2023 (2023 No 52).

7 Decisions relating to operation of subsidiaries

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—

- (a) its statement of intent; and
- (b) its constitution.

Compare: 2002 No 84 s 60

Schedule 5 clause 7: inserted, on 31 August 2023, by section 38 of the Water Services Legislation Act 2023 (2023 No 52).

8 Obligations of subsidiaries

- (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
- (b) are relevant to the purpose and objectives of the subsidiary as specified in its constitution and statement of intent.

- (2) A subsidiary must, when performing a function of a water services entity that requires engagement under section 472, comply with the engagement requirements set out in sections 472 and 473.

Schedule 5 clause 8: inserted, on 31 August 2023, by section 38 of the Water Services Legislation Act 2023 (2023 No 52).

9 Activities undertaken on behalf of water services entity

A subsidiary may undertake any activities on behalf of a water services entity apart from those activities specified in sections 118 and 119.

Schedule 5 clause 9: inserted, on 31 August 2023, by section 38 of the Water Services Legislation Act 2023 (2023 No 52).

10 Prohibition on guarantees, etc

- (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 a subsidiary under paragraph (b) of the definition of subsidiary in section 6(1) if the company has been established for the purpose of—

- (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 subclause (2) may only be given in respect of a matter specified in that subclause.

Compare: 2002 No 84 s 62

Schedule 5 clause 10: inserted, on 31 August 2023, by section 38 of the Water Services Legislation Act 2023 (2023 No 52).

11 Restriction on lending

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.

Compare: 2002 No 84 s 63

Schedule 5 clause 11: inserted, on 31 August 2023, by section 38 of the Water Services Legislation Act 2023 (2023 No 52).

12 Statements of intent

- (1) Every subsidiary must prepare and adopt a statement of intent in accordance with sections 147 to 150 and Part 1 of Schedule 3.
- (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.
- (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.
- (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.
- (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.

Compare: 2002 No 84 s 64

Schedule 5 clause 12: inserted, on 31 August 2023, by section 38 of the Water Services Legislation Act 2023 (2023 No 52).

13 Contents of statement 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:
- (c) the nature and scope of the activities that the subsidiary is to deliver:
- (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,—
 - (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:
 - (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:
- (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

Schedule 5 clause 13: inserted, on 31 August 2023, by section 38 of the Water Services Legislation Act 2023 (2023 No 52).

14 Consultation regarding statement of intent

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.

Schedule 5 clause 14: inserted, on 31 August 2023, by section 38 of the Water Services Legislation Act 2023 (2023 No 52).

15 Shareholders may require additional plans

- (1) The shareholders of a subsidiary may require the subsidiary to prepare and deliver additional plans, including—
 - (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).
- (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.
- (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

Schedule 5 clause 15: inserted, on 31 August 2023, by section 38 of the Water Services Legislation Act 2023 (2023 No 52).

16 Statement of expectations

- (1) The shareholders in a subsidiary may prepare a statement of expectations that—
 - (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—
 - (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).
- (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

Schedule 5 clause 16: inserted, on 31 August 2023, by section 38 of the Water Services Legislation Act 2023 (2023 No 52).

17 Performance monitoring

- (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
 - (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
 - (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.
- (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

Schedule 5 clause 17: inserted, on 31 August 2023, by section 38 of the Water Services Legislation Act 2023 (2023 No 52).

18 Half-yearly or quarterly reports

- (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.
- (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.
- (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.

Compare: 2002 No 84 s 66

Schedule 5 clause 18: inserted, on 31 August 2023, by section 38 of the Water Services Legislation Act 2023 (2023 No 52).

19 Annual report

- (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
 - (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
 - (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

Schedule 5 clause 19: inserted, on 31 August 2023, by section 38 of the Water Services Legislation Act 2023 (2023 No 52).

20 Contents of annual report

- (1) 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—
 - (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.
- (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.

Compare: 2002 No 84 s 68

Schedule 5 clause 20: inserted, on 31 August 2023, by section 38 of the Water Services Legislation Act 2023 (2023 No 52).

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
 - (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.
- (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

Schedule 5 clause 21: inserted, on 31 August 2023, by section 38 of the Water Services Legislation Act 2023 (2023 No 52).

22 Auditor-General is auditor of subsidiaries

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 Audit Act 2001 and, in accordance with that Act, the Auditor-General is its auditor.

Compare: 2002 No 84 s 70

Schedule 5 clause 22: inserted, on 31 August 2023, by section 38 of the Water Services Legislation Act 2023 (2023 No 52).

23 Protection from disclosure of sensitive information

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.

Compare: 2002 No 84 s 71

Schedule 5 clause 23: inserted, on 31 August 2023, by section 38 of the Water Services Legislation Act 2023 (2023 No 52).

24 Listed subsidiaries

- (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;
 - (b) a holding company of the subsidiary;
 - (c) controlling companies of the subsidiary.
- (2) If subclause (1) applies, the subsidiary is not required to—
 - (a) have a statement of intent under clause 12;
 - (b) deliver a half-yearly report or quarterly report under clause 18;
 - (c) deliver an annual report under clause 19.
- (3) In this clause,—

controlling companies 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

holding company has the same meaning as in section 5(2) of the Companies Act 1993.

Compare: 2002 No 84 s 71A

Schedule 5 clause 24: inserted, on 31 August 2023, by section 38 of the Water Services Legislation Act 2023 (2023 No 52).

25 Official information

- (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.
- (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.

Compare: 2002 No 84 s 74

Schedule 5 clause 25: inserted, on 31 August 2023, by section 38 of the Water Services Legislation Act 2023 (2023 No 52).

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

Schedule 5 clause 26: inserted, on 31 August 2023, by section 38 of the Water Services Legislation Act 2023 (2023 No 52).

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 5 clause 27: inserted, on 31 August 2023, by section 38 of the Water Services Legislation Act 2023 (2023 No 52).

Schedule 6

Transfer of small mixed-use rural water supplies to alternative operators

s 487

Schedule 6: inserted, on 31 August 2023, by section 38 of the Water Services Legislation Act 2023 (2023 No 52).

Eligibility to transfer

Heading: inserted, on 31 August 2023, by section 38 of the Water Services Legislation Act 2023 (2023 No 52).

1 Eligibility for transfer of small mixed-use rural water supply

A small mixed-use rural water supply may be transferred to an alternative operator 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.

Schedule 6 clause 1: inserted, on 31 August 2023, by section 38 of the Water Services Legislation Act 2023 (2023 No 52).

Requirement to transfer

Heading: inserted, on 31 August 2023, by section 38 of the Water Services Legislation Act 2023 (2023 No 52).

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—
 - (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
 - (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
 - (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.

- (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

Schedule 6 clause 2: inserted, on 31 August 2023, by section 38 of the Water Services Legislation Act 2023 (2023 No 52).

Preparation and assessment of transfer proposal

Heading: inserted, on 31 August 2023, by section 38 of the Water Services Legislation Act 2023 (2023 No 52).

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
 - (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
 - (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 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.

Schedule 6 clause 3: inserted, on 31 August 2023, by section 38 of the Water Services Legislation Act 2023 (2023 No 52).

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.
- (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.

Schedule 6 clause 4: inserted, on 31 August 2023, by section 38 of the Water Services Legislation Act 2023 (2023 No 52).

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.
- (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 assets and liabilities of, and interests relating to, the supply to the alternative operator.
- (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 in assessing the transfer proposal, including (without limitation) holding hearings and inviting submissions, as it thinks fit.

Schedule 6 clause 5: inserted, on 31 August 2023, by section 38 of the Water Services Legislation Act 2023 (2023 No 52).

6 Alternative operator must prepare business plan

- (1) The alternative operator must prepare a business plan relating to its transfer proposal.
- (2) The business plan must—
 - (a) provide information about the long-term governance arrangements of the alternative operator; and
 - (b) 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
 - (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 small mixed-use rural water supply:
 - (i) an asset management plan that complies with subclause (3):
 - (ii) a funding and pricing plan that complies with subclause (4):
 - (iii) a drinking water safety plan prepared by the alternative operator as if the operator were the owner of the supply; and

- (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 supply.
- (3) An asset management plan referred to in subclause (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 supply; and
 - (ii) how the alternative operator will—
 - (A) operate, maintain, and renew the infrastructure assets of the supply; and
 - (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
 - (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—
 - (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
 - (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 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.

Schedule 6 clause 6: inserted, on 31 August 2023, by section 38 of the Water Services Legislation Act 2023 (2023 No 52).

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—
 - (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
 - (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
 - (e) whether the alternative operator will be able to fund the total costs of running the supply over the long term; and
 - (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 meets drinking water standards on an ongoing basis, including by assessing the operator’s proposed drinking water safety plan; and
 - (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.

Schedule 6 clause 7: inserted, on 31 August 2023, by section 38 of the Water Services Legislation Act 2023 (2023 No 52).

8 Decision on transfer proposal

- (1) 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.
- (2) If the panel unanimously agrees that the proposed transfer is viable, the transfer proposal may proceed to a referendum under clause 9.

Schedule 6 clause 8: inserted, on 31 August 2023, by section 38 of the Water Services Legislation Act 2023 (2023 No 52).

Referendum

Heading: inserted, on 31 August 2023, by section 38 of the Water Services Legislation Act 2023 (2023 No 52).

9 Referendum on transfer proposal

- (1) If a panel of experts decides under clause 8 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.
- (2) The electoral officer who is responsible for conducting the referendum must prepare a special roll of the persons eligible under clause 10 to vote in the referendum.
- (3) The Local Electoral Act 2001 applies, with any necessary modifications, to a referendum on the transfer proposal.
- (4) In this clause, **relevant territorial authority** 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.

Compare: 2002 No 84 s 133

Schedule 6 clause 9: inserted, on 31 August 2023, by section 38 of the Water Services Legislation Act 2023 (2023 No 52).

10 Eligibility to vote in referendum

A person is **eligible to vote** in a referendum on a transfer proposal if the person—

- (a) 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
- (b) is a consumer of water services from the small mixed-use rural water supply.

Compare: 2002 No 84 s 132

Schedule 6 clause 10: inserted, on 31 August 2023, by section 38 of the Water Services Legislation Act 2023 (2023 No 52).

11 Referendum documentation

A referendum petition for a referendum on a transfer proposal must—

- (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
 - (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,—
 - (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.

Schedule 6 clause 11: inserted, on 31 August 2023, by section 38 of the Water Services Legislation Act 2023 (2023 No 52).

12 Costs of referendum

- (1) All the costs of conducting a referendum on a transfer proposal must be paid by the water services entity.
- (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.

Schedule 6 clause 12: inserted, on 31 August 2023, by section 38 of the Water Services Legislation Act 2023 (2023 No 52).

Repeal

Heading: inserted, on 31 August 2023, by section 38 of the Water Services Legislation Act 2023 (2023 No 52).

13 Repeal of this schedule

This schedule is repealed on 1 July 2036.

Schedule 6 clause 13: inserted, on 31 August 2023, by section 38 of the Water Services Legislation Act 2023 (2023 No 52).

Notes

1 *General*

This is a consolidation of the Water Services Entities Act 2022 that incorporates the amendments made to the legislation so that it shows the law as at its stated date.

2 *Legal status*

A consolidation is taken to correctly state, as at its stated date, the law enacted or made by the legislation consolidated and by the amendments. This presumption applies unless the contrary is shown.

Section 78 of the Legislation Act 2019 provides that this consolidation, published as an electronic version, is an official version. A printed version of legislation that is produced directly from this official electronic version is also an official version.

3 *Editorial and format changes*

The Parliamentary Counsel Office makes editorial and format changes to consolidations using the powers under subpart 2 of Part 3 of the Legislation Act 2019. See also PCO editorial conventions for consolidations.

4 *Amendments incorporated in this consolidation*

Water Services Acts Repeal Act 2024 (2024 No 2): section 8

Resource Management (Natural and Built Environment and Spatial Planning Repeal and Interim Fast-track Consenting) Act 2023 (2023 No 68): section 6

Water Services Legislation Act 2023 (2023 No 52): Part 1

Water Services Entities Amendment Act 2023 (2023 No 44): Part 1