

House of Representatives

Supplementary Order Paper

Tuesday, 22 August 2023

Water Services Economic Efficiency and Consumer Protection Bill

Proposed amendments for the consideration of the Committee of the whole House

Key:

- **this is inserted text**
- **~~this is deleted text~~**

Note: This Supplementary Order Paper shows amendments to the Bill that are being proposed by the Minister for the purposes of consideration in Committee of the whole House. This document does—

- **NOT have official status in terms of unamended text**
- **NOT have the status of an as-reported version of the Bill.**

Explanatory note

This Supplementary Order Paper amends the Water Services Economic Efficiency and Consumer Protection Bill. The main amendments relate to *Part 2*, and flow from decisions made by the government regarding changes to the wider water services reforms (broadly, to increase the number of statutory water services entities from 4 to 10, and to delay their start date). However, amendments are also proposed:

- to provisions in the Bill that relate to te Tiriti o Waitangi/the Treaty of Waitangi and Te Mana o te Wai;
- to the provisions in the Bill relating to fees and levies;
- that make a range of technical adjustments to the Bill, as well as changes to improve its readability and consistency.

Timing of regulation under Part 2

As part of changes made by the government to the wider water services reforms, the number of proposed entities has increased from 4 to 10, and their start date has been delayed. In the context of this Bill, the main implications of this relate to the timing of the different types of regulation provided for under *Part 2*. Accordingly, a range of amendments are proposed to *subpart 2 of Part 2*. In particular—

- changes to implement a later starting date (1 July 2029) for regulation under *Part 2* of all statutory water services entities other than the entity that serves the Auckland and Northland area (which is keeping its existing starting date for regulation under *Part 2*, of 1 July 2027); and
- flow-on changes to other milestone dates provided for in *subpart 2 of Part 2*— in particular, the dates by when initial input methodologies and section 15 determinations must be made by the Commerce Commission;
- adjustments to account for how the milestone dates should apply in respect of an entity that becomes subject to *Part 2* by being designated under *clause 54*;
- adjustments to the ability (provided for in *clause 22*) to change certain milestone dates by Order in Council. In particular, the proposed amendments allow price-quality regulation to be advanced to the start of the first regulatory period for all regulated water services providers (previously, this was only available for the entity that serves the Auckland and Northland areas).

In making a recommendation that a date provided for under *subpart 2 of Part 2* be changed, the Minister must in most cases have received and considered a recommendation from the Commerce Commission. The provisions relating to those reviews are set out in *subpart 2A of Part 5* of the Bill. Accordingly, a range of resulting changes are also proposed in relation to that subpart, in particular in relation to *clauses 139H* (Reviews in relation to early price-quality regulation) and *139J* (Reviews in relation to late price-quality regulation).

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Provisions relating to te Tiriti o Waitangi/the Treaty of Waitangi and Te Mana o te Wai

Clause 5 relates to the matters that must be considered by the Commerce Commission and the Minister in certain circumstances. Under *clause 5(2)(c)*, the Commission and Minister are required to take into account the obligations of regulated water services providers when making a recommendation, determination, or decision. The obligations that must be considered include obligations with respect to te Tiriti o Waitangi/the Treaty of Waitangi, Treaty settlement obligations, and Te Mana o te Wai. The proposed changes to this clause insert the words “giving effect to the principles of” before the reference to te Tiriti of Waitangi/the Treaty of Waitangi and, similarly, insert “giving effect to” before the reference to Te Mana o te Wai.

Clause 6 requires the Commerce Commission to maintain systems and processes to ensure that, for the purpose of carrying out its duties under *clause 5(2)(c) and (3)*, it has the capacity and capability do certain things, including give effect to the principles of te Tiriti o Waitangi/the Treaty of Waitangi. The proposed changes to *clause 6* add 2 items to the list of things that the Commission must have the capacity and capability to do. They are giving effect to Treaty settlement obligations and giving effect to Te Mana o te Wai.

Other changes to Bill

Other proposed changes make technical changes or adjustments to improve the consistency and readability of the Bill. The main changes in that category are as follows:

- an adjustment to *clause 4(1)(c)(iv)* (which relates to the functions of the Commerce Commission), to make the wording more consistent with *clause 4(1)(c)(iii)*:
- changes to definitions in *clause 7* to take account of the passage of other legislation (such as the Natural and Built Environment Act **2023**):
- changes to the definition of consumer in *clause 7* so that it covers (for certain Parts of the Bill) a person liable to pay charges for water infrastructure services under the amendments proposed to the Water Services Entities Act 2022 by the Water Services Legislation Bill:
- the inclusion of a new definition of “subsidiary” in *clause 7*, based on the definition proposed to be inserted into section 6 of the Water Services Entities Act 2022 by *clause 5* of the Water Services Legislation Bill:
- changes to the definitions of regulated water services provider in *clauses 13 and 61*, to clarify that a subsidiary or an interconnected body corporate must be treated (for the purposes of the Bill) as part of the main entity to which it relates, and not separately regulated in its own right:
- additions to *clauses 27, 34, 39, and 42* to provide that the Commerce Commission may, when carrying out certain actions under *Part 2*, have regard to the scale, complexity, and risk profile of a regulated water services provider:

- an addition to *clause 27* to clarify that the Commerce Commission may make input methodologies relating to matters other than the mandatory list of matters in that clause if the Commission considers it necessary or desirable in order to achieve the purpose of *Part 2*:
- adjustments to a range of clauses that refer to regulatory periods (for example, *clause 45*) to clarify their meaning, in light of the proposal that different regulated water services providers will now have different regulatory periods:
- an addition to *clause 51*, which requires the Commerce Commission to review funding and pricing plans and tariff lists made available by regulated water services providers, to clarify that the Commission is able to carry out further reviews at any time after it completes its first review:
- the deletion of *clause 142* (which provided for the imposition of levies on regulated water services providers and drinking water suppliers) and its replacement by provisions in *clauses 3, 5, and 8 of Schedule 2*, which allow service providers to charge regulated water services providers and drinking water suppliers fees for the provision of services to those persons (but not to charge consumers):
- the deletion of *clause 143* (relating to the recovery of fees and other money), which is no longer relevant as the Commerce Commission (and not the Crown) will recover fees and other money due under the Bill when enacted:
- *new clauses 145C and 145D*, which insert *new subclause (3B)* into section 9 of the Commerce Act 1986 (which relates to the membership of the Commerce Commission) to account for the proposed Water Services Commissioner under the Bill.

Departmental disclosure statement

The Ministry of Business, Innovation and Employment considers that a departmental disclosure statement is not required to be prepared for this Supplementary Order Paper.

The Hon Dr Duncan Webb, in Committee, to propose the amendments shown in the following document.

Hon Dr Duncan Webb

Water Services Economic Efficiency and Consumer Protection Bill

Government Bill

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Consumer dispute resolution service

The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Water Services Economic Efficiency and Consumer Protection Act **2022**.

2 Commencement

- (1) This Act comes into force on the day after the date on which it receives the Royal assent.
- (2) However, **Part 3** comes into force on **1 July 2024**.

Part 1
Preliminary provisions

3 Overview

- (1) This Act provides for—
 - (a) the regulation of the price and quality of water infrastructure services, as set out in **Part 2**; and
 - (b) consumer protection for water infrastructure services, as set out in **Part 3**.
- (2) The purpose of the regulation of the price and quality of water infrastructure services provided for in **Part 2** is set out in **section 12**.
- (3) The purpose of consumer protection for water infrastructure services provided for in **Part 3** is set out in **section 60**.
- (4) This section is intended only as a guide to the general scheme and effect of this Act.

4 Commission's functions under this Act

- (1) In addition to the other functions conferred on the Commission by this Act, the Commission's functions under this Act are as follows:
 - (a) to monitor—
 - (i) in relation to **Part 2**, whether outcomes relating to water infrastructure services in markets where there is little or no competition, and little or no likelihood of a substantial increase in competition, are consistent with outcomes produced in competitive markets; and
 - (ii) in relation to **Part 3**, the quality of service provided by regulated water services providers:
 - (b) to carry out inquiries, reviews, and studies (including international benchmarking) into any matter relating to the supply of water infrastructure services:

-
- (c) to act as regulator of water infrastructure services under this Act, including by—
- (i) issuing warnings, reports, or guidelines, or making comments, about any matter relating to water infrastructure services, regulated water services providers, or other persons engaged in the supply of water infrastructure services (including in relation to 1 or more particular persons); and
 - (ii) performing or exercising duties and powers under this Act; and
 - (iii) monitoring compliance with and enforcing this Act (including any determinations made under **Part 2**, the service quality code made under **Part 3**, and regulations (if any) relating to the consumer complaints process provided for under **Part 3**), including by investigating conduct that constitutes or may constitute a contravention, an attempted contravention, or an involvement in a contravention; and
 - (iv) taking appropriate action in respect of persons that have contravened, are contravening, have attempted to contravene, or are likely to contravene this Act, or have been involved, are involved, or are likely to be involved in a contravention of this Act (including any determinations made under **Part 2** ~~or~~, the service quality code made under **Part 3**, and regulations (if any) relating to the consumer complaints process provided for under **Part 3**); and
 - (v) ensuring that the development codes required by **sections 293A to 294C and 295** of the Water Services Entities Act 2022 are prepared and approved:
- (d) to make available, or co-operate in making available, information in connection with water infrastructure services (for example, reports or summaries about the things referred to in **paragraphs (a) to (c)**):
- (e) to co-operate with—
- (i) any other law enforcement or regulatory agency that carries out a role in relation to water infrastructure services; and
 - (ii) any overseas regulator that has functions in relation to water infrastructure services corresponding to those of the Commission under this Act:
- (f) to keep under review the law and practices that are relevant to its other functions under this section (including overseas law and practices).
- (2) In carrying out its function under **subsection (1)(d)**, the Commission must ensure that satisfactory provision exists to protect the confidentiality of any information that may reasonably be regarded as confidential or commercially sensitive.

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- (3) In carrying out its functions under this Act, the Commission may consider, analyse, use, and make comments on the information provided publicly by statutory water services entities or Taumata Arowai under any legislation dealing with water services.
- (4) **Subsection (3)** does not limit the Commission’s ability to use any other information in the course of carrying out its functions (for example, information provided directly to the Commission).
- (5) The Commission’s functions under this Act do not extend to regulating the safety of drinking water (*see* section 11 of the Taumata Arowai—the Water Services Regulator Act 2020, which describes the role of Taumata Arowai in that regard).

5 Matters to be considered by Commission and Minister

- (1) This section applies if the Commission or the Minister is required under this Act to make a recommendation, determination, or decision.
- (2) The Commission or Minister must,—
 - (a) in a case where the Commission or Minister is acting under **Part 2**, make the recommendation, determination, or decision that the Commission or Minister considers best gives, or is likely to best give, effect to the purpose in **section 12**; and
 - (b) in a case where the Commission or Minister is acting under **Part 3**, make the recommendation, determination, or decision that the Commission or Minister considers best gives, or is likely to best give, effect to the purpose in **section 60**; and
 - (c) in making the recommendation, determination, or decision, take into account the obligations of regulated water services providers, including with respect to the following matters:
 - (i) giving effect to the principles of te Tiriti o Waitangi/the Treaty of Waitangi;
 - (ii) giving effect to Treaty settlement obligations;
 - (iii) giving effect to Te Mana o te Wai;
 - (iv) mitigating and adapting to the effects of climate change and natural hazards;
 - (v) supporting and enabling planning processes, growth, and housing and urban development.
- (3) **Subsection (2)(c)** applies to the extent that the Commission or Minister considers it relevant to the recommendation, determination, or decision.
- (4) If the Commission is required to make a recommendation, determination, or decision under any other legislation relating to water services,—

- (a) the Commission must comply with **subsections (2)(c) and (3)**, which apply with any necessary modifications; and
- (b) compliance by the Commission with **paragraph (a)** must be treated as compliance with the requirements of any other legislation relating to water services in respect of the application of the following matters:
 - (i) te Tiriti o Waitangi/the Treaty of Waitangi; and
 - (ii) Treaty settlement obligations; and
 - (iii) Te Mana o te Wai.

Compare: 2001 No 103 s 166

6 Duties of Commission relating to te Tiriti o Waitangi/the Treaty of Waitangi

The Commission must maintain systems and processes to ensure that, for the purpose of carrying out its duties under **section 5(2)(c) and (3)**, it has the capacity and capability to—

- (a) give effect to the principles of te Tiriti o Waitangi/the Treaty of Waitangi; and
- (aa) give effect to Treaty settlement obligations; and
- (ab) give effect to Te Mana o te Wai; and
- (b) engage with Māori and understand perspectives of Māori.

7 Interpretation

In this Act, unless the context otherwise requires,—

backflow prevention device has the same meaning as in section 5 of the Water Services Act 2021

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 means the Commerce Commission established by section 8 of the Commerce Act 1986

competition means workable or effective competition

consumer—

- (a) means a person who consumes, acquires, or is provided with water infrastructure services; and
- (ab) includes a developer; ~~but~~ and
- (ac) for the purposes of **Parts 3 and 4** (other than any provision as it relates to **Part 2**), includes any person liable to pay charges for water infrastructure services under **section 339** of the Water Services Entities Act 2022; but

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(b) for the purposes of **Part 3**, does not include a drinking water supplier **consumer dispute resolution service** or **service** has the meaning set out in **section 61**

development code means a development code prepared by the board of a water services entity and approved by the Commission under **sections 293A to 294C and 295 of the Water Services Entities Act 2022** (and any amendments to it) but does not include a development code made under **clause 59B** of **Schedule 1** of that Act

drinking water has the same meaning as in section 6 of the Water Services Act 2021

drinking water infrastructure services has the meaning given in **section 8**

drinking water supplier has the same meaning as in section 8 of the Water Services Act 2021

end-point treatment device has the same meaning as in section 5 of the Water Services Act 2021

~~**first regulatory period** means the regulatory period described in **section 20(1)**~~

funding and pricing plan means a funding and pricing plan prepared by the board of a regulated water services provider under any legislation dealing with water services

green stormwater 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 stormwater services; and
- (b) includes an engineered system that is an area, feature, or process that complies with **paragraph (a)**

information disclosure requirement means a requirement that applies to a regulated water services provider and is specified in a **section 15** determination

input methodology means a description of any methodology, process, rule, or matter that includes any of the matters listed in **section 27** and that is published as referred to in **section 29**

interconnected and **interconnected bodies corporate** have the meanings set out in section 2(7) of the Commerce Act 1986

market means a market in New Zealand for goods or services as well as other goods or services that, as a matter of fact and commercial common sense, are substitutable for them

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

~~**National Policy Statement for Freshwater Management**, in relation to the definition of Te Mana o te Wai, means the National Policy Statement for Freshwater Management issued in 2020 under section 52 of the Resource Management Act 1991 and any statement that amends or replaces the 2020 statement~~

overland flow path has the same meaning as in section 6 of the Water Services Entities Act 2022

point of supply has the same meaning as in section 13 of the Water Services Act 2021

price—

- (a) means 1 or more of individual prices, aggregate prices, or revenues (whether in the form of specific numbers or in the form of formulas by which specific numbers are derived); and
- (b) includes any related terms of payment

regulated water services provider,—

- (a) for the purposes of **Part 2** (price and quality regulation), has the meaning set out in **section 13**; and
- (b) for the purposes of **Part 3** (consumer protection) and **Schedule 2**, has the meaning set out in **section 61**; and
- (c) for the purposes of the rest of this Act, means a water services entity that is a regulated water services provider within the meaning of either **Part 2** or **Part 3**

regulations means regulations made under this Act

regulatory period means a regulatory period referred to in **section 20**

~~**second regulatory period** means the regulatory period immediately following the first regulatory period~~

section 15 determination means a determination made by the Commission under **section 15** that sets out how any of the following types of regulation apply to a regulated water services provider:

- (a) information disclosure regulation:
- (b) quality regulation:
- (c) price-quality regulation

service provider has the meaning set out in **section 61**

service quality code means the service quality code referred to in **section 69**

statutory water services entity means a water services entity established under any legislation dealing with water services

stormwater infrastructure services—

- (a) means the collection, treatment, drainage, reuse, or discharge of stormwater in an urban area; and

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Part 1 cl 7

- (aa) includes services relating to—
 - (i) an overland flow path; and
 - (ii) green stormwater infrastructure; and
 - (iii) watercourses that are part of, or related to, the infrastructure used to carry out the services referred to in **paragraph (a)**; but
- (b) does not include services relating to a transport stormwater system **subsidiary**, in relation to a regulated water services provider,—
 - (a) means a company or body corporate in which 1 or more regulated water services providers—
 - (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 regulated water services providers hold shares; and
 - (ii) the combined shareholding produces 1 or more of the circumstances described in **paragraph (a)**

tariff list means a tariff list prepared by the board of a regulated water services provider under any legislation dealing with water services

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

Te Mana o te Wai—

- (a) has the meaning set out in the ~~National Policy Statement for Freshwater Management~~ national planning framework made under **section 34 of the Natural and Built Environment Act 2023**; and
- (b) applies, for the purposes of this Act, to water ~~(as that term is defined in section 2(1) of the Resource Management Act 1991)~~

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, for the purposes of the definition of stormwater infrastructure services,—

- (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; and
 - (ii) green stormwater infrastructure; and
 - (iii) watercourses that are part of, or related to, the infrastructure described in **paragraph (a)**

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 obligation means an obligation under either of the following:

- (a) a Treaty settlement Act;
- (b) a Treaty settlement deed

wastewater infrastructure services means the collection, treatment, storage, transmission through reticulation, or discharge of wastewater

water, for the purposes of the definition of Te Mana o te Wai,—

- (a) has the same meaning as in **section 7(1) of the Natural and Built Environment Act 2023**; but

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(b) includes water in any form while in any pipe, tank, or cistern
water infrastructure services means any 1 or more of the following:

- (a) water supply infrastructure services:
- (b) stormwater infrastructure services:
- (c) wastewater infrastructure services

water services means services relating to water supply, wastewater, and storm-water

water services entity means an entity that provides water infrastructure services (whether or not it is a regulated water services provider)

water supply has the same meaning as in section 6 of the Water Services Entities Act 2022

water supply infrastructure services includes—

- (a) drinking water infrastructure services; and
- (b) the infrastructure required for water supply

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

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.

8 Meaning of drinking water infrastructure services

(1) In this Act, unless the context otherwise requires, **drinking water infrastructure services**—

- (a) means the abstraction, storage, treatment, transmission, or transportation of drinking water for supply to consumers or a drinking water supplier; and
- (b) includes services that are provided at or through—
 - (i) the point of supply; and
 - (ii) any end-point treatment device; and
 - (iii) any backflow prevention device.

(2) However, services relating to the supply of drinking water from either of the following are not drinking water infrastructure services:

- (a) a temporary drinking water supply provided under section 33 or 34 of the Water Services Act 2021:
- (b) a domestic self-supply (as defined in section 10(1) of the Water Services Act 2021).

9 Transitional, savings, and related provisions

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

10 Act binds the Crown

This Act binds the Crown.

Part 2
Price and quality regulation

Subpart 1—General

11 Overview of this Part

- (1) In this Part,—
 - (a) **subpart 1** contains general provisions, defines terms used in this Part, and provides for the Commission to make determinations specifying how each type of regulation applies to regulated water services providers:
 - (b) **subpart 2** specifies when initial input methodologies and **section 15** determinations must be made, enables those dates to be changed, and contains provisions about the length of regulatory periods:
 - (c) **subpart 3** relates to input methodologies and provides for the Commission to determine input methodologies applying to the supply of water infrastructure services:
 - (d) **subpart 4** relates to information disclosure regulation and provides that certain regulated water services providers are required to disclose information in accordance with requirements determined by the Commission:
 - (e) **subpart 5** relates to quality regulation and provides that certain regulated water services providers are required to apply the quality paths determined by the Commission:
 - (f) **subpart 6** relates to price-quality regulation and provides that certain regulated water services providers are required to apply the price-quality paths determined by the Commission:
 - (g) **subpart 8** relates to reviews to be carried out by the Commission in relation to funding and pricing plans and tariff lists made available by regulated water services providers:

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- (h) **subpart 9** provides for the designation of water services entities that are not statutory water services entities (the effect of which is that such entities become regulated water services providers subject to 1 or more types of regulation under this Part).
- (2) This section is intended only as a guide to the general scheme and effect of this Part.

Compare: 2001 No 103 s 163

12 Purpose of this Part

The purpose of this Part is to promote the long-term benefit of consumers of water infrastructure services in markets where there is little or no competition, and little or no likelihood of a substantial increase in competition, by promoting outcomes that are consistent with outcomes produced in competitive markets so that regulated water services providers—

- (a) have incentives to innovate and to invest, including in replacement, upgraded, and new assets; and
- (b) have incentives to improve efficiency and provide services at a quality that reflects consumer demands; and
- (c) share with consumers the benefits of efficiency gains in the supply of water infrastructure services, including through lower prices; and
- (d) are limited in their ability to extract excessive profits.

Compare: 1986 No 5 s 52A

13 Interpretation

In this Part, unless the context otherwise requires,—

publicly disclose, in relation to information required to be disclosed under information disclosure regulation, means to disclose information to the public in the manner required by a **section 15** determination

~~**regulated water services provider** means each of the following:~~

- ~~(a) a statutory water services entity;~~
- ~~(b) a water services entity that is designated under **section 54**;~~
- ~~(c) a subsidiary of, or a successor to, a person referred to in **paragraph (a) or (b)**;~~
- ~~(d) a person that is an interconnected body corporate in relation to a person referred to in **paragraph (a) or (b)**;~~

regulated water services provider—

- (a) means—
 - (i) a statutory water services entity; and
 - (ii) a water services entity that is designated under **section 54**; and

- (iii) a successor to a person referred to in **subparagraph (i) or (ii)**; and
- (b) includes either of the following, which must be treated as part of the entity referred to in **paragraph (a)(i), (ii), or (iii)**:
 - (i) a subsidiary of a person referred to in **paragraph (a)(i), (ii), or (iii)**;
 - (ii) a person that is an interconnected body corporate in relation to a person referred to in **paragraph (a)(i), (ii), or (iii)**.

14 Regulation of water infrastructure services

- (1) Water infrastructure services are regulated as provided for by this Part.
- (2) A regulated water services provider must, in respect of the water infrastructure services it supplies, comply with—
 - (a) the requirements of this Part that apply to the regulated water services provider; and
 - (b) every **section 15** determination that applies to the regulated water services provider; and
 - (c) in relation to an input methodology that is not specified in a **section 15** determination (*see* **section 26(1)(aa)**), every such input methodology that applies to the regulated water services provider.
- (3) The Commission may exercise any of its powers under this Act for the purpose of monitoring compliance by regulated water services providers with regulation under this Part.

Compare: 2001 No 103 s 167

15 Determinations made by Commission under this section

- (1) The Commission must make determinations under this section specifying how 1 or more of the following apply to regulated water services providers:
 - (a) information disclosure regulation;
 - (b) quality regulation;
 - (c) price-quality regulation.
- (2) A determination must—
 - (a) specify the regulated water services providers to which it applies; and
 - (b) specify the water infrastructure services in respect of which it applies; and
 - (c) set out, for each type of regulation to which it relates, the requirements under this Part that apply to each regulated water services provider to which the determination applies; and
 - (d) set out any time frames (including regulatory periods) that must be complied with or that apply; and

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- (e) specify any input methodologies that apply; and
 - (f) be consistent with this Part.
- (3) It is not necessary for a single determination to address all matters relating to all water infrastructure services, or to a regulated water services provider, and different parts of any determination may come into effect at different times.
 - (4) A determination made under this section may require a regulated water services provider to comply with the requirements set out in any other determination that has been made under this section in respect of water infrastructure services.
 - (5) A determination made under this section may relate to all regulated water services providers or to 1 or more regulated water services providers (for example, a determination relating to price-quality regulation may apply to an individual regulated water services provider and set price-quality paths that are specific to that provider).
 - (6) A determination made under this section relating only to information disclosure or quality regulation may last for more than 1 regulatory period and remains in force until it is revoked.
 - (7) A determination under this section and an amendment to a determination are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).
 - (8) As soon as practicable after making a determination under this section, the Commission must give to each regulated water services provider to whom the determination relates notice of the determination and where it is available.

Compare: 2001 No 103 s 170

16 Amendment of section 15 determination

- (1) The Commission must consult interested parties before amending or revoking a **section 15** determination.
- (1A) However, the Commission may amend a **section 15** determination without complying with **subsection (1)** if the Commission is satisfied that the amendment is ~~only correcting a minor error or is otherwise of a minor nature only non-material~~.
- (2) As soon as practicable after making an amendment, the Commission must give to each regulated water services provider to which the determination relates notice of the amendment and where it is available.

Compare: 2001 No 103 s 173

17 Power to exempt disclosure of commercially sensitive information

- (1) The Commission may, on application, exempt any person or class of persons, in respect of any information or class of information that the Commission considers to be commercially sensitive, from any obligation to make that informa-

tion publicly available as part of the requirements of information disclosure regulation, quality regulation, or price-quality regulation.

- (1A) The Commission may only grant an exemption under this section if the Commission is satisfied that doing so would be consistent with the purpose of this Part.
- (2) The Commission may grant the exemption on any terms and conditions that it thinks fit.
- (2A) The Commission's reasons for granting an exemption must be published together with the exemption.
- (3) An exemption granted under this section, and any variation or revocation of it, is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Compare: 1986 No 5 s 53ZG

Subpart 2—Timing

18 ~~When Timing of initial input methodologies must be determined~~

Information disclosure and price-quality regulation

- (1) The Commission must determine initial input methodologies relating to information disclosure and price-quality regulation of water infrastructure services ~~no later than 1 July 2026. (and covering the matters referred to in **section 27(1)**),—~~
 - (a) ~~in relation to the statutory water services entity that serves the Auckland and Northland areas, no later than 1 July 2026; and~~
 - (b) ~~in relation to all other statutory water services entities, no later than 1 July 2028.~~
- (1A) In relation to a water services entity that is designated under **section 54**, the Commission may, at any time after the entity is designated, do 1 or both of the following:
 - (a) determine initial input methodologies of the type referred to in **subsection (1)**:
 - (b) if the Commission considers it appropriate, apply any existing input methodology of the type referred to in **subsection (1)** to the entity.
- (1B) The Commission is not required to comply with **section 28** for the purposes of applying an existing input methodology to a designated entity under **subsection (1A)(b)**.

Quality regulation

- (2) The Commission may, in respect of a regulated water services provider (or a class of regulated water services providers), determine initial input methodologies relating to quality regulation of water infrastructure services (and covering the matters referred to in **section 27(1)**), at any time after the initial input

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methodologies referred to in ~~subsection (1)~~ relating to that provider or those providers (and referred to in **subsection (1) or (1A)**) are determined.

- (3) ~~The Commission may determine further input methodologies relating to a type of regulation under this Part at any time after the initial input methodologies relating to that type of regulation have been determined in accordance with **subsection (1) or (2)**.~~

Compare: 2001 No 103 s 178

19 When initial section 15 determinations must be made

- (1) ~~The Commission must make initial determinations under **section 15**,—~~
- ~~(b) in relation to information disclosure and quality regulation, no later than the start of the first regulatory period; and~~
 - ~~(e) in relation to price-quality regulation, no later than the start of the second regulatory period.~~
- (1A) The Commission must make initial determinations under **section 15** relating to information disclosure and quality regulation,—
- (a) in relation to the statutory water services entity that serves the Auckland and Northland areas, no later than 1 July 2027; and
 - (b) in relation to all other statutory water services entities, no later than 1 July 2029.
- (1B) The Commission must make initial determinations under **section 15** relating to price-quality regulation,—
- (a) in relation to the statutory water services entity that serves the Auckland and Northland areas, no later than 1 July 2030; and
 - (b) in relation to all other statutory water services entities, no later than 1 July 2032.
- (2) An initial **section 15** determination must not impose obligations on a regulated water services provider any earlier than,— the following dates:
- (a) in relation to information disclosure regulation, 1 July 2024 (*see also **clause 1A of Schedule 1***); and
 - (b) in relation to quality regulation, ~~the start of the first regulatory period; and,—~~
 - (i) 1 July 2027, in relation to the statutory water services entity that serves the Auckland and Northland areas; and
 - (ii) 1 July 2029, in relation to all other regulated water services providers;
 - (c) in relation to price-quality regulation, ~~the start of the second regulatory period (unless the power under **section 22(1)(c)** is exercised),,—~~

- (i) 1 July 2030, in relation to the statutory water services entity that serves the Auckland and Northland areas (unless the power under **section 22(1)(c)** is exercised); and
 - (ii) 1 July 2032, in relation to all other regulated water services providers (unless the power under **section 22(1)(d)** is exercised).
- (3) The Commission must consult interested parties before making an initial **section 15** determination.
- Compare: 2001 No 103 s 172

20 Regulatory periods

- (1) The first regulatory period ~~starts on 1 July 2027 and lasts for a period of 3 years; and starts, —~~
- (a) in relation to the statutory water services entity that serves the Auckland and Northland areas, on 1 July 2027; and
 - (b) in relation to all other regulated water services providers, on 1 July 2029.
- (2) The duration of subsequent periods must be determined by the Commission and must be no longer than 6 years.
- (2A) In determining the duration of subsequent periods, the Commission may set different periods for different regulated water services providers as the Commission sees fit.
- (3) The Commission must notify the duration of each new regulatory period in a **section 15** determination, and must specify whether the period is common to all regulated water services providers or specific to 1 or more providers.
- Compare: 2001 No 103 s 207

22 Ability to change dates for initial input methodologies and initial **section 15** determinations

- (1) The Governor-General may, by Order in Council, do any 1 or more of the following:
- (a) ~~at any time before 1 July 2026, defer by up to 3 years the date by which the Commission must determine any of the initial input methodologies in accordance with **section 18(1)**;~~
 - (a) at any time before the Commission must determine an initial input methodology in accordance with **section 18(1)**, defer by up to 3 years the date by which the methodology must be made;
 - (b) at any time before the date on which the Commission must make an initial **section 15** determination in accordance with ~~**section 19(1)**~~ **section 19(1A) or (1B)**, defer by up to 3 years the date by which the determination must be made;
 - (c) at any time before 1 April 2026, ~~bring forward~~ advance by up to 3 years the date by which the Commission must make an initial determination in

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relation to price-quality regulation; for the statutory water services entity that serves the Auckland and Northland areas under **section 19(1B)(a)**:

- (d) at any time before 1 April 2028, advance by up to 3 years the date by which the Commission must make an initial determination in relation to price-quality regulation for 1 or more other statutory water services entities under **section 19(1B)(b)**.

(1A) However,—

- (a) the power to defer a date under **subsection (1)(a) or (b)** may be exercised only once in respect of each initial input methodology or initial **section 15** determination (as the case may be) in respect of the same regulated water services provider; and
- (b) the power to ~~bring forward~~ advance a date under **subsection (1)(c) or (d)** may be exercised only once in respect of the same statutory water services entity.

(2) A Order in Council made under this section—

- (a) must be made on the recommendation of the Minister; and
- (b) must specify a new date by which the Commission must determine the relevant initial input methodology or initial **section 15** determination (as the case may be); and
- (c) is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

23 Minister's recommendation

(1) In making a recommendation that a date be deferred under **section 22**, the Minister must—

- (a) be satisfied that the purpose of this Part would be better met if 1 or more water infrastructure services were not subject to 1 or more types of regulation under this Part on the latest date contemplated by this subpart; and
- (b) in relation to a deferral of the date by which the Commission must make an initial **section 15** determination relating to price-quality regulation (in accordance with ~~**section 19(1)(c)**~~**section 19(1B)**), have considered any recommendation of the Commission made following a review carried out under **section 139J**.

(2) The Minister may make a recommendation that a date be ~~brought forward~~ advanced under **section 22(1)(c) or (d)** only—

- (a) after receiving and considering a recommendation from the Commission under **section 139H**; and
- (b) if the Minister is satisfied of the ~~matter~~ relevant matters in **section 139H(1)(a)**; ~~and~~.

- (e) ~~in relation to a regulated water services provider that serves the Auckland and Northland areas.~~

Subpart 3—Input methodologies

24 Purpose of input methodologies

The purpose of input methodologies is to promote certainty for regulated water services providers and consumers in relation to the rules, requirements, and processes applying to the regulation, or proposed regulation, of water infrastructure services under this Part.

Compare: 2001 No 103 s 174

25 Requirement for input methodologies

- (1) The Commission—
- (a) must determine input methodologies in respect of information disclosure regulation under **subpart 4** and price-quality regulation under **subpart 6**; and
 - (b) may determine input methodologies in respect of quality regulation under **subpart 5**.
- (2) This section does not affect **clause 1A(2)(a) of Schedule 1**.

26 How input methodologies apply

- (1) An input methodology relating to the supply of water infrastructure services must be applied—
- (a) by each relevant regulated water services provider in accordance with the relevant **section 15** determination; and
 - (aa) in relation to an input methodology that is not specified in a **section 15** determination, by each regulated water services provider to which the relevant input methodology applies; and
 - (b) by the Commission in recommending, deciding, or determining—
 - (i) how regulation under this Part should apply to water infrastructure services; or
 - (ii) the prices or quality standards applying to water infrastructure services.
- (2) However, **subsection (1)(b)** does not apply in relation to an initial determination made by the Commission relating to information disclosure regulation, if the initial determination is made (in accordance with ~~**section 19(1)(b)**~~**section 19(1A)**) before the initial input methodologies have been determined (in accordance with **section 18(1)**).

Compare: 2001 No 103 s 175

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27 Matters covered by input methodologies

- (1) The input methodologies relating to water infrastructure services must include, to the extent applicable to the type of regulation under consideration,—
 - (a) methodologies for evaluating or determining the following matters in respect of the supply of the water infrastructure services:
 - (i) cost of capital;
 - (ii) valuation of assets, including depreciation, and treatment of revaluations;
 - (iii) allocation of common costs (for example, between activities, businesses, regulated services, consumer classes, and geographic areas);
 - (iv) treatment of taxation; and
 - (b) regulatory processes and rules, such as—
 - (i) the specification and definition of prices, including identifying any costs that can be passed through to prices (which may not include the legal costs of any appeals under **section 118 or 119**); and
 - (ii) identifying circumstances in which price-quality paths may be reconsidered within a regulatory period; and
 - (c) methodologies for capital expenditure projects, including the following:
 - (i) requirements that the regulated water services provider must meet, including the scope and specificity of information required, the extent of independent verification and audit, and the extent of consultation and agreement with other parties; and
 - (ii) the criteria the Commission will use to evaluate capital expenditure proposals; and
 - (iii) time frames and processes for evaluating capital expenditure proposals, including what happens if the Commission does not comply with those time frames.
- (2) Every input methodology must, as far as is reasonably practicable,—
 - (a) except in relation to any input methodology of the type referred to in **subsection (2C)**, set out the matters listed in **subsection (1)** in sufficient detail so that each affected regulated water services provider is reasonably able to estimate the material effects of the methodology on the provider; and
 - (b) set out how the Commission intends to apply the input methodology to particular water infrastructure services; and
 - (c) be consistent with the other input methodologies that relate to the same type of services.

- (2A) In determining an input methodology, the Commission may have regard to the scale, complexity, and risk profile of each regulated water services provider (or a class of regulated water services providers) in respect of which the methodology will apply (for example, by specifying the matters referred to in **subsection (1)** in a greater or lesser level of detail).
- (2B) An input methodology may relate to all regulated water services providers or to a class of regulated water services providers or to 1 or more regulated water services providers.
- (2C) To avoid doubt, the Commission may determine further input methodologies relating to a type of regulation under this Part covering matters other than the matters referred to **subsection (1)** if the Commission considers it necessary or desirable in order to achieve the purpose of this Part (for example, input methodologies that set out pricing methodologies or that relate to measures of the quality of water infrastructure services).
- (2D) If the Commission determines further input methodologies of the type referred to in **subsection (2C)**, every such input methodology must be set out in sufficient detail so that each regulated water services provider is reasonably able to estimate the material effects of the methodology on the provider.
- (3) If the Commission determines an input methodology that is not specified in a **section 15** determination, the Commission must ensure that the input methodology—
- (a) states clearly that it is an input methodology of the sort referred to in **section 26(1)(aa)**; and
 - (b) specifies the regulated water services providers to which it applies; and
 - (c) specifies the water infrastructure services in respect of which it applies; and
 - (d) sets out any time frames that must be complied with or that apply; and
 - (e) is consistent with this Part.

Compare: 1986 No 5 s 52T

28 Commission process for determining input methodologies

- (1) When the Commission begins work on an input methodology, it must give public notice of its intention to do so that—
- (a) outlines the process that will be followed; and
 - (b) sets out the proposed time frames.
- (2) During the course of its work on an input methodology, the Commission must give public notice of the draft methodology and consult interested parties before finalising the methodology.
- (3) *See **clause 1 of Schedule 1**.*

Compare: 2001 No 103 s 179

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29 Status of input methodologies, amendments, and revocations

- (1) The following are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements):
 - (a) an input methodology;
 - (b) an amendment to an input methodology;
 - (c) the revocation by the Commission of an input methodology.
- (2) Secondary legislation referred to in **subsection (1)** must be published under the Legislation Act 2019,—
 - (a) if it is made by the Commission, within 10 working days after the Commission makes its determination; or
 - (b) if it is made by the High Court on appeal, within 10 working days after the Commission receives a copy of the High Court’s decision.
- (3) If an input methodology or amendment is made by the High Court on appeal, the Legislation Act 2019 applies as if the Commission were the maker of the secondary legislation.
- (4) When a methodology or an amendment (but not a revocation) is published, the Commission must publish the reasons for determining the methodology, or for amending it, on the Commission’s Internet site.

Compare: 2001 No 103 s 180

30 Changes to input methodologies

- (1) If the Commission proposes to amend or revoke an input methodology, **section 28** applies with any necessary modifications, as if the amendment or revocation were a new input methodology.
- (2) However, the Commission may amend an input methodology without complying with **section 28** if the Commission is satisfied that the amendment is ~~only~~ correcting a minor error or is otherwise of a minor nature only non-material.

Compare: 2001 No 103 s 181

31 Review and date of publication of input methodologies

- (1) The Commission must review each input methodology no later than 7 years after its date of publication and, after that, at intervals of no more than 7 years.
- (2) The **date of publication** of an input methodology is the date on which it is published under the Legislation Act 2019.
- (3) **Section 28** applies, with any necessary modifications, as if the review were a new input methodology.
- (4) *See also section 29.*

Compare: 1986 No 5 s 52Y; 2001 No 103 s 182

31A Commission may direct regulated water services provider to comply with relevant input methodology requirement

- (1) If satisfied that a regulated water services provider has failed to comply with a requirement in a relevant input methodology, the Commission may, by written notice, direct the provider to comply with the relevant requirement.
- (2) In this section, a **relevant input methodology** means an input methodology that is not specified in a **section 15** determination (*see section 26(1)(aa)*).

31B Regulated water services provider must comply with direction from Commission

A regulated water services provider that receives a direction from the Commission under **section 31A** must comply with it.

Subpart 4—Information disclosure regulation

32 Purpose of information disclosure regulation

The purpose of information disclosure regulation is to ensure that sufficient information is readily available to interested persons to assess whether the purpose of this Part is being met.

Compare: 2001 No 103 s 186

33 Effect of being subject to information disclosure regulation

- (1) A regulated water services provider to which a **section 15** determination relating to information disclosure regulation applies must—
 - (a) publicly disclose information in accordance with the information disclosure requirements set out in the relevant **section 15** determination; and
 - (b) supply to the Commission a copy of all information disclosed in accordance with the **section 15** determination, within 5 working days after the information is first made available to the public; and
 - (c) supply to the Commission, in accordance with a written notice by the Commission, any further statements, reports, agreements, particulars, or other information required for the purpose of monitoring the regulated water services provider's compliance with the **section 15** determination.
- (2) The Commission—
 - (a) may monitor and analyse all information disclosed in accordance with the information disclosure requirements (including information supplied under **subsection (1)(c)**); and
 - (b) must, as soon as practicable after any information is publicly disclosed, publish (on the Commission's Internet site) a summary and an analysis of that information for the purpose of promoting greater understanding

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of the performance of individual regulated water services providers, their relative performance, and changes in their performance over time.

- (3) To avoid doubt, the Commission may, as part of a summary and an analysis, include an analysis of how effective the information disclosure requirements imposed on regulated water services providers are in promoting the purpose in **section 12**.
- (4) In complying with **subsection (2)(b)**, the Commission must ensure that satisfactory provision exists to protect the confidentiality of any information that may reasonably be regarded as confidential or commercially sensitive.

Compare: 2001 No 103 s 187

34 Section 15 determination to set out information disclosure requirements

- (1) A **section 15** determination relating to information disclosure regulation must specify the following:
- (a) the information to be disclosed:
 - (b) the manner in which the information is to be disclosed:
 - (c) the form of disclosure:
 - (d) when, and for how long, the information must be disclosed:
 - (e) any other methodologies that are required in the preparation or compilation of the information.
- (1A) In making a **section 15** determination relating to information disclosure regulation, the Commission may have regard to the scale, complexity, and risk profile of each regulated water services provider (or a class of regulated water services providers) in respect of which the determination will apply (for example, by requiring more or less information to be disclosed).
- (2) Information required to be disclosed may include (without limitation) 1 or more of the following:
- (a) financial statements (including projected financial statements):
 - (b) asset values and valuation reports:
 - (c) prices, terms and conditions relating to prices, and pricing methodologies:
 - (d) contracts:
 - (e) transactions with related parties:
 - (f) financial and non-financial performance measures:
 - (g) plans and forecasts, including (without limitation) plans and forecasts about demand, investments, prices, revenues, quality and service levels, capacity and spare capacity, and efficiency improvements:
 - (h) asset management plans:
 - (i) quality performance measures and statistics:

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- (j) assumptions, policies, and methodologies used or applied in these or other areas:
 - (k) consolidated information that includes information about goods or services that are not subject to regulation under this Part, in which case **section 35** applies:
 - (l) information about the financing of regulated water services providers that includes information about goods or services that are not subject to regulation under this Part, in which case **section 35** applies.
- (2A) In addition, in relation to a statutory water services entity, information required to be disclosed must include information about how the entity is fulfilling its objective to support and enable planning processes, growth, and housing and urban development and, in particular, the entity's level of responsiveness in relation to those issues (*see* **section 12(d) of the Water Services Entities Act 2022**).
- (3) The **section 15** determination may do 1 or more of the following:
- (a) require disclosed information, or information from which disclosed information is derived (in whole or in part), to be verified by statutory declaration:
 - (b) require independent audits of disclosed information:
 - (c) require the retention of data on which disclosed information is based, and associated documentation:
 - (d) exempt any person or class of persons, or provide for exemptions, from any requirements of the determination, and revoke, or provide for the revocation of, exemptions:
 - (e) provide for transitional provisions:
 - (f) impose any other requirements that the Commission considers necessary or desirable to promote the purpose of information disclosure regulation.
- (4) If a **section 15** determination authorises a person to grant exemptions referred to in **subsection (3)(d)**,—
- (a) an instrument granting or revoking an exemption is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements), unless it applies only to 1 or more named persons; and
 - (b) the determination must contain a statement to that effect.
- (5) The Commission must consult interested parties before making a **section 15** determination relating to water infrastructure services that are subject to information disclosure regulation.

Compare: 2001 No 103 s 188

35 Information required may include information about goods or services not subject to regulation under this Part

- (1) The purpose of this section is to enable the Commission to monitor—
 - (a) compliance with information disclosure regulation applying to water infrastructure services; and
 - (b) the ongoing capability of a regulated water services provider to raise finance with respect to its supply of regulated services, by assessing the provider's overall financial position.
- (2) A **section 15** determination may require information referred to in **subsection (3)** to be disclosed only to the extent required to enable the Commission to monitor 1 or both of the matters referred to in **subsection (1)**.
- (3) If a regulated water services provider provides goods or services that are not subject to regulation under this Part (**other goods or services**), the provider may be required to disclose—
 - (a) consolidated financial statements, and any other information referred to in **section 34**, for all businesses (including those related to the supply of other goods or services) undertaken by that provider; and
 - (b) consolidated financial statements, and any other information referred to in **section 34**, for the supply of all other goods or services in aggregate; and
 - (c) reconciliation of information provided under **paragraphs (a) and (b)** with information disclosed in accordance with information disclosure requirements applying to water infrastructure services; and
 - (d) information about the financing of—
 - (i) all businesses (including those related to the supply of other goods or services) undertaken by that provider; and
 - (ii) the supply of all goods and services (including other goods or services) provided by that provider.
- (4) This section overrides any other provision of this Part.

Compare: 2001 No 103 s 189

36 Charge for providing copies to public

- (1) A person who is required, by a **section 15** determination, to provide copies of statements and information to the public on request may charge for providing those copies.
- (2) The charge must be no more than is reasonably required to recover the costs of providing those copies.

Compare: 2001 No 103 s 190

Subpart 5—Quality regulation

37 Purpose of quality regulation

The purpose of quality regulation is to regulate the quality and performance (other than in relation to prices) of water infrastructure services provided by regulated water services providers.

Compare: 2001 No 103 s 192

38 Effect of being subject to quality regulation

(1) A regulated water services provider to which a **section 15** determination relating to quality regulation applies must apply the quality paths set by the Commission in the determination in respect of all water infrastructure services that are—

- (a) supplied by the provider; and
- (b) specified in the determination.

(2) For the purpose of monitoring compliance with this section, the Commission may, in addition to exercising its powers under section 98 of the Commerce Act 1986, issue a written notice to a regulated water services provider requiring it to provide any or all of the following:

- (a) a written statement that states whether the provider has complied with the quality paths applying to that provider;
- (b) a report on the written statement referred to in **paragraph (a)** that is signed by an auditor in accordance with any form specified by the Commission;
- (c) sufficient information to enable the Commission to properly determine whether a quality path has been complied with;
- (d) a certificate, in the form specified by the Commission and signed by at least 1 board member of the provider, or, if there is no board, the person who operates the provider, confirming the truth and accuracy of any information provided under this section.

Compare: 2001 No 103 s 193

39 Section 15 determination to set out quality path requirements

(1) A **section 15** determination relating to quality regulation must specify the quality paths that apply to each regulated water services provider to which the determination applies.

(2) A quality path must specify the following:

- (a) the regulatory period to which it applies (including specifying whether the period is common to all regulated water services providers or specific to 1 or more providers);
- (b) the quality standards that a regulated water services provider must meet:

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- (c) the date or dates on which the quality path (or any part of it) takes effect:
 - (d) the date or dates by which compliance must be demonstrated in accordance with **section 38(2)**.
- (2A) In specifying a quality path, the Commission may have regard to the scale, complexity, and risk profile of each regulated water services provider (or a class of regulated water services providers) in respect of which it will apply, for example, by doing either or both of the following:
- (a) undertaking a greater or lesser degree of scrutiny of a provider (or class of providers) with respect to historic and forecast quality of supply:
 - (b) setting quality standards at a more or less onerous level.
- (3) A quality path may include—
- (a) incentives for a regulated water services provider to maintain or improve its quality of supply, and those incentives may include (without limitation) either of the following:
 - (i) compensation schemes that set minimum standards of performance and require the provider to pay prescribed amounts of compensation if it fails to meet those standards:
 - (ii) the use of schemes that rate or rank various aspects of the provider's performance in meeting the required quality standards or any performance requirements; and
 - (b) performance requirements, including any of the following:
 - (i) requirements to adopt a particular approach to risk management:
 - (ii) requirements in relation to the condition of assets and remaining asset life:
 - (iii) requirements to make particular types of investment:
 - (iv) requirements to provide information about any investments planned for a particular period:
 - (v) requirements to consult the Commission about certain kinds of investments and investment decisions:
 - (vi) requirements to adopt asset management policies and practices:
 - (vii) requirements to ring-fence minimum amounts of revenue for investment purposes:
 - (viii) reporting requirements, including—
 - (A) to whom reports must be made; and
 - (B) the timing of reports; and
 - (C) special reporting requirements in asset management plans, if the regulated water services provider fails to meet the quality standards; and

- (D) any other matters relating to reporting, including requirements for additional information:
 - (ix) requirements that any disclosed information, or any information from which disclosed information is derived, be verified by statutory declaration or certified (in the form specified by the Commission) as true and accurate:
 - (x) requirements to undertake cost-benefit analysis before specified projects are begun:
 - (xi) requirements relating to consultation and engagement with consumers:
 - (xii) requirements based on comparative benchmarking of efficiency.
- (4) Quality standards, incentives, and performance requirements may be set or imposed only in respect of services that are subject to regulation under this Part.
- (5) A requirement to ring-fence revenue (as referred to in **subsection (3)(b)(vii)**) may include a requirement not to spend the relevant funds without the approval of the Commission.
- (6) Quality standards may be prescribed in any way the Commission considers appropriate (such as targets, bands, formulas, or timetables for responsiveness to consumers).
- (7) A quality path does not apply to a regulated water services provider until the date specified in the relevant **section 15** determination.
- (8) The Commission must consult interested parties before making a **section 15** determination relating to water infrastructure services that are subject to quality regulation.

Compare: 2001 No 103 s 194

Subpart 6—Price-quality regulation

40 Purpose of price-quality regulation

The purpose of price-quality regulation is to regulate the price, quality, and performance of water infrastructure services provided by regulated water services providers.

Compare: 2001 No 103 s 192

41 Effect of being subject to price-quality regulation

- (1) A regulated water services provider to which a **section 15** determination relating to price-quality regulation applies must apply the price-quality paths set by the Commission in the determination in respect of all water infrastructure services that are—
 - (a) supplied by the provider; and

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- (b) specified in the determination.
- (2) For the purpose of monitoring compliance with this section, the Commission may, in addition to exercising its powers under section 98 of the Commerce Act 1986, issue a written notice to a regulated water services provider requiring it to provide any or all of the following:
 - (a) a written statement that states whether the provider has complied with the price-quality paths applying to that entity:
 - (b) a report on the written statement referred to in **paragraph (a)** that is signed by an auditor in accordance with any form specified by the Commission:
 - (c) sufficient information to enable the Commission to properly determine whether a price-quality path has been complied with:
 - (d) a certificate, in the form specified by the Commission and signed by at least 1 board member of the provider, or, if there is no board, the person who operates the provider, confirming the truth and accuracy of any information provided under this section.

Compare: 2001 No 103 s 193

42 Section 15 determination to set out price-quality path requirements

- (1) A **section 15** determination relating to price-quality regulation must specify the price-quality paths that apply to each regulated water services provider to which the determination applies.
- (2) A price-quality path must specify the following:
 - (a) the regulatory period to which it applies (including specifying whether the period is common to all regulated water services providers or specific to 1 or more providers):
 - (b) in relation to prices, 1 or both of the following:
 - (i) the maximum price or prices that a regulated water services provider may charge:
 - (ii) the maximum revenues that a regulated water services provider may recover:
 - (c) the quality standards that a regulated water services provider must meet:
 - (d) the date or dates on which the price-quality path (or any part of it) takes effect:
 - (e) the date or dates by which compliance must be demonstrated in accordance with **section 41(2)**.
- (2A) In specifying a price-quality path, the Commission may have regard to the scale, complexity, and risk profile of each regulated water services provider (or a class of regulated water services providers) in respect of which it will apply, for example, by doing any 1 or more of the following:

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- (a) undertaking a greater or lesser degree of scrutiny of a provider (or class of providers) with respect to historic and forecast prices, expenditure, and quality of supply:
 - (b) setting higher or lower maximum prices or revenues:
 - (c) setting quality standards at a more or less onerous level.
- (3) A price-quality path may include—
- (a) incentives for a regulated water services provider to maintain or improve its quality of supply, and those incentives may include (without limitation) any of the following:
 - (i) penalties by way of a reduction in the provider’s maximum prices or revenues based on whether, or by what amount, the provider fails to meet the required quality standards or any performance requirements:
 - (ii) rewards by way of an increase in the provider’s maximum prices or revenues based on whether, or by what amount, the provider meets or exceeds the required quality standards or any performance requirements:
 - (iii) compensation schemes that set minimum standards of performance and require the provider to pay prescribed amounts of compensation if it fails to meet those standards:
 - (iv) the use of schemes that rate or rank various aspects of the provider’s performance in meeting the required quality standards or any performance requirements; and
 - (b) performance requirements, including any of the following:
 - (i) requirements to adopt a particular approach to risk management:
 - (ii) requirements in relation to the condition of assets and remaining asset life:
 - (iii) requirements to make particular types of investment:
 - (iv) requirements to provide information about any investments planned for a particular period:
 - (v) requirements to consult the Commission about certain kinds of investments and investment decisions:
 - (vi) requirements to adopt asset management policies and practices:
 - (vii) requirements to ring-fence minimum amounts of revenue for investment purposes:
 - (viii) reporting requirements, including—
 - (A) to whom reports must be made; and
 - (B) the timing of reports; and

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- (C) special reporting requirements in asset management plans, if the regulated water services provider fails to meet the quality standards; and
- (D) any other matters relating to reporting, including requirements for additional information:
 - (ix) requirements that any disclosed information, or any information from which disclosed information is derived, be verified by statutory declaration or certified (in the form specified by the Commission) as true and accurate:
 - (x) requirements to undertake cost-benefit analysis before specified projects are begun:
 - (xi) requirements relating to consultation and engagement with consumers:
 - (xii) requirements based on comparative benchmarking of efficiency.
- (4) Quality standards, incentives, and performance requirements may be set or imposed only in respect of services that are subject to regulation under this Part.
- (5) A requirement to ring-fence revenue (as referred to in **subsection (3)(b)(vii)**) may include a requirement not to spend the relevant funds without the approval of the Commission.
- (6) Quality standards may be prescribed in any way the Commission considers appropriate (such as targets, bands, formulas, or timetables for responsiveness to consumers).
- (7) A price-quality path does not apply to a regulated water services provider until the date specified in the relevant **section 15** determination.

Compare: 2001 No 103 s 194

43 Wash-up mechanism for maximum revenues specified in initial price-quality paths

- (1) This section applies when the Commission specifies, in the price-quality paths for a regulatory period, the maximum revenues that a regulated water services provider may recover.
- (2) The Commission may, in calculating the maximum revenues, apply a wash-up mechanism that provides for any over-recovery or under-recovery of revenue by the regulated water services provider during the previous regulatory period (if applicable) to be applied in a manner that is equivalent in present-value terms (as calculated in the manner that the Commission thinks fit) over 1 or more future regulatory periods.

Compare: 2001 No 103 s 196

44 Smoothing revenues and prices

- (1) This section applies when the Commission specifies maximum prices or maximum revenues for the purpose of **section 42(2)(b)**.
- (2) The Commission may calculate the maximum price or revenue in a manner that is equivalent in present value terms (as calculated in the manner that the Commission thinks fit) over 2 or more regulatory periods (for example, by altering depreciation) if, in the Commission's opinion, it is necessary or desirable to do so to provide for the financeability of a regulated water services provider or to minimise price shocks to consumers.

Compare: 2001 No 103 s 197

45 Making new **section 15** determination

- (1) Before the end of each regulatory period for a regulated water services provider (or a class of regulated water services providers), the Commission must make a new **section 15** determination specifying the price-quality paths that will apply for the following regulatory period in respect of that provider (or those providers).
- (2) However, **subsection (1)** ~~does not apply in respect of a regulatory period if price-quality regulation has not been imposed in that period.~~
 - (a) does not apply in respect of a regulatory period if price-quality regulation has not been imposed in that period; and
 - (b) does not require the Commission to make a **section 15** determination specifying price-quality paths for a regulatory period in respect of any regulated water services provider if price-quality regulation will not be imposed on that provider in that period.
- (3) In making a new **section 15** determination, the Commission must consult interested parties in relation to the requirements listed in **section 42**.

Compare: 2001 No 103 s 203

46 What happens to price-quality path if input methodologies change

- (1) The Commission must not reopen a price-quality path within a regulatory period on the grounds of a change in an input methodology, except as provided in **subsection (2)**.
- (2) The Commission must reopen a price-quality path, and make a new price-quality path by amending the relevant **section 15** determination in accordance with **section 16**, if—
 - (a) an input methodology changes as a result of an appeal under **section 119**; and
 - (b) had the changed methodology applied at the time the price-quality path was set, it would have resulted in a materially different path being set.

Compare: 2001 No 103 s 204

Subpart 8—Commission review of funding and pricing plans and tariff lists

51 Commission must review funding and pricing plans and tariff lists

- (1) The Commission must review any funding and pricing plan and tariff list made publicly available by the chief executive or the board of a regulated water services provider under any legislation dealing with water services.
- (2) In carrying out a review, the Commission must consider the following:
 - (a) any charging principles set out in any legislation dealing with water services:
 - (b) regulations made under any legislation dealing with water services, to the extent the Commission considers the regulations to be relevant:
 - (c) requirements in determinations made by the Commission under this Part, to the extent the Commission considers them to be relevant.
- (3) The Commission must complete its review and give directions under **section 52** (if any) as soon as practicable after a funding and pricing plan or tariff list (as the case may be) is made publicly available.
- (3A) The Commission may on its own initiative carry out further reviews of any funding and pricing plan or tariff list and give new or amended directions (if any) under **section 52** as a consequence, at any time after it completes its first review under this section.
- (4) This section and **section 52** do not apply in respect of an initial funding and pricing plan prepared in accordance with Schedule 1 of the Water Services Entities Act 2022.

52 Commission may give directions

If the Commission considers that a funding and pricing plan or tariff list is inconsistent with any of the things described in **section 51(2)**, the Commission may direct the board of a regulated water services provider to do either or both of the following:

- (a) reconsider the plan or tariff list (as the case may be):
- (b) change the plan or tariff list (as the case may be), according to the Commission's directions.

53 Obligations of boards of regulated water services providers in response to direction from Commission

A board of a regulated water services provider that receives a direction from the Commission under **section 52** must comply with it.

Subpart 9—Designations of water services entities following a review

53A Overview of subpart

- (1) This subpart—
 - (a) establishes a process under which water services entities that are not statutory water services entities may become subject to regulation under this Part (specifically, by being designated under **section 54**); and
 - (b) enables the level of regulation applying to an entity designated in that way to be adjusted to increase or decrease the requirements that apply to the entity by amending or revoking the relevant designation order under **section 58**.
- (2) In each case, the process for making, amending, or revoking a designation order requires a review to be carried out by the Commission under **subpart 2A of Part 5**.
- (3) This section is intended only as a guide to the general scheme and effect of this subpart.

54 Designation of water services entities by Order in Council

- (1) The Governor-General may, on the recommendation of the Minister, make an Order in Council declaring a water services entity that is not a statutory water services entity to be designated for the purposes of this Part.
- (2) A designation order is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

55 Minister's recommendation

- (1) The Minister may recommend to the Governor-General that a water services entity be designated for the purposes of this Part only if—
 - (a) the Minister has received and considered a recommendation from the Commission following a review carried out under **section 139D or 139F**; and
 - (b) the Minister is satisfied that the purpose of this Part (*see* **section 12**) would be better met if the designation were made.
- (2) *See also* **section 139E**.

56 Content of designation

A designation order must specify all of the following:

- (a) the water services entity that is designated;
- (b) at least 1 person that is an operator of the water services entity;
- (c) the type of regulation under this Part that will apply in respect of the water services entity (being 1 or more of information disclosure, quality, and price-quality regulation):

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- (d) the services provided by the water services entity to which the regulation will apply:
- (e) when any input methodologies apply:
- (f) when the relevant type of regulation will apply.

57 Duration of designation

- (1) A designation order continues in force until the date on which the order is revoked or replaced, whichever occurs first.
- (3) If a water services entity ceases to be designated for the purposes of this Part, any of the following that apply to the entity, cease to apply to the entity:
 - (a) a **section 15** determination:
 - (b) an input methodology:
 - (c) a requirement under any of **subparts 4 to 6** of this Part:
 - (d) a direction given under **section 52**.

58 Amendment and revocation of designation

- (1) A designation order may be amended or revoked using the process in **sections 54 to 56**, which apply with any necessary modifications.
- (2) However, **section 55** does not apply to an order amending a designation order if the Minister is satisfied that the amendment is ~~only correcting a minor error or is otherwise of a minor nature only (for example, a name change of an entity)~~ non-material.
- (3) To avoid doubt, an amendment to a designation order may be directed at (without limitation)—
 - (a) imposing additional regulation under this Part on an entity to which the designation relates in respect of 1 or more water infrastructure services (*see section 139E(1)(c)*); or
 - (b) excluding an entity to which the designation relates (or 1 or more water infrastructure services) from 1 or more types of regulation under this Part (*see section 139G(1)(b)*).

**Part 3
Consumer protection**

Subpart 1AAA—General

59 Overview of this Part

- (1) In this Part,—
 - (a) this subpart contains general provisions and defines terms used in this Part:

- (b) **subpart 1** provides for the designation of water services entities that are not statutory water services entities (the effect of which is that such entities become regulated water services providers for the purposes of this Part):
 - (c) **subpart 2** requires the making and operation of a service quality code, including a requirement that the Commission set a reasonable penalty rate for debt owed by a consumer to a water services entity:
 - (d) **subpart 3**—
 - (i) requires each regulated water services provider or drinking water supplier to establish a consumer complaints process; and
 - (ii) establishes a consumer dispute resolution service.
- (2) This section is intended only as a guide to the general scheme and effect of this Part.

60 Purpose of this Part

The purpose of this Part is to provide for consumer protection, and improvements in the quality of service provided to consumers to reflect consumer demands, by regulated water services providers and drinking water suppliers.

61 Interpretation

In this Part, unless the context otherwise requires,—

consumer dispute resolution service or **service** means—

- (a) the dispute resolution service authorised under **section 76** and approved under **Schedule 2**; and
- (b) if, at the same time, 2 or more consumer dispute resolution services are approved services, each consumer dispute resolution service or the particular consumer dispute resolution service in question, as the case requires

~~**regulated water services provider**~~ means each of the following:

- (a) a statutory water services entity;
- (b) a water services entity that is designated under **section 62**;
- (c) a subsidiary of, or a successor to, a person referred to in **paragraph (a) or (b)**;
- (d) a person that is an interconnected body corporate in relation to a person referred to in **paragraph (a) or (b)**

regulated water services provider—

- (a) means—
 - (i) a statutory water services entity; and
 - (ii) a water services entity that is designated under **section 62**; and

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- (iii) a successor to a person referred to in **subparagraph (i) or (ii)**; and
- (b) includes either of the following, which must be treated as part of the entity referred to in **paragraph (a)(i), (ii), or (iii)**:
 - (i) a subsidiary of a person referred to in **paragraph (a)(i), (ii), or (iii)**;
 - (ii) a person that is an interconnected body corporate in relation to a person referred to in **paragraph (a)(i), (ii), or (iii)**

service provider means—

- (a) the person who operates the consumer dispute resolution service; and
- (b) if, at the same time, 2 or more consumer dispute resolution services are approved services, the person who operates each consumer dispute resolution service or the particular consumer dispute resolution service in question, as the case requires

water services consumer protection requirements means the following:

- (a) the service quality code;
- (b) the consumer complaints process established by **section 73** and the regulations (if any) referred to in that section;
- (c) the consumer dispute resolution service.

Subpart 1—Designations of water services entities following a review

61A Overview of subpart

- (1) This subpart—
 - (a) establishes a process under which water services entities that are not statutory water services entities may become subject to regulation under this Part (specifically, by being designated under **section 62**); and
 - (b) enables the level of regulation applying to an entity designated in that way to be adjusted to increase or decrease their obligations to comply with requirements or provisions in this Part by amending or revoking the relevant designation order under **section 68**.
- (2) In each case, the process for making, amending, or revoking a designation order requires a review to be carried out by the Commission under **subpart 2A of Part 5**.
- (3) This section is intended only as a guide to the general scheme and effect of this subpart.

62 Designation of water services entities by Order in Council

- (1) The Governor-General may, on the recommendation of the Minister, make an Order in Council declaring a water services entity that is not a statutory water services entity to be designated for the purposes of this Part.
- (2) A designation order made under this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

63 Minister's recommendation

- (1) The Minister may recommend to the Governor-General that a water services entity be designated for the purposes of this Part only if—
 - (a) the Minister has received and considered a recommendation from the Commission following a review carried out under **section 139L** or **139N**; and
 - (b) the Minister is satisfied that the purpose of this Part would be better met if the designation were made.
- (2) *See also* **section 139M**.

66 Content of designation order

A designation order must specify all of the following:

- (a) the water services entity that is designated;
- (b) at least 1 person that is an operator of the water services entity;
- (c) the water services consumer protection requirements that will apply in respect of the water services entity;
- (d) the services provided by the water services entity to which those water services consumer protection requirements will apply;
- (e) when the water services consumer protection requirements will apply to the water services entity.

67 Duration of designation order

- (1) A designation order continues in force until the date on which the order is revoked or replaced, whichever occurs first.
- (3) If a water services entity ceases to be designated for the purposes of this Part, any requirements of this Part that apply to the entity (whether under the service quality code or otherwise) cease to apply to the entity.

68 Amendment and revocation of designation order

- (1) A designation order may be amended or revoked using the process in **sections 62 to 66**, which apply with any necessary modifications.
- (2) However, **section 63** does not apply to an order amending a designation order if the Minister is satisfied that the amendment is ~~only correcting a minor error~~

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~~or is otherwise of a minor nature only (for example, a name change of an entity) non-material.~~

- (3) To avoid doubt, an amendment to a designation order may be directed at (without limitation)—
- (a) making an entity to which the designation relates subject to additional provisions or requirements of this Part in respect of 1 or more water infrastructure services (*see* **section 139M(1)(b)**); or
 - (b) removing obligations on an entity to which the designation relates to comply with provisions or requirements of this Part in respect of 1 or more water infrastructure services (*see* **section 139O(1)(a)**).

Subpart 2—Service quality code

69 Commission must make service quality code

- (1) The Commission must, not later than **1 July 2027**, make a service quality code in relation to the provision of 1 or more types of water infrastructure service by regulated water services providers.
- (2) The service quality code is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

70 Contents of Commission’s service quality code

- (1) The service quality code must—
 - (a) specify which water infrastructure services it applies to; and
 - (b) specify which regulated water services providers it applies to; and
 - (c) specify a penalty rate for unpaid debt owed to regulated water services providers by consumers, or a method of calculating the penalty due, or both, for the purposes of **section 325(1) of the Water Services Entities Act 2022**; and
 - (d) promote the purpose of this Part set out in **section 60**.
- (2) The service quality code may (without limitation) do 1 or more of the following:
 - (a) specify a consumer’s rights when they make a complaint to a regulated water services provider;
 - (b) specify the type and frequency of communications that a regulated water services provider must have with consumers about—
 - (i) outages; and
 - (ii) the time taken to respond to outages and faults;
 - (c) contain rules about the transparency of billing practices, and the way in which account queries must be responded to;

- (d) set out the types of redress available to consumers when the quality of service does not meet appropriate standards (for example, in relation to pressure flow rates):
- (e) specify conditions for the provision of water infrastructure services to consumers experiencing hardship or who have other vulnerabilities (for example, the obligations of regulated water services providers when responding to non-payment by consumers):
- (f) specify requirements for consulting consumers:
- (g) provide for any other matter that the Commission considers appropriate.

71 Regulated water services providers must comply with service quality code

Regulated water services providers must comply with the provisions of the service quality code.

72 Process for making or amending service quality code

- (1) In order to make the service quality code, the Commission must—
 - (a) give public notice of the process that will be followed to make the code; and
 - (b) consult interested persons; and
 - (c) give public notice of a draft code.
- (2) A person is entitled to make a submission to the Commission not later than 30 working days after the date on which public notice of the draft code is given.
- (2A) The Commission must—
 - (a) take reasonable steps to identify classes of vulnerable consumers; and
 - (b) consider the impact of the provision of water services on vulnerable consumers and take the interests of those persons into account when making the service quality code.
- (3) The Commission may make the code only if the Commission is satisfied that the draft code meets all the requirements set out in this subpart.
- (4) The Commission may amend or revoke and replace a code if the Commission considers that the code should be changed to better promote the purpose of this Part.
- (5) The same procedure that applies to making a code in **subsections (1) to (3)** must be followed to make an amendment or a revocation and replacement, with any necessary modifications, except that **subsections (1) to (3)** do not apply if the Commission is satisfied that an amendment is ~~only correcting a minor error or is otherwise of a minor nature only~~ non-material.

Subpart 3—Consumer complaints process and consumer dispute
resolution service

Consumer complaints process

73 Requirement for regulated water services provider and drinking water suppliers to provide information to consumers and have complaints process

- (1) A regulated water services provider or drinking water supplier must, in accordance with regulations (if any) that apply to the provider or supplier,—
 - (a) provide any prescribed information to consumers; and
 - (b) establish, maintain, and administer a consumer complaints process; and
 - (c) report annually to the Commission on its consumer complaints process.
- (2) A regulated water services provider or drinking water supplier must ensure that complaints by consumers are dealt with—
 - (a) in accordance with its consumer complaints process; and
 - (b) in an efficient and effective manner.
- (3) Regulations referred to in this section may make different provisions for—
 - (a) different kinds of regulated water services providers or drinking water suppliers; and
 - (b) different classes of water infrastructure services.

Compare: 2021 No 36 s 38

74 Review of complaint outcome using consumer dispute resolution service

- (1) A consumer who is not satisfied with the outcome of a complaint dealt with using a consumer complaints process under this subpart may, in the form approved by the service provider, request the service provider for the consumer dispute resolution service to provide dispute resolution services.
- (2) The service provider may, at its discretion, decide to take no action or, as the case may require, no further action on any complaint if the provider is satisfied on reasonable grounds that—
 - (a) the length of time that has elapsed between the date when the subject matter of the complaint arose and the date when the complaint was made is such that an investigation of the complaint is no longer practicable or desirable; or
 - (b) the complaint is trivial, frivolous, or vexatious, or is not made in good faith; or
 - (c) the person alleged to be aggrieved does not want action to be taken or, as the case may be, continued; or

- (d) the complainant does not have sufficient personal interest in the subject matter of the complaint and is not a person or organisation representing consumers; or
- (e) the complaint would be more appropriately dealt with by a court, a tribunal, or another appropriate authority; or
- (f) adequate steps have been taken by the regulated water services provider or drinking water supplier to address the complaint, or the person who made the complaint has been adequately compensated for any loss (for example, by insurance).

Compare: 2021 No 36 s 39

75 Commission must monitor compliance with complaints process

The Commission must—

- (a) monitor compliance by regulated water service providers and drinking water suppliers with **section 73**; and
- (b) in doing so, may have regard to the scale, complexity, and risk profile of a regulated water services provider or drinking water supplier.

Consumer dispute resolution service

76 Consumer dispute resolution service

- (1) The consumer dispute resolution service for the resolution of disputes is the dispute resolution service—
 - (a) that is authorised under this section and approved by the Minister under **Schedule 2**; and
 - (b) that the Minister declares under that schedule to be the dispute resolution service for the purpose of this Part or a dispute resolution service authorised under **subsection (1B)(a), (b), or (c)** and approved under **Schedule 2**; and
 - (c) whose provider is approved by the Minister.
- (1A) There must only be 1 consumer dispute resolution service for all of New Zealand unless **subsection (1B)** applies.
- (1B) There may be 2 or more approved consumer dispute resolution services, at any one time, if 1 or more of the following apply:
 - (a) the Minister has reasonable grounds to believe that having only 1 approved dispute resolution service would operate to the disadvantage of consumers:
 - (b) following a review of the disputes resolution service by the Commission, the Minister determines that having 2 or more approved dispute resolution services is appropriate:

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- (c) the Minister approves the continuation of a dispute resolution service, after another dispute resolution service is approved to act in its place, until the successor dispute resolution service is fully operational.
- (2) Before approving a dispute resolution service under **Schedule 2**, the Minister must consult—
 - (a) the Minister responsible for Taumata Arowai:
 - (b) the Minister responsible for the administration of the Water Services Act 2021 (if a different Minister from the Minister referred to in **paragraph (a)**):
 - (ba) the Commission.

77 Determinations binding on regulated water services providers and drinking water suppliers

- (1) This section applies if a dispute arising from an unresolved complaint is referred by a consumer to the consumer dispute resolution service and a determination is made on the dispute under the rules of the service.
- (2) The determination is binding on the relevant regulated water services provider or drinking water supplier, as the case requires, unless the consumer, regulated water services provider, or drinking water supplier lodges an application under **section 78** to set aside the determination and the court modifies or reverses the determination.

Compare: 2001 No 103 s 242

78 Applications to set aside determinations

- (1) A consumer or a regulated water services provider or a drinking water supplier may, within the time allowed under **section 79(1)**, apply to the court to set aside any determination referred to in **section 77**.
- (2) The court may modify or reverse the determination that is the subject of the application if the court is satisfied that the terms of the determination are manifestly unreasonable but otherwise must confirm the determination.
- (3) The decision of the court on the application is binding on all persons named as parties in the determination, and there is no right of appeal against the court's decision.

Compare: 2001 No 103 s 243; 2021 No 36 s 93

79 Procedure on section 78 applications

- (1) An application under **section 78** must be brought and determined in accordance with the rules of court, except that—
 - (a) the application must be brought within 20 working days after the determination is notified to the party wanting to lodge the application, or any further time the court allows on a further application made before or after that period ends; and

- (b) the maker of the determination that is the subject of the application (if a person engaged by the service provider), is not entitled to be represented in connection with the application; and
 - (c) the court may not refer the determination back to the service provider of the consumer dispute resolution service for any purpose.
- (2) The court may hear all evidence provided and representations made by or on behalf of any party to the application that the court considers relevant to the application, whether or not the evidence would otherwise be admissible in a court.

Compare: 2001 No 103 s 244

80 Enforcement of binding settlements and determinations

- (1) Each party to a dispute that is referred to the consumer dispute resolution service must comply with the rules of the service.
- (2) On an application by the service provider, the court may require a person who is a party to a dispute to do any of the following:
- (a) comply with the rules of the service:
 - (b) comply with the terms of a binding settlement or determination made under the rules of the service.
- (3) If the court is satisfied that the terms of a binding settlement are manifestly unreasonable, the court's order under **subsection (2)(b)** may modify the terms of the binding settlement but only to the extent that the modification results in a binding settlement that could have been made by the consumer dispute resolution service.
- (4) If an order requiring a regulated water services provider, drinking water supplier, or other person to comply with a binding settlement includes a requirement that the person pay an amount of money to a person, that order (or part of the order) may be enforced as if it were a judgment by the court for the payment of a sum of money.

Compare: 2001 No 103 s 245

Commission review of consumer dispute resolution service

81 Commission must review consumer dispute resolution service

The Commission must review the consumer dispute resolution service, using the process and in accordance with the timetable set out in **Schedule 2**.

81A Compliance statement may be required for purposes of provision of this Part or Schedule 2

For the purpose of monitoring compliance with a provision of this Part or **Schedule 2** or each development code (as provided for in **section 293A to 294C and 295 of the Water Services Entities Act 2022**), the Commis-

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sion may, in addition to exercising its powers under section 98 of the Commerce Act 1986, issue a written notice to a regulated water services provider or drinking water supplier, requiring it to provide any or all of the following:

- (a) a written statement of whether the provider or supplier has complied with the provision:
- (b) a report on the written statement that is signed by an auditor in accordance with any form specified by the Commission:
- (c) sufficient information to enable the Commission to properly determine whether the provision has been complied with:
- (d) a certificate in the form specified by the Commission, and signed by at least 1 board member of the regulated water services provider or drinking water supplier or, if there is no board, the person who operates the provider or supplier, confirming the truth and accuracy of any information provided under this section.

81B Commission may give direction to comply with timetables and development codes

The Commission may direct—

- (a) a regulated water services provider to comply with the service quality code:
- (b) the board of a statutory water services entity to—
 - (i) if the Commission considers that **Part 1 or Part 2** of a draft development code has not been submitted or resubmitted within a reasonable time or the time specified by the Commission, to submit or resubmit that Part within a specified time:
 - (ii) comply with its own development code (as prepared and approved under **section 293A to 294C and 295 of the Water Services Entities Act 2022**).

Miscellaneous matters

82 Duties of service provider, regulated water services providers, and drinking water suppliers

- (1) If, in the course of dealing with any complaint or while dispute resolution services are being provided, the service provider becomes aware that—
 - (a) there is or may be a serious risk to public health arising from the provision of or omission to provide water infrastructure services, the service provider must promptly notify the matter to Taumata Arowai and the relevant medical officer of health:
 - (b) a regulated water services provider or drinking water supplier is facing a significant problem or potential problem (within the meaning of section

179 of the Water Services Entities Act 2022), the service provider must promptly notify the matter to Taumata Arowai.

- (2) The service provider, regulated water services providers, and drinking water suppliers must share with the Commission and Taumata Arowai information about issues, trends, and patterns arising out of consumer complaints.

Part 4 Enforcement, monitoring, and appeals

Subpart 1—Civil liability

83 Overview of civil liability

- (1) The following remedies (**civil liability remedies**) are available under this subpart:
- (a) a pecuniary penalty order (on application by the Commission only);
 - (b) a compensatory order;
 - (c) an injunction.
- (2) This section is a guide only to the general scheme and effect of this subpart.

Pecuniary penalty orders

84 When court may make pecuniary penalty order

- (1) The court may, on the application of the Commission, order a person to pay to the Crown a pecuniary penalty if the court is satisfied that the person has—
- (a) contravened an information disclosure requirement; or
 - (b) contravened a quality or price-quality requirement; or
 - (c) contravened the service quality code made under **section 69**; or
 - (ca) contravened **section 53**; or
 - (cb) contravened a development code;
 - (d) attempted to contravene any of the things referred to in **paragraphs (a) to (cb)**; or
 - (e) been involved in a contravention of any of the things referred to in **paragraphs (a) to (cb)**.
- (2) For the purposes of this Part,—
- contravening a quality or price-quality requirement—**
- (a) refers to a requirement imposed by a **section 15** determination, in relation to water infrastructure services generally or any particular water infrastructure services that are subject to quality or price-quality regulation imposed under **Part 2**; and

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- (b) means any or all of the following:
 - (i) failing to comply with the requirements for prices, whether by charging a price for the water infrastructure services that is higher than the maximum permitted, or by receiving more revenue than is permitted, or in any other way:
 - (ii) refusing or failing to comply with any quality standards required under the quality or price-quality regulation:
 - (iii) refusing or failing to comply with any incentives or performance requirements set out in a **section 15** determination relating to quality or price-quality regulation

contravening an information disclosure requirement includes all or any of the following:

- (a) failing to disclose information required to be disclosed:
 - (b) failing to disclose information in the form or within the time required:
 - (c) disclosing under an information disclosure requirement information that is false or misleading.
- (3) *See* **section 124** in relation to the meaning of involvement in a contravention.
Compare: 1986 No 5 ss 80, 87; 2001 No 103 s 215

85 Maximum amount of pecuniary penalty

- (1) The maximum amount of a pecuniary penalty is—
 - (a) \$500,000, in the case of an individual; or
 - (b) \$5 million, in any other case.
- (2) Despite **subsection (1)**, the maximum amount of a pecuniary penalty is \$300,000 for—
 - (a) a contravention of the service quality code under **section 84(1)(c)** or a contravention of a development code under **section 84(1)(ca)**:
 - (b) an attempted contravention of the service quality code or a development code under **section 84(1)(d)**:
 - (c) involvement in the contravention of the service quality code or a development code under **section 84(1)(e)**.

Compare: 2001 No 103 s 215(3)

86 Considerations for court in determining pecuniary penalty

- (1) In determining the amount of a pecuniary penalty that a person (A) must pay, the court must have regard to all relevant matters (to the extent they are known), including—
 - (a) the nature and extent of A's conduct; and
 - (b) the nature and extent of any loss or damage suffered by any person because of A's conduct; and

- (c) any gains made or losses avoided by A; and
 - (d) whether a person has paid an amount of compensation, reparation, or restitution, or taken other steps to avoid or mitigate any actual or potential adverse effects of A's conduct; and
 - (e) the circumstances in which A's conduct took place; and
 - (f) whether or not A has previously been found by a court in proceedings under this Act, or any other legislation, to have engaged in any similar conduct.
- (2) In this section, **A's conduct** means the conduct of A for which A is liable to the pecuniary penalty.
- Compare: 2001 No 103 s 215

87 Court must order that recovery from pecuniary penalty be applied to Commission's actual costs

If the court orders that a person pay a pecuniary penalty, the court must also order that the penalty must be applied first to pay the Commission's actual costs in bringing the proceeding.

Compare: 1988 No 234 s 42Z; 2013 No 69 s 493

Compensatory orders

88 When court may make compensatory orders

- (1) If the court orders a person to pay a pecuniary penalty order under **section 84** in respect of a specified matter, the court may, in addition, order the person to pay compensation to any person who has suffered, or is likely to suffer, loss or damage as a result of the contravention (an **aggrieved person**).
- (2) An application for an order under this section may be made by the Commission or any aggrieved person.
- (3) The court may make a compensatory order whether or not the aggrieved person is a party to the proceeding.
- (4) In this section, **specified matter** means—
 - (a) a contravention, an attempted contravention, or involvement in the contravention of a quality or price-quality requirement;
 - (b) a contravention of the service quality code;
 - (c) a contravention of a development code.

Compare: 1986 No 5 s 87A

89 Terms of compensatory orders

- (1) If **section 88** applies, the court may make any order it thinks just to compensate an aggrieved person in whole or in part for the loss or damage, or to prevent or reduce the loss or damage, referred to in that section.

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- (2) An order may include an order to direct a relevant person to pay to the aggrieved person the amount of the loss or damage (in whole or in part).
- (3) **Subsection (2)** does not limit **subsection (1)**.
- (4) In this section, **relevant person** means—
 - (a) any person in contravention; or
 - (b) any person involved (*see* **section 124**) in the contravention.

Compare: 2013 No 69 s 495

Injunctions

90 Court may grant injunctions

The court may, on application by the Commission or any other person, grant an injunction—

- (a) restraining a person from engaging in conduct that constitutes or would constitute a contravention, an attempted contravention, or involvement (*see* **section 124**) in a contravention of a quality or price-quality requirement, an information disclosure requirement, the service quality code, **section 53**, or any development code; or
- (b) requiring a person to do an act or a thing if—
 - (i) that person has refused or failed, ~~or~~ is refusing or failing, or is proposing to refuse or fail; to do that act or thing; and
 - (ii) the refusal or failure was, is, or would be a contravention of a quality or price-quality requirement, an information disclosure requirement, the service quality code, **section 53**, or any development code.

Compare: 2013 No 69 s 480

91 When court may grant restraining injunctions

- (1) The court may grant an injunction restraining a person from engaging in conduct described in **section 90(a)** if—
 - (a) it is satisfied that the person has engaged in conduct of that kind; or
 - (b) it appears to the court that, if an injunction is not granted, it is likely that the person will engage in conduct of that kind.
- (2) The court may grant an interim injunction restraining a person from engaging in conduct of a particular kind if in its opinion it is desirable to do so.
- (3) **Subsections (1)(a) and (2)** apply whether or not it appears to the court that the person intends to engage again, or to continue to engage, in conduct of that kind.
- (4) **Subsections (1)(b) and (2)** apply whether or not—
 - (a) the person has previously engaged in conduct of that kind; or

- (b) there is an imminent danger of substantial damage to any other person if the person engages in conduct of that kind.
- (5) In determining whether to grant an interim injunction under this section, the court must give any weight that the court considers appropriate to the interest of consumers.
- (6) In any proceedings under this section the Commission, on the order of the court, may obtain discovery and administer interrogatories.
- (7) The court may at any time rescind or vary an injunction granted under this Act.
Compare: 1986 No 5 s 88; 2013 No 69 s 481; 2022 No 21 s 48

92 Commission’s undertaking as to damages not required

- (1) If the Commission applies to the court for the grant of an interim injunction under this subpart, the court must not, as a condition of granting an interim injunction, require the Commission to give an undertaking as to damages.
- (2) In determining the Commission’s application for the grant of an interim injunction, the court must not take into account that the Commission is not required to give an undertaking as to damages.
Compare: 1986 No 5 s 88A; 2013 No 69 s 482; 2022 No 21 s 50

Orders about information disclosure

92A Order requiring information disclosure requirement to be complied with

- (1) The court may, on application by the Commission, order a regulated water services provider to comply with an information disclosure requirement that applies to the provider.
- (2) An order under this section must specify the date by which, or period within which, the provider must comply with the requirement.

Rules of procedure

93 Rules of civil procedure and civil standard of proof apply

A proceeding under this subpart is a civil proceeding and the usual rules of court and rules of evidence and procedure for civil proceedings apply (including the standard of proof).

94 Limit on proceedings

- (1) A proceeding under this subpart must be commenced within 3 years after the matter giving rise to the contravention, attempted contravention, or involvement in the contravention was discovered or ought reasonably to have been discovered.
- (2) However, an application for compensation under **section 88** must be made within 1 year of the relevant pecuniary penalty order.

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- (3) No proceeding under this subpart may be commenced 10 years or more after the matter giving rise to the contravention, attempted contravention, or involvement in the contravention occurred.
- (4) *See* **section 124** in relation to the meaning of involvement in a contravention.

Relationship between proceedings and orders

95 More than 1 civil liability remedy may be given for same conduct

The court may grant a civil liability remedy of one kind against a person even though the court has granted another civil liability remedy of a different kind against the person for the same conduct.

Example

The court may make a compensatory order and a pecuniary penalty order for the same conduct.

96 Only 1 pecuniary penalty order may be made for same conduct

- (1) If conduct by a person constitutes a contravention, an attempted contravention, or an involvement in the contravention of 2 or more provisions, a proceeding may be brought against that person for the contravention, attempted contravention, or involvement in the contravention of any 1 or more of the provisions, but no person is liable to more than 1 pecuniary penalty order for the same conduct.
- (2) *See* **section 124** in relation to the meaning of involvement in a contravention.

97 No pecuniary penalty and criminal penalty for same conduct

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

Subpart 2—Offences

99 Offences relating to information disclosure regulation

- (1) A person commits an offence if—
 - (a) the person, knowing that water infrastructure services are subject to information disclosure regulation, intentionally contravenes any information disclosure requirement relating to those services; or
 - (b) the person is subject to an order under **section 90 or 92A** and fails to comply with the order by the date, or within the period, specified.
- (2) A person who commits an offence under **subsection (1)** is liable on conviction to a fine not exceeding \$200,000, in the case of an individual, or \$1 million, in any other case.

Compare: 1986 No 5 s 86B

100 Offence relating to quality regulation

- (1) A person commits an offence if—
 - (a) the person, knowing that water infrastructure services are subject to quality regulation, intentionally contravenes a quality requirement in respect of the supply of the services; or
 - (b) the person is subject to an order under **section 90** and fails to comply with the order.
- (2) A person who commits an offence under **subsection (1)** is liable on conviction to a fine not exceeding \$200,000, in the case of an individual, or \$1 million, in any other case.

Compare: 1986 No 5 s 87B

101 Offence relating to price-quality regulation

- (1) A person commits an offence if—
 - (a) the person, knowing that water infrastructure services are subject to price-quality regulation, intentionally contravenes a price-quality requirement in respect of the services; or
 - (b) the person is subject to an order under **section 90** and fails to comply with the order.
- (2) A person who commits an offence under **subsection (1)** is liable on conviction to a fine not exceeding \$200,000, in the case of an individual, or \$1 million, in any other case.

Compare: 1986 No 5 s 87B

101A Offence relating to direction of Commission

- (1) A person commits an offence if the person fails to comply with **section 53** or **section 81B**.
- (2) A person who commits an offence under **subsection (1)** is liable on conviction to a fine not exceeding \$200,000, in the case of an individual, or \$1 million, in any other case.

102 Offence relating to service quality code

- (1) A person commits an offence if—
 - (a) the person, knowing that particular water infrastructure services are subject to the service quality code, intentionally contravenes a code requirement in respect of the services; or
 - (b) the person is subject to an order under **section 90** and fails to comply with the order.

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

Compare: 1986 No 5 s 87B

102A ~~Offence involving relating to failure to advise consumers about, provide information, and to consumers or to have and report on complaints process~~

- (1) A regulated water services provider or drinking water supplier commits an offence against this section if the provider or supplier fails to,—
- (a) in accordance with any regulations that apply to the provider or supplier,—
 - (i) comply with the duty under **section 73(1)(a)** to provide consumers with prescribed information; or
 - (ii) comply with the duty under **section 73(1)(b)** to establish, maintain, and administer a consumer complaints process; or
 - (iii) comply with the duty under **section 73(1)(c)** to report annually to the Commission on its consumer complaints process; or
 - (b) comply with the duty under **section 73(2)** to deal with consumer complaints.
- (2) A regulated water services provider or drinking water supplier who commits an offence against **subsection (1)** is liable on conviction,—
- (a) for an individual, to a fine not exceeding \$10,000;
 - (b) for a body corporate or an unincorporated body, to a fine not exceeding \$200,000.

102B ~~Failure-Offence relating to failure to comply with development code, etc~~

- (1) A person commits an offence if—
- (a) the person, knowing that particular water connection or disconnection services are subject to a development code, intentionally contravenes a code requirement in respect of these services; or
 - (b) the person is subject to an order under **section 90** and fails to comply with the order.
- (2) A person who commits an offence under **subsection (1)** is liable on conviction to a fine not exceeding \$200,000, in the case of an individual, or \$1 million in any other case.

Subpart 3—Additional remedies and penalties relating to **Part 3**

103 Overview of this subpart

This subpart sets out orders that may be made specifically for breaches of **Part 3** (which relates to consumer protection) and procedural matters relating to infringement offences for breaches of **Part 3** and other things done or made under **Part 3**.

Additional remedies in relation to failure to comply with service quality code or a development code

104 Order to disclose information or publish advertisement

- (1) The court may make either or both of the following orders if the court is satisfied, on the application of the Commission, that a person has failed without reasonable excuse to comply with the service quality code or a development code:
 - (a) an order requiring that person, or any other person involved in the failure to comply, to disclose to the public, or to a particular person or class of persons, the information or class of information that is specified in the order, being information that is in the possession of the person to whom the order is directed or to which that person has access;
 - (b) an order requiring that person, or any other person involved in the failure to comply, to publish corrective statements the terms of which are specified in, or are to be determined in accordance with, the order.
- (2) The information must be disclosed or published—
 - (a) in the manner and at the times that are specified in the order; and
 - (b) at the person's own expense.
- (3) The court may hear and determine an application in conjunction with any other proceedings under this Part.
- (4) *See section 124* in relation to the meaning of involvement in a contravention.
Compare: 2001 No 103 s 156MA

105 General orders for failure to comply with service quality code or development code

- (1) The court may make 1 or more of the following orders if the court is satisfied, on the application of the Commission, that a person (**person X**) has failed without reasonable excuse to comply with the service quality code or a development code:
 - (a) an order directing person X to refund money or return property to any other person;
 - (b) an order directing person X to pay to any other person the amount of any loss or damage caused to that other person by the conduct of person X:

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- (c) an order directing person X, at person X's own expense, to supply a service to any other person:
 - (d) an order declaring all or part of a contract made between person X and any other person, or a collateral arrangement relating to such a contract,—
 - (i) to be void; and
 - (ii) if the court thinks fit, to have been void at all times on and after a date specified in the order, which may be before the date on which the order is made:
 - (e) an order in respect of a contract made between person X and any other person, or a collateral arrangement relating to such a contract,—
 - (i) varying the contract or the arrangement in the manner specified in the order; and
 - (ii) if the court thinks fit, declaring the varied contract or arrangement to have had effect on and after a date specified in the order, which may be before the date on which the order is made.
- (2) The court may hear and determine an application under **subsection (1)** in conjunction with any other proceedings under this Part.

Compare: 2001 No 103 s 156MB

106 Other order for failure to comply with service quality code or development code

- (1) The court may, if the court is satisfied, on the application of the Commission or a consumer, that a person has failed without reasonable excuse to comply with the service quality code or a development code, make an order directing the person, at the person's own expense, to supply a service to a consumer.
- (2) The court may hear and determine an application under **subsection (1)** in conjunction with any other proceedings under this Part.

Compare: 2001 No 103 s 156MC

107 Certain provisions of subpart 1 apply in respect of proceedings under subpart 3

- (1) The provisions of **sections 93 to 97** apply in respect of proceedings under this subpart.
- (2) For the purposes of this Act, the remedies set out in **sections 104 to 106** are civil liability remedies.

Infringement offences

108 Interpretation

In **sections 109 to 117**,—

enforcement officer means a person employed or engaged by the chief executive of the Commission who is—

- (a) suitably qualified and trained; and
- (b) designated by the chief executive as an enforcement officer for the purposes of this Act

infringement fee, in relation to an infringement offence, means the infringement fee for the offence prescribed in the regulations

infringement offence means an offence in the regulations relating to the service quality code, the consumer complaints process, the consumer dispute resolution service, the rules of that service, or anything else done or made under **Part 3** that is prescribed as an infringement offence against those regulations.

109 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 111**.
- (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.

110 Who may issue infringement notices

The Commission may issue infringement notices under this Act.

111 When infringement notice may be issued

The Commission may issue an infringement notice to a person if the Commission believes on reasonable grounds that the person is committing, or has committed, an infringement offence.

112 Revocation of infringement notice before payment made

- (1) The Commission may revoke an infringement notice 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 Commission 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 109(1)(a) or (b)** against the person to whom the notice was issued in respect of the same matter.

113 What infringement notice must contain

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 where the infringement notice may be paid:
- (d) how the infringement fee may be paid:
- (e) the time period 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 matters prescribed in the regulations.

114 How infringement notice may be issued to person

- (1) An infringement notice may be issued to a person who the Commission believes is committing or has committed the 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)** 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 is to be treated as having been served at the time the electronic communication first entered an information system that is outside the control of the chief

executive of the Commission or an enforcement officer engaged by the Commission.

115 Payment of infringement fees

All infringement fees paid for infringement offences must be paid into a Crown Bank Account.

116 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.

117 Relationship between infringement offences and other offences

A person may be prosecuted or convicted of any offence referred to in this Act (rather than proceeding under **sections 109 to 116**), even if their conduct is, or may be, an infringement offence.

Subpart 4—Appeals

118 Appeals against Commission determinations

- (1) A regulated water services provider, a consumer of water infrastructure services to which the determination relates, or a representative of such a consumer, may appeal to the court under this subsection against any determination of the Commission under this Act, other than the following:
 - (a) a **section 15** determination, or any part of a **section 15** determination, that sets out how information disclosure regulation or quality regulation applies to a regulated water services provider;
 - (b) an input methodology determination under **subpart 3 of Part 2** (for which a separate appeal right is given under **section 119**).
- (2) A person may appeal to the court under this subsection on a question of law against any determination of the Commission under this Act (including a determination referred to in **subsection (1)**), except if the person has appealed, or is able to appeal, on the question of law against the determination under **section 119**.
- (3) An appeal under this section must be made by giving notice of appeal within 20 working days after the date of the determination appealed against or within any further time that the court may allow.
- (4) Sections 77 and 93 to 97 of the Commerce Act 1986 apply with any necessary modifications in respect of an appeal under this section.
- (5) To avoid doubt, a recommendation to the Minister by the Commission is not a determination for the purposes of this section.

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- (6) In this section, **input methodology determination** has the same meaning as in **section 119(2)**.

Compare: 2001 No 103 s 224

119 Appeals against input methodology determinations

- (1) Any person who gave views on an input methodology determination to the Commission as part of the process under **section 28**, and who, in the opinion of the court, has a significant interest in the matter, may appeal to the court against the determination.
- (2) In this section, **input methodology determination** means any of the following:
- (a) the initial determination of an input methodology;
 - (b) any determination by the Commission that amends or revokes an input methodology;
 - (c) any determination by the Commission of an input methodology after a review of the input methodology.
- (3) In determining an appeal against an input methodology determination, the court may do any of the following:
- (a) decline the appeal and confirm the input methodology, or the amendment or revocation of the input methodology, set out in the determination;
 - (b) allow the appeal by—
 - (i) amending the input methodology; or
 - (ii) revoking the input methodology and substituting a new one; or
 - (iii) referring the input methodology determination back to the Commission with directions as to the particular matters that require amendment; or
 - (iv) if the revocation of an input methodology is not confirmed, confirming that the input methodology still applies.
- (4) The court may exercise its powers under **subsection (3)(b)** only if it is satisfied that the amended, substituted, or confirmed input methodology is (or will be, in the case of **subsection (3)(b)(iii)**) materially better in meeting the purpose of **Part 2** or the purpose in **section 24**, or both.
- (5) If the court allows an appeal, the Commission may seek clarification from the court on any matter for the purpose of implementing the court's decision.
- (6) There is a right of appeal under section 97 of the Commerce Act 1986 to the Court of Appeal against any decision or order of the High Court under this section on a point of law only.

Compare: 2001 No 103 s 183

120 Process for appeals

- (1) An appeal under **section 119(1)** must be brought within 20 working days after the date on which the input methodology is published.
- (2) The appeal must be by way of rehearing and must be conducted solely on the basis of the documentary information and views that were before the Commission when it made its determination, and no party may introduce any new material during the appeal.
- (3) The High Court must sit with 2 lay members (unless the court considers that only 1 is required).
- (4) Each of the lay members must have relevant experience and be appointed from the pool of people appointed under section 77 of the Commerce Act 1986 to be members of the court for the purpose of hearing the appeal.
- (5) Section 77 of the Commerce Act 1986 applies, and section 77(14) of that Act is not limited by **subsection (3)** of this section.

Compare: 2001 No 103 s 184

121 Input methodology applies pending outcome of appeal

- (1) The court may not stay the application of **section 26** with respect to any input methodology until any appeal against it is finally determined.
- (2) **Section 26** continues to apply with respect to every input methodology until any appeal against the input methodology is finally determined.

Compare: 2001 No 103 s 185

Subpart 5—Miscellaneous provisions relating to enforcement

122 Jurisdiction of High Court

- (1) The High Court may hear and determine the following matters:
 - (a) proceedings for the recovery of pecuniary penalties under **section 84**:
 - (aa) applications for orders under any of **sections 88, 92A, 104, 105, and 106**:
 - (ab) applications for injunctions under **section 90**:
 - (ac) appeals under **section 118 or 119**:
 - (b) appeals arising from any proceeding in the District Court under this Part.
- (2) Section 75 of the Commerce Act 1986 applies with any necessary modifications to the extent that a provision referred to in that section applies for the purposes of this Act.
- (3) The provisions of the Criminal Procedure Act 2011 apply in relation to the jurisdiction of the High Court to determine criminal proceedings.

Compare: 1986 No 5 s 75

123 Jurisdiction of District Court

- (1) The District Court may hear and determine—
 - (a) applications for orders, or for a court to exercise any other power, under a provision of **Part 3** or **Schedule 2**; and
 - (b) proceedings for an offence against any provision of **subpart 2** of this Part or an offence referred to in **section 109** (infringement offences).
- (2) Section 76 of the Commerce Act 1986 applies with any necessary modifications to the extent that a provision referred to in that section applies for the purposes of this Act.
- (3) The provisions of the Criminal Procedure Act 2011 apply in relation to the jurisdiction of the District Court to determine criminal proceedings.

124 Involvement in contravention

In this Act, a person is **involved in a contravention** if the person—

- (a) has aided, abetted, counselled, or procured the contravention; or
- (b) has induced the contravention, or attempted to induce it, whether by threats or promises or otherwise; or
- (c) has been in any way, directly or indirectly, knowingly concerned in, or party to, the contravention; or
- (d) has conspired with others to effect the contravention.

125 Illegal contracts provisions do not apply

- (1) Subpart 5 of Part 2 of the Contract and Commercial Law Act 2017 does not apply to a contract that—
 - (a) is entered into in contravention of a civil liability provision; or
 - (b) contains a particular provision that if given effect to would contravene a civil liability provision or would result in a person contravening a civil liability provision.
- (2) In this section, **civil liability provision** means a provision the breach of which may be the subject of civil proceedings under this Part.

Compare: 1986 No 5 s 89(5)

126 Enforceability of other provisions not affected

- (1AAA) This section applies if a contract—
- (a) is entered into in contravention of a civil liability provision by reason that the contract contains a particular provision; or
 - (b) contains a particular provision that if given effect to would contravene a civil liability provision or would result in a person contravening a civil liability provision.

- (1) Despite any legislation or rule of law, the existence of the particular provision does not affect the enforceability of any other provision of the contract.
- (2) In this section, **civil liability provision** means a provision the breach of which may be the subject of civil proceedings under this Part.

Compare: 1986 No 5 s 89(6)

Part 5 Miscellaneous

Subpart 1—Water Services Commissioner

Water Services Commissioner

127 Appointment of Water Services Commissioner

- (1) There must be a Water Services Commissioner.
- (2) The Water Services Commissioner must be appointed by the Governor-General on the recommendation of the responsible Minister.
- (3) The appointment must be made by written notice to the appointee.
- (4) The responsible Minister must ensure that the following are notified in the *Gazette* as soon as is reasonably practicable after an appointment is made:
 - (a) the name of the appointee; and
 - (b) the date on which the appointment takes effect; and
 - (c) the terms-of the appointment.
- (5) In this section and **section 128**, **responsible Minister** means the responsible Minister, in relation to the Commission, within the meaning of section 10(1) of the Crown Entities Act 2004.

Compare: 2004 No 115 s 28

128 Minister's recommendation

- (1) The responsible Minister may only recommend that a person be appointed as the Water Services Commissioner if—
 - (a) the person is or will be a member of the Commission (*see* section 9 of the Commerce Act 1986); and
 - (b) in the opinion of the responsible Minister, the person is qualified for appointment, having regard to the functions and powers of the Commission under this Act and any other legislation.
- (2) For the purposes of **subsection (1)(b)**, a person is **qualified for appointment** because of that person's knowledge of, or experience in—
 - (a) the water services industry; or

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- (b) any other industry, commerce, economics, law, accountancy, public administration, or consumer affairs, or te Tiriti o Waitangi/the Treaty of Waitangi and its principles, and perspectives of Māori and tikanga Māori.

Compare: 2001 No 103 s 9(4), (5)

129 Further provisions relating to Water Services Commissioner

- (1) A person may only be removed from office as the Water Services Commissioner for just cause (within the meaning of section 40 of the Crown Entities Act 2004).
- (2) If a person is removed under **subsection (1)**, they are also removed from office as a member of the Commission as if they had been removed under section 13(1) of the Commerce Act 1986 (including the notice requirements under section 39 of the Crown Entities Act 2004).
- (3) If a person's term of office as the Water Services Commissioner expires or the person resigns from that office, the person—
 - (a) may continue to act as if they were the Water Services Commissioner for the purpose of completing the determination of any matter before that person, as the Water Services Commissioner, that commenced before the term of office expired or the resignation took effect; and
 - (b) must be treated as if they were the Water Services Commissioner for that purpose.
- (4) In other respects, the following provisions of the Crown Entities Act 2004 apply in relation to a Water Services Commissioner with all necessary modifications:
 - (a) section 34 (validity of members' acts):
 - (b) section 35 (validity of appointments):
 - (c) clause 2 of Schedule 5 (term of appointment):
 - (d) clause 3 of Schedule 5 (resignation):
 - (e) clause 4(2) and (3) of Schedule 5 (removal).

Compare: 1986 No 5 ss 12(2), (3), 13(4)

130 Who performs or exercises functions, duties, and powers of Commission

- (1) The functions, duties, and powers of the Commission under this Act must be performed or exercised by—
 - (a) the Water Services Commissioner alone; or
 - (b) if the Water Services Commissioner requests and the chairperson of the Commission agrees, by the Water Services Commissioner with 2 or more other members of the Commission.
- (2) However, if, in the opinion of the Water Services Commissioner, the function, duty, or power is any of the following, it must be performed or exercised by the

Water Services Commissioner with 2 or more other members of the Commission:

- (a) making every determination in respect of information disclosure regulation, quality regulation, and price-quality regulation under **Part 2**;
 - (b) making a determination in respect of input methodologies under **Part 2**;
 - (c) making a recommendation to the Minister under **subpart 2A** of this Part;
 - (d) making the service quality code under **section 69** or amending it under **section 72**;
 - (e) approving each development code prepared under **sections 293A to 294C and 295** of the Water Services Entities Act 2022 and any amendments to such a code.
- (3) The quorum requirement in section 15(4) of the Commerce Act 1986 does not apply if the Water Services Commissioner is performing their functions alone under this section.

Compare: 2001 No 103 s 10(1)(a), (c)

132 Further provisions relating to when Water Services Commissioner acts with 2 or more other members

- (1) This section applies if, under **section 130**, the Water Services Commissioner is performing or exercising a function, duty, or power with 2 or more other members of the Commission.
- (2) The chairperson of the Commission must determine which other members must perform or exercise that function, duty, or power with the Water Services Commissioner.
- (3) In addition to their general vote, the Water Services Commissioner has, in the case of an equality of votes, a casting vote (and clause 12(2) of Schedule 5 of the Crown Entities Act 2004 does not apply).

Compare: 2001 No 103 s 10(1)(ab), (3); 2004 No 115 Schedule 5 cl 12(2)

134 Alternate member to act instead of Water Services Commissioner in certain circumstances

- (1) This section applies if—
 - (a) there is no Water Services Commissioner; or
 - (b) the Water Services Commissioner is for any reason unable to perform or exercise a function, duty, or power that they would otherwise have performed or exercised under this Act.
- (2) That function, duty, or power must be performed or exercised by a member of the Commission who is appointed by the chairperson of the Commission for that purpose.

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- (3) Every reference in this Act to the Water Services Commissioner must, unless the context otherwise requires, be read as a reference to that member.

Compare: 2001 No 103 s 10(2)

135 Ability to delegate

- (1) The consent of both the Water Services Commissioner and the chairperson of the Commission must be obtained before a delegation, under section 73 of the Crown Entities Act 2004, is made of any function, duty, or power that, under **section 130(2)** of this Act, the Water Services Commissioner must perform or exercise with 2 or more other members of the Commission.
- (2) The consent of the Water Services Commissioner must be obtained before a delegation, under section 73 of the Crown Entities Act 2004, is made of any other function, duty, or power of the Water Services Commissioner under this Act.

Subpart 2—Application of Commerce Act 1986

136 Application of Part 6 of Commerce Act 1986 (enforcement, remedies, and appeals)

The following provisions of the Commerce Act 1986 apply with any necessary modifications:

- (a) section 74A (Commission may accept undertakings):
- (b) section 74B (matters included in undertakings):
- (c) section 74C (enforcement of undertakings):
- (d) section 77 (additional members of High Court for purposes of appellate jurisdiction in respect of Commission determinations):
- (f) section 79 (evidence not otherwise admissible):
- (g) section 90 (conduct by employees, agents, and others):
- (h) sections 91 to 97 (appeals against determinations of Commission).

137 Application of Part 7 of Commerce Act 1986 (miscellaneous provisions)

- (1) The following provisions of the Commerce Act 1986 apply with any necessary modifications:

Powers relating to evidence

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

- (d) section 99 (powers of Commission to take evidence):
Assistance to overseas regulators
 - (e) sections 99B to 99P (assistance to overseas regulators), as if—
 - (i) references to an overseas regulator were references to an overseas body that has functions in relation to a water services industry corresponding to those of the Commission under this Act; and
 - (ii) references to competition law were references to a water services industry:
Offence, regulations, and administrative provisions
 - (f) section 100 (powers of Commission to prohibit disclosure of information, documents, and evidence):
 - (g) section 100A (commission may state case for opinion of High Court):
 - (h) section 101 (notices):
 - (i) section 102 (service of notices):
 - (j) section 103 (offences):
 - (k) section 104 (determinations of Commission):
 - (l) section 106 (proceedings privileged):
 - (m) section 106A (judicial notice):
 - (n) section 109 (Commission may prescribe forms).
- (2) For the purposes of **subsection (1)(j)**, the necessary modifications include (without limitation) treating a notice under any of **sections 31A, 33(1)(c), 38(2), 41(2), 81A, and 138** of this Act as a notice referred to in section 103(1)(a) of the Commerce Act 1986.

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

- (1) For the purpose of carrying out its functions and exercising its powers under **Parts 2 and 3** of this Act, the Commission may, in addition to exercising its powers under this Act and section 98 of the Commerce Act 1986, do any of the following:
- (a) consult any person the Commission considers may assist it:
 - (b) investigate any of the following:
 - (i) how effectively and efficiently a regulated water services provider is supplying water infrastructure services:
 - (ii) how any direction being considered by the Commission may be applied, or how any direction has been applied, in considering directions:
 - (iii) how any formula, methodology, quality path, or price-quality path being considered by the Commission may be applied, or how any

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- formula, methodology, quality path, or price-quality path determined or authorised by the Commission has been applied, in considering proposed prices or quality standards or incentives for a regulated water services provider to maintain or improve its quality of supply or performance requirements:
- (iv) how any conditions relating to the quality of the water infrastructure services may be, or are being, fulfilled:
 - (c) examine, consider, or investigate any activity, cost, revenue, transfer, asset valuation, circumstance, or event that is occurring or that has occurred during the previous 7 years:
 - (d) by notice in writing, require any person—
 - (i) to prepare and produce forecasts, forward plans, or other information; and
 - (ii) to apply any methodology specified by the Commission in the preparation of forecasts, forward plans, or other information:
 - (e) by notice in writing, require any person that the Commission has reason to believe may have information or documents relevant to an investigation, audit, or inquiry to do either or both of the following:
 - (i) produce or supply to the Commission documents and information in relation to water infrastructure services or the prices or operations of the person in respect of water infrastructure services:
 - (ii) answer any questions about any matter that the Commission has reason to believe may be relevant to the investigation, audit, or inquiry:
 - (ea) by notice in writing, require any subsidiary or interconnected body corporate of a regulated water services provider (including a subsidiary of more than 1 regulated water services provider) that the Commission has reason to believe may have information or documents relevant to an investigation, audit, or inquiry to do any of the following:
 - (i) produce or supply to the Commission documents and information about—
 - (A) all businesses (including those related to the supply of goods or services that are not subject to regulation under **Part 2** or **3**) undertaken by the subsidiary or interconnected body corporate; or
 - (B) the supply of goods and services (including goods or services that are not subject to regulation under **Part 2** or **3**) provided by the subsidiary or interconnected body corporate:

- (ii) answer any questions about any matter that the Commission has reason to believe may be relevant to the investigation, audit, or inquiry:
- (f) by notice in writing, require any person, at the time and place specified in the notice, to produce or supply to the Commission an expert opinion from an appropriately qualified person, or a member of a class of appropriately qualified persons, as determined by the Commission, in relation to the matters in **paragraphs (b), (c), (d)–and–(e)(i), (e)(i), and (ea)(i)**.
- (2) In this section, a **direction** means a direction given under **section 52** or any action, recommendation, or other thing that the Commission may take, make, or do under **subpart 2 or 3 of Part 3**.

Compare: 1986 No 5 s 53ZD; 2022 No 21 s 37

139 Powers of Commission under this Part

For the purposes of carrying out its functions and exercising its powers under this Act and the Commerce Act 1986, the Commission may, in addition to exercising its powers under this Act and section 98 of the Commerce Act 1986, use any information previously disclosed to the Commission under this Act or the Commerce Act 1986.

Subpart 2A—Reviews

Process

139A How review triggered

- (1) The Commission—
 - (a) must carry out a review under this subpart if required to do so by the Minister; and
 - (b) may carry out a review under this subpart on its own initiative.
- (2) Any requirement by the Minister must—
 - (a) be in writing; and
 - (b) specify the date by which the Commission must make a recommendation to the Minister.

139B Process requirements for Commission

- (1) At the start of a review, the Commission must give public notice of the review that—
 - (a) outlines the process that will be followed; and
 - (b) sets out the proposed time frames.
- (2) The Commission must make 1 or more recommendations to the Minister after carrying out a review.

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- (3) Before making a recommendation to the Minister, the Commission must consult interested persons about each proposed recommendation (including the Commission's reasons for proposing to make the recommendation).
- (4) For the purposes of a review carried out under **section 139L or 139N** (which provide for reviews relating to **Part 3**), the reference in **subsection (3)** to **interested persons** includes Taumata Arowai.
- (5) The Commission must make a recommendation publicly available as soon as practicable after making it, along with a statement of its reasons for making the recommendation.
- (6) To avoid doubt, a recommendation made by the Commission is not a determination of the Commission.
- (7) In carrying out a review and making a recommendation under this subpart, the Commission may, without limitation, describe—
 - (a) a water services entity, regulated water services provider, or drinking water supplier under review with reference to any 1 or more of the following:
 - (i) the geographic area in which the entity, provider, or supplier provides water infrastructure services or drinking water;
 - (ii) the consumers of the water infrastructure services or drinking water provided by the entity, provider, or supplier;
 - (iii) any other matter it considers appropriate; and
 - (b) any service provided by a water services entity, regulated water services provider, or drinking water supplier under review with reference to any 1 or more of the following:
 - (i) the geographic area in which the service is supplied;
 - (ii) the consumers of the service;
 - (iii) any other circumstances in which the service is supplied.

139C Minister's decision

The Minister may, on receiving a recommendation from the Commission, do any 1 or more of the following:

- (a) accept the Commission's recommendation (in whole or in part):
- (b) reject the Commission's recommendation (in whole or in part):
- (c) request that the Commission reconsider any matter (such as an error, an oversight, or competing policy interests):
- (d) make any other decision that the Minister considers promotes the purpose of the relevant Part of this Act.

*Reviews relating to **Part 2***

139D Additional regulation reviews

- (1) In carrying out a review under this section, the Commission must consider the following:
 - (a) whether the purpose of **Part 2** would be better met—if either or both of the following were the case:
 - (i) ~~if~~ 1 or more water services entities that are not subject to regulation under **Part 2** (**unregulated water services entities**) were subject to 1 or more types of regulation under **Part 2** in respect of 1 or more water infrastructure services; ~~or;~~
 - (ii) ~~if~~ 1 or more regulated water services providers were subject to additional regulation under **Part 2** in respect of 1 or more water infrastructure services; ~~or;~~
 - (iii) ~~if both the scenarios in **subparagraphs (i) and (ii)** were to apply; and~~
 - (b) any other information that the Commission believes to be relevant.
- (2) If the Commission recommends to the Minister that 1 or more unregulated water services entities be subject to 1 or more types of regulation under **Part 2**, or that a regulated water services provider be subject to additional regulation under **Part 2** (or both), the recommendation must—
 - (a) describe each unregulated water services entity or regulated water services provider that is the subject of the recommendation; and
 - (b) describe the water infrastructure services provided by the entity or provider that the Commission considers should be regulated under **Part 2**; and
 - (c) specify the 1 or more types of regulation that the Commission considers the entity or provider should be subject to under **Part 2** and when the relevant **section 15** determinations should apply; and
 - (d) specify when input methodologies should apply for the entity or provider.

139E Outcome of additional regulation review

- (1) Following a review carried out under **section 139D**, the actions that the Minister may take include any 1 or more of the following:
 - (a) directing the Commission to—
 - (i) make a new **section 15** determination, or amend any existing **section 15** determination, in order to impose additional regulation under **Part 2** on 1 or more regulated water services providers in respect of 1 or more water infrastructure services; and

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- (ii) determine new input methodologies, or amend any existing input methodologies, that are required as a result; and
 - (iii) take any other action that the Minister considers to be necessary or desirable in the circumstances in order to give effect to the Minister's decision:
- (b) making a recommendation to the Governor-General that a designation order be made under **section 54** declaring a water services entity (other than a statutory water services entity) to be designated for the purposes of **Part 2** (*see section 56* in relation to the content of a designation order):
- (c) making a recommendation to the Governor-General that a designation order made under **section 54** be amended in order to impose additional regulation under **Part 2** on 1 or more regulated water services providers in respect of 1 or more water infrastructure services (*see section 56* in relation to the content of a designation order):
- (d) either of the actions referred to in **section 139G(1)(a) and (b)**.
- (2) The Minister must not direct the Commission to take any action that would result in a statutory water services entity no longer being subject to information disclosure regulation under **Part 2**.
- (3) The Minister may take 1 or more of the actions referred to in **subsection (1)** only if—
 - (a) the Minister has received and considered a recommendation from the Commission following a review carried out under **section 139D or 139F**; and
 - (b) the Minister is satisfied that the purpose of **Part 2** would be better met if the action were taken.
- (4) If the Minister makes a direction under **subsection (1)(a)**, the Commission must comply with it.
- (5) Sections 114 to 115A of the Crown Entities Act 2004 do not apply in relation to a direction made under **subsection (1)(a)**.

139F Deregulation reviews

- (1) In carrying out a review under this section, the Commission must consider—
 - (a) whether the purpose of **Part 2** would be better met if 1 or more regulated water services providers were no longer subject to 1 or more types of regulation under **Part 2** in respect of 1 or more water infrastructure services; and
 - (b) any other information that the Commission believes to be relevant.
- (2) However, the Commission must not, as part of a review carried out under this section, consider whether a statutory water services entity should no longer be

subject to information disclosure regulation under **Part 2** or make any recommendation to that effect.

- (3) The Commission must, before the start of each regulatory period in respect of which a regulated water services provider will (in the absence of any change to its regulatory regime) be subject to 1 or more types of regulation under **Part 2** (except the a provider's first 2 regulatory periods), consider whether there are reasonable grounds to carry out a review under this section.

139G Outcome of deregulation review

- (1) Following a review carried out under **section 139F**, the actions that the Minister may take include any 1 or more of the following:
- (a) directing the Commission to—
 - (i) make a new **section 15** determination, or amend or revoke any existing **section 15** determination, in order to exclude 1 or more regulated water services providers or 1 or more water infrastructure services from 1 or more types of regulation under **Part 2**; and
 - (ii) determine new input methodologies, or amend any existing input methodologies, that are required as a result; and
 - (iii) take any other action that the Minister considers to be necessary or desirable in the circumstances in order to give effect to the Minister's decision:
 - (b) making a recommendation to the Governor-General that a designation order made under **section 54** be amended or revoked to exclude 1 or more regulated water services providers or 1 or more water infrastructure services from 1 or more types of regulation under **Part 2** (*see **section 58***):
 - (c) any of the actions referred to in **section 139E(1)(a), (b) and (c)**.
- (2) The Minister must not direct the Commission to take any action that would result in a statutory water services entity no longer being subject to information disclosure regulation under **Part 2**.
- (3) The Minister may take 1 or more of the actions referred to in **subsection (1)** only if—
- (a) the Minister has received and considered a recommendation from the Commission following a review carried out under **section 139D or 139F**; and
 - (b) the Minister is satisfied that the purpose of **Part 2** would be better met if the action were taken.
- (4) If the Minister makes a direction under **subclause (1)(a)**, the Commission must comply with it.
- (5) Sections 114 to 115A of the Crown Entities Act 2004 do not apply in relation to a direction made under **subsection (1)(a)**.

139H Review in relation to early price-quality regulation

- (1) In carrying out a review under this section, the Commission must consider—the following:
 - (a) whether the purpose of **Part 2** would be better met if ~~the regulated water services provider that serves the Auckland and Northland areas were subject to price-quality regulation from the start of the first regulatory period; and~~ either or both of the following were the case:
 - (i) the statutory water services entity that serves the Auckland and Northland areas was subject to price-quality regulation earlier than 1 July 2030:
 - (ii) 1 or more other statutory water services entities were subject to price-quality regulation earlier than 1 July 2032:
 - (b) any other information that the Commission believes to be relevant.
- (2) If the Minister requires the Commission to carry out a review under this section, the Minister must do so ~~no later than 2 years before the start of the first regulatory period.~~
 - (a) no later than 1 July 2025, in respect of the statutory water services entity that serves the Auckland and Northland areas; and
 - (b) no later than 1 July 2027, in respect of any other statutory water services entity.
- (3) ~~If the Commission carries out a review under this section, the Commission must complete the review and make a recommendation to the Minister no later than 1 year before the start of the first regulatory period.~~
- (3) See also the related dates in **section 22(1)(c) and (d).**

139I Outcome of review in relation to early price-quality regulation

In relation to the outcome of a review carried out under **section 139H**, *see **sections 22(1)(c) and (d) and 23(2)***, which relate to the ability to ~~bring forward~~ advance the date by which the Commission must make an initial **section 15** determination in relation to price-quality regulation.

139J Review in relation to late price-quality regulation

- (1) In carrying out a review under this section, the Commission must consider—the following:
 - (a) whether the purpose of **Part 2** would be better met if ~~1 or more regulated water services providers were not subject to price-quality regulation from the start of the second regulatory period; and~~ either or both of the following were the case:
 - (i) the statutory water services entity that serves the Auckland and Northland areas was not subject to price-quality regulation on and from 1 July 2030:

- (ii) 1 or more other regulated water services providers were not subject to price-quality regulation on and from 1 July 2032:
 - (b) any other information that the Commission believes to be relevant.
- (2) If the Minister requires the Commission to carry out a review under this section, the Minister must do so ~~no later than 2 years before the start of the second regulatory period.~~
 - (a) no later than 1 July 2028, in respect of the statutory water services entity that serves the Auckland and Northland areas; and
 - (b) no later than 1 July 2030, in respect of any other regulated water services provider.
- (3) If the Commission carries out a review under this section, the Commission must complete the review and make a recommendation to the Minister ~~no later than 1 year before the start of the second regulatory period.~~
 - (a) no later than 1 July 2029, in respect of the statutory water services entity that serves the Auckland and Northland areas; and
 - (b) no later than 1 July 2031, in respect of any other regulated water services provider.

139K Outcome of review in relation to late price-quality regulation

In relation to the outcome of a review carried out under **section 139J**, *see sections 22(1)(a) and (b) and 23(1)*, which relate to the ability to defer certain dates, including in relation to price-quality regulation.

*Reviews relating to **Part 3***

139L Additional regulation reviews

- (1) In carrying out a review under this section, the Commission must consider—the following:
 - (a) whether the purpose of **Part 3** would be better met—if either or both of the following were the case:
 - (i) ~~if 1 or more water services entities that are not subject to any provisions or requirements of **Part 3** (unregulated water services entities) were subject to 1 or more provisions or requirements of **Part 3** in respect of 1 or more water infrastructure services; or~~
 - (ii) ~~if 1 or more regulated water services providers were subject to additional provisions or requirements of **Part 3** in respect of 1 or more water infrastructure services; or~~
 - (iii) ~~if both the scenarios in **subparagraphs (i) and (ii)** were to apply; and~~
 - (b) in relation to the matters in **paragraph (a)**, the following:

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- (i) the number of consumers served by each water services entity under review;
 - (ii) the service quality provided to consumers by each water services entity under review;
 - (iii) the extent to which designating the water services entity or applying additional requirements or provisions to an entity that is a regulated water services provider is likely to lead to an improvement in the service quality provided to consumers by the water services entity; ~~and;~~
 - (c) any other matter the Commission considers to be relevant.
- (2) If the Commission recommends to the Minister that 1 or more water services entities should be subject to all or any provisions or requirements of **Part 3**, the recommendation must include the information specified in **section 66(a) to (e)** in respect of each water services entity that is the subject of the recommendation.

139M Outcome of additional regulation review

- (1) Following a review under **section 139L**, the actions that the Minister may take include any 1 or more of the following:
- (a) making a recommendation to the Governor-General that a designation order be made under **section 62** declaring a water services entity (other than a statutory water services entity) to be designated for the purposes of **Part 3** (*see section 66* in relation to the content of a designation order);
 - (b) making a recommendation to the Governor-General that a designation order made under **section 62** be amended in order to impose additional provisions or requirements of **Part 3** on 1 or more regulated water services providers in respect of 1 or more water infrastructure services (*see section 66* in relation to the content of a designation order);
 - (c) the actions referred to in **section 139O**.
- (2) The Minister may not take any action that would result in—
- (a) a statutory water services entity no longer being subject to any provision or requirement of **Part 3**; or
 - (b) a drinking water supplier no longer being subject to the requirements of **subpart 3 of Part 3** (relating to the consumer complaints process and the consumer dispute resolution service).
- (3) The Minister may take 1 or more of the actions referred to in **subsection (1)** only if—
- (a) the Minister has received and considered a recommendation from the Commission following a review carried out under **section 139L or 139N**; and

- (b) the Minister is satisfied that the purpose of **Part 3** would be better met if the action were taken.

139N Deregulation reviews

- (1) In carrying out a review under this section, the Commission must consider the following:
 - (a) whether the purpose of **Part 3** would be better met if 1 or more regulated water services providers designated under **section 62** were no longer subject to all or any provisions or requirements of **Part 3** in respect of 1 or more water infrastructure services; and
 - (b) any other information the Commission considers to be relevant.
- (2) The Commission must not, as part of a review carried out under this section, consider whether—
 - (a) a statutory water services entity should no longer be subject to any provision or requirement of **Part 3** or make any recommendation to that effect; or
 - (b) a drinking water supplier should no longer be subject to the requirements of **subpart 3 of Part 3** (relating to the consumer complaints process and the consumer dispute resolution service) or make any recommendation to that effect.
- (3) If the Commission recommends to the Minister that 1 or more regulated water services providers should no longer be subject to any specified provision or requirement of **Part 3** in respect of 1 or more water infrastructure services, the recommendation must—
 - (a) describe each regulated water services provider that is the subject of the recommendation; and
 - (b) describe each water infrastructure service provided by the provider that is the subject of the recommendation; and
 - (c) specify the provisions or requirements of **Part 3** that are the subject of the recommendation.

139O Outcome of deregulation review

- (1) Following a review carried out under **section 139N**, the actions that the Minister may take include 1 or more of the following:
 - (a) recommending to the Governor-General that a designation order made under **section 62** be amended or revoked in order to exclude 1 or more regulated water services providers from any or all of the provisions or requirements of **Part 3** (*see section 68*);
 - (b) the actions referred to in **section 139M(1)(a) and (b)**.
- (2) The Minister may not take any action that would result in—

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- (a) a statutory water services entity no longer being subject to any provision or requirement of **Part 3**; or
 - (b) a drinking water supplier no longer being subject to the requirements of **subpart 3 of Part 3** (relating to the consumer complaints process and the consumer dispute resolution service).
- (3) The Minister may take 1 or more of the actions referred to in **subsection (1)** only if—
- (a) the Minister has received and considered a recommendation from the Commission following a review carried out under **section 139L or 139N**; and
 - (b) the Minister is satisfied that the purpose of **Part 3** would be better met if the action were taken.

Subpart 3—Other provisions

140 Regulations

- (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:
- (a) providing for anything this Act says may or must be provided for by regulations;
 - (b) prescribing infringement offences by—
 - (i) prescribing a duty, restriction, or prohibition for conduct that is similar to conduct, or similar to an element of conduct, for which there is a duty, restriction, or prohibition under any provision of this Act or regulations; and
 - (ii) providing that a contravention of the prescribed duty, restriction, or prohibition is an infringement offence;
 - (c) prescribing for those infringement offences—
 - (i) fines not exceeding—
 - (A) \$2,000, for an individual;
 - (B) \$6,000, in any other case;
 - (ii) infringement fees not exceeding—
 - (A) \$1,000, for an individual;
 - (B) \$3,000, in any other case;
 - ~~(ea) providing for the payment of fees by regulated water services providers and drinking water suppliers for dispute resolution under the consumer dispute resolution service;~~
 - (d) providing for anything incidental that is necessary for carrying out, or giving full effect to, this Act.

- (2) Regulations made under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

141 Regulations relating to ~~levy~~ levies

- (1) Every regulated water services provider must pay to the Crown, or a prescribed person on behalf of the Crown, a ~~levy~~ levies prescribed by regulations.
- (2) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations—
- (a) specifying the amount of levies, or method of calculating or ascertaining the amount of levies, on the basis that all or a portion of the following costs (as determined by the Minister) should be met fully out of the ~~levy~~ levies:
 - (i) the estimated costs ~~for an appropriation period~~ of performing the Commission's functions, powers, and duties under this Act, the Water Services Entities Act 2022, and any other water services legislation;
 - (ii) the estimated costs incurred by the Water Services Consumer Agency in performing its function under this Act;
 - (iii) the costs of collecting the levy money; and
 - (b) including in levies, or providing for the inclusion in levies, any shortfall in recovering those actual costs; and
 - (c) refunding, or providing for refunds of, any over-recovery of those actual costs; and
 - (d) providing different levies for ~~different classes of regulated water services provider or drinking water supplier; and~~
 - (i) different classes of regulated water services provider; and
 - (ii) different classes of drinking water supplier in relation to the Commission's functions under this Act regarding drinking water; and
 - (e) specifying the appropriation period or part appropriation period to which those levies apply, and applying to that appropriation period or part appropriation period and each subsequent appropriation period until revoked or replaced; and
 - (f) providing for the payment and collection of those levies; and
 - (g) for the first appropriation period to which the ~~levy~~ levies apply to a regulated water services provider or class of providers, or a drinking water supplier or class of drinking water suppliers, including in the levy amounts or method of calculating costs incurred by the Commission in connection with preparing itself to perform, and performing, its functions, powers, and duties under this Act, the Water Services Entities Act 2022, and any other legislation dealing with water services, irrespective of the fact—

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- (i) that the regulations are made and come into effect after that period; or
 - (ii) that the goods or services become regulated after the costs were incurred (for example, costs incurred by the Commission in preparing input methodologies); and
 - (h) requiring payment of ~~a levy~~ levies for an appropriation period or a part of an appropriation period, irrespective of the fact that ~~the regulations may be made after that appropriation period or part has commenced; and~~ and—
 - (i) the regulations may be made after that appropriation period or part of that appropriation period has commenced; or
 - (ii) a regulated water services provider or drinking water supplier may have become a regulated water services provider or drinking water supplier after the commencement of the appropriation period or a part of the appropriation period; and
 - (i) exempting or providing for exemptions from, and providing for waivers of, the whole or any part of ~~the levy~~ levies for any case or class of cases.
- (3) In **subsection (2), appropriation period**, in relation to any estimated costs, means—
- (a) a financial year; or
 - (b) if the estimated costs will be incurred under the authority of a multi-year appropriation or of a multi-year appropriation proposed in any Estimates, the financial years to which the multi-year appropriation applies.
- (4) In **subsection (3),—**
Estimates—
- (a) has the meaning given in section 2(1) of the Public Finance Act 1989; and
 - (b) includes Supplementary Estimates as defined in section 2(1) of that Act
- multi-year appropriation** means an appropriation authorised to apply for more than 1 financial year (*see* section 10 of the Public Finance Act 1989).
- (5) The amount of any unpaid levy is recoverable in any court of competent jurisdiction as a debt due to the Crown.
- (6) The Minister must consult regulated water services providers, or representatives of those providers, before making a recommendation for the purposes of **subsection (2)**.
- (7) Regulations made under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).
- (8) If regulations authorise a person to grant exemptions or waivers referred to in **subsection (2)(i)**,—

- (a) an instrument granting an exemption or a waiver is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements), unless it applies only in a particular case; and
- (b) the regulations must contain a statement to that effect.

Compare: 1986 No 5 s 53ZE; 2011 No 5 s 68

142 ~~Levy for consumer dispute resolution services~~

- (1) ~~Every regulated water services provider and drinking water supplier must pay to the Minister in each financial year or part financial year (as the case may require) a prescribed levy.~~
- (2) ~~The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations providing for the levy.~~
- (3) ~~The levy must be prescribed on the basis that the following costs should be met fully out of the levy:~~
 - (a) ~~a portion of the costs of the service provider for the consumer dispute resolution service, where the size of the portion to be met by the levy under this Act is determined by the Minister; and~~
 - (b) ~~the cost of collecting the levy money.~~
- (4) ~~**Section 141(4) to (7)** applies to a levy referred to in this section.~~
- (5) ~~Regulations made under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).~~
- (6) ~~If regulations made under this section authorise a person to grant waivers or refunds referred to in **section 141(5)(h)**,—~~
 - (a) ~~an instrument granting a waiver or refund is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements), unless it applies only in a particular case; and~~
 - (b) ~~the regulations must contain a statement to that effect.~~

Compare: 2001 No 103 s 155ZN(2), (4)

143 ~~Recovery of fees and other money~~

- (1) ~~All fees and other money payable to the Crown under this Act or the regulations, or under any permit granted under this Act, is recoverable as money due to the Crown and, without limiting any other method of recovery, may be recovered in any court of competent jurisdiction as a debt due to the Crown.~~
- (2) ~~All fees payable under this Act or the regulations must be paid into a Departmental Bank Account, and all other money payable to the Crown under this Act, or the regulations, or under any permit granted under this Act, must be paid into a Crown Bank Account.~~
- (3) ~~To avoid doubt, any interest payable on fees must be paid into a Crown Bank Account.~~

144 Commission to have regard to economic policies of Government

- (1) In the exercise of its powers under this Act, the Commission must have regard to any economic policies of the Government that the Minister gives to the Commission in a written statement.
- (2) The Minister must, as soon as practicable after giving a statement of economic policy of the Government to the Commission,—
 - (a) arrange for a copy of the statement to be published in the *Gazette*; and
 - (b) present a copy of the statement to the House of Representatives.
- (3) The statement of economic policy of the Government is not a direction for the purposes of Part 3 of the Crown Entities Act 2004.

Compare: 1986 No 5 s 26

145 Material incorporated by reference

- (1) This section applies for the purposes of section 66(2)(b) of the Legislation Act 2019.
- (2) If material incorporated by reference in secondary legislation made under this Act is amended or replaced by the originator of the material after the secondary legislation is made, legal effect may be given to that amendment or replacement material if—
 - (a) the amendment or replacement material is of the same general character as the original material; and
 - (b) the maker of the secondary legislation issues a notice to adopt the amendment or replacement material as having legal effect as part of the secondary legislation.
- (3) If material incorporated by reference in secondary legislation made under this Act expires, is revoked, or otherwise ceases to have effect, the material ceases to have legal effect as part of the secondary legislation if the maker of the secondary legislation issues a notice stating that the material ceases to have that legal effect.
- (4) A notice issued under **subsection (2)(b) or (3)** must be published in the *Gazette* and publicised by the maker of the secondary legislation.
- (5) This section does not limit section 66(2)(a) of the Legislation Act 2019.
- (6) In this section, **material** has the meaning given in section 63 of the Legislation Act 2019.

145A Minister may establish Water Services Consumers Agency

- (1) The Minister may establish a Water Services Consumers Agency by approving 1 or more persons to perform the function of the agency.
- (2) The Minister may approve 1 or more persons to perform the function of the agency, and each person approved may perform all or any part of that function.

- (3) In **subsection (2)**, **person** includes any instrument of the Crown (for example, a public service agency, as that term is defined in section 5 of the Public Service Act 2020).
- (4) In approving a person or persons under **subsection (2)**, the Minister must be satisfied that the person has (or the persons collectively have) the ability to perform the function of the agency.
- (5) The agency may determine its own procedure, subject to any directions given to it by the Minister.

145B Function of Water Services Consumers Agency

- (1) The function of the Water Services Consumers Agency is to represent and advocate for the interests of consumers in the water services industry.
- (2) The agency may carry out its function by, for example,—
 - (a) promoting the interests of consumers to relevant public service agencies and Crown entities; and
 - (b) providing evidence-based advocacy on behalf of consumers, whether in response to policy proposals or on its own initiative.

Amendment to Commerce Act 1986

145C Principal Act

Section 145D amends the Commerce Act 1986.

145D Section 9 amended (Membership of Commission)

After section 9(3A), insert:

- (3B) One of the members must be appointed by the Governor-General as Water Services Commissioner under **section 127** of the Water Services Economic Efficiency and Consumer Protection Act **2022**.

Amendments to Water Services Act 2021

146 Principal Act

Sections 147 to 155 amend the Water Services Act 2021.

147 Subpart 4 heading in Part 2 amended

In Part 2, in the subpart 4 heading, replace “complaints” with “information”.

148 Section 38 amended (Requirement for supplier to provide information to consumers and have complaints process)

- (1) In the heading to section 38, delete “**and have complaints process**”.
- (2) Repeal section 38(1)(b) and (c) and (2).

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149 Sections 39 and 40 repealed

Repeal sections 39 and 40.

150 Section 57 amended (General exemptions)

In section 57(1)(i), delete “and have a consumer complaints process”.

151 Section 165 amended (Defence in prosecution for strict liability offence)

In section 165(1), replace the item relating to section 188 with:

188	Failure to provide consumers with prescribed information
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152 Section 169 amended (Liability of volunteers)

In section 169(1), replace the item relating to section 188 with:

188	Failure to provide consumers with prescribed information
-----	--

153 Cross-heading above section 188 amended

In the cross-heading above section 188, replace “*complaints*” with “*information*”.

154 Section 188 amended (Offence involving failure to advise consumers about, provide, and report on complaint process)

- (1) Replace the heading to section 188 with “**Offence involving failure to provide consumers with prescribed information**”.
- (2) Repeal section 188(1)(a)(ii) and (iii) and (b).

155 Section 200 amended (Regulations)

Repeal section 200(1)(a)(iii), (b), and (c).

Schedule 1
Transitional, savings, and related provisions

s 9

Part 1
Provisions relating to this Act as enacted

1AAA Interpretation

In this schedule, **establishment date** has the same meaning as in clause 1 of Schedule 1 of the Water Services Entities Act 2022.

1 Preparation of input methodologies

Any work done or action taken (including any consultation) by the Commission on input methodologies before either of the following dates may be taken into account as part of the work required to be done by the Commission to comply with the requirements of **section 28(1) and (2)**:

- (a) the date on which **section 28** commences;
- (b) the establishment date for any statutory water services entity.

1A Preparation of section 15 determinations

- (1) Any work done or action taken (including any consultation) by the Commission on **section 15** determinations before either of the following dates may be taken into account as part of the work required to be done by the Commission to comply with the requirements of **section 19(3)**:

- (a) the date on which **section 19** commences;
- (b) the establishment date for any statutory water services entity.

- (2) The Commission may make the initial **section 15** determination relating to information disclosure in accordance with ~~**section 19(1)(b)**~~ **section 19(1A)** even if—

- (a) the initial input methodologies for information disclosure have not yet been made (*see* **section 18(1)**); or
- (b) the establishment date for any statutory water services entity has not yet occurred.

2 Completion of complaints made under sections 38 to 40 of Water Services Act 2021

Any complaint made before the commencement of this clause in accordance with a complaints process operated under sections 38 to 40 of the Water Services Act 2021 must be dealt with under those provisions as if **sections 147 to 155** of this Act had not come into force.

Schedule 2

Consumer dispute resolution service

s 76

- 1 Purpose of consumer dispute resolution service and purpose of service provider**
- (1) The purpose of the consumer dispute resolution service is to ensure that, if a person has a dispute, arising from an unresolved complaint, with a regulated water services provider about the provision of water infrastructure services (including any breaches of rights or obligations under the service quality code) or a drinking water supplier about the provision of drinking water, the person has access to a dispute resolution service for resolving that dispute.
- (2) To achieve that purpose, a service must be established in accordance with **section 76** and this schedule that—
- (a) provides for a range of dispute resolution processes, including facilitative, evaluative, and determinative processes, so that—
- (i) each dispute can be resolved through the process assessed to be the most appropriate to the particular dispute, having regard to the nature and circumstances of that dispute; and
- (ii) if the dispute cannot be resolved by agreement between the parties, the dispute is determined by a neutral third party whose decision is legally binding on the regulated water services provider or drinking water supplier, as the case requires; and
- (iii) the service combines both formality and flexibility in a manner most likely to achieve the purposes referred to in **paragraph (b)**; and
- (iv) the service makes available dispute resolution processes—
- (A) recognised under tikanga, for use where appropriate; and
- (B) that implement te ao Māori approaches:
- (b) provides for disputes to be assessed promptly after they are received for the purposes of—
- (i) identifying the process that is the most appropriate for resolving the dispute; and
- (ii) ensuring that the dispute is resolved within the time provided in the rules of the service, whether by agreement between the parties or determination by a neutral third party.
- (3) The purpose of the service provider that operates the consumer dispute resolution service is to—
- (a) operate that service; and

- (b) manage and investigate unresolved consumer complaints that it receives, including in relation to alleged breaches of the service quality code; and
 - (c) promote awareness of the service.
- (4) However, to avoid doubt, it is not the role of a service provider to investigate prices or tariffs set for the provision of water infrastructure services or the supply of drinking water.

2 Interpretation

In this schedule, unless the context otherwise requires,—

consumer dispute resolution service or **service** has the same meaning as in **section 61**

service provider has the same meaning as in **section 61**.

Service: rules and obligations

3 Rules of service

- (1) The rules of the approved service must provide for, or set out, the following:
- (a) who may refer disputes to the service for resolution:
 - (b) how disputes may be referred to the service:
 - (c) the kinds of disputes that the service will deal with:
 - (d) when a dispute referred to the service may be investigated under the service:
 - (da) who, and on what terms or conditions, the service provider for the service may appoint to conduct dispute resolution on the service provider's behalf:
 - (e) that any investigation as part of a process for resolving a dispute must be undertaken in a way that is consistent with the rules of natural justice:
 - (f) when a neutral third party may make a determination on a dispute referred to the service:
 - (g) that a hearing for the purposes of making a determination on a dispute is to be conducted on the papers, unless the person making the determination thinks that an oral hearing is required:
 - (h) the procedure for conducting a hearing on the papers:
 - (i) the time within which a determination on a dispute is to be made:
 - (j) that a determination must be made in writing and include the reasons of the decision maker:
 - (k) that, in relation to a dispute, any information may be considered, and any inquiry may be made, that is fair and reasonable in the circumstances:

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- (ka) when the service provider may charge regulated water services providers and drinking water suppliers fees for services provided by the service provider:
 - (l) the kinds of remedial action that the service may require regulated water services providers or drinking water suppliers to take in order to resolve disputes:
 - (m) that the service may stop investigating and resolving a dispute if any party to the dispute takes alternative court action against another party to the dispute:
 - (n) how the service provider will promote knowledge about, and access to, the service to members and persons entitled to make a complaint:;
 - (o) the fees or method of calculating the fees that may be charged for any service:
 - (p) the manner and process for charging fees for any service.
- (2) The service provider for the service must publicise the rules.

Limits on compensation

3A Limits on compensation able to be ordered by consumer dispute resolution service

The maximum amount of compensation that a person who determines a dispute may order is \$50,000.

Rights to representation

3B Right to representation in relation to dispute resolution

- (1) The parties are not entitled to be represented in relation to dispute resolution proceedings unless it appears to the person conducting the dispute resolution to be proper in all the circumstances to allow representation and the person proposed to be the representative is approved by the person conducting the dispute resolution.
- (2) Despite **subclause (1)**, the following parties may be represented by a representative who is approved by the person conducting the dispute resolution:
 - (a) the Crown, if the representative is an officer or employee of the Crown:
 - (b) a corporation or an unincorporated body of persons, if the representative is an officer or employee or a member of the corporation or body or holds, directly or indirectly, at least a 50% interest in it:
 - (c) a person jointly liable or entitled with another or others, if the representative is one of the persons jointly liable or entitled or, in the case of a partnership, is an employee of those persons:
 - (d) a minor, or other person under a disability:

- (e) any other person, if the person conducting the dispute resolution is satisfied that for sufficient cause that person is unable to appear in person or is unable to present their case adequately.
- (3) The person conducting the dispute resolution must not approve as a representative any person who is, or has been, enrolled as a barrister and solicitor, or who, in the opinion of the persons conducting the dispute resolution, is, or has been, regularly engaged in advocacy work before tribunals, but this prohibition does not apply if—
 - (a) the person proposed for approval under **subsection (1) or (2)** is a person or one of the persons jointly liable or entitled with another or others; or
 - (b) the party seeking to be represented is a company and the person proposed for approval under **subsection (1) or (2)** is the majority shareholder of the company.
- (4) If the person conducting the dispute resolution approves any person under **subsection (1) or (2)**, the person conducting the dispute resolution may impose in respect of the approval any conditions that it considers necessary to ensure that any other party to the dispute resolution is not substantially disadvantaged by the approval.

Relationship with other proceedings

3C Relationship with other proceedings

- (1) The referral of a dispute to the consumer dispute resolution service does not affect any right any person may have to commence or continue a proceeding in any court (a **concurrent proceeding**).
- (2) However, if a concurrent proceeding is, or has been, commenced in relation to the matters that are the subject of a dispute referred to dispute resolution, the concurrent proceeding continues—
 - (a) unless the court directs that it is to be stayed while the proceeding before the dispute resolution system and any rights to apply to set aside a determination continue; or
 - (b) unless a binding decision or a settlement agreement is in force, in which case it is stayed, but only in so far as the proceedings concern the parties affected by the settlement agreement or binding decision.

Consumer Dispute Resolution Service: approval and withdrawal of approval

4 Application for approval

- (1) The service provider of a proposed consumer dispute resolution service may apply to the Minister for approval of the proposed service as the consumer dispute resolution service.
- (2) The application must include—

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- (a) the rules of the proposed service; and
 - (b) any other information that the Minister, by notice in the *Gazette*, prescribes as being required to be included in an application under this clause; ~~and~~
 - (e) ~~the prescribed fee (if any).~~
- (3) The Minister may ask an applicant to supply any further information or documentation in support of the application.

5 Mandatory considerations for approval

- (1) When considering an application made under **clause 4**, the Minister must have regard to the following considerations in light of the principles listed in **subclause (2)**:
- (a) whether the proposed service is capable of meeting the purpose of the consumer dispute resolution service as set out in **clause 1(1)**:
 - (aa) if **section 76(1B)(a)** applies, whether the provision of an additional approved service is necessary or desirable:
 - (ab) if the Commission has recommended the establishment of an additional service under **section 76(1B)(b)**, whether the approval of an additional service is necessary or desirable:
 - (ac) if **section 76(1B)(c)** applies, whether continuing an approved service is desirable for transitional purposes (*see section 76*):
 - (b) whether the proposed service is capable of dealing with the wide range of disputes that persons and entities are entitled to refer to it:
 - (c) whether the applicant has adequate funding to enable it to operate the proposed service in accordance with the purpose of the applicant (if approved as the service provider) under **clause 9(2)** and the rules of the service:
 - (d) whether the applicant's directors and senior managers are competent to manage a dispute resolution service:
 - (e) whether the rules of the proposed service are adequate and comply with—
 - (i) the principles listed in **subclause (2)**; and
 - (ii) the requirements of **clause 3** (rules of service):
 - (f) whether the fees or method of calculating fees for a service are reasonable.
- (2) The principles are—
- (a) accessibility:
 - (aa) user-focused:
 - (b) independence:

- (c) fairness:
 - (d) accountability:
 - (e) efficiency:
 - (f) effectiveness.
- (3) The Minister may not approve a proposed service as the consumer dispute resolution service unless the Minister is satisfied that ~~the rules of the service are adequate and comply with—~~
- (a) ~~clause 3~~; and
 - (b) ~~the principles specified in subclause (2)~~.
- (a) the rules of the service are adequate and comply with—
- (i) **clause 3**; and
 - (ii) the principles specified in **subclause (2)**; and
- (b) the fees, or the process and manner for determining fees, set out in the rules of the proposed service are reasonable.

6 Minister must decide application for approval

- (1) After considering an application made under **clause 4**, the Minister may—
- (a) approve the proposed service as the consumer dispute resolution service; or
 - (b) decline the application.
- (2) The Minister may decide whether to approve the proposed service or decline the application only after carrying out consultation in accordance with **section 76(2)**.
- (3) A failure to consult the persons referred to in **subclause (2)** does not affect the validity of any approval of the service.

7 Decision must be notified and publicised

The Minister must, as soon as practicable after deciding an application,—

- (a) notify the applicant of the decision; and
- (b) if the decision is to approve the application, ensure that the approval is publicised.

8 Rules of service must not be changed without ministerial approval

- (1) ~~The Any change to the rules of the service must not be changed unless the Minister approves the change be approved by the Minister.~~
- (1A) Before approving a change to the rules of the service, the Minister must consult the persons listed in **section 76(2)**.
- (2) If the service provider of the service notifies the Minister of a proposed rule change, the rule change is deemed to be approved by the Minister 45 working

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days after the date of notification, unless the Minister declines approval within that 45-day period.

- (3) Despite **subclause (2)**,—
- (a) the Minister may require the provider of the service to provide further information before the Minister decides whether to approve or decline the proposed rule change; and
 - (b) if the Minister requires further information to be provided, the rule change is deemed to be approved by the Minister 45 working days after the Minister receives that information, unless the Minister declines approval within the 45-day period.
- (4) The Minister may decline approval for a rule change only if ~~the Minister is not satisfied that, if the rules were changed as proposed, they would comply with—~~
- (a) the Minister considers that, if the rules were changed as proposed, they would not comply with—
 - (i) the principles listed in **clause 5(2)**; or
 - (ii) the requirements in **clause 3**; or
 - (iii) the purpose in **clause 1**; or
 - (b) the Minister is not satisfied that the fees or method of charging fees specified in the rules would be reasonable.
- ~~(a) the principles listed in **clause 5(2)**; or~~
- ~~(b) the requirements in **clause 3**; or~~
- ~~(c) the purpose in **clause 1**.~~
- (5) Despite **subclauses (1) and (1A)**, the rules of the service may be amended by the service provider without notifying the Minister or the Minister complying with **subclause (1A)**, if the service provider is satisfied that the change is minor in nature or for the purpose of correcting an error.

8A Withdrawal of approval

- (1) The Minister may, at any time after the expiry of the notice period, withdraw the approval of the service for any or all of the following reasons:
- (a) the service is not, or is no longer, capable of meeting the purpose set out in **clause 1**;
 - (b) there are low levels of support for the service among persons that the Minister considers are substantially affected by the scheme;
 - (c) there has been a failure to comply with the rules of the service;
 - (d) the service provider has not publicised the rules of the service as required by **clause 3**;
 - (e) the service provider has not notified the Minister before changing the rules of the service as required by **clause 8**:

- (f) the service provider has not supplied the Minister with information as required by **clause 11**.
- (2) If the Minister withdraws the service's approval under **subclause (1)**, the withdrawal takes effect from the date on which the service provider is notified under **clause 8D**.
- (3) In addition, the Minister must withdraw the approval of the service if the provider of the service requests, in which case the withdrawal takes effect from the date on which that is 3 months after the date of the request.
- (4) If approval of the service (the **old service**) is withdrawn, any dispute that was referred to the old service, if not resolved before the new service begins operation, is transferred to the new service on the date the new service approved in place of the old service begins operation, unless the party that referred the dispute to the old service agrees otherwise.
- (5) For the purposes of this clause and **clauses 8B and 8C**, **notice period** means the notice period specified in the Minister's notice of intention to withdraw approval under **clause 8B**.

8B Notice of intention to withdraw approval

- (1) The Minister must notify the service provider of the Minister's intention to withdraw the consumer dispute resolution service's approval.
- (2) The Minister's notice must—
 - (a) state that the Minister intends to withdraw the service's approval; and
 - (b) identify which of the reasons described in **clause 8A** apply; and
 - (c) state why the Minister considers that those reasons apply; and
 - (d) specify the notice period, which must be at least 3 months, during which the service provider may object, under **clause 8C**, to the intended withdrawal.

8C Objection to intended withdrawal of approval

- (1) During the notice period, the service provider may object (with reasons) to the intended withdrawal of approval.
- (2) The Minister must consider any objection that is received before the end of the notice period.

8D Notification and publication of withdrawal of approval

The Minister must, as soon as practicable after withdrawing the consumer dispute resolution service's approval,—

- (a) notify the service provider; and
- (b) ensure that the Ministry publishes notice of the withdrawal.

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8E Fees

- (1) The service provider may charge regulated water services providers and drinking water suppliers fees for services it provides to those providers or suppliers.
- (2) Any fees charged by the service provider may include (without limitation) fees relating to 1 or both of the following:
 - (a) consumer dispute resolution services in relation to a dispute between a consumer and a regulated water services provider about the provision of water infrastructure services:
 - (b) consumer dispute resolution services in relation to a dispute between a consumer and a drinking water supplier about the provision of drinking water.
- (3) Any fees charged by the service provider must—
 - (a) be paid by the regulated water services provider or drinking water supplier that received the services for which the fee is charged; and
 - (b) not be paid by a consumer; and
 - (c) be consistent with the fees and process and manner specified for calculating or imposing the fees in the rules of the service provider.

9 Commission review of consumer dispute resolution service

- (1) The Commission must review the consumer dispute resolution service at least once every 3 years.
- (2) As part of a review of the service, the Commission may, without limitation, consider the following:
 - (a) the purpose of the service:
 - (b) the service provider and the person it engages to conduct dispute resolution on its behalf:
 - (c) the effectiveness of the service in resolving complaints by consumers against regulated water services providers and drinking water suppliers:
 - (d) the adequacy of the rules of the service:
 - (e) whether, in the opinion of the Commission, the rules of the service comply with the following principles:
 - (i) accessibility:
 - (ia) user-focused:
 - (ii) independence:
 - (iii) fairness:
 - (iv) accountability:
 - (v) efficiency:
 - (vi) effectiveness:

- (f) whether any recommendations for improving the service made under **subclause (4)** have been implemented:
 - (g) the purpose of the service provider set out in **clause 1(2)**:
 - (h) the procedures that are used for receiving, investigating, and resolving complaints:
 - (i) how promptly complaints are dealt with.
- (3) The Commission may require the following persons to provide the Commission with any information relevant to the matters included in **subclause (2)**:
- (a) any person who conducts dispute resolution under the service:
 - (b) the service provider.
- (4) After each review, the Commission must provide a report to the service provider on any recommendations for improving the service and when the recommendations should be implemented.
- (5) If the Commission considers that any recommendations made under **subclause (4)** have not been implemented satisfactorily, the Commission must provide a report to the Minister of—
- (a) the recommendations for improving the service made under **subclause (4)**; and
 - (b) whether those recommendations have been implemented; and
 - (c) whether, in the Commission’s opinion,—
 - (i) the service fails to achieve the purpose set out in **clause 1(1)**; or
 - (ii) the service provider fails to achieve the purpose set out **clause 1(2)**.
- (6) If the Commission proposes to report, under **subclause (5)(c)**, that the service fails to achieve the purpose set out in **clause 1(1)** or that the service provider fails to achieve the purpose set in **clause 1(3)**, the Commission must give the service provider 20 working days to make submissions on a draft report.
- (7) The Commission may, when carrying out its review of the service, consult any interested persons that the Commission considers appropriate.

11 Provision of information

- (1) The service provider of the consumer dispute resolution service must, on request by the Minister, provide information on the following:
- (a) matters relating to any information or reports that the service provider of the service is required to provide under the rules of the service:
 - (b) the service’s compliance with the principles listed in **clause 5(2)**.

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- (1A) The service provider of the service must, on request by the Commission provide information on the administration of the minimum service levels specified in the service quality code.
- (2) Nothing in this clause authorises a breach of the Privacy Act 2020 or any obligation of confidentiality.

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