Local Government (Water Services) Bill

(Divided from the Local Government (Water Services) Bill)

Government Bill

As reported from the committee of the whole House

This Bill was formerly part of the Local Government (Water Services) Bill as reported from the Finance and Expenditure Committee. The committee of the whole House has further amended the Bill and divided it into the following Bills:

- this Bill comprising clauses 1 and 2, Parts 1 to 4 and 6, and Schedules 1 to 4
- Local Government (Water Services) (Repeals and Amendments) Bill comprising Part 5 and Schedules 5 to 12.

Key to symbols used in reprinted bill

As reported from the committee of the whole House

text inserted

~~text deleted~~

Hon Simon Watts

Local Government (Water Services) Bill

Government Bill

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Local Government (Water Services) Act **2024**.

2 Commencement

This Act comes into force on the day after Royal assent. 5

Part 1
Preliminary provisions

3 Purposes

~~The purposes of this Act are—~~

~~(a) to establish a framework for local government to provide water services in a flexible, cost-effective, financially sustainable, and accountable manner, by—~~

~~(i) providing for territorial authorities' responsibility for providing water services in their districts and the different methods by which they can structure service provision arrangements, including through water organisations; and~~

~~(ii) setting out the responsibilities that apply to territorial authorities and water organisations as water service providers, and the functions, duties, and powers that are associated with meeting those responsibilities; and~~

~~(iii) ensuring that information about providing water services, including information relating to revenue, charging, expenditure, and levels of service, is transparent for consumers and communities; and~~

~~(b) in **Part 5**, to—~~

~~(i) enable effective and proportionate economic regulation of water services and water quality regulation; and~~

~~(ii) provide the Minister of Local Government with powers to act when a water service provider is facing a problem or potential problem.~~

The purpose of this Act is to establish a framework for local government to provide water services in a flexible, cost-effective, financially sustainable, and accountable manner, by—

(a) providing for territorial authorities' responsibility for providing water services in their districts and the different methods by which they can structure service provision arrangements, including through water organisations; and

(b) setting out the responsibilities that apply to territorial authorities and water organisations as water service providers, and the functions, duties, and powers that are associated with meeting those responsibilities; and

(c) ensuring that information about providing water services, including information relating to revenue, charging, expenditure, and levels of service, is transparent for consumers and communities.

4 Interpretation

In this Act, unless the context otherwise requires,—

Auckland water organisation has the meaning set out in section 4(1) of the Local Government (Auckland Council) Act 2009

board, in relation to a water organisation, includes the governing body of the organisation if the organisation is not a company

building consent has the meaning set out in section 7(1) of the Building Act 2004

claimant group means a group of Māori with Treaty of Waitangi claims against the Crown under the Treaty of Waitangi Act 1975, whether or not those claims have been submitted to, or inquired into by, the Waitangi Tribunal

collective area has the meaning set out in **section 25(8)**

consumer means a person who consumes, uses, is provided with, or benefits from the provision of, water services

consumer trust means a trust—

(a) that has—

(i) been established under **subpart 3 of Part 2**; and

(ii) had shares in a water organisation allocated or transferred to or vested in its trustees; and

(b) whose trustees continue to hold shares described in **paragraph (a)(ii)**

corridor manager has the meaning set out in section 4 of the Utilities Access Act 2010

council-controlled organisation has the meaning set out in section 6 of the LGA 2002

district means the district of a territorial authority

~~**district plan** means a territorial authority's district plan, as that term is defined in section 43AA of the Resource Management Act 1991~~

district plan, in relation to a territorial authority, has the meaning set out in section 43AA of the Resource Management Act 1991

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

financial year means a period of 12 months ending on 30 June

foundation documents, in relation to a water organisation, means,—

(a) the shareholders' agreement (if there is more than 1 shareholder); and

(b) either—

(i) the organisation's constitution, if it has one; or

(ii) if the organisation does not have a constitution, all rules and other documents that establish or govern the water organisation

~~(a) if the organisation has a constitution,—~~

~~(i) the constitution; and~~

~~(ii) the shareholders' agreement (if there is more than 1 shareholder); or~~

~~(b) if the organisation does not have a constitution, all rules and other documents that establish or govern the water organisation (including the shareholders' agreement if there is more than 1 shareholder)~~

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

green water services infrastructure means a natural, semi-natural, or engineered area, feature, or process that mimics natural areas, features, or processes that are planned or managed to provide water services

group of water services activities means all of the water services activities provided by, or on behalf of, a water service provider as part of providing one of the following:

(a) water supply services:

(b) stormwater services:

(c) wastewater services

joint water service provider arrangement means an arrangement entered into by 2 or more water service providers for 1 or both of the following purposes:

(a) providing water services or any aspect of water services in the providers' combined service areas:

(b) providing for any matters relating to providing water services (for example, a shared service agreement for technical or administrative support)

LGA 2002 means the Local Government Act 2002

Māori customary land has the meaning set out in section 4 of Te Ture Whenua Maori Act 1993

Māori freehold land has the meaning set out in section 4 of Te Ture Whenua Maori Act 1993

Māori land has the meaning set out in section 4 of Te Ture Whenua Maori Act 1993

Māori-owned land means any or all of the following:

(a) Māori land:

(b) a Māori reservation:

(c) any land on which a marae or an urupā is situated:

(d) a reserve that, under a Treaty settlement Act,—

(i) is vested in a post-settlement governance entity; or

(ii) is administered by a post-settlement governance entity, whether as the administering body or when performing a role in the administering body

Māori reservation has the meaning set out in section 4 of Te Ture Whenua Maori Act 1993

Māori Trustee has the meaning set out in section 4 of Te Ture Whenua Maori Act 1993

overland flow path means—

(a) a low point in terrain (other than a watercourse)—

(i) where surface runoff flows; and

(ii) that receives water from an upstream contributing catchment larger than 4,000 m^2; or

(b) any other location identified as an overland flow path in a stormwater network risk management plan

owner, in relation to land,—

(a) includes the occupier if the land is not Māori-owned land; and

(b) if the land is Māori-owned land,—

(i) means the person or administering body that has lawful authority (including under Te Ture Whenua Maori Act 1993 or any other Act) to—

(A) receive a notification under **section 117**; and

(B) consent to, or impose conditions on, any proposed entry and work under **section 118**; and

(C) engage in all processes and other matters under this subpart that arise from an action described in **subsubparagraph (A) or (B)**; and

(ii) includes the occupier for the following purposes:

(A) being notified under **section 117** of a water service provider's intention to enter land and carry out work under **section 116(1)(b), (c), or (d)**:

(B) imposing reasonable conditions under **section 118(1)(b)**:

(C) engaging in all processes and other matters under this subpart that arise from an action described in **subsubparagraph (A) or (B)**

post-settlement governance entity—

(a) means a body corporate or the trustees of a trust established by a claimant group for the purposes of receiving redress or participating in arrangements established under a Treaty settlement Act; and

(b) includes an entity established to represent a collective or combination of claimant groups

publicly available, in relation to information of any kind, means that the person or body making the information publicly available, must take reasonable steps to—

(a) ensure that the information or a copy of it is accessible to the general public in a manner appropriate to the nature of the information and the purpose of its publication, including, where practicable, on the person's or body's internet site; and

(b) publicise, in a manner appropriate to the purpose and significance of the information, both the fact that the information (or a copy of it) is available and the manner in which the information (or the copy) may be accessed

rating information database has the meaning set out in section 5 of the Local Government (Rating) Act 2002

regulatory requirement means a requirement, responsibility, or obligation of any kind imposed, by or under this or any other Act,—

(a) on water service providers; or

(b) in relation to providing water services

Secretary means the Secretary for Local Government

service area, in relation to a water service provider—

(a) ~~for a water service provider~~ that is a territorial authority, a regional council, or an Auckland water organisation,—

(i) means—

(A) the provider's district or region as listed in Schedule 2 of the LGA 2002; and

(B) any additional area in which the provider provides water services under any kind of agreement or arrangement entered into under **Part 2**; and

(ii) includes any infrastructure located outside the area described in **subparagraph (i)** that the provider uses to provide services within the area; and

(b) ~~for a water service provider~~ that is a water organisation, means the area specified in 1 or more transfer agreements under **section 11 or 13**

shareholder means one of the following that holds shares in a water organisation:

(a) a territorial authority:

(b) the trustees of a consumer trust:

(c) any other body that is permitted to hold shares under an exemption granted under **section 57**

significance and engagement policy, in relation to a water service provider, means,—

(a) for ~~a provider that is~~ a territorial authority, the significance and engagement policy that the authority adopts under section 76AA of the LGA 2002; and

(b) for ~~a provider that is~~ a water organisation, the significance and engagement policy that the organisation adopts under **section 30C**

specified serious risk has the meaning set out in **section 344**

statement of expectations has the meaning set out in **section 180**

stormwater network—

(a) means the water services infrastructure and processes that are—

(i) used to provide a stormwater service; and

(ii) owned by, or operated by, for, or on behalf of, a water service provider; and

(b) includes any of the following that receives stormwater from, or conveys stormwater to, the infrastructure referred to in **paragraph (a)**:

(i) an overland flow path:

(ii) green water services infrastructure:

(iii) a watercourse; and

(c) in **subpart 7 of Part 3** (management of stormwater networks), also includes the matters referred to in **section 164(2)**

stormwater network bylaw means a water services bylaw that relates to stormwater networks (*see* **section 170**)

stormwater network risk management plan—

(a) means a stormwater network risk management plan prepared, adopted, and implemented by a water service provider (*see* **section 165**); and

(b) includes any of the following prepared by water service providers under **section 166**:

(i) a separate plan for an aspect of a stormwater network:

(ii) a joint plan

stormwater service zone means a geographic area (comprising 1 or more urban areas and land adjacent to 1 or more of those urban areas) within a water service provider's service area that provides stormwater services to, or receives stormwater services from, the stormwater network

stormwater services—

(a) means the collection, treatment, drainage, reuse, or discharge of stormwater in an urban area ~~and~~ or any stormwater service zone; but

(b) does not include any of those services relating to a transport corridor

strategic water services asset, for a water service provider,—

(a) means water services infrastructure or another asset or group of assets without which the provider is unable—

(i) to meet its regulatory requirements; or ~~and~~

(ii) to maintain its capacity to achieve the outcomes set out in its water services strategy; and

(b) includes an asset or a group of assets listed as strategic water services assets in the provider's significance and engagement policy

tankered waste—

(a) means water or other liquid, including waste matter in solution or suspension, that is conveyed by vehicle for disposal; but

(b) does not include domestic wastewater that is discharged directly from houses, caravans, buses, or similar vehicles

territorial authority has the meaning set out in section 5(1) of the LGA 2002

trade waste—

(a) means—

(i) any waste that is produced in the course of an industrial, commercial, or trade process or operation, or in a related process or operation, and discharged into a wastewater network; and

(ii) any tankered waste; but

(b) does not include any class of waste or material that has been specified not to be trade waste by a trade waste discharge plan made under **section 150**

trade waste services has the meaning set out in **section 60(7)**

transfer agreement means an agreement entered into with a water organisation by—

(a) a territorial authority under **section 11 or 13**; or

(b) a regional council under **section 34**

transport corridor has the meaning set out in section 4 of the Utilities Access Act 2010

~~**transport corridor stormwater infrastructure** means infrastructure that—~~

~~(a) relates to the transport function of a transport corridor managed by the territorial authority; and~~

~~(b) is used to collect, treat, drain, reuse, or discharge stormwater~~

Treaty settlement Act means—

(a) an Act listed in Schedule 3 of the Treaty of Waitangi Act 1975; or

(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, including— 5

(i) the Maori Commercial Aquaculture Claims Settlement Act 2004:

(ii) the Ngā Mana Whenua o Tāmaki Makaurau Collective Redress Act 2014:

(iii) the Nga Wai o Maniapoto (Waipa River) Act 2012: 10

(iv) the Ngati Tuwharetoa, Raukawa, and Te Arawa River Iwi Waikato River Act 2010:

(v) the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 and secondary legislation that gives effect to section 10 of that Act and is made under Part 9 of the Fisheries Act 1996 15

Treaty settlement deed—

(a) means a deed or other agreement that—

(i) has been signed by or on behalf of a Minister of the Crown and representatives of a group of Māori; and

(ii) is in settlement of the claims of that group or in express anticipation, or on account, of that settlement; and 20

(b) to avoid doubt, includes a deed or other agreement of the kind described in **paragraph (a)** that relates to the claims of a collective or combination of Māori groups; but

(c) does not include an agreement in principle or any document that is preliminary to a signed and ratified deed 25

Treaty settlement obligations means an obligation under a Treaty settlement Act or a Treaty settlement deed

trustee, in relation to a consumer trust, means a trustee of that trust

urban area— 30

(a) means an area identified in a district plan or proposed district plan as being primarily zoned for residential, industrial, or commercial activities, together with adjoining special-purpose and open-space zones, however described; but

(b) does not include an area zoned primarily for rural or rural-residential activities, however described 35

wastewater network means the infrastructure and processes that are—

(a) used to provide a wastewater service; and

(b) owned by, or operated by, for, or on behalf of, a water service provider

wastewater services means the collection, treatment, storage, transmission (including metering), or discharge of wastewater from consumers

water organisation means—

(a) a water organisation established under **section 36**; or

(b) a council-controlled organisation that,—

(i) immediately before the commencement of this Act (the **commencement date**), was providing water services or had been established for the purpose of providing water services; and

(ii) intends to provide water services on and after the commencement date; and

(iii) after 6 months after the commencement date, complies with the following (unless exempted by an order made under **section 57**):

(A) the requirement that a water organisation be a company, unless exempted, as set out in **section 37(1)**:

(B) the ownership requirements for water organisations set out in **section 37(2)(a) or (b)**:

(C) the role requirement set out in **section 38**:

(D) applicable requirements of board members set out in **section 40**; or

(c) an Auckland water organisation in relation to—

(i) its responsibilities for water supply and wastewater services, as defined in section 4(1) of the Local Government (Auckland Council) Act 2009, in Auckland; and

(ii) any other water services, if responsibilities are transferred by Auckland Council to an Auckland water organisation using a transfer agreement under **section 11 or 13** of this Act

water service provider (or **provider**) means—

(a) a territorial authority that has not transferred to a water organisation all of ~~its~~ the authority's responsibility for providing water services, in relation to the water services for which the authority continues to have responsibility; or

(b) a water organisation to which a territorial authority or a regional council has transferred responsibility for providing water services, in relation to the responsibility transferred; or

(c) a regional council that has not transferred to a water organisation all of ~~its~~ the council's responsibility for providing water services, in relation to any water services for which the council continues to have responsibility; or

(d) an Auckland water organisation, in relation to—

(i) its responsibilities for water supply and wastewater services, as defined in section 4(1) of the Local Government (Auckland Council) Act 2009, in Auckland; and

(ii) any other water services, if responsibilities are transferred by Auckland Council to an Auckland water organisation using a transfer agreement under **section 11 or 13** of this Act

water services means any or all of the following:

(a) water supply services:

(b) stormwater services:

(c) wastewater services

water services activity means a good or service provided by, or on behalf of, a water service provider as part of providing water services in the provider's service area

water services annual budget has the meaning set out in **section 180**

water services annual report has the meaning set out in **section 180**

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

water services bylaw means a bylaw made under **section 347** that relates to water services

water services charges means charges set under **section 60 <u>or 213</u>**

water services infrastructure—

(a) means infrastructure that is associated with, or necessary for, providing water services; and

(b) includes the capability and capacity of that infrastructure to perform necessary processes, including the ~~processes of~~ attenuation, treatment, and conveyance of water

water services networks means the following networks in a territorial authority's district or a water service provider's service area:

(a) water supply networks:

(b) stormwater networks:

(c) wastewater networks

water services strategy has the meaning set out in **section 180**

water supply network means the infrastructure and processes that are—

(a) used to provide a water supply service; and

(b) owned by, or operated by, for, or on behalf of, a water service provider

water supply service means the abstraction, storage, treatment, or transmission (including metering) of water for supply to consumers if any of the water supplied is intended to be used as drinking water

watercourse includes a river, stream, passage, and channel on or under the ground, whether natural or not,— 5

(a) along which water flows continuously; and

(b) that receives stormwater from, or discharges stormwater to, a stormwater network.

5 Transitional, savings, and related provisions

The transitional, savings, and related provisions set out in **Schedule 1** have effect according to their terms. 10

6 Act binds the Crown

(1) This Act binds the Crown.

(2) However, **section 109** partially exempts the Crown from making development contributions under **subpart 2 of Part 3**. 15

6A All persons must act consistently with Treaty settlement obligations

All persons performing and exercising functions, duties, and powers under this Act must act in a manner that is consistent with Treaty settlement obligations.

Part 2
Structural arrangements for providing water services 20

7 Outline of this Part

(1) This Part provides for matters concerning the structural arrangements for providing water services.

(2) **Subpart 1** provides for territorial authorities' responsibility for providing water services in their districts and the different methods they can use to structure service provision arrangements, including— 25

(a) the key role of water organisations as being, along with territorial authorities, water service providers; and

(b) how territorial authorities can transfer responsibilities, infrastructure, and other matters to water organisations; and 30

(c) the objectives, financial principles, and obligations of water service providers; and

(d) how water service providers can contract for water services to be provided on their behalf or enter into joint arrangements with other water service providers; and 35

(e) the decision-making process that must be followed by a territorial authority that proposes to change the structure of water services provision.

(3) **Subpart 2** provides, for those regions in which the regional council also provides water services, the different methods they can use to structure service provision arrangements.

(4) **Subpart 3** provides for the establishment, ownership (including by the trustees of consumer trusts on behalf of consumers of water services), and governance of water organisations that, together with local authorities, are water service providers under this Act.

(5) **Subpart 4** sets out the role of water service providers in relation to—

(a) assessing water services; and

(b) ensuring water supply when a drinking water supplier is facing a significant problem or potential problem; and

(c) closing and transferring small water services.

(6) **Subpart 5** sets out an ongoing obligation for water service providers to submit water services delivery plans if they have not transferred responsibility for providing water supply services and wastewater services to a water organisation.

Subpart 1—Responsibility for providing water services

Territorial authority's responsibility

8 Territorial authority responsible for ~~providing~~ water services

(1) A territorial authority is responsible for ensuring that water services are provided in its district in accordance with this Act.

(2) However, a territorial authority may discharge its responsibility under **subsection (1)** by entering into a transfer agreement with a water organisation.

(3) Despite **subsection (1)**, no person may require a territorial authority or water organisation to provide a water service to that person.

9 How territorial authority ensures water services provided

(1) A territorial authority must ensure that water services are provided in its district in any 1 or more of the following ways:

(a) providing water services itself directly:

(b) a transfer agreement to transfer responsibility for providing water services to a water organisation (*see* **sections 11 and 13** ~~**section 11**~~):

(c) a contract with a person or body to provide water services on behalf of the territorial authority (*see* **section 21**):

(d) a joint water service provider arrangement (*see* **section 24**):

(da) by an Auckland water organisation (if applicable):

(f) another type of arrangement that is consistent with this Act, including receiving a transfer of responsibility for ~~the provision of~~ providing water services from the regional council (*see* **section 33**).

(2) A territorial authority may use a method listed in **subsection (1)** for providing—

(a) 1 or more water services; or

(b) any or all aspects of a water service.

(3) **Subsection (4)** applies to a territorial authority that enters into a contract or an arrangement under **subsection (1)(c), (d), or (f)**.

(4) The territorial authority—

(a) continues to be responsible, as the water service provider under this Act, for ensuring the provision of the water services to which the contract or arrangement relates; and

(b) must ensure that the other party to the contract or arrangement performs and exercises all regulatory requirements associated with providing the water services to which the contract or arrangement relates.

10 Exception: transport corridors

(1) This section applies to a territorial authority that is also a corridor manager in relation to 1 or more roads in its district.

(2) The territorial authority must ensure that any agreement, contract, or arrangement referred to in **section 9(1)** does not transfer to any person or body the authority's ownership or control of any transport corridor stormwater infrastructure.

(3) In this section, **transport corridor stormwater infrastructure** means infrastructure that—

(a) relates to the transport function of a transport corridor managed by the territorial authority; and

(b) is used to collect, treat, drain, reuse, or discharge stormwater.

Transfer of responsibilities, etc, to water organisation

11 Transfer agreement with water organisation

(1) This section applies to a territorial authority that intends to transfer responsibility for providing water services to a water organisation.

(2) The authority must enter into a transfer agreement with the water organisation under which the authority transfers to the organisation—

(a) specified responsibility for providing water services; and

(b) any specified water services infrastructure~~, related assets,~~ and other matters.

(3) A territorial authority may enter into a transfer agreement with a water organisation—

(a) that the authority has established; or

(b) in which it is a shareholder.

(4) A territorial authority that enters into a transfer agreement must adopt the agreement by resolution.

(5) If 2 or more territorial authorities have established the water organisation,—

(a) one of those authorities must not enter into a transfer agreement unless both or all of them do; and

(b) those transfer agreements must be developed and entered into separately.

(6) A transfer agreement must contain the matters set out in **Schedule 2**.

(7) Despite **subsection (6)** and **Schedule 2**, any matter that a transfer agreement does not specify as being transferred is taken to be retained by the territorial authority.

(8) A transfer agreement must not contain a provision that transfers any of the following:

(a) the territorial authority's power to make bylaws under this Act:

(b) the territorial authority's role as a shareholder of a water organisation:

(c) the territorial authority's power to delegate a responsibility, function, duty, or power under the LGA 2002.

11A Territorial authority's actions before entering transfer agreement

(1) A territorial authority must comply with this section before adopting a transfer agreement under **section 11(4)**.

(2) A territorial authority must—

(a) discuss and reach agreement with the following in relation to the significant matters to be contained in the proposed transfer agreement:

(i) the board of the water organisation:

(ii) 1 or more other appropriate representatives of the water organisation if the board has not yet been appointed ~~or its members have not yet taken up their role as directors~~; and

(b) establish and use a process for—

(i) resolving any disputes that might arise in discussions under this section; and

(ii) confirming the final version of the proposed transfer agreement with a representative of the water organisation.

(3) **Subsection (4)** applies if 2 or more territorial authorities—

(a) have established (or are in the process of establishing) a water organisation; or

(b) are, or intend to be, shareholders in a newly established water organisation.

(4) Despite **section 11(5)(b)**, the territorial authorities must—

(a) discuss and reach agreement with each other on the significant matters to be contained in their respective agreements; and

(b) agree on a common date on which those transfer agreements will take effect (which may be on or after the date on which the final transfer agreement is entered into); and

(c) prepare foundation documents for the water organisation.

12 Purpose and effect of transfer agreement

(1) The purpose of a transfer agreement is to ensure that the effect of the agreement (the matters that are transferred and the matters that are not transferred)—

(a) is transparent to—

(i) the territorial authority that is party to the agreement; and

(ii) the board of the water organisation; and

(b) can be readily ascertained by the public.

(2) The effect of a transfer agreement that transfers responsibility for providing water services is that the water organisation that is a party to the agreement replaces the territorial authority as the water service provider in relation to those services.

(3) Schedule 9 of the LGA 2002 applies to a transfer agreement as follows:

(a) for a transfer from a territorial authority to a water organisation, the schedule applies, with any necessary modifications, as if every reference to a council-controlled organisation were a reference to a water organisation:

(b) for a transfer from a water organisation returning matters to a territorial authority under **section 13(1)(b)**, the schedule applies, with any necessary modifications, as if—

(i) every reference to a council-controlled organisation were a reference to a territorial authority ~~water organisation~~; and

(ii) every reference to a local authority were a reference to a water organisation ~~territorial authority~~.

13 When new transfer agreement required

(1) A territorial authority that has entered into a transfer agreement with a water organisation must develop and enter into a new transfer agreement if the territorial authority decides—

(a) to transfer additional ~~responsibilities~~ responsibility for providing water services, additional water services infrastructure, ~~or~~ and any other additional matters to the water organisation; or

(b) that any ~~responsibilities, infrastructure, or~~ responsibility for providing water services, any water services infrastructure, and any other matters transferred to the water organisation are to be returned to the authority; or

(ba) to change, or to propose to change, any of the following in a transfer agreement:

(i) matters of shared interest or arrangements for managing them (*see* **clause 5 of Schedule 2**):

(ii) arrangements for charging and revenue collection for the water services transferred (*see* **clause 6 of Schedule 2**):

(iii) responsible decision makers under **clause 7 of Schedule 2**; or

(c) to cease to be a shareholder in the water organisation; or

(d) to disestablish the water organisation; or

(e) to establish or become a shareholder in a further water organisation.

Process and limitations

(2) Before entering into a new transfer agreement, a territorial authority must—

(a) consider any relevant provision in the water organisation's foundation documents; and

(b) discuss and reach agreement on all relevant matters with—

(i) the board of the water organisation; and

(ii) all shareholders in the water organisation.

(3) If there are shareholders in a water organisation other than the territorial authority that established it, that authority may enter into a transfer agreement referred to in **subsection (1)(c) or (d)** only if all those shareholders agree.

(4) If a territorial authority makes a decision referred to in **subsection (1)(c) or (d)**, the new transfer agreement must return to the authority all responsibilities, infrastructure, and other matters previously transferred to the water organisation.

(4A) If a territorial authority makes a decision referred to in **subsection (1)(e)**, the new transfer agreement—

(a) must return to the authority ~~all responsibilities, infrastructure, and~~ any responsibility for providing water services, water services infrastructure and other matters that are to be transferred to the further water organisation; but

(b) if all parties agree, may transfer ~~those responsibilities, infrastructure, and~~ that responsibility and infrastructure and those other matters directly to the further water organisation.

(5) A territorial authority that makes a decision referred to in **subsection (1)(e)** must enter into a new transfer agreement with the new water organisation.

(6) A new transfer agreement must—

(a) be adopted by the territorial authority by resolution; and

(b) contain the matters set out in **Schedule 2**—

(i) to the extent that those matters are relevant to the type of transfer agreement; and

(ii) modified as necessary.

(7) Despite **subsection (6)(b)** and **Schedule 2**, any matter that a transfer agreement does not specify as being transferred is taken to be retained by the territorial authority.

(8) **Section 11A** applies, with any necessary modifications, to a new transfer agreement under this section.

14 Transfer agreements to be published

(1) Each party to a transfer agreement must make the agreement publicly available.

(2) If the transfer agreement contains information that is commercially sensitive, the parties may redact that information from the published versions of the agreement.

Water service providers

15 Objectives of water service providers

(1) The objectives of a water service provider are—

(a) to provide water services that—

(iii) are reliable; and

(iv) are resilient to external factors, for example, climate change and natural hazards; and

(v) are of a quality that meets consumer expectations; and

(vi) meet all regulatory requirements, including, if the water service provider is responsible for water supply services, providing drinking water that is safe for consumers; and

(b) to ensure that it provides water services in a cost-effective and financially sustainable manner, including by—

(i) planning effectively to manage ~~assets~~ water services infrastructure used to provide water services in the future; and

(ii) sharing the benefits of efficiency gains with consumers, including when setting charges for water services; and

(iii) using water resources efficiently when providing water supply services; and

(c) to perform its functions as a water service provider— 5

(i) in an open, transparent, and accountable manner; and

(ii) in accordance with sound business practice; and

(d) to act in the best interests of current and future consumers; and

(da) to support housing growth and, if applicable, urban development in its service area; and 10

(e) to be a good employer.

(2) In **subsection (1)**,—

good employer has the same meaning as in clause 36(2) of Schedule 7 of the LGA 2002 and applies to a water organisation as if it were a local authority

natural hazard has the meaning set out in section 2(1) of the Resource Management Act 1991 15

safe has the meaning set out in section 7 of the Water Services Act 2021

urban development has the meaning set out in section 10(1) of the Urban Development Act 2020.

16 Financial principles for water service providers 20

(1) A water service provider must act in accordance with the following financial principles:

(a) the provider must spend the revenue it receives from, and funding it receives for, providing water services on the water services it provides (including on maintenance, improvements, infrastructure renewal, servicing debt relating to the services it provides, and providing for growth): 25

(b) the provider must ensure that the revenue and funding it applies to providing water services is sufficient to sustain the provider's long-term investment in its water services while meeting all regulatory requirements: 30

(c) the provider's revenue and funding (including from charges), expenses, and dividends (if applicable) must be transparent to the public:

(d) the provider must be accountable for its revenue, ~~and~~ funding, and expenses,—

(i) if it is a territorial authority, to its communities; or 35

(ii) if it is a water organisation, to its shareholders.

(2) A water service provider must demonstrate its compliance with the financial principles listed in **subsection (1)**—

(a) in its financial operations and financial policies; and

(b) in its planning and reporting documents prepared under **Part 4** (listed in **section 183(2)**); and

(ba) if the provider is a territorial authority,—

(i) in any transfer agreement it enters into; and

(ii) in documents relating to a proposal to establish a water organisation; and

(c) if the provider is a local authority, in its financial strategy prepared and adopted under section 101A of the LGA 2002.

(3) If a water service provider is a water organisation that is authorised by its shareholders to pay a dividend,—

(a) the financial principle stated in **subsection (1)(a)** does not apply to the payment of the dividend; but

(b) the organisation must not pay a dividend amount that could compromise its ability to act in accordance with the financial principle set out in **subsection (1)(b)**.

(4) **Subsections (1) and (2)** apply to the following water service providers jointly:

(a) 2 or more water service providers that enter into a joint water service provider arrangement under **section 24**:

(b) 2 or more water service providers that provide water services in accordance with a split decision-making model under **subpart 12 of Part 4** of the Commerce Act 1986.

17 Obligation to continue water services

(1AAA) This section applies to a water service provider that provides water services in its service area—

(a) at the commencement of this Act; or

(b) at any time after the commencement of this Act.

(1) A water service provider must—

(a) continue to provide water services in accordance with this Act; and

(b) maintain its capacity to meet its obligations under this Act.

(2) However, in fulfilling those obligations, a water service provider—

(a) must also ensure the supply of drinking water if the provider permanently takes over the management and operations of a drinking water supply under **section 58E**; and

(b) may enter into a contract or a joint water service provider arrangement relating to providing water services under **section 21 or 24**; and

(c) must comply with **section 18**.

(3) This section does not prevent a water service provider from—

(a) entering into a transfer agreement under **section 11 or 13**; or

(b) closing down or transferring a small water service in accordance with **sections 58F to 58H**.

Compare: 2002 No 84 s 130

Limitations on transfer agreements, contracts, and joint arrangements

18 General duty to retain ownership of infrastructure, etc

(1) A water service provider must not—

(a) use the assets of its water services networks as security for any purpose; or

(b) transfer its ownership of water services infrastructure or of any other interest in a water service; or

(c) lose control of, sell, or otherwise dispose of the significant water services infrastructure necessary for providing water services in its service area, unless it retains its capacity to meet its obligations; or

(d) in relation to a property to which the provider supplies water,—

(i) restrict the water supply, unless **section 178A** applies; or

(ii) stop the water supply unless section 25(3) of the Water Services Act 2021 applies.

(2) Despite **subsection (1)(a)**, a water service provider may use a charge or rate that relates to providing water services as security.

(3) Despite **subsection (1)(b) and (c)**, a water service provider may take any of the actions set out in either or both of those paragraphs if the action is a necessary part of any of the following arrangements with that other provider:

(a) if the water service provider transferring the ownership or interest is a territorial authority, a transfer agreement under **section 11 or 13**:

(b) a contract under **section 21**:

(c) a joint water service provider arrangement under **section 24**.

(4) A water service provider that is a water organisation must ensure that any action taken under **subsection (3)** is in accordance with—

(a) its foundation documents; and

(b) any transfer agreement to which the water organisation is a party.

19 Franchises and concession agreements prohibited

(1) A contract under **section 21** or a joint water service provider arrangement under **section 24** entered into by a water service provider in relation to providing water services must not be a franchise or concession agreement.

(2) In this section, **franchise or concession agreement**, in relation to providing water services, means an agreement under which the party with which the water service provider engages is entitled to receive a payment from a person other than the water service provider for providing the water services.

Contracting for providing water services 5

21 Contracts for providing water services

(1) A water service provider may enter into a contract with a person or body for the performance of any aspect of providing a water service on behalf of the water service provider.

(2) A water service provider that enters into a contract under this section— 10

(a) continues to be the water service provider responsible for the water service to which the contract relates; and

(b) retains control over—

(i) the development of policy for providing the relevant water service; and 15

(ii) the pricing of the relevant water service.

(2A) A contract entered into under this section must be for a term no longer than 50 years.

(3) **Subsections (2) and (2A)** do not apply if the contract is between the water service provider and another water service provider, unless the parties state otherwise in the contract. 20

(4) A contract entered into by a water service provider is not a contract permitted by this section merely because the water service provider agrees to any 1 or more of the following actions under the Infrastructure Funding and Financing Act 2020: 25

(a) to propose the use of a levy to support constructing eligible infrastructure:

(b) to carry out any aspect of administering a levy:

(c) the vesting of eligible infrastructure:

(d) to contribute to the construction costs of the eligible infrastructure. 30

Compare: 2002 No 84 s 136

22 Obligations before entering into contracts

All contracts

(1) When considering and negotiating a contract under **section 21**, a water service provider must— 35

(aaa) determine whether the proposed contract is a significant contract under **section 23**; and

(a) consider all current and anticipated future regulatory requirements in relation to the water services to which the proposed contract relates; and

(b) consider whether the contract should provide for compliance with those requirements.

Significant contracts

(2) Before entering into a contract that a provider determines to be a significant contract, it must—

(a) ~~undertake options assessment and~~ identify and assess options and undertake consultation in accordance with **sections 26 to 28**; and

(b) if it is a water organisation, also consult its shareholders and obtain their approval of the proposed contract.

(3) Before entering into a contract that a provider determines to be a significant contract because it will create a public-private partnership, a water service provider must, in addition,—

(a) have regard to any relevant procurement rules and guidance issued by central government; and

(b) obtain advice from—

(i) any central government agency whose role includes advising on public-private partnerships (if its role is applicable to water service providers); or

(ii) appropriate experts in the private sector.

(4) In this section and **section 23**, **public-private partnership** means a long-term contract for delivering a water service, where—

(a) providing the service requires constructing ~~a~~ new water services infrastructure ~~asset~~ or enhancing ~~an~~ existing water services infrastructure ~~asset~~; and

(b) the construction or enhancement is financed from external sources on a non-recourse basis; and

(c) the water service provider acquires or retains full ownership of the infrastructure ~~asset~~.

23 Significant contract requirements

(1) For the purposes of **section 22(2) and (3)**, a water service provider must determine whether a proposed contract is a significant contract ~~in accordance with~~ under the provider's significance and engagement policy.

(~~4~~2) After entering into a significant contract, the provider must ensure that its water services annual report—

(a) specifies the performance indicators that the provider is using to monitor and assess the performance of the contracted party; and

(b) sets out how the contracted party has performed against those indicators during the relevant period.

Interaction with significance and engagement policy

(~~5~~3) The provider must ensure that its significance and engagement policy addresses all matters necessary for determining—

(a) whether a proposed contract under **section 21** is a significant contract; and

(b) how to undertake engagement in relation to proposed significant contracts in a way that is consistent with **sections 27 and 28**.

(~~6~~4) Without limiting **subsection (5)**, the significance and engagement policy must contain all criteria needed for determining whether a proposed contract is a significant contract, and those criteria must include—

(a) whether the proposed contract is of high value relative to the revenue that the provider receives from providing the water service to which the contract relates; and

(b) whether the proposed contract will create a public-private partnership; and

(c) all matters that are essential to the provider's ability to meet its obligations under this Act in relation to the water service to which the contract relates; and

(d) any relevant thresholds (for example, the value of the contract).

(7) If the provider is a water organisation, it must obtain its shareholders' approval of the way in which the organisation proposes to comply with **subsection (5)**.

23A Third party to give information to water service provider on request

(1) This section applies if a water service provider has entered into an agreement or arrangement of any kind with a person or body (the **third party**) for the third party to provide water services on behalf of the water service provider.

(2) The water service provider may ask the third party for information relating to ~~the provision of~~ providing water services under the agreement or arrangement.

(3) The information requested must be information that the water service provider needs in order to meet regulatory requirements relating to the water services covered by the agreement or arrangement.

(4) The third party must provide the information requested as soon as is reasonably practicable.

(5) However, the third party is not required to provide information that—

(a) is commercially sensitive; and

(b) could disadvantage the third party in future negotiations for entering into an agreement or arrangement with a water service provider.

(6) The third party may recover from the provider the reasonable costs that the third party incurs in providing information requested under this section.

Joint arrangements for providing water services

24 Joint water service provider arrangements

(1) A water service provider may enter into a joint water service provider arrangement with 1 or more other water service providers, including providers operating outside the service area in which the first provider operates.

(1A) When considering and negotiating a joint water service provider arrangement, a water service provider must ~~consider~~ determine whether the proposed arrangement is a significant joint water service provider arrangement under the provider's significance and engagement policy.

Significant joint water service provider arrangements

(2) Before entering into a proposed arrangement that a water service provider determines to be a significant joint water service provider arrangement, the provider must—

(a) undertake options assessment and consultation in accordance with **sections 26 to 28**~~:~~; and

(b) if it is a water organisation, also consult its shareholders and obtain their approval of the proposed arrangement.

Role of significance and engagement policy

(4) The provider must ensure that its significance and engagement policy addresses all matters necessary for determining—

(a) whether a proposed joint water service provider arrangement is a significant joint water service provider arrangement; and

(b) how to undertake engagement in relation to a proposed significant joint water service provider arrangement in a way that is consistent with **sections 27 and 28**.

Compare: 2002 No 84 s 137

Decisions about structural arrangements

25 Application

(1) This section and **sections ~~26~~ 25A to 29** apply to a territorial authority that ~~proposes to make~~ is considering making a structural change to the provision of water services in its district by doing 1 or more of the following (**change proposal**):

(a) establishing a water organisation:

(b) becoming a shareholder in a water organisation established by the territorial authority or by another territorial authority:

(c) disestablishing, or changing the shareholding arrangements in, a water organisation in which the territorial authority is a shareholder:

(ca) transferring responsibility for providing water services to a water organisation (or receiving a transfer back from a water organisation), including by a transfer agreement under **section 11 or 13**:

(d) entering into a contract under **section 21** that the territorial authority determines to be a significant contract:

(e) entering into a joint water service provider arrangement under **section 24** that the territorial authority determines under that section to be a significant joint water service provider arrangement.

Duty of territorial authorities

(2) The territorial authority must act in accordance with **sections 26 to 28** in relation to its change proposal.

(3) If the territorial authority ~~proposes~~ is considering making a change under **subsection (1)(b) or (c)**, all other territorial authorities that are shareholders in the relevant water organisation must act in accordance with **sections 26 to 28**.

(4) For the purposes of **sections 26 to 29**, a territorial authority may have regard not only to impacts in its own district but also, if the change proposal involves another territorial authority, to impacts in any collective area involved in the change proposal.

Change proposal by water organisation

(4A) **Subsections (4B) to (4D)** apply if a water organisation is considering a change proposal that involves the organisation entering into—

(a) a contract under **section 21** that the organisation determines to be a significant contract; or

(b) a joint water service provider arrangement under **section 24** that the organisation determines to be a significant joint water service provider arrangement.

(4B) The water organisation must act in accordance with **sections 26 to 28** if—

(a) none of its shareholders is a territorial authority; or

(b) its shareholders direct the organisation to manage the proposal.

(4C) A territorial authority that is a shareholder in the water organisation must act in accordance with **sections 26 to 28** if the organisation's shareholders are managing the proposal.

(4D) For the purposes of **subsection (4B)**, the water organisation must act in accordance with **sections 26 to 28** as if it were a territorial authority (and those sections apply accordingly with all necessary modifications).

(8) In **subsection (4)** and **sections 28 and 29**, **collective area** means,—

(a) in relation to a change proposal referred to in **subsection (1)(a), (b), or (c)**, the combined districts of the territorial authorities that establish the water organisation or are shareholders in it; ~~and~~ or

(b) in relation to a change proposal referred to in **subsection (1)(d) or (e)**, the combined districts of the territorial authorities that are party to the contract or arrangement.

25AA Further application

(1) **Sections 27 and 28** apply to a territorial authority that is considering—

(a) transferring ownership or control of a strategic water services asset (as permitted under **section 18(3)**); or

(b) receiving a transfer of ownership or control of a strategic water services asset; or

(c) making a significant change to the level of service provided in relation to any water service.

(2) However, **subsection (1)** does not apply if the proposal is included in—

(a) a change proposal specified in **section 25(1)**; or

(b) a water services strategy under **section 190**; or

(c) a proposal in a water services delivery plan under the Local Government (Water Services Preliminary Arrangements) Act 2024.

(3) For the purposes of this section, each reference to a change proposal specified in **sections 27 and 28** must be treated as referring to a proposal under **subsection (1)**, with any necessary modifications.

(4) *See* **section 196**, which applies when a water organisation proposes to take an action specified in **subsection (1)**.

25A Interaction of sections 26 to 29 with other legislation

LGA 2002

(1) Sections 56, 77, ~~and~~ 82A(2), and 97 of the LGA 2002 do not apply to a territorial authority— ~~that makes a change proposal.~~

(a) when it makes a change proposal; or

(b) when it prepares and submits a water services delivery plan under **subpart 5**.

(1A) Sections 82A(2) and 97 of the LGA 2002 do not apply to a territorial authority that is considering taking an action specified in **section 25AA(1)**.

(2) However, all other relevant requirements in the LGA 2002 apply to a territorial authority that makes a change proposal or that is considering taking an action specified in **section 25AA(1)**. For example, the requirements in sections 81 and 82 of the LGA 2002 continue to apply.

Local Government (Water Services Preliminary Arrangements) Act 2024

(3) This section, **section 25**, and **sections 26 to 29** apply to any decision making and consultation by a territorial authority in relation to a change proposal that occur after a water services delivery plan submitted by the authority has been accepted by the Secretary for Local Government under section 20 of the Local Government (Water Services Preliminary Arrangements) Act 2024.

(4) Alternative requirements under Part 3 of the Local Government (Water Services Preliminary Arrangements) Act 2024—

(a) apply to any decision making and consultation by the authority that occur before the acceptance of its water services delivery plan; but

(b) do not apply after the date of that acceptance, including in relation to amendments to the plan made under section 23 of that Act.

26 Identification and assessment of options

(1) The territorial authority must identify and assess a range of options for ways of achieving the objective of a change proposal, including—

(a) continuing the existing approach to providing water services in its district; and

(b) the change proposal; and

(c) at least 1 further reasonably practicable option, if available.

~~(2) If, after identifying and assessing options, the authority proposes to take no action, it must treat that proposal as a change proposal for the purposes of—~~

~~(a) consultation under **sections 27 and 28**; and~~

~~(b) considering matters under **section 29**.~~

(2) After identifying and assessing options under **subsection (1)**,—

(a) the territorial authority must undertake consultation on its preferred option; and

(b) that preferred option must be treated as a change proposal for the purposes of **sections 27 to 29**.

(3) If any of the options identified under **subsection (1)** involve a significant decision in relation to land or a body of water, the authority must take into account the relationship of Māori and their culture and traditions with their ancestral land, water, sites, wāhi tapu, valued flora and fauna, and other taonga.

Compare: 2002 No 84 s 77

27 Consultation required

(1) The territorial authority—

(a) must consult on a change proposal; and

(b) in addition,—

(i) if the consultation results in significant amendment to the proposal, must consult on the amended proposal; and

(ii) may undertake further consultation at any stage of the decision-making process.

(2) All consultation on a change proposal must—

(a) be undertaken in accordance with this section and **section 28** and, if applicable, with regard to the matters set out in **section 29(1)**; and

(b) give persons who will or may be affected by, or who have an interest in, the change proposal an opportunity to present their views on the proposal to the authority.

(3) When deciding whether to undertake consultation under **subsection (1)(b)(i)**, the territorial authority may have regard to—

(a) the extent to which the authority already knows the views and preferences of persons likely to be affected by, or to have an interest in, the change proposal; and

(b) the nature and significance of the change proposal, including its likely impact from the perspective of the persons who will or may be affected by, or have an interest in, the change proposal.

(4) A territorial authority must use its significance and engagement policy to help the authority to determine—

(a) whether an amendment to a change proposal is significant for the purposes of **subsection (1)(b)(i)**; and

(b) the significance of a change proposal for the purposes of **subsection (3)(b)**; and

(c) if the authority has determined a change proposal ~~is determined~~ to be significant under the policy, matters of engagement that support consultation requirements under this section and **section 28**; and~~.~~

(d) for the purposes of **section 25AA(1)**, whether—

(i) an asset is a strategic water services asset; and

(ii) a proposed change to the level of service provided is significant.

Compare: 2024 No 31 s 62

28 Information to be made publicly available

(1) The territorial authority must, when consulting on a change proposal, make the following information publicly available:

(a) the change proposal, an explanation of the change proposal, and the reasons for the change proposal:

(b) the assessment of other options identified under **section 26** and the authority's reasons for not preferring those options:

(c) how proceeding with the change proposal is likely to affect—

(i) the authority's rates, debt, and levels of service; and

(ii) any charges for water services:

(iii) arrangements and mechanisms for funding, pricing, invoicing, and collecting charges for water services:

(d) how not proceeding with the change proposal is likely to affect—

(i) the authority's rates, debt, and levels of service; and

(ii) any charges for water services:

(e) the implications of the change proposal for communities throughout—

(i) the authority's district; and

(ii) any collective area involved in the change proposal:

(f) if the change proposal involves transferring ownership or control of a strategic water services asset, a description of how the change proposal is likely to affect the authority's debt in relation to the asset:

(fa) for a change proposal described in **section 25(1)(a), (b), or (c)**, information on the proposed ownership of, and shareholding arrangements for, the water organisation:

(g) any other relevant implications of the change proposal that the authority considers will be of interest to the public:

(h) how persons who will or may be affected by, or who have an interest in, the change proposal may present their views on the proposal to the authority.

(1A) If the territorial authority is considering 2 or more change proposals, it must make the information set out in **subsection (1)** publicly available in relation to each proposal.

Compare: 2024 No 31 s 64

29 Additional considerations for collective area

(1) When deciding whether to adopt a change proposal that relates to water services in a collective area, a territorial authority may also consider—

(a) the impact of the change proposal on the communities in the collective area (as well as the impact on the authority's district); and

(b) the views of people in communities in the collective area (as well as the views of people in communities in the authority's district); and

(c) the views of the other territorial authorities that are—

(i) parties to the change proposal; or

(ii) considering whether to adopt the change proposal.

(2) This section applies despite section 12(4) and 14(1)(g) of the LGA 2002.

Compare: 2024 No 31 s 65

~~*Public consultation required for other decisions*~~

~~30A Water service provider decisions that require public consultation~~

~~(1) This section—~~

~~(a) applies if a water service provider proposes to—~~

~~(i) transfer ownership or control of a strategic water services asset (as permitted by **section 18(3)**); or~~

~~(ii) receive a transfer of ownership or control of a strategic water services asset; or~~

~~(iii) make significant changes to the level of service it provides in relation to any water service; but~~

~~(b) does not apply if the proposed action is being consulted on publicly as part of—~~

~~(i) a change proposal under **section 25**; or~~

~~(ii) a draft water services strategy.~~

~~(2) The water service provider must not make a decision on the proposal without first conducting public consultation.~~

~~(3) The person or body that must comply with **subsection (2)** is,—~~

~~(a) if the water service provider is a territorial authority, that authority; or~~

~~(b) if the water service provider is a water organisation,—~~

~~(i) the organisation's shareholders; or~~

~~(ii) the organisation, if directed by the shareholders.~~

~~*Role of significance and engagement policy*~~

~~(4) The provider must ensure that its significance and engagement policy addresses all matters necessary for determining—~~

~~(a) whether a water services asset is a strategic water services asset; and~~

~~(b) whether a proposed change to the level of service is a significant change; and~~

~~(c) how to comply with **subsections (2) and (3)**.~~

~~Compare: 2002 No 84 s 97(1)~~

Significance and engagement policy

30B Territorial authority's policy

A territorial authority must amend its significance and engagement policy—

(a) to suit the authority's role, and any changes to its role, as—

(i) a water service provider; or

(ii) a shareholder in a water organisation; and

(b) by removing any matters that are no longer needed and are instead required to be included in the significance and engagement policy of a water organisation.

30C Water organisation's policy: content and purpose

(1) A water organisation must adopt a significance and engagement policy setting out the following:

(a) the organisation's general approach to determining the significance of proposals and decisions in relation to issues, water services infrastructure, and other matters:

(b) any criteria or procedures that the organisation will use in assessing the extent to which issues, proposals, water services infrastructure, decisions, or activities are significant or may have significant consequences:

(c) the organisation's general approach to engaging with consumers and communities, including the circumstances in which engagement will be undertaken by—

(i) the organisation; or

(ii) the organisation's shareholders:

(d) how the organisation will respond to community preferences about engagement on decisions relating to specific issues, water services infrastructure, or other matters, including the form of engagement that may be desirable:

(e) any particular approaches or arrangements for engaging with particular relevant communities (for example, iwi, hapū, and other Māori organisations in the water organisation's service area).

(2) The water organisation must also ensure that its significance and engagement policy sets out all relevant matters relating to specific decisions and actions that this Act requires to be made or done in accordance with a water service provider's significance and engagement policy.

(3) The purpose of the policy is—

(a) to enable the organisation, its shareholders, its consumers, and its communities to identify the degree of significance attached to particular issues, proposals, water services infrastructure, decisions, and activities; and

(b) to enable the organisation to develop a flexible and locally appropriate approach to engagement, which recognises and accommodates the preferences and expectations of—

(i) its shareholders; and

(ii) its consumers; and

(iii) its shareholders' communities; and

(iv) any particular communities specified in the policy (for example, iwi, hapū, and other Māori organisations in the water organisation's service area); and

(c) to provide clarity about—

(i) how and when communities can expect to be engaged in decisions about different issues, water services infrastructure, or other matters; and

(ii) whether engagement will be undertaken by the organisation or its shareholders; and

(iii) how the organisation will take account of consumer and community views on matters on which the organisation's shareholders have expressed a view; and

(d) to inform the organisation from the beginning of a decision-making process about—

(i) the extent of any engagement that is expected before a particular decision is made; and

(ii) with whom the engagement occurs (for example, shareholders, consumers, particular communities, or the general public); and

(iii) the form or type of engagement required.

(4) Without limiting this section, the policy must include all matters required by the organisation's shareholders.

Compare: 2002 No 84 s 76AA

30D Water organisation's policy: specific content

(1) Without limiting **section 30C**, a water organisation must ensure that its significance and engagement policy addresses all matters that any provision of this Act requires it to address, including—

(a) whether a proposed contract under **section 21** is a significant contract and the matters the organisation will consider when determining whether a contract is a significant contract; and

(b) whether a proposed joint water service provider arrangement under **section 24** is a significant joint water service provider arrangement and the matters the organisation will consider when determining whether an arrangement is a significant joint water service provider arrangement; and

(c) how to undertake engagement in relation to a proposed significant contract and a proposed significant joint water service provider arrangement in a way that is consistent with **sections 27 and 28**.

(2) The policy must also address all matters, and contain all information, necessary for—

(a) decisions under, and consultation required by, **section 196(10)**~~**section 30A**~~; and

(b) the organisation to make its water services strategy under **section 196**.

(3) As the organisation determines over time whether specific water services assets are strategic water services assets for the purposes of **section 196(10)**~~**section 30A**~~, it must develop a list of strategic water services assets and include the list in its significance and engagement policy for use under that section.

(4) In addition, the organisation must ensure that its significance and engagement policy is consistent with this Act, including by ensuring that the policy is consistent with any specific requirements relating to consultation or other engagement.

30E Water organisation's policy: preparation and amendment

First policy

(1) A water organisation must adopt its first significance and engagement policy within 12 months after the organisation is established under **section 36**.

(2) If the water organisation was providing water services before the commencement date of this Act, it must adopt its first significance and engagement policy within 12 months after that commencement date.

Policies generally

(3) When preparing ~~its~~ a significance and engagement policy, a water organisation must—

(a) engage with—

(i) its shareholders; and

(ii) the consumers in its service area; and

(iii) the communities in the districts or regions of those of its shareholders that are territorial authorities; and

(iv) any particular communities identified by shareholders (for example, iwi, hapū, and other Māori organisations in the organisation's service area); and

(b) obtain its shareholders' approval of the proposed policy.

(4) When a water organisation is preparing its significance and engagement policy, the organisation and any territorial authorities that are shareholders in the organisation must together—

(a) identify any matters addressed by the organisation's proposed policy and 1 or more of the authorities' significance and engagement policies; and

(b) consider the respective roles and responsibilities of the organisation and the authorities; and

(c) agree on amendments to the organisation's proposed policy and the authorities' policies that minimise unnecessary duplication and inconsistency between them.

(5) ~~The~~ An organisation—

(a) may amend its significance and engagement policy at any time; but

(b) must amend the policy if there is a change to the organisation's responsibilities for water services, including when the organisation receives or returns responsibilities under a transfer agreement with a territorial authority.

(6) When amending the policy, the organisation—

(a) must comply with **subsection (3)(a)(i) and (b)**; and

(b) must comply with **subsection (3)(a)(ii) to (iv)** unless it considers on reasonable grounds that it has sufficient information about the interests and preferences of consumers and communities to enable the purpose of the policy to be achieved; and

(c) must comply with **subsection (4)** if 1 or more territorial authorities are shareholders in the organisation.

30F Water organisation's policy: deviation from policy

If a decision of a water organisation ~~that is a water service provider~~ is significantly inconsistent with, or is anticipated to have consequences that will be significantly inconsistent with, its significance and engagement policy, the organisation must, when making the decision, clearly identify—

(a) the inconsistency; and

(b) the reasons for the inconsistency; and

(c) any intention of the organisation to amend its significance and engagement policy to accommodate the decision.

Compare: 2002 No 84 s 80

Subpart 2—Regions in which regional councils also provide water services

31 Purpose of this subpart

The purpose of this subpart is to make special provision for regions in which a responsibility for providing water services is exercised not only by 1 or more territorial authorities but also by the regional councils.

32 How regional councils provide water services

(1) A regional council may do any 1 or more of the following:

(a) transfer responsibility for providing water services by entering into a transfer agreement with a territorial authority in the council's region (*see* **section 33**):

(b) transfer responsibility for providing water services by entering into a transfer agreement with a water organisation whose service area is in the regional council's region (*see* **section 34**):

(c) enter into a contract with a person or body to provide water services on behalf of the regional council (*see* **section 21**):

(d) enter into a joint water service provider arrangement (*see* **section 24**):

(f) provide water services itself directly.

(2) A regional council may take different actions listed in **subsection (1)** for providing—

(a) different water services; or

(b) different aspects of a water service.

Effect of transfers, contracts, and arrangements

(3) If a regional council transfers responsibility under **subsection (1)(a) or (b)**, the territorial authority or the water organisation (as applicable) becomes the water service provider of the water services to the extent of the transfer.

(4) **Subsection (5)** applies to a regional council that enters into a contract or an arrangement under **subsection (1)(c) or (d)**.

(5) The council—

(a) continues to be responsible, as the water service provider under this Act, for ensuring the provision of the water services to which the contract or arrangement relates; and

(b) must ensure that the other party to the contract or arrangement performs and exercises all the statutory functions, duties, and powers associated with providing the water services to which the contract or arrangement relates.

(6) A regional council is the water service provider to the extent that it provides water services under **subsection (1)(c), (d), or (f)**.

33 Transfer of responsibilities to territorial authorities

(1) For the purposes of section 17(8)(b) of the LGA 2002, a regional council may transfer any responsibility for providing water services in its region to a territorial authority in that region.

(2) A territorial authority may not transfer any responsibility for providing water services in its district to the regional council for the region in which that district is located.

(3) In this section, **responsibility** includes any associated duty or legal obligation.

34 Transfer agreement with water organisation

(1) A regional council may enter into a transfer agreement with a water organisation whose service area is in the council's region and, for that purpose, **sections 11 to 14** apply—

(a) to a regional council in the same way that they apply to a territorial authority; and

(b) with any other necessary modifications.

(2) However, a regional council must not enter into a transfer agreement unless—

(a) the regional council has responsibilities, assets, or other matters relating to water services that can be transferred to the water organisation; and

(b) either—

(i) the regional council is a shareholder in the water organisation; or

(ii) the shareholders in the water organisation agree to the regional council entering into the transfer agreement.

35 Application of this Act to water services role of regional councils

(1) This Act applies to regional councils as follows:

(a) each reference to a territorial authority must be read as a reference to a regional council:

(b) each reference to the district of a territorial authority must be read as a reference to the region of a regional council.

(2) However, **subsection (1)** does not apply in the case of the following provisions:

(a) **sections 8(1) and (2), 9, and 10**:

(ab) **subpart 5 of Part 2** (but **subpart 5** does apply to Wellington Regional Council):

(b) **section 36**:

(c) **sections 43 to 53**:

(d) **sections 55 to ~~58~~ 58E**:

~~(e) **Part 3, subparts 2, 5, and 6**:~~

~~(f) **Part 6, subparts 1, 2, and 3**.~~

(e) **subparts 2, 5, and 6 of Part 3**:

(f) **subparts 1, 2, and 3 of Part 6**.

Subpart 3—Water organisations

Water organisations: establishment and ownership

36 Establishment of water organisation

(1) A territorial authority may establish a water organisation for the purpose of transferring to the organisation responsibility for providing water services in the authority's district.

(2) A territorial authority may, for the purpose of transferring responsibility for providing water services in its district, become a shareholder in a water organisation that 1 or more other territorial authorities have established under **subsection (1)**.

(3) A territorial authority may do any of the following:

(a) establish a water organisation alone or jointly with 1 or more other territorial authorities:

(b) establish, or become a shareholder in, more than 1 water organisation:

(d) establish a water organisation without becoming a shareholder in it (because, for example, the organisation is owned by the trustees of 1 or more consumer trusts).

(3A) A territorial authority must prepare foundation documents for a water organisation it establishes under this section.

(5) A regional council must not establish a water organisation, but it may become a shareholder in a water organisation established by a territorial authority whose district is located in the council's region (*see* **subpart 2**).

37 Nature and ownership of water organisation

(1) A water organisation established under **section 36** must be—

(a) a company incorporated under the Companies Act 1993 that has the ownership structure set out in **subsection (2)**; or

(b) if the territorial authority establishing the water organisation receives an exemption of the kind described in **section 55(2)**, a different kind of person or body with that ownership structure.

(2) A water organisation must be wholly owned by—

(a) 1 or more local authorities; or

(b) 1 or more local authorities and the trustees of 1 or more consumer trusts; or

(c) the trustees of 1 or more consumer trusts.

(3) Shares in a water organisation do not provide the shareholder with any right, title, or interest in the assets or liabilities of the water organisation other than any right, title, or interest specified in the organisation's foundation documents.

(4) Trustees that hold shares in a water organisation may only transfer those shares to a local authority or the trustees of another consumer trust.

38 Limited role of water organisation

A water organisation must not do anything other than—

(a) provide water services in accordance with this Act; or

(b) provide services that are related to, or necessary for, providing water services (for example, the management or maintenance of water services networks).

39 Territorial authorities with existing contracts, etc, relating to water services

(1) This section applies to a territorial authority that—

(a) proposes to—

(i) establish a water organisation; or

(ii) become a shareholder in a water organisation; or

(iii) transfer additional responsibilities to a water organisation under **section 13**; and

(b) has an existing contract, agreement, or arrangement with a third party that relates to providing water services.

(1A) The territorial authority and a third party that is a Māori third party must together determine how the contract, agreement, or arrangement will apply to the water organisation.

(1B) In all other cases, the territorial authority must consider how each existing contract, agreement, or arrangement will apply to the water organisation.

(2) In this section, **Māori third party** means a third party that is an iwi, hapū, or other Māori organisation.

Governance of water organisations: general

40 Board directors

(1) A director of a water organisation must be appointed on the basis of their competency to perform the role.

(2) The directors of a water organisation must collectively have an appropriate mix of skills, knowledge, and experience in relation to providing water services.

(3) A person is not able to be appointed as a director of a water organisation if the person is—

(a) an elected member of a territorial authority that is a shareholder in the water organisation; or

(b) an employee of a territorial authority that is a shareholder in the water organisation; or

(c) an employee of any other shareholder in the water organisation; or

(d) an employee of the water organisation.

(4) **Subsection (3)** does not apply if the water organisation is wholly owned by the trustees of 1 or more consumer trusts.

(5) This section applies in addition to sections 150 to 159 of the Companies Act 1993.

LGA 2002 application if organisation is council-controlled organisation

(6) The following provisions of the LGA 2002 do not apply if the water organisation is a council-controlled organisation:

(a) section 57 (appointment of directors):

(b) section 58 (role of directors of council-controlled organisations):

(c) section 59 (principal objective of council-controlled organisation):

(d) section 60 (decisions relating to operation of council-controlled organisations).

Governance of water organisations: consumer trusts

42 Purposes of ~~section~~ sections 43 to 54

The purposes of **sections 43 to 54** are to—

(a) enable territorial authorities to establish consumer trusts—

(i) whose trustees will own, or co-own, a water organisation on behalf of consumers; and

(ii) whose trustees will act in the interests of all of the water organisation's consumers; and

(b) enable consumers to elect trustees to those consumer trusts.

43 Territorial authority may establish consumer trust

(1) A territorial authority may establish a consumer trust whose trustees will own or co-own a water organisation (*see* **section 37**).

(2) A territorial authority may—

(a) establish a consumer trust alone or jointly with 1 or more other territorial authorities; and

(b) establish more than 1 consumer trust.

44 Role of trustees of consumer trusts

(1) The trustees of a consumer trust must—

(a) represent the interests of all consumers who hold an account for the provision of water services with the water organisation that the trust owns or co-owns; and

(b) perform the roles and responsibilities of the shareholders in a water organisation under this Act.

(2) The trustees of a consumer trust must comply with **subsection (1)**—

(a) on their own, if the water organisation is wholly owned by them; or

(b) in conjunction with the other co-owners of the water organisation, if the trustees co-own the water organisation with—

(i) 1 or more territorial authorities; or

(ii) the trustees of 1 or more other consumer trusts.

(3) A consumer trust exists for the sole purpose for which it is established, and its trustees must not have an ownership interest, in their role as trustees of the consumer trust, in any type of organisation other than a water organisation.

45 Trust deed: content

(1) A territorial authority that establishes a consumer trust must ensure that the trust deed provides for the following matters:

(a) the purpose of the trust:

(b) the number of trustees:

(c) the term, or maximum term, of appointment for trustees:

(d) matters relating to meetings of the trust, including their frequency, quorum, voting rules and other procedures, and when to hold a public meeting:

(e) the circumstances in which a trustee vacates office:

(f) how a trustee vacancy is to be filled:

(g) matters relating to interim trustees, including limitations on their decision making:

(h) trustees' remuneration:

(ha) how trustees will disclose their pecuniary interests and how conflicts of interest will be managed:

(i) the holding of elections of trustees in accordance with the principles set out in **section 50** and the process for holding elections:

(j) trustees' investment powers:

(k) trustees' powers to spend capital and income of the trust:

(l) how officers, employees, managers, and agents of the trust are to be appointed:

(m) administration of the trust generally, including how accounts are to be kept:

(n) the preparation, audit, and publication of financial statements as required by **section 51**:

(o) the funding of the trust's administration of the trust, including—

(i) the conduct of elections of trustees; and

(ii) how to recover the following from the water organisation that is owned or co-owned by the trust:

(A) reasonable costs of the trustees' performance of their role as shareholders in the organisation:

(B) reasonable costs of the election of trustees under **section 49**:

(C) reasonable administrative costs:

(p) how the trustees and the territorial authority that established the consumer trust will engage with one another in relation to the territorial authority's resource management planning and land use planning in its district:

(pa) how the trustees, in performing their role under this Act, will engage with the consumers on whose behalf the trustees own or co-own the water organisation, including Māori communities among those consumers:

(q) how the trustees will ensure that the water organisation will, as a water service provider, act consistently with Treaty settlement obligations (*see* **section 6A**):

(r) in what circumstances, and how, the trust deed may be varied:

(s) either or both of the following:

(i) in what circumstances, and how, the trust deed may be terminated:

(ii) the trust's expiry date:

(t) any further matters required by regulations, including any detailed requirements relating to any of the matters referred to in **paragraphs (a) to (s)**.

(2) If regulations under this Act provide for how a trust deed must provide for any matter referred to in **subsection (1)**, the trust deed must comply with those regulations.

46 Trust deed: general limitation

(1) The trust deed of a consumer trust must be consistent with this Act and any regulations made under this Act.

(2) A provision, or a variation of a provision, of a trust deed that is inconsistent with this Act or any regulations made under this Act is of no effect.

47 Trust deed: specific limitations

(1) The territorial authority that establishes a consumer trust must not include in the trust deed a provision that enables the authority to—

(a) appoint, remove, or monitor trustees; or

(b) give any direction or instruction to trustees; or

(c) require the trustees to consult the authority on their roles and responsibilities as shareholders in the water organisation, unless consultation is necessary to enable the authority to meet its statutory obligations. 5

(2) Except as otherwise provided in this Act, a consumer trust—

(a) must operate in accordance with the Trusts Act 2019; and

(b) must comply with the Local Government Official Information and Meetings Act 1987 as if it were a local authority, and that Act applies accordingly with all necessary modifications. 10

48 Trust deed: Secretary approval

(1) A territorial authority that proposes to establish a consumer trust must ask the Secretary to approve the proposed trust deed.

(2) The trust cannot be established unless the Secretary reviews the draft trust deed and approves it on being satisfied that it is consistent with this Act and any regulations made under this Act. 15

(3) The Secretary may ask the territorial authority to amend the draft trust deed.

49 Trustees: election, term, and scope of role

(1) Trustees of a consumer trust must be elected to that role in an election conducted in accordance with the election principles set out in **section 50**. 20

(2) A person is eligible for election as a trustee if—

(a) the address where the person resides for the purposes of section 72 of the Electoral Act 1993 is located in the service area of the water organisation that the trustees own or co-own; and

(b) they hold an account for the provision of water services with the water organisation. 25

(3) A trustee must be appointed for a term not exceeding the maximum term of office for trustees permitted by the trust deed.

(4) A trustee may hold office on more than 1 occasion.

(5) The powers of the trustees are not affected by a vacancy in the trust's membership. 30

(6) A trustee must not be a member of the board of directors of the water organisation that the trustees own or co-own.

(7) A trustee who owns or co-owns a water organisation does not have a conflict of interest by reason only of being a consumer of water services provided by the water organisation. 35

50 Trustee elections: principles

(1) Elections of trustees must be conducted in accordance with the following principles:

(a) trustees are elected by consumers who hold an account for the provision of water services with the water organisation that the trustees own or co-own:

(b) each consumer who is the named account holder may cast 1 vote:

(c) elections must be conducted by an electoral officer appointed by the trust:

(d) elections must be—

(i) conducted in accordance with the process set out in the trust deed; and

(ii) conducted by the electoral officer in a manner that is readily understood by electors and that gives them confidence in the fairness of the election process.

(2) Despite **subsection (1)**, when a consumer trust is first established, the territorial authority that establishes the trust must appoint persons whom the authority considers appropriate to be the initial trustees of the trust.

(3) The functions of initial trustees are limited to—

(a) conducting the first election of trustees as soon as practicable and performing related tasks, such as obtaining from the water organisation consumer information needed for conducting the election; and

(b) performing other tasks that are necessary to establish the trust.

(4) For the purposes of future elections, all trustees may obtain relevant consumer information from the water organisation.

51 Financial statements and audits

~~(1) The trustees must enable the trust's financial statements to be audited within 5 months after the end of each financial year of the trust by doing the following within 4 months after the end of each financial year:~~

~~(a) preparing financial statements in accordance with generally accepted accounting practice:~~

~~(b) submitting those financial statements to the auditor for audit.~~

(1) The trustees of a consumer trust must,—

(a) as soon as practicable, but within 3 months, after the end of each financial year, prepare the trust's financial statements in accordance with generally accepted accounting practice; and

(b) within 3 months after the end of each financial year, send those financial statements to the Auditor-General for audit.

(2) The Auditor-General must, within 4 months after the end of each financial year, ~~is the auditor of a consumer trust.~~

(a) audit the financial statements received under **subsection (1)(b)**; and

(b) give an audit report to the trustees of the consumer trust.

(4) A trustee who, knowingly and without lawful excuse, fails to comply with **subsection (1)** commits an offence punishable on conviction by a fine not exceeding $200,000.

51A Annual report

(1) The trustees of a consumer trust must, in relation to each financial year, prepare and adopt an annual report that, for the financial year to which it relates,—

(a) reports on—

(i) the trustees' activities to further the purpose of the trust; and

(ii) the extent to which the trustees' expectations in relation to ownership and control of the water organisation (as set out in the organisation's statement of expectations) have been met; and

(b) contains—

(i) the consumer trust's audited financial statements; and

(ii) the Auditor-General's report on the trust's financial statements.

(2) The trustees must—

(a) ~~adopt~~ prepare the annual report ~~no later than 4 months~~ as soon as practicable after the end of the financial year to which it relates; and

~~(b) make the report publicly available as soon as practicable after an audit under **section 51** is completed.~~

(b) adopt the report and make it publicly available no later than 15 working days after receiving the Auditor-General's report under **section 51**.

(3) Despite **subsection (2)(a)**, the trustees of a consumer trust that is established less than 4 months before the end of a financial year must, after the end of the trust's first full financial year, prepare and adopt an annual report that covers the period from the date on which the trust is established until the end of the first full financial year.

(4) A trustee who, knowingly and without lawful excuse, fails to comply with **subsection (2)(b)** commits an offence punishable on conviction by a fine not exceeding $200,000.

51B Trustees' indemnity and liability

(1) Subject to this section, a trustee of a consumer trust is indemnified from the trust property for—

(a) costs and damages for any civil liability arising from any action brought by a third party if the trustee was acting in good faith and in the perform-

ance (or intended performance) of the trustee's roles and responsibilities; and

(b) costs arising from any successfully defended criminal action relating to acts or omissions in their capacity as a trustee.

(2) The trustees of a consumer trust are jointly and severally liable for losses incurred by trust property if 1 or more trustees~~ unlawfully expend money, unlawfully sell or otherwise dispose of assets or incur liabilities, or intentionally or negligently fail to collect money owed.~~

(a) unlawfully expend money; or

(b) unlawfully sell or otherwise dispose of assets; or

(c) intentionally or negligently fail to collect money owed.

(3) ~~Loss~~ Any loss under **subsection (2)** is recoverable as a debt due to the Crown in any court of competent jurisdiction.

(4) In proceedings by the Crown to recover ~~the~~ a loss from the trustees, it is a defence if a trustee proves that the act or failure to act resulting in the loss occurred—

(a) without the trustee's knowledge; or

(b) with the trustee's knowledge but against the trustee's protest made at or before the time when the loss occurred; or

(c) contrary to the manner in which the trustee voted on the issue at a meeting of the trustees of the consumer trust; or

(d) in circumstances where, although being a party to the act or failure to act, the trustee acted in good faith and reasonably in reliance on reports, statements, financial data, or other information prepared or supplied, or on professional or expert advice given, by any of the following persons:

(i) an employee of the consumer trust, or of the water organisation owned or co-owned by the trust, whom the trustee believed on reasonable grounds to be reliable and competent in relation to the matters concerned:

(ii) a professional adviser or expert in relation to matters that the trustee believed on reasonable grounds to be within the person's professional or expert competence.

(4A) A trustee cannot rely on a defence under **subsection (4)** if the court finds, or to the extent that the court finds, that the loss occurred as a result of the trustee's dishonesty, wilful misconduct, or gross negligence.

(5) If the court finds that the loss was incurred by any action by the trustees referred to in **subsection (2)**, the trustees must, by order of the court, pay costs and other expenses arising out of the proceedings.

(6) The Crown must return any amount it recovers from the trustees, less costs and other expenses it incurred in the recovery, to the trust property.

Compare: 2002 No 84 ss 43, 44, 46, 47~~,~~; 2019 No 38 s 40

52 Variation of trust deed: Secretary approval

(1) Trustees who propose to vary the trust deed must—

(a) prepare an appropriate variation; and

(b) obtain the Secretary's approval of the variation.

(2) The Secretary must approve the variation of the trust deed if satisfied that the variation is consistent with this Act and any regulations made under this Act.

53 Termination and expiry of trust

(1) A consumer trust continues indefinitely, subject to the terms of the trust deed.

(2) A consumer trust must not, without the approval of the Secretary, be terminated other than by expiry.

(2A) The Secretary must approve the termination of the trust if satisfied that the trust's termination is consistent with this Act and any regulations made under this Act.

(3) When a consumer trust expires or is terminated, the trustees must transfer to the territorial authority or territorial authorities that established the trust—

(a) all shares that they hold in the water organisation that is owned or co-owned by the trust; and

(b) all other assets and liabilities that they hold for the trust.

54 Ministerial powers

(1) The Minister may use their powers under Part 10 of the LGA 2002 to assist trustees and to intervene in the affairs of trustees.

(2) For the purposes of this section, Part 10 of the LGA 2002 must be read as applying, with any necessary modifications, to a consumer trust as if it were a local authority.

Exemptions relating to water organisations and consumer trusts

55 Applications for exemptions

(1) This section allows a territorial authority that establishes, intends to establish, or has established a water organisation (whether or not the authority owns or co-owns, or intends to own or co-own, the water organisation) to apply to the Secretary for an exemption from specified requirements under this subpart.

(2) The authority may apply for the water organisation to be exempted from the requirement that a water organisation must be a company incorporated under the Companies Act 1993 (*see* **section 37(1)**).

(3) The authority may apply for the water organisation to be exempted from the requirement that a water organisation must not provide services other than—

(a) water services; and

(b) services that are related to, or necessary for, providing water services (for example, services relating to the management or maintenance of water services networks) (*see* **section 38**).

(4) The authority may apply for an exemption from the requirement under **section 44(3)** that trustees of a consumer trust who own or co-own, or who are to own or co-own, the water organisation must not have an ownership interest, in their role as trustees of the consumer trust, in any type of organisation other than a water organisation.

(5) A territorial authority that intends to establish a water organisation may apply to the Secretary for the water organisation to be exempted from the requirement that only local authorities and trustees of consumer trusts may be shareholders in a water organisation (*see* **section 37(2)**) if the authority intends that the water organisation will be owned by—

(a) 1 or more local authorities or trustees of 1 or more consumer trusts as set out in **section 37(2)**; and

(b) consumer shareholders in a co-operative company holding only a nominal number of ~~non-transferrable~~ non-transferable shares in the water organisation.

(7) In **subsection (5)**,—

consumer shareholder means a person who is—

(a) a consumer of the services provided by the water organisation; and

(b) a transacting shareholder in the co-operative company within the meaning of section 4(1)(b) and (d) of the Co-operative Companies Act 1996

co-operative company means a company registered as a co-operative company under the Co-operative Companies Act 1996.

56 Process for considering application for exemption

(1) On receipt of an application under **section 55**, the Secretary must—

(a) consult the Water Services Authority, the Commerce Commission, and the Inland Revenue Department in relation to the application; and

(b) advise the Minister whether to recommend granting an exemption, including—

(i) whether the exemption should be subject to any terms and conditions; and

(ii) whether the exemption should be granted in full or in part.

(2) After receiving the Secretary's advice, the Minister must—

(a) recommend that an exemption be granted by order under **section 57**; or

(b) decline the application.

(3) The Minister may recommend that the exemption be granted—

(a) subject to any terms or conditions; or

(b) in full or in part.

(4) The Minister must not recommend an exemption unless satisfied on reasonable grounds that the exemption—

(a) would not prevent the water organisation or the trustees of the consumer trust (as applicable) from complying with this Act; and

(b) would not adversely affect—

(i) the ability of the water organisation to meet its objectives; or

(ii) the financial sustainability of the water organisation.

(5) If the Minister decides to decline an application for an exemption, the Minister must direct the Secretary to notify the following parties that the exemption has been declined:

(a) the shareholders:

(b) the territorial authority that applied for the exemption.

(6) After an exemption order is made granting ~~the~~ an exemption, the Secretary must notify the following parties that the exemption has been granted:

(a) the shareholders:

(b) the territorial authority that applied for the exemption.

57 Exemption order

(1) The Governor-General may, by Order in Council made on the recommendation of the Minister, exempt a water organisation or trustees from a requirement referred to in **section 55**.

(2) An exemption under this section—

(a) may be granted—

(i) in full or in part; or

(ii) with or without conditions; and

(b) must refer to the territorial authority that applied for the exemption; and

(c) must set out the reasons for the exemption.

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

58 Publication of reliance on exemption

(1) This section applies to a territorial authority that is referred to in an exemption order under **section 57** and that starts to rely on the exemptions.~~—~~

~~(a) is referred to in an exemption order under **section 57**; and~~

~~(b) relies on the exemption when establishing—~~

~~(i) a water organisation; or~~

~~(ii) a consumer trust.~~

(2) The territorial authority must make information about the exemption, and the territorial authority's reliance on the exemption, publicly available.

Subpart 4—Other roles of water service providers

58A Definitions for this subpart

In this subpart,—

assessment,—

(a) in relation to drinking water services,—

(i) means an assessment of drinking water services available to communities throughout ~~the~~ a territorial authority's district, including private drinking water supplies and community-owned or community-operated drinking water supplies, regardless of any role of the authority as a water service provider; but

(ii) does not include assessments in relation to domestic self-suppliers; and

(b) in relation to stormwater services and wastewater services,—

(i) means an assessment of stormwater services and wastewater services available to communities throughout ~~the~~ a territorial authority's district, regardless of any role of the authority as a water service provider; but

(ii) does not include assessments in relation to individual properties; and

(c) includes reviewing and updating an assessment

domestic self-supplier has the same meaning as in section 10 of the Water Services Act 2021

drinking water services means the supply of drinking water to communities to the point of supply of each dwelling house and commercial premises to which drinking water is supplied

drinking water supplier—

(a) has the same meaning as in section 8 of the Water Services Act 2021; but

(b) does not include a water service provider

significant problem or potential problem means—

(a) a drinking water supplier has persistently failed to comply with the requirements of the Water Services Act 2021; or

(b) there is a serious risk to public health from the supply provided by a drinking water supplier; or

(c) a drinking water supplier—

(i) has ceased to manage and operate a drinking water supply; or

(ii) is, in the Water Services Authority's opinion, likely to cease managing and operating a drinking water supply.

Assessment of water services throughout district

58B Assessment of communities' access to drinking water

(1) A territorial authority must inform itself about the access that each community in its district has to drinking water services by ~~undertaking~~ conducting an assessment of drinking water services in accordance with this section.

(2) An assessment of drinking water services must—

(a) identify each community that receives a drinking water service; and

(b) describe the nature of existing drinking water services to the community; and

(c) describe the characteristics of the community; and

(d) assess the extent to which the community is currently receiving, and will continue to receive, a sufficient quantity of drinking water, including a consideration of—

(i) the community's existing access to drinking water services; and

(ii) any reasonably foreseeable risks to the community's access to drinking water services in the future; and

(iii) the current and estimated future demands for drinking water services within the community; and

(e) describe the safety and quality of drinking water currently being supplied to the community, using information collected and made available by the Water Services Authority and any other organisations that the territorial authority considers relevant; and

(f) identify and assess any other public health risks relating to the drinking water services supplied to the community; and

(g) based on the assessment under **paragraphs (b) to (f)**,—

(i) assess the consequences if the community loses access to drinking water services in the future, or is provided with drinking water services that are deficient in any way, including the implications for that community's public health; and

(ii) outline a plan to provide for the community's ongoing access to drinking water services.

(2A) A territorial authority must—

(a) conduct its first assessment by 1 July 2026; and

(b) conduct later assessments—

(i) at least once every 3 years after the completion of the first assessment; or

(ii) at an earlier date, if the authority is made aware of concerns about a community's access to drinking water services.

~~(3) A territorial authority must conduct an assessment under **subsection (2)**—~~

~~(a) at least once every 3 years (when other assessments are carried out or at different times); or~~

~~(b) at an earlier date than required by **paragraph (a)**, if the territorial authority is made aware of concerns about the access that a community has to drinking water services.~~

(4) A territorial authority must provide opportunities for any person to alert the territorial authority at any time to concerns about a community's access to drinking water services.

(5) For the purposes of this section,—

~~(a) **assessment** includes—~~

~~(i) assessing a service for the first time; and~~

~~(ii) reviewing and updating an existing assessment; and~~

(b) the scope of each assessment must include—

(i) communities that receive drinking water services from the territorial authority or another water service provider; and

(ii) communities that do not receive drinking water services from the territorial authority or another water service provider; and

(iii) all types of water supply arrangements, including communities (and households within those communities) that do not receive water supply services supplied by network reticulation; and

(c) territorial authorities need not assess drinking water services that are owned or operated by a department within the meaning of section 5 of the Water Services Act 2021; and

(d) an assessment may be carried out—

(i) by the territorial authority; or

(ii) on the authority's behalf by another appropriate organisation in the authority's district, including another water service provider or an iwi, hapū, or other Māori organisation.

Compare: 2002 No 84 s 125

58C Obligations in relation to completed drinking water assessment

(1) On completing an assessment of a ~~community~~ community's drinking water service, a territorial authority must—

(a) make the assessment publicly available; and

(b) provide the Water Services Authority with a copy of the assessment in electronic form.

(2) A territorial authority must also notify the Water Services Authority about—

(a) any drinking water suppliers that are, or appear to be, failing to meet the supplier's obligations under the Water Services Act 2021 or are at risk of doing so; and

(b) any other matters of concern arising from the assessment, including potential risks to communities affected by the assessment that relate to—

(i) any absence of, or deficiency in, a drinking water service; or

(ii) a drinking water supplier that is at risk of ceasing to provide a service.

(3) A territorial authority must also consider the findings and implications of the assessment in relation to—

(a) the territorial authority's water services strategy under **section 190**; and

(b) if the territorial authority is a shareholder in a water organisation that is a water service provider, the authority's statement of expectations under **section 184**; and

(c) the territorial authority's district plan prepared under the Resource Management Act 1991; and

(d) the territorial authority's broader duty to improve, promote, and protect public health within its district in accordance with section 23 of the Health Act 1956.

Compare: 2002 No 84 s 126

58D Assessment of communities' stormwater and wastewater services

(1) A territorial authority must assess the provision within its district of—

(a) stormwater services; and

(b) wastewater services.

(2) The purpose of an assessment is to assess, from a public health perspective, the adequacy of stormwater services and wastewater services available to communities throughout a territorial authority's district, taking into consideration—

(a) the health risks to communities arising from any absence of, or deficiency in, the services; and

(b) the quality of the services currently available to communities within the district; and

(c) the current and estimated future demands for any of those services; and

(d) the actual or potential consequences of stormwater and wastewater discharges within the district.

(3) One type of service may be assessed in conjunction with the other.

(4) An assessment may be conducted ~~carried out~~—

(a) by the territorial authority; or

(b) on the authority's behalf by another appropriate organisation in the authority's district, including another water service provider or an iwi, hapū, or other Māori organisation.

(4A) A territorial authority (or other organisation under **subsection (4)(b)**) must—

(a) conduct its first assessment by 1 July 2029; and

(b) conduct later assessments at least once every 3 years after the completion of the first assessment.

(5) On completing an assessment, a territorial authority must make the assessment publicly available.

(6) A territorial authority must also consider the findings and implications of the assessment in relation to—

(a) the territorial authority's water services strategy under **section 190**; and

(b) if the territorial authority is a shareholder in a water organisation that is a water service provider, the authority's statement of expectations under **section 184**; and

(c) the territorial authority's district plan prepared under the Resource Management Act 1991; and

(d) the territorial authority's broader duty to improve, promote, and protect public health within its district in accordance with section 23 of the Health Act 1956.

Compare: 2002 No 84 s 128

Water supply ensured if supplier facing significant problem, etc

58E Provider to ensure water supply when existing supplier facing significant problem, etc

(1) This section applies if—

(a) a water service provider with responsibility for water supply services—

(i) becomes aware that a drinking water supplier operating in the provider's service area is facing a significant problem or potential problem in relation to any of its drinking water supplies; and

(ii) notifies the Water Services Authority of the provider's concerns and discusses them with the Authority; or

(b) the Water Services Authority requires the water service provider to take action under this section.

(2) The water service provider must, as the circumstances allow and within a time frame determined by the Water Services Authority,—

(a) work collaboratively with the supplier, the consumers of the supply, and the Water Services Authority to identify 1 or more of the following:

(i) an immediate solution to the problem:

(ii) a temporary solution to the problem:

(iii) a permanent solution to the problem; and

(b) ensure that drinking water is supplied to the affected consumers on a temporary or permanent basis if—

(i) the supplier is unable to continue to provide a supply that meets the requirements under the Water Services Act 2021; and

(ii) an alternative solution is not readily available, or cannot be agreed by the parties involved within the time frame determined by the Water Services Authority.

(3) In complying with **subsection (2)**, the water service provider may consider a range of options, including—

(a) temporarily taking over the management and operations of the drinking water supply; and

(b) permanently taking over the management and operations of the drinking water supply; and

(c) ensuring that drinking water continues to be provided by other means.

(4) The water service provider is not required to provide the supply by means of a reticulated network.

(5) If a water service provider permanently takes over the management and operations of a drinking water supply, the provider, the Water Services Authority, the former supplier, and the affected consumers must work together to determine how to deal with—

(a) any assets and liabilities of the service taken over; and

(b) any legal or other issues that may affect the provider's ability to manage and operate the drinking water supply, such as access to the land on, or beneath which, assets are situated; and

(c) how the provider will be compensated for costs incurred in taking over responsibility for the drinking water supply.

(6) A water service provider referred to in **subsection (5)**—

(a) may—

(i) charge for any drinking water services it provides to affected consumers; and

(ii) recover its costs from the previous supplier; but

(b) when making decisions about future charges and funding arrangements, must—

(i) take reasonable steps to ascertain and consider the financial circumstances facing the affected consumers; and

(ii) consider the range of available funding sources; and

(iii) on request, demonstrate that it has considered the matters referred to in **subparagraphs (i) and (ii)**.

Compare: 2002 No 84 s 127

Closure or transfer of small water services

58F Power to close down or transfer small water service

(1) This section applies to a small water service—

(a) that has been operated by a water service provider; but

(b) that it is no longer appropriate to maintain.

(2) Despite **section 17(1)**, a water service provider may—

(a) close down a water service; or

(b) transfer a water service to an entity that represents the community for which the service is operated.

(3) The water service provider must not close down or transfer the water service unless—

(a) there are 200 or fewer persons for whom the water service is operated and they are ordinarily resident in the provider's service area; and

(b) the provider has consulted the Medical Officer of Health for the district in which the provider's service area is located or the Water Services Authority; and

(c) in the case of a proposed closure, the provider has—

(i) carried out a review, assessment, and comparison under **section 58G(1)**; and

(ii) made all information obtained from those actions publicly available in a balanced and timely manner; and

(d) in the case of a proposed transfer, the provider has—

(i) developed a draft management plan and carried out assessments under **section 58G(2)**; and

(ii) made all information obtained from those actions publicly available in a balanced and timely manner; and

(e) the provider has made the views of the Medical Officer of Health or the Water Services Authority (as applicable) publicly available in a balanced and timely manner; and

(f) the proposal is supported, in a binding referendum conducted under section 9 of the Local Electoral Act 2001 using the First Past the Post electoral system,— 5

(i) in the case of a proposed closure, by 75% or more of the votes cast by eligible voters; or

(ii) in the case of a proposed transfer, by more than 50% of the votes cast by eligible voters. 10

(4) For the purposes of **subsection (3)(a)**, a certificate signed by the chief executive of the water service provider as to the relevant number of persons is conclusive evidence of that number.

Compare: 2002 No 84 s 131

58G Assessments, etc, required for closure or transfer of water service 15

(1) A water service provider may only close down a water service under **section 58F(2)(a)** if it has first—

(a) reviewed the likely effect of the closure on—

(i) the public health of the community that would be affected by the closure; and 20

(ii) the environment in the district of that community; and

(b) assessed, in relation to each property that receives the water service, the likely capital cost and annual operating costs of providing an appropriate alternative service if the water service is closed down; and

(c) compared the quality and adequacy of the existing water service with the likely quality and adequacy of the alternative service referred to in **paragraph (b)**. 25

(2) A water service provider may only transfer a water service under **section 58F(2)(b)** if it has first—

(a) developed a draft management plan under which the entity that represents the community (the **entity**) would maintain and operate the water service; and 30

(b) assessed the likely future capital and operating costs of the entity to maintain and operate the water service; and

(c) assessed the ability of the entity to maintain and operate the water service satisfactorily. 35

Compare: 2002 No 84 ss 134, 135

58H Conduct of referendum

(1) The territorial authority in whose district the majority of eligible voters are on the roll of electors is responsible for conducting a referendum for the purposes of **section 58F(3)(f)**.

(2) The electoral officer of the territorial authority must prepare a special roll of the eligible voters.

(3) A person is **eligible** to vote in a referendum if the person is qualified as—

(a) a residential elector under section 23 of the Local Electoral Act 2001 and the address in respect of which the person is registered as a parliamentary elector is a property serviced by the water service that is the subject of the referendum; or

(b) a ratepayer elector under section 24 of the Local Electoral Act 2001 and the property, for the purposes of section 24(1)(a) or (b) of that Act, is a property serviced by the water service that is the subject of the referendum.

(4) The provisions of the Local Electoral Act 2001 apply, with any necessary modifications, to the conduct of a referendum for the purposes of **section 58F(3)(f)**.

Compare: 2002 No 84 ss 132, 133

Subpart 5—Water services delivery plans

58I Application of this subpart

(1) This subpart applies to a territorial authority that, 18 months before the relevant date,—

(a) is a water service provider; and

(b) has not transferred responsibility for providing water supply services and wastewater services in its district to a water organisation under a transfer agreement.

(2) This subpart applies despite section 8(3) of the Preliminary Arrangements Act.

58J Definitions for this subpart

(1) In this subpart,—

Preliminary Arrangements Act means the Local Government (Water Services Preliminary Arrangements) Act 2024

relevant day has the meaning set out in **subsection (2)**

relevant territorial authority means a territorial authority described in **section 58I(1)**

water services delivery plan means a water services delivery plan prepared under this subpart.

(2) The **relevant day** in relation to a relevant territorial authority is—

(a) 3 September 2030:

(b) 3 September in the year that is 5 years after the year in which it was required to provide its most recent water services delivery plan under this Act.

58K Territorial authority must submit water services delivery plan

(1) A relevant territorial authority must, on each relevant day, submit a water services delivery plan to the Secretary.

(2) Subpart 1 of Part 2 of the Preliminary Arrangements Act applies to a water services delivery plan provided under this subpart, subject to all necessary modifications, including the following:

(a) in section 13(1)(n) and (o)(ii) of the Preliminary Arrangements Act, the references to 30 June 2028 must be read as referring to 30 June in the year that is 3 years after the date on which the relevant territorial authority submits the water services delivery plan to the Secretary under this Act:

(b) in section 14(1)(d)(i), the reference to a joint WSCCO must be read as referring to a water organisation in which there are 2 or more shareholders:

(c) in section 15(1)(a) of the Preliminary Arrangements Act, the period of 10 consecutive financial years covered by the water services delivery plan must be read as starting on the first day of the financial year in which the relevant territorial authority submits the water services delivery plan to the Secretary:

(d) sections 16, 17, 18(1), 19, and 23 of the Preliminary Arrangements Act do not apply:

(e) each reference to a water services delivery plan under the Preliminary Arrangements Act must be read as referring to a water services delivery plan under this Act.

58L Water services delivery plans: adoption and consultation

(1) A relevant territorial authority must adopt a water services delivery plan by resolution.

(2) Before adopting a plan, the relevant territorial authority must consult on the anticipated or proposed model or arrangements (required under section 13(1)(k) of the Preliminary Arrangements Act).

(3) The relevant territorial authority must undertake the consultation—

(a) in accordance with **sections 25 to 29** of this Act, with any necessary modifications; and

(b) as if the anticipated or proposed model or arrangements were a change proposal (as defined in **section 25(1)**).

(4) A relevant territorial authority is not required, under this Act or any other enactment, to undertake any other consultation on a water services delivery plan.

58LA Subsequent proposal to make structural change to providing water services

(1) This section applies if—

(a) a relevant territorial authority submits a water services delivery plan under **section 58K(1)**; and

(b) after submitting the plan, the relevant territorial authority proposes making a structural change to the provision of water services in its district.

(2) When this section applies,—

(a) **sections 25 to 29** apply to the proposed structural change; and

(b) section 22 of the Preliminary Arrangements Act does not apply if, but only to the extent that, the relevant territorial authority decides to make the structural change.

58M Ministerial powers in relation to water services delivery plans

Subpart 2 of Part 2 of the Preliminary Arrangements Act applies, with all necessary modifications, in relation to the requirement to submit a water services delivery plan under this Act as if it were the requirement to submit a water services delivery plan under that Act.

58N Secretary may exempt relevant territorial authority from submitting water services delivery plan

(1) A relevant territorial authority may apply to the Secretary for an exemption from the requirement to submit a water services delivery plan under this subpart.

(2) After considering an application under **subsection (1)**, the Secretary must—

(a) grant the exemption; or

(b) decline the exemption.

(3) The Secretary may grant an exemption subject to any terms or conditions.

(4) The Secretary must not grant an exemption unless the Secretary considers, in the Secretary's absolute discretion, that the territorial authority—

(a) is in the process of forming, joining, transferring its water assets to, or transferring the delivery of its water services to, a water organisation; or

(b) has taken reasonable steps to take an action listed in **paragraph (a)**.

(5) After deciding whether to grant an exemption, the Secretary must notify the applicant—

(a) that the Secretary has granted the exemption (including whether the exemption was granted in full, in part, or subject to any terms or conditions); or

(b) that the Secretary has declined the exemption (including the Secretary's reasons for declining it).

58O Secretary may require territorial authority to submit water services delivery plan

(1) The Secretary may, at any time, require a territorial authority to prepare a water services delivery plan and submit it to the Secretary for approval.

(2) **Subsection (1)** applies even if—

(a) the territorial authority is not a relevant territorial authority; or

(b) the territorial authority is not otherwise required to provide a water services delivery plan under this Act or any other enactment.

(3) However, the Secretary may only require a territorial authority to prepare and submit a water services delivery plan if the Secretary—

(a) considers that the territorial authority has taken steps to enter into a new transfer agreement with a water organisation that returns some or all responsibility for providing water supply services or wastewater services in its district to the territorial authority; and

(b) has considered the extent to which the territorial authority has consulted on the proposed new transfer agreement.

Part 3
Provision of water services: operational matters

Subpart 1—Charges for water services

59 Application of this subpart

(1) Despite anything to the contrary in this subpart, this subpart does not apply to Watercare Services Limited (and any subsidiary of Watercare Services Limited).

(2) Each reference to a water organisation in this subpart must be read as excluding Watercare Services Limited (and any subsidiary of Watercare Services Limited).

59A Purpose of this subpart

(1) The purpose of this subpart is to provide water organisations with the ability to charge for providing water services.

(2) A water organisation must not charge for providing water services except as provided in this subpart.

60 Water organisation may set charges

(1) A water organisation may set and collect charges for 1 or more of the following:

(a) water supply services:

(b) stormwater services:

(c) wastewater services, including trade waste services.

(2) A charge set and collected under **subsection (1)** may include charges for 1 or more of the following:

(a) the initial connection to 1 or more of the services specified in **subsection (1)**:

(c) serviceability (*see* **section 62**):

(d) meeting the costs that the water organisation incurs in performing and exercising its duties, functions, and powers in relation to providing water services.

(3) When setting a charge, the water organisation may determine—

(a) how the charge is assessed; and

(b) when the charge is due; and

(c) how the charge is collected; and

(d) how the charge may be paid.

(4) When determining whether to set a charge, or how a charge is to be collected or may be paid, the water organisation may (by way of example) do 1 or more of the following:

(a) charge a fixed or variable charge:

(b) charge according to water usage or wastewater flow:

(c) require a deposit and then further payment:

(d) require full payment at the outset:

(e) charge on the basis of an hourly rate or any other rate of service or by any other method of charging.

(5) For the purposes of **subsection (2)(c)**, a charge for serviceability is a charge in respect of a property to which **section 62** applies.

(6) A charge set under this section—

(a) must be set in accordance with the water organisation's water services strategy (*see* **sections 190 and 191**); but

(b) must not be based on, or take into consideration, a property's rateable value.

(7) In this section, **trade waste services** means services provided in relation to trade waste.

61 Setting charges for stormwater services: additional requirements

(1) In setting charges for stormwater services, a water organisation must comply with this section. 5

(2) A water organisation must determine the recoverable cost of stormwater services on the basis of whether the property is located within a stormwater service zone of the organisation's service area that is specified in—

(a) a transfer agreement with a territorial authority; or

(b) the organisation's water services strategy. 10

(3) A water organisation must not collect a charge for stormwater services from a ~~transport~~ corridor manager.

62 Serviceability charge for property not connected to network

(1) This section applies to property that—

(a) is within 100 metres of one of the following networks that has sufficient capacity to service the property: 15

(i) a water supply network:

(ii) a wastewater network; and

(b) is not, but can be, connected to that network; and

(c) is not non-rateable land specified in Part 1 of Schedule 1 of the Local Government (Rating) Act 2002. 20

(2) The relevant water organisation for a property that is not connected to its network may set serviceability charges in relation to the property.

(3) However, if the property is 50% non-rateable land specified in Part 2 of Schedule 1 of the Local Government (Rating) Act 2002, the water organisation may only set a serviceability charge that is 50% of the charge that would otherwise be payable. 25

63 Charges set by new water organisation

(1) This section applies to a water organisation—

(a) that is setting charges under this subpart for the first time; and 30

(b) whose account holders, or intended account holders, include persons who, immediately before the organisation's establishment, were being rated for water services on the basis of a property's rateable value.

(1A) When this section applies, **section 60(6)(b)** does not apply.

(2) During the 5 years after the organisation's establishment, the water organisation may set charges under this section based on a property's rateable value. 35

(3) However, during that 5-year period, the organisation's power to set charges based on a property's rateable value is subject to the following:

(a) it must not rely entirely on a property's rateable value:

(b) it may use a property's rateable value and 1 or more other methods (for example, charging fixed amounts or according to water usage) for portions of the charge:

(c) it must annually adjust its methods of setting charges to decrease its reliance on a property's rateable value:

(d) in the final year, it must use methods other than a property's rateable value for most of the charge:

(e) by the start of the sixth year, it must use methods other than a property's rateable value for the whole charge.

63A Disapplication of limit on revenue from rates

(1) Section 21 of the Local Government (Rating) Act 2002 does not apply to a territorial authority that has transferred the power to charge for providing water services to a water organisation.

(2) **Subsection (1)** applies until the end of the fifth financial year after the financial year in which the transfer takes effect.

64 Water organisation must publish list of charges

(1) A water organisation must,—

(a) publish a list setting out the water services charges that apply to its annual billing period on a publicly accessible internet site maintained by, or on behalf of, the water organisation in a format that is readily accessible; and

(b) update the list as soon as is reasonably practicable after changing the charges.

(1A) For the purposes of **subsection (1)(a)**, the water organisation must publish the list of charges that will apply in a financial year no later than the last day of the previous financial year.

(2) However, the water organisation is not required to comply with **subsection (1)** in respect of water services charges that the organisation considers to be customised or otherwise unusual.

65 Water organisation and territorial authority must not both charge for water service

(1) If a water organisation sets a charge under **section 60** for providing a water service to a property, a territorial authority must not, in relation to the property,—

(a) set a charge for providing the same service; or

(b) collect a rate for providing the same service.

(2) If a territorial authority sets a rate for providing a water service to a property, a water organisation must not, in relation to the property, set a charge for providing the same service.

(3) This section is subject to **section 66**.

(4) In this section, **rate** has the meaning set out in section 5 of the Local Government (Rating) Act 2002.

66 Charges when responsibility for setting water services charges transferred during rating year

(1) This section applies—

(a) if the responsibility for setting a water services charge transfers—

(i) from a territorial authority to a water organisation; or

(ii) from a water organisation to a territorial authority; and

(b) the transfer takes place on a date (the **transfer date**) other than 1 July.

(2) The party that is responsible for setting the water services charge before the transfer date—

(a) must not set a charge for the water service provided on or after the transfer date; but

(b) may, on or after the transfer date, set and collect a charge for the water service provided before the transfer date.

(3) The party that is responsible for setting the water services charge after the transfer date—

(a) must not set a charge for the water service provided before the transfer date; but

(b) may, before the transfer date, set and collect a charge for the water service to be provided on or after the transfer date.

67 Liability for water services charges

(1) The following persons are liable to pay water services charges (other than trade waste charges) for the water services that a water organisation provides in respect of a property:

(a) the owner of the ~~a~~ property; or~~:~~

(b) the lessee of the ~~a~~ property if the lease—

(i) is registered after 30 April 2003 under section 91 of the Land Transfer Act 2017; and

(ii) is for a term (including renewals) of 10 years or more; and

(iii) provides that the lessee must be entered in the rating information database and the district valuation roll as the ratepayer in respect of the property; or~~:~~

(c) the lessee or licensee of the ~~a~~ property if—

(i) the name of the lessee or licensee was, immediately before 30 April 2003, entered in the district valuation roll as the occupier of a separately rateable property under the Rating Powers Act 1988 that substantially corresponds with the rating unit entered in the rating information database; and

(ii) the lease or licence with the owner—

(A) was entered into before 8 August 2001; and

(B) remains in force; and

(C) either precludes the renegotiation of rent or any other payments that would allow the owner to be reimbursed if the owner were directly liable to pay the charges due on the property or is a lease registered under section 91 of the Land Transfer Act 2017.

(2) **Subsection (1)(a) and (b)** is subject to **subsection (1)(c)**.

~~(3) A person described in **subsection (1)** is liable to pay water services charges for the water services that the water organisation provides in respect of the property.~~

(4) For the purposes of **subsection (1)(c)**, it is sufficient evidence, unless the contrary is proved, that the person referred to is named in the rating information database and the district valuation roll if,—

(a) in the case of a lease registered under section 91 of the Land Transfer Act 2017, the owner has provided a certified copy of the record of title in relation to the unit that shows that the lease has been registered; or

(b) in any other case, the owner has provided a statutory declaration to the relevant local authority that **subsection (1)(c)(ii)** applies.

(5) For the purposes of **subsection (1)(c)(ii)(B)**, a lease must be treated as remaining in force if the lessee has exercised a right to renew the lease on the same terms and conditions.

(6) In this section,—

district valuation roll has the meaning set out in section 5 of the Local Government (Rating) Act 2002

lessee includes a person to whom the lessee transfers or assigns the lessee's interest in the lease

property, in relation to a water organisation, means a property that is in the water organisation's service area, but excludes Māori land.

67A Water services charges for separately used or inhabited parts of property

(1) A water organisation may set separate water services charges for separately used or inhabited parts of a property.

(2) However, **subsection (1)** applies only if the water organisation has defined **separately used or inhabited** in the organisation's water services strategy. 5

68 Liability for water services charges for Māori land

(1) This section applies to Māori land in the service area of a water organisation, but—

(a) **subsections (2) to (7)** apply only to land that is Māori freehold land; and 10

(b) **subsection (7A)** applies only to land that is Māori customary land.

(2) If Māori land is owned legally and beneficially by 1 or 2 owners, the owner or owners are liable to pay water services charges, other than trade waste charges, for the water services that the water organisation provides for the Māori land.

(3) If Māori land in multiple ownership is leased, the lessee is liable to pay water 15 services charges (other than trade waste charges) for the water services that the water organisation provides for the Māori land unless the lease provides for the lessor to be liable to pay the water services charges.

(4) If Māori land in multiple ownership is occupied through an arrangement other than a lease, the occupier is liable to pay water services charges (other than 20 trade waste charges) for the water services that the water organisation provides for the Māori land unless the arrangement provides for the owners or trustees of the land to be liable to pay the water services charges.

(5) If Māori land in multiple ownership is subject to an occupation order made by the Māori Land Court under section 328 of Te Ture Whenua Maori Act 1993 25 (or an equivalent order made under an Act replaced by that Act), the person in whose favour the order is made is liable to pay water services charges (other than trade waste charges) for the Māori land unless the order provides for the owners or trustees of the land to pay the water services charges.

(6) If none of **subsections (2), (3), (4), and (5)** applies, the following persons 30 are liable to pay the water services charges (other than trade waste charges):

(a) for Māori land owned by more than 2 persons, other than as trustees, the owners:

(b) for Māori land vested in trustees, the trustees.

(7) If an area is divided from Māori land, the person actually using the area is 35 liable to pay the water services charges (other than trade waste charges) for water services that the water organisation provides for the area.

(7A) If the land is Māori customary land, the person who is using the land is liable to pay water services charges, other than trade waste charges, for the water services that the water organisation provides for the land. 40

(7B) This section overrides anything to the contrary in **section 67**.

(8) In this section,—

lease includes a tenancy at will, and any other tenancy that confers a leasehold interest on the tenant, whether at law or in equity

Māori land in multiple ownership means Māori land owned by more than 2 persons

trustee includes a body corporate constituted under Part 13 of Te Ture Whenua Maori Act 1993.

Compare: 2022 No 77 s 327

68A Rating unit on Māori freehold land may be divided into separate rating areas

(1) For the purposes of water services charges, a water organisation may divide a separate rating area from a rating unit on Māori freehold land on the request of a person in accordance with this section.

(2) For the purposes of **subsection (1)**, sections 98A to 98E of the Local Government (Rating) Act 2002 apply with all necessary modifications, ~~including—~~ including the following:

(a) each reference to a local authority must be read as a reference to a water organisation; and

(b) each reference to rates must be read as a reference to water services charges.

69 Limitation on trustee liability for water services charges

(1) If trustees are liable to pay the water services charges on rateable Māori freehold land under **section 68**, they—

(a) must pay the charges out of income derived from the land and received by the trustees for the beneficial owners of the land; and

(b) are liable for the charges only to the extent of the money derived from the land and received by them on behalf of the beneficial owner or owners.

(2) Trustees seeking to rely on **subsection (1)(b)** must, on request by a water organisation, provide copies of any annual financial statements that the trustees have given the beneficial owners.

Compare: 2022 No 77 s 328

69A Charging order in favour of owner paying water services charges

(1) An owner of Māori freehold land in multiple ownership who has paid the water services charges on that land may apply to the Māori Land Court for a charging order against the land for the excess amount of water services charges paid by that owner.

(2) In this section, **excess amount**, in relation to an owner, means the amount paid by an owner in excess of the water services charges properly apportionable to that owner's interest in the land.

(3) The Māori Land Court may make a charging order in favour of that owner for the excess amount if the court is satisfied that the amount paid by the owner is an excess amount.

(4) Despite **subsections (1) to (3)**, the court may make an order only if it is satisfied,—

(a) if the land is vested in trustees, that ~~all reasonable steps have been taken by the water organisation~~ the water organisation has taken all reasonable steps to obtain payment of the water services charges from the trustees; or

(b) if a person is liable to pay the water services charges because **section 68(7)** applies, that—

(i) the water organisation has taken proceedings against that person to recover judgment for the amount of the water services charges, or an appropriate portion of the charges, and has been unable to recover the amount of the judgment; or

(ii) having regard to all the circumstances of the case, those proceedings are unlikely to result in the rates being recovered.

(5) **Subsection (1)** does not apply to an owner who is actually using the land, as provided in **section 68(7)**.

Compare: 2002 No 6 s 103

70 Water services charges are debt

Any water services charge that has become payable to a water organisation, and any penalty that is added to an unpaid water services charge under this subpart, is—

(a) a debt due to the water organisation; and

(b) recoverable as a debt by the water organisation in any court of competent jurisdiction.

Waiver of water services charges

70A Water organisation may waive charges and penalties

(1) A water organisation may waive either or both of the following:

(a) a water services charge for a property:

(b) a penalty for an unpaid water services charge (*see* **section 72**).

(2) A water organisation may waive a charge or penalty whether it is due to be paid or overdue.

(3) If a water organisation waives a charge or penalty, it must do so in accordance with its waiver policy.

70B Water organisation must adopt and publish waiver policy

(1) A water organisation must prepare and adopt a waiver policy that allows the water organisation to waive either or both of the following:

(a) a water services charge:

(b) a penalty for an unpaid water services charge.

(2) When preparing a waiver policy, the water organisation must use its significance and engagement policy to determine—

(a) what public consultation it will undertake, if any, before adopting the waiver policy; and

(b) if it undertakes public consultation, the form of that consultation.

(3) A water organisation must make its waiver policy publicly available.

Penalties for unpaid water services charges

71 Authorisation of penalties

(1) A water organisation may, by resolution of its board, authorise penalties to be added to water services charges that are not paid by the due date.

(2) A resolution under **subsection (1)** must—

(a) be made not later than the date on which the water organisation sets the water services charges for the financial year; and

(b) state—

(i) how the penalty is calculated; and

(ia) how frequently the penalty may be imposed (for example, monthly or quarterly); and

(ii) the date on which the penalty is to be added to the amount of the unpaid charges by reference to the due date (for example, each month after the due date or each quarter after the due date).

(3) A penalty must not exceed,—

(a) in the year after the due date, 21% of the amount of the unpaid water services charge ~~charges~~; and

(b) in the first 6 months after the due date, 10% of the amount of the unpaid water services charge ~~charges~~.

Compare: 2002 No 6 s 57

72 Penalty may be imposed on previous unpaid penalty

The amount of unpaid water services charges to which a penalty may be added includes a penalty previously added to unpaid charges under **section 71** ~~this section~~.

Compare: 2002 No 6 s 58

Sharing information

73 Information ~~Rating information~~ needed by water organisation

(1) A territorial authority must give a water organisation any information that the authority holds, including information in the authority's rating information database, and that the water organisation reasonably needs to charge its account holders ~~consumers~~, if the water organisation—

(a) requests the information; and

(b) provides water services to account holders ~~consumers~~ in the authority's district.

(2) The territorial authority must provide the ~~rating~~ information—

(a) as soon as is reasonably practicable after receiving the request from the water organisation; and

(b) on a reasonable cost basis, which may include the authority's costs of preparing and maintaining the rating information database.

74 Rating information that may not be withheld

(1) This section applies to a territorial authority that—

(a) has removed particulars from its rating information database under section 28C(3) of the Local Government (Rating) Act 2002; and

(b) has not restored the particulars under section 28C(4) of that Act.

(2) The authority—

(a) must provide, if requested by a water organisation, information that the authority holds but that has been removed from the database; and

(b) may not withhold any particulars that remain removed from its rating information database under section 28C(3) of the Local Government (Rating) Act 2002.

75 Water organisation must provide charging information to territorial authorities

(1) Each water organisation must give the relevant territorial authority the charging information from the water organisation's records that the authority reasonably requires to calculate entitlements to rebates under the Rates Rebate Act 1973 for the previous rating year.

(1A) A water organisation must give the information—

(a) in a timely manner that the water organisation and the territorial authority agree upon; and

(b) on a reasonable cost basis.

(2) In this section,—

charging information includes (without limitation)—

(a) the names and addresses of the persons that the water organisation has charged for water services; and

(b) the amounts that the water organisation has charged those persons for water services during the previous rating year

rating year has the meaning set out in section 2(1) of the Rates Rebate Act 1973

relevant territorial authority means a territorial authority in whose district all or part of the water organisation's service area is located.

75A Information required for land information memoranda

A water organisation may provide information to a territorial authority for the purposes of the authority issuing a land information memorandum under the Local Government Official Information and Meetings Act 1987.

Subpart 2—Development contributions

76 Interpretation

In this subpart, unless the context otherwise requires,—

building consent authority means a person whose name is entered in the register referred to in section 273(1)(a) of the Building Act 2004

consent authority means—

(a) a building consent authority; or

(b) a consent authority under the Resource Management Act 1991 (*see* section 2(1) of that Act)

development ~~means~~—

(a) means any subdivision, building (as defined in section 8 of the Building Act 2004), land use, or work that generates a demand for water services infrastructure; but

(b) does not include the pipes or lines of a network utility operator

development agreement means a voluntary agreement—

(a) entered into between the parties specified in **section 101(2)**; and

(b) for the provision, supply, or exchange of infrastructure, land, or money to provide water services infrastructure—

(i) in the service area, or part of a service area, of each water organisation that is a party to the agreement; and

(ii) in the district, or part of a district, of any territorial authority that is a party to the agreement

development contribution means a contribution (from a person who is undertaking development) that—

(a) is required to be made under a development contributions policy; and

(b) is calculated in accordance with the methodology; and

(c) comprises 1 or both of the following:

(i) money:

(ii) land, including a reserve or an esplanade reserve (other than in relation to a subdivision consent), but excluding Māori land ~~within the meaning of Te Ture Whenua Maori Act 1993~~, unless ~~that Act~~ Te Ture Whenua Maori Act 1993 provides otherwise

development contributions commissioner means a person appointed under section 199F of the LGA 2002

development contributions policy means—

(a) a water organisation's development contributions policy adopted under **section 85 or 85A** (as applicable); or

(b) a territorial authority's development contributions policy adopted under section 102 of the LGA 2002; or

(c) a development contributions policy described in **paragraph (b)** that has been extended to a water organisation under **section 93**

financial contribution has the meaning set out in section 108(9) of the Resource Management Act 1991

methodology means the methodology for calculating development contributions set out in **section 91~~(2) to (6)~~**

network utility operator has the meaning set out in section 166 of the Resource Management Act 1991

objector means a person who objects under **section 96** to the assessed amount of a development contribution

resource consent has the meaning set out in section 2(1) of the Resource Management Act 1991, and includes a change to a condition of a resource consent under section 127 of that Act

water service connection means a physical connection to a water ~~service~~ services network provided by, or on behalf of, a water organisation.

77 Watercare must not require development contribution ~~Application~~

(1) Despite anything to the contrary in this subpart, Watercare Services Limited (and any subsidiary of Watercare Services Limited) must not require a development contribution under this Act.

(2) Each reference to a water organisation in this subpart must be read as excluding Watercare Services Limited (and any subsidiary of Watercare Services Limited).

78 Purpose of development contributions

(1) The purpose of this subpart is to enable water organisations to recover from those persons undertaking development a fair, equitable, and proportionate portion of the total cost of capital expenditure necessary to service an additional or increased demand on water services infrastructure over the long term.

(2) A water organisation must only recover a cost under this subpart if it incurs the cost in relation to water services infrastructure that it owns or will own.

(3) To avoid doubt, a water organisation may recover costs under this subpart for capital expenditure incurred by a territorial authority before it transferred the responsibility for the relevant water services infrastructure to the water organisation ~~transfers~~ under a transfer agreement ~~to the water organisation~~.

Compare: 2002 No 84 s 197AA

79 Development contributions principles

(1) This section applies to a water organisation performing functions and duties under this subpart when—

(b) requiring a development contribution under **section 80**; or

(ba) preparing a development contributions policy for adoption under **section 85**; or

(c) providing information to a territorial authority under **section 93(3)**.

(2) The water organisation must take the following principles into account:

(a) development contributions must only be required if the effects or cumulative effects of developments have created or will create a requirement for the water organisation to have provided or to provide any of the following water services infrastructure assets for the purpose of providing water services:

(i) new assets:

(ii) additional assets:

(iii) assets of increased capacity:

(b) development contributions must be determined in a way that—

(i) is generally consistent with the capacity life of the water services infrastructure assets for which they are intended to be used; and

(ii) avoids over-recovery of costs allocated to development contributions funding:

(c) cost allocations used to establish development contributions must be determined in a manner that the water organisation considers appropriate after considering—

(i) the persons who will benefit from the water services infrastructure assets to be provided (including the community as a whole); and

(ii) the persons who create the need for those assets:

(d) development contributions must be used—

(i) for or towards the purpose of the group of water services activities for which the contributions were required; and

(ii) for the benefit of the service area or the part of the service area that is identified in the development contributions policy and for which the development contributions were required:

(e) a water organisation must make sufficient information available to demonstrate—

(i) what it is using development contributions for; and

(ii) why it is using them for those purposes:

(f) development contributions must be—

(i) predictable; and

(ii) consistent with—

(A) the methodology and schedules in the water organisation's development contributions policy under **sections 88 to 91**; or

(B) if a territorial authority's development contributions policy has been extended to the water organisation under **section 93**, the methodology and schedules of that policy:

(g) when calculating and requiring a development contribution, water organisations may group together certain developments by geographic area or categories of land use, but must ensure that—

(i) the grouping is done in a manner that balances practical and administrative efficiencies with considerations of fairness and equity; and

(ii) grouping by geographic area avoids grouping across an entire service area wherever practical.

(3) Despite anything to the contrary, in **subsection (2)**, **assets** includes water services infrastructure and related assets transferred to the water organisation by a territorial authority.

Compare: 2002 No 84 s 197AB

80 Power to require contributions for developments

(1) A water organisation may require a development contribution to be made to the organisation when any of the following is granted:

(a) a resource consent for a development within the water organisation's service area:

(b) a building consent ~~under the Building Act 2004~~ (whether granted by a territorial authority or a building consent authority) for building work within the water organisation's service area:

(c) an approval ~~authorisation~~ for a water ~~service~~ services connection.

(2) A water organisation may only require a development contribution in accordance with—

(a) a development contributions policy it has adopted in accordance with this subpart; or

(b) a territorial authority's development contributions policy that has been extended to the water organisation under **section 93**.

(3) For the purposes of **subsection (2)**, a development contribution must be consistent with the development contributions policy that was in force at the time that the application for a resource consent, building consent, or service connection (accompanied by all required information) was submitted.

(4) A requirement for a development contribution under **subsection (1)(a) or (b)** is not—

(a) a condition of a resource consent that gives rise to any right of objection or appeal; or

(b) a matter that gives rise to any right to apply to the chief executive for a determination under the Building Act 2004.

(5) **Subsection (6)** applies if a water organisation's development contributions policy provides for a development contribution under **subsection (1)(b)**.

(6) The water organisation may require the development contribution to be made when the relevant ~~building consent authority~~ territorial authority grants a certificate of acceptance under section 98 of the Building Act 2004 in respect of that building work, but only if the water organisation or a territorial authority would have required a development contribution if a building consent had been granted for the building work.

(7) If Kāinga Ora–Homes and Communities is responsible for granting the consent, approval, ~~authorisation,~~ or certificate referred to in **subsection (1) or (6)**, it—

(a) may, as appropriate and by agreement with the water organisation and the relevant territorial authority, require the development contribution on behalf of the water organisation; and

(b) must, as soon as is reasonably practicable, transfer the development contribution to the water organisation.

(8) This section does not limit the functions or powers of a territorial authority or consent authority under any other legislation.

(9) In this section, **chief executive** has the meaning given to it in section 7(1) of the Building Act 2004.

Compare: 2002 No 84 s 198

80A Limit on requiring contributions for developments

(1) A water organisation ~~must recover~~ may only recover its cost of capital expenditure necessary to service an additional or increased demand on water services infrastructure over the ~~long term, only~~ long term under—

(a) this Act; or

(b) any other enactment that specifically allows a water organisation to recover that cost.

(2) However, if a person is undertaking development within a water organisation's service area, the water organisation may charge the person a fee or charge to recover the cost of capital expenditure incurred by Watercare Services Limited (**Watercare**) if that expenditure was necessary to service additional or increased demand on Watercare's water services infrastructure from that development, whether Watercare incurred that expenditure—

(a) solely for that development; or

(b) jointly with other developments.

81 Information sharing for development contributions

(1) This section applies if—

(a) a water organisation adopts a development contributions policy under **section 85**; or

(b) the development contributions policy of a territorial authority is extended to cover a water organisation under **section 93**.

(2) The water organisation and each territorial authority in whose district the organisation operates must, on receipt of a request from the other party, provide the information that the other party requires for the purposes of recovering development contributions (for example, the territorial authority may request that the water organisation provide information relating to ~~consent applications or to~~ water services infrastructure that the water organisation builds, or the water organisation may request that the territorial authority provide information relating to consent applications).

(3) A party that receives a request for information under **subsection (2)** must provide the information—

(a) as soon as is reasonably practicable after receiving the request; and

(b) on a reasonable cost basis.

82 Limits on power to require development contributions

(1) A water organisation must not require a development contribution for water services infrastructure if, and to the extent that,—

(a) the developer will fund or otherwise provide for the same water services infrastructure; or

(b) the water organisation or a territorial authority has already required and received a development contribution for the same purpose in respect of the same work, whether on the granting of a building consent or a certificate of acceptance; or

(c) a third party has funded or provided, or undertaken to fund or provide, the same water services infrastructure.

(2) Despite **section (1)(b)**, a water organisation may require an additional development contribution for the same purpose if the additional contribution is required to reflect an increase in the scale or intensity of the development since a previous contribution was required.

(3) This section does not prevent a water organisation from accepting from a person, with that person's agreement, additional contributions for water services infrastructure.

(4) This section does not prevent a water organisation from requiring a development contribution if—

(a) income from the following is being used or will be used to meet a proportion of the capital costs of the water services infrastructure for which the development contribution will be used:

(i) water services charges (*see* **subpart 1 of Part 3**):

(ii) interest and dividends from investments:

(iii) borrowings:

(iv) proceeds from asset sales; or

(b) a person required to make the development contribution has paid or will pay rates or water services charges in respect of the water services infrastructure.

(6) A territorial authority must not require a development contribution or financial contribution for the same purpose for which, and to the extent that, a water organisation has required and received a development contribution.

Compare: 2002 No 84 s 200(1)–(4)

83 Consequential limits on territorial authority's policy on development contributions or financial contributions

(1) This section applies if—

(a) a territorial authority has a policy on development contributions or financial contributions that relates to water services; and

(b) responsibility for providing those water services is transferred to a water organisation under a transfer agreement.

Development contributions

(1A) The territorial authority must amend its policy on development contributions so that it no longer applies to the water services that have been transferred to the water organisation.

(1B) However, if a territorial authority and a water organisation agree to extend the territorial authority's policy under **section 93**, **subsection (1A)** does not prevent the territorial authority's policy from containing the information required under **section 93(2)(a)**.

~~(2) The territorial authority must amend its policy on development contributions or financial contributions to remove the duplication with the water organisation's development contributions policy.~~

(3) The amendment—

(a) must be made by resolution of the governing body of the territorial authority; and

(b) is not required to be made using the process in the LGA 2002~~ or the Resource Management Act 1991~~; and

(c) ~~in the case of an amendment to the provisions of the policy that relate to development contributions,~~ must take effect from the earlier of—

(i) the date on which~~— the water organisation adopts its development contributions policy under **section 85 or 85A**; and~~

(A) the water organisation adopts its development contributions policy under **section 85 or 85A**; or

(B) the territorial authority extends its policy to the water organisation under **section 93**; and

(ii) the end of the calendar month after the date on which the transfer agreement takes effect.~~; and~~

~~(d) in the case of an amendment to the provisions of the policy that relate to financial contributions, must take effect from the date on which the water organisation adopts its development contributions policy under **section 85 or 85A**.~~

(4) Despite **subsection (3)(c)**~~ **and (d)**~~, the amendment does not prevent the territorial authority from requiring a development contribution ~~or financial contribution~~ in relation to water services infrastructure if ~~that is the subject of~~ an application for a resource consent, a building consent, or a water service connection is ~~that was~~ lodged before the earlier of—

~~(a) in the case of a development contribution, before the earlier of—~~

~~(i) the date on which the water organisation adopted its development contributions policy under **section 85 or 85A**; and~~

~~(ii) the end of the calendar month after the date on which the transfer agreement took effect; or~~

~~(b) in the case of a financial contribution, before the date on which the water organisation adopted its development contributions policy under **section 85 or 85A**.~~

(c) the date on which—

(i) the water organisation adopts its development contributions policy under **section 85 or 85A**; or

(ii) the territorial authority extends its development contributions policy to the water organisation under **section 93**; and

(d) the end of the calendar month after the date on which the transfer agreement takes effect.

Financial contributions

(5) The territorial authority must amend its policy on financial contributions to remove financial contributions that are for the same purpose as development contributions required under a development contributions policy that—

(a) the water organisation has adopted under **section 85 or 85A**; or

(b) the territorial authority has extended to the water organisation under **section 93**.

(6) The amendment—

(a) must be made by resolution of the governing body of the territorial authority; and

(b) is not required to be made using the process in the Resource Management Act 1991; and

(c) must take effect from the date on which—

(i) the water organisation adopts its development contributions policy under **section 85 or 85A**; or

(ii) the territorial authority's development contributions policy is extended to the water organisation under **section 93**.

(7) Despite **subsection (6)(c)**, the amendment does not prevent the territorial authority from requiring a financial contribution in relation to water services infrastructure if an application for a resource consent, a building consent, or a water service connection is lodged before the date on which—

(a) the water organisation adopts its development contributions policy under **section 85 or 85A**; or

(b) the territorial authority's development contributions policy is extended to the water organisation under **section 93**.

84 Basis on which water organisation may require development contributions

(1) A water organisation may require development contributions if—

(a) the effect of the development is to require new or additional assets or assets of increased capacity for the purposes of providing water services; and

(b) as a consequence, the water organisation—

(i) incurs capital expenditure to provide appropriately for water services infrastructure; or

(ii) is liable to pay a development contribution to a territorial authority.

(2) This section does not prevent a water organisation from requiring a development contribution that is to be used to pay, in full or in part, for capital expenditure already incurred by the water organisation or a territorial authority in anticipation of the development.

(3) In **subsection (1)**, **effect** includes the cumulative effects that a development may have in combination with other developments.

Compare: 2002 No 84 s 199

Development contributions policy

85 Development contributions policy

(1) A water organisation may adopt a development contributions policy.

(2) A development contributions policy must not be inconsistent with the principles set out in the Preamble to Te Ture Whenua Maori Act 1993.

(3) A water organisation that adopts a development contributions policy must publish the policy on an internet site maintained by, or on behalf of, the water organisation.

(4) A water organisation must review its development contributions policy at least once every 3 years.

(5) Before adopting, amending, or revoking a development contributions policy, a water organisation must—

(a) consult each territorial authority within the water organisation's service area; and

(b) do so in accordance with section 82 of the LGA 2002 (which applies, with any necessary modifications, for that purpose).

Compare: 2002 No 84 s 102(3A), (4)

85A Initial development contributions policy

(1) For the purposes of adopting a policy under **section 85(1)**, <u>and despite anything to the contrary in this subpart,</u> a water organisation may adopt, as its initial development contributions policy, the relevant parts of 1 or more territorial

authorities' development contributions policies that were in place immediately before the territorial authorities were required to amend their policies under **section 83**.

~~(2) **Subsection (1)** applies only during the period between—~~

~~(a) the responsibility for providing water services being transferred to the water organisation under a transfer agreement; and~~

~~(b) the water organisation adopting its own development contributions policy under **section 85**.~~

(2) **Subsection (1)** applies only during the period between the following:

(a) the date on which the responsibility for providing water services is transferred to the water organisation under a transfer agreement:

(b) the date on which the water organisation revokes the policy (with or without a replacement) under **subsection (4)**.

(3) Despite **section 85(5)**, a water organisation is not required to consult before adopting ~~a territorial authority's~~ its initial development contributions policy under **subsection (1)**.

(4) A water organisation that adopts an initial development contributions policy under **subsection (1)** must, within 3 years of adopting the policy,—

(a) review the policy under **section 85(4)**; and

(b) either—

(i) revoke the policy and replace it with a new policy under **section 85**; or

(ii) revoke the policy without replacing it.

(5) However, an initial development contributions policy that is revoked under **subsection (4)(b)(ii)** continues to apply to an application for a resource consent, a building consent, or a water service connection that is lodged before the date on which the policy is revoked.

86 Development contributions policy and methodology must be available for public inspection

(1) If a water organisation's development contributions policy requires development contributions, the water organisation must keep the following available for public inspection:

(a) the organisation's development contributions policy; and

(b) the full methodology that demonstrates how the calculations for those development contributions were made.

(2) The places at which a water organisation must keep the information specified in **subsection (1)** available for public inspection are—

(a) the principal public office of the water organisation; and

(b) such other places within its service area that the water organisation considers necessary to provide members of the public with reasonable access to the policy and the methodology.

87 Contents of development contributions policy

(1) A development contributions policy must, in relation to the purposes for which development contributions may be required,—

(a) summarise and explain the total cost of capital expenditure (identified in the water organisation's water services strategy (*see* **section 190**) or under **section 91**) that the water organisation expects to incur to meet the additional or increased demand for water services infrastructure resulting from growth; and

(b) state the proportion of that total cost of capital expenditure that will be funded by—

(i) development contributions; and

(ii) other sources of funding; and

(c) explain, by reference to the considerations set out in section 101(3) of the LGA 2002 (as if each reference in that section to a local authority were a reference to a water organisation), why the water organisation has determined to use the funding sources referred to in **paragraph (b)** to meet the expected total cost of capital expenditure referred to in **paragraph (a)**; and

(d) identify separately each group of water services activities for which a development contribution will be required and, in relation to each group of water services activities, specify the total amount of funding to be sought by development contributions; and

(e) if development contributions will be required,—

(ii) contain a schedule of assets in accordance with **section 88**; and

(iii) contain a schedule of development contributions in accordance with **section 89**; and

(iv) include, in summary form,—

(A) an explanation of, and justification for, the way each development contribution in the schedule of development contributions is calculated; and

(B) the significant assumptions underlying the calculation of the schedule of development contributions, including an estimate of the potential effects, if there is a significant level of uncertainty as to the scope and nature of the effects; and

(C) the conditions and criteria (if any) that will apply in relation to the remission, postponement, or refund of development contributions, or the return of land.

(2) Subject to **subsection (3)**, a development contribution provided for in a development contributions policy may be increased without consultation, formality, or a review of the development contributions policy.

(3) A development contribution may be increased under **subsection (2)** only if—

(a) the increase does not exceed the result of multiplying together—

(i) the rate of increase (if any), in the Producers Price Index since the development contribution was last set or increased; and

(ii) the proportion of the total costs of capital expenditure to which the development contribution will be applied that does not relate to interest and other financing costs; and

(b) before any increase takes effect, the water organisation makes publicly available information setting out—

(i) the amount of the newly adjusted development contribution; and

(ii) how the increase complies with the requirements of **paragraph (a)**.

(4) To avoid doubt,—

(a) a development contributions policy may also relate to contributions transferred to the water organisation under **section 93A**; and

(b) this section does not prevent a water organisation from calculating development contributions based on capital expenditure that a territorial authority has incurred; and

(c) this section does not prevent a water organisation from calculating development contributions over the capacity life of assets or groups of assets for which development contributions are required, so long as—

(i) the assets that have a capacity life extending beyond the period covered by the water organisation's water services strategy are identified in the organisation's development contributions policy; and

(ii) development contributions per unit of demand do not exceed the maximum amount allowed by **section 91**.

Compare: 2002 No 84 ss 106, 201

88 Schedule of assets for which development contributions will be used

(1) The schedule of assets contained in a water organisation's development contributions policy must list—

(a) each new asset, additional asset, asset of increased capacity, or programme of works for which the development contributions set out in the

schedule of development contributions are intended to be used or have already been used; and

(b) the estimated capital cost of each asset described in **paragraph (a)**; and

(c) the proportion of the capital cost that the water organisation proposes to recover through development contributions; and

(d) the proportion of the capital cost that the water organisation proposes to recover from other sources.

(2) The schedule must also include assets for which capital expenditure has already been incurred by a territorial authority or a water organisation in anticipation of development.

(3) The schedule—

(a) must list assets according to—

(i) the parts of the water organisation's service area for which the development contribution is required; and

(ii) each group of water services activities for which the development contribution is required; and

(b) may list assets in logical and appropriate groups that reflect the intended or completed programmes of works or capacity expansion.

(4) A water organisation may amend the schedule of assets at any time without consultation, ~~or further~~ formality, or a review of the schedule if—

(a) the amendment is being made to reflect a change of circumstances in relation to an asset that is listed in the schedule or is to be added to the schedule; and

(b) the amendment does not increase the total or overall development contribution that will be required to be made to the water organisation.

(5) If the water organisation is satisfied that the schedule or any part of it is too large or impractical to print in hard copy form, the water organisation may—

(a) provide the schedule in a publicly accessible electronic format; and

(b) provide and maintain an electronic link from the development contributions policy to the schedule (if the policy is on the internet) or state where a hard copy of the schedule can be found and inspected.

Compare: 2002 No 84 s 201A

89 Schedule of development contributions

(1) The schedule of development contributions contained in a water organisation's development contributions policy must specify—

(a) the development contributions payable in the water organisation's service area, calculated, in each case, in accordance with the methodology in respect of water services infrastructure; and

(b) the event that will give rise to a requirement for a specified development contribution in accordance with **section 80**.

(2) The schedule must specify development contributions according to—

(a) the parts of the water organisation's service area for which they may be required; and

(b) each group of water services activities for which they are required.

Compare: 2002 No 84 s 202

90 Development contributions policy must contain reconsideration process

(1) If a water organisation has determined to seek funding for water services infrastructure under this subpart, its development contributions policy must set out the process, which must comply with **sections 94 and 95**, for reconsidering a requirement.

(2) The process for reconsideration must set out—

(a) how the request is lodged with the water organisation; and

(b) the steps that the water organisation will take when reconsidering the requirement.

(3) If a water organisation and a territorial authority have entered, or intend to enter, into an agreement under **section 92** that provides for the territorial authority to administer the water organisation's reconsideration process, the water organisation's development contributions policy must outline the reconsideration process that is contained in, or is intended to be contained in, that agreement.

Compare: 2002 No 84 s 202A

91 Maximum development contributions

(1) This section describes how a water organisation must calculate the maximum amount of development contributions ~~that can be required for a unit of demand~~.

~~(2) Development contributions for water services infrastructure must not exceed the amount calculated by multiplying the cost of a relevant unit of demand calculated under **subsections (3) to (5)** by the number of units of demand that the water organisation has attributed to the development in accordance with **subsection (6)** (as amended for any Producers Price Index adjustment adopted in the water organisation's development contributions policy in accordance with **section 87(2) and (3)**).~~

(2) Development contributions for water services infrastructure for a particular development or type of development must not exceed the amount—

(a) calculated by multiplying the cost of a relevant unit of demand calculated under **subsections (3) to (5)** by the number of units of demand assessed for the development or the type of development; and

(b) amended for any Producers Price Index adjustment adopted in the water organisation's development contributions policy in accordance with **section 87(2) and (3)**).

(3) To calculate the maximum development contribution in respect of a group of water services activities for which a separate development contribution is to be required, a water organisation must first—

(a) identify the total cost of the capital expenditure that the organisation expects to incur in respect of the group of water services activities in order to meet increased demand resulting from growth within the service area, or part of the service area; and

(b) identify the share of that expenditure attributable to each unit of demand, using the units of demand for the group of water services activities by which the organisation has assessed the impact of growth ~~(*see* **subsection (6)**)~~.

(4) A water organisation may identify capital expenditure for the purposes of calculating the development contributions in respect of assets or groups of assets that—

(a) will be built after the period covered by the organisation's water services strategy; and

(b) are identified in the organisation's development contributions policy.

(5) The total cost of the capital expenditure identified in **subclause (3)(a)** may, in part, relate to assets intended to be delivered after the period covered by a water organisation's water services strategy if—

(a) the assets concerned are identified in the organisation's development contributions policy; and

(b) the total cost of capital expenditure does not exceed that which relates to the period over which development has been assessed for the purpose of setting development contributions.

(6) For the purposes of determining the maximum development contribution that may be required for a particular development or type of development under **subsection (2)**~~this section~~, a water organisation must demonstrate in its methodology that it has attributed units of demand to particular developments or types of development on a consistent and equitable basis.

Compare: 2002 No 84 s 203

92 Agreement to administer development contributions policy

(1) A water organisation and a territorial authority in whose district the organisation's service area is located ~~organisation operates~~ may enter into a written agreement for the territorial authority to administer all or any part of the water organisation's development contributions policy on behalf of the organisation.

(2) A territorial authority must not administer any part of a water organisation's development contributions policy unless they have entered into a written agreement under this section.

(3) An agreement under this section must specify—

(a) which parts of the development contributions policy the territorial authority will administer; and

(b) which parts of the development contributions policy (if any) the water organisation will administer; and

(c) what the water organisation will pay the territorial authority for its administering activities under the agreement; and

(d) the approach to recovering costs under **section 99**, which must ensure that—

(i) a person is not required to pay more than the actual and reasonable costs; and

(ii) a water organisation and a territorial authority do not attempt to recover the same costs.

(4) An agreement under this section—

(a) may be amended only by agreement of the parties to the agreement; and

(aa) must not provide for the territorial authority to—

(i) decide the outcome of a reconsideration requested under **section 94**; or

(ii) be a party to any proceedings in relation to an objection made under **section 96**.

~~(b) is binding and enforceable.~~

(5) If a water organisation and a territorial authority enter into an agreement,—

(a) the territorial authority must provide the development contributions it collects to the water organisation as soon as is reasonably practicable; and

(b) the parties to the agreement must make the agreement publicly available.

(6) For the purposes of this section, administering a development contributions policy includes—

(a) assessing an application for resource consent or building consent against the water organisation's development contributions policy and determining the amount ~~level~~ of development contributions (if any) the developer is required to pay; and

(b) determining the level of development contributions a developer is required to pay when applying for approval of a water service connection; and

(c) invoicing a developer for development contributions; and

(ca) administering any postponed payments of a development contribution; and

(d) collecting any outstanding amounts of development contributions, including taking any debt recovery steps; and

(e) administering the reconsideration process; and

(f) administering the objection process; and

(g) transferring any development contributions that are paid to the territorial authority to the water organisation.

93 Territorial authority may extend development contributions policy to water organisation

(1) If a water organisation does not adopt a development contributions policy, the organisation and a territorial authority in whose district the water organisation operates may agree that the territorial authority will extend its development contributions policy to also cover the operations of the water organisation.

(2) If a territorial authority extends its development contributions policy,—

(a) the policy must contain the information required to be included in a water organisation's policy under ~~**section 87**~~ **sections 87 and 90**; and

(aa) if the territorial authority collects a development contribution set by the water organisation,—

(i) for the purposes of this subpart, the contribution is required by the water organisation; and

(ii) the territorial authority collects the contribution on behalf of the water organisation; and

(b) the territorial authority must provide the relevant development contributions it collects to the water organisation as soon as is reasonably practicable~~.~~; and

(c) although the territorial authority may administer the reconsideration process or objection process on behalf of the water organisation, the authority must not—

(i) decide the outcome of a reconsideration requested under **section 94**; or

(ii) be a party to any proceedings in relation to an objection made under **section 96**; and

(d) the water organisation and the territorial authority must make the agreement publicly available.

(2A) For the purposes of **subsection (1)**,—

(a) the territorial authority must consult on the extended policy in accordance with section 106(6) of the LGA 2002 with any necessary modifications; and

(b) the territorial authority must advise the water organisation of the feedback received from the consultation; and

(c) the water organisation must consider the feedback and decide whether any changes are required to the policy before agreeing to it being extended to the water organisation.

(3) For the purposes of **subsection (2)(a)**,—

(a) the water organisation must provide the necessary information to the territorial authority; and

(b) the territorial authority must not alter any of the information without the water organisation's agreement.

(4) An agreement under **subsection (1)** must include how the territorial authority will consult on (in accordance with section 106(6) of the LGA 2002) and administer the water organisation's development contributions, including the reconsideration and objection processes.

(5) To avoid doubt, ~~, a water organisation that operates in the district of more than 1 territorial authority may agree with 1 or more of those territorial authorities that the territorial authority will extend its development contributions policy to cover the operations of the water organisation.~~

(a) a water organisation that operates in the district of more than 1 territorial authority may agree with 1 or more of those territorial authorities that the territorial authority will extend its development contributions policy to cover the operations of the water organisation; and

(b) despite a water organisation entering into an agreement under **subsection (1)**, this subpart applies as if the water organisation had adopted the policy (for example, the contributions collected under the policy by the territorial authority on behalf of the water organisation are the revenue of the water organisation, not of the territorial authority).

Transfer to new water organisation

93A Transfer to new water organisation

(1) This section applies when a territorial authority transfers the responsibility for providing water services ~~is transferred from a territorial authority~~ to a water organisation under a transfer agreement.

(2) The territorial authority must, as of the date on which the transfer agreement takes effect, transfer the following to the water organisation:

(a) any development contribution or financial contribution (or any part of a development contribution or financial contribution) that the territorial

authority received in respect of the relevant water services infrastructure to which the transfer agreement relates, if the infrastructure costs are yet to be incurred:

(b) all relevant information, including the purpose for which the contribution was required.

(3) After the date on which the transfer agreement takes effect,—

(a) the territorial authority must continue to require development contributions, or financial contributions in respect of developing the water services infrastructure to which the transfer agreement relates, for—

(i) applications for resource consents or building consents that were lodged before the date on which the transfer agreement took effect; or

(ii) applications for service connections that were granted before the date on which the transfer agreement took effect; and

(b) the territorial authority must, as soon as is reasonably practicable, transfer all development contributions and financial contributions received under **paragraph (a)** to the water organisation.

93B Limitation on use of transferred contributions

A water organisation that receives a development contribution or financial contribution under **section 93A(2) or (3)(b)** must use the contribution only for the purpose for which it was collected.

Reconsideration of requirement for development contribution

94 Right to reconsideration of requirement for development contribution

(1) If a water organisation requires a person to make a development contribution, the person may request the water organisation to reconsider the requirement if the person has grounds to believe that—

(a) the development contribution was incorrectly calculated or assessed under the water organisation's development contributions policy; or

(b) the water organisation incorrectly applied its development contributions policy; or

(c) the information used to assess the person's development against the development contributions policy, or the way the water organisation has recorded or used that information, was incomplete or contained an error.

(2) A request for a reconsideration must be lodged and decided according to the process set out in the water organisation's development contributions policy under **section 90**.

(3) A request for a reconsideration must be made within 10 working days after the date on which the person lodging the request receives notice from the water

organisation of the amount of development contribution that the water organisation requires.

(4) A person may not request a reconsideration of a requirement if the person has already objected to that requirement under **section 96**.

Compare: 2002 No 84 s 199A

95 Water organisation to notify outcome of reconsideration

(1) The water organisation must, within 15 working days after the date on which it receives all required relevant information relating to a request for reconsideration under **section 94**, give written notice of the outcome of its reconsideration to the person who made the request.

(2) The person who requested the reconsideration may object to the outcome of the reconsideration in accordance with **section 96**.

Compare: 2002 No 84 s 199B

Objections

96 Right to object to development contribution

(1) A person may, on any ground set out in **section 97**, object to the assessed amount of a development contribution that a water organisation has required from the person.

(2) The right of objection conferred by **subsection (1)** applies regardless of whether the person has earlier requested a reconsideration of the requirement for the development contribution.

(3) The right of objection conferred by this section does not apply to challenges to the content of a water organisation's development contributions policy.

Compare: 2002 No 84 s 199C

97 Scope of objections

A person may object to a development contribution requirement only on the ground that the water organisation has—

(a) failed to properly take into account features of the objector's development that, on their own or cumulatively with those of other developments, would substantially reduce the impact of the development on requirements for water services infrastructure in the water organisation's service area or parts of that service area; or

(b) required a development contribution for water services infrastructure not required by, or related to, the objector's development, whether on its own or cumulatively with other developments; or

(c) required a development contribution in breach of **section 82**; or

(d) incorrectly applied its development contributions policy to the objector's development.

Compare: 2002 No 84 s 199D

98 Procedure for objections

(1) Sections 199F to 199P and Schedule 13A of the LGA 2002 apply, with all necessary modifications, in relation to objections made under **section 96**.

(2) The modifications include the following:

(a) a reference to a territorial authority must be read as a reference to a water organisation:

(b) a reference to the district of a territorial authority must be read as a reference to the whole or a part of the service area of a water organisation.

99 Costs of objections

(1) A person who objects under **section 96** to the amount of a development contribution requirement is liable to pay the water organisation's actual and reasonable costs in respect of the objection.

(2) The costs that the water organisation may recover under this section are the actual and reasonable costs incurred by it in respect of—

(a) the selection, engagement, and employment of the development contributions commissioners; and

(b) secretarial and administrative support for the objection process; and

(c) preparing for, organising, and holding the hearing.

(3) A water organisation may, in any particular case and in its absolute discretion, waive or remit the whole or any part of any costs that would otherwise be payable under this section.

(4) If a territorial authority administers the water organisation's objections process under an agreement entered into under **section 92** or **93**, the territorial authority may recover the costs under this section on behalf of the water organisation.

(5) However,—

(a) the territorial authority's ability to recover the costs applies only to the extent specified in the agreement; and

(b) the territorial authority must not recover, or attempt to recover, any costs from a person if the water organisation has already recovered those costs; and

(c) the water organisation must not recover, or attempt to recover, any costs from a person if the territorial authority has already recovered those costs.

Compare: 2002 No 84 s 150A

Use of development contributions

100 Use of development contributions by water organisation

(1) A water organisation that receives a development contribution (whether received under **section 80** or transferred from a territorial authority)—

(a) must use it for, or towards, the capital expenditure of the water services infrastructure for which the contribution was required, which may also include the development of the water services infrastructure; but

(b) must not use it for the maintenance of the water services infrastructure.

(2) Despite **subsection (1)**, a water organisation may use a development contribution for or towards any assets other than those set out in the schedule of assets required by **section 87(1)(e)(ii)** as at the time the development contribution was required if—

(a) the assets are for the same general function and purpose as those that were set out in the schedule as at the time the development contribution was required; and

(b) the schedule has been amended in accordance with **section 88(4)**, or will be amended when the development contributions policy is next reviewed under **section 85(4)**, to identify the assets that the development contribution has been, or is intended to be, used for or towards.

Compare: 2002 No 84 s 204

Development agreements

101 Request to enter development agreement

(1) A water organisation may enter into a development agreement with a developer if either party requests in writing that the parties enter into a development agreement.

(2) The parties to a development agreement—

(a) must include at least 1 water organisation and 1 developer; and

(b) may also include—

(i) 1 or more additional water organisations; or

(ii) 1 or more additional developers; or

(iii) 1 or more territorial authorities.

(3) A territorial authority may—

(a) ~~may~~ enter into a development agreement under this subpart on behalf of a water organisation; and

(b) ~~may~~ administer a development agreement under this subpart on behalf of a water organisation.

Compare: 2002 No 84 s 207A

102 Response to request to enter development agreement

(1) A water organisation that receives a written request from a developer to enter into a development agreement must consider that request as soon as practicable.

(2) The water organisation may—

(a) accept the request in whole or in part subject to any amendments agreed to by the parties; or

(b) decline the request.

(3) The water organisation must give the developer a written notice of its decision and the reasons for its decision.

(4) A developer who receives a request from a water organisation to enter into a development agreement may, in a written response to the water organisation,—

(a) accept the request in whole or in part subject to any amendments agreed to by the parties; or

(b) decline the request.

Compare: 2002 No 84 s 207B

103 Content of development agreement

(1) A development agreement must be in writing and be signed by all parties that are to be bound by the agreement.

(2) A development agreement must include—

(a) the legal name of each water organisation that will be bound by the agreement; and

(b) the legal name of each developer that will be bound by the agreement; and

(c) the legal name of any territorial authority that will be bound by the agreement; and

(d) a description of the land to which the agreement will relate, including its legal description and, if applicable,—

(i) the street address of the land; and

(ii) other identifiers of the location of the land, its boundaries, and extent; and

(e) details of the water services infrastructure (if any) that each party to the agreement will provide or pay for.

(3) A development agreement may also include information relating to all or any of the following:

(a) a description of the development to which the agreement will relate:

(b) when the water services infrastructure will be provided, including whether the infrastructure will be provided in stages:

(c) who will own, operate, and maintain the infrastructure being provided:

(d) the timing and other arrangements for any vesting of infrastructure in a party:

(e) the timing and other arrangements for any transfer of land between the parties:

(f) the mechanism for the resolution of disputes:

(g) the nature, amount, and timing of any monetary payments to be made between the parties:

(h) the enforcement of the development agreement by a suitable means in the event of a breach, for example, by—

(i) a guarantee; or

(ii) a bond; or

(iii) a memorandum of encumbrance:

(i) other matters the parties agree to include.

(4) A development agreement must not contain any provision that limits a water organisation's powers under this subpart.

Compare: 2002 No 84 s 207C

104 Effect of development agreement

(1) A development agreement is a legally enforceable contract.

(2) A development agreement has no force until all parties that will be bound by the agreement have signed it.

(3) A development agreement does not oblige any water organisation or consent authority (as applicable) to—

(a) grant a resource consent under the Resource Management Act 1991; or

(b) issue a building consent ~~under the Building Act 2004~~; or

(c) issue a code compliance certificate under the Building Act 2004; or

(d) grant a certificate under ~~section 223(3)~~ section 224(c) of the Resource Management Act 1991; or

(e) grant an approval ~~authorisation~~ for a water service connection.

(4) However, a water organisation or consent authority (as applicable) must not refuse to grant or issue a consent, certificate, or approval ~~authorisation~~ referred to in **subsection (3)** on the basis that a development agreement has not been entered into.

(5) A development agreement prevails in the event of any conflict between it and the application of a relevant development contributions policy in relation to any matter concerning the agreement.

Compare: 2002 No 84 s 207D

105 Restrictions on use of development agreement

(1) A development agreement must not require a developer to provide water services infrastructure—

(a) of a nature or type for which the developer would not otherwise have been required to make a development contribution; or

(b) of a higher standard than that for which the developer would otherwise have been required to make a development contribution; or

(c) of a scale that exceeds that for which the developer would otherwise have been required to make a development contribution.

(2) However, a developer may agree to provide infrastructure described in **subsection (1)(a), (b), or (c)**.

Compare: 2002 No 84 s 207E

106 Amendment or termination of development agreement

(1) The parties to a development agreement may agree in writing to amend the agreement at any time.

(2) A development agreement terminates—

(a) on a date specified in the agreement; or

(b) on the date on which all actions, undertakings, or obligations under the agreement have been fulfilled; or

(c) on a date mutually agreed in writing by all parties to the agreement.

Compare: 2002 No 84 s 207F

Power to delay processes if development contributions not paid

107 Powers of water organisation if development contributions not made

(1) A water organisation that has required a development contribution under **section 80** may do the following until the contribution is made:

(a) in the case of a development contribution required under **section 80(1)(a)**, request the relevant consent authority to—

(i) withhold a certificate under ~~section 223(3)~~ section 224(c) of the Resource Management Act 1991:

(ii) prevent the commencement of a resource consent under the Resource Management Act 1991:

(b) in the case of a development contribution required under **section 80(1)(b)**, request the relevant consent authority to withhold a code compliance certificate under section 95 of the Building Act 2004:

~~(c) in the case of a development contribution required under **section 80(1)(c)**, withhold a service connection to the relevant development:~~

(ca) in the case of a development contribution required under **section 80(6)**, request the relevant ~~building consent authority~~ territorial authority to withhold a certificate of acceptance under section 99 of the Building Act 2004:

(cb) in any case, withhold approval of a service connection to the relevant development:

(d) in any case, register the development contribution under subpart 5 of Part 3 of the Land Transfer Act 2017, as a charge on the land in respect of which the development contribution was required.

(2) When making a request under **subsection (1)(a) or (b)**, the water organisation must provide sufficient evidence to the consent authority to support the request.

(2A) However, **subsection (1)(cb)** does not authorise a water organisation to restrict or disconnect a water connection that existed before it required the development contribution.

(3) **Subsection (4)** applies—

(a) in the circumstances to which **subsection (1)** applies; and

(b) if Kāinga Ora–Homes and Communities is responsible for granting the consent, approval, ~~authorisation,~~ or certificate.

(4) Kāinga Ora–Homes and Communities may do the following until the development contribution is made:

(a) in the case of a development contribution required under **section 80(1)(a)**,—

(i) withhold a certificate made under ~~section 223(3)~~ section 224(c) of the Resource Management Act 1991:

(ii) prevent the commencement of a resource consent under the Resource Management Act 1991:

(b) in the case of a development contribution required under **section 80(1)(b)**, withhold a code compliance certificate under section 95 of the Building Act 2004:

(c) in the case of a development contribution required under **section 80(1)(c)**, exercise the power set out in **subsection (1)(c)** on the water organisation's behalf, as appropriate and by agreement with the water organisation.

Compare: 2002 No 84 s 208

Refund of development contributions~~, etc~~

108 Refund of money and return of land if development does not proceed

(1) This section applies if a consent holder has made a development contribution required by a water organisation and—

(a) the resource consent for the development—

(i) lapses under section 125 of the Resource Management Act 1991; or

(ii) is surrendered under section 138 of that Act; or

(b) the building consent for the development lapses under section 52 of the Building Act 2004; or

(c) the development or building in respect of which the resource consent or building consent was granted does not proceed; or

(d) the water organisation does not provide the water services infrastructure for which the development contribution was required.

(1A) This section also applies if—

(a) a consent holder has made a development contribution that was required by a territorial authority and transferred to a water organisation; and

(b) 1 or more of **paragraphs (a) to (d) of subsection (1)** ~~applies~~ apply.

(2) The water organisation—

(a) must return to the consent holder, or to their personal representative, any development contribution that the consent holder has made in relation to the relevant development; but

(b) may retain a portion of the contribution of a value equivalent to the costs incurred by the water organisation or a territorial authority in relation to the development or building and its discontinuance.

Compare: 2002 No 84 s 209

Crown exempt from development contributions

109 Crown exempt from development contributions

(1) The Crown is exempt from making any development contributions under this subpart.

(2) However, this section—

(a) does not apply to Kāinga Ora–Homes and Communities; and

(b) does not prevent the Crown from making a payment to a water organisation to recognise the demand a Crown development places on the water organisation's water services infrastructure.

Compare: 2022 No 77 s 351

Subpart 3—Water services networks: connections

Bylaws

110 Bylaws for purposes of connections

(1) Without limiting **section 347**, a territorial authority may make water services bylaws for its district for the purposes of regulating connections to water services networks.

(1A) A water services bylaw under **subsection (1)**—

(a) is made under **section 347**; and

(b) must provide for a process for a water service provider to approve connections to water services networks.

(2) A process for approving connections must consist of the following 3 steps:

(a) step 1: approval of concept plans:

(b) step 2: approval of engineering plans:

(c) step 3: final approval and sign-off.

(3) However, the bylaw must allow—

(a) a person to apply for approval of more than 1 step at the same time; and

(b) the water service provider to approve ~~grant approval for~~ more than 1 step at the same time; and

(ba) the water service provider to require the applicant to confirm that they have obtained any relevant resource consents before the water service provider makes the connection to the water services network; and

(c) an applicant to amend their application for approval at any stage before the water service provider decides whether to approve the application; and

(d) an applicant to amend their application for approval after the water service provider has made their decision (in which case the water service provider must consider the amended application using the same process that it uses for any other application).

(4) A bylaw under this section must comply with any National Engineering Design Standards made under the Water Services Act 2021.

111 Approval

A water service provider may provide written approval for the purposes of the Resource Management Act 1991 after it has granted approval under step 1 or step 2 (as applicable) of the approval process described in **section 110(2)** ~~(depending on which step is required under the network connection requirements)~~.

112 Application of water services bylaws for connections

The 3-step approval process set out in a water services bylaw made under **section 347** ~~**section 110**~~ for the purpose of approving connections applies to a person who wishes to—

(a) make a connection to a ~~one of the territorial authority's~~ water services network that is in the territorial authority's district ~~networks~~; or

(b) make structural changes to premises that would affect the flow rate through an existing connection to a water services network (for example, when a house is replaced with an apartment block).

113 Requirements of 3-step approval process for connections

A water services bylaw made under **section 347** for the purpose of regulating connections to a water services network ~~**section 110**~~ must specify that—

(a) step 1 of the approval process is to enable the water service provider to be satisfied that the relevant network has capacity for the proposed activity; and

(b) step 2 of the approval process is to enable the water service provider to be satisfied that, based on detailed engineering plans, the proposed activity can be implemented; and

(c) step 3 of the approval process is to enable the water service provider to be satisfied that, based on inspections of completed works and supporting documentation, the work has been completed to an acceptable standard and in accordance with the approvals granted under steps 1 and 2.

Internal reviews

113A Internal review of decision under bylaw for purposes of connection

(1) A person whose application for a connection to a water service network is declined may apply to the water service provider ~~territorial authority~~ for an internal review of that decision (the **original decision**).

(2) A person who applies for an internal review must do so—

(a) no later than—

(i) 20 working days after the day on which the original decision first came to the person's notice; or

(ii) any later date that the water service provider ~~territorial authority~~ allows; and

(b) in the manner and form required by the water service provider ~~territorial authority~~.

113B Decision of water service provider ~~territorial authority~~

(1) A water service provider ~~territorial authority~~ that receives an application for internal review under **section 113A** must review the original decision and make a new decision—

(a) as soon as is practicable; and

(b) in any case, within 20 working days after receiving the application for internal review.

(2) The chief executive of the water service provider ~~territorial authority~~ must appoint, to undertake the internal review, a person who was not involved in making the original decision.

(3) The person appointed to undertake the review (the **appointed person**) may recommend that the water service provider ~~territorial authority~~ confirm, vary, set aside, or replace all or part of the original decision.

(4) The appointed person may seek further information from the applicant, and, if they do so,—

(a) the applicant must provide the information to the appointed person within the period (not less than 7 working days) specified in the request for information; and

(b) the period specified in **subsection (1)(b)** ceases to run until the applicant provides the information.

(5) If the applicant does not provide the further information to the appointed person within the specified period ~~required time~~,—

(a) the appointed person may make a recommendation to the water service provider ~~territorial authority~~ on the basis of the information the appointed person holds; and

(b) the water service provider ~~territorial authority~~ may make a decision on the basis of the recommendation.

(6) If the original decision is not varied, set aside, or replaced within the period specified in **subsection (1)(b)**, the original decision must be treated as having been confirmed by the water service provider ~~territorial authority~~.

113C Notice of decision on internal review

As soon as practicable after the water service provider ~~territorial authority~~ makes a decision in accordance with **section 113B**, the chief executive of the water service provider ~~territorial authority~~ must notify the applicant in writing of—

(a) the decision on the internal review; and

(b) the reasons for the decision.

113D Stay of reviewable decision on internal review

(1) If a person applies for an internal review of an original decision, the water service provider ~~territorial authority~~ may stay the operation of the original decision—

(a) on its own initiative; or

(b) on the application of the applicant for the review.

(2) A water service provider ~~territorial authority~~ must make a decision on an application for a stay within 3 working days after the date on which it receives the application.

(3) If the water service provider ~~territorial authority~~ does not make a decision on an application for a stay within the time specified in **subsection (2)**, the water service provider ~~territorial authority~~ must be treated as having granted a stay.

(4) A stay of the operation of an original decision pending a decision on an internal review continues until the water service provider ~~reviewer~~ makes a decision on the review.

113E Appeal to District Court

(1) An applicant for a connection to a water service network who is not satisfied—

(a) with a decision notified under **section 113C** may appeal to the District Court against the decision; or

(b) with the original decision being treated as having been confirmed under **section 113B(6)** may appeal to the District Court against that confirmation.

(2) An appeal under this section must be made within 20 working ~~28~~ days after—

(a) the applicant receives notification of the outcome of the internal review; or

(b) the original decision ~~being~~ is treated as having been confirmed under **section 113B(6)**.

(3) The court may—

(a) confirm, reverse, or modify the original decision; or

(b) refer the matter back to the water service provider in accordance with the rules of court; or

(c) make any decision that the water service provider could have made.

(4) Subject to any order of the court, every decision of the water service provider ~~territorial authority~~ continues in force and has effect pending the determination of an appeal against it.

(5) On any appeal under this section, the court may order the water service provider ~~territorial authority~~ or the appellant to pay the costs incurred by the other party in respect of the appeal.

113F Appeal to High Court

(1) A person may appeal to the High Court on a question of law only against a decision made by the District Court under **section 113E**.

(2) An appeal must be made by giving notice of appeal no later than 20 working days after the date on which notice of the decision was communicated to the appellant, or within any further time that the High Court may allow.

113G Appeals to Court of Appeal or Supreme Court

(1) A party to an appeal under **section 113F** may appeal to the Court of Appeal or the Supreme Court against any determination of the High Court on a question of law arising in that appeal, with the leave of the court appealed to.

(2) The Court of Appeal or the Supreme Court hearing an appeal under this section has the same power to adjudicate on the appeal as the High Court had.

(3) **Subsection (1)** is subject to section 75 of the Senior Courts Act 2016 (which provides that the Supreme Court must not give leave to appeal directly to it against a decision made in a court other than the Court of Appeal unless it is satisfied that there are exceptional circumstances that justify taking the proposed appeal directly to the Supreme Court).

Obligations to publish water services network maps and capacity utilisation and asset details

~~114 Obligation to publish water services network maps~~

~~(1) A water service provider must—~~

~~(a) prepare and publish a map of each of its water services networks that shows the location of each pipe and connection point in the network; and~~

~~(b) update the map as soon as practicable after any changes to the location of a pipe or a connection point.~~

~~(2) The water service provider must publish the map on a publicly accessible internet site maintained by, or on behalf of, the water service provider.~~

114 Obligation to publish water services network maps and capacity utilisation and asset details

(1) A water service provider must, no later than 4 years after this section comes into force,—

(a) prepare and publish a map of each of its water services networks that shows the location of each pipe and connection point in the network; and

(b) publish all capacity utilisation and asset details known to the water service provider in relation to its water services networks.

(2) The provider must ensure that the published information is, at all times, as up to date as is practicable.

(3) The provider must publish the information on a publicly accessible internet site maintained by, or on behalf of, the provider.

~~114A Obligation to publish capacity utilisation and asset details~~

~~(1) A water service provider must, no later than 4 years after this section comes into force,—~~

~~(a) publish all capacity utilisation and asset details known to the water service provider; and~~

~~(b) ensure that the published information is, at all times, as up to date as practicable.~~

~~(2) The water service provider must publish the information on a publicly accessible internet site maintained by, or on behalf of, the water service provider.~~

Subpart 4—Accessing land to carry out water services infrastructure work

115 Outline of this subpart

(1) This subpart provides for—

(a) a water service provider entering privately owned land (including Māori-owned land) and roads and level crossings to carry out works in relation to water services infrastructure; and

(b) when consent to the entry and works is, and is not, required; and

(c) when an owner of land or a road or level crossing or another person may impose conditions on the entry and the work; and

(d) related matters.

(3) A reference in this subpart to a water service provider entering, or proposing to enter, land to carry out work in relation to water services infrastructure also applies to land that—

(a) is adjacent to the land where the infrastructure is located; and

(b) it is necessary to enter in order to carry out the work.

115A Interpretation

In this subpart,—

land—

(a) means privately owned land; and

(b) does not include roads and level crossings

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

~~Māori-owned land~~ ~~means any or all of the following:~~

~~(a) Māori land:~~

~~(b) a Māori reservation:~~

~~(c) any land on which a marae or an urupā is situated:~~

~~(d) a reserve that, under a Treaty settlement Act,—~~

~~(i) is vested in a post-settlement governance entity; or~~

~~(ii) is administered by a post-settlement governance entity, whether as the administering body or when performing a role in the administering body~~

~~**owner**, in relation to land,—~~

~~(a) includes the occupier if the land is not Māori-owned land; and~~

~~(b) if the land is Māori-owned land,—~~

~~(i) means the person or administering body that has lawful authority under Te Ture Whenua Maori Act 1993 or any other Act to—~~

~~(A) receive a notification under **section 117**; and~~

~~(B) consent to, or impose conditions on, any proposed entry and work under **section 118**; and~~

~~(C) engage in all processes and other matters under this subpart that arise from an action described in **subsubparagraph (A) or (B)**; and~~

~~(ii) includes the occupier for the following purposes:~~

~~(A) being notified under **section 117** of a water service provider's intention to enter land and carry out work under **section 116(1)(b), (c), or (d)**:~~

~~(B) imposing reasonable conditions under **section 118(1)(b)**:~~

~~(C) engaging in all processes and other matters under this subpart that arise from an action described in **subsubparagraph (A) or (B)**~~

road—

(a) includes—

(i) a street and any other place to which the public have access (including a State highway and a public footpath), whether as of right or not; and

(ii) land that is vested in a local authority for the purpose of a road as shown on a deposited survey plan; and

(iii) all bridges, culverts, ferries, and fords that form part of any road, street, or other place referred to in **subparagraph (i) or (ii)**; but

(b) does not include—

(i) a motorway within the meaning of section 2(1) of the Government Roading Powers Act 1989; or

(ii) a private road within the meaning of section 315 of the Local Government Act 1974; or

(iii) any roadway laid out by order of the Māori Land Court under sections 315 to ~~327~~ 326D of Te Ture Whenua Maori Act 1993 or under any former Act, except where that order has been cancelled, or where the roadway has been declared under section 320 of that Act to be a road

State highway has the meaning set out in section 5(1) of the Land Transport Management Act 2003.

General requirements

116 Power to enter land and carry out work

(1) A water service provider may enter land ~~to~~ and carry out any of the following work that it considers necessary or desirable for the provision of water services in its service area:

(a) constructing or placing water services infrastructure on, over, or under land or under a building on land:

(b) managing, controlling, monitoring, or eliminating any risks relating to water services infrastructure and processes:

(c) operating, inspecting, maintaining, completing, altering, renewing, or replacing any water services infrastructure and processes on, over, or under land or under a building on land:

(d) carrying out work in relation to an overland flow path or watercourse.

Authorisation: subsection (1)(a) work

(2) A water service provider may exercise the ~~power~~ powers specified in **subsection (1)(a)** only—

(a) with the prior written consent of, and in accordance with any reasonable conditions imposed by, the owner of the land; or

(b) in accordance with an internal review determination under **section 118D** or a court order under **section 120**.

Authorisation: subsection (1)(b) to (d) work

(3) A water service provider must exercise the power specified in **subsection (1)(b), (c), or (d)** in accordance with—

(a) any reasonable conditions imposed by the owner of the land; or

(b) an internal review determination under **section 118D** or a court order under **section 120**.

Exceptions

(5) **Subsection (1)(a)** does not apply to—

(a) land owned by the Crown; or

(b) land held or administered under the Conservation Act 1987 or any of the Acts specified in Schedule 1 of that Act.

(6) Despite **subsection (5)(b)**, **subsection (1)(a)** applies to land administered by a local authority under the Reserves Act 1977.

(7) **Subsection (1)** does not apply to a road or a level crossing (*see* **sections 132 to 136**).

Compare: 2022 No 77 s 200

117 Notification of proposed entry and work

(1) Before a water service provider enters land and carries out any work specified in **section 116(1)**, it must notify the owner of the land of its intention to enter the land and carry out the work.

All land

(2) A notice under **subsection (1)** must—

(a) be in writing; and

(b) be given within the relevant time specified in **subsection (2A)**; and

(c) specify the following:

(i) the land where the relevant infrastructure (or, if applicable, the relevant overland flow path or watercourse) is located:

(ii) any adjacent land that must also be entered to carry out the work:

(iii) the location of the proposed entry:

(iv) the date and time of the proposed entry:

(v) the nature of the work to be carried out and the reasons for it:

(vi) the length of time that an officer, employee, or agent of the provider expects to be on the land or in any building on the land; and

(d) ask the owner to respond to the notice within 10 working days, including in relation to consent and conditions (as applicable).

(2A) A water service provider must give notice in writing—

(a) at least 30 working days before the proposed entry onto the land ~~work is to start~~, unless **paragraph (b) or (c)** applies; or

(b) if the proposed work is maintaining, completing, altering, renewing, or replacing existing water services infrastructure or an existing overland flow path or watercourse, at least 10 working days before the proposed work is to start; or

(c) in accordance with **section 137**, for urgent work to which that section applies.

(2B) Despite **subsection (2)(a) and (b)**, if the proposed work is operating or inspecting existing water services infrastructure or an existing overland flow

path or watercourse, a water service provider must give reasonable notice by telephone or in any other manner that the provider considers appropriate.

(3) If there is any change to the date or time of a proposed entry, the water service provider must—

(a) ~~the water service provider must~~ notify the owner in writing of the change; and

(b) give the owner a reasonable time before the proposed work is to start.

Māori-owned land: additional notice

(3A) If the land is or includes Māori-owned land, the water service provider must also notify the following in accordance with this section:

(a) the marae, if a marae is situated on the land:

(b) the trustees of the principal marae of the hapū that is associated with the land if—

(i) an urupā, but no marae, is situated on the land; or

(ii) the land has been set apart as a Māori reservation~~.~~:

(c) if the land is Māori customary land,—

(i) the trustees of the principal marae of the hapū that is associated with the land; and

(ii) the Māori Trustee.

~~(5) In this section, **existing water services infrastructure or an existing overland flow path or watercourse** means water services infrastructure, an overland flow path, or a watercourse that was wholly or partly in place on, over, or under land or under a building on land immediately before this Act came into force.~~

Change of owner: all land

(6) If there is a change of owner of the land after the provider gives notice under this section, the provider is not required to give a new notice to the new owner before the proposed work is done.

Compare: 2022 No 77 s 201

118 Owner's notice of consent and conditions

Notice: land generally, all work

(1) An owner of land who receives a notice under **section 117** must, within 10 working days, give written notice to the water service provider,—

(a) for entry and work specified in **section 116(1)(a)**,—

(i) giving unconditional consent; or

(ii) declining consent; or

(iii) giving consent subject to reasonable conditions; or

(b) for entry and work specified in **section 116(1)(b), (c), or (d)**,—

(i) imposing any reasonable conditions the owner wishes to impose on the entry or the work; or

(ii) advising the water service provider that the owner is not imposing any conditions.

(1AAA) Despite **subsection (1)**, if an owner of land receives notice under **section 117(2B)**, the owner—

(a) may notify the water service provider of their response in the same way that the provider gave notice; and

(b) must notify the provider as soon as is reasonably practicable but no later than required under **subsection (1)**.

Notice: certain Māori-owned land, all work

(1A) **Subsection (1B)** applies if the land is Māori-owned land that is—

(a) land on which a marae or an urupā is situated; or

(b) set aside as a Māori reservation.

(1B) The owner's notice under **subsection (1)** in relation to entry and any work specified in **section 116(1)** must—

(a) give unconditional consent; or

(b) decline consent; or

(c) give consent subject to reasonable conditions.

Conditions: all land, all work

(2A) A condition imposed by an owner of land—

(a) may include conditions as to the time and manner of entry onto the relevant land; but

(b) may not—

(i) delay the entry by more than 15 working days; or

(ii) require monetary or other consideration; or

(iii) otherwise defeat the ability of the water service provider to exercise effectively its powers under **section 116**; or

(iv) limit or override any legally binding agreement (whether new or existing) between the owner of the land and the water service provider relating to water services.

Breach of deadline: all land, section 116(1)(b) to (d) work

(3) If the owner of the land fails to comply with **subsection (1)(b)**, or with **subsection (1AAA)** in relation to entry and work specified in **section 116(1)(b), (c), or (d)**, within ~~15~~ 10 working days after being notified of the proposed entry and work, ~~the water service provider may start the work.~~

(a) a later notice declining consent, or imposing conditions, has no effect; and

(b) the internal review process does not apply; and

(c) the water service provider may start the work.

Compare: 2022 No 77 s 202

118A Provider must conduct internal review

All land, all work (and breach of deadline: section 116(1)(a) work)

(1) This section and **sections 118B to 118D** apply if—

(a) a water service provider notifies the owner of ~~private~~ land under **section 117** of the provider's intention to enter the land and carry out work; and

(b) the owner of the land, within 10 working days,—

(i) gives notice to the provider ~~under **section 118(1)(a)(ii) or (1B)(b)**~~ declining consent; or

(ii) gives notice to the provider ~~under **section 118(1)(a)(iii) or (b)(i) or (1B)(c)**~~ imposing conditions that the provider considers unreasonable; or

(iii) in the case of a proposed entry to carry out work specified in **section 116(1)(a)**, does not respond to the provider ~~within 30 working days after being notified of a proposed entry to carry out work specified in **section 116(1)(a)**~~.

(2) The provider must arrange for the conduct of an internal review in relation to the matter ~~dispute~~.

(3) The person (the **reviewer**) who reviews the matter on the provider's behalf—

(a) must be employed or engaged by the provider for the purposes of this section; and

(b) must be suitably qualified and experienced to perform the task; and

(c) must not have had any involvement in the matter under review.

118B Internal review process

(1) The reviewer must review and determine the matter within 20 working days after the expiry of the 10 working days in which the owner of the land must respond to the water service provider's notice under **section 117**.—

~~(a) the 15 working days referred to in **section 118(3)**; or~~

~~(b) the 30 working days referred to in **section 118A(1)(b)(iii)**.~~

(2) The reviewer may ask for further information from the water service provider and the owner of the land.

(3) If the reviewer asks for further information, the ~~person or body~~ provider or owner asked must provide the information within the period (of not less than 5 working days) specified by the reviewer.

(4) The reviewer may, but is not required to, convene a meeting with the provider and the owner of the land.

(5) If the reviewer decides to convene a meeting, the reviewer must give the provider and the owner of the land reasonable notice of the date, time, and place of the meeting.

118C When parties do not participate

(1) This section applies if a party to an internal review fails to participate in the review by—

(a) not giving the reviewer the further information requested within the time specified in the request; or

(b) not attending a meeting convened by the reviewer.

(2) The reviewer may determine the matter under **section 118D** without the further information or the meeting (as applicable).

(3) However, **subsection (4)** applies if—

(a) the land is Māori-owned land; and

(b) the notice given under **section 117** is for—

(i) proposed entry and work specified in **section 116(1)** on land on which a marae or an urupā is situated; or

(ii) proposed entry and work specified in **section 116(1)** on land that has been set apart as a Māori reservation; or

(iii) proposed entry and work specified in **section 116(1)(a)** on other Māori-owned land; and

(c) the owner of the land—

(i) has declined consent to the entry and work; or

(ii) has given consent subject to conditions that the water service provider considers unreasonable; or

(iii) has not responded to the notice within 30 working days.

(4) In the circumstances set out in **subsection (3)**,—

(a) the reviewer may not determine the matter; but

(b) the water service provider may appeal the matter to the Māori Land Court.

118D Reviewer's determination

(1) A reviewer may—

(a) confirm the position taken by the owner of the land; or

(b) if the owner declined consent, set aside the owner's decision and replace it with a determination that the entry and work may proceed—

(i) subject to reasonable conditions specified by the reviewer; or

(ii) unconditionally; or

(c) if the owner imposed conditions,—

(i) vary those conditions; or

(ii) remove those conditions; or

(iii) substitute new conditions; or

(d) if the owner did not respond to the provider's notice within 30 working days,—

(i) determine whether the entry and work may proceed (~~if~~ in a case where the owner's consent is required); and

(ii) specify reasonable conditions in relation to the entry and work.

(2) If the reviewer does not complete the review within the 20 working days specified in **section 118B(1)**, the reviewer is taken to have confirmed the position taken by the owner of the land.

(3) The reviewer must, as soon as practicable (but not more than 5 working days) after completing the review, notify the provider and the owner of the land in writing of—

(a) the reviewer's determination; and

(b) the reasons for that determination.

(4) This section does not apply in the circumstances set out in **section 118C(3)**.

120 Appeal against internal review determination

(1) An owner of land other than Māori-owned land may appeal to the District Court against the outcome of an internal review.

(2) The owner must lodge the appeal with the court within 20 working days after being notified of the reviewer's determination under **section 118D**.

(3) If an appeal is lodged, the provider must not proceed with the proposed works before the court has heard and decided the matter.

(4) On appeal, the court may, if satisfied that the requirements set out in **subsection (5)** have been met, make an order—

(a) authorising the provider to enter the land and carry out work specified in the order; and

(b) imposing any conditions that the court considers appropriate.

(5) The requirements are that—

(a) carrying out the work is necessary or desirable for providing water services in the provider's service area; and

(b) the provider has taken reasonable steps to negotiate consent and agreed conditions with the owner of the land; and

(c) in relation to the construction or placement of the water services infrastructure, no practical and comparably priced alternative exists.

(6) Before making an order under **subsection (4)**, the court must have regard to the particulars of any applicable resource consent or building consent.

122 Requirement to produce evidence of authority and identity

An officer, employee, or agent of a water service provider acting under a court order made under **section 120** must produce evidence of their authority and identity on entering any land under this subpart.

Compare: 2022 No 77 206

Appeals relating to Māori-owned land

129 Appeal to Māori Land Court

(1A) An owner of Māori-owned land may appeal to the Māori Land Court against the outcome of an internal review.

(1B) In addition, this section applies to an appeal by a water service provider under **section 118C(4)(b)**.

(4) An appeal must be made by giving notice of appeal—

(a) not later than 20 working days after the date on which the owner is ~~was~~ notified of the reviewer's determination under **section 118D**; or

(aa) for an appeal by a water service provider under **section 118C(4)(b)**, not later than 50 working days after the provider gives notice to the owner under **section 117**; or

(b) within any further time that the Māori Land Court allows.

~~(5) The Māori Land Court may confirm, vary, or set aside the reviewer's determination.~~

(5) On an appeal under **subsection (1A)**, the Māori Land Court may make an order confirming, varying, or setting aside the reviewer's determination.

(6) On an appeal under **subsection (1B)**, the Māori Land Court may make orders—

(a) confirming the position taken by the owner of the land; or

(b) if the owner declined consent, setting aside the owner's decision and replacing it with a determination that the entry and work may proceed—

(i) subject to reasonable conditions specified by the court; or

(ii) unconditionally; or

(c) if the owner imposed conditions,—

(i) varying those conditions; or

(ii) removing those conditions; or

(iii) substituting new conditions; or

(d) if the owner did not respond to the provider's notice within 30 working days,—

(i) determining whether the entry and work may proceed (in a case where the owner's consent is required); and

(ii) specifying reasonable conditions in relation to the entry and work.

Compare: 2022 No 77 s 232

130 Appeal to Māori Appellate Court

(1) A person may appeal to the Māori Appellate Court on a question of law only in relation to a decision of the Māori Land Court made under **section 129**.

(2) An appeal must be made by giving notice of appeal—

(a) not later than 20 working days after the date on which the order is ~~was~~ made or notice of the decision is ~~was~~ communicated to the appellant; or

(b) within any further time that the Māori Appellate Court allows.

Compare: 2022 No 77 s 233

Work on roads

132 Power to enter road and carry out work

(1) A water service provider may enter onto a road and carry out any of the following work that it considers necessary for providing water services:

(a) constructing, placing, operating, inspecting, maintaining, altering, renewing, or replacing water services infrastructure (or an overland flow path or a watercourse) on, along, over, across, or under any road in the provider's service area:

(b) removing any obstruction or blockage relating to water services infrastructure (or an overland flow path or a watercourse), or clearing any flora that constitutes a risk to water services infrastructure (or to an overland flow path or a watercourse) on, along, over, across, or under any road in the provider's service area:

(c) for the purposes of **paragraphs (a) and (b)**,—

(i) working in any road (including excavating or breaking up any road):

(ii) altering the position of, or altering, repairing, or removing, any gas, electricity, or telecommunications infrastructure or any part of that infrastructure on, along, over, across, or under any road in the provider's service area.

(2) The water service provider must exercise the powers specified in **subsection (1)** in accordance with any reasonable conditions imposed by any of the following:

(a) the road owner:

(b) ~~any~~ the local authority or other person ~~who has~~ with jurisdiction over the road:

(c) a utility operator whose infrastructure (including pipes and lines) is likely to be affected by the work.

(3) In this section and **section 133**, **utility operator** has the meaning set out in section 4 of the Utilities Access Act 2010.

Compare: 2022 No 77 s 211

133 Notice requirement

(1) Before working on any road, a water service provider must give notice of the intention to enter and carry out the work to—

(a) the local authority or other person ~~who has~~ with jurisdiction over the road; and

(b) any utility operator whose infrastructure (including pipes and lines) is likely to be affected by the work.

(2) Every notice must specify the location of the proposed work, the nature of the work, and the reasons for it.

Compare: 2001 No 103 s 136

134 Water service provider to be notified of conditions

A person or body that receives a notice under **section 133** must, within 15 working days, notify the water service provider in writing of any conditions imposed under **section 132(2)**.

Compare: 2001 No 103 s 137

135 Failure to notify conditions

If the person or body fails to notify the water service provider of conditions in accordance with **section 134**, the water service provider may commence work.

Compare: 2001 No 103 s 138

Work on level crossings

136 Power to enter level crossing and carry out work

(1) A water service provider may enter a level crossing in its service area ~~for~~ and carry out any of the following work ~~purposes~~:

(a) constructing, placing, operating, inspecting, maintaining, altering, renewing, or replacing water services infrastructure (or an overland flow

path or a watercourse) on, along, over, across, or under ~~a~~ the level crossing:

(b) removing any obstruction or blockage relating to water services infrastructure (or an overland flow path or a watercourse), or clearing any flora that constitutes a risk to water services infrastructure (or to an overland flow path or a watercourse) on, along, over, across, or under ~~a~~ the level crossing:

(c) for the purposes of **paragraphs (a) and (b)**,—

(i) working in ~~a~~ the level crossing (including excavating or breaking up a level crossing):

(ii) altering the position of, or altering, repairing, or removing, any gas, electricity, or telecommunications infrastructure or any part of that infrastructure on, along, over, across, or under ~~a~~ the level crossing.

(2) The provider must take all reasonable steps to negotiate consent to the proposed entry and work with the level crossing owner.

(3) In addition, the provider must enter the level crossing and carry out the proposed work in accordance with any reasonable conditions imposed by—

(a) the level crossing owner; and

(b) any other person ~~who has~~ with jurisdiction over the level crossing; and

(c) utility operators whose infrastructure (including pipes and lines) is likely to be affected by the work.

(4) The provider, if unable to negotiate consent, may apply to the District Court for an order authorising the provider to enter the level crossing and carry out the work.

(5) The provider must give the owner of the level crossing at least 15 working days' notice of its intention to apply to the court.

(6) The court may, if satisfied that the requirements set out in **subsection (7)** have been met, make an order—

(a) authorising the provider to enter the level crossing and carry out the work specified in the order; and

(b) imposing any conditions that the court considers appropriate, including conditions about—

(i) how and when entry may be made; and

(ii) entry being with or without the assistants, aircraft, boats, vehicles, appliances, machinery, and equipment that are reasonably necessary for the work.

(7) The requirements are that—

(a) carrying out the work is necessary or desirable for providing water services in the provider's service area; and

(aa) the work will be carried out in a manner that ensures the safety of all rail personnel and members of the public on the level crossing; and

(b) the provider has taken all reasonable steps to negotiate an agreement for entry onto the level crossing; and

(c) in relation to the construction or placement of the water services infrastructure, no practical alternative route exists.

(8) In **subsection (7)**, **rail personnel** has the meaning set out in section 4(1) of the Railways Act 2005.

Compare: Compare 2022 No 77 s 214

Urgent work

137 Urgent work permitted

(1) This section applies if—

(a) an emergency has been declared under the Water Services Act 2021, the Civil Defence Emergency Management Act 2002, the Hazardous Substances and New Organisms Act 1996, or the Biosecurity Act 1993 and immediate action is necessary to respond to the emergency; or

(b) any officer, employee, or agent of a water service provider believes, on reasonable grounds, that a specified serious risk exists.

(2) An officer, employee, or agent of a water service provider—

(a) may take immediate action to carry out any work described in **section 116(1)** (including work on Māori-owned land) or **section 132** without complying with any requirement to give notice or obtain consent; and~~—~~

~~(i) **section 116(1)(a)** (including work described in **section 123(1)(a)**) without complying with the requirement to obtain consent before entering the land; and~~

~~(ii) **section 116(1)(b) or (c) or 123(1)(a)** without complying with the requirement to give notice before entering the land; and~~

(b) must give the information required by **section 117(2)(c) or 133(2)** as soon as practicable after commencing the work, including by providing information about the action taken and the reasons for taking the action.

(3) An officer, employee, or agent of the water service provider, while exercising powers under this section in respect of the land, road, or level crossing must—

(a) carry evidence of their authority and identity; and

(b) produce the evidence on request.

(4) In this section, **specified serious risk** has the meaning set out in **section 344**.

Compare: 2001 No 103 s 139

Appeal about conditions by water service provider

138 Appeal about conditions relating to work on roads and level crossings

(1) A water service provider may appeal to the District Court against all or any of the conditions imposed under **section 132(2) or 136(3)**.

(2) The provider must lodge the appeal— 5

(a) no later than 45 working days after the date of notification of the conditions; or

(b) within any further time that the court allows.

(3) In its determination of any appeal, the court may confirm, modify, or cancel any or all of the conditions. 10

(4) The decision of the court in the determination of an appeal under this section is final.

Compare: 2001 No 103 s 141

Provider to notify landowners of court orders

139 Service of order 15

Before taking any actions authorised by a court order made under this subpart, a water service provider must send the owner of the land to which the order relates a copy of the order.

Compare: 2022 No 77 s 205

Compensation payable by water service provider 20

140 Compensation

(1) The exercise of a power set out in **section 116(1)** applies subject to Part 5 of the Public Works Act 1981 as to compensation for injurious affection to land.

(2) The amount of the compensation may be—

(a) agreed between the water service provider and the person concerned; or 25

(b) failing agreement, determined in the manner set out in the Public Works Act 1981.

Compare: 2022 No 77 s 218

Protection of water services infrastructure

141 Protection of water services infrastructure 30

(1) This section applies to any existing water services infrastructure lawfully placed on, over, or under land, or under a building on land, that is not owned by the person who owns the infrastructure.

(2) The infrastructure must remain in place until the owner of the infrastructure decides otherwise. 35

(3) No other person has any interest in the infrastructure by reason only of having an interest in the land.

Compare: 1992 No 122 s 22

142 Owners of land not responsible for maintenance

(1) An owner of land on, over, or under which any existing water services infrastructure owned by a water service provider is placed is not required by this Act to maintain the infrastructure, or to maintain tracks for the purpose of providing the water service provider with access to the infrastructure.

(2) This section does not limit or override any new or existing legally binding agreement that provides for an owner of the land to be responsible for any maintenance.

Compare: 1992 No 122 s 22A

Crown land

142A Purchase of Crown land

(1) This section applies if a water service provider intends to purchase any Crown-owned land that is not subject to a Treaty settlement deed for the purposes of constructing or placing water services infrastructure.

(2) Before any purchase may proceed,—

(a) the provider must notify the Minister or agency responsible for administering the land of the provider's intention; and

(b) that Minister or agency must consult the Minister for Treaty of Waitangi Negotiations for the purpose of considering the Crown's obligation to provide redress by way of Crown-owned land for any future settlements of Treaty of Waitangi claims.

Compare: 2022 No 77 s 228

Subpart 6—Trade waste discharges

149 Interpretation

In this subpart, unless the context otherwise requires,—

~~**trade waste discharge—**~~

~~(a) means any waste that is—~~

~~(i) discharged in the course of an industrial, commercial, or trade process or operation, or a related process or operation; and~~

~~(ii) discharged into a wastewater network; but~~

~~(b) does not include any class of waste or material that has been specified not to be trade waste discharge by a trade waste discharge plan made under **section 150**~~

trade waste bylaw means a water services bylaw made under **section 347** that relates to trade waste discharge

trade waste discharge—

(a) means any waste that is—

(i) discharged in the course of an industrial, commercial, or trade process or operation, or a related process or operation; and

(ii) discharged into a wastewater network; but

(b) does not include any class of waste or material that has been specified not to be trade waste discharge by a trade waste discharge plan made under **section 150**

~~**trade waste permit** means a permit issued by a water service provider in accordance with a water services bylaw made under **section 155**~~

trade waste discharge plan means a plan made by a water service provider under **section 150**

trade waste permit means a permit issued by a water service provider in accordance with **section 155**

trade waste premises means any land or premises used, or intended to be used, for—

(a) an industrial, commercial, or ~~a~~ trade purpose; or

(b) storing, transferring, treating, or discharging trade waste.

Trade waste discharge plans

150 Territorial authority must make trade waste discharge plan

(1) A territorial authority must prepare and issue a trade waste discharge plan no later than 2 years after the date on which this section comes into force.

(2) A territorial authority may delegate preparing, consulting on, and issuing the trade waste discharge plan to a water organisation that provides wastewater services in the territorial authority's district.

(3) A trade waste discharge plan must set out the approach that the territorial authority (and the ~~its~~ water organisation, if applicable) will take to regulate—

(a) trade waste in its district; and

(b) the discharge of trade waste into wastewater networks in its district.

(4) The trade waste discharge plan may,—

(a) if issued by a territorial authority, include proposals that the territorial authority make a trade waste bylaw; or

(b) if issued by a water organisation, include recommendations that the territorial authority make a trade waste bylaw.

(5) The trade waste discharge plan must specify—

(a) the types of or specific premises to which the trade waste discharge plan applies; and

(b) any requirements or limits in relation to transporting trade waste; and

(ba) any proposed or recommended trade waste bylaws that are necessary to implement the plan; and

(c) the circumstances in which the water service provider will impose any fees or charges in relation to trade waste, including when a penalty will be imposed for not complying with the trade waste discharge plan or a trade waste permit.

(6) The trade waste discharge plan may—

(a) include conditions that the water service provider may impose on the discharge of trade waste into the wastewater network:

(b) include different requirements or provisions for different categories of trade waste premises:

(c) apply to 1 or more wastewater networks:

(d) specify any class of waste or material that is not to be trade waste for the purposes of this Act.

151 Territorial authority must consult on proposed trade waste discharge plan

(1) When preparing a trade waste discharge plan, or preparing an amendment or a revocation of a trade waste discharge plan, the territorial authority (or the water organisation, if applicable) must consult in accordance with the process set out in **section 347(2C)** as if the references in **subpart 1 of Part 6** ~~that subpart~~ to a bylaw were references to a trade waste discharge plan.

(2) Consultation on a trade waste discharge plan must also include any consultation required under **section 153** on a proposed or recommended trade waste bylaw.

152 Bylaws proposed or recommended in trade waste discharge plan

(1) If a trade waste discharge plan includes a proposal or a recommendation for the territorial authority to make a trade waste bylaw, the territorial authority must—

(a) consider the proposal or the recommendation; and

(b) make the trade waste bylaw if satisfied that the bylaw would be consistent with this Act and other enactments related to making bylaws.

(1A) A trade waste bylaw under **subsection (1)** is made under **section 347**.

(2) A proposal or recommendation may be for a trade waste bylaw that specifies 1 or more of the following matters:

(a) the activities that may be performed by a person who holds a trade waste permit:

(b) the activities that a person must not perform without a trade waste permit:

(c) the activities that will be subject to restrictions under a trade waste permit:

(d) activities that are prohibited (for which a trade waste permit will not be issued):

(e) the territorial authority's intended approach—

(i) to issuing trade waste permits over a 5-year period, including the approach to classes of trade waste, trade waste premises, and trade waste carriers:

(ii) to determining the requirements, conditions, and limits that are to apply to different classes of trade waste under trade waste permits:

(iii) to determining the qualification, training, and supervision requirements that are to apply to persons who are granted trade waste permits:

(iv) to determining the considerations that are to apply when the territorial authority sets fees or charges in relation to trade waste permits:

(f) that an owner or operator of trade waste premises who wishes to discharge trade waste into a wastewater network must—

(i) apply for a trade waste permit to discharge the trade waste; and

(ii) pay a fee with the application:

(fa) requirements for a trade waste permit to be reviewed, varied, revoked, or transferred:

(g) the process by which the territorial authority will issue trade waste permits:

(h) the role of a water organisation ~~service provider~~ in administering or enforcing the bylaw.

153 Territorial authority must consult on proposed or recommended trade waste bylaw

(1) Before deciding whether to make a trade waste bylaw under **section 347** that is proposed or recommended in a trade waste discharge plan, a territorial authority must consult in accordance with the process set out in **subpart 1 of Part 6**.

(3) The consultation on a trade waste bylaw that is proposed or recommended in a trade waste discharge plan must be included with the consultation required under **section 151(1)** on the plan.

154 Review of trade waste discharge plan and trade waste bylaws

(1) A territorial authority must review—

(a) each trade waste discharge plan ~~that is made under this Act and~~ that relates to the territorial authority's district; and

(b) each trade waste bylaw that is made following a recommendation or proposal in a trade waste discharge plan.

(2) The territorial authority must complete a review under **subsection (1)**—

(a) no later than 10 years after the date on which it makes the plan or bylaw; and

(b) no later than 10 years after the plan or bylaw was last reviewed under **paragraph (a)**.

(2A) The territorial authority must review the trade waste discharge plan or the trade waste bylaw in accordance with **section 352(1A) to (5)**, but, in the case of reviewing a trade waste discharge plan, each reference to a bylaw must be read as a reference to the plan.

Trade waste permits

155 Bylaw may authorise making trade waste permits

(1) A trade waste bylaw made under **section 347(1)(b)** may authorise the territorial authority (or a water service provider that provides wastewater services in the territorial authority's district) to grant and administer trade waste permits (including charging fees for permits).

(2) A trade waste bylaw may authorise the territorial authority or the water service provider to specify any requirements, conditions, and limits in a trade waste permit that the territorial authority or the water service provider considers appropriate for a person to comply with in specified circumstances, including (without limitation) 1 or more of the following:

(a) requirements relating to the storage, handling, treatment, or discharge of trade waste:

(b) notification requirements (for example, notification requirements relating to unintended or accidental discharge of trade waste, whether into a wastewater network, a stormwater network, or the environment):

(c) volumetric requirements, conditions, or limits:

(d) contaminant requirements, conditions, or limits:

(e) treatment requirements or conditions:

(f) measurement or monitoring requirements:

(g) laboratory testing requirements:

(h) qualification, training, or supervision requirements:

(i) requirements relating to unique identifiers (for example, a code that enables an entity to identify particular trade waste premises or a vehicle used to transport trade waste):

(j) record-keeping, audit, and inspection requirements:

(k) a requirement to pay a fee or a charge, including a penalty fee that may be imposed if a permit holder does not comply with the terms of their permit.

(3) A trade waste permit must not be inconsistent with any relevant wastewater environmental performance standard made under section 138 of the Water Services Act 2021.

(4) A trade waste permit may only authorise trade waste to be discharged into a wastewater network—

(a) from trade waste premises specified in the permit; or

(b) by a person, specified in the permit, that transports trade waste.

(5) A trade waste permit may specify requirements, conditions, and limits that the permit holder must satisfy before discharging trade waste into a wastewater network or transporting trade waste.

(6) However, a trade waste permit may specify requirements, conditions, and limits only if—

(a) they are consistent with this Act and the relevant trade waste discharge plan; and

(b) they are necessary to—

(i) protect the wastewater network; or

(ii) enable a water service provider in the territorial authority's district to meet its reporting obligations under **subpart 3 of Part 4**.

(7) A trade waste bylaw may authorise permits that specify different requirements and conditions for different types of trade waste.

Internal review of decision ~~declining~~ to decline trade waste permit

156 Internal review of decision to decline trade waste permit

(1) A person whose application to a territorial authority for a trade waste permit is declined may apply to the territorial authority for an internal review of that decision (the **original decision**).

(2) A person who applies for an internal review must do so—

(a) no later than—

(i) 20 working days after the day on which the original decision first came to the person's notice; or

(ii) any later date that the territorial authority allows; and

(b) in the manner and form required by the territorial authority.

157 Decision of territorial authority

(1) A territorial authority that receives an application for internal review under **section 156** must review the original decision and make a new decision—

(a) as soon as practicable; and

(b) in any case, within 20 working days after receiving the application for internal review.

(2) The chief executive of the territorial authority must appoint, to undertake the internal review, a person who was not involved in making the original decision.

(3) The person appointed to undertake the review (the **appointed person**) may recommend that the territorial authority confirm, vary, set aside, or replace all or part of the original decision.

(4) The appointed person may seek further information from the applicant, and, if they do so,—

(a) the applicant must provide the information to the appointed person within the period (not less than 7 working days) specified in the request for information; and

(b) the period specified in **subsection (1)(b)** ceases to run until the applicant provides the information.

(5) If the applicant does not provide the further information to the appointed person within the required time,—

(a) the appointed person may make a recommendation to the territorial authority on the basis of the information the appointed person holds; and

(b) the territorial authority may make a decision on the basis of the recommendation.

(6) If the original decision is not varied, set aside, or replaced within the period specified in **subsection (1)(b)**, the original decision must be treated as having been confirmed by the territorial authority.

158 Notice of decision on internal review

As soon as practicable after the territorial authority makes a decision in accordance with **section 157**, the chief executive of the territorial authority must notify the applicant in writing of—

(a) the decision on the internal review; and

(b) the reasons for the decision.

159 Stay of reviewable decision on internal review

(1) If a person applies for an internal review of an original decision, the territorial authority may stay the operation of the original decision—

(a) on its own initiative; or

(b) on the application of the applicant for the review.

(2) A territorial authority must make a decision on an application for a stay within 3 working days after the date on which it receives the application.

(3) If the territorial authority does not make a decision on an application for a stay within the time specified in **subsection (2)**, the territorial authority must be treated as having granted a stay.

(4) A stay of the operation of an original decision pending a decision on an internal review continues until the territorial authority ~~reviewer~~ makes a decision on the review.

160 Appeal to District Court

(1) An applicant for a trade waste permit who is not satisfied—

(a) with a decision notified under **section 158** may appeal to the District Court against the decision:

(b) with the original decision being treated as having been confirmed under **section 157(6)** may appeal to the District Court against that confirmation.

(2) An appeal under this section must be made within 20 working ~~28~~ days after—

(a) the applicant receives notification of the outcome of the internal review; or

(b) the original decision ~~being~~ is treated as having been confirmed under **section 157(6)**.

(3) The court may—

(a) confirm, reverse, or modify the original decision; or

(b) refer the matter back to the territorial authority ~~water service provider~~ in accordance with the rules of court; or

(c) make any decision that the territorial authority ~~water service provider~~ could have made.

(4) Subject to any order of the court, every decision of the territorial authority ~~water service provider~~ continues in force and has effect pending the determination of an appeal against it.

(5) On any appeal under this section, the court may order the territorial authority ~~water service provider~~ or the appellant to pay the costs incurred by the other party in respect of the appeal.

161 Appeal to High Court

(1) A person may appeal to the High Court on a question of law only against a decision made by the District Court under **section 160**.

(2) An appeal must be made by giving notice of appeal no later than 20 working days after the date on which notice of the decision was communicated to the appellant, or within any further time that the High Court may allow.

162 Appeals to Court of Appeal or Supreme Court

(1) A party to an appeal under **section 161** may appeal to the Court of Appeal or the Supreme Court against any determination of the High Court on a question of law arising in that appeal, with the leave of the court appealed to.

(2) The Court of Appeal or the Supreme Court hearing an appeal under this section has the same power to adjudicate on the appeal as the High Court had.

(3) **Subsection (1)** is subject to section 75 of the Senior Courts Act 2016 (which provides that the Supreme Court must not give leave to appeal directly to it against a decision made in a court other than the Court of Appeal unless it is satisfied that there are exceptional circumstances that justify taking the proposed appeal directly to the Supreme Court).

163 Delegation of trade waste bylaws

If a territorial authority has delegated the administration of trade waste bylaws in the territorial authority's district to a water organisation ~~service provider~~, each reference to a territorial authority in **sections 156 to 160** ~~**159**~~ must be read as a reference to the water organisation ~~service provider~~.

Subpart 7—Management of stormwater networks

164 Application of this subpart

(1) This subpart imposes obligations on a water service provider ~~who~~ that has responsibility for managing the stormwater network in its service area.

(2) That responsibility extends to ~~any of~~ the following in the provider's service area:

(a) stormwater service zones:

(b) overland flow paths and watercourses that are a part of the network, including those that cross over or beneath private land.

164A Interpretation

In this subpart, unless the context otherwise requires,—

critical infrastructure—

(a) means stormwater infrastructure and processes whose failure would prevent or seriously impair the conveying of stormwater in a stormwater network; and

(b) includes—

(i) infrastructure described in **paragraph (a)** that conveys stormwater to, or receives stormwater from, an overland flow path or a watercourse that crosses over or beneath private land; and

(ii) infrastructure described in **paragraph (a)** (including infrastructure described in **subparagraph (i)**) that is privately owned and is part of the conveying of stormwater in a stormwater network

manage, in relation to a risk, means—

(a) to take action—

(i) to eliminate the risk; or

(ii) if elimination is not practicable, to minimise the risk so far as is reasonably practicable; and

(b) to monitor the effectiveness of those actions

private owner means the person who owns—

(a) land referred to in **section 173(a)**; or

(b) infrastructure referred to in **section 173(b)**.

~~**164A Meaning of critical infrastructure**~~

~~In this subpart, **critical infrastructure**—~~

~~(a) means stormwater infrastructure and processes whose failure would prevent or seriously impair the conveyance of stormwater in a stormwater network; and~~

~~(b) includes—~~

~~(i) infrastructure described in **paragraph (a)** that conveys stormwater to, or receives stormwater from, an overland flow path or a watercourse that crosses over or beneath private land; and~~

~~(ii) infrastructure described in **paragraph (a)** (including infrastructure described in **subparagraph (i)**) that is privately owned and is part of the conveyance of stormwater in a stormwater network.~~

Stormwater network risk management plans

165 Stormwater network risk management plan

(1) A water service provider that is responsible for managing a stormwater network in its service area must—

(a) develop a stormwater network risk management plan for the provider's service area in accordance with **sections 167 and 168A** ~~**sections 167 and 168**~~; and

(b) adopt the plan within 3 years after the commencement of this section; and

(c) implement the plan in accordance with its terms.

(2) A provider that is responsible for managing more than 1 stormwater network may develop, adopt, and implement—

(a) a separate plan for each network; or

(b) a combined plan for some or all networks.

166 More than 1 responsible water service provider

(1) This section applies if more than 1 water service provider is responsible for managing a stormwater network, with each being responsible for managing a different aspect of the network (for example, where a territorial authority establishes a water organisation to manage a stormwater network but retains responsibility for managing overland flow paths and watercourses that are a part of the stormwater network).

(2) Those providers must work collaboratively to prepare—

(a) separate compatible stormwater network risk management plans; or

(b) a joint stormwater network risk management plan that they will implement collaboratively.

167 Content of stormwater network risk management plan

(1) A stormwater network risk management plan must—

(a) contain a map of the stormwater network in the water service provider's service area; and

(b) identify all critical infrastructure in the service area ~~for the purposes of **paragraphs (c), (d), (e), and (g)**~~; and

(c) identify all hazards that could affect the operation of critical infrastructure in the stormwater network; and

(d) in relation to each hazard identified under **paragraph (c)**, assess any risks of adverse impact on the network (that is, the infrastructure and its operation); and

(e) describe how the risks assessed under **paragraph (d)** are to be managed; and

(f) identify all overland flow paths and watercourses in the service area that—

(i) receive stormwater from, or take stormwater to, ~~other~~ critical infrastructure in the network; and

(ii) cross over or beneath private land; and

(g) specify any stormwater network bylaws that must be complied with—

(i) when managing risks under **paragraph (e)**; and

(ii) when managing the capacity of overland flow paths and watercourses identified under **paragraph (f)** to receive stormwater

from, or take stormwater to, ~~other~~ critical infrastructure in the network.

(1A) In addition, a stormwater network risk management plan—

(a) must include any stormwater environmental performance standards made under section 139A of the Water Services Act 2021 and how the water service provider will meet those standards; and

(b) may refer to any relevant management plans prepared by a territorial authority or a ~~water service provider~~ water organisation under the Resource Management Act 1991.

(2) In this section,~~—~~ **hazard**, in relation to operating critical infrastructure, means any of the following:

(a) an existing hazard:

(b) an emerging hazard:

(c) a potential future hazard.

~~**hazard**, in relation to operating critical infrastructure, means—~~

~~(a) existing hazards; and~~

~~(b) emerging hazards; and~~

~~(c) potential future hazards~~

~~**manage**, in relation to a risk assessed in a stormwater network risk management plan, means—~~

~~(a) to take action—~~

~~(i) to eliminate the risk; or~~

~~(ii) if elimination is not practicable, to minimise the risk so far as practicable; and~~

~~(b) to monitor the effectiveness of those actions.~~

168A Consultation on proposed plan

(1) When preparing a stormwater network risk management plan, a water service provider must—

(a) undertake public consultation; and

(b) consult—

(i) the Water Services Authority:

(ia) the territorial authority in whose district the provider's service area is located (whether or not that authority is a shareholder in the provider):

(ii) the regional council in whose region the provider's service area is located:

(iii) ~~transport~~ corridor managers with responsibilities in the provider's service area:

(iv) if the provider is a water organisation, any territorial authority that is a shareholder in the water organisation.

Consultation materials

(2) The provider must prepare—

(a) a statement of proposal; and

~~(b) if the provider considers on reasonable grounds that a summary of the statement of proposal is necessary to enable public understanding of the proposal, a summary of the information contained in the statement of proposal:~~

(c) if the provider considers on reasonable grounds that it is necessary to enable public understanding of the proposal, a summary of the information contained in the statement of proposal.

(3) A summary of the information contained in a statement of proposal must—

(a) be a fair representation of the major matters in the statement of proposal; and

(b) be in a form determined by the water service provider; and

(c) for the ~~purpose~~ purposes of public consultation, indicate where the statement of proposal is available.

Public consultation

(4) The provider must—

(a) make the following publicly available:

(i) the statement of proposal:

(ii) any summary prepared under **subsection (2)(c)**:

(iii) a description of how the provider will give persons interested in the proposal an opportunity to present their views to the provider:

(iv) a statement of the period within which views on the proposal may be presented to the provider (the period must not end earlier than 1 month after the date on which the provider issues the statement of proposal); and

(b) make the statement of proposal (and, if applicable, the summary prepared under **subsection (2)(c)** ~~of the information contained in the statement of proposal~~) as widely available as is reasonably practicable as a basis for consultation; and

(c) provide an opportunity for interested members of the public to present their views to the provider; and

(d) ensure that any member of the public who wishes to present their views to the provider—

(i) is given a reasonable opportunity to do so; and

(ii) is informed about how and when they may do so.

(5) For the purposes of, but without limiting, **subsection (4)(d)**, the provider may allow any person to present their views to the ~~territorial authority~~ provider by way of audio link or audiovisual link.

Consultation with specified persons and bodies

(6) The provider must give the following to the persons and bodies referred to in **subsection (1)(b)**:

(a) the statement of proposal:

(b) any summary prepared under **subsection (2)(c)**~~:~~:

(c) a statement of the period within which the persons and bodies consulted may ~~must~~ give their views on the proposal ~~may~~ (the period must not end earlier than 1 month after the date on which the provider issues the statement of proposal).

Other matters

(7) This section does not prevent a provider ~~territorial authority~~ from requesting or considering, before making a decision, any comment or advice from any person in relation to the proposal.

(8) Consultation on a proposal under this section must be undertaken in a manner that gives effect to section 82 of the LGA 2002 (principles of consultation), but each reference in that section to a local authority must be read as a reference to the water service provider.

Compare: 2002 No 84 ss 83, 83AA

169 Review of plan

(1) A water service provider must review and, as necessary, revise its stormwater ~~infrastructure~~ network risk management plan at least once every 10 years.

(2) A water service provider must ~~undertake consultation~~ consult in accordance with **section 168A** in relation to a proposal to amend a stormwater network risk management plan unless the provider is satisfied that the amendment—

(a) is minor or technical~~, not adversely and substantially affect~~; and

(b) will not adversely and substantially affect the operation of any infrastructure.

Stormwater network bylaws

170 Stormwater network bylaws

(1) Water services bylaws that a territorial authority may make under **section 347** include stormwater network bylaws to support ~~the~~ a water service provider's stormwater network risk management plan (*see* **section 347(1)(d)**).

Scope of bylaws

(2) Without limiting **subsection (1)**, stormwater network bylaws may impose requirements—

(a) in relation to managing and operating critical infrastructure and all other parts of ~~the~~ a stormwater network that can affect the operation of critical infrastructure (*see* **section 167(1)(c)**); and

(b) on the owners of private land in relation to managing overland flow paths and watercourses (*see* **section 167(1)(g)(ii)**); and

(c) in relation to any matter concerning the management and operation of a ~~the~~ stormwater network, including—

(i) obstructions and diversions of stormwater; and

(ii) ground soakage systems; and

(iii) alterations to the network; and

(iv) damage to the network.

(3) Without limiting **subsection (2)(b)**, stormwater network bylaws may require private landowners to notify the water service provider about—

(a) any impairment of the capacity of a relevant overland flow path or watercourse to receive stormwater from, or take stormwater to, other infrastructure in the network; and

(b) any activity the landowner proposes to carry out near the overland flow path or watercourse that has the potential to cause an impairment of that capacity.

(3A) A territorial authority must not make a stormwater network bylaw in relation to an overland flow path within or crossing a transport corridor.

Private owners must comply

(4) An owner of private land that has an overland flow path or a watercourse crossing over or beneath it must comply with any stormwater network bylaw that applies to that land.

(5) Nothing in **sections 142 and 173A** prevents a stormwater network ~~infrastructure~~ bylaw from applying to a private owner (as defined in ~~**section 173A**~~ **section 173A(4)**).

Obligations of owners of private land

173 Application of sections 173A ~~and 175~~ to 175

Sections 173A to 175 apply to—

(a) infrastructure that conveys stormwater to, or receives stormwater from, an overland flow path or a watercourse that crosses over or beneath private land; and

(b) infrastructure (including infrastructure described in **paragraph (a)**) that is privately owned and is part of the conveyance of stormwater in a stormwater network.

173A Water service provider and private owner to manage critical infrastructure risks

(1) This section applies if a stormwater network risk management plan identifies a risk in relation to critical infrastructure described in **paragraph (b)** of the definition of critical infrastructure (*see* **section 164A**).

(2) The water service provider in whose service area the infrastructure is located must work collaboratively with the private owner to develop and implement a solution to manage the risk.

(3) The provider must develop and implement its own solution if—

(a) a collaborative approach cannot be achieved within a reasonable time; or

(b) the private owner is unable to implement an agreed solution.

~~(4) In this section,—~~

~~**manage**, in relation to a risk, means—~~

~~(a) to take action—~~

~~(i) to eliminate the risk; or~~

~~(ii) if elimination is not practicable, to minimise the risk so far as practicable; and~~

~~(b) to monitor the effectiveness of those actions~~

~~**private owner** means the person who owns—~~

~~(a) land referred to in **section 173(a)**; or~~

~~(b) infrastructure referred to in **section 173(b)**.~~

174 Private owner who impairs stormwater flow

(1) This section applies if any activity of a private owner impairs the capacity of an overland flow path or watercourse to receive stormwater from, or take stormwater to, other infrastructure in the network—

(a) in contravention of a stormwater network bylaw; or

(b) without a resource consent required under the Resource Management Act 1991 for the activity.

(2) The private owner must—

(a) remedy the impairment as soon as practicable; or

(b) pay the reasonable costs incurred by the water service provider in remedying the impairment.

(3) The private owner is not required to remedy an impairment to which this section relates that is caused by—

(a) an act or omission of another person in relation to other land; or

(b) a breach of this Act or of any regulations, bylaws, or rules made under this Act, by another person in relation to other land; or

(c) a natural disaster.

175 Private owner to notify ~~territorial authority~~ water service provider of proposed activity

A private owner who proposes to carry out an activity that could impair the capacity of ~~a~~ an overland flow path or watercourse to receive stormwater from, or take stormwater to, other infrastructure in ~~the~~ a stormwater network must notify the water service provider in whose service area the network is located of the proposed activity before carrying out the activity.

Integrated management of stormwater network

176 Service agreements for stormwater network

(1) A water service provider—

(a) must enter into a service agreement with ~~a transport~~ any corridor manager in relation to local roads located within the provider's service area; and

(b) may enter into a service agreement with any 1 or more other entities that have a statutory role, function, or interest in operating ~~the operation of~~ any stormwater infrastructure in the provider's service area.

(2) The purposes of a service agreement are—

(a) to support the integrated management of stormwater infrastructure in the provider's service area by concerned parties (including the provider); and

(b) to provide a framework for managing interactions between those concerned parties, including in relation to—

(i) collaborative working practices; and

(ii) information sharing; and

(iii) dispute resolution.

(3) A service agreement must—

(a) specify—

(i) the stormwater infrastructure and the stormwater services to which it applies; and

(ii) the stormwater infrastructure in the provider's service area to which the agreement does not apply; and

(iii) the parties to the agreement; and

(b) describe the roles and responsibilities of those parties in relation to managing, operating, and maintaining ~~the management, operation, and maintenance of~~ the stormwater infrastructure to which the agreement applies; and

(c) state how the stormwater services to which the agreement applies are to be funded.

Subpart 8—Discharge of wastewater ~~sewage~~ and trade waste

177 Discharge of wastewater ~~sewage~~ and trade waste

(1) The discharge of wastewater or trade waste into a wastewater network ~~under the control of a territorial authority~~ in accordance with the bylaws that apply in the relevant water service provider's service area ~~of the territorial authority, and the discharge of trade waste into a wastewater network in accordance with a trade waste bylaw,~~ is not a breach of—

(a) this Act; or

(b) the LGA 2002; or

(c) the Resource Management Act 1991 or regulations made under that Act: or

(d) the Building Act 2004 or regulations made under that Act.

(2) However, this section does not absolve a water service provider from liability for the discharge, in contravention of this Act, the LGA 2002, or the Resource Management Act 1991, of a contaminant from a wastewater network that is owned or operated by ~~under the control of~~ the water service provider.

Compare: 2002 No 84 s 195

178 Discharge of trade waste

(1) The occupier of trade premises within a water service provider's service area ~~the district of a territorial authority~~ may discharge trade waste proceeding from those premises into the water service provider's wastewater network ~~under the control of the territorial authority trade waste proceeding from those premises either~~—

(a) with the consent of the water service provider ~~territorial authority~~; or

(b) without consent if, and to the extent that, the discharge is permitted by a trade waste discharge plan or a trade waste bylaw.

(2) This section does not override any trade waste bylaws or the Resource Management Act 1991.

Compare: 2002 No 84 s 196

Subpart 9—Other operational matters

178A Restriction of water service to person who commits offence, etc

(1) A water service provider may, in any way it considers appropriate, restrict the water supply to a person's property if the person—

(a) commits an offence against this Act; or

(b) contravenes, or refuses or fails to comply with, a water services bylaw made under **section 347** (including by committing an infringement offence specified in a water services bylaw under **section 356**); or

(c) contravenes, or refuses or fails to comply with, any other requirement of this Act or any requirement by a water service provider or a compliance officer; or

(d) obstructs a compliance officer appointed under **section 366** in the ~~performance~~ exercise of the officer's compliance powers, including by denying the officer entry to the person's land.

(2) The provider must not restrict water supply to a person's property if the restriction, due to the circumstances or manner in which it is imposed,—

(a) creates unsanitary conditions at the property; or

(b) conflicts with the duty to ensure that a sufficient quantity of drinking water is provided under section 25 of the Water Services Act 2021.

Compare: 2002 No 84 s 193

Fire hydrants

178B Water service providers must instal fire hydrants

(1) In every part of a water service provider's service area where the provider is responsible for providing water supply services, the provider must attach fire hydrants to the main pipes of the water supply network other than trunk mains.

(2) The water service provider must—

(a) attach the fire hydrants at the most convenient places for extinguishing fires as determined by the provider with the approval of Fire and Emergency New Zealand; and

(b) determine, with the approval of Fire and Emergency New Zealand, how far apart to attach the fire hydrants; and

(c) maintain the fire hydrants in effective working order.

(3) If more than 1 water service provider is responsible for providing water supply services in a territorial authority's district, the water service providers may agree that one of those providers is responsible for attaching the fire hydrants in all or part of the district.

(4) If the water service provider is a water organisation, it must consult the territorial authority in whose district the water organisation is operating before seeking

the approval of Fire and Emergency New Zealand under **subsection (2)(a) or (b)**.

(5) If a water service provider is dissatisfied with any decision of Fire and Emergency New Zealand under **subsection (2)**, it may, within 1 month after receiving notice of the decision, appeal against that decision to the District Court, whose decision is final.

(6) In this section, **trunk main** means a main used for the purposes of—

(a) conveying water from a source of supply to a filter or reservoir; or

(b) conveying water from one filter or reservoir to another filter or reservoir; or

(c) conveying water in bulk from one part of the limits of supply to another part of those limits; or

(d) giving or taking a supply of water in bulk.

Compare: 1974 No 66 s 647(1)–(3), (5), (6)

178C Territorial authority must place notice or mark near fire hydrants

(1) A territorial authority must place a notice or mark near each fire hydrant in its district to show the location of the fire hydrant.

(2) The notice or mark—

(a) must be of a kind approved by Fire and Emergency New Zealand; and

(b) must be conspicuous; and

(c) may, if the territorial authority considers it appropriate, be placed on a building.

Compare: 1974 No 66 s 647(4)

178D Water service providers must ensure water in pipes and available for extinguishing fires

(1) A water service provider must, at all times, keep the pipes, to which fire hydrants are attached under **section 178B**, filled with water.

(2) However, **subsection (1)** does not apply—

(a) in the case of an unusual drought, an accident, or a shortage of the water supply from any cause; or

(b) during necessary repairs, connections, or inspections; or

(c) during a state of emergency declared under the Civil Defence Emergency Management Act 2002.

(3) A water service provider must allow any person to take and use water, free of charge, from any waterworks or water race for the purpose of extinguishing a fire.

(4) However, **subsection (3)** is subject to the overall requirements of a Controller while a state of emergency exists under the Civil Defence Emergency Management Act 2002.

(5) In this section,—

water race has the meaning set out in section 5(1) of the LGA 2002

waterworks includes—

(a) rivers, streams, lakes, waters, and underground waters, and rights relating to them; and

(b) land, watershed, catchment, and water collection areas; and

(c) if vested in a water service provider, or acquired, constructed, or operated by, or under the control of, a water service provider,—

(i) reservoirs, dams, bores, tanks, and pipes; and

(ii) buildings, machinery, and appliances.

Compare: 1974 No 66 s 648

Part 4
Planning, reporting, and financial management

179 Outline of this Part

(1) **Subparts 1 and 2** provide for a cycle of planning, performance, and reporting that promotes accountability to consumers of water services and to shareholders in water organisations. The cycle includes the following requirements:

(a) the shareholders of each water organisation must prepare and adopt a statement of expectations for the water organisation:

(b) each water service provider must prepare and adopt a water services strategy, an annual budget, and an annual report.

(2) **Subpart 3** provides additional planning, reporting, and performance requirements for water organisations.

(3) **Subpart 4** sets out financial matters, including provisions relating to operating revenues, borrowing in foreign currency, and income tax.

179A Responsibilities under this Part

(1) The following water service providers are responsible for preparing and adopting a water services strategy, a water services annual budget, and a water services annual report:

(a) a water service provider that is a territorial authority, but only in relation to the water services that the territorial authority provides—

(i) directly; or

(ii) through a contract with a third party; or

(iii) through a joint water service provider arrangement; or ~~:~~

(iv) through another type of arrangement under **section 9(1)(f)**:

(b) a water organisation, in relation to~~,~~—

(i) in the case of water organisations other than an Auckland water organisation, the water services that it provides under a transfer agreement; or

(ii) in the case of an Auckland water organisation,—

(A) its responsibilities for water supply and wastewater services, as defined in section 4(1) of the Local Government (Auckland Council) Act 2009, in Auckland; and

(B) any other water services, if ~~responsibilities are transferred by Auckland Council~~ Auckland Council transfers responsibilities to an Auckland water organisation using a transfer agreement under **section 11 or 13** of this Act.

(2) However, a territorial authority ~~or regional council~~ that is responsible for providing only a minor aspect of a water service that is not connected to a water supply network, wastewater network, or stormwater network that is provided by another water service provider—

(a) need not prepare and adopt a water services strategy, a water services annual budget, or a water services annual report in respect of the minor aspect of the water service ~~those services~~; but

(b) if it does not prepare and adopt all of those documents under this Part, must include information relevant to the minor aspect of the water service in its planning and reporting documents prepared under Part 6 of the LGA 2002, with appropriate modifications to reflect the minor nature of the aspect of the water service that it provides.

(3) For the purposes of **subsection (2)**, examples of a **minor aspect** of a water service include—

(a) wastewater services for a community facility, such as a campground, that is not connected to a wastewater network; and

(b) a water supply for a small number of rural homes that are not connected to a water supply network.

180 Interpretation

In this Part, unless the context otherwise requires,—

statement of expectations means a statement of expectations required under **section 184 or 185**

water services annual budget means a water services annual budget required under **section 200**

water services annual report means a water services annual report required under **section 203 or 204**

water services strategy means a water services strategy required under **section 190 or 191**.

181 Part applies in place of provisions in LGA 2002

(1) The following provisions of the LGA 2002 do not apply to a council-controlled organisation that is a water organisation or its shareholders:

(a) section 64 (statements of intent for council-controlled organisations):

(b) section 64A (shareholders may require additional plans):

(c) section 64B (statement of expectations):

(d) section 65 (performance monitoring):

(e) section 66 (half-yearly or quarterly reports):

(f) section 67 (annual report):

(g) section 68 (content of reports on operations of council-controlled organisations):

(h) section 69 (financial statements and auditor's report):

(i) Schedule 8 (statements of intent for council-controlled organisations).

(2) A territorial authority that is required to comply with this Part must not include information relating to water services in—

(b) a long-term plan prepared under section 93 and Schedule 10 of the LGA 2002:

(c) an annual plan prepared under section 95 and Schedule 10 of the LGA 2002:

(d) an annual report prepared under section 98 and Schedule 10 of the LGA 2002.

(3) However, **subsection (2)(b) and (d)** only ~~prohibit~~ prohibits a territorial authority from including information that relates to an individual group of water services activities.

(4) To avoid doubt, a territorial authority may include information about targeted rates for activities, or a group of activities, relating to water services in a funding impact statement that is included in—

(a) a long-term plan under clause 15 of Schedule 10 of the LGA 2002; or

(b) an annual plan under clause 20 of Schedule 10 of the LGA 2002.

182 Failure to comply with this Part or water services strategy

A failure by a water service provider to comply with any requirement in this Part, or to implement a proposal contained in its water services strategy, does

not affect the validity or enforceability of any deed, agreement, right, or obligation entered into, obtained, or incurred by that water service provider.

183 Publication requirements

(1) The parties listed in **subsection (3)** must publish the documents listed in **subsection (2)** on an internet site maintained by or on behalf of the relevant party—

(a) no later than 1 month after the document is adopted; and

(b) for at least 7 years.

(2) The obligation in **subsection (1)** applies to the following documents prepared and adopted under this Part:

(a) a statement of expectations (*see* **sections 184 to 189**):

(b) a water services strategy (*see* **sections 190 to 199**):

(c) a water services annual budget (*see* **sections 200 to 202**):

(d) a water services annual report (*see* **sections 203 to 207**):

(e) a water services half-yearly report (*see* **section 208**):

(f) an additional plan or report required to be prepared under **section 209**.

(3) The parties that must publish each document are,—

(a) for a statement of expectations, the relevant water organisation and each shareholder in the ~~relevant~~ water organisation ~~and the water organisation~~:

(b) for a water services strategy, the relevant water service provider:

(c) for a water services annual budget, the relevant water service provider:

(d) for a water services annual report, the relevant water service provider and, if the water service provider is a water organisation, each shareholder in the water organisation:

(e) for a water services half-yearly report, the relevant water organisation and each shareholder in the water organisation:

(f) for an additional plan or report, the relevant water organisation and each shareholder in the water organisation.

Subpart 1—Planning

Statement of expectations

184 Statement of expectations

(1) The shareholders of a water organisation must prepare and adopt a statement of expectations and provide it to the water organisation at least 6 months (or such longer period as is agreed between the shareholders and the water organisation)

before the water organisation is required to prepare a water services strategy (*see* **section 190 or 191**).

(2) A statement of expectations must relate to a period of at least 10 consecutive financial years.

(3) The purpose of a statement of expectations is—

(a) to set out the shareholders' expectations of the water organisation; and

(c) to inform and guide—

(i) the decisions and actions of the water organisation; and

(ii) the water organisation's preparation of its water services strategy (*see* **section 190 or 191**), including its strategic priorities (*see* **clause 2(1)(a) of Schedule 3**).

185 Statement of expectations for new water organisation

(1) This section applies when a water organisation is established after the date on which this section comes into force.

(2) Despite anything to the contrary in **section 184**, the shareholders in the water organisation must prepare a statement of expectations under **section 184** and provide it to the water organisation—

(a) as soon as practicable after the date on which the water organisation is established; but

(b) no later than 6 months after the date on which the water organisation is established.

(3) The shareholders may provide the water organisation with a document setting out the shareholders' interim expectations of the water organisation (an **interim statement**) that applies ~~between—~~ during the period between the following:

(a) the date on which the water organisation is established~~; and~~:

(b) the date on which the shareholders provide the statement of expectations to the water organisation under **subsection (2)**.

(4) In addition to the shareholders' expectations, an interim statement may also include, to the extent permitted by **section 188**, either or both of the following:

(a) directions for the operation of the water organisation:

(b) priorities for the water organisation.

(5) The shareholders may start preparing the statement of expectations or an interim statement before the date on which the water organisation is established.

186 Water organisation must give effect to statement of expectations

A water organisation must give effect to a statement of expectations provided by the shareholders of the water organisation.

187 Content of statement of expectations

(1) A statement of expectations prepared under this subpart must include—

(c) the outcomes that the shareholders expect the water organisation to achieve by providing water services; and

(d) requirements relating to the territorial authority's resource management planning and land use planning that are relevant to the water organisation's service area; and

(e) a requirement that the water organisation must act in accordance with any relevant statutory obligation that applies to a shareholder that is a territorial authority; and

(f) the information that the water organisation must include in its water services half-yearly report (*see* **section 208**).

(2) A statement of expectations may include any other matters the shareholders decide, including, for example,—

(a) how the shareholders require the water organisation to conduct its relationships with—

(i) the shareholders:

(ii) the shareholders' communities or any specified stakeholders within those communities:

(iii) hapū, iwi, and other Māori organisations:

(iv) consumers in the water organisation's service area:

(b) performance indicators and measures that the shareholders may use to monitor the water organisation:

(ba) expectations relating to the strategic priorities to be included in the water organisation's water services strategy:

(c) a requirement that the water organisation ~~must~~ act in accordance with an obligation that a shareholder that is a territorial authority may have with a third party (including with hapū, iwi, or other Māori organisations) under a contract or other agreement:

(d) a requirement that the water organisation undertake a specified obligation on behalf of a shareholder that is a territorial authority:

(e) a requirement to undertake community or consumer engagement, and the contents of that engagement:

(f) expectations in relation to collaborating with the shareholders and other parties when providing water services:

(g) a requirement that part or all of the water organisation's water services strategy ~~must~~ be independently reviewed or audited.

(3) A statement of expectations may contain a matter that applies—

(a) to all or a specified part of the water services provided by the water organisation (for example, a matter that applies only to wastewater):

(b) to all or a specified part of the water organisation's service area (for example, a matter that applies only to a territorial authority's district).

188 Additional requirements of statement of expectations

(1) A statement of expectations must be consistent with—

(a) all legislative obligations that apply to the water organisation; and

(ca) the water organisation's foundation documents; and

(d) the water organisation's responsibilities,—

(i) in the case of an Auckland water organisation, for providing a water supply service and wastewater services; and

(ii) in all other cases, as specified in a transfer agreement.

(2) If a water organisation is financially independent of its shareholders, the statement of expectations must not include any requirements or expectations that would compromise that financial independence.

(3) The statement of expectations must not include any requirements or expectations that—

(a) relate to the water organisation's performance or exercise of a duty, function, or power under this Act; or

(b) require the water organisation to perform, or not to perform, a specified act, or to achieve a specified result, in relation to a specified person or persons.

(4) However, **subsection (3)** does not apply if the water organisation's foundation documents provide otherwise.

189 Statement of expectations: process and limits

(1) The shareholders of a water organisation may only provide 1 statement of expectations to a water organisation at any time.

(2) If a water organisation receives a statement of expectations that is inconsistent with a direction or requirement imposed by a regulator, the regulator's direction or requirement prevails to the extent of the inconsistency.

(3) The shareholders of a water organisation must publish, on an internet site maintained by or on behalf of 1 or more of the shareholders, the process that the shareholders must follow to prepare a statement of expectations.

(3A) The process to prepare a statement of expectations must include the following:

(a) the shareholders must provide a draft of the statement of expectations to the water organisation:

(b) the shareholders must give the water organisation a reasonable opportunity to review the draft statement and provide comments:

(c) the shareholders must consider any comments provided by the water organisation before finalising the statement of expectations.

(4) In **subsection (2)**, **regulator** means 1 or more of the following:

(a) the Water Services Authority:

(b) the Commerce Commission:

(c) a regional council or unitary authority (as that term is defined in the LGA 2002) in whose region the water organisation provides water services.

Water services strategy

190 Water services strategy

(1) A water service provider must—

(a) prepare a water services strategy in accordance with this Part; and

(b) have a water services strategy in place at all times.

(2) A water service provider must adopt its water services strategy before the start of the first financial year to which the strategy relates.

(3) A water services strategy ~~must~~—

(a) comes ~~come~~ into force on the first day of the first financial year to which the water services strategy relates; and

(b) continues ~~continue~~ in force until the end of the third consecutive financial year to which it relates; and

(c) must relate to a period of at least 10 consecutive financial years or such other period as is specified in this Part or **Schedule 3**.

(4) A water services strategy must be prepared and adopted,—

(a) in the case of a water service provider that is a water organisation, by the water organisation; or

(b) in the case of a water service provider that is a territorial authority, by resolution of the territorial authority.

191 Water services strategy for new water organisation

(1) This section applies when a water organisation is established after the date on which this section comes into force.

(2) Despite anything to the contrary in **section 190**, the water organisation must prepare and adopt a water services strategy under **section 190**—

(a) as soon as practicable after the date on which the water organisation is established; but

(b) before the start of the first financial year to which the strategy relates.

(3) The water organisation and the shareholders of the water organisation ~~and the water organisation~~ may agree to 1 or more of the following matters:

(a) that the water services strategy of the water organisation may come into force on a date other than the first day of a financial year:

(b) that the water services strategy may cover a period other than what would otherwise be required under this Act—

(i) due to the strategy having come into force on a date other than the first day of a financial year; or

(ii) to enable the water organisation's next water services strategy to align with the timing requirements for the shareholders' long-term plans under section 93 of the LGA 2002.

(4) If a water organisation is established before its first water services strategy is in force, each territorial authority that establishes the water organisation must agree with the following parties the interim arrangements that will apply until the first water services strategy is in force:

(a) each other shareholder of the water organisation (if any):

(b) the board of the water organisation or, if the board has not yet been appointed, a representative of the water organisation.

(4A) The interim arrangements may include any of the following:

(a) relevant parts of the long-term plan of each territorial authority that is a shareholder in the water organisation remain in force until the water organisation's water services strategy comes into force:

(b) relevant parts of the water services strategy of each territorial authority that is a shareholder in the water organisation remain in force until the water organisation's water services strategy comes into force:

(c) preparing or relying on any other business planning or budgetary documents that can—

(i) guide the water organisation's operations; and

(ii) be used for the purposes of monitoring and reporting on the water organisation's performance.

(5) The interim arrangements cease to apply when the water organisation's first water services strategy comes into force.

192 Purpose of water services strategy

(1) The purpose of a water services strategy is—

(a) for the water service provider to state publicly, for the period to which the strategy relates,—

(i) the water services activities that it intends to carry out to achieve the objectives specified in **section 15** and any other outcomes; and

(ii) in the case of a water organisation, how the intended activities will contribute to the expectations, outcomes, or any other relevant matters set out in the water organisation's statement of expectations; and

(c) to provide a basis for the water service provider to be accountable to the following for its performance in providing water services:

(i) in the case of a water service provider that is a territorial authority, the communities in the authority's district:

(ii) in the case of a water service provider that is a water organisation, the water organisation's shareholders; and

(e) to present, in 1 document, information that relates to a water service provider's provision of water services throughout the water service provider's service area for the purposes of providing transparency about, and supporting ~~decision-making~~ decision making in relation to,—

(i) the costs of, and investment associated with, providing water services; and

(ii) the water service provider's proposed charges, levels of service, and performance measures; and

(iii) financial forecasting; and

(iv) long-term infrastructure and investment plans.

(2) Despite **subsection (1)(e)**, a water services strategy may include different information or proposals in relation to different parts of the water service provider's service area.

(3) For a water organisation,—

(a) the purpose of the water services strategy is also to provide an opportunity for the shareholders of the water organisation to—

(i) participate in the water organisation setting its strategic intentions and performance framework; and

(ii) influence the strategic direction of the water organisation; and

(b) a water services strategy must be consistent with—

(i) the water organisation's foundation documents; and

(ii) if the water organisation is an Auckland water organisation, its responsibilities for providing ~~a~~ water supply and wastewater services under the Local Government (Auckland Council) Act 2009; and

(iii) if the water organisation is not an Auckland water organisation, its responsibilities specified in a transfer agreement.

193 Effect of adopting water services strategy

(1) The effect of a water services strategy adopted by a water service provider is to provide a formal and public statement of the provider's intentions in relation to the matters covered by the strategy.

(2) A resolution to adopt a water services strategy does not constitute a decision to act on any specific matter included in the strategy.

(3) A water service provider may make a decision that is inconsistent with the contents of a water services strategy.

(3A) If a decision of a water organisation is significantly inconsistent with, or is anticipated to have consequences that will be significantly inconsistent with, the organisation's water services strategy, the water organisation must, when making the decision, clearly identify—

(a) the inconsistency; and

(b) the reasons for the inconsistency; and

(c) any intention of the water organisation to amend the water services strategy to accommodate the decision.

(3B) However, **subsection (3)** does not apply to a decision of a water service provider to set a charge under **section 60**.

(4) No person is entitled to require a water service provider to implement the provisions of a water services strategy.

(5) In ~~However, in~~ the case of a water services strategy adopted by a water service provider that is a territorial authority, this section applies subject to—

(a) section 80 of the LGA 2002; and

(b) Part 4A of the Local Government (Rating) Act 2002.

194 Contents of water services strategy

(1) A water services strategy must contain—

(a) the information specified in **Schedule 3**; and

(b) any information that the water service provider is required to publicly disclose in a water services strategy under subpart 4 of Part 4 of the Commerce Act 1986; and

(c) in the case of a water organisation,—

(i) any information that the shareholders of the water organisation require; and

(ii) an explanation of any information contained in the water services strategy that is included to give effect to a decision made by a shareholder.

(1A) Information included in a water services strategy must be consistent with any applicable requirements or determinations issued by the Commerce Commission under Part 4 of the Commerce Act 1986.

(2) All information that is included in a water services strategy must be prepared in accordance with generally accepted accounting practice if that information is of a form or nature for which generally accepted accounting practice has developed standards.

(3) However, the requirement in **subsection (2)** does not apply—

(a) if Part 4 of the Commerce Act 1986 makes alternative requirements; or

(b) to a funding impact statement that is included in the strategy (*see* **clause 5(2)(e) of Schedule 3**).

195 Process for making water services strategy: territorial authorities

(1) A territorial authority that is a water service provider must,—

(a) in addition to preparing a draft water services strategy under this subpart, prepare a summary of the major matters in the draft water services strategy; and

(b) consult its communities on the summary; and

(c) when consulting under **paragraph (b)**, use the special consultative procedure under the LGA 2002 (*see* sections 83, 83AA, and 83A of that Act).

(2) The summary under **subsection (1)(a)** must—

(a) identify and explain the important issues and choices facing the territorial authority in relation to providing water services, and the consequences of those choices; and

(b) include information about the likely consequences of implementing the water services strategy on—

(i) charges for providing water services; and

(ii) rates collected under the Local Government (Rating) Act 2002; and

(iii) the debt of the territorial authority; and

(iv) the level of service provided by the territorial authority; and

(v) the territorial authority's ability to provide for urban development and housing in its district.

(3) When using the special consultative procedure,—

(a) each reference to a statement of proposal must be read as a reference to a draft water services strategy; and

(b) each reference to a summary of the information must be read as a reference to a summary under **subsection (1)(a)**.

(4) If a territorial authority consults on the summary at the same time as consulting on its long-term plan under the LGA 2002, or as part of any other combined or concurrent consultation under section 83A of the LGA 2002,—

(a) the summary must form a discrete part of the consultation material; and

(b) the approach to consultation, and any consultation material used, must be consistent with the purpose of the water services strategy in **section 192**.

(5) If a territorial authority wishes to include a proposal to change how water services are provided in its district (*see* **section 25**) in its water services strategy, and to consult on that proposal as part of consultation on the strategy,—

(a) **section 28** does not apply; and

(b) the information required to be made publicly available under **section 28(1)** must be included in a summary prepared under **subsection (1)(a)**.

196 Process for making water services strategy: water organisations

(1) A water organisation must—

(a) prepare a draft water services strategy in accordance with—

(i) this Part; and

(ii) the water organisation's significance and engagement policy; and

(b) provide the draft strategy to the organisation's shareholders for comment no later than—

(i) 1 March in the financial year before the first financial year to which the draft strategy relates; or

(ii) any other date agreed with the shareholders.

(2) The shareholders of the water organisation must determine the nature of their involvement in preparing and finalising the water services strategy, including whether—

(a) the shareholders will be able to, as necessary,—

(i) provide comments on the draft strategy:

(ii) require the water organisation to amend the draft strategy:

(iii) approve the final strategy; or

(b) the shareholders will be able to provide comments on the draft water services strategy but will not have the power to require changes or approve the final strategy.

(2A) However, if a shareholder that is a territorial authority is able to approve the final strategy, it must comply with the decision-making requirements in the LGA 2002.

(3) The shareholders of the water organisation must ensure that information on the nature of their involvement in preparing and finalising the water services strategy under **subsection (2)** is included in the water organisation's foundation documents.

(4) The water organisation must—

(a) consider any comments the shareholders provide on the draft strategy; and

(b) comply with any requirements set by shareholders in accordance with the approach determined in the water organisation's foundation documents; and

(c) adopt the final water services strategy in accordance with **section 190**; and

(d) provide the final water services strategy to shareholders before the start of the first financial year to which the strategy relates.

(4A) When consulting its shareholders under this section, a water organisation that is owned by the trustees of 1 or more consumer trusts must also consult each territorial authority in whose district the water organisation operates on the following content of the organisation's water services strategy:

(a) the territorial authority's resource management planning and land use planning in the water organisation's service area, including how the water organisation intends to respond to any requirements in the organisation's statement of expectations (*see* **section 187(1)(d)**):

(b) the information relating to expected significant water infrastructure issues that is included in the strategy under **clause 2(3) of Schedule 3**.

(5) Except as required under **subsection (7) or (8)**, this ~~This~~ Act does not require a water organisation or its shareholders to consult communities or consumers on a draft water services strategy.

(7) However,—

(a) a water organisation's significance and engagement policy may require such consultation; and

(b) if the shareholders of a water organisation require the water organisation to consult on any proposals contained in a draft water services strategy (in addition to the shareholders commenting on the strategy), the water organisation must consult in accordance with its significance and engagement policy.

(8) Public consultation must be undertaken on a proposal in a water services strategy to—

(a) transfer ownership or control of a strategic water services asset (under **section 18(3)**); or

(b) receive a transfer of ownership or control of a strategic water services asset; or

(c) make a significant change to the level of service provided in relation to any water service.

(9) Public consultation under **subsection (8)** must be undertaken by—

(a) the organisation's shareholders; or

(b) the organisation, if directed by the shareholders.

(10) A water organisation must ensure that its significance and engagement policy addresses all matters necessary for determining—

(a) whether a water services asset is a strategic water services asset; and

(b) whether a proposed change to the level of service is a significant change; and

(c) how to comply with **subsections (8) and (9)**.

197 Amending water services strategy: territorial authority

(1) A territorial authority that is a water service provider may amend its water services strategy at any time.

(2) If the amendment is significant, the territorial authority must consult on a summary of the proposed amendment using the special consultative procedure under the LGA 2002 (*see* sections 83, 83AA, and 83A of that Act).

(2A) For the purposes of **subsection (2)**, a territorial authority's significance and engagement policy may assist the territorial authority to determine whether an amendment is significant.

(3) A territorial authority must comply with the requirements for consultation set out in **section 195** when proposing to amend a water services strategy.

(4) For the purposes of **subsection (3)**, all references in **section 195** to a draft water services strategy must be read as referring to the draft amendment.

(5) If a territorial authority amends its water services strategy and the amendment is relevant to the authority's long-term plan,—

(a) the territorial authority may consequentially amend the long-term plan; but

~~(b) the amendments need not be audited under section 94 of the LGA 2002.~~

(c) the territorial authority need not—

(i) use the special consultative procedure when amending the long-term plan (despite section 93(5) of the LGA 2002); and

(ii) comply with sections 93A and 93D of the LGA 2002 when amending the long-term plan; and

(iii) have the amendments to the long-term plan audited under section 94 of the LGA 2002.

198 Amending water services strategy: water organisation

(1) A water organisation may amend its water services strategy at any time.

(2) However, before amending the strategy, the water organisation must—

(aaa) consider whether the organisation's significance and engagement policy is relevant to the proposed amendment; and

(aab) take any further action required to comply with the significance and engagement policy; and

(a) give written notice to the shareholders of the water organisation of the proposed amendment; and

(b) consider any comments made by the shareholders on the proposed amendment that—

(i) the water organisation receives by a date agreed between the water organisation and the shareholders; and

(ii) the shareholders make in accordance with the nature of their involvement determined by shareholders under **section 196(2)**.

199 Audit of water services strategy

(1) A water service provider—

(a) must request a report from the Auditor-General on the provider's water services strategy if the Secretary requires the provider to do so; and

(b) may request a report from the Auditor-General on the provider's water services strategy if the provider decides, on its volition, to do so.

(1A) If a water service provider requests a report from the Auditor-General under **subsection (1)**, it must do so at least 12 months before the date by which the water service provider must adopt the water services strategy.

(2) A requirement under **subsection (1)(a)** for a water service provider to request a report must—

(a) be made at a time that enables the water service provider to comply with **subsection (1A)** ~~at least 12 months before the date by which the water services strategy must be adopted~~; and

(b) be made by written notice to the water service provider.

(3) A report from the Auditor-General provided under this section—

(a) must comment on—

(i) whether the strategy gives effect to the purpose of a water services strategy (*see* **section 192**); and

(ii) the quality of the information and assumptions underlying the forecast information provided in the strategy; but

(b) must not comment on the merits of the policy content of the strategy.

(4) If the Auditor-General provides a report to a water service provider, the water service provider must include the report in its water services strategy.

Water services annual budget

200 Water services annual budget

(1) A water service provider must, for each financial year that is not the first financial year to which the provider's water services strategy relates, prepare a water services annual budget.

(2) A water service provider must adopt its water services annual budget before the start of the financial year to which the budget relates.

(3) However, the following documents for the first financial year of a water services strategy must be treated as being the water service provider's water services annual budget adopted for that year:

(a) the forecast financial statements included in the provider's water services strategy under **clause 5(1) and (2)(d) of Schedule 3**:

(b) the funding impact statement included in the provider's water services strategy under **clause 5(2)(e) and (6) of Schedule 3**.

201 Contents of water services annual budget

(1) A water services annual budget must, for the relevant financial year,—

(a) contain the water service provider's proposed budget, including,—

(i) if the water service provider is a territorial authority, any rates proposed to be set under the Local Government (Rating) Act 2002; and

(ii) fees and charges (including any charges set by a water organisation under **section 60**); and

(iii) financial statements (as described in **clause 5(1) and (2)(d)(i) to (iii) of Schedule 3**); and

(iv) a funding impact statement (as described in **clause 5(2)(e) and (6) of Schedule 3**); and

(aa) contain any information that the water service provider is required to publicly disclose in the water services annual budget under Part 4 of the Commerce Act 1986; and

(b) explain any significant variation between the information in the annual budget and the corresponding information in the water services strategy for the financial year; and

(c) be consistent with the provider's intended approach to funding, revenue, and pricing for the financial year, as set out in its water services strategy (*see* **clause 5(2)(a) of Schedule 3**); and—

(d) be published in accordance with **section 183**.

(2) In the case of a water organisation, the water services annual budget may include the list of charges that the organisation is required to publish under **section 64**.

(3) Information included in a water services annual budget must be consistent with any applicable requirements or determinations issued by the Commerce Commission under Part 4 of the Commerce Act 1986.

(4) All information that is included in a water services annual budget must be prepared in accordance with generally accepted accounting practice if that information is of a form or nature for which generally accepted accounting practice has developed standards.

(5) However, the requirement in **subsection (4)** does not apply—

(a) if Part 4 of the Commerce Act 1986 makes alternative requirements; or

(b) to a funding impact statement that is included in the budget (*see* **clause 5(2)(e) and (6) of Schedule 3**).

202 Process for making water services annual budget

(1) A water service provider is not required to consult on a water services annual budget.

(2) However, in ~~In~~ the case of a water organisation, the process for preparing a water services strategy under **section 196(1) to (4)** ~~**section 196**~~ applies, with all necessary modifications, to preparing a water services annual budget.

Subpart 2—Reporting

Water services annual report

203 Water services annual report: water organisation

(1) A water organisation must, in relation to each financial year, prepare and adopt a water services annual report that reports on the organisation's operations during that financial year.

(2) The water organisation must adopt the annual report no later than 3 months after the end of the financial year to which it relates.

(3) The water organisation must provide the annual report to the shareholders of the water organisation.

(4) A water organisation's annual report under this Act may be combined with an annual report required under section 208 of the Companies Act 1993.

(5) The purpose of a water services annual report for a water organisation is—

(a) to enable the water organisation's shareholders and the public to make an informed assessment of the water organisation's performance; and

(b) to compare the water organisation's intended activities and intended performance levels for providing water services, as set out in the water

organisation's water services strategy for the financial year, with the actual activities and performance levels; and

(c) to promote the water organisation's accountability to its shareholders for its performance throughout the financial year; and

(d) to support the water organisation's shareholders' accountability to the shareholders' communities with respect to—

(i) the provision of water services; and

(ii) the water organisation's performance.

204 Annual report for new water organisation

(1) This section applies when a water organisation is established after the date on which this section comes into force.

(3) Despite anything to the contrary in **section 203**, a water organisation that is established less than 4 months before the end of a financial year must, after the end of the organisation's first full financial year, prepare and adopt an annual report that covers the period from the date on which the organisation is established until the end of the first full financial year.

(4) If the water organisation's statement of expectations and water services strategy are not in place when the water organisation prepares its first annual report, the board of the water organisation and the organisation's shareholders must agree which documents the annual report will report against.

205 Water services annual report: territorial authority

(1) A water service provider that is a territorial authority must, in relation to each financial year, prepare and adopt by resolution a water services annual report that reports on the territorial authority's water services operations during that financial year.

(2) The territorial authority must adopt the annual report by resolution no later than 4 months after the end of the financial year to which it relates.

(3) The purpose of a water services annual report for a water service provider that is a territorial authority is—

(a) to compare the territorial authority's intended activities and intended performance levels for providing water services, as set out in the territorial authority's water services strategy for the financial year, with the actual activities and performance levels; and

(b) to provide transparency of the territorial authority's activities, performance, and decisions in relation to providing water services; and

(c) to promote the territorial authority's accountability to its communities in relation to the decisions it has made in the financial year that relate to providing water services.

(4) The territorial authority may include its water services annual report in its annual report prepared and adopted under section 98 of the LGA 2002 if, in doing so,—

(a) the purposes of both annual reports are met; and

(b) the content relating to providing water services forms a discrete part of the annual report.

206 Contents of water services annual report

(1) A water services annual report for a financial year must contain—

(a) the information specified in **Schedule 4**; and

(b) any information that the water service provider is required to publicly disclose in a water services annual report under subpart 4 of Part 4 of the Commerce Act 1986; and

(c) a report by the Auditor-General on—

(i) the financial statements required by **clause 2(1)(a) or (aa) of Schedule 4**; and

(ii) the statement relating to budgeted and actual capital expenditure required by **clause 4 of Schedule 4**; and

(iii) the funding impact statement required by **clause 5 of Schedule 4**; and

(iiia) each statement of service required by **clause 7 of Schedule 4**.

(1A) Information included in a water services annual report must be consistent with any applicable requirements or determinations issued by the Commerce Commission under Part 4 of the Commerce Act 1986.

(2) All information that is included in a water services annual report must be prepared in accordance with generally accepted accounting practice if that information is of a form or nature for which generally accepted accounting practice has developed standards.

(3) However, the requirement in **subsection (2)** does not apply—

(a) if Part 4 of the Commerce Act 1986 makes alternative requirements; or

(b) to a funding impact statement (*see* **clause 5(2)(e) and (6) of Schedule 3**).

207 Auditor-General is auditor of water organisation

(1) The Auditor-General is the auditor of a water organisation.

(3) This section applies despite sections 207P to 207V of the Companies Act 1993.

Subpart 3—Additional requirements for water organisations

Water services half-yearly report

208 Water services half-yearly report: water organisation

(1) In each financial year, a water organisation must prepare and adopt a water services half-yearly report that reports on the organisation's operations during the first 6 months of the financial year.

(2) A water organisation's water services half-yearly report must include the information that the organisation's statement of expectations requires.

(3) The water organisation must provide the half-yearly report to its shareholders no later than 8 months after the start of the financial year.

Additional management requirements

209 Additional plans or reports: water organisation

(1) The shareholders of a water organisation may require, by written notice, the water organisation to prepare additional plans or reports, including—

(a) 1 or more thematic plans:

(b) an asset management plan:

(c) quarterly reports.

(2) The written notice may be included in the shareholders' statement of expectations provided to the water organisation (*see* **section 184**).

(3) A water organisation that receives a written notice must provide the additional plan or report to the shareholders in accordance with the written notice.

(4) The written notice must specify—

(a) the date by which the water organisation must provide the plan or report to the shareholders; and

(b) the matters to be addressed in the plan or report; and

(c) if relevant to the particular plan or report,—

(i) the period that the plan or report must cover; and

(ii) when the water organisation must report to shareholders on its progress against a plan.

(5) If the shareholders require a water organisation to prepare quarterly reports, the water organisation must provide the quarterly reports no later than 2 months after the end of the first and third quarters of the relevant financial year.

210 Performance monitoring: water organisations

(1) The shareholders of a water organisation must regularly monitor the performance of the water organisation.

(2) The monitoring required under **subsection (1)** must include an annual review of the organisation's performance in giving effect to—

(a) the statement of expectations provided by the shareholders (*see* **section 184**); and

(b) the strategic priorities, objectives, and outcomes specified in the water organisation's water services strategy.

Subpart 4—Financial matters

211 Financial management: water organisations

(1) A water organisation must ensure that each year's projected operating revenues are set at a level sufficient to meet that year's projected operating expenses.

(2) Despite **subsection (1)**, a water organisation may set projected operating revenues at a different level from that required by **subsection (1)** if the organisation determines that it is financially prudent to do so, having regard to—

(a) the estimated expenses of achieving and maintaining the intended service levels set out in the organisation's water services strategy, including the estimated expenses associated with maintaining the service capacity and integrity of assets ~~in the water services infrastructure~~ throughout their useful life; and

(b) the projected revenue available to fund the estimated expenses associated with maintaining the service capacity and integrity of assets ~~in the water services infrastructure~~ throughout their useful life; and

(c) the equitable allocation of responsibility for funding the provision and maintenance of assets and facilities ~~in the water services infrastructure~~ throughout their useful life.

(3) A water organisation must manage its revenues, expenses, assets, liabilities, investments, and general financial dealings prudently and in a manner that promotes the current and future interests of the communities and consumers in its service area.

(4) A water organisation must make adequate and effective provision in its water services strategy to meet the organisation's expenditure needs identified in that strategy.

(5) This section does not limit the application of Part 4 of the Commerce Act 1986.

212 Borrowing in foreign currency

(1) A water organisation may borrow or enter into incidental arrangements within or outside New Zealand in currency other than New Zealand currency.

(2) **Subsection (1)** applies despite section 113 of the LGA 2002.

213 Charges as security

(1) This section—

(a) applies if—

(i) a water organisation has granted a security interest over water services charges or the revenue from water services charges as security for a loan or the performance of any obligations under an incidental arrangement; and

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

(b) does not apply to an Auckland water organisation.

(2) The receiver may, without further authority than this section, assess and collect in each financial year a water services charge under this section to recover sufficient funds to meet—

(a) the payment of the water organisation's commitments in respect of the loan or arrangement during that year; and

(b) the receiver's reasonable costs of administering, assessing, and collecting the water services charge.

(3) However, a receiver may not create or receive any interest or security in water services infrastructure.

~~(4) A water services charge under this section must be assessed as a uniform charge in the dollar on the water services charges payable by consumers—~~

~~(a) in the water organisation's service area; or~~

~~(b) if the water organisation resolved, at the time when the loan was being raised or the incidental arrangement was being entered into, that it was for the benefit of only a specified part of the service area, in that part.~~

(4) A water services charge under this section must be assessed as an amount that is a uniform percentage (which percentage may exceed 100%) of the total water services charge payable in relation to a property during the 12-month period ending on the last day of the calendar month immediately before the month in which the water services charge is assessed under this section.

(5) A charge under this section over any 1 or more of the assets of a water organisation is subject to the Receiverships Act 1993.

(6) A water services charge under this section—

(a) is a debt due to the water organisation; and

(b) is recoverable as a debt by the water organisation in any court of competent jurisdiction.

(7) In this section,—

incidental arrangement has the same meaning as in section 112 of the LGA 2002

loan has the same meaning as in section 112 of the LGA 2002

property means a street address that, at any point in a 12-month period ending on the last day of the calendar month immediately before the month during which a charge is assessed under this section, is (or has been) connected to 1 or more of a water organisation's—

(a) water supply services:

(b) wastewater services:

(c) stormwater services.

213A Obligation to consider cost-effectiveness of wastewater options

(1) This section applies when a water service provider makes a decision relating to—

(a) options for providing wastewater infrastructure:

(b) options for treating wastewater.

(2) The water service provider must, when making a decision under **subsection (1)**, choose the option it considers to be the most cost-effective option for providing wastewater services over the life of the infrastructure assets required to implement that option.

Income tax

214 Consequences of transfer for purposes of Inland Revenue Acts

(1) For the purposes of the Inland Revenue Acts (as defined in section 3(1) of the Tax Administration Act 1994), the following entities are treated as the same person in the specified circumstances:

(a) when a territorial authority transfers the role of providing water services to a water organisation, the territorial authority and the water organisation:

(b) when a water organisation transfers the role of providing water services to another water organisation, the 2 water organisations:

(c) when a water organisation transfers the role of providing water services to a territorial authority, the water organisation and the territorial authority.

(2) This section, and the cross-heading above it, is repealed on the date that is 10 years after the date on which this section comes into force.

. . . . .

Part 6
Miscellaneous provisions

344 Interpretation

In this Part,—

compliance officer means a compliance officer appointed under **section 366**

infringement fee, in relation to an infringement offence, means the infringement fee for the offence specified in a bylaw made under this Act

infringement offence means an offence that—

(a) is identified in a bylaw made under this Act as being an infringement offence; and

(b) is an offence against **section 393, 397, 398, 401, 402, 404, 406, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, or 419**

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

(a) illness, injury, or death:

(b) public health:

(c) the natural or built environment:

(d) water services infrastructure:

(e) sites of cultural significance.

345 Regulations

(1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations for all or any of the following purposes:

(a) providing for anything this Act says may or must be provided for by regulations:

(b) 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).

Subpart 1—Water services bylaws

347 Power to make water services bylaws

(1) A territorial authority may make water services bylaws for its district for the purposes of regulating 1 or more of the following matters:

(aaa) connections to, and disconnections from, a water supply network, a stormwater network, or a wastewater network (*see* **section 110**):

(b) a matter related to trade waste specified in **section 152(2)**:

(d) managing a stormwater network~~,~~ (including bylaws to support a water service provider's stormwater network risk management plan) (*see* **section 170**):

(da) a matter that is proposed or recommended in a source water risk management plan (*see* **section 348A**):

(e) the provision of water services:

(f) conserving drinking water provided in the territorial authority's district:

(g) discharging domestic waste and sewage:

(h) the use of equipment or devices for the purposes of providing water services.

(1A) A water services bylaw may authorise a water service provider to grant and administer permits (including charging fees for permits) for activities that may be undertaken in relation to water services.

(1B) If a bylaw authorises a water service provider to charge a fee, section 150(1) to (4) of the LGA 2002 applies with any necessary modifications.

(2) To avoid doubt, a territorial authority may make a water services bylaw that relates to a specific water service despite the water service being provided by a water service provider other than the territorial authority.

(2A) Before making a bylaw, a territorial authority must—

(a) send a copy of the proposed bylaw to each water organisation that operates in the territorial authority's district for comment; and

(b) consider any comments received from a water organisation.

(2B) However, **subsection (2A)** does not apply if the water organisation proposed that the territorial authority make the bylaw.

(2C) For the purposes of making, amending, or revoking a bylaw under this subpart, section 156 of the LGA 2002 applies, with any necessary modifications, as if the bylaw were being made, amended, or revoked under that Act.

~~(3) Before making a bylaw relating to the discharge of trade waste, a territorial authority must follow the process set out in section 148(2) to (4) of the LGA 2002 as if the bylaw were being made under that Act.~~

(4) If a territorial authority makes a bylaw under **subsection (1)** regulating a wastewater network, the bylaw must not be inconsistent with any wastewater environmental performance standards made under section 138 of the Water Services Act 2021.

(5) If a territorial authority makes a bylaw under **subsection (1)** or the Reserves Act 1977 relating to a stormwater network, the bylaw must not be inconsistent with any stormwater environmental performance standards made under section 139A of the Water Services Act 2021.

(6) If a territorial authority makes a bylaw under **subsection (1)**,—

(a) it must make the bylaw available—

(i) for public inspection free of charge at the public office of the territorial authority during ordinary office hours; and

(ii) on a publicly accessible internet site maintained by or on behalf of the territorial authority; and

(b) if a water service provider in the territorial authority's district is a water organisation, the water organisation must make the bylaw available—

(i) for public inspection free of charge at the public office of the water organisation during ordinary office hours; and

(ii) on a publicly accessible internet site maintained by or on behalf of the water organisation.

348 Water organisation may propose making, amending, or revoking water services bylaw

(1) A water organisation may propose, in writing, that the territorial authority in whose district the water organisation operates makes a new water services bylaw or amends or revokes an existing water services bylaw.

(2) A territorial authority that receives a proposal under **subsection (1)** must decide, after consulting the water organisation that made the proposal, whether—

(a) the territorial authority will undertake any consultation required by section 156 of the LGA 2002 (*see* **section 347(2C)**); or

(b) the water organisation will undertake the consultation on behalf of the territorial authority.

(2A) If the territorial authority decides that the water organisation will undertake the consultation, the water organisation must—

(a) undertake the consultation; and

(b) after completing the consultation, decide whether to confirm, amend, or withdraw its proposal; and

(c) notify the territorial authority of that decision.

(2B) If the territorial authority decides to undertake the consultation, it must—

(a) undertake the consultation; and

(b) after completing the consultation, decide whether to accept, amend, or decline the proposal; and

(c) notify the water organisation of that decision, with reasons.

(3) If a water organisation that makes a proposal under **subsection (1)** operates in the district of more than 1 territorial authority, it must make the same proposal to each of the territorial authorities.

(4) However, **subsection (3)** does not apply if there is good reason for the water organisation not to make the same proposal to each territorial authority.

(5) If a water organisation makes a proposal to more than 1 territorial authority, each territorial authority that receives the proposal must, to the extent practicable,—

(a) consider the proposal jointly with the other territorial authorities that received the proposal; and

(b) respond to the proposal in a manner that ensures that its relevant bylaws are consistent with the bylaws of each other territorial authority that receives the proposal.

348A Bylaws proposed ~~or recommended~~ in source water risk management plan

(1) Without limiting **section 347**, a source water risk management plan may include a proposal that a territorial authority makes, amends, or revokes a water services bylaw.

(2) **Section 349** applies to a proposal included in a source water risk management plan.

(3) In this section, **source water risk management plan** has the meaning set out in section 5 of the Water Services Act 2021.

349 Territorial authority must consider proposal

(1) As soon as is practicable after receiving a proposal to make, amend, or revoke a water services bylaw under **section 348 or 348A** (the **proposed bylaw**), a territorial authority must decide whether it meets the following requirements:

(a) the proposed bylaw is a bylaw that relates to the water services provided by the water organisation; and

(b) the enactment under which the proposed bylaw is to be made authorises making the bylaw; and

(c) the proposed bylaw complies with the applicable statutory requirements of that enactment and any other relevant enactments; and

(d) the proposed bylaw is not inconsistent with any strategy, policy, plan, or bylaw of the territorial authority; and

(e) the proposed bylaw can be implemented and enforced in a cost-effective manner.

(1A) If the territorial authority decides that the proposed bylaw—

(a) meets the requirements in **subsection (1)**, it must—

(i) notify the water organisation that made the proposal of that decision; or

(ii) make the bylaw in accordance with **section 347**; or

(b) does not meet the requirements in **subsection (1)**, it must notify the water organisation that made the proposal of that decision, with reasons.

350 Territorial authority may delegate functions or powers relating to water services bylaws

(1) A territorial authority may delegate any of its functions or powers that relate to the administration or enforcement of a water services bylaw.

(2) However, a territorial authority—

(a) may only make a delegation under **subsection (1)** to a water organisation that operates in the territorial authority's district; and

(b) must not delegate the function or power—

(i) to make, amend, or revoke a bylaw; or

(ii) to delegate functions and powers under this section.

(3) A water organisation to which any functions or powers are delegated under this section may, unless the delegation provides otherwise, perform the function or exercise the power in the same manner, subject to the same restrictions, and with the same effect as if the water organisation were the territorial authority.

(4) A water organisation that ~~who~~ purports to perform a function or exercise a power under a delegation under this section—

(a) is, in the absence of proof to the contrary, presumed to do so in accordance with the terms of the delegation; and

(b) must produce evidence of the delegation, if reasonably requested to do so.

(5) No delegation under this section—

(a) affects or prevents the performance of any function or the exercise of any power by the territorial authority; or

(b) affects the responsibility of the territorial authority for the actions of the water organisation acting under the delegation; or

(c) is affected by any change in the membership of the territorial authority.

(6) A delegation under this section may be revoked by—

(a) resolution of the territorial authority and notice to the water organisation; or

(b) any other method provided for in the delegation.

351 Initial review of bylaws

(1) A territorial authority must identify and review each water services bylaw—

(a) that relates to providing water services in its district (whether provided by the territorial ~~local~~ authority or any other water service provider); and

(b) that the territorial authority has made under this Act or any other Act.

(2) The purpose of the review is to ensure that each water services bylaw is consistent with the requirements set out in this Act.

(3) The territorial authority must review each water services bylaw no later than the date that is 2 years after the date on which this section comes into force.

(4) As part of the review of a bylaw under this section, the territorial authority must—

(aaa) invite each water organisation operating in the territorial authority's district to propose a new bylaw or an amendment to the existing bylaw; and

(aab) consider each proposal made under **paragraph (aaa)**; and

(a) decide whether to confirm the bylaw, or to amend, revoke, or revoke and replace the bylaw to ensure it is consistent with the provisions in this Act; and

(b) if it decides a bylaw should be amended, revoked, or revoked and replaced, develop a plan for doing so.

(4A) However, **subclause (4)** does not require a territorial authority to consult a water organisation unless the organisation provides water services that are relevant to the topic of the bylaw.

(5) A plan required under **subsection (4)(b)** for amending, revoking, or revoking and replacing a bylaw must—

(a) include a schedule of dates for each step in the plan; and

(b) ensure that the amendment, replacement, or revocation and replacement is made no later than the date that is 5 years after the date on which this section comes into force.

(6) If a territorial authority has established a water organisation under a joint arrangement with 1 or more other territorial authorities, the territorial authorities must jointly complete the review under this section of the water services bylaws under which the water organisation operates.

(7) A bylaw that has not yet been reviewed under this section is not required to be reviewed under section 158 or 159 of the LGA 2002.

352 Ongoing review of water services bylaws

(1) A territorial authority must review a water services bylaw it has made under this Act or under any other Act—

(a) no later than 10 years after the date on which it makes the bylaw; and

(b) no later than 10 years after the bylaw was last reviewed under **paragraph (a)**.

(1A) A review under this section must be completed in accordance with section 160 of the LGA 2002, with any necessary modifications.

(2A) As part of the review of a bylaw under this section, the territorial authority must—

(a) invite each water organisation operating in the territorial authority's district to propose a new bylaw or an amendment to the existing bylaw; and

(b) consider each proposal made under **paragraph (a)**; and

(c) decide whether to confirm the bylaw, or to amend, revoke, or revoke and replace the bylaw to ensure it is consistent with the provisions in this Act.

(2B) However, **subclause (2A)** does not require a territorial authority to consult a water organisation ~~service provider~~ unless the water organisation ~~provider~~ provides water services that are relevant to the topic of the bylaw.

(5) If a territorial authority has established a water organisation under a joint arrangement with 1 or more other territorial authorities, the territorial authorities must jointly complete the review under this section of the water services bylaws under which the water organisation operates.

353 Water organisation must provide advice on request

(3) A water organisation that is asked for ~~advice~~ a proposal by a territorial authority under **section 351(4)(aaa) or 352(2A)(a)** must provide its ~~advice~~ proposal—

(a) to the territorial authority that sought it; and

(b) if the territorial authority that sought the ~~advice~~ proposal has entered into a joint arrangement with 1 or more other territorial authorities for the water organisation to provide water services, to those other territorial authorities.

353A Water services bylaw not reviewed within specified time frame revoked

A water services bylaw that is not reviewed in accordance with **section 351 or 352**~~-~~, if not earlier revoked by the territorial authority, is revoked,—

(a) in the case of a bylaw that is not reviewed as required under **section 351**, on the date that is 7 years after the date on which that section comes into force; or

(b) in the case of a bylaw that is not reviewed as required under **section 352**, on the date that is 2 years after the date by which the bylaw was required to have been reviewed under that section.

354 Power to make water services bylaws does not limit other powers

The power under this Act for a territorial authority to make a water services bylaw does not limit the territorial authority's power to make a bylaw under any other Act (including, for example, under the LGA 2002).

355 Bylaws Act 1910

The Bylaws Act 1910 prevails over this Act.

Subpart 2—Compliance and enforcement

Infringement offences

356 Bylaw may provide for infringement offences

A water services bylaw made under this Act may—

(a) specify the offences under this Act that are infringement offences (which must be an offence against a section listed in **paragraph (b)** of the definition of infringement offence in **section 344**):

(b) prescribe infringement fees for those offences, not exceeding—

(i) $1,000 for an individual; or

(ii) $3,000 for a body corporate:

(c) prescribe the form of infringement notices for infringement offences:

(d) prescribe matters to be included in infringement notices:

(e) prescribe the form of a reminder notice.

357 Infringement offences

(1) A person who is alleged to have committed an infringement offence may—

(a) be proceeded against by filing a charging document under section 14 of the Criminal Procedure Act 2011; or

(b) be issued with an infringement notice under **section 359**.

(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.

(2A) Section 375 of the Criminal Procedure Act 2011 applies to a defendant who is convicted of an offence under this Act that is specified to be an infringement offence in a water services bylaw that applies in the region in which the charging document is filed or the infringement notice is issued.

(2B) However, the designation of an offence as an infringement offence in a water services bylaw that applies in a district does not have the effect that the offence must be treated as an infringement offence in any other district for the purposes of section 375 of the Criminal Procedure Act 2011.

(3) *See* section 21 of the Summary Proceedings Act 1957 for the procedure that applies if an infringement notice is issued.

358 Who may issue infringement notices

(1) A territorial authority may, in writing, authorise a compliance officer to issue infringement notices under this Act.

(2) However, a territorial authority may delegate the power to authorise a compliance officer to issue infringement notices to a water organisation.

359 When infringement notice may be issued

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

360 Revocation of infringement notice before payment made

(1) The compliance officer may revoke an infringement notice before—

(a) the infringement fee is paid; or

(b) an order for payment of a fine is made or deemed to be made by a court under section 21 of the Summary Proceedings Act 1957.

(2) The compliance officer must take reasonable steps to ensure that the person to whom the notice was issued is made aware of the revocation of the notice.

(3) The revocation of an infringement notice before the infringement fee is paid is not a bar to any further action as described in **section 357(1)(a) or (b)** against the person to whom the notice was issued in respect of the same matter.

361 What infringement notice must contain

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

(a) details of the alleged infringement offence that fairly inform a person of the time, place, and nature of the alleged offence:

(b) the amount of the infringement fee:

(c) the address of the territorial authority or water organisation ~~service provider~~ (as applicable):

(d) how the infringement fee may be paid:

(e) the time within which the infringement fee must be paid:

(f) a summary of the provisions of section 21(10) of the Summary Proceedings Act 1957:

(g) a statement that the person served with the notice has a right to request a hearing:

(h) a statement of what will happen if the person served with the notice neither pays the infringement fee nor requests a hearing:

(i) any other matters required by the bylaw to be included in the notice.

362 How infringement notice may be served

(1) An infringement notice may be served on the person who the compliance officer believes is committing or has committed the infringement offence by—

(a) delivering it to the person or, if the person refuses to accept it, bringing it to the person's notice; or

(b) leaving it for the person at the person's last known place of residence with another person who appears to be of or over the age of 14 years; or

(c) leaving it for the person at the person's place of business or work with another person; or

(d) sending it to the person by prepaid post addressed to the person's last known place of residence or place of business or work; or

(e) sending it to an electronic address of the person in any case where the person does not have a known place of residence or business in New Zealand.

(2) Unless the contrary is shown,—

(a) an infringement notice (or a copy of it) sent by prepaid post to a person under **subsection (1)** is to be treated as having been served on that person on the fifth working day after the date on which it was posted; and

(b) an infringement notice sent to a valid electronic address is to be treated as having been served at the time the electronic communication first entered an information system that is outside the control of the territorial authority or water organisation ~~service provider~~ (as applicable).

363 Payment of infringement fees

An infringement fee paid for an infringement offence must be paid to the territorial authority (or the water organisation if delegated under **section 358(2)**) that appointed the compliance officer who issued the infringement notice for the offence.

364 Reminder notices

A reminder notice must be in the form prescribed in the bylaw and must include the same particulars, or substantially the same particulars, as the infringement notice.

~~Amendment to Summary Proceedings Act 1957~~

~~365 Amendment to Summary Proceedings Act 1957~~

~~(1) This section amends the Summary Proceedings Act 1957.~~

~~(2) In section 2(1), definition of **infringement notice**, after paragraph (jl), insert:~~

~~(jm) section 359 of the Local Government (Water Services) Act **2024**; or~~

Compliance officers

366 Compliance officers

(1) A territorial authority or a water organisation may, by notice in writing, appoint the following as a compliance officer:

(a) an employee of the territorial authority or water organisation:

(b) any other person who the territorial authority or water organisation ~~service provider~~ is satisfied—

(i) is suitably qualified and trained; or

(ii) belongs to a class of persons who are suitably qualified and trained to perform or exercise all or any of the functions, duties, and powers of a compliance officer.

(2) A compliance officer's compliance powers are subject to any conditions or limitations specified in the notice of the officer's appointment.

(3) However, the exercise of a compliance power by a compliance officer is not invalid merely because it did not comply with the conditions specified in their notice of appointment.

Compare: 2022 No 77 s 367

367 Identity cards

(1) A territorial authority or water organisation ~~service provider~~ must give each compliance officer it appoints an identity card that states the person's name and appointment as a compliance officer.

(2) A compliance officer must, when exercising compliance powers under this Act, produce their identity card for inspection on request.

(3) A person who ceases to be a compliance officer must, as soon as is practicable, return the identity card to the territorial authority or the water organisation ~~service provider~~ that appointed it.

Compare: 2022 No 77 s 368

368 Suspension and ending of appointment of compliance officers

A territorial authority or water organisation may, at any time, suspend or end the appointment of a compliance officer it has appointed.

Compare: 2022 No 77 s 369

Compliance powers

369 Purpose of compliance powers

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

(a) to ensure that compliance requirements under this Act have been, are being, or will be met:

(b) to investigate specified serious risks relating to water services:

(c) to respond to specified serious risks:

(d) to investigate the commission of offences against bylaws and infringement offences under this Act:

(e) to bring proceedings in relation to any compliance order (*see* **section 383**) or offence under this Act.

Compare: 2022 No 77 s 372

Power to take and test samples

370 Power to take and test samples 5

(1) A compliance officer may, for a purpose specified in **section 369**, take and test a sample of any material, substance, or other thing for analysis.

(2) However, **subsection (1)** does not authorise a compliance officer to take a sample from a person's body.

(3) A compliance officer must, not later than 10 working days after removing any sample under this section, give the person from whom it was taken an inventory of all samples taken. 10

(4) A sample taken under **subsection (1)** may only be used to determine whether compliance requirements have been, are being, or will be met.

Compare: 2002 No 77 s 377 15

Power to obtain information

371 Power to obtain information

(1) A compliance officer may—

(a) inspect, at all reasonable times, all records and documents of every description in the possession or control of a person that are required to be kept under this Act; and 20

(b) make copies of, or take extracts from, those records and documents; and

(c) direct any person who has possession or control of those records and documents to supply to the compliance officer, in any reasonable manner that the officer specifies, all or any of those records or documents; and 25

(d) take photographs, video recordings, and other visual images; and

(e) take audio sound recordings; and

(f) make electronic records.

(2) The compliance officer must, not later than 10 working days after directing a person to supply records or documents under this section, give the person an inventory of all records or documents taken. 30

(3) Subpart 5 of Part 4 of the Search and Surveillance Act 2012 (privilege and confidentiality) applies to anything done under this section.

(4) Nothing in this section limits any other legislation that imposes a prohibition or restriction on the collection of information. 35

Compare: 2022 No 77 s 378

372 Power to require name, date of birth, and address

(1) A compliance officer may require a person to provide the person's name, date of birth, and residential address if—

(a) the officer finds the person committing an offence under this Act; or

(b) the officer finds the person in circumstances that lead, or has information that leads, the officer to reasonably suspect that the person has committed an offence under this Act.

(2) When asking a person to provide their name, date of birth, and residential address, the compliance officer must—

(a) tell the person the reason for the requirement to provide their name, date of birth, and residential address; and

(b) warn the person that it is an offence to fail to provide their name, date of birth, and residential address, unless the person has a reasonable excuse.

(3) If the compliance officer reasonably believes that the name, date of birth, or residential address that a person provides is false, the compliance officer may require the person to give evidence of their correctness.

(4) Subpart 5 of Part 4 of the Search and Surveillance Act 2012 (privilege and confidentiality) applies to anything done under this section.

(5) Nothing in this section limits any other legislation that imposes a prohibition or restriction on the collection of information.

Compare: 2022 No 77 s 379

373 Power to question

(1) If a compliance officer reasonably believes that a person holds relevant information, the compliance officer may direct that person to answer any question for the purpose of—

(a) ensuring that compliance requirements have been, are being, or will be met; or

(b) investigating anything the officer believes is a specified serious risk.

(2) The person must answer the questions, subject to **subsections (3) and (4)**.

(3) Subpart 5 of Part 4 of the Search and Surveillance Act 2012 (privilege and confidentiality) applies to anything done under this section.

(4) Nothing in this section limits any other legislation that imposes a prohibition or restriction on the collection of information.

Compare: 2022 No 77 s 380

374 Powers of entry and inspection

(1) A compliance officer may exercise a power under **subsection (2)** for 1 or more of the purposes in **section 369(a) to (c)**.

(2) Subject to this section, a compliance officer may, in relation to a place,—

(a) enter the place; and

(b) inspect the place; and

(c) exercise the power set out in **section 370** (power to take and test samples).

(3) Before exercising the power to enter a place, the compliance officer must make reasonable efforts to contact the owner, occupier, or person in charge of the place.

(4) A compliance officer must not enter a home, except with the consent of an occupier.

(5) A compliance officer must not enter any land on which a marae or an urupā is situated or that is a Māori reservation, except with the consent of an owner.

(6) A compliance officer must not enter any Māori-owned land unless, before entering, the compliance officer has given reasonable notice in writing to the owner (or owners) of the land and also to the following:~~.~~

(a) the marae, if a marae is situated on the land:

(b) the trustees of the principal marae of the hapū that is associated with the land if—

(i) an urupā, but no marae, is situated on the land; or

(ii) the land has been set apart as a Māori reservation:

(c) if the land is Māori customary land,—

(i) the trustees of the principal marae of the hapū that is associated with the land; and

(ii) the Māori Trustee.

~~(7) However, if the land referred to in **subsection (6)** is owned by more than 10 persons with no clear management structure or is owned by more than 10 persons and not vested in a trustee, the compliance officer must not enter the land unless, before entering, the compliance officer has given reasonable notice in writing to the trustees of the principal marae of the hapū associated with the land.~~

~~(8) A compliance officer must not enter any land that is a reserve vested in a post-settlement governance entity and managed by an administering body unless, before entering, the compliance officer has given reasonable notice in writing to the post-settlement governance entity and the administering body.~~

(9) A compliance officer must not enter a defence area (within the meaning of section 2(1) of the Defence Act 1990) under this section, except in accordance with a written agreement between the compliance officer's chief executive and the Chief of Defence Force.

(10) Part 4 of the Search and Surveillance Act 2012 (other than subparts 2, 3, 6, and 8 and sections 118 and 119) applies to anything done under this section.

(11) For the purposes of this section, in relation to circumstances in which consent is required, the person giving consent must be a person who has the capacity to consent.

Compare: 2022 No 77 s 381

375 Power to enter place without search warrant

(1) A compliance officer may exercise a power under **subsection (2)** if the officer believes, on reasonable grounds, that the exercise of the power is required in relation to a specified serious risk.

(2) A compliance officer may, in relation to a place,—

(a) enter the place without a search warrant; and

(b) search the place; and

(c) exercise any of the powers in **sections 370 to 373**.

(3) Before exercising the power to enter a place, the compliance officer must make reasonable efforts to contact the owner, occupier, or person in charge of the place.

(4) A compliance officer must not enter a home, except with the consent of an occupier.

(5) A compliance officer must not enter any land on which a marae or an urupā is situated or that is a Māori reservation, except with the consent of an owner.

(6) A compliance officer must not enter any Māori land unless, before entering, the compliance officer has given reasonable notice in writing to the owner (or owners) of the land.

(7) However, if the land referred to in **subsection (6)** is owned by more than 10 persons with no clear management structure or is owned by more than 10 persons and not vested in a trustee, the compliance officer must not enter the land unless, before entering, the compliance officer has given reasonable notice in writing to the trustees of the principal marae of the hapū associated with the land.

(8) A compliance officer must not enter any land that is a reserve vested in a post-settlement governance entity and managed by an administering body unless, before entering, the compliance officer has given reasonable notice in writing to the post-settlement governance entity and the administering body.

(9) A compliance officer must not enter a defence area (within the meaning of section 2(1) of the Defence Act 1990) under this section, except in accordance with a written agreement between the compliance officer's chief executive and the Chief of Defence Force.

(10) Part 4 of the Search and Surveillance Act 2012 (other than subparts 2, 3, 6, and 8 and sections 118 and 119) applies to anything done under this section.

(11) For the purposes of this section, in relation to circumstances in which consent is required, the person giving consent must be a person who has the capacity to consent.

Compare: 2022 No 77 s 382

376 Notice of entry

(1) If a compliance officer enters any place under this Act and is unable, despite reasonable efforts, to find the owner, occupier, or person in charge as required by this Act, the officer must, before leaving the place, leave a written notice stating—

(a) the officer's identity; and

(b) the officer's contact information; and

(c) the date and time of entry; and

(d) the officer's reasons for entering.

(2) In **subsection (1)(b)**, **contact information** includes 1 or more of the following:

(a) phone number:

(b) email address:

(c) physical or postal address.

Compare: 2022 No 77 s 383

377 Power to enter place with consent or search warrant

(1) The chief executive of a territorial authority or water organisation ~~service provider~~ may authorise a specified person to enter and search a place, vehicle, or other thing for the purpose of ascertaining whether a person has engaged in or is engaging in conduct that contravenes or may contravene any compliance requirement, if satisfied that there are reasonable grounds—

(a) to suspect that person has engaged in or is engaging in conduct that constitutes or may constitute a contravention; and

(b) to believe that the search will find evidence in or on any part of the place, vehicle, or thing.

(2) A specified person authorised under **subsection (1)** may enter and search the place, vehicle, or other thing if—

(a) the occupier of the place or the person in charge of the vehicle or thing (as the case may be) consents; or

(b) the specified person obtains a warrant under **subsection (3)**.

(3) An issuing officer may issue a search warrant in relation to a place, vehicle, or thing, on an application made in the manner provided by subpart 3 of Part 4 of the Search and Surveillance Act 2012 by a specified person authorised under

subsection (1), if the issuing officer is satisfied that there are reasonable grounds—

(a) to suspect that a person has engaged in or is engaging in conduct that contravenes or may contravene any compliance requirement; and

(b) to believe that the search will find evidence in or on any part of the place, vehicle, or thing.

(4) In this section,—

issuing officer has the meaning set out in section 3(1) of the Search and Surveillance Act 2012

specified person means—

(a) a compliance officer; or

(b) an employee of the territorial authority or water organisation ~~service provider~~; or

(c) any other person who the chief executive of the territorial authority or water organisation ~~service provider~~ is satisfied is suitably qualified and trained.

(5) Despite **subsection (4)**, a constable may apply for a warrant to be issued under **subsection (3)** without an authorisation from the chief executive.

(6) The provisions of Part 4 of the Search and Surveillance Act 2012 (except sections 118 and 119) apply, with any necessary modifications.

Compare: 2022 No 77 s 384

377A Authority to act

(1) If a compliance officer is authorised by this Act to enter private land on behalf of a territorial authority or water organisation, the territorial authority or water organisation must provide a written warrant that the person is so authorised.

(2) The written warrant must,—

(a) in the case of a territorial authority, be produced under the seal of the authority; or

(b) in the case of a water organisation, be certified by the chief executive of the organisation.

(3) The production of a warrant provided under **subsection (1)** is sufficient proof of a person's authorisation.

(4) A compliance officer must, if requested, produce the warrant provided under **subsection (1)** before entering private land under its authority.

(5) A compliance officer must surrender to the territorial authority or water organisation the warrant provided under **subsection (1)** if—

(a) the compliance officer's appointment is terminated; or

(b) the authorisation referred to in **subsection (1)** is terminated.

Compare: 2002 No 84 s 174

377B Delegation of power to issue warrants to compliance officers

(1) A territorial authority or water organisation may delegate to a committee or member or officer of the territorial authority or water organisation the power to provide warrants to compliance officers.

(2) A delegation under **subsection (1)** may—

(a) limit or restrict the exercise of the power; or

(b) impose conditions on the exercise of the power; or

(c) prohibit, in specified circumstances, the exercise of the power.

(3) The territorial authority or water organisation must determine the matters in **subsection (2)** before acting under **subsection (1)**.

(4) To avoid doubt,—

(a) a delegation does not relieve the territorial authority or water organisation of the liability or legal responsibility to perform or ensure performance of any function or duty; and

(b) the delegation powers in this section are in addition to any power of delegation a territorial authority or water organisation has under any other enactment.

Compare: 2002 No 84 Schedule 7 cl 32A

378 Continuation of powers of entry and inspection without search warrants

A compliance officer who, in the course of exercising a power under **section 375**, finds evidence of contravention of a relevant compliance requirement is not required to obtain a search warrant under **section 377** to continue exercising powers under **section 375**.

Compare: 2022 No 77 s 385

379 Conditions of entry, search, and seizure

(1) A compliance officer must take all reasonable steps to ensure that any equipment the officer has taken into a place is—

(a) free from contamination; and

(b) in good working order.

(2) Section 110(e) of the Search and Surveillance Act 2012 applies.

Compare: 2022 No 77 s 386

380 Compliance with Building Act 2004

(1) If a compliance officer, in the course of performing functions or exercising powers under this Act, believes that any building or sitework that relates to water services infrastructure does not comply with the Building Act 2004 or

the building code made under that Act, the officer must notify the appropriate territorial authority in writing and include details of the officer's opinion.

(2) In this section, **sitework** has the meaning given in section 7(1) of the Building Act 2004.

Compare: 2022 No 77 s 387

381 Power to ask for assistance

(1) A compliance officer who considers it necessary to do so may ask a person for assistance in performing their functions or exercising their powers (other than exercising a power of entry) under this Act.

(2) If the person agrees to assist, they—

(a) must act under the supervision of, and as instructed by, the officer; and

(b) may accompany the officer into any place that the officer enters.

Compare: 2022 No 77 s 388

382 Protection of persons acting under authority of Act

(1) This section applies to the following persons:

(a) a compliance officer:

(b) a person asked to assist a compliance officer:

(c) a water organisation ~~service provider~~:

(d) a territorial authority:

(e) a specified person authorised to enter and search a place, vehicle, or thing under **section 377**.

(2) The person is protected from civil and criminal liability, however it may arise, for any act that the person does or omits to do in the performance or purported performance of the person's duties or functions, or the exercise or purported exercise of the person's powers, under this Act—

(a) in good faith; and

(b) with reasonable cause.

(3) *See* also section 6 of the Crown Proceedings Act 1950.

Compare: 2022 No 77 s 389

Compliance orders

383 Power to serve ~~issue~~ compliance order

(1) The chief executive of a territorial authority or water organisation ~~service provider~~ may serve a compliance order on any person—

(a) requiring that person to stop, or prohibiting that person from starting or continuing, anything done or to be done by, or on behalf of, that person that the chief executive believes, on reasonable grounds,—

(i) contravenes, or is likely to contravene, a compliance requirement; or

(ii) will or may create a specified serious risk; or

(b) requiring that person to do something that the chief executive believes, on reasonable grounds, will—

(i) ensure compliance by, or on behalf of, that person with a compliance requirement; or

(ii) prevent, reduce, or eliminate any specified serious risk.

(2) A compliance order may be made subject to directions and conditions.

Compare: 2022 No 77 s 390

384 Compliance with compliance order

A person on whom a compliance order is served must—

(a) comply with the order within the period specified in it; and

(b) unless the order directs otherwise, pay all the costs and expenses of complying with it.

Compare: 2022 No 77 s 391(1)

385 Form and content of compliance order

A compliance order must state—

(a) the name of the person to whom it relates; and

(b) the reasons for the order; and

(c) the action required to be taken, stopped, or not to be taken; and

(d) the period within which the action must be taken or stopped, being a reasonable period within which to take the action required or to stop the action.

Compare: 2022 No 77 s 392

386 Compliance order may be varied or cancelled

A compliance order may be amended or revoked at any time by the chief executive of the territorial authority or water organisation ~~service provider~~ that served it.

Compare: 2022 No 77 s 393

387 Formal irregularities or defects in order

A compliance order is not invalid merely because of any defect, irregularity, omission, or want of form in the order unless the defect, irregularity, omission, or want of form causes or is likely to cause a miscarriage of justice.

Compare: 2022 No 77 s 394

388 When chief executive may take remedial action

(1) This section applies if a person fails to comply with the whole or any part of a compliance order that is issued to the person.

(2) The chief executive of the territorial authority or water organisation ~~service provider~~ may take any remedial action they believe is reasonable to—

(a) ensure compliance by, or on behalf of, that person with a compliance requirement; or

(b) prevent, reduce, or eliminate a specified serious risk.

(3) However, the chief executive may only take action under **subsection (2)** after giving written notice to the person of—

(a) the chief executive's intention to take that action; and

(b) the person's liability for the costs of that action.

Compare: 2022 No 77 s 395

389 Power of chief executive to take other remedial action

(1) This section applies if the chief executive of a territorial authority or water organisation ~~service provider~~ reasonably believes that—

(a) circumstances exist in which a compliance order can be issued; but

(b) a compliance order cannot be issued at a place because, after reasonable steps are taken, the person to whom the order could be issued cannot be found.

(2) The chief executive may take any remedial action necessary to—

(a) ensure compliance by, or on behalf of, that person with any compliance requirement; or

(b) prevent, reduce, or eliminate a specified serious risk.

Compare: 2022 No 77 s 396

390 Costs of remedial action

(1) A territorial authority or water organisation ~~service provider~~ may recover as a debt due to the territorial authority or water organisation ~~service provider~~ the reasonable costs of any remedial action taken under—

(a) **section 388** from the person to whom a compliance order is issued; or

(b) **section 389** from any person to whom a compliance order could have been issued in relation to the matter.

(2) This section is subject to **section 391**.

Compare: 2022 No 77 s 397

391 Protection of Māori land against execution for debt

(1) This section applies in relation to—

(a) a judgment for the payment of costs of remedial action under **section 390**:

(b) a fine imposed for an offence against this Act.

(2) The judgment or fine cannot be enforced against a person's interest in Māori customary land or, subject to section 343 of Te Ture Whenua Maori Act 1993, a person's beneficial freehold interest in Māori freehold land.

(3) Nothing in **subsection (2)**—

(a) limits or affects the operation of any mortgage or charge to which any Māori land is subject:

(b) applies to any revenue derived by any person from any interest in land to which that subsection applies, and all such revenue is available for the payment of the person's debts.

(4) For the purposes of this section, the interest of any person in Māori land includes—

(a) that person's interest in all timber, flax, and other things (other than industrial crops) so attached to the land as to form part of it as between the heir and the executor of a deceased freeholder at common law; and

(b) while the land remains Māori land, that person's interest in all money that is the proceeds of any alienation of that land, except any money that has been actually received by that person or by any trustee for that person.

Compare: 2022 No 77 s 398

392 Chief executive may delegate

(1) The chief executive of a territorial authority or water organisation ~~service provider~~ may delegate any of the chief executive's functions or powers under this subpart to any officer or employee of the territorial authority or water organisation ~~service provider~~.

(2) A person to whom any functions or powers are delegated may perform those functions or exercise those powers in the same manner and with the same effect as if they had been conferred on that person directly by this Act and not by delegation (subject to any general or special directions given or conditions imposed by the chief executive).

(3) A delegation under this section—

(a) must be in writing signed by the chief executive; and

(b) is revocable at will in writing signed by the chief executive.

(4) A person purporting to act under a delegation is, in the absence of proof to the contrary, presumed to be acting in accordance with the terms of the delegation.

(5) A delegation does not prevent the chief executive from performing any function or exercising any power or affect the chief executive's responsibility for the actions of any person acting under the delegation.

(6) If the chief executive ceases to hold office, the delegation continues to have effect as if it were made by the chief executive's successor in office.

(7) The chief executive must not delegate the power to delegate under this section.

Subpart 3—Offences

Infrastructure offence

393 Carrying out building work over or near water services infrastructure without approval

(1) A person commits an offence if they carry out building work over or near water services infrastructure without approval from the relevant water service provider.

(1A) However, **subsection (1)** does not apply to building work that is carried out—

(a) by a person authorised to do the work by a licensed access provider under the Railways Act 2005; and

(b) within a rail corridor under the Railways Act 2005.

(1B) For the purposes of **subsection (1)**, building work is **near** water services infrastructure if—

(a) it is less than 2 metres from a water services pipe that is less than 300 millimetres in diameter; or

(b) it is less than 10 metres from a water services pipe that is 300 millimetres or more in diameter.

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

(a) for an individual, to a fine not exceeding $20,000:

(b) for a body corporate or an unincorporated body, to a fine not exceeding $200,000.

Compare: 2022 No 77 s 401

Offences relating to water supply network

394 Engaging in conduct relating to water supply network that causes specified serious risk

(1) A person commits an offence if they—

(a) engage in conduct relating to a water supply network that causes a specified serious risk; and

(b) intentionally cause, or are reckless as to causing, that specified serious risk.

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

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

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

Compare: 2022 No 77 s 402

395 Negligently engaging in conduct relating to water supply network that causes specified serious risk

(1) A person commits an offence if they negligently engage in conduct relating to a water supply network that causes a specified serious risk.

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

(a) for an individual, to a fine not exceeding $50,000:

(b) for a body corporate or an unincorporated body, to a fine not exceeding $1 million.

Compare: 2022 No 77 s 403

395A Discharging into water supply network without authorisation

(1) A person commits an offence if they discharge anything into a water supply network without written authorisation from a water service provider.

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

(a) for an individual, to a fine not exceeding $50,000:

(b) for a body corporate or an unincorporated body, to a fine not exceeding $500,000.

Compare: 2022 No 77 s 416

395B Connecting to or disconnecting from water supply network or supplying water to another person without authorisation

(1) A person commits an offence if they—

(a) knowingly connect to or disconnect from, or take water from, a water supply network without authorisation from a water service provider; or

(b) having been supplied with water by a water service provider from a water supply network, knowingly and without authorisation from the water service provider extend their network connection to another property that should be party to a service agreement with the water service provider.

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

(a) for an individual, to a fine not exceeding $50,000:

(b) for a body corporate or an unincorporated body, to a fine not exceeding $500,000.

Compare: 2022 No 77 s 417

Offences relating to wastewater networks

396 Disposing of materials or substances into wastewater network causing specified serious risk

(1) A person commits an offence if they—

(a) dispose of or discharge materials or substances into a wastewater network and that disposal or discharge causes a specified serious risk; and

(b) intentionally cause, or are reckless as to causing, that specified serious risk.

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

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

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

Compare: 2022 No 77 s 404

397 Negligently disposing of materials or substances into wastewater network causing specified serious risk

(1) A person commits an offence if they negligently dispose of materials or substances in, or discharge them into, a wastewater network and that disposal or discharge causes a specified serious risk.

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

(a) for an individual, to a fine not exceeding $50,000:

(b) for a body corporate or an unincorporated body, to a fine not exceeding $1 million.

Compare: 2022 No 77 s 405

398 Connecting to, disconnecting from, or discharging into wastewater network without authorisation

(1) A person commits an offence if they connect to, disconnect from, or discharge material or substances into a wastewater network without the authorisation of a water service provider.

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

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

(b) for a body corporate or an unincorporated body, to a fine not exceeding $500,000.

Compare: 2022 No 77 s 406

399 Engaging in conduct relating to wastewater network that causes specified serious risk

(1) A person commits an offence if they—

(a) engage in conduct relating to a wastewater network that causes a specified serious risk; and

(b) intentionally cause, or are reckless as to causing, that specified serious risk.

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

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

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

Compare: 2022 No 77 s 407

400 Negligently engaging in conduct relating to wastewater network that causes specified serious risk

(1) A person commits an offence if they negligently engage in conduct relating to a wastewater network that causes a specified serious risk.

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

(a) for an individual, to a fine not exceeding $50,000:

(b) for a body corporate or an unincorporated body, to a fine not exceeding $1 million.

Compare: 2022 No 77 s 408

401 Discharging trade waste without trade waste permit

(1) A person commits an offence if they discharge trade waste into a wastewater network without a trade waste permit issued under a trade waste bylaw made under **section 347**.

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

(a) for an individual, to a fine not exceeding $500,000:

(b) for a body corporate or an unincorporated body, to a fine not exceeding $3 million.

Compare: 2022 No 77 s 409

402 Breach of trade waste permit

(1) A person commits an offence if they breach a trade waste permit issued under a trade waste bylaw made under **section 347**.

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

(a) for an individual, to a fine not exceeding $250,000:

(b) for a body corporate or an unincorporated body, to a fine not exceeding $3 million.

Compare: 2022 No 77 s 410

Offences relating to stormwater network

403 Disposing of or discharging materials or substances into stormwater network causing specified serious risk

(1) A person commits an offence if they—

(a) dispose of or discharge materials or substances into a stormwater network and that disposal or discharge causes a specified serious risk; and

(b) intentionally cause, or are reckless as to causing, that specified serious risk.

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

(a) for an individual, to a fine not exceeding $200,000:

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

Compare: 2022 No 77 s 411

404 Negligently disposing of or discharging materials or substances into stormwater network causing specified serious risk

(1) A person commits an offence if they negligently dispose of or discharge materials or substances into a stormwater network and the disposal or discharge causes a specified serious risk.

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

(a) for an individual, to a fine not exceeding $50,000:

(b) for a body corporate or an unincorporated body, to a fine not exceeding $500,000.

Compare: 2022 No 77 s 412

405 Engaging in conduct relating to stormwater network that causes specified serious risk

(1) A person commits an offence if they—

(a) engage in conduct relating to a stormwater network that causes a specified serious risk; and

(b) intentionally cause, or are reckless as to causing, that specified serious risk.

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

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

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

Compare: 2022 No 77 s 413

406 Connecting to or disconnecting from, or discharging materials or substances into, stormwater network without authorisation

(1) A person commits an offence if they, without authorisation from a water service provider,—

(a) connect to or disconnect from a stormwater network; or

(b) discharge materials or substances into a stormwater network.

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

(a) for an individual, to a fine not exceeding $50,000:

(b) for a body corporate or an unincorporated body, to a fine not exceeding $500,000.

Compare: 2022 No 77 s 414

407 Negligently engaging in conduct relating to stormwater network that causes specified serious risk

(1) A person commits an offence if they negligently engage in conduct relating to a stormwater network that causes a specified serious risk.

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

(a) for an individual, to a fine not exceeding $50,000:

(b) for a body corporate or an unincorporated body, to a fine not exceeding $1 million.

Compare: 2022 No 77 s 415

Offence relating to water supply network, wastewater network, or stormwater network

410 Carrying out work on or in relation to water supply network, wastewater network, or stormwater network without authorisation

(1) A person commits an offence if they knowingly carry out work on or in relation to a water supply network, wastewater network, or a stormwater network owned or operated by a water service provider without first— 5

(a) notifying the water service provider of their intention to carry out the work; and

(b) obtaining written authorisation from the water service provider to carry out the work on any terms or conditions that the water service provider thinks fit. 10

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

(a) for an individual, to a fine not exceeding $100,000: 15

(b) for a body corporate or an unincorporated body, to a fine not exceeding $500,000.

(3) A person does not commit an offence against this section if the work is carried out in accordance with a statutory authorisation.

(4) It is a defence to an offence against this section if the work carried out was necessary to avoid an emergency, or to mitigate or remedy the effects of an emergency. 20

Compare: 2022 No 77 s 418

Offences relating to plans, permits, bylaws, directions, and compliance orders

411 Breach of source water risk management plan or permit 25

(1) A person commits an offence if they breach a prohibition, restriction, or requirement set out in—

(a) a source water risk management plan issued under the Water Services Act 2021; or

(b) a permit issued under a water services bylaw. 30

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

(a) for an individual, to a fine not exceeding $20,000:

(b) for a body corporate or an unincorporated body, to a fine not exceeding $100,000. 35

Compare: 2022 No 77 s 419

412 Breach of duty in stormwater network ~~bylaw that~~ bylaw: breach causes specified serious risk

(1) A person commits an offence if they—

(a) have a duty under a stormwater network bylaw made under **section 347**; and

(b) knowingly fail to comply with that duty and that non-compliance causes a specified serious risk.

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

(a) for an individual, to a fine not exceeding $20,000:

(b) for a body corporate or an unincorporated body, to a fine not exceeding $200,000.

Compare: 2022 No 77 s 420

413 Failure to comply with water services bylaw relating to equipment or ~~device that~~ device: failure causes specified serious risk

(1) A person commits an offence if they—

(a) have a duty under a water services bylaw made under **section 347** relating to equipment or devices; and

(b) knowingly fail to comply with that duty and that non-compliance causes a specified serious risk.

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

(a) for an individual, to a fine not exceeding $20,000:

(b) for a body corporate or an unincorporated body, to a fine not exceeding $200,000.

Compare: 2022 No 77 s 421

414 Failure to notify water service provider of notifiable risk or ~~hazard that~~ hazard: failure causes specified serious risk

(1) A person commits an offence if they—

(a) have a duty to notify a water service provider of a notifiable risk or hazard under a bylaw made under **section 347**; and

(b) knowingly fail to comply with that duty and that non-compliance causes a specified serious risk.

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

(a) for an individual, to a fine not exceeding $20,000:

(b) for a body corporate or an unincorporated body, to a fine not exceeding $200,000.

Compare: 2022 No 77 s 422

415 Failure to comply with water use restriction or limit

(1) A person commits an offence if they—

(a) are subject to a water use restriction or limit set out in a bylaw made under **section 347**; and

(b) knowingly fail to comply with that restriction or limit and that non-compliance causes a specified serious risk.

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

(a) for an individual, to a fine not exceeding $20,000:

(b) for a body corporate or an unincorporated body, to a fine not exceeding $100,000.

Compare: 2022 No 77 s 423

416 Breach of bylaw relating to undertaking specified classes of work near, under, or above water supply network, wastewater network, or stormwater network

(1) A person commits an offence if they knowingly fail to comply with a bylaw made under **section 347** regulating, restricting, or prohibiting the undertaking of specified classes of work near, under, or above a water supply network, a wastewater network, or a stormwater network.

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

(a) for an individual, to a fine not exceeding $20,000:

(b) for a body corporate or an unincorporated body, to a fine not exceeding $200,000.

(3) A person does not commit an offence against this section if the work is undertaken in accordance with a statutory authorisation.

(4) It is a defence against this section if—

(a) the action or event to which the prosecution relates was necessary for the purposes of preventing, avoiding, or mitigating a specified serious risk; and

(b) the conduct of the defendant was reasonable in the circumstances; and

(c) the defendant took steps that were reasonable in all the circumstances to mitigate or remedy the effects of the action or event after it occurred.

Compare: 2022 No 77 s 424

417 Failure to comply with direction given ~~issued~~ by compliance officer

(1) A person commits an offence if they fail to comply with a direction given ~~issued~~ by a compliance officer under **section 371(1)(c) or 373(1)**.

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

(a) for an individual, to a fine not exceeding $75,000:

(b) for a body corporate or an unincorporated body, to a fine not exceeding $300,000.

Compare: 2022 No 77 s 425

418 Failure to comply with compliance order or court order

(1) A person commits an offence if they fail to comply with a compliance order issued under **section 383** or an order of the court made under this Act.

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

(a) for an individual, to a fine not exceeding $75,000:

(b) for a body corporate or an unincorporated body, to a fine not exceeding $300,000.

Compare: 2022 No 77 s 426

419 Tampering with water meter

(1) A person commits an offence if they, without the prior written authorisation of a water service provider,—

(a) alter the index of, or in any other manner tamper with, a water meter; or

(b) alter the position of a water meter.

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

(a) for an individual, to a fine not exceeding $50,000:

(b) for a body corporate or an unincorporated body, to a fine not exceeding $200,000.

Compare: 2002 No 77 s 427

Offences relating to duties associated with administration of Act

420 Intentionally hindering or obstructing employee or agent of territorial authority or water organisation ~~service provider~~

(1) A person commits an offence if they intentionally hinder or obstruct an employee or agent of a territorial authority or water organisation ~~service provider~~ who is performing a duty or function, or exercising a power, under this Act.

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

(a) for an individual, to a fine not exceeding $10,000:

(b) for a body corporate or an unincorporated body, to a fine not exceeding $250,000.

Compare: 2022 No 77 s 428

421 Intentionally threatening or assaulting employee or agent of territorial authority or water organisation ~~service provider~~

(1) A person commits an offence if they intentionally threaten or assault an employee or agent of a territorial authority or water organisation ~~service provider~~ who is performing a duty or function, or exercising a power, under this Act.

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

(a) for an individual, to a fine not exceeding $50,000:

(b) for a body corporate or an unincorporated body, to a fine not exceeding $250,000.

Compare: 2022 No 77 s 429

422 Pretending to be compliance officer, employee, agent, or warrant holder of territorial authority or water organisation ~~service provider~~

(1) A person commits an offence if, with intent to deceive,—

(a) they pretend to be a person who has been appointed as a compliance officer under **section 366**; or

(b) they pretend to be an employee or agent of a territorial authority or water organisation ~~service provider~~; or

(c) they pretend to be a person who holds a warrant under **section 377A** despite not holding such a warrant; or

(d) they act under a warrant under ~~**section 347**~~ **section 377 or 377A** after the termination of, as the case may be,—

(i) their appointment as a compliance officer of the territorial authority or water organisation; or

(ii) their authority to act on behalf of the territorial authority or water organisation.

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

(a) for an individual, to a fine not exceeding $50,000:

(b) for a body corporate or an unincorporated body, to a fine not exceeding $250,000.

Compare: 2022 No 77 s 430

Defences in prosecution for strict liability offences

423 Defences in prosecution for strict liability offences

(1) This section applies in a prosecution for an offence against a section of this Act listed in the following table:

Section	Description
398	Connecting to, disconnecting from, or discharging into wastewater network without authorisation
401	Discharging trade waste without trade waste permit
402	Breach of trade waste permit
411	Breach of source water risk management plan or permit
417	Failure to comply with direction issued by compliance officer
418	Failure to comply with compliance order or court order
419	Tampering with water meter

(2) The defendant has a defence if they prove that—

(a) the commission of the offence was due to—

(i) the act or omission of another person; or

(ii) an accident; or

(iii) some other cause outside the defendant's control; and

(b) the defendant took all reasonable precautions and exercised due diligence to avoid the commission of the offence or offences of the same kind.

(3) The defendant has a defence if they prove that—

(a) the action or event to which the prosecution relates was necessary for the purposes of preventing, avoiding, or mitigating a specified serious risk; and

(b) the conduct of the defendant was reasonable in the circumstances; and

(c) the defendant took steps that were reasonable in all the circumstances to mitigate or remedy the effects of the action or event after it occurred.

(4) For the purposes of this section, the court may take into account all relevant matters, including—

(a) the likelihood of the hazard or risk concerned, including a specified serious risk, occurring; and

(b) the degree of harm that might result from the hazard or risk; and

(c) what the person concerned knows, or ought reasonably to know, about—

(i) the hazard or risk; and

(ii) ways of eliminating or minimising the risk; and

(d) the availability and suitability of ways to eliminate or minimise the risk.

Subpart 4—Review of water services system

424 Minister to initiate review

(1) The Minister must initiate a review of the water services system, as specified in **section 425(1)**,—

(a) no sooner than 54 months after the commencement of this Act; and

(b) no later than 66 months after that commencement.

(2) Before initiating a review, the Minister must consult all other Ministers of the Crown that the Minister considers appropriate.

(3) The Minister initiates a review by—

(a) preparing the terms of reference for the review under **section 426**; and

(b) appointing a reviewer under **section 427**.

425 Scope of review of water services system

(1) The review of the water services system must examine and report on the overall operation and effectiveness of water services legislation and local government arrangements for providing water services, including—

(a) the performance and interaction of relevant regulators, government departments, and Crown entities; and

(b) the effectiveness of relevant regulatory frameworks; and

(c) the structure of local government arrangements for providing water services (including any arrangements that involve consumer trusts); and

(d) any other matters identified by the Minister.

(2) In this subpart, **water services legislation** includes the following:

(a) this Act and all secondary legislation made under it:

(b) the **Water Services Authority—Taumata Arowai Act 2020**:

(c) the Water Services Act 2021 and all secondary legislation made under that Act that relates to providing water services:

(d) Parts 4 **and 4A** of the Commerce Act 1986 and all secondary legislation made under that Act that relates to providing water services:

(e) any other legislation that is relevant to local government and providing water services.

426 Terms of reference

The Minister must prepare the terms of reference for the review within the scope of the review specified in **section 425**.

427 Minister must appoint reviewer

(1) The Minister must appoint a reviewer to conduct a review under this subpart.

(2) The reviewer must be 1 or more of the following:

(a) the department responsible for the administration of this Act:

(b) another department that is listed in Part 1 of Schedule 2 of the Public Service Act 2020:

(c) any other person or panel of people that the Minister considers suitable to conduct the review.

(3) After appointing the reviewer, the Minister must—

(a) give the review's terms of reference to the reviewer; and

(b) publish, by notice in the *Gazette*, the name (or names) of the reviewer and the review's terms of reference.

428 Conduct of review

(1) The reviewer must conduct the review in accordance with the terms of reference that the Minister gives to the reviewer.

(2) When conducting the review, the reviewer must consult the people the reviewer considers appropriate on the matters to be included in the report prepared under **section 430**.

429 Reviewer's power to request information

(1) The reviewer may, by notice in writing, require any of the following entities to give the reviewer any information the reviewer considers necessary for conducting the review:

(a) a water service provider:

(b) a local authority:

(c) the trustees of a consumer trust:

(d) the Commerce Commission:

(e) the Water Services Authority:

(f) a relevant public service agency (as defined in section 10 of the Public Service Act 2020):

(g) a relevant statutory entity (as defined in section 10(1) of the Crown Entities Act 2004):

(h) any other relevant person or body.

(1A) However, the reviewer may not require the following officers of Parliament to give information under **subsection (1)**:

(a) an Ombudsman appointed under the Ombudsmen Act 1975:

(b) the Parliamentary Commissioner for the Environment:

(c) the Controller and Auditor-General.

(2) A notice must specify—

(a) the information required; and

(b) the form in which the information must be given; and

(c) a reasonable time for giving the information.

(3) An entity that receives a notice must give the required information to the reviewer in accordance with the notice unless—

(a) withholding the information is necessary to protect the privacy of a living individual; and

(b) that necessity is not outweighed by the reviewer's need for the information.

Compare: 2022 No 77 ss 176, 469

430 Report

(1) The reviewer must prepare a report on the review once the review is concluded.

(2) The report must include the following:

(a) the review's terms of reference:

(b) the process that the reviewer followed:

(c) the issues that the reviewer examined:

(d) the reviewer's findings:

(e) the reviewer's recommendations, including—

(i) any necessary or desirable amendments to any water services legislation; and

(ii) any necessary or desirable changes to the structure of local government arrangements for providing water services; and

(iii) any other necessary or desirable changes to other relevant regulatory schemes or the operation of relevant regulators:

(f) any actions the Minister might consider taking under Part 10 of the LGA 2002:

(g) any other matters that the reviewer considers appropriate.

(3) On completing the report, the reviewer must promptly give it to the Minister.

Compare: 2022 No 77 s 470

431 Minister's obligations on receiving report

(1) On receiving a report under **section 430**, the Minister must present a copy to the House of Representatives.

(2) The Minister must consider the findings and recommendations in the report and take any further action that the Minister considers appropriate.

~~Subpart 5—Consequential amendments~~

~~432 Consequential amendments~~

~~Amend the legislation specified in **Schedule 12** as set out in that schedule.~~

Schedule 1
Transitional, savings, and related provisions

s 5

Part 1
Provisions relating to this Act as enacted

Transfer of employees

1 Identification of affected employees

(1) This clause applies when the responsibility for providing water services transfers from one water service provider (**provider A**) to another water service provider (**provider B**) (the **transfer**).

(2) Before the transfer takes place, the chief executive of provider A must identify—

(a) those employees of provider A whose employment at provider A relates more to the water services being transferred to provider B than to the functions that provider A will retain after the transfer; and

(b) those employees of provider A who are not identified under **paragraph (a)** but whose employment with provider A will cease as a result of the transfer.

(3) An employee identified under **subclause (2)(a)** who receives an offer of employment (whether the employee accepts the offer or not) from the chief executive of provider B is not entitled to any payment or other benefit (including redundancy), as a result of the transfer, if the offer—

(a) is for substantially the same position as the position the employee holds at provider A before the transfer; and

(b) is for employment in substantially the same general locality; and

(c) is on the same, or better, terms and conditions as the employee's terms and conditions at provider A.

2 Continuous employment

(1) If an employee accepts an offer of employment described in **clause 1(3)**, their employment is to be treated as continuous for the purposes of any entitlements or benefits, whether legislative or otherwise.

(2) To avoid doubt, the employment of an employee who accepts an offer of employment described in **clause 1(3)** by provider B does not constitute new employment for the purposes of the Holidays Act 2003 or the KiwiSaver Act 2006.

3 Application

Clauses 1 and 2 only apply in relation to a transfer that takes place before the date that is 5 years after the date on which this clause comes into force.

Act previously called Taumata Arowai–the Water Services Regulator Act 2020

4 References to previous Title

(1) Every reference in any enactment or in any document to the Taumata Arowai–the Water Services Regulator Act 2020 must, unless the context otherwise provides, be read as a reference to the **Water Services Authority—Taumata Arowai Act 2020**.

(2) Every reference in any enactment or in any document to Taumata Arowai–the Water Services Regulator must, unless the context otherwise provides, be read as a reference to the Water Services Authority—Taumata Arowai.

Water services strategies

5 Timing of first water services strategies

(1) Despite **Part 4** coming into force sooner,—

(a) a water service provider must prepare and adopt its first water services strategy under **section 190 or 191** no later than 30 June 2027; and

(b) a water service provider's first water services strategy must come into force on the earlier of—

(i) 1 July 2027; and

(ii) a date determined by the water service provider when it adopts the strategy.

(2) A water service provider's first water services strategy must—

(a) commence on the earlier of—

(i) 1 July 2027; and

(ii) the date determined under **subclause (1)(b)(ii)**; and

(b) continue in force until 30 June 2030.

(3) However, this clause does not apply to a water organisation that is established after the date on which this clause comes into force (*see* **section 191**, which applies to a water organisation in those circumstances).

Water services annual report

6 Timing of first water services annual report

(1) Despite **Part 4** coming into force sooner, a water service provider's first water services annual report under **section 203, 204, or 205** must be prepared in accordance with this clause.

(2) If a water service provider's first water services strategy comes into force on or before 31 December 2026, the provider must prepare its first water services annual report for the period—

(a) starting on the date on which the water services strategy comes into force; and

(b) ending on 30 June 2027.

(3) If a water service provider's first water services strategy comes into force on or after 1 January 2027, the provider must prepare its first water services annual report for the period—

(a) starting on the date on which the water services strategy comes into force; and

(b) ending on 30 June 2028.

(4) However, this clause does not apply to a water organisation that is established after the date on which this clause comes into force (*see* **section 204**, which applies to a water organisation in those circumstances).

Alternative form of funding impact statement

7 Alternative form of funding impact statement

(1) This clause applies if, when a water service provider prepares a water services strategy or a water services annual report, regulations have not been made to prescribe the form of a funding impact statement for the purposes of (as applicable)—

(a) **clause 5(2)(e) of Schedule 3**; or

(b) **clause 5 of Schedule 4**.

(2) A water service provider must provide a funding impact statement in the following form set out in Schedule 2 of the Local Government (Financial Reporting and Prudence) Regulations 2014:

(a) for the purposes of preparing a water services strategy, form 2; or

(b) for the purposes of preparing a water services annual report, form 4.

Council-controlled organisations as water organisations

8 Council-controlled organisations deemed to be water organisations

(1) This clause applies to a council-controlled organisation that,—

(a) immediately before the date on which this clause comes into force,—

(i) was providing water services; or

(ii) had been established for the purpose of providing water services; and

(b) intends to provide water services on and after the date on which this clause comes into force.

(2) The council-controlled organisation is taken to be a water organisation for 6 months after the date on which this clause comes into force (*see* the definition of water organisation in **section 4**).

(3) The council-controlled organisation will continue to be taken to be a water organisation after the expiry of the 6-month period if, within that period, the board of the organisation adopts a document that confirms that the organisation complies with the following requirements:

(a) the requirement that a water organisation be a company, as set out in **section 37(1)** (unless exempted under **section 57**):

(b) the ownership requirements for water organisations set out in **section 37(2)(a), (b), or (c)** (unless exempted under **section 57**):

(c) the role requirement set out in **section 38** (unless exempted under **section 57**):

(d) the applicable requirements of board directors set out in **section 40**.

(4) Within 3 years after the date on which this clause comes into force, each territorial authority that established the council-controlled organisation—

(a) must enter into a transfer agreement under **section 11 or 13** with the organisation; or

(b) if the council-controlled organisation has been disestablished and replaced with 1 or more new water organisations, must enter into a transfer agreement under **section 11** with each new water organisation.

(5) However, this clause does not apply to an Auckland water organisation under the Local Government (Auckland Council) Act 2009.

(6) Despite **subclause (5)**, an Auckland water organisation under the Local Government (Auckland Council) Act 2009 is taken to be a water organisation under this Act.

Existing notifications under LGA 2002

9 Certain notifications under LGA 2002 remain valid

(1) This clause applies to—

(a) a notification provided under section 171(4) of the LGA 2002 to an owner of unoccupied land or an unoccupied building; and

(b) a notification of intention to enter land provided under section 181(5) of the LGA 2002 to the owner and occupier (if any) of land.

(2) If a notification is in force on the date on which this clause comes into force,—

(a) the notification continues to apply despite this Act coming into force; and

(b) the corresponding notice provisions in this Act do not apply.

Amendments to long-term plans

10 Amendments to long-term plans under LGA 2002

(1) This clause applies if—

(a) a territorial authority is making, or has made, a decision that relates to transferring (to or from the territorial authority) the responsibility for providing all or part of a water service in the territorial authority's district (a **transfer decision**); and

(b) as a consequence of making or having made that transfer decision, the territorial authority is considering amending its long-term plan under section 93 of the LGA 2002.

(2) The territorial authority—

(a) may amend its long-term plan, as necessary, to implement a transfer decision to transfer responsibility for providing water services to a water organisation through the transfer agreement adopted under **section 11 or 13**; but

(b) need not—

(i) consult on the amendments to the long-term plan under section 93(5) of the LGA 2002; or

(ii) have the amendments audited under section 93D(4) or 94 of the LGA 2002.

(3) However, **subclause (2)(b)(i)** applies—

(a) despite anything to the contrary in the territorial authority's significance and engagement policy; and

(b) only if the territorial authority—

(i) has already consulted on a proposal that is relevant to the transfer decision; and

(ii) is satisfied that its community has a good understanding of the implications of the proposal; and

(iii) is satisfied that it understands the community's views on the proposal.

(4) For the purposes of **subclause (2)(a)**, an amendment to a long-term plan may include, for example,—

(a) an amendment needed as a result of transferring responsibilities or water services infrastructure from the territorial authority to the water organisation, as provided in a transfer agreement:

(b) an amendment needed as part of the interim arrangements that apply until the water organisation's first water services strategy is in force (*see* **section 191**):

(c) an amendment relating to the resources required to establish the water organisation. 5

Schedule 2
Contents of transfer agreements

ss 11, 13

1 Parties, purpose, dates, and scope of agreement

A transfer agreement must—

(a) name the parties; and

(b) state the purpose of the agreement, including the section of this Act that requires or permits the agreement to be entered into; and

(c) specify the geographical boundaries of the service area in which the water organisation will provide water services under the agreement; and

(d) specify—

(i) the date on which the agreement is entered into; and

(ii) the date on which the agreement is to take effect.

2 Matters transferred: general

A transfer agreement must describe the general nature of—

(a) the responsibilities for providing water services being transferred; and

(b) any water services infrastructure and ~~related~~ any other assets being transferred.

3 Matters transferred: specifics

(1) A transfer agreement must specify in detail all matters being transferred in relation to the relevant water services, including the following:

(a) statutory responsibilities, functions, duties, and powers concerning providing water services:

(b) ownership of water services infrastructure and ~~related~~ any other assets:

(c) liabilities:

(d) responsibilities for managing the water services:

(e) responsibilities for operating the water services:

(ea) if the transfer agreement relates to providing stormwater services,—

(i) a current and accurate description of any stormwater service zones in the service area; and

(ii) the responsibilities relating to stormwater service zones (if applicable):

(f) resource consents and associated rights and functions (for example, the right to apply for renewal of a consent and the functions of monitoring and reporting on compliance with a consent):

(g) contracts, including service agreements between the territorial authority and any other person.

(2) For the purposes of **subclause (1)(c)**, the transfer agreement must include additional information relating to any liabilities, including the following:

(a) the liabilities that relate to each water service:

(b) any liabilities that are not specifically related to a particular water service:

(c) an explanation of why a liability identified under **paragraph (b)** is being transferred under the agreement.

4 Matters not transferred

A transfer agreement must specify all matters referred to in **clause 3** that relate to water services and are not being transferred, including details about—

(a) water services infrastructure and ~~related~~ any other assets that will continue to be owned by the territorial authority; and~~:~~

(b) what is required of the water organisation in relation to—

(i) managing the water services infrastructure and ~~related~~ other assets; and

(ii) operating and using the water services infrastructure and ~~related~~ other assets; and

(c) any statutory responsibilities, functions, duties, and powers relating to providing water services that will be retained, and will continue to be performed and exercised, by the territorial authority.

5 Matters of shared interest

(1) A transfer agreement must specify in detail arrangements to be put in place between the parties to ensure that matters of shared interest are managed effectively and efficiently.

(2) Those matters include how the parties to the agreement will work together in relation to—

(a) when the territorial authority is performing and exercising its functions, duties, and powers under the Building Act 2004; and

(b) land use planning and resource management planning (including consent processes); and

(c) the performance or exercise of any other statutory functions, duties, and powers of the parties that are relevant to both parties (for example, emergency management).

6 Collection of charges, etc

(1) A transfer agreement must set out arrangements to be put in place for charging and revenue collection for the water services that are being transferred, including—

(a) whether rates, fees, and other charges will be collected by the territorial authority or the water organisation; and

(b) if the territorial authority will continue to collect any rates, fees, and other charges,—

(i) how and when the territorial authority will pass revenue collected on to the water organisation (including details about transitional arrangements and the duration of those arrangements); and

(ii) any associated fees and expenses that will be charged and retained by the territorial authority; and

(iii) a confirmation that the territorial authority will provide the water organisation with sufficient revenue each financial year to enable the organisation—

(A) to undertake the capital and operating investment programme in the organisation's water services strategy for that year; and

(B) to comply with all relevant regulatory requirements; and

(C) to be financially sustainable.

(2) However, **subclause (1)(b)(iii)** does not apply if the territorial authority is collecting the rates, fees, and other charges as an agent of the water organisation.

(3) If a territorial authority collects rates, fees, or other charges other than as an agent of a water organisation, the authority—

(a) does so under the LGA 2002 and the Local Government (Rating) Act 2002; and

(b) must include information relating to the rates, fees, or other charges in relevant documents prepared under Part 6 of the LGA 2002.

(4) In this clause, **agent of the water organisation**, in relation to the capacity in which a territorial authority collects rates, fees, or other charges,—

(a) means—

(i) the transfer agreement provides that the territorial authority will collect the rates, fees, and other charges as an agent for the water organisation; and

(ii) the water organisation is responsible for—

(A) setting charges under **section 60**; and

(B) determining the amount of revenue to be collected and the nature of charges imposed under this Act; but

(b) does not include a territorial authority collecting rates, fees, and other charges when the territorial authority is responsible for—

(i) setting those rates, fees, and other charges; or

(ii) determining the amount of revenue and the nature of those rates, fees, and other charges to be imposed.

7 Responsible decision makers for revenue and charging

(1) A transfer agreement must specify whether the territorial authority or the board of the water organisation will be responsible for making final decisions about the following matters:

(a) the water organisation's capital expenditure and operating expenditure for the water services it provides:

(b) the water organisation's level of charges and revenue recovery for the water services.

(2) If a transfer agreement specifies that the territorial authority will be responsible for making any final decision described in **subclause (1)**, the practical implications of that approach must be explained in the transfer agreement or the water organisation's foundation documents, including—

(a) the implications for the territorial authority and the water organisation; and

(b) the implications for the process of preparing the water organisation's water services strategy and water services annual budget; and

(c) how the territorial authority will notify the water organisation of its final decision; and

(d) how the territorial authority will ensure that its process for making the final decision is transparent to its communities.

8 Other information in agreement

A transfer agreement must provide for all other matters, and contain all other information, that the territorial authority considers appropriate.

Schedule 3
Contents of water services strategy

s 194

Strategic matters

1 Groups of water services activities

A water services strategy must, in relation to each group of water services activities of a water service provider, identify—

(a) the water services activities within the group of water services activities; and

(b) the outcomes that the water service provider expects to achieve by providing the group of water services activities, including,—

(i) in the case of a water service provider that is a territorial authority, any community outcomes that are relevant to providing water services; and

(ii) in the case of a water organisation, the outcomes that the organisation's shareholders expect the organisation to achieve, as specified in the organisation's statement of expectations.

2 Water services strategy: strategic matters

(1) A water services strategy for a water service provider must include the following information:

(a) the strategic priorities of the water service provider:

(b) the objectives, outcomes, and expectations that apply to the water service provider, including—

(i) the objectives specified in **section 15**; and

(ii) in the case of a water organisation, any outcomes or expectations specified in the organisation's statement of expectations:

(c) an overview of regulatory requirements:

(d) an explanation of how the water service provider intends to achieve or meet—

(i) the strategic priorities included under **paragraph (a)**; and

(ii) the objectives, outcomes, and expectations included under **paragraph (b)** (which must include how the water service provider intends to achieve the objective of managing and providing water services in a financially sustainable manner); and

(iii) regulatory requirements included under **paragraph (c)**:

(e) in the case of a water organisation, the measures and targets by which the water organisation's shareholders can assess the water organisation's performance in relation to its objectives and outcomes:

(f) factors that the water service provider expects will have a significant impact on the provider, including the following:

(i) any expected changes to the population in the water service provider's service area:

(ii) any expected changes to the use of land in the water service provider's service area:

(iii) the expected capital and operating costs required to address the expected changes specified under **subparagraphs (i) and (ii)**:

(iv) any expected investment needed to meet objectives relating to housing growth and urban development:

(v) any other significant issues affecting the water service provider's ability to maintain existing levels of service to consumers and to meet additional demands for water services:

(g) information relating to a territorial authority's resource management planning and land use planning in the water service provider's service area, including, in the case of a water organisation, how the organisation intends to respond to any relevant requirements that are included in the organisation's statement of expectations:

(h) a description of any stormwater service zones in the provider's service area and of any proposals to change them.

(2) The information required by **subclause (1)** must cover the period of at least 10 consecutive financial years to which the water services strategy relates (but not individually for each financial year), or such other period as is specified in this schedule or in **Part 4** of this Act.

(3) A water services strategy must also, for a period of at least 30 consecutive financial years, identify—

(a) any expected significant water infrastructure issues for the provider over that period; and

(b) the principal options for managing any issues under **paragraph (a)**; and

(c) the implications of the options under **paragraph (b)**.

Operational matters

3 Water services strategy: operational matters

(1) A water services strategy for a water service provider must include the following information for each group of water services activities for which the water service provider is responsible:

(a) the nature and scope of the main water services activities the water service provider proposes to undertake:

(b) any significant work the water service provider proposes to undertake relating to the water services activities included under **paragraph (a)**:

(c) a statement of the provider's intended levels of service provision, which must include—

(i) the performance measures that apply to the group of water services activities, including as applicable—

(A) the measures that the water service provider considers will enable the public to assess the level of service for major aspects of the group of water services activities; and

(B) any intended levels of service that the water service provider is required to publicly disclose in a water services strategy in accordance with a section 52P determination under the Commerce Act 1986; and

(C) if no similar requirements have been set under **subsubparagraph (B)**, any performance measures specified in a rule made under section 261B of the LGA 2002 that are relevant to a group of water services activities; and

(ii) the performance targets for each performance measure under **subparagraph (i)**; and

(iia) any relevant quality standards or performance requirements in a section 52P determination under the Commerce Act 1986; and

(iii) any intended changes to the level of service that the provider provided in the financial year before the first financial year covered by the water services strategy and the reasons for the changes; and

(iv) the reasons for any material change to the cost of water services.

(2) The information required by **subclause (1)** must be provided—

(a) in detail for each of the first 3 financial years covered by the strategy; and

(b) in outline for each of the subsequent financial years covered by the strategy.

4 Water services strategy: consumer feedback

A water services strategy for a water service provider must include information about how the water service provider proposes to obtain feedback from consumers in relation to the water services that the water service provider provides to them.

Financial matters

5 Water services strategy: financial matters

(1) A water services strategy for a water service provider must include, for each year to which the strategy relates,—

(a) if the water service provider is a territorial authority, a complete set of forecast financial statements for the provider that is prepared as if the territorial authority were a separate water service provider; or

(b) if the water service provider is a water organisation, a complete set of forecast financial statements for the water service provider.

~~(1A) However, the water services strategy need not include each of the statements referred to in **subclause (2)(d)** if—~~

~~(a) the water service provider is a territorial authority that provides stormwater services but not wastewater services or water supply services; and~~

~~(b) the information in those statements is included in the set of forecast financial statements under **subclause (1)(a)**.~~

(2) A water services strategy must include the following information for each group of water services activities for which the water service provider is responsible:

(a) the water service provider's intended approach to funding, revenue, and pricing, which must include detailed information on the following for the first 3 financial years to which the water services strategy relates:

(i) the water service provider's intended approach to pricing the water services it provides; and

(ii) the water service provider's intended approach to charging consumers; and

(iii) the water service provider's intended sources of funding and revenue:

(b) the amount of capital expenditure and operating expenditure that the provider has budgeted, in each financial year to which the water services strategy relates, for the purposes of—

(i) improving the level of service; and

(ii) meeting additional demand for the group of water services activities; and

(iii) replacing existing assets in the water services infrastructure:

(c) the forecast financial statements that were prepared for the financial year immediately before the first financial year to which the strategy relates:

(d) each of the following statements for each financial year to which the water services strategy relates:

(i) a forecast statement of comprehensive revenue and expenses:

(ii) a forecast statement of cash flow:

(iii) a forecast statement of financial position:

(e) a funding impact statement for each financial year to which the water services strategy relates:

(f) any other information required by the Commerce Commission (*see* **section 194**).

(2A) A water service provider's intended approach to funding, revenue, and pricing under **subclause (2)(a)** must be consistent with any requirements set by the Commerce Commission under Part 4 of the Commerce Act 1986.

(2B) The information provided under **subclause (2)(a)(i) and (ii)** must be accompanied by—

(a) the water service provider's intended schedule of prices and charges; and

(b) the methodologies that support the provider's prices and charges.

(2C) For the purposes of **subclause (2)(a)(iii)**, the information relating to the intended sources of funding and revenue must include—

(a) the reasons for selecting each intended source of funding and revenue; and

(b) an indication of the amount or level of funding or revenue expected from each intended source; and

(c) an explanation of the intended funding mechanism for each intended source; and

(d) the reasons for selecting each intended funding mechanism.

(3) For the purposes of **subclause (2)(b)**, if capital expenditure is budgeted for 2 or all of the purposes in that paragraph, the expenditure may be treated as if it were budgeted solely in relation to the primary purpose of the expenditure.

(4) For the purposes of **subclause (2)(c)**, the previous year's financial statements must be presented in a way that allows the public to compare the financial statements with the forecast financial statements for each of the financial years covered by the strategy.

~~(5) However, a water services strategy is not required to include the financial statements required under **subclause (2)(d)** if it is the first water services strategy for the water service provider.~~

(5A) However, a water services strategy need not include the following:

(a) the financial statements required under **subclause (2)(d)** if it is the first water services strategy for the water service provider:

(b) each of the statements referred to in **subclause (2)(d)** if—

(i) the water service provider is a territorial authority that provides stormwater services but not wastewater services or water supply services; and

(ii) the information in those statements is included in the set of forecast financial statements under **subclause (1)(a)**.

(6) For the purposes of **subclause (2)(e)**, a funding impact statement must—

(a) be in the prescribed form; and

(b) identify—

(i) the sources of funding to be used by the water service provider; and

(ii) the amount of funds expected to be produced from each source; and

(iii) how the funds are to be applied.

(6A) In addition to the requirements in **subclause (6)(b)**, the prescribed form for a funding impact statement may require that the water services strategy includes information relating to 1 or more of the financial statements required under **subclause (2)(d)**.

(6B) If the prescribed form for a funding impact statement does require the inclusion of the information described in **subclause (6A)**, that information need not also be included under **subclause (2)(d)**.

6 Water services strategy: additional matters for water organisations

(1) This clause applies to a water services strategy prepared by a water organisation.

(2) In addition to the information required under **clause 5**, the water services strategy must include—

(a) the organisation's policy on giving security for borrowing; and

(b) the organisation's objectives for holding and managing financial investments and equity securities; and

(c) the organisation's quantified targets for returns on financial investments and equity securities; and

(e) if the water organisation decides to set separate water services charges for separately used or inhabited parts of a property under **section 67A**, a definition of separately used or inhabited.

Information relating to water infrastructure

7 Water services strategy: water services infrastructure

A water services strategy for a water service provider must outline the most likely scenario for managing the water service provider's water services infrastructure assets over a period of at least 30 years and, in that context, must—

(a) include estimates of the projected capital and operating expenditure associated with managing those assets—

(i) in each of the first 10 financial years covered by the strategy; and

(ii) in each subsequent period of 5 financial years covered by the strategy; and

(b) identify, for each period described in **paragraph (a)**,—

(i) any significant decisions about capital expenditure the provider expects it will be required to make; and

(ii) when the provider expects it will be required to make those decisions; and

(iii) for each decision, the principal options the provider expects it will have to consider; and

(iv) the approximate scale or extent of the costs associated with each decision.

Additional information and requirements

8 Water services strategy: additional information and requirements

A water services strategy for a water service provider must, in relation to any forecast financial statements and financial estimates included in the strategy,—

(a) identify all the significant forecasting assumptions and risks underlying the financial estimates; and

(b) without limiting **paragraph (a)**, identify the following assumptions on which the financial estimates are based:

(i) the water service provider's assumptions concerning the life cycle of significant water services infrastructure assets; and

(ii) the water service provider's assumptions concerning sources of funds for the future replacement of significant water services infrastructure assets; and

(iii) in relation to the scenario referred to in **clause 7**, the assumptions of the water service provider about—

(A) growth or decline in the demand for relevant services:

(B) increases or decreases in relevant levels of service; and

(c) in any case where significant forecasting assumptions involve a high level of uncertainty,—

(i) identify the nature of that uncertainty; and

(ii) include an outline of the potential effects of that uncertainty on the financial estimates provided.

9 Water services strategy: additional information for water organisations

A water services strategy for a water organisation must include—

(a) a summary of any comments provided by shareholders on a draft of the water services strategy (*see* **section 196**); and

(b) an explanation of any significant changes that shareholders required the water organisation to make to the draft strategy; and 5

(c) a statement as to whether shareholders approved the final water services strategy.

Schedule 4
Contents of water services annual report

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General requirements

1 Water services annual report: general requirements

(1) A water services annual report for a water service provider must contain information that will enable a person to make an informed assessment of the water service provider's operations and performance, including information that—

(a) compares the provider's intended activities and intended performance levels, as set out in the provider's water services strategy for the financial year, with the actual activities and performance levels; and

(b) explains any material differences between the provider's performance and the provider's water services strategy.

(2) A water services annual report must, in relation to each group of water services activities of the water service provider,—

(a) identify the water services activities within the group of water services activities; and

(b) identify the outcomes and objectives to which the group of water services activities primarily contributes (as referred to in the provider's water services strategy); and

(c) report the results of any measurement undertaken during the financial year of progress towards achieving those outcomes and objectives.

Financial statements

2 Water services annual report: financial statements

(1) A water services annual report for a water service provider must include the following information for the relevant financial year:

(a) if the water service provider is a territorial authority, a complete set of audited financial statements for the provider that is prepared as if the territorial authority were a separate water service provider; and

(aa) if the water service provider is a water organisation, a complete set of audited financial statements for the water service provider; and

(b) for each group of water services activities—

(i) a statement of comprehensive revenue and expense; and

(ii) a statement of cash flows; and

(iii) a statement of financial position; and

(c) any other prescribed information.

(2) A water services annual report must also include the financial statements that were prepared for the financial year immediately preceding the first financial year to which the report relates.

(3) The information provided—

(a) under **subclause (1)** must be presented in a way that allows a person to compare the financial statements with the forecast financial statements for the financial year covered by the report (which were included in the provider's water services strategy or water services annual budget):

(b) under **subclause (1)(c)** must be provided in the prescribed form.

(4) However, the water services annual report need not include each of the financial statements referred to in **subclause (1)(b)** if—

(a) the water service provider is a territorial authority that provides stormwater services but not wastewater services or water supply services; and

(b) the information in those statements is included in the set of audited financial statements under **subclause (1)(a)**.

3 Water services annual report: water organisation

(1) A water services annual report for a water organisation must specify the dividend, if any, that the organisation's shareholders have authorised the organisation to pay (or the maximum dividend that the organisation proposes to pay) for its equity securities (other than fixed interest securities).

(2) A water services annual report for a water organisation must include information about how the water organisation has performed in relation to any performance indicators and measures that the shareholders of the organisation use to monitor the organisation's performance and have included in the organisation's statement of expectations.

4 Water services annual report: capital expenditure

(1) A water services annual report for a water service provider must include, for each group of water services activities provided by the water service provider, an audited statement that compares—

(a) the capital expenditure budgeted for the water service provider (as set out in the provider's water services strategy for the financial year); with

(b) the capital expenditure that the water service provider actually spent in the financial year.

(2) The statement must show separately the water service provider's budgeted expenditure, and the provider's actual expenditure,—

(a) to meet any additional demand for a group of water services activities; and

(b) to improve the level of service in relation to a group of water services activities; and

(c) to replace any assets that are part of the water services infrastructure.

(3) For the purpose of **subclause (2)**, if capital expenditure is budgeted for 2 or all of the purposes in that subclause, the expenditure may be treated as if it were budgeted solely in relation to the primary purpose of the expenditure.

5 Water services annual report: funding impact statement

(1) A water services annual report for a water service provider must include, for each group of water services activities provided by the water service provider, an audited funding impact statement that—

(a) is in the prescribed form; and

(b) identifies the water service provider's funds produced by each source of funding; and

(c) specifies how those funds were applied; and

(d) compares the information provided under **paragraphs (b) and (c)** with information included in the water service provider's water services strategy.

(2) In addition to the requirements in **subclause (1)(b) to (d)**, the prescribed form for a funding impact statement may require that the water services annual report includes information relating to 1 or more of the financial statements required under **clause 2(1)(b)**.

(3) If the prescribed form for a funding impact statement does require the inclusion of the information described in **subclause (2)**, that information need not also be included under **subclause (1)**.

6 Water services annual report: insurance of assets

A water services annual report for a water service provider must include the following information in relation to the water service provider:

(a) the total value of the assets in the water services infrastructure that are owned by the water service provider and that are insured:

(b) the maximum total amount for which those assets are insured:

(c) the total value of the assets in the water services infrastructure that are—

(i) owned by the water service provider; and

(ii) covered by a financial risk-sharing arrangement:

(d) the maximum total amount available to the water service provider under those risk-sharing arrangements:

(e) the total value of the assets in the water services infrastructure that are—

(i) owned by the water service provider; and

(ii) self-insured:

(f) the value of any fund that the water service provider maintains for the purpose of self-insuring those assets.

Statement of service

7 Water services annual report: statement of service

A water services annual report for a water service provider must include, for each group of water services activities provided by the water service provider, an audited statement of service that—

(a) compares the actual level of service provided in relation to each group of water services activities with the intended service level; and

(b) specifies whether any intended changes to the service levels were achieved; and

(c) if there is a significant difference between the intended service level and the service level that was achieved, specifies the reasons for that difference.

Statement of compliance

8 Water services annual report: statement of compliance

(1) A water services annual report for a water service provider must include a statement that all statutory requirements in relation to the water services annual report have been complied with.

(2) In the case of a water service provider that is a territorial authority, the statement of compliance must be signed by—

(a) the mayor of the territorial authority; and

(b) the chief executive of the territorial authority.

(3) In the case of a water organisation, the statement of compliance must be signed by—

(a) the chair of the board of the water organisation; and

(b) the chief executive of the water organisation.

Consumer feedback

9 Water services annual report: results of consumer feedback

A water services annual report must include information relating to—

(a) the results of any feedback sought from the water service provider's consumers in relation to the water services provided to them, as referred to in the provider's water services strategy (*see* **clause 4 of Schedule 3**); and

(b) how the provider addressed, or proposes to address, any significant matters raised in the feedback.

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Legislative history

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