Water Services Entities Amendment Act 2023

Public Act	2023 No 44
Date of assent	22 August 2023
Commencement	see section 2

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Water Services Entities Amendment Act 2023.

2 Commencement

This Act comes into force on the day after the date of Royal assent.

Part 1
Amendments to Water Services Entities Act 2022

Principal Act

3 Principal Act

This Part amends the Water Services Entities Act 2022.

Principal Act's commencement

4 Section 2 amended (Commencement)

(1) Before section 2(1), insert:

15 December 2022

(2) Replace section 2(2) and (3) with:

Commencement of Water Services Entities Amendment Act 2023

(1A) The following provisions come into force on the day after the date of Royal assent of the Water Services Entities Amendment Act 2023:

(a) section 27 (establishment and membership of regional representative group):

(b) section 93 (what constitution must contain) so far as it relates to regulations made under section 210(1)(a):

(c) section 97 (process for amending or replacing constitution) so far as it relates to regulations made under section 210(1)(a):

(d) section 117(4) (directions for shared services not subject to section 117):

(e) sections 123 to 128 (protections from liability):

(f) section 129 (method of contracting):

(g) section 131(2A) (directions for shared services):

(h) subpart 2A of Part 4 (directions for shared services):

(i) section 206 (engagement requirements).

1 July 2024

(2) The rest of this Act comes into force on 1 July 2024.

Principal Act's purpose

5 Section 3 amended (Purpose)

(1) In section 3(2)(a), replace "4" with "10".

(2) After section 3(2)(a), insert:

(aa) ensuring that this Act applies to a water services entity, and its service area, only on and after that entity's operational establishment date (*see* section 6A):

(3) In section 3(2)(b), after "their governance, reporting, and accountability arrangements", insert "(for example, shared services arrangements, community priority statements, a funding agency, and protected transactions)".

(4) After section 3(2)(d), insert:

(da) providing a locally led process enabling them to merge if their regional representative groups decide to do so (*see* section 19A):

Interpretation

6 Section 6 amended (Interpretation)

(1) In section 6, definition of **Te Mana o te Wai**, paragraph (b), replace "section 2(1) of the Resource Management Act 1991" with "this section".

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

water—

(a) has the same meaning as in section 2(1) of the Resource Management Act 1991; but

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

water body—

(a) has the same meaning as in section 2(1) of the Resource Management Act 1991; but

(b) includes water—

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

(ii) that is located within the coastal marine area (as that term is defined in that section 2(1))

Principal Act's application to water services entity

7 New section 6A inserted (Act applies to water services entity, and its service area, only on and after that entity's establishment date)

After section 6, insert:

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

General rule

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

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

Exception

(3) However, subsections (1) and (2) do not affect or limit the operation, during a water service's entity's establishment period, of the following:

(a) this section:

(b) Schedule 1 of this Act:

(c) Schedule 1AA of the Local Government Act 2002:

(d) Schedule 1AA of the Local Government (Rating) Act 2002:

(e) Schedule 1 of the Local Government (Financial Reporting and Prudence) Regulations 2014.

Establishment date

(4) The Northland and Auckland Water Services Entity's **establishment date** is 1 July 2024.

(5) Any other water services entity's **establishment date** is an establishment date for the entity that is set by an Order in Council made under this section on the recommendation of the Minister, and that is one of the following dates:

(a) 1 July 2024:

(b) 1 October 2024:

(c) 1 January 2025:

(d) 1 April 2025:

(e) 1 July 2025:

(f) 1 October 2025:

(g) 1 January 2026:

(h) 1 April 2026:

(i) 1 July 2026.

Order in Council setting establishment date

(6) The power under this section to set an establishment date for an entity is capable of being exercised more than once to amend, revoke, or replace an Order in Council made in a previous exercise of the power, but only so long as each re-exercise of the power—

(a) takes effect before the previous establishment date; and

(b) is recommended due to exceptional circumstances (for example, an emergency) arising only after the previous exercise of the power.

(7) Within 6 months of this section's commencement, the Minister must recommend, and the Governor-General in Council must make, 1 or more Orders in Council—

(a) made under this section; and

(b) setting establishment dates for all the water services entities whose establishment dates are to be set by Order in Council.

(8) Before recommending an Order in Council setting a water services entity's establishment date, the Minister must engage in accordance with section 206 with territorial authority owners and mana whenua in the entity's service area.

(9) An Order in Council made under this section may contain, or be amended so that it contains, establishment dates for all or any of the water services entities whose establishment dates are set by Order in Council.

(10) An Order made under this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Merger of water services entities

(11) However, for a water services entity whose establishment is provided for by an Order in Council made under clause 24(1) of Schedule 2A (Order in Council to give effect to requested merger),—

(a) the rest of this Act, and secondary legislation made under the rest of this Act, applies to that water services entity, and its service area, only on and after the date on which the provisions of that order establishing that water services entity have effect; and

(b) subsections (1) to (10), and the transitional provisions specified in subsection (3)(b) to (e), of this section do not apply to the entity.

(12) However, subsection (11) does not limit the application of section 19A and Schedule 2A to a water services entity—

(a) that is proposed to be part of a requested merger; and

(b) to which section 19A and Schedule 2A apply under subsection (1).

Legislation Act 2019 requirements for secondary legislation made under this section		
Publication	PCO must publish it on the legislation website and notify it in the *Gazette*	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Water services entities and their service areas

8 Section 11 replaced (Water services entities established)

Replace section 11 with:

11 Water services entities established

Entities established

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

When each water services entity established

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

When new entity resulting from merger established

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

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

(4) This section does not limit—

(a) section 210(1)(d) of this Act; or

(b) clause 24(1) of Schedule 2A of this Act; or

(c) section 25(4) of the Local Government Act 2002.

Functions of water services entities

9 Section 13 amended (Functions of water services entities)

After section 13(a), insert:

(aa) to enter into shared services arrangements related to all or any activities specified in section 137A(5) (for example, related to debt funding and management), whether or not those shared services arrangements are required to give effect to a direction given under section 137A; and

Water services entities and their service areas, establishment date

10 Section 16 amended (Shares in water services entities)

(1) In section 16(3), definition of **relevant date**, paragraph (a), replace "the establishment date (as defined in clause 1 of Schedule 1)" with "1 July 2026".

(2) In section 16(3), definition of **relevant date**, paragraph (b)(i), replace "the establishment date (as so defined)" with "1 July 2026".

(3) In section 16(3), definition of **relevant date**, paragraphs (c)(i) and (d), replace "Parts 1 to 4 of Schedule 2" with "Parts 1 to 10 of Schedule 2".

(4) In section 16(3), definition of **relevant date**, after paragraph (c), insert:

(ca) a date on which a merger proposal (*see* section 19A) that affects the water services entities named in Parts 1 to 10 of Schedule 2, or their service areas, or both, takes effect; or

Merger of water services entities

11 New subpart 1A of Part 2 inserted

After section 19, insert:

Subpart 1A—Merger of water services entities

19A Merger of water services entities

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

Regional representative group membership

12 Section 27 amended (Establishment and membership of regional representative group)

(1) Replace section 27(2) with:

(2) Each regional representative group consists of the number of regional representatives that is provided for in the constitution (*see* section 93(a)(i)).

(2) After section 27(3), insert:

(4) Each entity's regional representative group must include at least 1 representative from each territorial authority owner in the entity's service area.

13 Section 93 amended (What constitution must contain)

In section 93(a)(i), replace "and (3)" with "to (4)".

Directions for shared services

14 Section 117 amended (Safeguarding independence of water services entities)

Replace section 117(4) with:

(4) However, nothing in this section affects the following:

(a) the giving of a direction under section 137A (directions for shared services):

(b) the performance or exercise of a territorial authority's regulatory duties, functions, or powers under legislation other than this Act.

Directions for shared services, community priority statements for water services, and Water Services Entities Funding Agency

15 Section 131 amended (Outline of Part (financial and accountability matters))

(1) After section 131(2), insert:

Directions for shared services

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

(2) After section 131(4), insert:

Community priority statements for water services

(4A) Subpart 4A is about a community priority statement for water services made—

(a) about a water body in the service area of a water services entity; and

(b) by an eligible person (*see* section 145AB); and

(c) to the entity's regional representative group; and

(d) by any current deadline for community priority statements that has been set by the group and notified to the public (*see* section 145AC); and

(e) to state to the group the person's views about, and priorities for, how water services provided by, or other activities of, the entity do or could affect or relate to the water body.

(3) Replace section 131(9) and the heading above section 131(9) with:

Funding Agency and protected transactions

(9) Subpart 9 contains provisions related to the Water Services Entities Funding Agency.

(10) Subpart 10 contains provisions related to protected transactions.

Status of outline

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

Directions for shared services

16 New subpart 2A of Part 4 inserted

After section 137, insert:

Subpart 2A—Directions for shared services

137A Directions for shared services

Purposes for which direction may be given

(1) The Minister may direct water services entities to comply with specified requirements to share services provided to those entities and that are requirements for all or any of the following purposes:

(a) to improve (directly or indirectly) the provision of water services:

(b) to develop expertise and capability:

(c) to ensure business continuity:

(d) to manage risks to the water services entities' financial position, the Government's financial position, or both.

Entities to which direction may be given

(2) The direction may be given only to 2 or more entities each of which is—

(a) a water services entity; or

(b) a subsidiary of a water services entity.

Requirements for direction

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

(4) The direction may direct 2 or more entities to which it may be given about how to give effect to it, but only in respect of any 1 or more specified periods—

(a) after it comes into force; and

(b) before 1 July 2026.

(5) The direction must be limited to all or any of the following activities:

(a) debt funding and management (for example, through the Water Services Entities Funding Agency):

(b) information and communication technology, and digital infrastructure procurement and management:

(c) other procurement, and supply chain management:

(d) risk management and insurance:

(e) workforce development and employment relations.

(6) However, a direction to which subsection (5)(a) applies may only be given (despite subsection (1)) jointly by the Minister and the Minister of Finance.

(7) A direction given under this section must include the reasons why it is given and a statement of its purposes.

Commencement

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

Direction is secondary legislation

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

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

This note is not part of the Act.

Compare: 2004 No 115 s 107

137B Process for giving directions under section 137A

Engagement

(1) The Minister must, before giving a direction under section 137A, engage in accordance with section 206 in relation to the proposed direction with—

(a) the water services entities; and

(b) the regional representative group of each water services entity; and

(c) Taumata Arowai–the Water Services Regulator; and

(d) the Commission; and

(e) other persons, and representative groups of persons, who have an interest in water services in New Zealand.

(2) The Minister must, in giving a direction under section 137A, consider—

(a) the input or feedback provided through the engagement in accordance with section 206 in relation to the proposed direction; and

(b) whether and how the proposed direction should respond to any issues or concerns raised by that input or feedback.

(3) Subsection (2) does not limit or affect section 206A.

Notification

(4) The Minister must, as soon as practicable after giving a direction under section 137A, notify the entities to which the direction will apply that the direction—

(a) has been given; and

(b) will come into force on the commencement date stated in it.

Shared services directions related to debt finding and management

(5) However, for a direction to which section 137A(5)(a) applies, references in this section to the Minister are to be treated as references to the Minister acting jointly with the Minister of Finance (and section 206, as applied by this section, applies accordingly).

Exception for amendments or replacements with limited effect

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

Compare: 2004 No 115 s 108

137C Obligation to give effect to direction

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

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

Compare: 2004 No 115 s 110

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

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

(a) entered into by parties that are or include 1 or more entities to which a direction under section 137A is given; and

(b) entered into by those 1 or more entities in order to give effect to the direction when performing their functions (in accordance with section 137C).

Community priority statements for water services

17 New subpart 4A of Part 4 inserted

After section 145, insert:

Subpart 4A—Community priority statements for water services

145A Making of statement

A community priority statement for water services may be made—

(a) about a water body in the service area of a water services entity; and

(b) by a person who is an eligible person (*see* section 145AB); and

(c) to the entity's regional representative group; and

(d) by any current deadline for community priority statements that has been set by the group and notified to the public (*see* section 145AC); and

(e) to state to the group the person's views about, and priorities for, how water services provided by, or other activities of, the entity do or could affect or relate to the water body.

145AB Who is eligible person

Meaning of eligible person

(1) An **eligible person**, for the purposes of section 145A(b), means a person who—

(a) has a connection with the entity's service area (*see* subsection (2)); and

(b) has an interest in how water services are provided in that service area, or in how other activities of the entity do or could affect or relate to the water body, or in both.

When person has connection with entity's service area

(2) A person **has a connection with the entity's service area** for the purposes of subsection (1)(a) only if the person is—

(a) an individual who ordinarily resides in that service area; or

(b) a corporation sole or a body corporate (including, without limitation, a local authority that is a body corporate with perpetual succession under section 12(1) of the Local Government Act 2002) whose registered office, or whose main place of activities, is in that service area; or

(c) an unincorporated body, or any other person of any kind,—

(i) whose main place of activities is in that service area; and

(ii) whose purpose is, or includes, for any reason, any matter related to a water body in that service area; or

(d) a corporation sole, a body corporate, any unincorporated body, or any other person of any kind,—

(i) whose registered office, or whose main place of activities, is not in that service area; and

(ii) who is a regional, national, or international organisation, of any kind, that carries out all or any of its activities in any place or places in New Zealand; and

(iii) whose purpose is, or includes, for any reason, any matter related to a water body in that service area.

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

(1) A water services entity's regional representative group may set, and notify publicly, a current deadline for community priority statements.

(2) In setting a current deadline for community priority statements, the group must consider when it may next have regard to those statements (*see* section 145C(3) and (4))—

(a) in preparing, issuing, or reviewing the group's statement of strategic and performance expectations under section 139; and

(b) as part of any comments the group makes on the water services entity's planning and reporting documents under subpart 5.

(3) A current deadline for community priority statements is notified publicly for the purposes of this section if the deadline is published—

(a) on an Internet site maintained by, or on behalf of, the entity; and

(b) in any other ways that the group thinks are reasonable in the circumstances.

145B Other requirements for making statement

(1) A community priority statement for water services must be made in writing.

(2) A community priority statement for water services must state—

(a) the person's interest in how water services are provided in the entity's service area, or in how other activities of the entity do or could affect or relate to the water body, or in both; and

(b) the person's views about, and priorities for, how water services provided by, or other activities of, the entity do or could affect or relate to the water body.

(3) A community priority statement must be made by any current deadline for community priority statements that has been set by the regional representative group and notified to the public (*see* section 145AC).

(4) However, a community priority statement made after any current deadline of that kind must be treated as having been received before the next current deadline of that kind (if any).

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

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

(2) The group must forward the statement to a consumer forum established by the water services entity under section 207.

(3) The group may consider the statement in preparing, issuing, or reviewing the group's statement of strategic and performance expectations under section 139.

(4) The group may consider the statement as part of any comments the group makes on the water services entity's planning and reporting documents under subpart 5.

Water Services Entities Funding Agency and protected transactions

18 New subparts 9 and 10 of Part 4 inserted

After section 173, insert:

Subpart 9—Water Services Entities Funding Agency

Preliminary provisions

173A Purpose

(1) The purpose of this subpart is to facilitate the operation of the Funding Agency.

(2) To achieve that purpose, this subpart—

(a) exempts the Funding Agency from certain regulatory or taxation criteria that would otherwise apply to it; and

(b) applies to the Funding Agency certain regulatory or taxation criteria that would otherwise not apply to it; and

(c) authorises water services entities to deal with the Funding Agency in a manner in which they would otherwise not be authorised to do so; and

(d) authorises or requires water services entities, in certain situations, to act in a manner in which they would otherwise not be authorised or required to act.

Compare: 2011 No 77 s 3

173B Definitions

In this subpart, unless the context otherwise requires,—

borrowing has the same meaning as in section 173K

Funding Agency means a limited liability company—

(a) registered under Part 2 of the Companies Act 1993; and

(b) approved for the purposes of this subpart by the Minister by notice in the *Gazette*

incidental arrangement has the same meaning as in section 173K

loan has the same meaning as in section 173K

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

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

Compare: 2011 No 77 s 4

173C Application

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

Compare: 2011 No 77 s 5

Application of Non-bank Deposit Takers Act 2013

173D Funding Agency not non-bank deposit taker

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

Compare: 2011 No 77 s 7

Application of Financial Markets Conduct Act 2013

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

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

Compare: 2011 No 77 s 8

Prohibitions and restrictions relating to subsidiaries

173F Exemptions from prohibitions and restrictions applying to subsidiaries

(1) This section applies to a water services entity only while the Funding Agency is a subsidiary of 1 or more water services entities (*see* section 173C).

(2) A water services entity may give a guarantee, an indemnity, or a security in respect of the performance of any obligation by the Funding Agency.

(3) A water services entity may lend money, or provide any other financial accommodation, to the Funding Agency on terms and conditions that are more favourable to the Funding Agency than those that would apply if the water services entity were borrowing the money or obtaining the financial accommodation.

(4) Subsection (5) applies if the water services entity gives a guarantee, an indemnity, or a security, or lends money or provides any other financial accommodation, under subsection (2) or (3) while the Funding Agency is a subsidiary of a

water services entity and, subsequently, the Funding Agency ceases to be a subsidiary of a water services entity.

(5) The guarantee, indemnity, security, loan, or other financial accommodation continues subject to its terms, and the obligations and rights of the water services entity in respect of the guarantee, indemnity, security, loan, or other financial accommodation continue to apply, despite the Funding Agency no longer being a subsidiary of a water services entity.

Compare: 2011 No 77 s 9

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

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

(1) This section applies to a water services entity if it has prepared and provided to its regional representative group a funding and pricing plan and it gives a guarantee in relation to either or both of the following:

(a) any indebtedness of the Funding Agency:

(b) another water services entity's indebtedness to the Funding Agency.

(2) The water services entity must specify in its funding and pricing plan its policy on the giving of any securities that secure obligations under the guarantee.

Compare: 2011 No 77 s 10

Protected transactions

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

(1) This section applies to arrangements of any of the following kinds:

(a) a guarantee by a water services entity of any indebtedness owed by another water services entity to the Funding Agency:

(b) a guarantee by a water services entity of any indebtedness of the Funding Agency:

(c) a commitment by a water services entity to contribute equity to the Funding Agency:

(d) a commitment by a water services entity to lend money to the Funding Agency.

(2) Those arrangements are to be treated as protected transactions for the purposes of sections 173L to 173O.

(3) This section does not limit the generality of sections 173L to 173O.

Compare: 2011 No 77 s 12

Crown relationship with Funding Agency

173I Crown may lend money to Funding Agency

(1) The Minister, on behalf of the Crown, may lend money to the Funding Agency if—

(a) the Minister considers that it is necessary or expedient in the public interest to do so; and

(b) the money is lent on commercial terms.

(2) The Minister may lend money under subsection (1) without further appropriation than this section.

Compare: 2011 No 77 s 15(1)

173J No Crown guarantee for debts of Funding Agency

(1) No debt of the Funding Agency is guaranteed by the Crown.

(2) If the Funding Agency enters into any loan agreement or incidental arrangement, the agreement or arrangement must include a statement that the loan or liability under the agreement or arrangement is not guaranteed by the Crown.

(3) However, subsections (1) and (2) do not apply if the Crown is liable (for example, the Crown is liable to pay a debt) under a guarantee or an indemnity given by the Minister, on behalf of the Crown, under section 65ZD of the Public Finance Act 1989.

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

Subpart 10—Protected transactions

173K Definitions

In this subpart, unless the context otherwise requires,—

borrowing—

(a) means the incurring by any means of debt to raise money; and

(b) includes the incurring of debt—

(i) under any contract or arrangement for hire purchase, deferred payment, instalment payment, sale and lease-back or buy-back, financial lease, loan, overdraft, or other arrangement for obtaining debt finance; or

(ii) by the drawing, acceptance, making, endorsement, issue, or sale of bills of exchange, promissory notes, and other negotiable instruments and debt securities; or

(iii) by the use, for any purpose, of funds received or invested by a water services entity for any other purpose if the water services entity has resolved to repay, with or without interest, the funds used; but

(c) does not include debt incurred in connection with the hire purchase of goods, the deferred purchase of goods or services, or the giving of credit for the purchase of goods or services if—

(i) the period for which the indebtedness is outstanding is less than 91 days and the indebtedness is not incurred again promptly after payment; or

(ii) the goods or services are obtained in the ordinary course of the water services entity's performance of its lawful responsibilities, on terms and conditions available generally to parties of equivalent creditworthiness, for amounts not exceeding in aggregate an amount—

(A) determined by resolution of the water services entity as not being so significant as to require specific authorisation; or

(B) recorded for the purposes of this subparagraph in the then current borrowing management policy of the water services entity

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

incidental arrangement means—

(a) a contract or an arrangement for the management, reduction, sharing, limiting, assumption, offset, or hedging of financial risks and liabilities in relation to any investment or investments or any loan or loans or other incidental arrangement, whether or not that contract or arrangement involves—

(i) the expenditure, borrowing, or lending of money; or

(ii) a water services entity undertaking to make payments in exchange for another person undertaking to make payments to the water services entity; or

(iii) the creation or acquisition or disposal of any property or right; or

(b) a contract or an arrangement with any bank, financial institution, or other person providing for any person to act as underwriter, broker, indemnifier, guarantor, accommodation party, manager, dealer, trustee, registrar, or paying, fiscal, or other agent for, or in connection with, any loan or investment; or

(c) the creation of a charge

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

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

(a) any deed, agreement, right, or obligation constituting, relating to, or for the purpose of any borrowing or incidental arrangement:

(b) any charge, guarantee, or security for the payment of any amount (including any loan) payable in relation to, or for the purpose of any borrowing or incidental arrangement:

(c) any conveyance or transfer of any property in relation to, or for the purpose of any borrowing or incidental arrangement.

Compare: 2002 No 84 s 112

173L Protected transactions

(1) Every protected transaction entered into, or purportedly entered into, by or on behalf of a water services entity is valid and enforceable despite—

(a) the water services entity failing to comply with any provision of this Act in any respect; or

(b) the entry into, or performance of, the protected transaction being outside the capacity, rights, or powers of the water services entity; or

(c) a person held out by the water services entity as being a member of the establishment board, member of the board, or an employee, agent, or attorney, of the water services entity—

(i) not having been validly appointed as such; or

(ii) not having the authority to exercise any power or to do anything either that the person is held out as having or that a person appointed to such a position would customarily have; or

(d) a document issued, or purporting to be issued, on behalf of the water services entity by a person with actual or customary authority, or held out as having such authority, to issue the document not being valid or not being genuine.

(2) However, nothing in this subpart overrides section 118 (obligation to maintain water services).

Compare: 2002 No 84 s 117

173M Certificate of compliance

(1) This section applies to a certificate—

(a) signed, or purporting to be signed, by the chief executive of a water services entity; and

(b) to the effect that the water services entity has complied with this Act in connection with a protected transaction.

(2) The certificate is conclusive proof for all purposes that the water services entity has so complied.

Compare: 2002 No 84 s 118

173N Good faith in relation to protected transactions

(1) Sections 173L and 173M apply in relation to a protected transaction even though a person of the kind referred to in section 173L(1)(c) or (d) or 173M acts fraudulently or forges a document that appears to have been signed on behalf of the water services entity, unless any person dealing with the water services entity in relation to the protected transaction or a person who had acquired property, rights, or interests from the water services entity acts in bad faith.

(2) A person may not rely on section 173L or 173M in relation to a protected transaction if that person has dealt in bad faith with a water services entity in relation to the protected transaction.

(3) For the purpose of subsections (1) and (2),—

(a) a person is not regarded as acting in bad faith by reason only of the fact that, in relation to any protected transaction, the person knew or ought to have known of the existence of any of the states of affairs referred to in paragraphs (a) to (d) of section 173L(1); and

(b) a person must be presumed to have acted in good faith unless the contrary is proved.

Compare: 2002 No 84 s 119

173O Savings provision in respect of power of court

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

Compare: 2002 No 84 s 120

Establishment date

19 Section 200 amended (Interim review of governance and accountability arrangements under Act)

In section 200(2), replace "the establishment date (as defined in clause 1 of Schedule 1)" with "1 July 2026".

20 Section 201 amended (Comprehensive review of water services legislation)

In section 201(2), replace "the establishment date (as defined in clause 1 of Schedule 1)" with "1 July 2026".

21 Section 205 amended (Repeal of this subpart)

In section 205, replace "the establishment date (as defined in clause 1 of Schedule 1)" with "1 July 2026".

Directions for shared services

22 Section 206 amended (Engagement requirements)

(1) Before section 206(1)(a), insert:

(aaa) section 6A(8) (relating to setting by Order in Council establishment dates under section 6A for 1 or more water services entities):

(2) After section 206(1)(b), insert:

(ba) section 137B(1) (relating to giving a direction under section 137A for shared services):

(3) After section 206(1)(d), insert:

(da) clause 14 of Schedule 2A (relating to whether a finalised merger proposal should be implemented):

23 New section 206A

After section 206, insert:

206A Report on engagement

(1) This section applies when a water services entity or the Minister is undertaking engagement in accordance with a provision referred to in section 206(1).

(2) The water services entity or the Minister must, as soon as practicable after finalising any relevant statement, response, plan, strategy, or secondary legislation (**specified document**),—

(a) prepare a report on how input into, and feedback on, the specified document was considered and incorporated into the specified document; and

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

Community priority statements for water services

24 Section 207 amended (Consumer forum)

(1) After section 207(2)(c), insert:

(ca) assist the entity's regional representative group and, through that group, the entity, to understand views and priorities—

(i) about 1 or more water bodies in the entity's service area; and

(ii) stated in 1 or more community priority statements for water services (*see* subpart 4A of Part 4); and

(2) In section 207(4), after "and rural communities", insert ", and mana whenua,".

25 Section 208 amended (Consumer engagement stocktake)

After section 208(2)(b), insert:

(c) to set out how the entity will respond to views and priorities—

(i) about 1 or more water bodies in the entity's service area; and

(ii) stated in 1 or more community priority statements for water services (*see* subpart 4A of Part 4).

Regional representative group membership

26 Section 210 amended (Regulations)

Replace section 210(3) and (4) with:

(3) Regulations made under subsection (1)(a) in relation to the Northland and Auckland Water Services Entity must, despite sections 27(2) and (4) and 93(a)(i), provide that the entity's regional representative group consists of only the following regional representatives:

(a) 4 Auckland Council representatives:

(b) 4 mana whenua representatives appointed in respect of Tāmaki Makaurau (and that area, in this paragraph, means the district of the territorial authority in paragraph (a)):

(c) 1 representative each from Far North District Council, Kaipara District Council, and Whangarei District Council:

(d) 3 mana whenua representatives appointed in respect of Te Tai Tokerau (and that area, in this paragraph, means the districts of the territorial authorities in paragraph (c)).

(4) However, subsection (3) does not limit sections 27(2) and (4) and 93(a)(i) when the entity's model constitution is amended or replaced under section 97.

Transitional, savings, and related provisions

27 Schedule 1 amended

Establishment date and establishment period

(1) In Schedule 1, clause 1, replace the definitions of establishment date and establishment period with:

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

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

(a) starting on the date on which the entity is established under section 11 (as inserted by the Water Services Entities Amendment Act 2023); and

(b) ending on the entity's establishment date (as defined in this clause)

Disestablishment of former entities

(2) In Schedule 1, Part 1, before subpart 1, insert:

Subpart 1A—Disestablishment of former entities

1A Disestablishment of former entities

Disestablishment

(1) This clause disestablishes the 4 water services entities established on 15 December 2022 by section 11 of this Act as enacted.

Effect on former entity's establishment chief executive

(2) After the disestablishment of an entity mentioned in subclause (1), its establishment chief executive appointed under clause 4(4) of this schedule (in this Act as enacted)—

(a) no longer holds that position; but

(b) continues to be an employee of the department on the terms and conditions of employment mentioned in clause 4(4) of this schedule (in this Act as enacted), except to the extent (if any) that those terms and conditions are varied or replaced by agreement between the chief executive of the department and the establishment chief executive.

References to water services entities established under section 11 of this Act

(3) After the commencement of this clause, references in other legislation to water services entities under section 11 of this Act are, unless the context otherwise requires, references to water services entities under section 11 of this Act (as inserted by the Water Services Entities Amendment Act 2023).

(4) Subclause (3) applies even if the other legislation was enacted before the commencement of the Water Services Entities Amendment Act 2023.

Establishment board

(3) In Schedule 1, after clause 3(d), insert:

(da) the Minister must, after the commencement of this paragraph and before 1 July 2026, and subject to paragraph (dc), appoint an establishment board for each water services entity; and

(db) the Minister's appointment under paragraph (da) of the entity's establishment board—

(i) may take effect before or on the entity's establishment date; but

(ii) must take effect on or after 1 July 2024 and before or on 1 July 2026; and

(dc) any establishment board appointed, before this paragraph's commencement, for the Northern Water Services Entity (as established on 15 December 2022 by section 11 of this Act as enacted) is, after that commencement, taken to have been appointed on that commencement,

under paragraph (da), and on equivalent terms and conditions, as the establishment board for the Northland and Auckland Water Services Entity (as established under section 11 of this Act (as inserted by the Water Services Entities Amendment Act 2023)):

(4) In Schedule 1, replace clause 3(f) with:

(f) section 67 must be read as if it provided that a member of the board of a water services entity appointed by the Minister during the establishment period holds office until the second anniversary of the establishment date unless earlier ceasing to hold office under section 74, for example, because of being removed from office under section 70 by—

(i) the Minister (*see* paragraph (d) of this clause), during the establishment period; or

(ii) the board appointment committee, on or after the entity's establishment date.

Establishment chief executives

(5) In Schedule 1, replace clause 4 with:

4 Appointment of establishment chief executive

General

(1) The establishment board of a water services entity must appoint an establishment chief executive of the entity.

(2) The appointment required by subclause (1)—

(a) must be made in the entity's establishment period; and

(b) must take effect in the entity's establishment period; and

(c) is subject to section 121.

(3) The establishment chief executive is appointed for a term of office that ends at the close of the day that is 24 months after the entity's establishment date, unless the entity's establishment chief executive's term of office is earlier terminated by—

(a) the entity's establishment board, during the entity's establishment period; or

(b) the entity's board, on or after the entity's establishment date.

(4) Subclauses (1) to (3) are subject to subclauses (5) and (6).

Exception: Northland and Auckland Water Services Entity

(5) The Northland and Auckland Water Services Entity's establishment chief executive is the person who, immediately before the commencement of this clause, held under clause 4 of this schedule (in this Act as enacted) the position of the Northern Water Services Entity's establishment chief executive.

(6) Subclause (5) does not—

(a) prevent that person from ceasing to hold the position of Northland and Auckland Water Services Entity's establishment chief executive; or

(b) affect or limit clause 1A(2)(b) (under which that person continues to be an employee of the department on the terms and conditions of employment mentioned in clause 4(4) of this schedule (in this Act as enacted)), except to the extent (if any) that those terms and conditions are varied or replaced by agreement between the chief executive of the department and the establishment chief executive.

Allocation schedule

(6) In Schedule 1, heading to clause 5, replace "**chief executive**" with "**board**".

(7) In Schedule 1, clause 5(1) and (4)(b), replace "chief executive" with "board".

(8) In Schedule 1, clause 6(1) and (2), replace "chief executive" with "board".

(9) In Schedule 1, clause 6(3), definition of **should-not-transfer part**, paragraph (b), replace "chief executive" with "board".

Directions for shared services

(10) In Schedule 1, after clause 8, insert:

8A Directions for shared services

(1) A direction under section 137A may be given by being approved by the Minister before or during a water services entity's establishment period, and may come into force at the start of, or otherwise during, that period, if it is or is to be given to entities that are or include (or, when established under section 11 or by the water services entity, will be) either or both of—

(a) the water services entity:

(b) a subsidiary of the water services entity.

(2) A direction to which this clause applies—

(a) must be copied to the establishment board of the water services entity as soon as is practicable after whichever is the later of the time that the direction is approved by the Minister and the time that the entity is established under section 11; and

(b) is subject to sections 117(4), 137A to 137D, 206(1)(ba), and 206A.

(3) However, for a direction that is to be approved by the Minister before or during a water services entity's establishment period, section 137B(1) only requires engagement in accordance with section 206 with—

(a) the establishment boards of the water services entities, but only if those boards have been appointed under clause 3(da); and

(b) Taumata Arowai–the Water Services Regulator; and

(c) the Commission.

(4) A direction to which this clause applies that is approved by the Minister before a water services entity's establishment period expires and is revoked on 1 July 2027.

Establishment water services plan

(11) In Schedule 1, repeal clause 9(3).

Commission's functions and powers in establishment period

(12) In Schedule 1, clause 13(3), before "the entity", insert "the establishment board of".

Quarterly reports

(13) In Schedule 1, after clause 14(2), insert:

(3) Nothing in this clause requires a quarterly report to be provided in respect of any period before the date on which the appointment of the entity's establishment board under clause 3 of this schedule takes effect.

(14) In Schedule 1, after clause 15(2), insert:

(2A) Nothing in this clause requires an establishment period annual report to be provided in respect of any period before the date on which the appointment of the entity's establishment board under clause 3 of this schedule takes effect.

First infrastructure strategy, and first consumer engagement stocktake, of water services entity

(15) In Schedule 1, clause 16, replace "within 3 years after the establishment date" with "on a date that is 1 July in any of the 3 years that start on the entity's establishment date".

(16) In Schedule 1, after clause 16, insert:

16A First consumer engagement stocktake of water services entity

(1) This clause applies if a water services entity's establishment date is 1 January 2025 or 1 January 2026.

(2) A consumer stocktake is not required under section 208 for the entity's first financial year.

Obligation to offer employees position if role primarily relates to, or primarily supports, delivery of water services

(17) In Schedule 1, before clause 23(2), insert:

(1B) The chief executive of a water services entity may, with the prior written approval of the chief executive of the department, offer an employment position under subclause (1) to an employee of another water services entity if the employee works at all or any times in the service area of the entity with which the position will be offered.

(1C) This clause, and clauses 24 to 30, apply to an employee of another water services entity offered under subclause (1B) an employment position under subclause (1) as if—

(a) a reference to an existing employer (as that term is defined in clause 22) includes a reference to that other water services entity; and

(b) a reference to any kind of employment agreement includes a reference to that employee's employment agreement with that other water services entity.

(1D) Sections 19 to 25 of the Employment Relations Act 2000 apply to the workplace of an employee who is or may be offered an employment position under subclause (1).

Staff retention payment and references in conditions on visas granted under Immigration Act 2009

(18) In Schedule 1, after clause 27, insert:

27A Staff retention payment

(1) This clause applies to an employee who has accepted an offer of employment from the chief executive of a water services entity under clause 23(4).

(2) The water services entity may, on or after its establishment date, make a payment to the employee for the purpose of facilitating staff retention.

(3) The payment may be made subject to lawful conditions to help achieve that purpose.

(4) This clause does not limit a water services entity's ability to—

(a) initiate, enter into, and carry out bargaining for, or vary or renegotiate, an employment agreement; or

(b) provide payments, or other benefits of any kind, to employees.

27B References in conditions on visas granted under Immigration Act 2009

(1) This clause applies to a reference to a local authority in a condition imposed on a visa granted under the Immigration Act 2009 to a person who has accepted an offer of employment from the chief executive of a water services entity under clause 23(4).

(2) On and after the entity's establishment date, the reference must be read as a reference to the entity.

(19) In Schedule 1, before clause 28, insert:

27C Collective bargaining on behalf of water services entity with no establishment chief executive or chief executive

(1) This clause applies to a water services entity—

(a) that has not yet, or has, been established under section 11; and

(b) whose establishment chief executive has not been appointed (*see also* clause 4); and

(c) whose chief executive has not been appointed.

(2) The chief executive of the department may appoint in writing a person (a **bargaining agent**) to represent the entity by carrying out, on behalf of the entity, collective bargaining—

(a) under Part 5 of the Employment Relations Act 2000; and

(b) with 1 or more unions; and

(c) initiated by 1 or more unions under clause 28.

(3) The bargaining agent may, in or after the collective bargaining, enter into a collective employment agreement—

(a) on behalf of the entity (and, if applicable, on behalf of any 1 or more other entities also represented under this clause by the bargaining agent (*see* subclause (8))); and

(b) the parties to which may include 1 or more other entities represented under this clause by 1 or more other bargaining agents.

(4) Subclause (3) does not limit the generality of subclause (2).

(5) Nothing in this clause applies to any terms or conditions of employment of—

(a) an establishment chief executive of a water services entity; or

(b) a chief executive of a water services entity.

(6) After the appointment of an establishment chief executive of a water services entity takes effect, a bargaining agent appointed under this clause may continue to represent that entity under this clause only if, and only to the extent that, the bargaining agent has a written authorisation to do so given by the establishment chief executive.

(7) Any employment agreement negotiated and entered into by a bargaining agent who is representing a water services entity under this clause—

(a) binds a represented water services entity on and after its establishment date; but

(b) does not prevent the parties from varying or renegotiating the agreement, under this Act and the general law relating to employment relations.

(8) A bargaining agent may under this clause be appointed for, and represent, 2 or more water services entities if the requirements of this clause are met for each entity.

Decision making during establishment period

(20) In Schedule 1, before clause 31, insert:

30A Clauses 31 to 33 apply only for 2-year period

(1) This clause applies to powers or functions conferred, or duties imposed, by clauses 31 to 33.

(2) Those powers or functions may be exercised, and those duties may be carried out, only for the period that—

(a) starts on 1 July 2024; and

(b) ends on 1 July 2026.

(3) This clause does not limit any duty to carry out, on or after 1 July 2026, those duties to be carried out during that 2-year period.

(21) In Schedule 1,—

(a) the heading to clause 31, replace "**establishment**" with "**2-year**"; and

(b) clause 31(1), replace "establishment period" with "2-year period specified in clause 30A(2)"; and

(c) clause 31(2), replace "the establishment period" with "that 2-year period".

(22) In Schedule 1,—

(a) the heading to clause 32, replace "**establishment**" with "**2-year**"; and

(b) clause 32(3), replace "establishment period" with "2-year period specified in clause 30A(2)"; and

(23) In Schedule 1, clause 32(3)(b) and (c), replace "the water services entities" with "a water services entity".

(24) In Schedule 1, after clause 33(3), insert:

(4) However, if the decision is to adopt or amend a plan or policy under, or required by, the Local Government Act 2002, the department may—

(a) confirm under subclause (2)(a) the decision, to the extent that it is to adopt or amend 1 or more parts of the plan or policy; and

(b) decline to confirm under subclauses (2)(b) and (3) the decision, or require further information under subclause (2)(c) and then act under subclause (2)(a) or (b) in respect of the decision, to the extent that it is to adopt or amend 1 or more other parts of the plan or policy.

Payment provisions

(25) In Schedule 1, replace clause 36(2)(c) with:

(c) made under that package's "no worse off" component; and

Water services entities and their service areas

28 Schedule 2 replaced

Replace Schedule 2 with the Schedule 2 set out in Schedule 1 of this Act.

Merger of water services entities

29 New Schedule 2A inserted

After Schedule 2, insert the Schedule 2A set out in Schedule 2 of this Act.

Part 2
Amendments to other legislation

Subpart 1—Amendment to Financial Markets Conduct Act 2013

30 Principal Act

This subpart amends the Financial Markets Conduct Act 2013.

31 Section 6 amended (Interpretation)

In section 6(1), definition of **local authority**, after "*see also* section 8 of the Local Government Borrowing Act 2011", insert "and section 173E of the Water Services Entities Act 2022".

Subpart 2—Amendment to Goods and Services Tax Act 1985

32 Principal Act

This subpart amends the Goods and Services Tax Act 1985.

33 Section 78I amended (Support package payment made by water services entity to be zero-rated)

Replace section 78I(2)(c) with:

(c) made under that package's "no worse off" component; and

Subpart 3—Amendment to Income Tax Act 2007

34 Principal Act

This subpart amends the Income Tax Act 2007.

35 Section YA 1 amended (Definitions)

In section YA 1, definition of **local authority**, after paragraph (b)(ix), insert:

(ixa) the Funding Agency as defined in section 173B of the Water Services Entities Act 2022 while it is a subsidiary of 1 or more water services entities (as defined in section 6 of that Act):

Subpart 4—Amendments to Local Government Act 2002

36 Principal Act

This subpart amends the Local Government Act 2002.

37 Schedule 1AA amended

Deferring review of water services bylaws during transition period

(1) In Schedule 1AA, clause 24, replace the definitions of **establishment date** and **transition period** with:

transition period means the period—

(a) starting on 15 December 2022; and

(b) ending on 1 July 2026

(2) In Schedule 1AA, clause 24, insert in their appropriate alphabetical order:

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

water services reform means—

(a) the establishment of water services entities to deliver water services in accordance with the Water Services Entities Act 2022; and

(b) the transfer of interests in, and the ownership of, infrastructure assets from local government organisations to the water services entities.

(3) In Schedule 1AA, clause 25(4) and (5), replace "the second anniversary of the establishment date" with "1 July 2028".

Duty to identify before 1 January 2024 specified water services bylaws

(4) In Schedule 1AA, repeal clause 26.

Long-term planning if water services entity's establishment date is 1 July 2024

(5) In Schedule 1AA, replace the cross-heading above clause 27 with "*Long-term planning if water services entity's establishment date is 1 July 2024*".

(6) In Schedule 1AA, heading to clause 27, after "**period**", insert "**if, and only to extent that, territorial authority's district is in service area of water services entity with establishment date of 1 July 2024**".

(7) In Schedule 1AA, before clause 27(1), insert:

(1AA) This clause applies—

(a) only if a territorial authority's district is wholly or partly in the service area of a water services entity with an establishment date (under section 6A(4) or (5) of the Water Services Entities Act 2022) of 1 July 2024; and

(b) only to the extent that the content mentioned in subclause (2) relates to water services in that entity's service area.

(8) In Schedule 1AA, clause 27(2), after "the establishment period", insert "(as defined in clause 1 of Schedule 1 of the Water Services Entities Act 2022) of the water services entity specified in subclause (1AA)".

Planning or reporting documents if water services entity's establishment date is 1 October 2024 to 1 July 2026

(9) In Schedule 1AA, after clause 27, insert:

Planning or reporting documents if water services entity's establishment date is 1 October 2024 to 1 July 2026

28 Content relating to water services in planning or reporting documents if, and only to extent that, territorial authority's district is in service area of water services entity with establishment date of 1 October 2024 to 1 July 2026

Application

(1) Clauses 29 to 37 apply—

(a) only if a territorial authority's district is wholly or partly in the service area of a water services entity with an establishment date (under section 6A(4) or (5) of the Water Services Entities Act 2022) on or after 1 October 2024 and before or on 1 July 2026; and

(b) only to the extent that the water services content of the documents mentioned in subclause (2) relates to water services in that entity's service area.

Modified planning or reporting obligations

(2) Clauses 29 to 37 specify the territorial authority's modified obligations under Part 6 of this Act to prepare, consult on, adopt, amend, or replace planning or reporting documents relating to water services for the 2024/25 and 2025/26 financial years.

(3) Those obligations are modified because the Water Services Entities Act 2022 requires territorial authority responsibilities relating to water services to be transferred to water services entities during those financial years.

Local government organisations' responsibility for providing water services

(4) Before the entity's establishment date, a local government organisation provides water services in its district (to the extent that it is part of the entity's service area) under the law in force immediately before 1 July 2024 (*see* section 6A(2) of the Water Services Entities Act 2022).

(5) On and after that date, a local government organisation ceases to provide water services in its district (to the extent that it is part of the entity's service area).

(6) In preparing a long-term plan or annual plan in accordance with clauses 29 to 37, a local authority must plan to at least maintain the levels of service for water services that were planned to be provided by that local authority in the 2023/24 financial year.

(7) Clauses 29 to 37 apply, without limitation, even if—

(a) different parts of a territorial authority's district are included in the service areas of different water services entities; and

(b) those water services entities have different establishment dates.

Meaning of water services

(8) In this clause and clauses 29 to 37, **water services** includes, without limitation, the following activities:

(a) water supply:

(b) sewerage and the treatment and disposal of sewage:

(c) stormwater drainage.

(9) Under clause 2(2)(a) to (c) of Schedule 10 (long-term plans, annual plans, and annual reports), each of those activities is a group of activities in Schedule 10.

29 Decision making and consultation

(1) This clause applies to conduct by or on behalf of a local authority if that conduct is—

(a) required under the Water Services Entities Act 2022; or

(b) required to give effect to the water services reform.

(2) The conduct is not subject to sections 76 to 82 of this Act.

30 Significance and engagement policy

(1) This clause applies to a significance and engagement policy—

(a) under section 76AA; and

(b) adopted by a local authority.

(2) The local authority may amend the policy, to the extent the local authority considers necessary or desirable as a consequence of the water services reform, without having to consult under section 76AA(5).

31 Long-term plan to take effect for all or any of 2024/2034, and related documents

(1) A long-term plan (under section 93 and Part 1 of Schedule 10) to take effect for all or any of the 2024/2034 financial years (a **specified long-term plan**), and associated material or documentation (including a consultation document), must explain to communities the following matters:

(a) water services are to be transferred from the local authority to a water services entity during the 2024/25 and 2025/26 financial years:

(b) the implications of, and any significant risks associated with, the transfer (including financial implications and risks):

(c) how the council is planning to deal with the implications of, and any significant risks associated with, the transfer (including financial implications and risks).

(2) In particular, section 93(7)(b) and clause 17(c)(ii) of Schedule 10 do not require a local authority to estimate the potential effects on the financial estimates provided of any uncertainty relating to the water services reform.

(3) A consultation document that is prepared under sections 93A to 93C in relation to a specified long-term plan must include a statement to the effect that—

(a) the Water Services Entities Act 2022 requires the transfer of water services to a water services entity; and

(b) that transfer is therefore not a matter for consultation by the local authority.

(4) If the transfer of water services from a local authority to a water services entity occurs on or after 1 October 2024 and before or on 1 July 2026, requirements under sections 93(5), 93D, and 94(2) relating to amendments to a specified long-term plan do not apply to matters related to that transfer.

(5) In particular, a local authority may (despite sections 76 to 82A) amend its specified long-term plan without consultation in relation to matters related to that transfer.

32 Requirements under clauses of Part 1 of Schedule 10

(1) The information specified in the following clauses of Part 1 of Schedule 10 must cover, with respect to water services, only the first 2 financial years of a long-term plan (under section 93 and Part 1 of Schedule 10) to take effect for all or any of the 2024/34 financial years:

(a) clause 3 (capital expenditure for groups of activities):

(b) clause 4 (statement of intended levels of service provision), except that no information with respect to water services is required under clause 4(a) of Schedule 10:

(c) clause 5 (funding impact statement for groups of activities):

(d) clause 12 (forecast financial statements):

(e) clause 15 (funding impact statements).

(2) However, subclause (1) requires that information for the 2025/26 financial year only if a local authority will be providing water services for all or any of that year.

33 Annual plan

(1) An annual plan (under section 95) must include information about water services for the 2024/25 or 2025/26 financial year even if during that year a local authority may or does cease to provide water services in its district (to the extent that it is part of the entity's service area).

(2) However, subclause (1) does not apply to the 2025/26 financial year if a local authority's responsibilities for water services will be or are transferred to a water services entity before that year starts.

(3) Section 95(2) does not apply to a local authority if the only significant or material differences relate to a change in the timing of the implementation of water services reform, or the application of the Water Services Entities Act

2022, from the time frames anticipated in a long-term plan (under section 93 and Part 1 of Schedule 10) to take effect for all or any of the 2024/34 financial years.

34 Certain decisions to be taken only if provided for in long-term plan

(1) This clause applies to conduct by or on behalf of a local authority that is required—

(a) under the Water Services Entities Act 2022; or

(b) to give effect to the water services reform.

(2) The conduct is not subject to any requirements in section 97.

35 Annual report

(1) An annual report (under section 98) must include information about water services for the 2024/25 or 2025/26 financial year even if during that year a local authority may or does cease to provide water services in its district (to the extent that it is part of the entity's service area).

(2) However, a local authority must include in the annual report the information required by clauses 23, 24, 25, and 26 of Schedule 10 only—

(a) from the start of a financial year mentioned in subclause (1); and

(b) until the local authority ceases to provide water services.

36 Balanced budget requirement

(1) This clause applies to a loss—

(a) of a local authority; and

(b) arising from the transfer of assets and liabilities from the local authority to a water services entity.

(2) The loss must be disregarded in determining whether the local authority complies with section 100(1).

37 Infrastructure strategy

(1) This clause applies to a local authority's infrastructure strategy (under section 101B) prepared and adopted as part of a long-term plan (under section 93 and Part 1 of Schedule 10) of the local authority to take effect for all or any of the 2024/34 financial years.

(2) The local authority is not required to include information about water services in the infrastructure strategy.

Budget, and unapplied rates revenue, for water services

38 Budget, and unapplied rates revenue, for water services

Application

(1) This clause applies if—

(a) a territorial authority's district is wholly or partly in the service area of a water services entity with an establishment date (under section 6A(4) or (5) of the Water Services Entities Act 2022) in a financial year; and

(b) the territorial authority is, under section 6A(2) of the Water Services Entities Act 2022, to provide water services in its district for any part of that financial year.

Annual plan budget and funding impact statement

(2) The territorial authority must provide in its annual plan budget and funding impact statement for water services to be provided by the territorial authority in that district for all of that financial year.

Transfer of unapplied rates revenue

(3) As soon as is reasonably practicable after the establishment date, the territorial authority must transfer to the water services entity any unapplied rates revenue that has been collected for the financial year and in accordance with clause 4 of Schedule 1AA of the Local Government (Rating) Act 2002.

Wellington Regional Council

(4) This clause—

(a) applies to Wellington Regional Council as if it were a territorial authority; and

(b) requires that council to transfer to the Wellington Water Services Entity any unapplied charges paid to that council by constituent local authorities for the financial year for water supplied to those authorities under the Wellington Regional Water Board Act 1972.

Related provision

(5) *See also* clause 4 of Schedule 1AA of the Local Government (Rating) Act 2002.

39 Development contributions and financial contributions relating to water services infrastructure

Application

(1) This clause applies if—

(a) a territorial authority's district is wholly or partly in the service area of a water services entity with an establishment date (under section 6A(4) or (5) of the Water Services Entities Act 2022) in a financial year; and

(b) the territorial authority is, under section 6A(2) of the Water Services Entities Act 2022, to provide water services in its district for any part of that financial year.

Development contributions and financial contributions

(2) The territorial authority may, until that establishment date,—

(a) include, in a development contributions policy of the territorial authority (for example, in a schedule of that policy), requirements relating to development contributions or financial contributions and water services infrastructure:

(b) identify, in a development contributions policy, capital expenditure for the purposes of calculating development contributions or financial contributions in respect of, or in respect of groups of, water services infrastructure assets—

(i) not provided for in the authority's long-term plan; and

(ii) expected to be constructed by that entity on or after that establishment date:

(c) require, under a development contributions policy (for example, under a schedule of that policy), development contributions or financial contributions for the water services infrastructure the territorial authority has been planning to provide:

(d) require development contributions or financial contributions for capital expenditure relating to water services infrastructure that may or will be incurred in future (even if, and to the extent that, that capital expenditure will be incurred after that establishment date):

(e) include, in a schedule (of assets for which development contributions will be used) required under section 201A, water services infrastructure assets to be constructed by that entity wholly or partly on or after that establishment date.

Reviewing development contributions policies

(3) Section 106(6) does not apply to the parts of a development contributions policy of the territorial authority that relate to water services infrastructure.

Effect on other provisions of this Act about development contributions or financial contributions

(4) Other provisions of this Act about development contributions or financial contributions must be read as modified as necessary to give effect to this clause.

Definitions

(5) In this clause,—

development contributions has, as provided in the definition of that term in section 5(1) of this Act, the meaning set out in section 197(2) of this Act

development contributions policy, for a territorial authority, means a policy—

(a) on development contributions or financial contributions; and

(b) adopted by the territorial authority under section 102 of this Act

financial contributions has the meaning given to it by section 108(9) of the Resource Management Act 1991.

Chatham Islands Council

40 Chatham Islands Council not subject to specified clauses

None of the following clauses of this schedule apply to the Chatham Islands Council:

(a) clause 25 (review under section 158 or 159 of water services bylaws may be deferred during transition period):

(b) clause 27 (long-term planning to exclude water services during establishment period if, and only to extent that, territorial authority's district is in service area of water services entity with establishment date of 1 July 2024):

(c) clauses 28 to 37 (content relating to water services in planning or reporting if, and only to extent that, territorial authority's district is in service area of water services entity with establishment date of 1 October 2024 to 1 July 2026):

(d) clause 38 (budget, and unapplied rates revenue, for water services):

(e) clause 39 (development contributions and financial contributions relating to water services infrastructure).

Subpart 5—Amendments to Local Government (Rating) Act 2002

38 Principal Act

This subpart amends the Local Government (Rating) Act 2002.

39 Schedule 1AA amended

In Schedule 1AA, after clause 3, insert:

Part 2
Provisions relating to Water Services Entities Amendment Act 2023

4 Rates for water services

Application

(1) This clause applies if—

(a) a territorial authority's district is wholly or partly in the service area of a water services entity with an establishment date (under section 6A(4) or (5) of the Water Services Entities Act 2022) in a financial year; and

(b) the territorial authority is, under section 6A(2) of the Water Services Entities Act 2022, to provide water services in its district for any part of that financial year.

Rates

(2) The territorial authority must assess, set, and collect rates, and recover unpaid rates (subject to any remission, postponement, or writing off of rates), for water services to be provided by the territorial authority in that district for all of that financial year.

Related provision

(3) *See also* clause 38 of Schedule 1AA of the Local Government Act 2002.

5 Section 21 modified (Certain rates must not exceed 30% of total rates revenue)

Local authorities to which clause applies

(1) This clause applies to a local authority that—

(a) will provide water services after 1 July 2024; and

(b) will cease to provide water services before or on 1 July 2026.

(2) This clause does not apply to a local authority that is—

(a) a local authority whose district is wholly or partly in the service area of a water services entity with an establishment date (under section 6A(4) or (5) of the Water Services Entities Act 2022) of 1 July 2024; or

(b) the Chatham Islands Council.

Modification

(3) The local authority may, after the commencement of this clause and despite section 21(1), seek rates revenue in the 2024/25, 2025/26, or 2026/27 financial year from section 21(2) rates that exceeds 30% of the total revenue from all rates sought by the local authority for that year.

(4) However, a local authority may rely on subclause (3) in a financial year only if the proportion of its rates income from section 21(2) rates in that financial year does not exceed the proportion of its rates income from section 21(2) rates in the last year in which it provided water services.

(5) For the purposes of subclause (4), the proportion of the local authority's rates income from section 21(2) rates in that financial year must be calculated as if—

(a) the local authority were seeking in that financial year the same proportion of section 21(3) rates as it sought in the last year in which it provided water services; and

(b) the local authority's rates income from all rates in that financial year included the same proportion of section 21(3) rates as it sought in the last year in which it provided water services.

Example

The effect of the limit in subclause (4) is illustrated in the following example.

Equation item (Rates)	Section	Last year	Financial year	Proportion
A = Uniform annual general charges (excluding water supply or sewage disposal rates)	21(2)(a)	1,000	1,000	10.10%
B = Uniform targeted rates (excluding water supply or sewage disposal rates)	21(2)(b)	1,950	1,950	19.60%
C = Uniform targeted rates for water supply or sewage disposal	21(3)	2,000	[2,000]	[20.10]%
D = All other rates		5,000	5,000	50.25%
E = Total rates	21(1)	9,950	7,950	100.00%
Percentage of total revenue from all rates				
(A + B) / E <= 30%		29.6%	37.1%	

Definitions

(6) In this clause,—

section 21(2) rates means the rates described in section 21(2), other than section 21(3) rates

section 21(3) rates means targeted rates that are set solely for water supply or sewage disposal.

Chatham Islands Council

6 Chatham Islands Council not subject to specified clauses

The following clauses of this schedule do not apply to the Chatham Islands Council:

(a) clause 4 (rates for water services):

(b) clause 5 (section 21 modified (certain rates must not exceed 30% of total rates revenue)).

Subpart 6—Amendments to Local Government (Financial Reporting and Prudence) Regulations 2014

40 Principal regulations

This subpart amends the Local Government (Financial Reporting and Prudence) Regulations 2014.

41 Schedule 1 amended

(1) In Schedule 1, before clause 1, insert:

Part 1
Provisions relating to these regulations as made

(2) In Schedule 1, after clause 3, insert:

Part 2
Provisions relating to Water Services Entities Act 2022

4 Information about core assets to be disclosed in financial statements in annual report

(1) This clause applies to the disclosures of information required by regulation 6(3) in respect of the assets referred to in regulation 6(2)(a) to (c).

(2) Those disclosures must be included in a local authority's annual report if the local authority continues to own the assets concerned for the full financial year covered by that report.

(3) Those disclosures need not be included in a local authority's annual report for the financial year in which the assets concerned are transferred to a water services entity if those assets are transferred at any time other than on the last day of that financial year.

5 Funding impact statements

(1) This clause applies to a local authority affected by the transfer of water services to a water services entity.

(2) The local authority is not required to disclose the costs and revenues associated with that transfer in a funding impact statement prepared under these regulations (*see* regulation 7(1) to (5)).

6 Balanced budget benchmark

For the purposes of regulation 19, revenue and operating expenses exclude any amount (for example, any amount of revenue) relating to the transfer—

(a) of assets, liabilities, or other matters; and

(b) from a local authority to a water services entity; and

(c) for the purposes of establishing a water services entity.

7 Chatham Islands Council not subject to specified clauses

The following clauses of this schedule do not apply to the Chatham Islands Council:

(a) clause 4 (information about core assets to be disclosed in financial statements in annual report):

(b) clause 5 (funding impact statements):

(c) clause 6 (balanced budget benchmark).

42 Schedule 4 amended

In Schedule 4, after Note 3(2), insert:

(3) However, the balanced budget benchmark (*see* regulation 19) is subject to clause 6 of Schedule 1 (which relates to the transfer of assets, liabilities, or other matters from a local authority to a water services entity).

43 Schedule 5 amended

In Schedule 5, before the heading "**Essential services benchmark**", insert:

However, the balanced budget benchmark (*see* regulation 19) is subject to clause 6 of Schedule 1 (which relates to the transfer of assets, liabilities, or other matters from a local authority to a water services entity).

44 Schedule 6 amended

In Schedule 6, before the heading "**Essential services benchmark**", insert:

However, the balanced budget benchmark (*see* regulation 19) is subject to clause 6 of Schedule 1 (which relates to the transfer of assets, liabilities, or other matters from a local authority to a water services entity).

Subpart 7—Amendments to Taumata Arowai–the Water Services Regulator Act 2020

45 Principal Act

This subpart amends the Taumata Arowai–the Water Services Regulator Act 2020.

46 Section 4 amended (Interpretation)

(1) In section 4, definition of **Te Mana o te Wai**, paragraph (b), replace "section 2(1) of the Resource Management Act 1991" with "this section".

(2) In section 4, insert in its appropriate alphabetical order:

water—

(a) has the same meaning as in section 2(1) of the Resource Management Act 1991; but

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

Subpart 8—Amendments to Water Services Act 2021

47 Principal Act

This subpart amends the Water Services Act 2021.

48 Section 5 amended (Interpretation)

In section 5, insert in its appropriate alphabetical order:

water—

(a) has the same meaning as in section 2(1) of the Resource Management Act 1991; but

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

49 Section 14 amended (Te Mana o te Wai: meaning, application, effect)

In section 14(1)(b), replace "section 2(1) of the Resource Management Act 1991" with "section 5 of this Act".

50 Section 201 amended (Levy)

(1) In section 201(2A), replace "the establishment period (as defined in clause 1 of Schedule 1 of the Water Services Entities Act 2022)" with "the period starting on 1 July 2024 and ending on 1 July 2026".

(2) In section 201(2B), replace "the establishment date (as defined in clause 1 of Schedule 1 of the Water Services Entities Act 2022)" with "1 July 2026".

Schedule 1
New Schedule 2 of Water Services Entities Act 2022

s 28

Schedule 2
Water services entities and their service areas

s 11

Part 1
Northland and Auckland Water Services Entity

The Northland and Auckland Water Services Entity's service area is the districts of the following territorial authorities:

- Far North District Council:
- Kaipara District Council:
- Whangarei District Council:
- Auckland Council.

Part 2
Waikato Water Services Entity

The Waikato Water Services Entity's service area is the districts of the following territorial authorities:

- Hamilton City Council:
- Hauraki District Council:
- Matamata-Piako District Council:
- Ōtorohanga District Council:
- South Waikato District Council:
- Taupo District Council:
- Thames-Coromandel District Council:
- Waikato District Council:
- Waipa District Council:
- Waitomo District Council.

Part 3
Bay of Plenty Water Services Entity

The Bay of Plenty Water Services Entity's service area is the districts of the following territorial authorities:

- Rotorua District Council:
- Kawerau District Council:
- Ōpōtiki District Council:
- Tauranga City Council:
- Western Bay of Plenty District Council:
- Whakatane District Council.

Part 4
Taranaki Water Services Entity

The Taranaki Water Services Entity's service area is the districts of the following territorial authorities:

- New Plymouth District Council:
- South Taranaki District Council:
- Stratford District Council.

Part 5
Manawatū-Whanganui Water Services Entity

The Manawatū-Whanganui Water Services Entity's service area is the districts of the following territorial authorities:

- Ruapehu District Council:
- Whanganui District Council:
- Rangitikei District Council:
- Manawatu District Council:
- Palmerston North City Council:
- Tararua District Council:
- Horowhenua District Council.

Part 6
Gisborne and Hawke's Bay Water Services Entity

The Gisborne and Hawke's Bay Water Services Entity's service area is the districts of the following territorial authorities:

- Gisborne District Council:
- Wairoa District Council:
- Central Hawke's Bay District Council:
- Hastings District Council:
- Napier City Council.

Part 7
Wellington Water Services Entity

The Wellington Water Services Entity's service area is the districts of the following territorial authorities:

- Wellington City Council:
- Porirua City Council:
- Kapiti Coast District Council:
- South Wairarapa District Council:
- Carterton District Council:
- Masterton District Council:
- Hutt City Council:
- Upper Hutt City Council.

Part 8
Nelson, Tasman, and Marlborough Water Services Entity

The Nelson, Tasman, and Marlborough Water Services Entity's service area is the districts of the following territorial authorities:

- Tasman District Council (excluding those parts included in the service area of the Canterbury and the West Coast Water Services Entity under Part 9 of this schedule):
- Nelson City Council:
- Marlborough District Council (excluding those parts included in the service area of the Canterbury and the West Coast Water Services Entity under Part 9 of this schedule).

Part 9
Canterbury and the West Coast Water Services Entity

The Canterbury and the West Coast Water Services Entity's service area is the following:

- the parts of the districts of the following territorial authorities within the boundaries of the takiwā of Ngāi Tahu as described in section 5 of Te Runanga o Ngai Tahu Act 1996:
    - Tasman District Council:
    - Marlborough District Council; and
- the districts of the following territorial authorities:
    - Buller District Council:
    - Grey District Council:

- Westland District Council:
- Kaikoura District Council:
- Hurunui District Council:
- Waimakariri District Council:
- Christchurch City Council:
- Selwyn District Council:
- Ashburton District Council:
- Timaru District Council:
- Waimate District Council:
- Mackenzie District Council:
- Waitaki District Council.

Part 10
Otago and Southland Water Services Entity

The Otago and Southland Water Services Entity's service area is the districts of the following territorial authorities:

- Dunedin City Council:
- Clutha District Council:
- Central Otago District Council:
- Queenstown-Lakes District Council:
- Gore District Council:
- Southland District Council:
- Invercargill City Council.

Schedule 2
New Schedule 2A of Water Services Entities Act 2022

s 29

Schedule 2A
Merger of water services entities

s 19A

Purpose of merger provisions

1 Purpose of water services entities merger provisions

The purpose of the water services entities merger provisions of this Act is to help achieve this Act's purpose (*see* section 3) by enabling mergers that improve water services governance.

Requirement for shared boundaries

2 Entities cannot merge unless they have some shared boundaries

(1) Water services entities cannot merge unless, before their merger, every entity in the merger shares some of its boundary with that of at least 1 other entity in the merger.

(2) For the purposes of this clause, a water services entity's boundary is the boundary of the area identified in Schedule 2 as the service area of the entity.

(3) No provision of this schedule permits a merger proposal contrary to this clause.

Request for merger proposal

3 Request to water services entity's regional representative group

A request for a merger proposal may be made to a water services entity's regional representative group.

4 Who may make request

The request may only be made by all or any of the following:

(a) the entity's board:

(b) a territorial authority owner:

(c) a mana whenua representative on the regional representative group:

(d) a consumer forum established by the entity:

(e) a Crown observer, Crown review team, or Crown manager appointed under subpart 2 of Part 5 of this Act, if that observer, team, or manager considers a merger is necessary or desirable to address a problem within the meaning of that term in section 179 of this Act.

5 Requirements for request

(1) The request must be made in writing.

(2) The request must include the following information:

(a) the name of each person who made the request:

(b) the name of each other water services entity that is proposed to be part of the requested merger, and an explanation of how it complies with clause 2:

(c) an explanation of why the merger is being requested.

6 What group must do after receiving request

Promptly after receiving a request, the regional representative group must—

(a) notify the entity's board and territorial authority owners that the group has received a request for a merger proposal; and

(b) publish a notice that the group has received a request for a merger proposal, for at least 20 working days, on an Internet site maintained by, or on behalf of, the entity in a format that is readily accessible; and

(c) engage with the boards and regional representative groups of every water services entity about the request for a merger proposal; and

(d) consider any feedback received, and make any changes to the request for a merger proposal that the group considers necessary; and

(e) make (in accordance with section 30) a decision of the group about whether the entity's board should prepare a merger proposal.

7 Group's decision on request, and group's reasons, must be notified

(1) The regional representative group must notify the group's decision on a request, together with the group's reasons for that decision, to—

(a) the entity's board and territorial authority owners; and

(b) the monitor; and

(c) the person or people who made the request.

(2) The regional representative group must also notify publicly the group's decision on a request, together with the group's reasons for that decision, for at least 20 working days, on an Internet site maintained by, or on behalf of, the entity in a format that is readily accessible.

Preparation of merger proposal

8 When entity's board must prepare merger proposal

(1) This clause applies if a regional representative group's decision under clause 6(e) is that the entity's board should prepare a merger proposal.

(2) The entity's board must prepare a merger proposal.

9 Contents of merger proposal

The merger proposal must include the following information:

(a) information about the underlying problem or opportunity that the merger is proposed to address, supported by available evidence:

(b) information about all other practical options to address the problem or opportunity the merger is proposed to address:

(c) information about the costs and benefits associated with the proposed merger:

(d) information about all material impacts and risks relating to the proposed merger, including possible unintended consequences:

(e) a recommendation about whether to proceed with the merger proposal.

10 Engagement

In preparing the merger proposal, the board must engage with any water services entity that is proposed to be part of the requested merger.

11 Collaboration and information reasonably required

If a water services entity is proposed to be part of the requested merger, the entity's board and chief executive must—

(a) work collaboratively on preparing the merger proposal with the board that is preparing the merger proposal; and

(b) provide any information that is reasonably requested by that board to help that board to prepare the merger proposal.

12 Further requirements for preparing merger proposal

In preparing the merger proposal, the board must—

(a) provide a draft merger proposal to—

(i) the monitor:

(ii) Taumata Arowai–the Water Services Regulator:

(iii) the Commission:

(iv) any water services entity that is proposed to be part of the requested merger:

(b) consider any feedback received, and make any changes to the draft merger proposal that the board considers necessary:

(c) finalise the merger proposal:

(d) notify the finalised merger proposal publicly, for at least 20 working days, on an Internet site maintained by, or on behalf of, the entity in a format that is readily accessible:

(e) provide the finalised merger proposal to—

(i) the monitor:

(ii) Taumata Arowai–the Water Services Regulator:

(iii) the Commission:

(iv) the entity's regional representative group:

(v) the entity's territorial authority owners:

(vi) any water services entity that is proposed to be part of the requested merger.

Engagement and decision on merger proposal

13 Application to water services entity's regional representative group

Clauses 14 to 17 apply to a water services entity's regional representative group if a finalised merger proposal is provided to that group and to that entity under clause 12(e)(iv) and (vi).

14 Engagement on merger proposal

(1) The group must engage in accordance with sections 206 and 209 with interested persons in the entity's service area in relation to whether the finalised merger proposal should be implemented.

(2) Sections 206 and 209 apply, for the purposes of this clause, as if the group were the entity.

15 Decision on merger proposal

(1) After complying with clause 14, the group must (in accordance with section 30) decide whether the proposal should be implemented.

(2) In deciding under this clause whether the proposal should be implemented, the group must have regard to the factors in clause 16.

16 Factors group must have regard to when deciding whether proposal should be implemented

In deciding under clause 15 whether the proposal should be implemented, the group must have regard to—

(a) the purpose of a water services entities merger set out in clause 1; and

(b) the implications of any changes to governance arrangements that might result from the proposed merger; and

(c) any problem identified by any Crown observer, Crown review team, or Crown manager who made the request for a merger; and

(d) any other problems, and any opportunities, to be addressed by the proposed merger; and

(e) the costs and benefits associated with the proposed merger; and

(f) the views expressed in engagement by consumers and communities about the proposed merger; and

(g) any other factor relevant to the purpose set out in clause 1.

17 Group's decision, and group's reasons, must be notified

(1) The group must notify the group's decision on a merger proposal, together with the group's reasons for that decision, to—

(a) the entity's board and territorial authority owners; and

(b) the monitor.

(2) The group must also notify publicly the group's decision on a merger proposal, together with the group's reasons for that decision, for at least 20 working days, on an Internet site maintained by, or on behalf of, the entity in a format that is readily accessible.

Implementation of merger

18 Implementation of merger

A finalised merger proposal is to be implemented only if every regional representative group to which clauses 14 to 17 apply in relation to that proposal decides to implement the merger proposal.

19 Merger implementation board and apportionment of costs

If a finalised merger proposal is to be implemented, the board of every water services entity that is proposed to be part of the requested merger must—

(a) appoint a merger implementation board with at least 2 members from the board of each such entity, together with an independent chairperson; and

(b) agree how to apportion the costs associated with the merger (including any costs associated with the merger implementation board).

20 Functions of merger implementation board

The merger implementation board has the following functions:

(a) to prepare a merger implementation plan:

(b) to oversee and manage the process for establishing the new entity:

(c) to perform any other functions agreed by the board of every water services entity that is proposed to be part of the requested merger.

21 Merger implementation plan

A merger implementation plan must include—

(a) the anticipated date on which the new entity will be established:

(b) the processes, policies, and guidance for identifying the functions, staff, and assets, liabilities, and other matters to be transferred to the new entity:

(c) the proposed timing for the transfer of functions, staff, and assets, liabilities, and other matters to the new entity:

(d) the processes, and required timing, for preparing and adopting for the new entity the following:

(i) an initial asset management plan:

(ii) an initial funding and pricing plan:

(iii) an initial infrastructure strategy:

(iv) a constitution:

(v) relationship agreements:

(e) the processes, policies, and timing for the reconciliation of the finances of the entities to be merged:

(f) identification of any risks relating to the merger, and of how those risks will be mitigated:

(g) the processes, policies, and guidance for communication about the merger process:

(h) any other matters that the merger implementation board considers relevant.

22 Boards of entities proposed to be part of requested merger must give effect to plan

(1) This clause applies to—

(a) the boards of the water services entities proposed to be part of the requested merger; and

(b) the merger implementation plan (as adopted, and amended or replaced, by the merger implementation board).

(2) Those boards must give effect to that plan.

23 Quarterly progress report to boards of entities proposed to be part of requested merger

(1) The merger implementation board must provide a quarterly progress report to the board of each entity proposed to be part of the requested merger.

(2) The report must include any information required for the report by the merger implementation plan (as adopted, and amended or replaced, by the merger implementation board).

24 Order in Council to give effect to requested merger

(1) A merger implementation plan—

(a) is given effect to by Order in Council made on the recommendation of the Minister; and

(b) has effect on and after the date or dates specified for that purpose by that Order in Council (as required by subclause 4(a)).

(2) The merger implementation board may recommend to the Minister that the requested merger be given effect to by Order in Council.

(3) After receiving a recommendation under subclause (2), the Minister must recommend the making of an Order in Council under subclause (1) unless the Minister is satisfied, on reasonable grounds, that the process followed to result in the recommendation under subclause (2) was not in accordance with this Act and the merger implementation plan.

(4) An Order in Council made under subclause (1)—

(a) must specify the date or dates on which its provisions come into effect (and the specified date or dates must not be before 1 July 2026); and

(b) must provide for—

(i) the establishment of the new water services entity (including, without limitation, the appointment of the establishment board for that entity); and

(ii) the disestablishment of the water services entities to be merged; and

(c) must amend Schedule 2 to reflect—

(i) the name and service area of the new water services entity that is established; and

(ii) the disestablishment of the water services entities to be merged; and

(d) must amend section 3(2)(a) to reflect the total number of water services entities after the merger; and

(e) must specify how shares in the new water services entity are to be allocated to each territorial authority owner based on the population of its district or part district (*see also* section 16); and

(f) may suspend any statutory requirement that an affected water services entity would otherwise be subject to if the merger would make compliance with the statutory requirement unnecessary or inappropriate; and

(g) brings into operation the provisions in clauses 25 to 35.

(5) An Order in Council giving effect to a merger implementation plan is not invalid merely because it is inconsistent with the provisions of the merger implementation plan if the inconsistency relates to—

(a) corrections of clerical, grammatical, or typographical errors; or

(b) the inclusion of provisions that are necessary to give legal effect to the merger implementation plan; or

(c) the omission of explanatory material or other material that is not necessary to give legal effect to the merger implementation plan; or

(d) matters of a format or referential nature that do not alter the substance or effect of the merger implementation plan.

(6) An order made under subclause (1) is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Compare: 2002 No 84 s 25

Legislation Act 2019 requirements for secondary legislation made under this section		
Publication	PCO must publish it on the legislation website and notify it in the *Gazette*	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Effect of merger and disestablishment

25 Effect of merger

When this clause applies

(1) This clause applies on and after the commencement of the provisions of an Order in Council made under clause 24(1) establishing the new water services entity and disestablishing the water services entities to be merged.

Assets

(2) All assets, liabilities, and other matters of the disestablished entities vest in the new entity.

(3) The **assets, liabilities, and other matters** of a disestablished entity, in subclause (2), include, without limitation, that entity's—

(a) assets (for example, infrastructure assets):

(b) contracts, engagements, or information:

(c) benefits, entitlements, interests, rights, powers, or privileges (including, without limitation, moneys payable and, in relation to any moneys payable, proceedings, statutory approvals or consents, easements, encumbrances, leases, or licences (including, without limitation, access licences)):

(d) other property (which, in this paragraph, means—

(i) any other thing that is capable of being owned, whether it is real or personal property, and whether it is tangible or intangible property; or

(ii) any estate or interest in any thing specified in subparagraph (i)):

(e) eligibility for benefits, entitlements, interests, rights, powers, or privileges:

(f) duties or liabilities (including, without limitation, in relation to any moneys payable, proceedings, or statutory approvals or consents):

(g) ineligibility for benefits, entitlements, interests, rights, powers, or privileges.

Information and documents

(4) All information and documents held by the disestablished entities are held by the new entity.

(5) Any transfer of information or documents under subclause (4) is not a breach of the following information privacy principles (or IPPs) under the Privacy Act 2020:

(a) IPP 8 (accuracy, etc, of personal information to be checked before use or disclosure):

(b) IPP 11 (limits on disclosure of personal information).

Employees

(6) Other than the chief executives of the disestablished entities, every employee of a disestablished entity becomes an employee of the new entity.

Acts or omissions

(7) Anything done, or omitted to be done, or that is to be done, by or in relation to a disestablished entity is treated as having been done, or having been omitted to be done, or to be done, by or in relation to the new entity.

Proceedings, inquiries, and investigations

(8) Proceedings, inquiries, and investigations under any legislation that may be commenced, continued, or enforced by or against a disestablished entity (including as an interested party or intervenor) or in relation to a disestablished entity may instead be commenced, continued, or enforced by or against the new entity without amendment to the proceedings.

Matters or things disestablished entity could have done or completed

(9) A matter or thing that could, but for the entity's disestablishment, have been done or completed by a disestablished entity may be done or completed by the new entity.

Relationship agreements and service-level agreements

(10) Relationship agreements and service-level agreements of the disestablished entity transfer to the new entity.

26 Effect of disestablishment of entity

(1) The disestablishment of a water services entity under an Order in Council made under clause 24(1) does not by itself affect any of the following matters:

(a) any decision made, or anything done or omitted to be done, by the entity in performing or exercising its functions, powers, or duties under any legislation:

(b) any proceedings commenced against the entity (*see also* clause 21A(8)):

(c) any other matter or thing arising out of a disestablished entity's performance or exercise, or purported performance or exercise, of its functions, powers, or duties under any legislation.

(2) Any designations, permits, or consents made or issued by a water services entity, and in force immediately before the disestablishment of that water services entity under an Order in Council made under clause 24(1),—

(a) continue in force after that disestablishment; and

(b) are taken, after that disestablishment, to have been made or issued by the new water services entity established by that Order in Council; and

(c) may be amended, revoked, or replaced by that new water services entity accordingly.

Secondary legislation

27 Temporary saving for secondary legislation made by disestablished entities

(1) This clause applies to secondary legislation—

(a) made under this Act by a water services entity disestablished by an Order in Council made under clause 24(1); and

(b) in force (in all, or relevant, parts of the service area of the disestablished entity) immediately before that entity was disestablished.

(2) The secondary legislation continues in force (in all, or relevant, parts of the service area of the disestablished entity), and must be treated as if it were made by the new water services entity established by that Order in Council, until the earlier of the following:

(a) the date on which corresponding secondary legislation made by that new water services entity takes effect:

(b) the date that is the fifth anniversary of the date on which that new water services entity was established.

(3) During the period that the secondary legislation remains in force (in all, or relevant, parts of the service area of the disestablished entity), the secondary legislation—

(a) may be amended by that new water services entity under the relevant empowering provision (if any) in this Act; and

(b) may be enforced by that new water services entity in the same way as if all references in the secondary legislation to a water services entity disestablished by that Order in Council were references to that new water services entity.

Treaty settlement obligations

28 Treaty settlement obligations

(1) This clause applies to a person who performs or exercises a duty, function, or power under this schedule.

(2) The person must, in performing or exercising the duty, function, or power, uphold the integrity, intent, and effect of Treaty settlement obligations.

(3) This clause does not affect or limit how section 9 (Treaty settlement obligations prevail) applies to this schedule.

Agreements with mana whenua

29 New entity to be responsible for existing agreements, etc, with mana whenua

(1) This clause applies to any agreement, arrangement, or understanding—

(a) between a water services entity disestablished by an Order in Council made under clause 24(1) and mana whenua; and

(b) entered into before the disestablishment of that water services entity; and

(c) in force immediately before the disestablishment of that water services entity.

(2) The water services entity established by that Order in Council is, on and after the date on which it is established, to be treated as being responsible for performing or exercising any functions, duties, or powers relating to water services that are set out in the agreement, arrangement, or understanding in place of the disestablished water services entity (for example, in place of the disestablished water services entity, and as a party to the agreement, arrangement, or understanding).

Te Mana o te Wai statements

30 Te Mana o te Wai statements

(1) This clause applies to a Te Mana o te Wai statement—

(a) provided under section 143 to a water services entity that has been disestablished by an Order in Council made under clause 24(1); and

(b) in force immediately before the disestablishment of that water services entity.

(2) The Te Mana o te Wai statement is taken to have been provided to the water services entity established by that Order in Council.

31 Responses to Te Mana o te Wai statements

(1) This clause applies to a response to a Te Mana o te Wai statement made under section 145 by a board of a water services entity that has been disestablished by an Order in Council made under clause 24(1).

(2) After the establishment of the water services entity established by that Order in Council, the response is taken to have been provided by the board of that entity.

Statement of intent

32 First statement of intent of new entity

The board of a water services entity established by an Order in Council made under clause 24(1) must comply with section 148 (statement of intent)—

(a) as soon as is reasonably practicable after the water services entity is established; and

(b) by preparing a statement of intent that relates to a period that includes the rest of the financial year in which the entity is established; and

(c) as if the statement of intent were being prepared before the start of the period to which the draft statement relates.

Annual reports

33 First annual report of new entity

(1) A water services entity established by an Order in Council made under clause 24(1) must provide a first annual report for the period—

(a) starting on the date on which the water services entity is established; and

(b) ending at the end of the financial year in which the water services entity is established.

(2) A report required by this clause must be prepared in accordance with sections 160 to 168, which apply with all necessary modifications.

34 Final annual reports of disestablished entities

(1) A water services entity disestablished by an Order in Council made under clause 24(1) must provide a final annual report for the period—

(a) starting at the start of the financial year in which the entity is disestablished; and

(b) ending on the date on which the Order in Council establishes the new water services entity.

(2) A report required by this clause must be—

(a) prepared in accordance with sections 160 to 168, which apply with all necessary modifications; and

(b) provided in the 4 months starting on the date on which the entity is disestablished.

Application of other transitional provisions

35 Application of other transitional provisions

The following do not apply to a water services entity established by an Order in Council made under clause 24(1):

(a) Schedule 1 of this Act:

(b) Schedule 1AA of the Local Government Act 2002.

Legislative history

16 June 2023	Introduction (Bill 262–1)
22 June 2023	First reading and referral to Governance and Administration Committee
27 July 2023	Reported from Governance and Administration Committee (Bill 262–2)
2 August 2023	Second reading
15 August 2023	Committee of the whole House, third reading
22 August 2023	Royal assent

This Act is administered by the Department of Internal Affairs.

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