

# Water Services Economic Efficiency and Consumer Protection Bill

Government Bill

## Explanatory note

### General policy statement

In July 2020, the Government launched the Three Waters Reform Programme to reform local government water service delivery arrangements. The reforms will establish 4 water services entities (**entities**) to provide drinking water, wastewater, and stormwater services to the majority of New Zealanders. However, there is a risk that, without sufficient independent scrutiny, the entities will act inefficiently.

Therefore, on 6 June 2022, the Government agreed to establish an economic regulation and consumer protection regime for the three waters sector, and that the Commerce Commission (the **Commission**) would be the regulator. This Bill introduces the following economic regulation and consumer protection measures for the three waters sector:

- the entities will be subject to economic regulation, with the necessary flexibility to adapt that regulation for different entities and services (such as stormwater):
- there is a presumption that information disclosure and quality-only regulation will apply to the entities from the first regulatory period. However, there is flexibility for information disclosure regulation to apply earlier:
- there is a presumption that price-quality regulation will apply to the entities from the second regulatory period. However, there is flexibility for the Minister to agree to apply price-quality regulation for the first regulatory period in respect of 1 provider:
- the Commission will be required to set and enforce minimum service level codes:
- a consumer dispute resolution service will be established and will be subject to regular reviews by the Commission:

- the position of Water Services Commissioner will be established on the Commission's board to reflect the unique nature of the water sector and the importance of Te Mana o te Wai.

The Bill also provides for the following:

- funding the regime via levies on regulated suppliers on behalf of consumers;
- a range of remedies and enforcement mechanisms for breaches of regulatory obligations, including pecuniary penalties, enforceable undertakings, injunctions, and compensation.

The Bill will come into force on the day after the date on which it receives the Royal assent. However, *Part 3* comes into force on 1 July 2024.

### Departmental disclosure statement

The Ministry of Business, Innovation, and Employment is required to prepare a disclosure statement to assist with the scrutiny of this Bill. The disclosure statement provides access to information about the policy development of the Bill and identifies any significant or unusual legislative features of the Bill.

A copy of the statement can be found at <http://legislation.govt.nz/disclosure.aspx?type=bill&subtype=government&year=2022&no=192>

### Regulatory impact statement

The Ministry of Business, Innovation, and Employment produced a regulatory impact statement on 26 May 2022 to help inform the main policy decisions taken by the Government relating to the contents of this Bill.

A copy of this regulatory impact statement can be found at—

- <https://www.mbie.govt.nz/document-library>
- <https://treasury.govt.nz/publications/informationreleases/ris>

### Clause by clause analysis

*Clause 1* is the Title clause.

*Clause 2* provides that the Bill (except *Part 3*) comes into force on the day after the date on which it receives the Royal assent. *Part 3* comes into force on **1 July 2024**.

## Part 1

### Preliminary provisions

*Clause 3* sets out the purpose of the Bill. The purpose is to provide for—

- the regulation of the price and quality of water infrastructure services as set out in *Part 2* of the Bill; and
- consumer protection for water infrastructure services, as set out in *Part 3* of the Bill.

*Clause 4* sets out the functions of the Commerce Commission (the **Commission**) under the Bill.

*Clause 5* describes matters to be considered by the Commission and the Minister when making a recommendation, determination, or decision under the Bill. As well as the relevant purpose provision, the Commission and the Minister must take into account the obligations of regulated water services providers, including with respect to—

- te Tiriti o Waitangi/the Treaty of Waitangi;
- giving effect to Treaty settlement obligations;
- Te Mana o te Wai;
- mitigating the effects of climate change and natural hazards.

This obligation also extends to recommendations, determinations, or decisions the Commission may be required to make under other legislation relating to water services.

*Clause 6* imposes on the Commission a duty to maintain systems and processes to ensure that, for the purposes of complying with *clause 5(2)(c)*, it has the capacity and capability to—

- uphold the principles of te Tiriti o Waitangi/the Treaty of Waitangi; and
- engage with Māori and understand perspectives of Māori.

*Clause 7* defines terms used in the Bill.

*Clause 8* defines drinking water infrastructure services.

*Clause 9* inserts *Schedule 1*, which sets out transitional, savings, and related provisions.

*Clause 10* provides that the Act binds the Crown.

## **Part 2**

### **Price and quality regulation**

#### **Subpart 1—General**

*Clause 11* sets out an overview of *Part 2*. *Part 2* provides for the regulation of the price and quality of water infrastructure services in markets where there is little or no competition and little or no likelihood of a substantial increase in competition.

*Clause 12* sets out in more detail the purpose of *Part 2*.

*Clause 13* sets out defined terms that are used only or primarily in *Part 2*.

*Clause 14* requires a regulated water services provider to comply with the requirements of *Part 2* that apply to the provider, and every *section 15* determination that applies to the provider.

*Clause 15* is a key clause. It provides for the Commission to make determinations specifying how information disclosure regulation, quality regulation, and price-quality regulation apply to regulated water services providers. A determination must—

- specify the regulated water services provider to which it applies; and
- specify the water services infrastructure in respect of which it applies; and
- set out, for each type of regulation, the requirements that apply to each regulated water services provider; and
- set out time frames that must be complied with; and
- specify any input methodologies that apply; and
- be consistent with the other provisions of *Part 2*.

*Clause 15* gives the Commission considerable flexibility in determining the contents and scope of its determinations.

*Clause 16* provides for the amendment of *section 15* determinations.

*Clause 17* enables the Commission to exempt any person or class of person from an obligation to make information or a class of information publicly available, on the grounds of commercial sensitivity.

## Subpart 2—Timing

*Clause 18* requires the Commission to determine initial input methodologies relating to information disclosure and price-quality regulation of water infrastructure services no later than 1 July 2026. The Commission may determine further input methodologies after that date.

*Clause 19* requires the Commission to make initial *section 15* determinations,—

- in relation to information disclosure, no later than 1 July 2027; and
- in relation to quality regulation, no later than the start of the first regulatory period; and
- in relation to price-quality regulation, no later than the start of the second regulatory period.

*Clause 20* describes the regulatory periods. The first regulatory period is a period of 3 years starting on the implementation date (the later of 1 July 2027 and a date specified by Order in Council). The duration of subsequent regulatory periods must be determined by the Commission but must be no longer than 6 years.

*Clause 21* empowers the changing of the implementation date by Order in Council, subject to specified limitations.

*Clause 22* similarly empowers the changing of other dates by Order in Council, subject to specified limitations.

*Clause 23* specifies the matters the Minister must take into account when deciding whether to recommend a change to the implementation date or other dates specified in the Bill, and some limitations on that power.

### Subpart 3—Input methodologies

*Clause 24* sets out the purpose of having input methodologies. It is to promote certainty for water services providers and consumers in relation to the rules, requirements, and processes applying to the regulation, or proposed regulation, of water infrastructure services under *Part 2*.

*Clause 25* requires the Commission to determine at least 1 input methodology for each of information disclosure regulation and price-quality regulation. The clause also empowers but does not require the Commission to determine input methodologies in respect of quality regulation.

*Clause 26* describes how input methodologies are to be applied by relevant regulated water services providers and the Commission, respectively.

*Clause 27* specifies the matters to be covered by input methodologies to the extent relevant in each case. In general terms, they are matters relating to—

- the cost of capital; and
- the valuation of assets; and
- the allocation of common costs; and
- the treatment of taxation.

Input methodologies must also deal with regulatory processes and rules, such as the specification and definition of prices and identifying circumstances in which price-quality paths may be reconsidered within a regulatory period. *Clause 27* also contains specific rules dealing with input methodologies for capital expenditure projects, and general matters that all input methodologies need to include.

*Clause 28* sets out a process that the Commission must follow in determining input methodologies.

*Clause 29* relates to the status of an input methodology, an amendment to it, and a revocation of it as secondary legislation.

*Clause 30* requires the Commission to follow the processes set out in *clause 28* whenever it proposes to amend or revoke an input methodology.

*Clause 31* requires the Commission to review an input methodology at least once every 7 years.

### Subpart 4—Information disclosure regulation

*Clause 32* sets out the purpose of information disclosure regulation. It is to ensure that sufficient information is readily available to interested persons to assess whether the purpose of *Part 2* is being met.

*Clause 33* describes the effect of being subject to information disclosure regulation. It is, in general terms, a requirement to—

- publicly disclose information in accordance with the information disclosure requirements set out in the relevant *section 15* determination:

- supply the Commission with all the publicly released information within 5 working days of the date of its public release;
- supply other specified information to the Commission in accordance with any written notice issued by the Commission.

*Clause 34* requires a *section 15* determination relating to information disclosure to set out, among other matters,—

- the information to be disclosed; and
- the manner in which the information is to be disclosed; and
- the form of the disclosure; and
- when, and for how long, the information must be disclosed; and
- any other methodologies that are required in the preparation or compilation of the information.

*Clause 35* enables a *section 15* determination to require the disclosure of information in a case where a regulated water services provider provides other goods and services that are not regulated by *Part 2*, including—

- consolidated financial statements for all businesses;
- consolidated financial statements for the supply of all non-regulated goods and services in aggregate;
- a reconciliation of the information in the 2 sets of consolidated financial statements;
- certain specified information about the financing all businesses of the provider and the supply of all goods and services provided by the provider.

*Clause 36* enables a person who is required to provide copies of statements and information to the public to impose a reasonable charge to cover the costs of supplying the copies.

### Subpart 5—Quality regulation

*Clause 37* sets out the purpose of quality regulation. It is to regulate the quality and performance (other than in relation to prices) of water infrastructure services provided by regulated water services providers.

*Clause 38* describes the effect of being subject to quality regulation. The effect is that regulated water services providers to which a *section 15* determination relating to quality regulation applies must apply the quality paths set by the Commission in respect of all water infrastructure services that are—

- supplied by the supplier; and
- specified in the determination.

*Clause 39* requires a *section 15* determination relating to quality regulation to specify quality paths that apply to each regulated water services provider. A quality path must specify—

- the regulatory period to which it applies:
- the quality standards that must be met by a regulated water services provider:
- the date (or dates) on which the quality path (or any part of it) takes effect:
- the date or dates by which compliance with the quality path must be demonstrated.

A quality path may include—

- incentives for a regulated water services provider to maintain or improve its quality of supply; and
- performance standards covering a range of specified matters.

### Subpart 6—Price-quality regulation

*Clause 40* sets out the purpose of price-quality regulation. It is to regulate the price and quality of water infrastructure services provided by regulated water services providers.

*Clause 41* describes the effect of being subject to price-quality regulation. The effect is that regulated water services providers to which a *section 15* determination relating to price-quality regulation applies must apply the price-quality paths set by the Commission in respect of all water infrastructure services that are—

- supplied by the provider; and
- specified in the determination.

*Clause 42* requires a *section 15* determination relating to price-quality regulation to specify price-quality paths that apply to each regulated water services provider. A price-quality path must specify—

- the regulatory period to which it applies:
- the maximum price that a regulated water services provider may charge:
- the maximum revenues that a regulated water services provider may recover:
- the quality standards that a regulated water services provider must meet:
- the date or dates on which the price-quality path (or any part of it) takes effect:
- the date or dates by which compliance with the price-quality path must be demonstrated.

A price-quality path may include—

- incentives for a regulated water services provider to maintain or improve its quality of supply; and
- performance requirements covering a range of specified matters.

*Clause 43* provides that, in a case where the price-quality paths for a regulatory period specify the maximum revenues that a regulated water services provider may recover, the Commission may apply a mechanism that provides for any under-recov-

ery or over-recovery of revenues (a wash-up mechanism) to be applied over 1 or more future regulatory periods.

*Clause 44* applies when the Commission specifies maximum prices or maximum revenues for the purposes of *clause 42(2)(b)*. The Commission may calculate the maximum price or revenue over 2 or more regulatory periods if the Commission considers that necessary or desirable to provide for the financeability of a regulated water services provider or to minimise price shocks to consumers.

*Clause 45* requires the Commission to make a new *section 15* determination before the end of each regulatory period specifying the price-quality paths that will apply for the following regulatory period.

*Clause 46* specifies what happens to a price-quality path where there is a change of input methodology. The Commission must not reopen a price-quality path except in 2 specified circumstances.

### Subpart 7—Reviews

*Clause 47* empowers the Commission to review (either on its own initiative or at the request of the Minister) how 1 or more water infrastructure services are regulated under *Part 2*, if the Commission has reasonable grounds to consider that those services should no longer be subject to 1 or more of the types of regulation provided for in *subpart 4, 5, or 6 of Part 2*. The Commission must make a recommendation to the Minister after a review.

*Clause 48* empowers the Commission to undertake reviews (either on its own initiative or at the request of the Minister) to determine whether 1 or more water services entities that are not subject to regulation under *Part 2* should be subject to 1 or more of the types of regulation provided for in *subpart 4, 5, or 6 of Part 2*. The Commission must make a recommendation to the Minister after a review.

*Clause 49* empowers the Commission to undertake reviews (either on its own initiative or at the request of the Minister) in relation to the timing of price-quality regulation. Specifically, the Commission can undertake reviews to determine whether price-quality regulation should apply to any regulated water services supplier from the start of the first regulatory period, or from the start of the second regulatory period.

*Clause 50* gives the Minister the power to accept or reject a recommendation from the Commission under *clauses 47 to 49*, or to ask that it be reconsidered by the Commission. If the Minister accepts the recommendation, *clause 50* requires the Commission (in some cases) to take action to implement it.

### Subpart 8—Commission review of funding and pricing plans

*Clause 51* requires the Commission to review any funding and pricing plan made available by the chief executive of a regulated water services provider.

*Clause 52* empowers the Commission to direct the board of a regulated water services provider to reconsider a plan.

*Clause 53* requires the board of a regulated water services provider to comply with a direction it receives from the Commission under *clause 52*.

### Subpart 9—Designations of unregulated water services entities

*Clause 54* empowers the designation for the purposes of *Part 2* of a water services entity that is not a statutory entity. The designation is made by Order in Council on the recommendation of the Minister. The effect of the designation is that the water services entity, through the act of designation, becomes a regulated water services provider.

*Clause 55* provides that the Minister may recommend such a designation only after receiving a recommendation from the Commission under *clause 48*.

*Clause 56* lists the matters that must be specified in the designation order.

*Clause 57* requires the duration of the order, which must not exceed 10 years, to be specified in the order.

*Clause 58* describes the process for amending or revoking a designation order.

## Part 3 Consumer protection

*Clause 59* provides an overview of *Part 3*.

*Clause 60* sets out the purpose of *Part 3*. It is to provide for consumer protection and improvements in the quality of service provided by regulated water services providers and drinking water suppliers to consumers.

*Clause 61* sets out defined terms that are used only or primarily in *Part 3*.

### Subpart 1—Designations

*Clause 62* empowers the designation of a water services entity that is not a statutory entity to be designated for the purposes of *Part 3*. The designation is made by Order in Council on the recommendation of the Minister. The effect of the designation is that a designated water services entity, through the act of designation, becomes a regulated water services provider.

*Clause 63* provides that the Minister may recommend such a designation only after receiving a recommendation from the Commission. In deciding whether to make a recommendation the Minister may—

- accept or reject the Commission's recommendation:
- request that the Commission reconsider any matter:
- make any other decision that the Minister considers is in the public interest.

*Clause 64* lists the matters that the Commission must consider in deciding whether to make a recommendation.

*Clause 65* sets out the process that the Commission must follow before making a recommendation under *clause 64*. The process involves consultation with water consumers or their representatives and operators of the relevant water services entity.

*Clause 66* lists the matters that must be specified in the designation order.

*Clause 67* requires the duration of the order, which must not exceed 10 years, to be specified in the order.

*Clause 68* describes the process for amending or revoking a designation order.

### Subpart 2—Service quality code

*Clause 69* requires the Commission to make, not later than 1 July 2027, a service quality code. The code relates to the service quality of water infrastructure services provided by regulated water services providers.

*Clause 70* sets out the matters that must be specified in the service quality code.

*Clause 71* requires regulated water services providers to comply with the code.

*Clause 72* sets out the process for making or amending or revoking the service quality code.

### Subpart 3—Consumer complaints process and consumer dispute resolution service

#### *Consumer complaints process*

*Clause 73* requires a regulated water services provider or a drinking water supplier to—

- provide prescribed information to consumers; and
- establish, maintain and administer a consumer complaints process; and
- report annually to the Commission on its consumer complaints process.

*Clause 74* enables a consumer who is dissatisfied with the outcome of a complaint dealt with using a consumer complaints process to request that the service provider for the consumer dispute resolution service provide dispute resolution services to review the complaint. *Clause 74(2)* lists the circumstances in which the service provider may decide to take no action or no further action on a complaint.

*Clause 75* requires the Commission to monitor compliance with the complaints process set out in *clauses 73 and 74*.

#### *Consumer dispute resolution*

*Clause 76* provides that the consumer dispute resolution service for the resolution of consumer protection disputes (including disputes about the interpretation and application of the service quality code) is the dispute resolution service—

- approved by the Minister under *Schedule 2*; and

- that the Minister declares under *Schedule 2* to be the consumer dispute resolution service for the purposes of *Part 3*; and
- whose provider is approved by the Minister.

*Clause 77* provides that determinations made under the consumer dispute resolution service are binding on the relevant regulated water supplier or drinking water supplier. However, under *clause 78*, a consumer may appeal to the court against a determination, and the court may confirm, modify, or reverse the determination.

*Clause 79* sets out rules of procedure to apply on an appeal under *clause 78*.

*Clause 80* requires each party to a dispute that is referred to the consumer dispute resolution service to comply with the rules of the service. The court may require a person who is a party to a dispute to comply with the rules of the service or to comply with the terms of a binding settlement or determination made under the rules of the service, or both. In certain specified circumstances, the court may modify the terms of a binding settlement or determination. An order requiring money to be paid under a binding settlement may be enforced as if it were a judgment of the court.

#### *Commission review of consumer dispute resolution service*

*Clause 81* requires the Commission to review the consumer dispute resolution service, using the process and in accordance with the timetable set out in *Schedule 2*.

#### *Miscellaneous matters*

*Clause 82* requires a service provider to notify Taumata Arowai if, during the course of providing dispute resolution services, the provider becomes aware of an actual or a possible serious risk to public health. *Clause 82* also requires the sharing of information between various entities in an agreed manner.

## **Part 4**

### **Enforcement, monitoring, and appeals**

#### Subpart 1—Civil liability

*Clause 83* sets out an outline of *subpart 1 of Part 4*. It states that the following remedies are available under *subpart 1*:

- a pecuniary penalty order (on application by the Commission only);
- a compensatory order;
- an injunction.

#### *Pecuniary penalties*

*Clause 84* states when the court may order a person to pay a pecuniary penalty to the Crown. The court may impose a pecuniary penalty if it is satisfied that the person has—

- contravened an information disclosure requirement; or

- contravened a quality requirement; or
- contravened a price-quality requirement; or
- contravened a code made under the Bill; or
- attempted to contravene or been involved in a contravention of any of the above-listed requirements.

*Clause 85* sets the maximum pecuniary penalty that may be ordered for a contravention, attempted contravention, or involvement in a contravention as—

- \$500,000, for an individual; and
- \$5 million, in any other case.

*Clause 86* sets out examples of the matters to which the court must have regard in determining the appropriate pecuniary penalty in any particular case.

*Clause 87* empowers the court to order that any pecuniary penalty must be applied first to pay the Commission's actual costs.

#### *Compensatory orders*

*Clause 88* provides that if the court orders a person to pay a pecuniary penalty, it may, in addition, order the person to pay compensation to any person who has suffered, or is likely to suffer, loss or damage as a result of the contravention.

*Clause 89* specifies the terms under which a compensation order must be made.

#### *Injunctions*

*Clause 90* empowers the court to grant various kinds of injunctions.

*Clause 91* sets out the criteria that the court must apply in order to issue a restraining injunction.

*Clause 92*, which is based on a similar provision in the Commerce Act 1986, provides that the court may not require the Commission to give an undertaking as to damages, if the Commission applies for an interim injunction.

#### *Rules of procedure*

*Clause 93* provides that a proceeding under *subpart 1* is a civil proceeding and that the rules of evidence and procedure for civil proceedings apply (including the standard of proof).

*Clause 94* requires proceedings under *subpart 1* to be commenced within 3 years after the matter giving rise to the contravention, attempted contravention, or involvement in the contravention was discovered or ought reasonably to have been discovered. However, an application for compensation under *clause 88* must be made within 1 year of the relevant pecuniary penalty order.

#### *Relationship between proceedings and orders*

*Clause 95* allows the court to grant more than 1 civil liability remedy for the same conduct (for example, a compensation order and a pecuniary penalty may be imposed

for the same conduct). However, *clause 96* provides that only 1 pecuniary penalty order may be made for the same conduct, and *clause 97* provides that no person can be ordered to pay a pecuniary penalty and be liable to a fine or imprisonment for the same conduct.

### Subpart 2—Offences

*Clause 98* enables the court to make an order requiring a regulated water services provider to comply with an information disclosure requirement that applies to the provider.

*Clause 99* creates an offence of intentionally contravening an information disclosure requirement or failing to comply with an order made under *clause 90 or 98* within the required time.

*Clause 100* creates an offence of intentionally contravening a quality requirement in relation to the supply of water infrastructure services or failing to comply with an order made under *clause 90* within the required time.

*Clause 101* creates an offence of intentionally contravening a price-quality requirement in respect of water infrastructure services or failing to comply with an order made under *clause 90* within the required time.

*Clause 102* creates an offence of intentionally contravening the service quality code or failing to comply with an order made under *clause 90*.

The penalties for offences against any of *clauses 99 to 102* are,—

- in the case of an individual, a fine not exceeding \$200,000; and
- in any other case, a fine not exceeding \$1 million.

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

*Clause 103* sets out an overview of *subpart 3*. The subpart sets out orders that may be made specifically for breaches of *Part 3* (which relates to consumer protection) and procedural matters relating to infringement offences.

#### *Additional remedies in relation to breach of service quality code*

*Clause 104* empowers the court, if it is satisfied that a person has, without reasonable excuse, breached the service quality code, to order 1 or both of the following:

- the disclosure of information to the public or to a particular person or class of persons;
- the publication of corrective statements.

*Clause 105* sets out a general menu of orders that the court may make if satisfied that a person (**person X**) has breached the quality service code. Those are—

- an order directing person X to refund money or return property;
- an order requiring person X to pay another person the amount of any loss or damage suffered by that person as a result of conduct by person X:

- an order directing person X to supply a service to another person, at person X's own expense:
- an order declaring all or part of a contract between person X and another person to be void:
- an order varying a contract or a related collateral arrangement between person X and another person.

*Clause 106* empowers the court to make an order directing a person, if they have breached the quality service code, to supply a service to a consumer at the person's own expense.

*Clause 107* deals with machinery provisions applying to proceedings for additional remedies under *clauses 104 to 106*.

*Clauses 108 to 117* set out standard machinery provisions relating to infringement offences. It is intended that infringement offences will be prescribed for breaches of the service quality code and other breaches of *Part 3*.

Those clauses relate to—

- interpretation (*clause 108*):
- proceedings for infringement offences (*clause 109*):
- who may issue infringement notices (*clause 110*):
- when infringement notices may be issued (*clause 111*):
- the revocation of an infringement notice before payment is made (*clause 112*):
- what infringement notices must contain (*clause 113*):
- how infringement notices may be issued to a person (*clause 114*):
- payment of infringement fees (*clause 115*):
- reminder notices (*clause 116*):
- the relationship between infringement offences and other offences (*clause 117*).

#### Subpart 4—Appeals

*Clause 118* gives a regulated water services provider or any other person a general right to appeal to the court against any determination under the Act (except a section 15 determination that relates to information disclosure or quality regulation, or an input methodology determination under *subpart 3 of Part 2*).

*Clause 119* gives a person who participated in an input methodology determination and who, in the opinion of the court, has a significant interest in the matter, a right to appeal to the court against the determination.

*Clause 120* describes the process for bringing and determining appeals under *clause 119*.

*Clause 121* prohibits the court from staying the application of any input methodology pending the final determination of any appeal.

### Subpart 5—Miscellaneous provisions relating to enforcement

*Clause 122* sets out the jurisdiction of the High Court in relation to enforcement matters under *Part 4*.

*Clause 123* similarly sets out the jurisdiction of the District Court.

*Clause 124* defines “involvement in a contravention” for the purposes of the Bill.

*Clause 125* sets out rules governing the interrelationship between *Part 4* and subpart 5 of Part 2 of the Contract and Commercial Law Act 2017 (which relates to illegal contracts).

*Clause 126* inserts a rule governing the enforceability of contracts that if entered into would contravene a civil liability provision, by providing that the enforceability of other provisions is not affected.

## Part 5 Miscellaneous

### Subpart 1—Water Services Commissioner

*Clause 127* provides for the appointment of a Water Services Commissioner on the recommendation of the responsible Minister.

*Clause 128* sets out the prerequisites that must be satisfied in order for a person to be appointed as the Water Services Commissioner. The responsible Minister may only recommend the appointment if the person is already a member of the Commission, and, in the opinion of the Minister, is qualified for appointment. *Clause 128(2)* provides that a person is qualified for appointment by virtue of that person’s knowledge of or experience in the water services industry or any other industry, commerce, economics, law, accountancy, public administration, or consumer affairs.

*Clause 129* sets out further machinery provisions relating to the removal of the Water Services Commissioner from office, the effect of the expiry of their term of office, and which provisions of the Crown Entities Act 2004 apply in relation to the Water Services Commissioner.

*Clause 130* deals with what functions, duties, and powers of the Commission under the Bill can be dealt with by the Water Services Commissioner acting alone or with 2 or more other members of the Commission.

*Clause 131* confers on the Water Services Commissioner, when acting alone, the authority to perform the Commission’s functions, duties, and powers.

*Clause 132* sets out further machinery provisions that apply when the Water Services Commissioner acts with 2 or more other members of the Commission.

*Clause 133* deals with accountability for collective duties.

*Clause 134* provides for a alternate member to act instead of the Water Services Commissioner in certain circumstances.

*Clause 135* deals with delegation of functions, duties, or powers.

## Subpart 2—Application of Commerce Act 1986

*Clause 136* provides that certain provisions of Part 6 of the Commerce Act 1986 (relating to enforcement, remedies, and appeals) apply with any necessary modifications.

*Clause 137* provides that certain provisions of Part 7 of the Commerce Act 1986 (a range of miscellaneous provisions) apply with any necessary modifications.

*Clause 138* gives the Commission a range of powers in relation to monitoring and enforcement that apply in addition to any powers the Commission has in exercising its powers under the Bill, and under section 98 of the Commerce Act 1986.

*Clause 139* provides that the Commission may use any information previously disclosed to it under the Bill or under the Commerce Act 1986 for the purposes of carrying out its functions and exercising its powers under *Part 5*.

## Subpart 3—Other provisions

*Clause 140* empowers the making of regulations for the following purposes:

- providing for anything the Bill says may or must be provided for by regulations:
- prescribing infringement offences:
- prescribing fines and fees for those infringement offences:
- providing for anything incidental that is necessary for carrying out or giving full effect to the Bill.

*Clause 141* empowers the making of regulations for a levy that must be paid by regulated water services providers relating to the operations of the Commission. The levy must be prescribed on the basis that the following costs should be met fully out of the levy:

- a portion of the costs of the Commission in performing or exercising its functions, powers, and duties under the Bill and any other enactment, where the size of the portion to be met by the levy is determined by the Minister:
- the costs of collecting the levy money.

*Clause 142* empowers the making of regulations for a levy that must be paid by regulated water services providers and drinking water suppliers relating to consumer dispute resolution services.

*Clause 143* relates to the recovery of fees and other money and provides that—

- any fees or other money payable to the Crown under the Bill or regulations, or under any permit granted under the Bill, is recoverable as money due to the Crown:
- all fees payable under the Bill or the regulations must be paid into a Departmental Bank Account, and all other money payable to the Crown under the Bill, or the regulations, or under any permit granted under the Bill, must be paid into a Crown Bank Account.

*Clause 144* imposes a duty on the Commission, in the exercise of its powers under the Bill, to have regard to any economic policies of the Government that the Minister gives to the Commission in a written statement.

*Clause 145* relates to incorporation by reference.

#### *Amendments to Water Services Act 2021*

*Clauses 146 to 153* repeal certain provisions of the Water Services Act 2021 relating to complaints procedures. Those provisions have been replaced by the complaints procedures set out in *Part 3* of this Bill.

#### *Schedules*

*Schedule 1* contains transitional, savings, and related provisions.

*Schedule 2* sets out various provisions relating to the consumer dispute resolution service established by *Part 3*.



*Hon Dr David Clark*

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**Schedule 2**  
**Consumer dispute resolution service**

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

**1 Title**

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

**2 Commencement**

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

**Part 1**

**Preliminary provisions**

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**3 Purpose**

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

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**4 Functions of Commission under this Act**

- (1) In addition to the other functions conferred on the Commission by this Act, the Commission must—
  - (a) monitor the quality of service provided by regulated water services providers; and
  - (b) monitor whether outcomes in the markets described in **section 11** are consistent with outcomes produced in competitive markets; and
  - (c) act as a regulator of water infrastructure services under this Act; and
  - (d) carry out any functions or duties under this Act it is required to carry out.
- (2) The Commission may—

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- (a) consider, analyse, use, and make comments on the information provided publicly by statutory water services entities or Taumata Arowai under any legislation dealing with water services; and
- (b) conduct inquiries, reviews, and studies (including international benchmarking) into any matter relating to the supply of water infrastructure services or the long-term benefit of consumers of water infrastructure services in New Zealand; and 5
- (c) carry out its role under **subsection (1)(c)** by—
- (i) issuing warnings, reports, or guidelines, or making comments, about any matter relating to water infrastructure services, regulated water services providers, or other persons engaged in the supply of water infrastructure services (including in relation to 1 or more particular persons); and 10
- (ii) monitoring compliance with, investigating conduct that constitutes or may constitute a contravention or an involvement in a contravention of, and enforcing this Act (including any determinations made under **Part 2** and any service quality code made under **Part 3**); and 15
- (iii) taking appropriate action in respect of persons that have contravened, are contravening, or are likely to contravene this Act, or have been involved, are involved, or are likely to be involved in a contravention of this Act (including any determinations made under **Part 2** and any service quality code made under **Part 3**); and 20
- (d) make available, or co-operate in making available, reports, summaries, and information about the things referred to in **paragraphs (a), (b), and (c)**; and 25
- (e) exercise any other power or carry out any other functions under this Act that the Commission may exercise or carry out.
- (3) The Commission’s functions under this Act do not extend to regulating the safety of drinking water (*see* section 11 of the Taumata Arowai—the Water Services Regulator Act 2020, which describes the role of Taumata Arowai in that regard). 30
- 5 Matters to be considered by Commission and Minister**
- (1) This section applies if the Commission or the Minister is required under this Act to make a recommendation, determination, or decision. 35
- (2) The Commission or Minister must,—
- (a) in a case where the Commission or Minister is acting under **Part 2**, make the recommendation, determination, or decision that the Commission or Minister considers best gives, or is likely to best give, effect to the purpose in **section 12**; and 40

- (b) in a case where the Commission or Minister is acting under **Part 3**, make the recommendation, determination, or decision that the Commission or Minister considers best gives, or is likely to best give, effect to the purpose in **section 60**; and
- (c) in making the recommendation, determination, or decision, take into account the obligations of regulated water services providers, including with respect to the following matters:
  - (i) te Tiriti o Waitangi/the Treaty of Waitangi:
  - (ii) giving effect to Treaty settlement obligations:
  - (iii) Te Mana o te Wai:
  - (iv) mitigating the effects of climate change and natural hazards.
- (3) **Subsection (2)(c)** applies to the extent that the Commission or Minister considers it relevant to ensuring that the recommendation, determination, or decision reflects the obligations referred to in that provision.
- (4) If the Commission is required to make a recommendation, determination, or decision under any other legislation relating to water services,—
  - (a) the Commission must comply with **subsections (2)(c) and (3)**, which apply with any necessary modifications; and
  - (b) compliance by the Commission with **paragraph (a)** must be treated as compliance with the requirements of any other legislation relating to water services in respect of the application of the following matters:
    - (i) te Tiriti o Waitangi/the Treaty of Waitangi; and
    - (ii) Treaty settlement obligations; and
    - (iii) Te Mana o te Wai.

Compare: 2001 No 103 s 166 25

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

The Commission must maintain systems and processes to ensure that, for the purpose of complying with **section 5(2)(c)**, it has the capacity and capability to— 30

- (a) uphold the principles of te Tiriti o Waitangi/the Treaty of Waitangi; and
- (b) engage with Māori and understand perspectives of Māori.

## 7 Interpretation

In this Act, unless the context otherwise requires,—

**backflow prevention device** has the same meaning as in section 5 of the Water Services Act 2021 35

**claimant group**, in relation to the definitions of Treaty settlement Act and Treaty settlement deed, means a group of Māori with Treaty of Waitangi claims

against the Crown, whether or not those claims have been lodged with, or heard by, the Waitangi Tribunal under the Treaty of Waitangi Act 1975

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

**consumer** means a person who— 5

- (a) consumes or acquires water infrastructure services; and
- (b) in respect of stormwater infrastructure services, pays for those services

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

**drinking water infrastructure services** has the meaning given in **section 8** 10

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

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

**funding and pricing plan** means a funding and pricing plan prepared by the board of a regulated water services provider under any legislation dealing with water services 15

**green stormwater infrastructure**—

- (a) means a natural or semi-natural area, feature, or process that mimics natural areas, features, or processes that are planned or managed to provide stormwater services; and 20
- (b) includes an engineered system that mimics natural processes

**information disclosure requirement** has the meaning given in **section 13**

**interconnected** and **interconnected bodies corporate** have the meanings set out in section 2(7) of the Commerce Act 1986 25

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

**National Policy Statement for Freshwater Management**, in relation to the definition of Te Mana o te Wai, means the National Policy Statement for Freshwater Management issued in 2020 under section 52 of the Resource Management Act 1991 and any statement issued under that section that amends or replaces the 2020 statement 30

**point of supply** has the same meaning as in section 13 of the Water Services Act 2021 35

**price**—

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

- (b) includes any related terms of payment
- regulated water services provider**,—
- (a) for the purposes of **Part 2** (price and quality regulation) has the meaning set out in **section 13**; and
- (b) for the purposes of **Part 3** (consumer protection), has the meaning set out in **section 61**; and 5
- (c) for the purposes of the rest of this Act means a water services entity who is a regulated water services provider within the meaning of either **Part 2 or Part 3**
- regulations** means regulations made under this Act 10
- section 15 determination** means a determination made by the Commission under **section 15** that sets out how any of the following types of regulation apply to a regulated water services provider:
- (a) information disclosure regulation:
- (b) quality regulation: 15
- (c) price-quality regulation
- service quality code** means the code that regulates the service quality of all or any water infrastructure services provided by regulated water services providers
- statutory water services entity** means a water services entity established under any legislation dealing with water services 20
- stormwater infrastructure services**—
- (a) means the collection, treatment, drainage, reuse, or discharge of stormwater in an urban area; but
- (b) does not include services relating to a transport stormwater system 25
- Taumata Arowai** means Taumata Arowai—the Water Services Regulator established by section 8 of the Taumata Arowai—the Water Services Regulator Act 2020
- Te Mana o te Wai** has the meaning set out in the National Policy Statement for Freshwater Management 30
- transport corridor manager** means—
- (a) the New Zealand Transport Agency established under section 93 of the Land Transport Management Act 2003:
- (b) KiwiRail Limited:
- (c) Auckland Transport established under section 38 of the Local Government (Auckland Council) Act 2009: 35
- (d) any local authority that has, in relation to a road defined in section 315(1) of the Local Government Act 1974, jurisdiction over the road

**transport stormwater system**, for the purposes of the definition of stormwater infrastructure services,—

- (a) means the infrastructure owned or operated by, or processes used by, a transport corridor manager to collect, treat, drain, store, reuse, or discharge stormwater affecting a transport corridor; and 5
- (b) includes—
  - (i) an overland flow path; and
  - (ii) green stormwater infrastructure

**Treaty settlement Act** means—

- (a) an Act listed in Schedule 3 of the Treaty of Waitangi Act 1975; and 10
- (b) any other Act that provides redress for Treaty of Waitangi claims, including Acts that provide collective redress or participation arrangements for claimant groups whose claims are, or are to be, settled by another Act

**Treaty settlement deed** means a deed or other agreement— 15

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

**Treaty settlement obligation** means an obligation under either of the following: 20

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

**wastewater infrastructure services** means the collection, treatment, storage, transmission through reticulation, or discharge of wastewater 25

**water infrastructure services** means any 1 or more of the following:

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

**water services** means services relating to water supply, wastewater, and storm-water 30

**water services entity** means a water services entity (whether or not it is a regulated water services provider)

**water supply infrastructure services** includes—

- (a) drinking water infrastructure services; and 35
- (b) the infrastructure required for—
  - (i) a drinking water supply as defined in section 9 of the Water Services Act 2021; and

- (ii) firefighting water supplies as defined in section 6 of the Fire and Emergency New Zealand Act 2017; and
- (iii) water supplied for agricultural or horticultural purposes

**urban area—**

- (a) means an area identified in a district plan or a proposed district plan as being primarily zoned, or intended to be for residential, industrial, commercial and mixed use, or settlement activities, together with adjoining special-purpose and open-space and recreation zones, however described; but 5
- (b) does not include any other area zoned primarily for rural activities, however described. 10

**8 Meaning of drinking water infrastructure services**

- (1) In this Act, unless the context otherwise requires, **drinking water infrastructure services—**
  - (a) means the abstraction, storage, treatment, transmission, or transportation of drinking water for supply to consumers or a drinking water supplier; and 15
  - (b) includes services that are provided at or through—
    - (i) the point of supply; and
    - (ii) any end-point treatment device; and 20
    - (iii) any backflow prevention device.
- (2) However, services relating to the supply of drinking water from either of the following are not drinking water infrastructure services:
  - (a) a temporary drinking water supply provided under section 33 or 34 of the Water Services Act 2021: 25
  - (b) a domestic self-supply (as defined in section 10(1) of the Water Services Act 2021).

**9 Transitional, savings, and related provisions**

The transitional, savings, and related provisions set out in **Schedule 1** have effect according to their terms. 30

**10 Act binds the Crown**

This Act binds the Crown.

## Part 2

### Price and quality regulation

#### Subpart 1—General

- 11 Overview of this Part** 5
- This Part provides for the regulation of the price and quality of water infrastructure services in markets where there is little or no competition and little or no likelihood of a substantial increase in competition.
- Compare: 1986 No 5 s 52
- 12 Purpose of this Part** 10
- The purpose of this Part is to promote the long-term benefit of consumers in markets referred to in **section 11** by promoting outcomes that are consistent with outcomes produced in competitive markets so that regulated water services providers—
- (a) have incentives to innovate and to invest, including in replacement, upgraded, and new assets; and 15
  - (b) have incentives to improve efficiency and provide services at a quality that reflects consumer demands; and
  - (c) share with consumers the benefits of efficiency gains in the supply of water infrastructure services, including through lower prices; and
  - (d) are limited in their ability to extract excessive profits. 20
- Compare: 1986 No 5 s 52A
- 13 Interpretation**
- In this Part, unless the context otherwise requires,—
- first regulatory period** means the regulatory period described in **section 20(1)** 25
- implementation date** means the later of—
- (a) 1 July 2027; and
  - (b) any date specified by Order in Council in accordance with **section 21**
- information disclosure requirement** means a requirement that applies to a regulated water services provider and is specified in a **section 15** determination 30
- input methodology** means a description of any methodology, process, rule, or matter that includes any of the matters listed in **section 27** and that is published as referred to in **section 29**
- publicly disclose**, in relation to information required to be disclosed under information disclosure regulation, means to disclose information to the public in the manner required by a **section 15** determination 35

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

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

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

**14 Regulation of water infrastructure services** 10

- (1) Water infrastructure services are regulated as provided for by this Part.
- (2) A regulated water services provider must comply with—
  - (a) the requirements of this Part that apply to the regulated water services provider; and
  - (b) every **section 15** determination that applies to the regulated water services provider.
- (3) The Commission may exercise any of its powers under this Act for the purpose of monitoring compliance by regulated water services providers with regulation under this Part.

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Compare: 2001 No 103 s 167

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**15 Determinations made by Commission under this section**

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

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- (3) It is not necessary for a single determination to address all matters relating to all water infrastructure services, or to a regulated water services provider, and different parts of any determination may come into effect at different times.
- (4) A determination made under this section may require a regulated water services provider to comply with the requirements set out in any other determination that has been made under this section in respect of water infrastructure services. 5
- (5) A determination made under this section may relate to all regulated water services providers or to 1 or more regulated water services providers.
- (6) A determination made under this section relating only to information disclosure or quality regulation may last for more than 1 regulatory period and remains in force until it is revoked. 10
- (7) A determination under this section and an amendment to a determination are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements). 15
- (8) As soon as practicable after making a determination under this section, the Commission must give to each regulated water services provider to whom the determination relates notice of the determination and where it is available.
- Compare: 2001 No 103 s 170
- 16 Amendment of section 15 determination** 20
- (1) A **section 15** determination may be amended in a material way or revoked only after the Commission has consulted interested parties, but may be amended in a non-material way without prior consultation.
- (2) As soon as practicable after making an amendment, the Commission must give to each regulated water services provider to which the determination relates notice of the amendment and where it is available. 25
- Compare: 2001 No 103 s 173
- 17 Power to exempt disclosure of commercially sensitive information**
- (1) The Commission may, on application, exempt any person or class of persons, in respect of any information or class of information that the Commission considers to be commercially sensitive, from any obligation to make that information publicly available as part of the requirements of information disclosure regulation, quality regulation, or price-quality regulation. 30
- (2) The Commission may grant the exemption on any terms and conditions that it thinks fit. 35
- (3) An exemption granted under this section, and any variation or revocation of it, is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).
- Compare: 1986 No 5 s 53ZG

Subpart 2—Timing

- 18 When initial input methodologies must be determined** 5
- (1) The Commission must determine initial input methodologies relating to information disclosure and price-quality regulation of water infrastructure services no later than 1 July 2026. 5
- (2) The Commission may determine input methodologies relating to quality regulation of water infrastructure services at any time after the initial input methodologies referred to in **subsection (1)** are determined.
- Compare: 2001 No 103 s 178
- 19 When initial section 15 determinations must be made** 10
- (1) The Commission must make initial determinations under **section 15**,—
- (a) in relation to information disclosure regulation, no later than 1 July 2027; and
- (b) in relation to quality regulation, no later than the start of the first regulatory period; and 15
- (c) in relation to price-quality regulation, no later than the start of the second regulatory period.
- (2) The Commission may make the initial **section 15** determination relating to information disclosure regulation in accordance with **subsection (1)(a)** even if the initial input methodologies for information disclosure regulation have not yet been made (*see* **section 18(1)**). 20
- (3) The Commission must consult interested parties before making an initial **section 15** determination.
- Compare: 2001 No 103 s 172
- 20 Regulatory periods** 25
- (1) The first regulatory period starts on the implementation date and lasts for a period of 3 years.
- (2) The duration of subsequent periods must be determined by the Commission and must be no longer than 6 years.
- (3) The Commission must notify the duration of each new regulatory period in a **section 15** determination. 30
- Compare: 2001 No 103 s 207
- 21 Ability to change implementation date**
- (1) The Governor-General may, by Order in Council made at any time before 1 July 2027, defer the implementation date by up to 2 years. 35
- (2) However, the implementation date may be deferred only once.

- (3) An Order in Council made under this section deferring the implementation date—
- (a) must be made on the recommendation of the Minister; and
  - (b) must specify a new implementation date; and
  - (c) is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements). 5
- 22 Ability to change other dates**
- (1) The Governor-General may, by Order in Council, do any 1 or more of the following:
- (a) at any time before 1 July 2026, defer the date by which the Commission must determine an initial input methodology in accordance with **section 18(1)**: 10
  - (b) at any time before the date on which the Commission must make an initial **section 15** determination in accordance with **section 19(1)**, defer the date by which the determination must be made: 15
  - (c) at any time before 31 December 2026, bring forward the date by which the Commission must make an initial determination in relation to price-quality regulation.
- (2) A Order in Council made under this section—
- (a) must be made on the recommendation of the Minister; and 20
  - (b) must specify a new date by which the Commission must determine the relevant initial input methodology or initial **section 15** determination (as the case may be); and
  - (c) is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements). 25
- 23 Minister’s recommendation**
- (1) In making a recommendation under **section 21** or **section 22(1)(a) or (b)**, the Minister must consider the following:
- (a) whether the purpose of this Part would be better met if 1 or more water infrastructure services were not yet subject to 1 or more forms of regulation under this Part: 30
  - (b) in relation to a deferral of the date by which the Commission must make an initial **section 15** determination relating to price-quality regulation in accordance with **section 19(1)(c)**, any recommendation from the Commission made under **section 49(1)(b)**. 35
- (2) The Minister may make a recommendation under **section 22(1)(c)** only—
- (a) after receiving and considering a recommendation from the Commission under **section 49(1)(a)**; and

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

### Subpart 3—Input methodologies

#### 24 Purpose of input methodologies

The purpose of input methodologies is to promote certainty for regulated water services providers and consumers in relation to the rules, requirements, and processes applying to the regulation, or proposed regulation, of water infrastructure services under this Part. 5

Compare: 2001 No 103 s 174

#### 25 Requirement for input methodologies 10

- (1) The Commission—
  - (a) must determine at least 1 input methodology in respect of each of information disclosure regulation under **subpart 4** and price-quality regulation under **subpart 6**; and
  - (b) may determine input methodologies in respect of quality regulation under **subpart 5**. 15
- (2) This section does not affect **section 19(2)**.

#### 26 How input methodologies apply

- (1) An input methodology relating to the supply of water infrastructure services must be applied— 20
  - (a) by each relevant regulated water services provider in accordance with the relevant **section 15** determination; and
  - (b) by the Commission in recommending, deciding, or determining—
    - (i) how regulation under this Part should apply to water infrastructure services; or 25
    - (ii) the prices or quality standards applying to water infrastructure services.
- (2) However, **subsection (1)(b)** does not apply in relation to an initial determination made by the Commission relating to information disclosure regulation, if the initial determination is made (in accordance with **section 19(1)(a)**) before the initial input methodologies have been determined (in accordance with **section 18(1)**). 30

Compare: 2001 No 103 s 175

#### 27 Matters covered by input methodologies

- (1) The input methodologies relating to water infrastructure services must include, to the extent applicable to the type of regulation under consideration,— 35

- (a) methodologies for evaluating or determining the following matters in respect of the supply of the water infrastructure services:
    - (i) cost of capital: 5
    - (ii) valuation of assets, including depreciation, and treatment of revaluations: 5
    - (iii) allocation of common costs, including between activities, businesses, regulated services, consumer classes, and geographic areas: 5
    - (iv) treatment of taxation; and
  - (b) regulatory processes and rules, such as— 10
    - (i) the specification and definition of prices, including identifying any costs that can be passed through to prices (which may not include the legal costs of any appeals under **section 118 or 119**); and
    - (ii) identifying circumstances in which price-quality paths may be reconsidered within a regulatory period; and 15
  - (c) methodologies for capital expenditure projects, including the following:
    - (i) requirements that the regulated water services provider must meet, including the scope and specificity of information required, the extent of independent verification and audit, and the extent of consultation and agreement with other parties; and 20
    - (ii) the criteria the Commission will use to evaluate capital expenditure proposals; and
    - (iii) time frames and processes for evaluating capital expenditure proposals, including what happens if the Commission does not comply with those time frames. 25
  - (2) Every input methodology must, as far as is reasonably practicable,—
    - (a) set out the matters listed in **subsection (1)** in sufficient detail to enable each affected regulated water services provider to estimate the material effects of the methodology on the provider; and 30
    - (b) set out how the Commission intends to apply the input methodology to particular water infrastructure services; and
    - (c) be consistent with the other input methodologies that relate to the same type of services.
- Compare: 1986 No 5 s 52T 35

## 28 Commission process for determining input methodologies

- (1) When the Commission begins work on an input methodology, it must give public notice of its intention to do so that—
  - (a) outlines the process that will be followed; and

- (b) sets out the proposed time frames.
- (2) During the course of its work on an input methodology, the Commission must give public notice of the draft methodology and consult interested parties before finalising the methodology.
- Compare: 2001 No 103 s 179 5
- 29 Status of input methodologies, amendments, and revocations**
- (1) The following are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements):
- (a) an input methodology:
- (b) an amendment to an input methodology: 10
- (c) the revocation by the Commission of an input methodology.
- (2) Secondary legislation referred to in **subsection (1)** must be published under the Legislation Act 2019,—
- (a) if it is made by the Commission, within 10 working days after the Commission makes its determination; or 15
- (b) if it is made by the High Court on appeal, within 10 working days after the Commission receives a copy of the High Court’s decision.
- (3) If an input methodology or amendment is made by the High Court on appeal, the Legislation Act 2019 applies as if the Commission were the maker of the secondary legislation. 20
- (4) When a methodology or an amendment (but not a revocation) is published, the Commission must publish the reasons for determining the methodology, or for amending it, on the Commission’s Internet site.
- Compare: 2001 No 103 s 180
- 30 Changes to input methodologies** 25
- (1) If the Commission proposes to amend or revoke an input methodology, **section 28** applies with any necessary modifications, as if the amendment or revocation were a new input methodology.
- (2) However, the Commission may amend an input methodology to make a non-material change without complying with **section 28**. 30
- Compare: 2001 No 103 s 181
- 31 Review and date of publication of input methodologies**
- (1) The Commission must review each input methodology no later than 7 years after its date of publication and, after that, at intervals of no more than 7 years.
- (2) The **date of publication** of an input methodology is the date on which it is published under the Legislation Act 2019. 35
- (3) **Section 28** applies, with any necessary modifications, as if the review were a new input methodology.

(4) *See also* **section 29**.

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

## Subpart 4—Information disclosure regulation

**32 Purpose of information disclosure regulation**

The purpose of information disclosure regulation is to ensure that sufficient information is readily available to interested persons to assess whether the purpose of this Part is being met. 5

Compare: 2001 No 103 s 186

**33 Effect of being subject to information disclosure regulation**(1) A regulated water services provider to which a **section 15** determination relating to information disclosure regulation applies must— 10

(a) publicly disclose information in accordance with the information disclosure requirements set out in the relevant **section 15** determination; and

(b) supply to the Commission a copy of all information disclosed in accordance with the **section 15** determination, within 5 working days after the information is first made available to the public; and 15

(c) supply to the Commission, in accordance with a written notice by the Commission, any further statements, reports, agreements, particulars, or other information required for the purpose of monitoring the regulated water services provider's compliance with the **section 15** determination. 20

## (2) The Commission—

(a) may monitor and analyse all information disclosed in accordance with the information disclosure requirements; and 25

(b) must, as soon as practicable after any information is publicly disclosed, publish (on the Commission's Internet site) a summary and an analysis of that information for the purpose of promoting greater understanding of the performance of individual regulated water services providers, their relative performance, and changes in their performance over time. 30

(3) To avoid doubt, the Commission may, as part of a summary and an analysis, include an analysis of how effective the information disclosure requirements imposed on regulated water services providers are in promoting the purpose in **section 12**.(4) In complying with **subsection (2)(b)**, the Commission must ensure that satisfactory provision exists to protect the confidentiality of any information that may reasonably be regarded as confidential or commercially sensitive. 35

Compare: 2001 No 103 s 187

**34 Section 15 determination to set out information disclosure requirements**

- (1) A **section 15** determination relating to information disclosure regulation must specify the following:
- (a) the information to be disclosed:
  - (b) the manner in which the information is to be disclosed: 5
  - (c) the form of disclosure:
  - (d) when, and for how long, the information must be disclosed:
  - (e) any other methodologies that are required in the preparation or compilation of the information.
- (2) Information required to be disclosed may include (without limitation) 1 or more of the following: 10
- (a) financial statements (including projected financial statements):
  - (b) asset values and valuation reports:
  - (c) prices, terms and conditions relating to prices, and pricing methodologies: 15
  - (d) contracts:
  - (e) transactions with related parties:
  - (f) financial and non-financial performance measures:
  - (g) plans and forecasts, including (without limitation) plans and forecasts about demand, investments, prices, revenues, quality and service levels, capacity and spare capacity, and efficiency improvements: 20
  - (h) asset management plans:
  - (i) quality performance measures and statistics:
  - (j) assumptions, policies, and methodologies used or applied in these or other areas: 25
  - (k) consolidated information that includes information about goods or services that are not subject to regulation under this Part, in which case **section 35** applies:
  - (l) information about the financing of regulated water services providers that includes information about goods or services that are not subject to regulation under this Part, in which case **section 35** applies. 30
- (3) The **section 15** determination may do 1 or more of the following:
- (a) require disclosed information, or information from which disclosed information is derived (in whole or in part), to be verified by statutory declaration: 35
  - (b) require independent audits of disclosed information:
  - (c) require the retention of data on which disclosed information is based, and associated documentation:

- (d) exempt any person or class of persons, or provide for exemptions, from any requirements of the determination, and revoke, or provide for the revocation of, exemptions:
- (e) provide for transitional provisions:
- (f) impose any other requirements that the Commission considers necessary or desirable to promote the purpose of information disclosure regulation. 5
- (4) If a **section 15** determination authorises a person to grant exemptions referred to in **subsection (3)(d)**,—
- (a) an instrument granting or revoking an exemption is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements), unless it applies only to 1 or more named persons; and 10
- (b) the determination must contain a statement to that effect.
- (5) The Commission must consult interested parties before making a **section 15** determination relating to water infrastructure services that are subject to information disclosure regulation. 15
- Compare: 2001 No 103 s 188
- 35 Information required may include information about goods or services not subject to regulation under this Part**
- (1) The purpose of this section is to enable the Commission to monitor—
- (a) compliance with information disclosure regulation applying to water infrastructure services; and 20
- (b) the ongoing capability of a regulated water services provider to raise finance with respect to its supply of regulated services, by assessing the provider's overall financial position.
- (2) A **section 15** determination may require information referred to in **subsection (3)** to be disclosed only to the extent required to enable the Commission to monitor 1 or both of the matters referred to in **subsection (1)**. 25
- (3) If a regulated water services provider provides goods or services that are not subject to regulation under this Part (**other goods or services**), the provider may be required to disclose— 30
- (a) consolidated financial statements, and any other information referred to in **section 34**, for all businesses (including those related to the supply of other goods or services) undertaken by that provider; and
- (b) consolidated financial statements, and any other information referred to in **section 34**, for the supply of all other goods or services in aggregate; and 35
- (c) reconciliation of information provided under **paragraphs (a) and (b)** with information disclosed in accordance with information disclosure requirements applying to water infrastructure services; and

- (d) information about the financing of—
  - (i) all businesses (including those related to the supply of other goods or services) undertaken by that provider; and
  - (ii) the supply of all goods and services (including other goods or services) provided by that provider.

5

Compare: 2001 No 103 s 189

**36 Charge for providing copies to public**

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

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Compare: 2001 No 103 s 190

Subpart 5—Quality regulation

**37 Purpose of quality regulation**

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

Compare: 2001 No 103 s 192

**38 Effect of being subject to quality regulation**

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- (1) A regulated water services provider to which a **section 15** determination relating to quality regulation applies must apply the quality paths set by the Commission in the determination in respect of all water infrastructure services that are—
  - (a) supplied by the provider; and
  - (b) specified in the determination.
- (2) For the purpose of monitoring compliance with this section, the Commission may, in addition to exercising its powers under section 98 of the Commerce Act 1986, issue a written notice to a regulated water services provider requiring it to provide any or all of the following:
  - (a) a written statement that states whether the provider has complied with the quality paths applying to that provider;
  - (b) a report on the written statement referred to in **paragraph (a)** that is signed by an auditor in accordance with any form specified by the Commission;
  - (c) sufficient information to enable the Commission to properly determine whether a quality path has been complied with:

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- (d) a certificate, in the form specified by the Commission and signed by at least 1 board member of the provider, confirming the truth and accuracy of any information provided under this section.

Compare: 2001 No 103 s 193

- 39 Section 15 determination to set out quality path requirements** 5
- (1) A **section 15** determination relating to quality regulation must specify the quality paths that apply to each regulated water services provider that is subject to quality regulation.
- (2) A quality path must specify the following: 10
- (a) the regulatory period to which it applies (but *see* **section 15(6)**):
  - (b) the quality standards that a regulated water services provider must meet:
  - (c) the date or dates on which the quality path (or any part of it) takes effect:
  - (d) the date or dates by which compliance must be demonstrated in accordance with **section 38(2)**.
- (3) A quality path may include— 15
- (a) incentives for a regulated water services provider to maintain or improve its quality of supply, and those incentives may include (without limitation) either of the following:
    - (i) compensation schemes that set minimum standards of performance and require the provider to pay prescribed amounts of compensation if it fails to meet those standards: 20
    - (ii) the use of schemes that rate or rank various aspects of the provider's performance in meeting the required quality standards; and
  - (b) performance requirements, including any of the following:
    - (i) requirements to adopt a particular approach to risk management: 25
    - (ii) requirements in relation to the condition of assets and remaining asset life:
    - (iii) requirements to make particular types of investment:
    - (iv) requirements to provide information about any investments planned for a particular period: 30
    - (v) requirements to consult the Commission about certain kinds of investments and investment decisions:
    - (vi) requirements to adopt asset management policies and practices:
    - (vii) requirements to ring-fence minimum amounts of revenue for investment purposes: 35
    - (viii) reporting requirements, including—
      - (A) to whom reports must be made; and
      - (B) the timing of reports; and

- (C) special reporting requirements in asset management plans, if the regulated water services provider fails to meet the quality standards; and
- (D) any other matters relating to reporting, including requirements for additional information: 5
  - (ix) requirements that any disclosed information, or any information from which disclosed information is derived, be verified by statutory declaration or certified (in the form specified by the Commission) as true and accurate:
  - (x) requirements to undertake cost-benefit analysis before specified projects are begun: 10
  - (xi) requirements relating to consultation and engagement with consumers:
  - (xii) requirements based on comparative benchmarking of efficiency.
- (4) Quality standards, incentives, and performance requirements may be set or imposed only in respect of services that are subject to regulation under this Part. 15
- (5) A requirement to ring-fence revenue (as referred to in **subsection (3)(b)(vii)**) may include a requirement not to spend the relevant funds without the approval of the Commission. 20
- (6) Quality standards may be prescribed in any way the Commission considers appropriate (such as targets, bands, formulas, or timetables for responsiveness to consumers).
- (7) A quality path does not apply to a regulated water services provider until the date specified in the relevant **section 15** determination. 25
- (8) The Commission must consult interested parties before making a **section 15** determination relating to water infrastructure services that are subject to quality regulation.

Compare: 2001 No 103 s 194

## Subpart 6—Price-quality regulation 30

### 40 Purpose of price-quality regulation

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

Compare: 2001 No 103 s 192 35

### 41 Effect of being subject to price-quality regulation

- (1) A regulated water services provider to which a **section 15** determination relating to price-quality regulation applies must apply the price-quality paths

set by the Commission in the determination in respect of all water infrastructure services that are—

- (a) supplied by the provider; and
  - (b) specified in the determination.
- (2) For the purpose of monitoring compliance with this section, the Commission may, in addition to exercising its powers under section 98 of the Commerce Act 1986, issue a written notice to a regulated water services provider requiring it to provide any or all of the following:
- (a) a written statement that states whether the provider has complied with the price-quality paths applying to that entity: 10
  - (b) a report on the written statement referred to in **paragraph (a)** that is signed by an auditor in accordance with any form specified by the Commission:
  - (c) sufficient information to enable the Commission to properly determine whether a price-quality path has been complied with: 15
  - (d) a certificate, in the form specified by the Commission and signed by at least 1 board member of the provider, confirming the truth and accuracy of any information provided under this section.

Compare: 2001 No 103 s 193

#### **42 Section 15 determination to set out price-quality path requirements** 20

- (1) A **section 15** determination relating to price-quality regulation must specify the price-quality paths that apply to each regulated water services provider that is subject to price-quality regulation.
- (2) A price-quality path must specify the following:
  - (a) the regulatory period to which it applies: 25
  - (b) in relation to prices, 1 or both of the following:
    - (i) the maximum price or prices that a regulated water services provider may charge:
    - (ii) the maximum revenues that a regulated water services provider may recover: 30
  - (c) the quality standards that a regulated water services provider must meet:
  - (d) the date or dates on which the price-quality path (or any part of it) takes effect:
  - (e) the date or dates by which compliance must be demonstrated in accordance with **section 41(2)**. 35
- (3) A price-quality path may include—

- 
- (a) incentives for a regulated water services provider to maintain or improve its quality of supply, and those incentives may include (without limitation) any of the following:
- (i) penalties by way of a reduction in the provider’s maximum prices or revenues based on whether, or by what amount, the provider fails to meet the required quality standards: 5
  - (ii) rewards by way of an increase in the provider’s maximum prices or revenues based on whether, or by what amount, the provider meets or exceeds the required quality standards:
  - (iii) compensation schemes that set minimum standards of performance and require the provider to pay prescribed amounts of compensation if it fails to meet those standards: 10
  - (iv) the use of schemes that rate or rank various aspects of the provider’s performance in meeting the required quality standards; and
- (b) performance requirements, including any of the following: 15
- (i) requirements to adopt a particular approach to risk management:
  - (ii) requirements in relation to the condition of assets and remaining asset life:
  - (iii) requirements to make particular types of investment:
  - (iv) requirements to provide information about any investments planned for a particular period: 20
  - (v) requirements to consult the Commission about certain kinds of investments and investment decisions:
  - (vi) requirements to adopt asset management policies and practices:
  - (vii) requirements to ring-fence minimum amounts of revenue for investment purposes: 25
  - (viii) reporting requirements, including—
    - (A) to whom reports must be made; and
    - (B) the timing of reports; and
    - (C) special reporting requirements in asset management plans, if the regulated water services provider fails to meet the quality standards; and 30
    - (D) any other matters relating to reporting, including requirements for additional information:
  - (ix) requirements that any disclosed information, or any information from which disclosed information is derived, be verified by statutory declaration or certified (in the form specified by the Commission) as true and accurate: 35

- (x) requirements to undertake cost-benefit analysis before specified projects are begun:
- (xi) requirements relating to consultation and engagement with consumers:
- (xii) requirements based on comparative benchmarking of efficiency. 5
- (4) Quality standards, incentives, and performance requirements may be set or imposed only in respect of services that are subject to regulation under this Part.
- (5) A requirement to ring-fence revenue (as referred to in **subsection (3)(b)(vii)**) may include a requirement not to spend the relevant funds without the approval of the Commission. 10
- (6) Quality standards may be prescribed in any way the Commission considers appropriate (such as targets, bands, formulas, or timetables for responsiveness to consumers).
- (7) A price-quality path does not apply to a regulated water services provider until the date specified in the relevant **section 15** determination. 15  
Compare: 2001 No 103 s 194
- 43 Wash-up mechanism for maximum revenues specified in initial price-quality paths**
- (1) This section applies when the Commission specifies, in the price-quality paths for a regulatory period, the maximum revenues that a regulated water services provider may recover. 20
- (2) The Commission may, in calculating the maximum revenues, apply a wash-up mechanism that provides for any over-recovery or under-recovery of revenue by the regulated water services provider during the previous regulatory period (if applicable) to be applied in a manner that is equivalent in present-value terms (as calculated in the manner that the Commission thinks fit) over 1 or more future regulatory periods. 25  
Compare: 2001 No 103 s 196
- 44 Smoothing revenues and prices** 30
- (1) This section applies when the Commission specifies maximum prices or maximum revenues for the purpose of **section 42(2)(b)**.
- (2) The Commission may calculate the maximum price or revenue in a manner that is equivalent in present value terms (as calculated in the manner that the Commission thinks fit) over 2 or more regulatory periods (for example, by altering depreciation) if, in the Commission's opinion, it is necessary or desirable to do so to provide for the financeability of a regulated water services provider or to minimise price shocks to consumers. 35  
Compare: 2001 No 103 s 197

**45 Making new section 15 determination**

- (1) Before the end of each regulatory period, the Commission must make a new **section 15** determination specifying the price-quality paths that will apply for the following regulatory period.
- (2) However, **subsection (1)** does not apply in respect of a regulatory period if price-quality regulation has not been imposed in that period. 5
- (3) In making a new **section 15** determination, the Commission must consult interested parties in relation to the requirements listed in **section 42**.

Compare: 2001 No 103 s 203

**46 What happens to price-quality path if input methodologies change** 10

- (1) The Commission must not reopen a price-quality path within a regulatory period on the grounds of a change in an input methodology, except as provided in **subsection (2)**.
- (2) The Commission must reopen a price-quality path, and make a new price-quality path by amending the relevant **section 15** determination in accordance with **section 16**, if— 15
  - (a) an input methodology changes as a result of an appeal under **section 119**; and
  - (b) had the changed methodology applied at the time the price-quality path was set, it would have resulted in a materially different path being set. 20

Compare: 2001 No 103 s 204

Subpart 7—Reviews

**47 Deregulation reviews**

- (1) The Commission may, either on its own initiative or at the request of the Minister, review how 1 or more water infrastructure services are regulated under this Part if the Commission has reasonable grounds to consider that those services should no longer be subject to any 1 or more of the following: 25
  - (a) information disclosure regulation;
  - (b) quality regulation;
  - (c) price-quality regulation. 30
- (2) A review under this section may be carried out at any time after the implementation date.
- (3) The Commission must, before the start of each regulatory period (except the first 2 regulatory periods), consider whether there are reasonable grounds to start a review. 35
- (4) For the purposes of **subsection (1)**, the Commission may, without limitation, describe a service under review with reference to any 1 or more of the following:

- (a) the geographic area in which the service is supplied:
  - (b) the consumers of the service:
  - (c) any other circumstances in which the service is supplied.
- (5) In carrying out a review, the Commission may consider—
- (a) whether the purpose of this Part would be better met if 1 or more water infrastructure services were no longer subject to 1 or more forms of regulation under this Part; and 5
  - (b) any other information that the Commission believes to be relevant.
- (6) The Commission must make a recommendation to the Minister after a review.
- (7) The Commission must— 10
- (a) consult interested persons about the review before making a recommendation to the Minister; and
  - (b) make the recommendation publicly available as soon as practicable after making it, along with a statement of its reasons for making the recommendation. 15

Compare: 2001 No 103 s 210

#### 48 Reviews of unregulated water services entities

- (1) The Commission may, either on its own initiative or at the request of the Minister, undertake reviews to determine whether 1 or more water services entities that are not subject to regulation under this Part (**unregulated water services entities**) should be subject to any 1 or more of the following in respect of 1 or more water infrastructure services: 20
- (a) information disclosure regulation:
  - (b) quality regulation:
  - (c) price-quality regulation. 25
- (2) A review under this section may be carried out at any time after the implementation date.
- (3) For the purposes of **subsection (1)**, the Commission may, without limitation, describe an unregulated water services entity under review with reference to any 1 or more of the following: 30
- (a) the geographic area in which the entity provides water infrastructure services:
  - (b) the consumers of the water infrastructure services provided by the entity:
  - (c) any other matter it considers appropriate.
- (4) For the purposes of **subsection (1)**, the Commission may, without limitation, describe any service provided by the unregulated water services entity under review with reference to any 1 or more of the following: 35
- (a) the geographic area in which the service is supplied:

- (b) the consumers of the service;
- (c) any other circumstances in which the service is supplied.
- (5) In carrying out a review, the Commission may consider—
  - (a) whether the purpose of this Part would be better met if 1 or more unregulated water services entities were subject to 1 or more forms of regulation under this Part in respect of 1 or more water infrastructure services; and 5
  - (b) any other information that the Commission believes to be relevant.
- (6) The Commission must make a recommendation to the Minister after a review.
- (7) If the Commission recommends to the Minister that 1 or more unregulated water services entities should be subject to 1 or more forms of regulation under this Part, the recommendation must— 10
  - (a) describe each unregulated water services entity; and
  - (b) describe the water infrastructure services provided by any unregulated water services entity that should be regulated by this Part; and 15
  - (c) specify the 1 or more forms of regulation that any unregulated water services entity should be subject to under this Part and when the relevant **section 15** determinations should apply; and
  - (d) specify when input methodologies should apply for the entity.
- (8) The Commission must— 20
  - (a) consult interested persons about the review before making a recommendation to the Minister; and
  - (b) make the recommendation publicly available as soon as practicable after making it, along with a statement of its reasons for making the recommendation. 25

**49 Reviews in relation to timing of price-quality regulation**

- (1) The Commission may, either on its own initiative or at the request of the Minister, undertake reviews to determine whether price-quality regulation should apply in relation to 1 or more regulated water services providers—
  - (a) from the start of the first regulatory period; or 30
  - (b) from the start of the second regulatory period.
- (2) However, the Commission may not undertake a review under **subsection (1)(a)** in relation to a regulated water services provider unless the provider serves the Auckland and Northland areas.
- (3) If the Commission undertakes a review under this section, the Commission must,— 35
  - (a) in the case of a review under **subsection (1)(a)**, complete the review before the start of the first regulatory period; and

- (b) in the case of a review under **subsection (1)(b)**, complete the review before the start of the second regulatory period; and
- (c) in either case, make a recommendation to the Minister.
- (4) In carrying out a review under **subsection (1)(a)**, the Commission must take into account the following: 5
  - (a) whether the purpose of this Part would be better met if the regulated water services provider that serves the Auckland and Northland areas were subject to price-quality regulation from the start of the first regulatory period; and
  - (b) any other information that the Commission believes to be relevant. 10
- (5) In carrying out a review under **subsection (1)(b)**, the Commission must consider—
  - (a) whether the purpose of this Part would be better met if 1 or more regulated water services providers were not subject to price-quality regulation from the start of the second regulatory period; and 15
  - (b) any other information that the Commission believes to be relevant.
- (6) If the Minister requests that the Commission undertake a review under **subsection (1)**, the Minister must make the request,—
  - (a) in relation to a review under **subsection (1)(a)**, no later than 2 years before the start of the first regulatory period; and 20
  - (b) in relation to a review under **subsection (1)(b)**, no later than 2 years before the start of the second regulatory period.

## 50 Outcome of reviews

- (1) The Minister may, on receiving a recommendation from the Commission under **sections 47 to 49**, do either of the following: 25
  - (a) accept or reject the Commission's recommendation:
  - (b) request that the Commission reconsider any matter (such as an error, an oversight, or competing policy interests).
- (2) If the Minister accepts a recommendation made as a result of a review carried out under **section 47**, the Commission must take whatever action is required (if any) in order to implement the recommendation. 30
- (3) The action taken by the Commission may include any 1 or more of the following:
  - (a) making a new **section 15** determination, or amending any existing **section 15** determination, to exclude 1 or more water infrastructure services from 1 or more forms of regulation under this Part: 35
  - (b) determining new input methodologies, or amending any existing input methodologies, as may be required:

- (c) taking any other action the Commission considers to be necessary or desirable in the circumstances.
- (4) In relation to the outcome of a review carried out under **section 48**, *see subpart 9*, which relates to the Minister’s ability to recommend that water services entities be designated for the purposes of this Part. 5
- (5) In relation to the outcome of a review carried out under **section 49**, *see sections 21 to 23*, which relate to the Minister’s ability to change certain dates, including in relation to price-quality regulation.
- Subpart 8—Commission review of funding and pricing plans
- 51 Commission must review funding and pricing plans** 10
- (1) The Commission must review any funding and pricing plan made publicly available by the chief executive of a regulated water services provider under any legislation dealing with water services.
- (2) In carrying out a review, the Commission must consider any charging principles set out in any legislation dealing with water services. 15
- 52 Commission may give directions**
- If the Commission considers that a funding and pricing plan is inconsistent with any charging principles set out in any legislation dealing with water services, the Commission may direct the board of a regulated water services provider to reconsider the plan. 20
- 53 Obligations of boards of regulated water services providers in response to direction from Commission**
- A board of a regulated water services provider that receives a direction from the Commission under **section 52** must comply with it.
- Subpart 9—Designations of unregulated water services entities 25
- 54 Designation of water services entities by Order in Council**
- (1) The Governor-General may, on the recommendation of the Minister, make an Order in Council declaring a water services entity that is not a statutory water services entity to be designated for the purposes of this Part.
- (2) A designation order is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements). 30
- 55 Minister’s recommendation**
- The Minister may recommend to the Governor-General that a water services entity be designated for the purposes of this Part only after receiving a recommendation from the Commission as a result of a review carried out under **section 48**. 35

**56 Content of designation**

A designation order must specify all of the following:

- (a) the water services entity that is designated:
- (b) at least 1 person that is an operator of the water services entity:
- (c) the form of regulation under this Part that will apply in respect of the water services entity (being 1 or more of information disclosure, quality, and price-quality regulation): 5
- (d) the services provided by the water services entity to which the regulation will apply.

**57 Duration of designation**

10

- (1) A designation order continues in force until the date on which the order is revoked or replaced, whichever occurs first.
- (2) A designation order must state its revocation date, which must be no later than 10 years after the date on which the order commences.
- (3) If a water services entity ceases to be designated for the purposes of this Part, any standard or direction that applies to the entity— 15
  - (a) expires if the standard or direction applies only to that entity; or
  - (b) ceases to apply to the entity in any other case.

**58 Amendment and revocation of designation**

- (1) A designation order may be amended or revoked using the process in **section 48**, which applies with any necessary modifications. 20
- (2) However,—
  - (a) the Commission may recommend that a designation order be amended without complying with **section 48** if the Commission is satisfied that the amendment is only correcting a minor error or is otherwise of a minor nature only (for example, a name change of an entity); and 25
  - (b) **section 48(8)(b)** does not apply in relation to a recommendation by the Commission that a designation order be revoked.

**Part 3****Consumer protection**

30

**59 Overview of this Part**

This Part provides for—

- (a) the designation of water services entities that are not statutory water services entities (the effect of which is that such entities become regulated water services providers for the purposes of this Part): 35
- (b) the making and operation of a service quality code:

- (c) a consumer quality complaints service and a consumer disputes resolution service:
- (d) the setting by the Commission of a reasonable penalty rate for debt owed by a consumer to a water services entity.

**60 Purpose of this Part** 5

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

**61 Interpretation** 10

In this Part, unless the context otherwise requires,—

**consumer dispute resolution service** means the dispute resolution service approved under **section 76** and **Schedule 2**

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

- (a) a statutory water services entity:
- (b) a water services entity that is designated under **section 62** for the purposes of this Part: 15
- (c) a subsidiary of, or a successor to, a person referred to in **paragraph (a) or (b)**:
- (d) a person that is an interconnected body corporate in relation to a person referred to in **paragraph (a) or (b)** 20

**service provider** means the person who owns or operates the consumer disputes resolution service.

Subpart 1—Designations

**62 Designation of water services entities by Order in Council** 25

- (1) The Governor-General may, on the recommendation of the Minister, make an Order in Council declaring a water services entity that is not a statutory water services entity to be designated for the purposes of this Part. 25
- (2) A designation order made under this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

**63 Minister’s recommendation** 30

- (1) The Minister may recommend to the Governor-General that a water services entity be designated for the purposes of this Part only after receiving a recommendation from the Commission.
- (2) In deciding whether to make a recommendation that a designation order be made, the Minister may do any of the following: 35
  - (a) accept or reject the Commission’s recommendation:

- (b) request that the Commission reconsider any matter (such as an error, an oversight, or competing policy interests):
- (c) make any other decision that the Minister considers is in the public interest.
- 64 Commission’s recommendation** 5
- (1) The Commission may recommend to the Minister that a water services entity that is not a statutory water services entity be designated for the purposes of this Part.
- (2) In deciding whether to make a recommendation, the Commission must take into account the following: 10
- (a) the number of consumers served by the water services entity:
- (b) the service quality provided to consumers by the water services entity:
- (c) the extent to which designating the water services entity is likely to lead to an improvement in the service quality provided to customers by the water services entity: 15
- (d) any other matter the Commission considers relevant.
- 65 Process for Commission’s recommendation**
- (1) Before making a recommendation under **section 64**, the Commission must—
- (a) consult any group or representatives of any group representing the interests of water services consumers as the Minister considers appropriate: 20
- (b) consult affected operators of the water services entity about the proposed designation (including the Commission’s reasons for proposing to make a recommendation).
- (2) The Commission must make the recommendation publicly available as soon as practicable after making it, along with a statement of its reasons for making the recommendation. 25
- 66 Content of designation**
- A designation order must specify all of the following:
- (a) the water services entity that is designated:
- (b) at least 1 person that is an operator of the water services entity: 30
- (c) the prescribed consumer protection legislation that will apply in respect of the water services entity:
- (d) the services provided by the water services entity to which that consumer protection legislation will apply.
- 67 Duration of designation** 35
- (1) A designation order continues in force until the date on which the order is revoked or replaced, whichever occurs first.

- (2) A designation order must state its revocation date, which must be no later than 10 years after the date on which the order commences.
- (3) If a water services entity ceases to be designated for the purposes of this Part, any standard or direction that applies to the entity (whether under the service quality code or otherwise)— 5
- (a) expires if the standard or direction applies only to that entity; or
- (b) ceases to apply to the entity in any other case.

**68 Amendment and revocation of designation**

A designation order may be amended or revoked using the process in **section 65**, except that— 10

- (a) **section 65** does not apply to an order that amends a designation order if the Commission is satisfied that the amendment is only correcting a minor error or is otherwise of a minor nature only (for example, a name change of an entity):
- (b) **section 65(2)** does not apply to a revocation order. 15

Subpart 2—Service quality code

**69 Commission must make service quality code**

The Commission must, not later than **1 July 2027**, make a service quality code in relation to the provision of 1 or more types of water infrastructure service by regulated water services providers. 20

**70 Contents of Commission’s service quality code**

The service quality code must—

- (a) specify which water infrastructure services it applies to; and
- (b) specify which regulated water services providers it applies to; and
- (c) specify a penalty rate for unpaid debt owed to regulated water services providers by consumers, or a method of calculating the penalty due, or both; and 25
- (d) promote the purpose of this Part set out in **section 60**.

**71 Regulated water services providers must comply with service quality code**

Regulated water services providers must comply with the provisions of the service quality code. 30

**72 Process for making or amending service quality code**

- (1) In order to make the service quality code, the Commission must—
- (a) give public notice of the process that will be followed to make the code; and 35

- (b) consult interested persons; and
- (c) give public notice of a draft code.
- (2) A person is entitled to make a submission to the Commission not later than 30 working days after the date on which public notice of the draft code is given.
- (3) The Commission may make the code only if the Commission is satisfied that the draft code meets all the requirements set out in this subpart. 5
- (4) The Commission may amend or revoke and replace a code if the Commission considers that the code no longer meets all the requirements set out in this subpart.
- (5) The same procedure that applies to making a code in **subsections (1) to (3)** must be followed to make an amendment or a revocation and replacement, with any necessary modifications, except that **subsections (1) to (3)** do not apply if the Commission is satisfied that an amendment is only correcting a minor error or is otherwise of a minor nature only. 10

### Subpart 3—Consumer complaints process and consumer dispute resolution service 15

#### *Consumer complaints process*

- 73 Requirement for regulated water services provider and drinking water suppliers to provide information to consumers and have complaints process 20**
- (1) A regulated water services provider or drinking water supplier must, in accordance with regulations that apply to the provider or supplier,—
    - (a) provide any prescribed information to consumers; and
    - (b) establish, maintain, and administer a consumer complaints process; and
    - (c) report annually to the Commission on its consumer complaints process. 25
  - (2) A regulated water services provider or drinking water supplier must ensure that complaints by consumers are dealt with—
    - (a) in accordance with its consumer complaints process; and
    - (b) in an efficient and effective manner.
  - (3) Regulations referred to in this section may make different provisions for— 30
    - (a) different kinds of regulated water services providers or drinking water suppliers; and
    - (b) different classes of water infrastructure services.

Compare: 2021 No 36 s 38

- 74 Review of complaint outcome using consumer dispute resolution service**
- (1) A consumer who is not satisfied with the outcome of a complaint dealt with using a consumer complaints process under this subpart may, in the form approved by the service provider, request the service provider for the consumer dispute resolution service to provide dispute resolution services. 5
- (2) The service provider may, at its discretion, decide to take no action or, as the case may require, no further action on any complaint if, in the opinion of the provider,—
- (a) the length of time that has elapsed between the date when the subject matter of the complaint arose and the date when the complaint was made is such that an investigation of the complaint is no longer practicable or desirable; or 10
- (b) the complaint is trivial, frivolous, or vexatious, or is not made in good faith; or
- (c) the person alleged to be aggrieved does not want action to be taken or, as the case may be, continued; or 15
- (d) the complainant does not have sufficient personal interest in the subject matter of the complaint; or
- (e) there is in all the circumstances an adequate remedy or right of appeal, other than the right to petition the House of Representatives or to make a complaint to an Ombudsman, that it would be reasonable for the aggrieved person to exercise. 20

Compare: 2021 No 36 s 39

- 75 Commission must monitor compliance with complaints process**
- The Commission must monitor compliance with **sections 73 and 74**. 25

*Consumer dispute resolution*

- 76 Consumer dispute resolution service**
- (1) The consumer dispute resolution service for the resolution of disputes is the dispute resolution service—
- (a) that is approved by the Minister under **Schedule 2**; and 30
- (b) that the Minister declares under that schedule to be the dispute resolution service for the purpose of this Part; and
- (c) whose provider is approved by the Minister.
- (2) Before approving a dispute resolution service under **Schedule 2**, the Minister must consult— 35
- (a) the Minister responsible for Taumata Arowai:

- (b) the Minister responsible for the administration of the Water Services Act 2021 (if a different Minister from the Minister referred to in **paragraph (a)**):
- (c) all regulated water services providers:
- (d) representatives of drinking water suppliers who are not regulated water services providers. 5

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

- (1) This section applies if a dispute arising from an unresolved complaint is referred by the service provider or a consumer to the consumer dispute resolution service and a determination is made on the dispute under the rules of the service. 10
- (2) The determination is binding on the regulated water services provider or drinking water supplier, as the case requires, except if the consumer lodges an appeal under **section 78** against the determination and the court modifies or reverses the determination. 15

Compare: 2001 No 103 s 242

### 78 Appeals against determinations

- (1) A consumer may, within the time allowed under **section 79(1)**, appeal to the court against any determination referred to in **section 77**. 20
- (2) The court may confirm, modify, or reverse the determination appealed against.
- (3) The decision of the court on the appeal is binding on all persons named as parties in the determination, and there is no right of appeal against the court's decision.

Compare: 2001 No 103 s 243; 2021 No 36 s 93 25

### 79 Procedure on appeal

- (1) An appeal under **section 78** must be brought and determined in accordance with the rules of court, except that—
  - (a) an appeal must be brought within 5 working days after the determination appealed against is notified to the party wanting to lodge the appeal, or any further time the court allows on an application made before or after that period ends; and 30
  - (b) the service provider and the maker of the determination appealed against (if a person engaged by the service provider), are not entitled to be represented at the hearing of the appeal; and 35
  - (c) the court on appeal may not refer the determination back to the service provider of the consumer dispute resolution service for any purpose.

- (2) The court may hear all evidence provided and representations made by or on behalf of any party to the appeal that the court considers relevant to the appeal, whether or not the evidence would otherwise be admissible in a court.

Compare: 2001 No 103 s 244

**80 Compliance with rules, binding settlements, and determinations** 5

- (1) Each party to a dispute that is referred to the consumer dispute resolution service must comply with the rules of the service.
- (2) On an application of the service provider, the court may require a person who is a party to a dispute to do any of the following:
- (a) comply with the rules of the service: 10
  - (b) comply with the terms of a binding settlement or determination made under the rules of the service.
- (3) If the court is satisfied that the terms of a binding settlement or determination are manifestly unreasonable, the court's order under **subsection (2)(b)** may modify the terms of the binding settlement or determination, but only to the extent that the modification results in a binding settlement or determination that could have been made under the consumer dispute resolution service. 15
- (4) If an order requiring a regulated water services provider, drinking water supplier, or other person to comply with a binding settlement includes a requirement that the person pay an amount of money to a person, that order (or part of the order) may be enforced as if it were a judgment by the court for the payment of a sum of money. 20

Compare: 2001 No 103 s 245

*Commission review of consumer dispute resolution service*

**81 Commission must review consumer dispute resolution service** 25

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

*Miscellaneous matters*

**82 Duties of dispute resolution service provider, regulated water services providers, and drinking water suppliers** 30

- (1) If, in the course of dealing with any complaint or while dispute resolution services are being provided, the service provider becomes aware that—
- (a) there is or may be a serious risk to public health arising from the provision of or omission to provide water infrastructure services, the service provider must promptly notify the matter to Taumata Arowai and the relevant medical officer of health: 35
  - (b) a regulated water services provider is facing a significant problem or potential problem (within the meaning of section 127(3) of the Local

Government Act 2002), the service provider must promptly notify the matter to Taumata Arowai.

- (2) The service provider, regulated water services providers, and drinking water suppliers must, in an agreed manner, share with the Commission and Taumata Arowai information about issues, trends, and patterns arising out of consumer complaints. 5

## Part 4 Enforcement, monitoring, and appeals

### Subpart 1—Civil liability

#### 83 Overview of civil liability 10

- (1) The following remedies (**civil liability remedies**) are available under this subpart:

- (a) a pecuniary penalty order (on application by the Commission only):
- (b) a compensatory order:
- (c) an injunction. 15

- (2) This section is a guide only to the general scheme and effect of this subpart.

#### *Pecuniary penalty orders*

#### 84 When court may make pecuniary penalty order

- (1) The court may, on the application of the Commission, order a person to pay to the Crown the pecuniary penalty that the court determines to be appropriate if the court is satisfied that the person has— 20

- (a) contravened an information disclosure requirement; or
- (b) contravened a quality or price-quality requirement; or
- (c) contravened a code made under this Act; or
- (d) attempted to contravene any of the things referred to in **paragraphs (a) to (c)**; or 25
- (e) been involved (*see section 124*) in a contravention of any of the things referred to in **paragraphs (a) to (c)**.

- (2) For the purposes of this Part,—  
**contravening a quality or price-quality requirement—** 30

- (a) refers to a requirement imposed by a **section 15** determination, in relation to water infrastructure services generally or any particular water infrastructure services that are subject to quality or price-quality regulation imposed under **Part 2**; and
- (b) means any or all of the following: 35

- (i) failing to comply with the requirements for prices, whether by charging a price for the water infrastructure services that is higher than the maximum permitted, or by receiving more revenue than is permitted, or in any other way:
- (ii) refusing or failing to comply with any quality standards required under the quality or price-quality regulation: 5
- (iii) refusing or failing to comply with any incentives or performance requirements set out in a **section 15** determination relating to quality or price-quality regulation

**contravening an information disclosure requirement** includes all or any of the following: 10

- (a) failing to disclose information required to be disclosed:
- (b) failing to disclose information in the form or within the time required:
- (c) disclosing under an information disclosure requirement information that is false or misleading. 15

Compare: 1986 No 5 ss 80, 87; 2001 No 103 s 215

#### **85 Maximum amount of pecuniary penalty**

The maximum amount of a pecuniary penalty is—

- (a) \$500,000, in the case of an individual; or
- (b) \$5 million, in any other case. 20

Compare: 2001 No 103 s 215(3)

#### **86 Considerations for court in determining pecuniary penalty**

- (1) In determining the amount of a pecuniary penalty that a person (A) must pay, the court must have regard to all relevant matters (to the extent they are known), including— 25
  - (a) the nature and extent of A's conduct; and
  - (b) the nature and extent of any loss or damage suffered by any person because of A's conduct; and
  - (c) any gains made or losses avoided by A; and
  - (d) whether a person has paid an amount of compensation, reparation, or restitution, or taken other steps to avoid or mitigate any actual or potential adverse effects of A's conduct; and 30
  - (e) the circumstances in which A's conduct took place; and
  - (f) whether or not A has previously been found by a court in proceedings under this Act, or any other legislation, to have engaged in any similar conduct. 35

- (2) In this section, **A's conduct** means the conduct of A for which A is liable to the pecuniary penalty.

Compare: 2001 No 103 s 215

**87 Court must order that recovery from pecuniary penalty be applied to Commission's actual costs** 5

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

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

*Compensatory orders* 10

**88 When court may make compensatory orders**

- (1) If the court orders a person to pay a pecuniary penalty order under **section 84**, the court may, in addition, order the person to pay compensation to any person who has suffered, or is likely to suffer, loss or damage as a result of the contravention (an **aggrieved person**). 15

- (2) An application for an order under this section may be made by the Commission or any aggrieved person.

- (3) The court may make a compensatory order whether or not the aggrieved person is a party to the proceeding.

Compare: 1986 No 5 s 87A 20

**89 Terms of compensatory orders**

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

- (2) An order may include an order to direct a relevant person to pay to the aggrieved person the amount of the loss or damage (in whole or in part). 25

- (3) **Subsection (2)** does not limit **subsection (1)**.

- (4) In this section, **relevant person** means—

- (a) any person in contravention; or  
(b) any person involved (*see* **section 124**) in the contravention. 30

Compare: 2013 No 69 s 495

*Injunctions*

**90 Court may grant injunctions**

The court may, on application by the Commission or any other person, grant an injunction— 35

- (a) restraining a person from engaging in conduct that constitutes or would constitute a contravention, attempted contravention, or involvement (*see section 124*) in a contravention of a quality or price-quality requirement, an information disclosure requirement, or a code made under this Act; or 5
- (b) requiring a person to do an act or a thing if—
  - (i) that person has refused or failed, or is refusing or failing, or is proposing to refuse or fail, to do that act or thing; and
  - (ii) the refusal or failure was, is, or would be a contravention of a quality or price-quality requirement, an information disclosure requirement, or a code made under this Act. 10

Compare: 2013 No 69 s 480

## 91 When court may grant restraining injunctions

- (1) The court may grant an injunction restraining a person from engaging in conduct of a particular kind if— 15
  - (a) it is satisfied that the person has engaged in conduct of that kind; or
  - (b) it appears to the court that, if an injunction is not granted, it is likely that the person will engage in conduct of that kind.
- (2) The court may grant an interim injunction restraining a person from engaging in conduct of a particular kind if in its opinion it is desirable to do so. 20
- (3) **Subsections (1)(a) and (2)** apply whether or not it appears to the court that the person intends to engage again, or to continue to engage, in conduct of that kind.
- (4) **Subsections (1)(b) and (2)** apply whether or not— 25
  - (a) the person has previously engaged in conduct of that kind; or
  - (b) there is an imminent danger of substantial damage to any other person if the person engages in conduct of that kind.
- (5) In determining whether to grant an interim injunction under this section, the court must give any weight that the court considers appropriate to the interest of consumers. 30
- (6) In any proceedings under this section the Commission, on the order of the court, may obtain discovery and administer interrogatories.
- (7) The court may at any time rescind or vary an injunction granted under this Act.

Compare: 1986 No 5 s 88; 2013 No 69 s 481; 2022 No 21 s 48

## 92 Commission's undertaking as to damages not required 35

- (1) If the Commission applies to the court for the grant of an interim injunction under this subpart, the court must not, as a condition of granting an interim injunction, require the Commission to give an undertaking as to damages.

- (2) In determining the Commission’s application for the grant of an interim injunction, the court must not take into account that the Commission is not required to give an undertaking as to damages.

Compare: 1986 No 5 s 88A; 2013 No 69 s 482; 2022 No 21 s 50

### *Rules of procedure*

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#### **93 Rules of civil procedure and civil standard of proof apply**

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

#### **94 Limit on proceedings**

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- (1) A proceeding under this subpart must be commenced within 3 years after the matter giving rise to the contravention, attempted contravention, or involvement in the contravention was discovered or ought reasonably to have been discovered.

- (2) However, an application for compensation under **section 88** must be made within 1 year of the relevant pecuniary penalty order. 15

- (3) No proceeding under this subpart may be commenced 10 years or more after the matter giving rise to the contravention, attempted contravention, or involvement in the contravention occurred.

- (4) *See section 124* in relation to the meaning of “involvement in a contravention”. 20

### *Relationship between proceedings and orders*

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

The court may grant a civil liability remedy of one kind against a person even though the court has granted another civil liability remedy of a different kind against the person for the same conduct. 25

#### **Example**

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

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

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- (1) If conduct by a person constitutes a contravention, an attempted contravention, or an involvement in the contravention of 2 or more provisions, a proceeding may be brought against that person for the contravention, attempted contravention, or involvement in the contravention of any 1 or more of the provisions, but no person is liable to more than 1 pecuniary penalty order for the same conduct. 35

- (2) See **section 124** in relation to the meaning of “involvement in a contravention”.

**97 No pecuniary penalty and criminal penalty for same conduct**

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

5

Subpart 2—Offences

**98 Order requiring information disclosure requirement to be complied with**

- (1) The court may, on application by the Commission, order a regulated water services provider to comply with an information disclosure requirement that applies to the provider.

10

- (2) An order under this section must specify the date by which, or period within which, the provider must comply with the requirement.

Compare: 1986 No 5 s 86A

**99 Offences relating to information disclosure regulation**

- (1) A person commits an offence if—

15

(a) the person, knowing that water infrastructure services are subject to information disclosure regulation, intentionally contravenes any information disclosure requirement relating to those services; or

(b) the person is subject to an order under **section 90 or 98** and fails to comply with the order by the date, or within the period, specified.

20

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

Compare: 1986 No 5 s 86B

**100 Offence relating to quality regulation**

25

- (1) A person commits an offence if—

(a) the person, knowing that water infrastructure services are subject to quality regulation, intentionally contravenes a quality requirement in respect of the supply of the services; or

(b) the person is subject to an order under **section 90** and fails to comply with the order.

30

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

Compare: 1986 No 5 s 87B

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**101 Offence relating to price-quality regulation**

- (1) A person commits an offence if—
- (a) the person, knowing that water infrastructure services are subject to price-quality regulation, intentionally contravenes a price-quality requirement in respect of the services; or 5
  - (b) the person is subject to an order under **section 90** and fails to comply with the order.
- (2) A person who commits an offence under **subsection (1)** is liable on conviction to a fine not exceeding \$200,000, in the case of an individual, or \$1 million, in any other case. 10
- Compare: 1986 No 5 s 87B

**102 Offence relating to service quality code**

- (1) A person commits an offence if—
- (a) the person, knowing that particular water infrastructure services are subject to the service quality code, intentionally contravenes a code requirement in respect of the services; or 15
  - (b) the person is subject to an order under **section 90** and fails to comply with the order.
- (2) A person who commits an offence under **subsection (1)** is liable on conviction to a fine not exceeding \$200,000, in the case of an individual, or \$1 million, in any other case. 20
- Compare: 1986 No 5 s 87B

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

**103 Overview of this subpart**

This subpart sets out orders that may be made specifically for breaches of **Part 3** (which relates to consumer protection) and procedural matters relating to infringement offences for breaches of **Part 3** and other things done or made under **Part 3**. 25

*Additional remedies in relation to breach of service quality code***104 Order to disclose information or publish advertisement** 30

- (1) The court may make one or both of the following orders if the court is satisfied, on the application of the Commission, that a person has failed without reasonable excuse to comply with the service quality code:
- (a) an order requiring that person, or any other person involved in the contravention, to disclose to the public, or to a particular person or class of persons, the information or class of information that is specified in the 35

order, being information that is in the possession of the person to whom the order is directed or to which that person has access:

- (b) an order requiring that person, or any other person involved in the contravention, to publish corrective statements the terms of which are specified in, or are to be determined in accordance with, the order. 5
- (2) The information must be disclosed or published—
  - (a) in the manner and at the times that are specified in the order; and
  - (b) at the person’s own expense.
- (3) The court may hear and determine an application in conjunction with any other proceedings under this Part. 10
- (4) *See section 124* in relation to the meaning of “involvement in a contravention”.

Compare: 2001 No 103 s 156MA

**105 General orders for breach of service quality code**

- (1) The court may make 1 or more of the following orders if the court is satisfied, on the application of the Commission, that a person (**person X**) has committed a breach of the service quality code: 15
  - (a) an order directing person X to refund money or return property to any other person:
  - (b) an order directing person X to pay to any other person the amount of any loss or damage caused to that other person by the conduct of person X: 20
  - (c) an order directing person X, at person X’s own expense, to supply a service to any other person:
  - (d) an order declaring all or part of a contract made between person X and any other person, or a collateral arrangement relating to such a contract,— 25
    - (i) to be void; and
    - (ii) if the court thinks fit, to have been void at all times on and after a date specified in the order, which may be before the date on which the order is made: 30
  - (e) an order in respect of a contract made between person X and any other person, or a collateral arrangement relating to such a contract,—
    - (i) varying the contract or the arrangement in the manner specified in the order; and
    - (ii) if the court thinks fit, declaring the varied contract or arrangement to have had effect on and after a date specified in the order, which may be before the date on which the order is made. 35

- (2) The court may hear and determine an application under **subsection (1)** in conjunction with any other proceedings under this Part.

Compare: 2001 No 103 s 156MB

#### **106 Other order for breach of service quality code**

- (1) The court may, if the court is satisfied, on the application of the Commission or a consumer, that a person has committed a breach of the service quality code, make an order directing the person, at the person's own expense, to supply a service to a consumer. 5

- (2) The court may hear and determine an application under **subsection (1)** in conjunction with any other proceedings under this Part. 10

Compare: 2001 No 103 s 156MC

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

- (1) The provisions of **sections 93 to 97** apply in respect of proceedings under this subpart. 15

- (2) For the purposes of this Act, the remedies set out in **sections 104 to 106** are civil liability remedies.

### *Infringement offences*

#### **108 Interpretation**

In **sections 109 to 117**,— 20

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

**infringement offence** means an offence in the regulations relating to a consumer protection provision in **Part 3**, the service quality code, the consumer complaints process, the consumer dispute resolution service, the rules of that service, or anything else done or made under **Part 3** that is prescribed as an infringement offence against those regulations. 25

#### **109 Infringement offences**

- (1) A person who is alleged to have committed an infringement offence may— 30
- (a) be proceeded against by the filing of a charging document under section 14 of the Criminal Procedure Act 2011; or
- (b) be issued with an infringement notice under **section 111**.
- (2) Proceedings commenced in the way described in **subsection (1)(a)** do not require the leave of a District Court Judge or Registrar under section 21(1)(a) of the Summary Proceedings Act 1957. 35
- (3) *See* section 21 of the Summary Proceedings Act 1957 for the procedure that applies if an infringement notice is issued.

**110 Who may issue infringement notices**

The Commission may issue infringement notices under this Act.

**111 When infringement notice may be issued**

The Commission may issue an infringement notice to a person if the Commission believes on reasonable grounds that the person is committing, or has committed, an infringement offence. 5

**112 Revocation of infringement notice before payment made**

- (1) The Commission may revoke an infringement notice before—
  - (a) the infringement fee is paid; or
  - (b) an order for payment of a fine is made or deemed to be made by a court under section 21 of the Summary Proceedings Act 1957. 10
- (2) The Commission must take reasonable steps to ensure that the person to whom the notice was issued is made aware of the revocation of the notice.
- (3) The revocation of an infringement notice before the infringement fee is paid is not a bar to any further action as described in **section 109(1)(a) or (b)** against the person to whom the notice was issued in respect of the same matter. 15

**113 What infringement notice must contain**

An infringement notice must be in the form prescribed in the regulations and must contain the following particulars:

- (a) details of the alleged infringement offence that fairly inform a person of the time, place, and nature of the alleged offence: 20
- (b) the amount of the infringement fee:
- (c) the address of the place where the infringement notice may be paid:
- (d) how the infringement fee may be paid:
- (e) the time period within which the infringement fee must be paid: 25
- (f) a summary of the provisions of section 21(10) of the Summary Proceedings Act 1957:
- (g) a statement that the person served with the notice has a right to request a hearing:
- (h) a statement of what will happen if the person served with the notice neither pays the infringement fee nor requests a hearing: 30
- (i) any other matters prescribed in the regulations.

**114 How infringement notice may be issued to person**

- (1) An infringement notice may be issued to a person who the Commission believes is committing or has committed the infringement offence by— 35

- (a) delivering it to the person or, if the person refuses to accept it, bringing it to the person's notice; or
- (b) leaving it for the person at the person's last known place of residence with another person who appears to be of or over the age of 14 years; or
- (c) leaving it for the person at the person's place of business or work with another person; or 5
- (d) sending it to the person by prepaid post addressed to the person's last known place of residence or place of business or work; or
- (e) sending it to an electronic address of the person in any case where the person does not have a known place of residence or business in New Zealand. 10
- (2) Unless the contrary is shown,—
- (a) an infringement notice (or a copy of it) sent by prepaid post to a person under **subsection (1)** is to be treated as having been served on that person on the fifth working day after the date on which it was posted; and 15
- (b) an infringement notice sent to a valid electronic address is to be treated as having been served at the time the electronic communication first entered an information system that is outside the control of the chief executive or enforcement officer.
- 115 Payment of infringement fees** 20  
All infringement fees paid for infringement offences must be paid into a Crown Bank Account.
- 116 Reminder notices**  
A reminder notice must be in the form prescribed in the regulations and must include the same particulars, or substantially the same particulars, as the infringement notice. 25
- 117 Relationship between infringement offences and other offences**  
A person may be prosecuted or convicted of any offence referred to in this Act (rather than proceeding under **sections 109 to 116**), even if their conduct is, or may be, an infringement offence. 30

#### Subpart 4—Appeals

- 118 Appeals against Commission determinations**
- (1) A regulated water services provider or any other person may appeal to the court under this subsection against any determination of the Commission under this Act, other than the following: 35

- (a) a **section 15** determination, or any part of a **section 15** determination, that sets out how information disclosure regulation or quality regulation applies to a regulated water services provider:
  - (b) an input methodology determination under **subpart 3 of Part 2** (for which a separate appeal right is given under **section 119**). 5
- (2) A person may appeal to the court under this subsection on a question of law against any determination of the Commission under this Act (including a determination referred to in **subsection (1)**), except if the person has appealed, or is able to appeal, on the question of law against the determination under **section 119**. 10
- (3) An appeal under this section must be made by giving notice of appeal within 20 working days after the date of the determination appealed against or within any further time that the court may allow.
- (4) Sections 77 and 93 to 97 of the Commerce Act 1986 apply with any necessary modifications in respect of an appeal under this section. 15
- (5) To avoid doubt, a recommendation to the Minister by the Commission is not a determination for the purposes of this section.

Compare: 2001 No 103 s 224

### **119 Appeals against input methodology determinations**

- (1) Any person who gave views on an input methodology determination to the Commission as part of the process under **section 28**, and who, in the opinion of the court, has a significant interest in the matter, may appeal to the court against the determination. 20
- (2) In this section, **input methodology determination** means any of the following: 25
- (a) the initial determination of an input methodology:
  - (b) any determination by the Commission that amends or revokes an input methodology:
  - (c) any determination by the Commission of an input methodology after a review of the input methodology. 30
- (3) In determining an appeal against an input methodology determination, the court may do any of the following:
- (a) decline the appeal and confirm the input methodology, or the amendment or revocation of the input methodology, set out in the determination:
  - (b) allow the appeal by— 35
    - (i) amending the input methodology; or
    - (ii) revoking the input methodology and substituting a new one; or

- (iii) referring the input methodology determination back to the Commission with directions as to the particular matters that require amendment; or
- (iv) if the revocation of an input methodology is not confirmed, confirming that the input methodology still applies. 5
- (4) The court may exercise its powers under **subsection (3)(b)** only if it is satisfied that the amended, substituted, or confirmed input methodology is (or will be, in the case of **subsection (3)(b)(iii)**) materially better in meeting the purpose of **Part 2** or the purpose in **section 24**, or both.
- (5) If the court allows an appeal, the Commission may seek clarification from the court on any matter for the purpose of implementing the court's decision. 10
- (6) There is a right of appeal under section 97 of the Commerce Act 1986 to the Court of Appeal against any decision or order of the High Court under this section on a point of law only.
- Compare: 2001 No 103 s 183 15
- 120 Process for appeals**
- (1) An appeal under **section 119(1)** must be brought within 20 working days after the date on which the input methodology is published.
- (2) The appeal must be by way of rehearing and must be conducted solely on the basis of the documentary information and views that were before the Commission when it made its determination, and no party may introduce any new material during the appeal. 20
- (3) The High Court must sit with 2 lay members (unless the court considers that only 1 is required).
- (4) Each of the lay members must have relevant experience and be appointed from the pool of people appointed under section 77 of the Commerce Act 1986 to be members of the court for the purpose of hearing the appeal. 25
- (5) Section 77 of the Commerce Act 1986 applies, and section 77(14) of that Act is not limited by **subsection (3)** of this section.
- Compare: 2001 No 103 s 184 30
- 121 Input methodology applies pending outcome of appeal**
- (1) The court may not stay the application of **section 26** with respect to any input methodology until any appeal against it is finally determined.
- (2) **Section 26** continues to apply with respect to every input methodology until any appeal against the input methodology is finally determined. 35
- Compare: 2001 No 103 s 185

Subpart 5—Miscellaneous provisions relating to enforcement

**122 Jurisdiction of High Court**

- (1) The High Court may hear and determine the following matters:
- (a) applications for orders, or for a court to exercise any other power, under any provision of this Part: 5
  - (b) appeals arising from any proceeding in the District Court under this Part.
- (2) Section 75 of the Commerce Act 1986 applies with any necessary modifications to the extent that a provision referred to in that section applies for the purposes of this Act.
- (3) The provisions of the Criminal Procedure Act 2011 apply in relation to the jurisdiction of the High Court to determine criminal proceedings. 10

Compare: 1986 No 5 s 75

**123 Jurisdiction of District Court**

- (1) The District Court may hear and determine applications for orders, or for a court to exercise any other power, under any of the provisions of this Part if— 15
- (a) the amount claimed does not exceed \$350,000; or
  - (b) no amount is claimed; or
  - (c) the occasion for the making of the order or the exercise of the power arises in the course of civil proceedings properly before the court; or
  - (d) the parties consent, under section 81 of the District Court Act 2016, to the District Court having jurisdiction to hear and determine the application. 20
- (2) Section 76 of the Commerce Act 1986 applies with any necessary modifications to the extent that a provision referred to in that section applies for the purposes of this Act. 25
- (3) The provisions of the Criminal Procedure Act 2011 apply in relation to the jurisdiction of the District Court to determine criminal proceedings.

**124 Involvement in contravention**

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

- (a) has aided, abetted, counselled, or procured the contravention; or 30
- (b) has induced, whether by threats or promises or otherwise, the contravention; or
- (c) has been in any way, directly or indirectly, knowingly concerned in, or party to, the contravention; or
- (d) has conspired with others to effect the contravention. 35

**125 Illegal contracts provisions do not apply**

- (1) Subpart 5 of Part 2 of the Contract and Commercial Law Act 2017 does not apply to any contract entered into in contravention of a civil liability provision or to any contract that contains a provision the giving effect to of which would constitute a contravention of a civil liability provision. 5
- (2) In this section, **civil liability provision** means a provision the breach of which may be the subject of civil proceedings under this Part.
- Compare: 1986 No 5 s 89(5)

**126 Enforceability of other provisions not affected**

- (1) Despite any legislation or rule of law, if a contract is entered into in contravention of a civil liability provision because the contract contains a particular provision, or the contract contains a provision that if given effect to would contravene a civil liability provision, the enforceability of any other provision of the contract is not affected by the existence of that provision. 10
- (2) In this section, **civil liability provision** means a provision the breach of which may be the subject of civil proceedings under this Part. 15
- Compare: 1986 No 5 s 89(6)

**Part 5  
Miscellaneous**

**Subpart 1—Water Services Commissioner 20**

*Water Services Commissioner*

**127 Appointment of Water Services Commissioner**

- (1) There must be a Water Services Commissioner.
- (2) The Water Services Commissioner must be appointed by the Governor-General on the recommendation of the responsible Minister. 25
- (3) The appointment must be made by written notice to the appointee.
- (4) The responsible Minister must ensure that the following are notified in the *Gazette* as soon as is reasonably practicable after an appointment is made:
- (a) the name of the appointee; and
  - (b) the date on which the appointment takes effect; and 30
  - (c) the terms of the appointment.
- (5) In this section and **section 128, responsible Minister** means the responsible Minister, in relation to the Commission, within the meaning of section 10(1) of the Crown Entities Act 2004.
- Compare: 2004 No 115 s 28 35

**128 Minister’s recommendation**

- (1) The responsible Minister may only recommend that a person be appointed as the Water Services Commissioner if—
- (a) the person is a member of the Commission appointed under section 9(2) of the Commerce Act 1986; and 5
  - (b) in the opinion of the responsible Minister, the person is qualified for appointment, having regard to the functions and powers of the Commission under this Act and any other legislation.
- (2) For the purposes of **subsection (1)(b)**, a person is **qualified for appointment** because of that person’s knowledge of, or experience in, the water services industry or any other industry, commerce, economics, law, accountancy, public administration, or consumer affairs. 10

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

**129 Further provisions relating to Water Services Commissioner**

- (1) A person may only be removed from office as the Water Services Commissioner for just cause (within the meaning of section 40 of the Crown Entities Act 2004). 15
- (2) If a person is removed under **subsection (1)**, they are also removed from office as a member of the Commission as if they had been removed under section 13(1) of the Commerce Act 1986 (including the notice requirements under section 39 of the Crown Entities Act 2004). 20
- (3) If a person’s term of office as the Water Services Commissioner expires or the person resigns from that office, the person may continue to act (and must be treated) as if they were the Water Services Commissioner for the purpose of completing the determination of any matter before that person, as the Water Services Commissioner, that commenced before the term of office expired or before the resignation took effect (as the case may be). 25
- (4) In other respects, the following provisions of the Crown Entities Act 2004 apply in relation to a Water Services Commissioner with all necessary modifications: 30
- (a) section 34 (validity of members’ acts):
  - (b) section 35 (validity of appointments):
  - (c) clause 2 of Schedule 5 (term of appointment):
  - (d) clause 3 of Schedule 5 (resignation):
  - (e) clause 4(2) and (3) of Schedule 5 (removal). 35

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

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

- (1) The functions, duties, and powers of the Commission under this Act must be performed or exercised by—

- (a) the Water Services Commissioner alone; or
- (b) if the chairperson of the Commission agrees, by the Water Services Commissioner with 2 or more other members of the Commission.
- (2) However, if, in the opinion of the Water Services Commissioner, the function, duty, or power is to do any of the following, the function, duty, or power must be performed or exercised by the Water Services Commissioner with 2 or more other members of the Commission: 5
- (a) make every determination in respect of information disclosure regulation, quality regulation, and price-quality regulation under **section 15**:
- (b) make every determination in respect of input methodologies under **section 25, 28, 30, or 31**: 10
- (c) make a recommendation to the Minister under **section 47, 48, or 49**:
- (d) make the service quality code under **section 69**.
- Compare: 2001 No 103 s 10(1)(a), (c)
- 131 Further provisions relating to when Water Services Commissioner acts alone** 15
- (1) This section applies if, under **section 130**, the Water Services Commissioner is performing or exercising a function, duty, or power alone.
- (2) The Water Services Commissioner has the authority, in the Commission's name, to perform or exercise that function, duty, or power. 20
- Compare: 2001 No 103 s 10(4)
- 132 Further provisions relating to when Water Services Commissioner acts with 2 or more other members**
- (1) This section applies if, under **section 130**, the Water Services Commissioner is performing or exercising a function, duty, or power with 2 or more other members of the Commission. 25
- (2) The chairperson of the Commission must determine which other members must perform or exercise that function, duty, or power with the Water Services Commissioner.
- (3) When acting with the Water Services Commissioner, those other members have the authority, in the Commission's name, to perform or exercise the function, duty, or power. 30
- (4) **Subsection (3)** is an exception to section 25(1) of the Crown Entities Act 2004.
- (5) Clauses 6 to 13 of Schedule 5 of the Crown Entities Act 2004 (with all necessary modifications) govern the proceedings of the Water Services Commissioner acting with those other members, except that— 35
- (a) the chairperson is the Water Services Commissioner; and

- (b) the quorum for a meeting is the same as in section 16 of the Commerce Act 1986.

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

**133 Accountability for collective duties**

- (1) This section applies in relation to the performance or exercise of functions, duties, and powers, under **section 130**, by the Water Services Commissioner alone or the Water Services Commissioner with 2 or more other members of the Commission (as the case may be). 5
- (2) In relation to those functions, duties, and powers, only the Water Services Commissioner alone or the Water Services Commissioner acting with those other members (as the case may be) must comply with the collective duties under sections 49 and 50 of the Crown Entities Act 2004. 10
- (3) This section applies despite section 26(a) of the Crown Entities Act 2004.

**134 Alternate member to act instead of Water Services Commissioner in certain circumstances** 15

- (1) This section applies if—
- (a) there is no Water Services Commissioner; or
- (b) the Water Services Commissioner is for any reason unable to perform or exercise a function, duty, or power that they would otherwise have performed or exercised under this Act. 20
- (2) That function, duty, or power must be performed or exercised by a member of the Commission who is appointed by the chairperson of the Commission for that purpose.
- (3) Every reference in this Act to the Water Services Commissioner must, unless the context otherwise requires, be read as a reference to that member. 25

Compare: 2001 No 103 s 10(2)

**135 Ability to delegate**

- (1) A function, duty, or power that, under **section 130(2)**, the Water Services Commissioner must perform with 2 or more other members of the Commission is not capable of delegation. 30
- (2) In the case of any other function, duty, or power of the Commission under this Act, the Water Services Commissioner's consent must be obtained before a delegation, under section 73 of the Crown Entities Act 2004, is made of that function, duty, or power.
- (3) **Subsection (2)** applies despite section 73 of the Crown Entities Act 2004. 35

Compare: 2001 No 103 s 17

## Subpart 2—Application of Commerce Act 1986

- 136 Application of Part 6 of Commerce Act 1986 (enforcement, remedies, and appeals)**
- The following provisions of the Commerce Act 1986 apply with any necessary modifications: 5
- (a) section 74A (Commission may accept undertakings):
  - (b) section 74B (matters included in undertakings):
  - (c) section 74C (enforcement of undertakings):
  - (d) section 77 (additional members of High Court for purposes of appellate jurisdiction in respect of Commission determinations): 10
  - (e) section 78 (lay members of High Court in certain cases):
  - (f) section 79 (evidence not otherwise admissible):
  - (g) section 90 (conduct by employees, agents, and others):
  - (h) sections 91 to 97 (appeals against determinations of Commission).
- 137 Application of Part 7 of Commerce Act 1986 (miscellaneous provisions)** 15
- The following provisions of the Commerce Act 1986 apply with any necessary modifications:
- Powers relating to evidence*
- (a) section 98 (Commission may require person to supply information or documents or give evidence): 20
  - (b) section 98A (power to search) as if the reference to regulation under Part 4 of the Commerce Act 1986 were a reference to secondary legislation made under this Act:
  - (c) section 98G (Commission may exercise powers notwithstanding other proceedings): 25
  - (d) section 99 (powers of Commission to take evidence):
- Assistance to overseas regulators*
- (e) sections 99B to 99P (assistance to overseas regulators), as if—
    - (i) references to an overseas regulator were references to an overseas body that has functions in relation to a water services industry corresponding to those of the Commission under this Act; and 30
    - (ii) references to competition law were references to a water services industry:
- Offence, regulations, and administrative provisions*
- (f) section 100 (powers of Commission to prohibit disclosure of information, documents, and evidence): 35

- (g) section 100A (commission may state case for opinion of High Court):
  - (h) section 101 (notices):
  - (i) section 102 (service of notices):
  - (j) section 103 (offences) as if the reference to section 53ZD were a reference to **section 138** of this Act: 5
  - (k) section 104 (determinations of Commission):
  - (l) section 106 (proceedings privileged):
  - (m) section 106A (judicial notice):
  - (n) section 109 (Commission may prescribe forms).
- 138 Additional monitoring and investigation powers based on subpart 8 of Part 4 of Commerce Act 1986** 10
- For the purpose of carrying out its functions and exercising its powers under **Parts 2 and 3** of this Act, the Commission may, in addition to exercising its powers under this Act and section 98 of the Commerce Act 1986, do any of the following: 15
- (a) consult any person the Commissioner considers may assist it:
  - (b) investigate any of the following:
    - (i) how effectively and efficiently a regulated water services provider is supplying water infrastructure services:
    - (ii) how any standard or direction being considered by the Commission may be applied, or how any standard or direction has been applied, in considering standards or directions: 20
    - (iii) how any formula, methodology, or price-quality path being considered by the Commissioner may be applied, or how any formula, methodology, or price-quality provision determined or authorised by the Commissioner has been applied, in considering proposed prices or quality standards: 25
    - (iv) how any conditions relating to the quality of the water infrastructure services may be, or are being, fulfilled:
  - (c) examine, consider, or investigate any activity, cost, revenue, transfer, asset valuation, circumstance, or event that is occurring or that has occurred during the previous 7 years: 30
  - (d) by notice in writing, require any person—
    - (i) to prepare and produce forecasts, forward plans, or other information; and 35
    - (ii) to apply any methodology specified by the Commission in the preparation of forecasts, forward plans, or other information:

- (e) by notice in writing, require any person that the Commission has reason to believe may have information or documents relevant to an investigation, audit, or inquiry to do either or both of the following:
- (i) produce or supply to the Commission documents and information in relation to water infrastructure services or the prices or operations of the person in respect of water infrastructure services: 5
  - (ii) answer any questions about any matter that the Commission has reason to believe may be relevant to the investigation, audit, or inquiry:
- (f) by notice in writing, require any person, at the time and place specified in the notice, to produce or supply to the Commission an expert opinion from an appropriately qualified person, or a member of a class of appropriately qualified persons, as determined by the Commission, in relation to the matters in **paragraphs (b), (c), and (d)(i)**. 10
- Compare: 1986 No 5 s 53ZD; 2022 No 21 s 37 15

### 139 Powers of Commission under this Part

For the purposes of carrying out its functions and exercising its powers under this Part, the Commission may, in addition to exercising its powers under this Act and section 98 of the Commerce Act 1986, use any information previously disclosed to the Commission under this Act or the Commerce Act 1986. 20

### Subpart 3—Other provisions

### 140 Regulations

- (1) The Governor-General may, by Order in Council, on the recommendation of the Minister, make regulations for all or any of the following purposes:
- (a) providing for anything this Act says may or must be provided for by regulations: 25
  - (b) prescribing infringement offences by—
    - (i) prescribing a duty, restriction, or prohibition for conduct that is similar to conduct, or similar to an element of conduct, for which there is a duty, restriction, or prohibition under any provision of this Act or regulations; and 30
    - (ii) providing that a contravention of the prescribed duty, restriction, or prohibition is an infringement offence:
  - (c) prescribing for those infringement offences—
    - (i) fines not exceeding— 35
      - (A) \$2,000, for an individual:
      - (B) \$6,000, in any other case:
    - (ii) infringement fees not exceeding—

- (A) \$1,000, for an individual:
- (B) \$3,000, in any other case:
- (d) providing for anything incidental that is necessary for carrying out, or giving full effect to, this Act.
- (2) Regulations made under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements). 5

**141 Regulations relating to levy**

- (1) Every regulated water services provider must pay to the Crown, or a prescribed person on behalf of the Crown, a levy prescribed by regulations.
- (2) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations providing for the levy. 10
- (3) The levy must be prescribed on the basis that the following costs should be met fully out of the levy:
  - (a) a portion of the costs of the Commission in performing or exercising its functions, powers, and duties under this Act and any other enactment, where the size of the portion to be met by the levy under this Act is determined by the Minister; and 15
  - (b) the costs of collecting the levy money.
- (4) The levy may be prescribed on the basis that any actual cost that could have been, but has not been, recovered as a levy shortfall for a year may be recovered (along with any financing charge) over any period of up to 5 years. 20
- (5) The regulations may—
  - (a) specify the amount of the levy, or method of calculating or ascertaining the amount of the levy:
  - (b) include in the levy, or provide for the inclusion in the levy, any shortfall in recovering the actual costs: 25
  - (c) refund, or provide for refunds of, any over-recovery of the actual costs:
  - (d) provide for the payment and collection of the levy:
  - (e) provide different levies for different classes of regulated water services providers: 30
  - (f) specify the financial year or part financial year to which a levy applies, and apply that levy to that financial year or part financial year and each subsequent financial year until the levy is revoked or replaced:
  - (g) require payment of a levy for a financial year or part financial year, irrespective of the fact— 35
    - (i) that the regulations may be made after that financial year has commenced; and

- (ii) that the services become regulated after the costs were incurred (for example, costs incurred by the Commission in preparing input methodologies):
- (h) provide for waivers or refunds of the whole or any part of a levy for any case or class of cases. 5
- (6) The amount of any unpaid levy is recoverable in any court of competent jurisdiction as a debt due to the Commission, or to any other person prescribed for the purposes of this subsection, on behalf of the Crown.
- (7) The Commission, or any other person prescribed for the purposes of this subsection, must ensure that— 10
- (a) each levy payment is paid into a Crown Bank Account and is separately accounted for; or
- (b) by the 20th day of the month after the month in which the Commission or other person receives a levy payment, the levy payment is paid into a Crown Bank Account. 15
- (8) Regulations made under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).
- (9) If regulations made under this section authorise a person to grant waivers or refunds referred to in **subsection (5)(h)**,—
- (a) an instrument granting a waiver or refund is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements), unless it applies only in a particular case; and 20
- (b) the regulations must contain a statement to that effect.
- Compare: 1986 No 5 s 53ZE; 2011 No 5 s 68
- 142 Levy for consumer dispute resolution services** 25
- (1) Every regulated water services provider and drinking water supplier must pay to the Minister in each financial year or part financial year (as the case may require) a prescribed levy.
- (2) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations providing for the levy. 30
- (3) The levy must be prescribed on the basis that the following costs should be met fully out of the levy:
- (a) a portion of the costs of the service provider for the disputes resolution service, where the size of the portion to be met by the levy under this Act is determined by the Minister; and 35
- (b) the cost of collecting the levy money.
- (4) **Section 141(4) to (9)** applies to a levy referred to in this section.
- (5) Regulations made under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

- (6) If regulations made under this section authorise a person to grant waivers or refunds referred to in **section 141(5)(h)**,—
- (a) an instrument granting a waiver or refund is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements), unless it applies only in a particular case; and 5
  - (b) the regulations must contain a statement to that effect.
- Compare: 2001 No 103 s 155ZN(2), (4)
- 143 Recovery of fees and other money**
- (1) All fees and other money payable to the Crown under this Act or the regulations, or under any permit granted under this Act, is recoverable as money due to the Crown and, without limiting any other method of recovery, may be recovered in any court of competent jurisdiction as a debt due to the Crown. 10
  - (2) All fees payable under this Act or the regulations must be paid into a Departmental Bank Account, and all other money payable to the Crown under this Act, or the regulations, or under any permit granted under this Act, must be paid into a Crown Bank Account. 15
  - (3) To avoid doubt, any interest payable on fees must be paid into a Crown Bank Account.
- 144 Commission to have regard to economic policies of Government**
- (1) In the exercise of its powers under this Act, the Commission must have regard to any economic policies of the Government that the Minister gives to the Commission in a written statement. 20
  - (2) The Minister must, as soon as practicable after giving a statement of economic policy of the Government to the Commission,—
    - (a) arrange for a copy of the statement to be published in the *Gazette*; and 25
    - (b) present a copy of the statement to the House of Representatives.
  - (3) The statement of economic policy of the Government is not a direction for the purposes of Part 3 of the Crown Entities Act 2004.
- Compare: 1986 No 5 s 26
- 145 Material may be incorporated by reference** 30
- (1) Schedule 5 of the Commerce Act 1986 applies if the Commission wishes to incorporate material by reference in any of the following documents:
    - (a) a **section 15** determination;
    - (b) an input methodology.
  - (2) Schedule 5 of that Act applies— 35
    - (a) as if every reference in that schedule to a Part 4 determination were a reference to a **section 15** determination or an input methodology, as the case requires; and

(b) with any other necessary modifications.

Compare: 1986 No 5 s 53ZF

*Amendments to Water Services Act 2021*

- 146 Principal Act**  
**Sections 147 to 155** amend the Water Services Act 2021. 5
- 147 Part 2, subpart 4 heading amended**  
In Part 2, in the heading to subpart 4, replace “complaints” with “information”.
- 148 Section 38 amended (Requirement for supplier to provide information to consumers and have complaints process)**
- (1) In the heading to section 38, delete “**and have complaints process**”. 10
- (2) Repeal section 38(1)(b) and (c) and (2).
- 149 Sections 39 and 40 repealed**  
Repeal sections 39 and 40.
- 150 Section 57 amended (General exemptions)**  
Repeal section 57(1)(i). 15
- 151 Section 165 amended (Defence in prosecution for strict liability offence)**  
In section 165(1), replace the item relating to section 188 with:
- |     |  |
|-----|--|
| 188 | Failure to provide consumers with prescribed information |
|-----|--|
- 152 Section 169 amended (Liability of volunteers)**  
In section 165(1), replace the item relating to section 188 with:
- |     |  |
|-----|--|
| 188 | Failure to provide consumers with prescribed information |
|-----|--|
- 153 Cross-heading above section 188 amended** 20  
In the cross-heading above section 188, replace “*complaints*” with “*information*”.
- 154 Section 188 amended (Offence involving failure to advise consumers about, provide, and report on complaint process)**
- (1) Replace the heading to section 188 with “**Offence involving failure to provide consumers with prescribed information**”. 25
- (2) Repeal section 188(1)(a)(ii) and (iii) and (b).
- 155 Section 200 amended (Regulations)**  
Repeal section 200(1)(a)(iii), (b), and (c).

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**Schedule 1**  
**Transitional, savings, and related provisions**

**s 9**

**Part 1**  
**Provisions relating to this Act as enacted**

**5**

**1 Consultation on input methodologies**

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

**10**

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

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

**15**

## Schedule 2

### Consumer dispute resolution service

s 76

#### 1 Purpose of consumer dispute resolution service

- (1) The purpose of the consumer dispute resolution service is to ensure that, if a person has a dispute, arising from an unresolved complaint, with a regulated water services provider about the provision of water infrastructure services or a drinking water supplier about the supply of drinking water, the person has access to a dispute resolution service for resolving that dispute. 5
- (2) To achieve the purpose, a service must be established that— 10
- (a) provides for a range of dispute resolution processes, including facilitative, evaluative, and determinative processes, so that—
- (i) each dispute can be resolved through the process assessed to be the most appropriate to the particular dispute, having regard to the nature and circumstances of that dispute; and 15
- (ii) if the dispute cannot be resolved by agreement between the parties, the dispute is determined by a neutral third party whose decision is legally binding on the regulated water services provider; and
- (iii) the service combines both formality and flexibility in a manner most likely to achieve the purposes referred to in **paragraph (b)**; and 20
- (iv) the service makes available dispute resolution processes—
- (A) recognised under tikanga, for use where appropriate; and
- (B) that implement te ao Māori approaches: 25
- (b) provides for disputes to be assessed promptly after they are received for the purposes of—
- (i) identifying the process that is the most appropriate for resolving the dispute; and
- (ii) ensuring that the dispute is resolved within the time provided in the rules of the service, whether by agreement between the parties or determination by a neutral third party. 30

#### 2 Interpretation

In this schedule, unless the context otherwise requires, **approved consumer dispute resolution service** or **approved service** is the dispute resolution service approved by the Minister under **clause 6**. 35

*Approved service: rules and obligations*

**3 Rules of approved service**

- (1) The rules of the approved service must provide for, or set out, the following:
- (a) who may refer disputes to the service for resolution:
  - (b) how disputes may be referred to the service: 5
  - (c) the kinds of disputes that the service will deal with:
  - (d) when a dispute referred to the service may be investigated under the service:
  - (e) that any investigation as part of a process for resolving a dispute must be undertaken in a way that is consistent with the rules of natural justice: 10
  - (f) when a neutral third party may make a determination on a dispute referred to the service:
  - (g) that a hearing for the purposes of making a determination on a dispute is to be conducted on the papers, unless the person making the determination thinks that an oral hearing is required: 15
  - (h) the procedure for conducting a hearing on the papers:
  - (i) the time within which a determination on a dispute is to be made:
  - (j) that a determination must be made in writing and include the reasons of the decision maker:
  - (k) that, in relation to a dispute, any information may be considered, and any inquiry may be made, that is fair and reasonable in the circumstances: 20
  - (l) the kinds of remedial action that the service may require regulated water services providers or drinking water suppliers to take in order to resolve disputes (for example, a requirement to compensate up to a certain amount stated in the rules, or to carry out reinstatement work): 25
  - (m) that the service may stop investigating and resolving a dispute if any party to the dispute takes alternative court action against another party to the dispute:
  - (n) how the service provider will promote knowledge about, and access to, the service to members and persons entitled to make a complaint. 30
- (2) The responsible person for the approved service must publicise the rules.

*Approved service: approval and withdrawal of approval*

**4 Application for approval**

- (1) The service provider of a dispute resolution service may apply to the Minister for approval of the service as the approved consumer dispute resolution service. 35
- (2) The application must include—

- 
- (a) the rules of the service; and
- (b) any other information that the Minister, by notice in the *Gazette*, prescribes as being required to be included in an application under this clause; and
- (c) the prescribed fee (if any). 5
- (3) The Minister may ask an applicant to supply any further information or documentation in support of the application.
- 5 Mandatory considerations for approval**
- (1) When considering an application made under **clause 4**, the Minister must have regard to the following considerations in light of the principles listed in **subclause (2)**: 10
- (a) whether the service is capable of meeting the purpose of the dispute resolution service as set out in **clause 1**:
- (b) whether the service is capable of dealing with the wide range of disputes that persons and entities are entitled to refer to it: 15
- (c) whether the applicant has adequate funding to enable it to operate the service in accordance with its purpose and the rules of the service:
- (d) whether the applicant's directors and senior managers are competent to manage a dispute resolution service:
- (e) whether the rules of the service are adequate and comply with— 20
- (i) the principles listed in **subclause (2)**; and
- (ii) the requirements of **clause 3** (rules of approved service).
- (2) The principles are—
- (a) accessibility:
- (b) independence: 25
- (c) fairness:
- (d) accountability:
- (e) efficiency:
- (f) effectiveness.
- 6 Minister must decide application for approval** 30
- (1) After considering an application made under **clause 4**, the Minister may—
- (a) approve the service as the approved consumer dispute resolution service:
- (b) decline the application.
- (2) The Minister may decide whether to approve the service or decline the application only after consulting regulated water services providers. 35

- (3) A failure to consult the persons referred to in **subclause (2)** does not affect the validity of any approval of the service.
- 7 Decision must be notified and publicised**
- The Minister must, as soon as practicable after deciding an application,—
- (a) notify the applicant of the decision; and 5
- (b) if the decision is to approve the application, ensure that the approval is publicised.
- 8 Rules of approved service must not change without ministerial approval**
- (1) The rules of the approved service must not be changed unless the Minister approves the change. 10
- (2) If the service provider of the approved service notifies the Minister of a proposed rule change, the rule change is deemed to be approved by the Minister 45 working days after the date of notification, unless the Minister declines approval within that 45-day period.
- (3) Despite **subclause (2)**,— 15
- (a) the Minister may require the provider of the approved service to provide further information before the Minister decides whether to approve or decline the proposed rule change; and
- (b) if the Minister requires further information to be provided, the rule change is deemed to be approved by the Minister 45 working days after the Minister receives that information, unless the Minister declines approval within the 45-day period. 20
- (4) The Minister may decline approval for a rule change only on the grounds that, if the rules were changed as proposed, they would not comply with the principles listed in **clause 5(2)** or the purpose in **clause 1**. 25
- 9 Commission review of consumer dispute resolution service**
- (1) The Commission must review the consumer dispute resolution service at least once every 3 years.
- (2) As part of a review of the service, the Commission may, without limitation, consider the following: 30
- (a) the purpose of the service:
- (b) the service provider and the person it engages to conduct dispute resolution on its behalf:
- (c) the effectiveness of the service in resolving complaints by consumers against regulated water services providers and drinking water suppliers: 35
- (d) the adequacy of the rules of the service:
- (e) whether the rules of the service comply with the following principles:

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- (i) accessibility:
  - (ii) independence:
  - (iii) fairness:
  - (iv) accountability:
  - (v) efficiency: 5
  - (vi) effectiveness:
  - (f) whether any recommendations for improving the service made under **subclause (4)** have been implemented:
  - (g) the purpose of the service provider set out in **clause 10**:
  - (h) the procedures that are used for receiving, investigating, and resolving complaints: 10
    - (i) how promptly complaints are dealt with.
  - (3) The Commission may require the following persons to provide the Commission with any information relevant to the matters included in **subclause (2)**:
    - (a) any person who conducts dispute resolution under the service: 15
    - (b) the service provider.
  - (4) After each review, the Commission must provide a report to the service provider on any recommendations for improving the service and when the recommendations should be implemented.
  - (5) If the Commission considers that any recommendations made under **subclause (4)** have not been implemented satisfactorily, the Commission must provide a report to the Minister of— 20
    - (a) the recommendations for improving the service made under **subclause (4)**; and
    - (b) whether those recommendations have been implemented; and 25
    - (c) whether, in the Commission’s opinion,—
      - (i) the service fails to achieve the purpose set out in **clause 1(1)**; or
      - (ii) the service provider fails to achieve the purpose set out **clause 10**.
  - (6) If the Commission proposes to report, under **subclause (5)(c)**, that the service fails to achieve the purpose set out in **clause 1(1)** or that the service provider fails to achieve the purpose set in **clause 10**, the Commission must give the service provider 20 working days to make submissions on a draft report. 30
  - 10 Purpose of service provider**
  - The purpose of the service provider, in relation to the consumer dispute resolution service, is— 35
    - (a) to operate the service; and

- (b) to administer the service quality code; and
- (c) to manage consumer complaints relating to the code; and
- (d) to investigate disputes relating to the code; and
- (e) to promote awareness of the service and the code; and
- (f) to monitor compliance with the service and the code; and 5
- (g) to enforce the provisions of the service and the code.

**11 Provision of information**

- (1) The service provider of the approved service must, on request by the Minister, provide information on the following:
  - (a) matters relating to any information or reports that the provider of the approved service is required to provide under the rules of the service: 10
  - (b) the service’s compliance with the principles listed in **clause 5(2)**.
- (2) Nothing in this clause or **clause 12** authorises a breach of the Privacy Act 2020 or any obligation of confidentiality.

*Approved consumer dispute resolution service: rules of service and appointment of service provider* 15

**12 Regulations setting out rules for service**

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations for the operation of the approved consumer dispute resolution service. 20
- (2) The regulations must—
  - (a) set out the rules of the service, which must comply with **clause 3**; and
  - (b) be consistent with the purpose in **clause 1**.
- (3) Before recommending that regulations be made, the Minister must consult—
  - (a) regulated water services providers: 25
  - (b) representatives of drinking water suppliers and consumers:
  - (c) any other persons (or their representatives) that the Minister considers are likely to be substantially affected by the recommendation.
- (4) However, a failure to consult the persons referred to in **subclause (3)** does not affect the validity of the regulations. 30
- (5) Regulations made under this clause are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

**13 Order in Council appointing service provider of approved service**

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, appoint a person to provide the approved service. 35

- (2) The Minister may make a recommendation under this clause only if the Minister is satisfied that the person appointed as the service provider—
- (a) is a formally constituted dispute resolution body; and
  - (b) is capable of providing the service in accordance with the purpose in **clause 1** and the rules of the service.
- (3) An order made under this clause is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

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