

**Local Government (Water Services Preliminary  
Arrangements) Bill**

Government Bill

As reported from the committee of the whole House



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Arrangements) Bill**

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**Key to symbols used in reprinted bill**

**As reported from the committee of the whole House**

text inserted

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*Hon Simeon Brown*

# **Local Government (Water Services Preliminary Arrangements) Bill**

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

**1 Title**

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

**2 Commencement**

5

- (1) This Act comes into force on the day after Royal assent.
- (2) However, ~~sections 82 to 99~~ **sections 82 to 98, 103, and Schedule 2** come into force on a date or dates set by Order in Council made on the recommendation of the Minister.
- (3) Any provision of this Act that has not come into force by **1 July 2025** comes into force then.

10

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

## Part 1 Preliminary provisions

- 3 Purpose** 5
- (1) The purpose of this Act is to establish a framework for local government to manage and deliver water services.
- (2) This Act delivers that purpose by—
- (a) requiring territorial authorities to prepare water services delivery plans; and 10
- (b) providing for the Minister to assist or intervene if territorial authorities find it difficult to prepare a water services delivery plan; and
- (c) requiring territorial authorities to publicly disclose specified foundational information in relation to delivering water services, for the purpose of supporting economic regulation; and 15
- ~~(d) providing specific consultation and decision-making processes that territorial authorities may use to establish, join, or amend council-controlled organisations that will deliver water services; and~~
- (d) providing specific consultation and decision-making processes for territorial authorities to use when— 20
- (i) establishing, joining, or amending council-controlled organisations or joint local government arrangements that will deliver water services; or
- (ii) consulting or making decisions on a water services delivery plan, including in relation to an anticipated or proposed model or arrangement for delivering water services; and 25
- (e) providing a financially sustainable model for Watercare to be financially separate from Auckland Council and an interim economic regulation regime for Watercare that is administered by a Crown monitor.
- 4 Overview** 30
- (1) This Part provides for preliminary matters, including the purpose of this Act and the definitions of terms and expressions used in this Act.
- (2) **Part 2** has the following subparts:
- (a) **subpart 1**, which requires territorial authorities to prepare and submit water services delivery plans: 35
- (b) **subpart 2**, which relates to Ministerial powers in relation to water services delivery plans:

- (c) **subpart 3**, which sets out a framework for specified territorial authorities to disclose additional foundational information for the purposes of economic regulation, and also includes provisions relating to information sharing and enforcement.
- ~~(3) **Part 3** sets out consultation and decision-making processes that territorial authorities may use when establishing, joining, or amending a water services council-controlled organisation.~~ 5
- (3) **Part 3** sets out specific consultation and decision-making processes that territorial authorities—
- (a) must use when consulting or making decisions on including an anticipated or proposed model or arrangement for delivering water services in a water services delivery plan; or 10
- (b) may use in relation to other parts of a water services delivery plan; or
- (c) may use when establishing, joining, or amending council-controlled organisations or joint local government arrangements that will deliver water services. 15
- (4) **Part 4** sets out specific requirements for Watercare to be financially separate from Auckland Council, including the requirement for the Minister to appoint a Crown monitor and the requirement to have a Watercare charter.
- (5) **Part 5** amends section 138 of the Water Services Act 2021 by removing the requirement for Taumata Arowai to have regard to the hierarchy of obligations contained in the National Policy Statement for Freshwater Management when making wastewater environmental performance standards. It also authorises, in certain circumstances, the amendment to be reversed by the Governor-General making an Order in Council. 20
- 25
- 5 Interpretation**
- In this Act, unless the context otherwise requires,—
- Commission** means the Commerce Commission established by section 8 of the Commerce Act 1986
- consumer** means a person who consumes, uses, acquires, or is provided with, water services 30
- council-controlled organisation** has the meaning set out in section 6(1) of the Local Government Act 2002
- Crown facilitator** means a Crown facilitator for water services delivery plans appointed under **section 20** 35
- Crown water services specialist** means a Crown water services specialist appointed under **section 23**
- department** means the department, departmental agency, or interdepartmental venture (as named in Part 1, 2, or 4 of Schedule 2 of the Public Service Act

2020) that, with the authority of the Prime Minister, is responsible for the administration of this Act

**drinking water supply** has the meaning set out in section 9 of the Water Services Act 2021

**financial year** means a period of 12 months ending on 30 June 5

**financially sustainable** means, in relation to a territorial authority's delivery of water services, that—

- (a) the revenue applied to the authority's delivery of those water services is sufficient to ensure the authority's long-term investment in delivering water services; and 10
- (b) the authority is financially able to meet all regulatory standards and requirements for the authority's delivery of those water services

**firefighting water supplies** has the meaning set out in section 6 of the Fire and Emergency New Zealand Act 2017

**government department** means a department listed in Part 1 of Schedule 2 of the Public Service Act 2020 15

**green water services infrastructure**—

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

**joint arrangement** means an arrangement to deliver water services between—

- (a) 2 or more territorial authorities; or
- (b) the Wellington Regional Council and 1 or more territorial authorities 25

**joint service area** means,—

- (a) in relation to a joint arrangement, the combined districts of the territorial authorities that are a party to the joint arrangement (and, if applicable, the relevant part of the Wellington Regional Council's region); or
- (b) in relation to a joint WSCCO, the combined districts of the territorial authorities that control the joint WSCCO (and, if applicable, the relevant part of the Wellington Regional Council's region) 30

**joint water services council-controlled organisation** or **joint WSCCO** means a water services council-controlled organisation—

- (a) controlled by 2 or more territorial authorities; or 35
- (aa) controlled by the Wellington Regional Council and 1 or more territorial authorities; or
- (b) in which 2 or more territorial authorities are shareholders; or

- (c) in which the Wellington Regional Council and 1 or more territorial authorities are shareholders

**joint water services delivery plan or joint plan** means a water services delivery plan relating to—

- (a) 2 or more territorial authorities; or 5  
(b) the Wellington Regional Council and 1 or more territorial authorities

**LGA2002** means the Local Government Act 2002

**long-term plan** has the meaning set out in section 5(1) of the LGA2002

**Minister** means the Minister of the Crown who, under the authority of a warrant or with the authority of the Prime Minister, is responsible for the administration of this Act 10

**ministerial appointee** means—

- (a) a Crown facilitator for water services delivery plans appointed under **section 20**; or  
(b) a Crown water services specialist appointed under **section 23** 15

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

**price**—

- (a) means any 1 or more of individual prices, aggregate prices, or revenues (whether in the form of specific numbers, or in the form of formulas by which specific numbers are derived); and 20  
(b) includes any related terms of payment

**Secretary** means the Secretary for Local Government

**stormwater network**—

- (a) means the infrastructure and processes that— 25  
(i) are used to collect, treat, drain, reuse, or discharge stormwater in an urban area; and  
(ii) are owned by, or operated by, for, or on behalf of a territorial authority, a council-controlled organisation, or a subsidiary of a council-controlled organisation; and 30  
(b) includes—  
(i) an overland flow path:  
(ii) green water services infrastructure that delivers stormwater services:  
(iii) watercourses that are part of, or related to, the infrastructure described in **paragraph (a)** 35

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

**territorial authority** has the meaning set out in section 5(1) of the LGA2002

**urban area**— 5

(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 10

**urban development** has the meaning set out in section 10 of the Urban Development Act 2020

**wastewater network** means the infrastructure and processes that—

(a) are used to collect, store, transmit through reticulation, treat, or discharge wastewater; and 15

(b) are owned by, or operated by, for, or on behalf of a territorial authority, a council-controlled organisation, or a subsidiary of a council-controlled organisation

**water services** means services in relation to a territorial authority’s— 20

(a) water supply network:

(b) stormwater network:

(c) wastewater network

**water services council-controlled organisation** or **WSCCO**—

(a) means a council-controlled organisation that— 25

(i) delivers water services; or

(ii) provides goods or services that are incidental and related to, or consequential on, delivering water services; and

(b) includes a joint water services council-controlled organisation; but

(c) does not include a council-controlled organisation that provides goods or services other than those listed in **paragraph (a)** 30

**water services delivery plan**—

(a) means a water services delivery plan prepared under **subpart 1 of Part 2**; and

(b) includes a joint water services delivery plan 35

**water supply network** means the infrastructure and processes that—

(a) are used to provide—

(i) a drinking water supply; or

- (ii) firefighting water supplies, if the supply is part of a drinking water supply; and
  - (b) are owned by, or operated by, for, or on behalf of a territorial authority, a council-controlled organisation, or a subsidiary of a council-controlled organisation 5
- Watercare** means Watercare Services Limited and includes any subsidiary of Watercare Services Limited
- watercourse** means a watercourse that is part of, or related to, the drainage or discharge of stormwater in an urban area.
- 6 Transitional, savings, and related provisions** 10
- The transitional, savings, and related provisions (if any) set out in **Schedule 1** have effect according to their terms.
- 7 Act binds the Crown**
- This Act binds the Crown.

## Part 2 15

### Water services delivery plans and foundational information disclosure requirements

#### Subpart 1—Water services delivery plans

##### *Water services delivery plan: preparation and contents*

- 8 Territorial authority must prepare water services delivery plan** 20
- (1) Each territorial authority must prepare a water services delivery plan that—
- (a) identifies the current state of the authority’s water services; and
  - (b) demonstrates publicly its commitment to deliver water services in a way that—
    - (i) ensures that the territorial authority will meet all relevant regulatory quality standards for its water services; and 25
    - (ii) is financially sustainable for the territorial authority; and
    - (iii) ensures that the territorial authority will meet all drinking water quality standards; and
    - (iv) supports the territorial authority’s housing growth and urban development, as specified in the territorial authority’s long-term plan. 30
- (2) **Subsection (1)** is subject to **section 9(3)**.
- (3) To avoid doubt, this Act requires each territorial authority to prepare and have accepted a water services delivery plan only once (however, *see* **section 19B** 35

for the circumstances in which a water services delivery plan may be amended).

**8A Reference to territorial authority includes Wellington Regional Council**

In the following provisions, a reference to a territorial authority includes, where applicable, a reference to the Wellington Regional Council:

- (a) **sections 9, 9A, 10, 11, 12, 14, 15, 16, 17, 19A, and 19B:**
- (b) to the extent they are used in the sections listed in **paragraph (a)**, the definitions in **section 5**.

**9 Territorial authorities may submit joint plan**

- (1) A territorial authority may, in the circumstances described in **subsection (2)**, submit a joint water services delivery plan with 1 or more other territorial authorities, in relation to delivering water services in the joint service area covered by a joint arrangement. 10
- (2) For the purposes of **subsection (1)**, the circumstances are that the territorial authorities anticipate or propose delivering water services through a joint arrangement, as set out in the joint water services delivery plan. 15
- (3) If 2 or more territorial authorities decide to submit a joint plan, the territorial authorities are required to prepare only 1 water services delivery plan in respect of the joint service area. 10

**9A Extent of joint arrangement** 20

A joint arrangement must relate to the delivery of—

- (a) all water services for all of the territorial authorities; or
- (b) all water services except for some or all services relating to all of the territorial authorities' stormwater networks; or
- (c) all water services for some of the territorial authorities, and all water services except for some or all services relating to stormwater networks for the other territorial authorities. 25

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**Example**

Territorial authorities A, B, and C join together to form a joint arrangement. The joint arrangement relates to the delivery of all water services for territorial authorities A and B, but territorial authority C joins the joint arrangement in relation to water services other than those services relating to its stormwater network. Territorial authority C will deliver its services related to stormwater networks independently, rather than through the joint arrangement. 30

Alternatively, territorial authority C may join the joint arrangement in relation to water services other than some of its services relating to its stormwater network, and choose to deliver the remaining stormwater services independently. 35

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**10 Water services to be covered by water services delivery plan**

- (1) A water services delivery plan must relate to all water services.
- (2) To avoid doubt, if a joint arrangement relates to the delivery of all water services except some or all of those relating to 1 or more of the authorities' stormwater networks, the joint plan must relate to the delivery of all water services in the joint service area. 5

**Example**

Territorial authorities A, B, and C join together to form a joint arrangement. The joint arrangement relates to the delivery of all water services for territorial authorities A and B, but territorial authority C joins the joint arrangement in relation to water services other than those services relating to its stormwater network. The joint plan must contain the required information in relation to all water services for all 3 territorial authorities, including information about territorial authority C's delivery of services relating to its stormwater network. 10

- (3) Despite **subsection (1)**, the water services delivery plan for the Auckland Council need not relate to water services that relate to its water supply network or its wastewater network. 15

**11 Contents of water services delivery plan**

- (1) A territorial authority's water services delivery plan must contain the following information in relation to the water services delivered in the authority's district: 20
- (a) a description of the current state of the water services network:
- (b) a description of the current levels of service relating to water services provided:
- (c) a description of—
- (i) the areas in the district that receive water services (including a description of any areas in the district that do not receive water services); and 25
- (ii) the water services infrastructure associated with providing for population growth and development capacity:
- (d) whether and to what extent water services— 30
- (i) comply with current regulatory requirements:
- (ii) will comply with any anticipated future regulatory requirements:
- (da) if any water services do not comply with current regulatory requirements or will not comply with any anticipated future regulatory requirements,— 35
- (i) a description of the non-compliance; and
- (ii) a description of how the anticipated or proposed model or arrangements provided under **paragraph (j)** will assist to ensure water services will comply:

- (e) details of the capital and operational expenditure required—
  - (i) to deliver the water services; and
  - (ii) to ensure that water services comply with regulatory requirements:
- (f) financial projections for delivering water services over the period covered by the plan, including— 5
  - (i) the operating costs and revenue required to deliver water services; and
  - (ii) projected capital expenditure on water services infrastructure; and
  - (iii) projected borrowing to deliver water services: 10
- (g) an assessment of the current condition, lifespan, and value of the water services networks:
- (h) a description of the asset management approach being used, including capital, maintenance, and operational programmes for delivering water services: 15
- (i) a description of any issues, constraints, and risks that impact on delivering water services:
- (j) the anticipated or proposed model or arrangements for delivering water services (including whether the territorial authority is likely to enter into a joint arrangement under **section 9** or will continue to deliver water services in its district alone): 20
- (k) an explanation of how the revenue from, and delivery of, water services will be separated from the territorial authority’s other functions and activities:
- (l) a summary of any consultation undertaken as part of developing the information required to be included in the plan under **paragraph (j)**: 25
- (m) an explanation of what the territorial authority proposes to do to ensure that the delivery of water services will be financially sustainable by 30 June 2028:
- (ma) an implementation plan— 30
  - (i) for delivering the proposed model or arrangements described under **paragraph (j)**; and
  - (ii) if a territorial authority is proposing to deliver water services itself and not as part of a joint arrangement for delivering water services, that sets out the action that the territorial authority will take to ensure its delivery of water services will be financially sustainable by 30 June 2028: 35
- (n) any other information prescribed in rules made by the Secretary under **section 14**.

- (1A) For the purposes of **subsection (1)(ma)**, an implementation plan must include the following:
- (a) a process for delivering the proposed model or arrangements:
  - (b) a commitment to give effect to the proposed model or arrangements once the plan is accepted: 5
  - (c) the name of each territorial authority that commits to delivering the proposed model or arrangements:
  - (d) the time frames and milestones for delivering the proposed model or arrangements.
- (2) A water services delivery plan must also comply with any requirements prescribed in rules made by the Secretary under **section 14**. 10

## 12 Contents of joint water services delivery plan

- (1) A joint water services delivery plan must contain the following:
- (a) information that clearly identifies each territorial authority that is proposed to be a party to the joint arrangement: 15
  - (b) information as to whether the joint arrangement will deliver—
    - (i) all water services for all of the territorial authorities that are parties to the joint arrangement; or
    - (ii) all water services except for some or all services in relation to all of the territorial authorities' stormwater networks; or 20
    - (iii) all water services for some of the territorial authorities, and all water services except for some or all services in relation to stormwater networks for the other territorial authorities:
  - (c) all of the information listed in **section 11**:
  - (d) information on the likely form of the joint arrangement, including whether it is anticipated it will involve water services being delivered by— 25
    - (i) a joint WSCCO; or
    - (ii) an arrangement described in section 137 of the LGA2002; or
    - (iii) another organisation or arrangement that the territorial authorities are considering. 30
- (2) To the extent that further information about the joint arrangement is available when the plan is submitted to the Secretary under **section 16**, a joint water services delivery plan may also contain that information, including— 35
- (a) the ownership structure; and
  - (b) the governance structure; and
  - (c) the control and financial rights of each territorial authority in the joint arrangement.

- 
- (3) For the purposes of **subsection (1)(c)**, a joint plan must contain the information required under **section 11** in relation to—
- (a) each territorial authority that is a party to the joint arrangement; and
  - (b) all water services delivered in the joint service area (including services relating to each territorial authority’s stormwater network). 5
- (4) **Subsection (1)(c)** applies to a territorial authority’s delivery of water services relating to its stormwater network even if the delivery of those services is not part of the joint arrangement.
- (5) A joint plan must also comply with any requirements prescribed in rules made by the Secretary under **section 14**. 10
- 13 Period covered by water services delivery plan**
- (1) A water services delivery plan—
- (a) must cover a period of not less than 10 consecutive financial years, starting with the 2024–25 financial year; and
  - (b) may include information that covers an additional 20 consecutive years, if the information identifies investment requirements— 15
    - (i) for water services infrastructure; or
    - (ii) to support future housing growth and urban development.
- (2) A water services delivery plan must provide the required information—
- (a) in detail in relation to each of the first 3 financial years covered by the plan; and 20
  - (b) in outline in relation to each of the subsequent financial years covered by the plan.
- 14 Secretary may make rules in relation to water services delivery plans**
- (1) The Secretary may make rules for 1 or more of the following purposes relating to water services delivery plans: 25
- (a) specifying additional information that must be included in a plan:
  - (b) specifying the manner and form in which information must be included in a plan.
- (2) Without limiting **subsection (1)(a)**, a rule made under **subsection (1)(a)** may require the inclusion of information that— 30
- (a) improves accountability to a territorial authority’s community:
  - (b) provides a basis for regulating the delivery of water services:
  - (c) relates to 1 or more of the following:
    - (i) financial matters (including, for example, revenues, equity levels, debt arrangements, and expenses): 35

- (ii) the assets involved in delivering water services (including, for example, asset management plans and asset replacement policies):
- (iii) financial and non-financial performance measures:
- (iv) the relevant performance measures and statistics relating to water quality: 5
- (v) pricing practices, assumptions, policies and methodologies used in delivering water services.
- (3) Before making a rule, the Secretary must consult each person or organisation that the Secretary considers to hold views that are representative of the views held, or that may be held, in the local government sector. 10
- (4) A rule is not invalid only because the consultation required under **subsection (3)** occurred before this Act came into force.
- (4A) Rules made under this section must not be made, or come into force, later than the date (the **relevant date**) that is 3 months after the date on which this section comes into force. 15
- (4B) Rules made under this section, and in force on the relevant date,—
- (a) continue in force after the relevant date; but
- (b) cannot be amended, revoked, or replaced by further rules made under this section after the relevant date.
- (5) Rules made under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements). 20
- 15 Process to prepare and adopt water services delivery plan**
- (1) A territorial authority must adopt a water services delivery plan by resolution.
- (2) ~~A territorial authority must comply with the LGA2002 when preparing, adopting, or amending a water services delivery plan, except as provided in **Part 3** of this Act.~~ 25
- (3) ~~This Act does not require a territorial authority to consult in relation to a water services delivery plan. However, a territorial authority must comply with the LGA2002 and any other relevant enactments when making decisions that relate to the water services delivery plan.~~ 30
- (2) In relation to an anticipated or proposed model or arrangement for delivering water services in its water services delivery plan (*see* **section 11(1)(j)**), a territorial authority must—
- (a) undertake consultation; and
- (b) ensure that its consultation and decision-making complies with **sections 51 to 54.** 35
- (3) Except as required under **subsection (2)**, this Act does not require a territorial authority to consult on a draft or final water services delivery plan.

- (4) However, if a territorial authority decides to consult on a part of its water services delivery plan, other than a model or arrangement described in **subsection (2)**, it must do so in accordance with **sections 52 to 54**.
- (5) Despite **subsection (2)**, Auckland Council is not required (under this Act or any other Act) to consult on its anticipated or proposed model or arrangements for delivering water services in its water services delivery plan, but— 5
- (a) may decide to consult; and
- (b) if it decides to consult, must do so in accordance with **sections 52 to 54**.

*Submission of water services delivery plan* 10

**16 Plan must be submitted to Secretary for acceptance**

- (1) A territorial authority or a group of 2 or more territorial authorities (as the case may be) must submit its water services delivery plan to the Secretary—
- (a) no later than 1 year after the date on which this section comes into force; or 15
- (b) on or before a later date specified by the Minister under **section 17**.
- (2) Each water services delivery plan that is submitted to the Secretary for acceptance must include a certification that—
- (a) the plan complies with this Act; and
- (b) the information contained in the plan is true and accurate. 20
- (3) The certification must be made,—
- (a) in the case of a joint water services delivery plan, by the chief executive of each authority to which the plan relates, in respect of the information provided by that authority; and
- (b) in any other case, by the chief executive of the territorial authority to which the plan relates. 25

**17 Minister may grant extension to deadline for submitting water services delivery plan**

- (1) A territorial authority or a group of 2 or more territorial authorities that is proposing to submit a joint plan (the **applicant**) may apply to the Minister for an extension to the deadline for submitting its water services delivery plan. 30
- (2) An application for an extension must—
- (a) be in writing; and
- (b) specify the length of the extension that the applicant is seeking; and
- (c) include sufficient information to enable the Minister to decide whether to grant the extension; and 35

- (d) be made no later than 1 month before the last date for submitting a plan under **section 16(1)(a)**.
- (3) The Minister may grant an extension only if the Minister is satisfied that—
- (a) an application for the extension is made in accordance with **subsection (2)**; and 5
- (b) the applicant requires the extension for 1 or more of the following reasons:
- (i) the applicant anticipates forming or joining a joint arrangement, and requires the extension to consult its communities in relation to the plan: 10
- (ii) the applicant anticipates forming or joining a joint arrangement, and requires the extension to conclude the negotiations relating to forming or joining the joint arrangement:
- (iii) the applicant is late preparing its water services delivery plan as a result of having attempted, unsuccessfully, to form or join a joint arrangement: 15
- (iv) any other reason that the Minister considers justifies granting the extension.
- (4) **Subsection (3)** is subject to **subsection (5)**.
- (5) The Minister may grant an extension despite not having received an application for an extension if satisfied that exceptional circumstances justify granting the extension. 20
- (6) If the Minister decides to grant an extension, the Minister—
- (a) must notify the length of the extension and the date by which the water services delivery plan must be submitted to the Secretary to,— 25
- (i) if an applicant applied for the extension, the applicant; or
- (ii) if the Minister has not received an application for the extension, each territorial authority to which the extension applies; and
- (b) may notify the length of the extension and the date by which the water services delivery plan must be submitted to the Secretary to any other territorial authority that the Minister considers relevant. 30
- (6A) If the Minister decides not to grant an extension, the Minister must notify the applicant of that decision.
- (7) The Minister may grant an extension subject to any conditions that the Minister thinks reasonable in the circumstances. 35

*Acceptance of water services delivery plan*

**18 Secretary accepts water services delivery plan**

- (1) The Secretary must, as soon as reasonably practicable,—

- (a) consider each water services delivery plan submitted under **section 16**; and
  - (b) accept a water services delivery plan only if satisfied that the plan complies with this Act.
- (2) In deciding whether to accept a water services delivery plan, the Secretary may consult 1 or more of the following: 5
- (a) a government department:
  - (b) the Commission:
  - (c) Taumata Arowai:
  - (d) Crown Infrastructure Partners Limited: 10
  - (e) any other person the Secretary considers relevant.
- (3) If the Secretary is not satisfied that a plan complies with the requirements in this Act, the Secretary must, as soon as reasonably practicable,—
- (a) advise the territorial authority or group of 2 or more territorial authorities why the Secretary is not satisfied with the plan and require the territorial authority or group to amend the plan (which may be by including additional information) and resubmit it to the Secretary by a specified date; or 15
  - (b) decide not to accept the plan.
- (4) A territorial authority or group of 2 or more territorial authorities must comply with a requirement to amend and resubmit a plan by the date specified. 20
- (5) After deciding whether to accept a water services delivery plan, the Secretary must notify the territorial authority or group of 2 or more territorial authorities—
- (a) whether the Secretary has accepted the plan; and 25
  - (b) if the Secretary has decided not to accept the plan, the reason for that decision.

**19 Publication of accepted water services delivery plan**

If the Secretary notifies a territorial authority or group of 2 or more territorial authorities that its water services delivery plan has been accepted,— 30

- (a) the territorial authority or group of 2 or more territorial authorities must, as soon as reasonably practicable, publish the water services delivery plan,—
- (i) in the case of a plan relating to 1 territorial authority, on the territorial authority's internet site; or 35
- (ii) in the case of a joint plan, on the internet site of each territorial authority to which the plan relates; and

- (b) the Secretary must, at the same time as the Secretary notifies having accepted the plan, provide a copy of the plan to—
  - (i) the Commission; and
  - (ii) Taumata Arowai.

*Implementation, amendment, and monitoring of water services delivery plans* 5

**19A Territorial authority must give effect to water services delivery plan**

A territorial authority must give effect to the proposals or undertakings relating to the future delivery of water services that are specified, in accordance with **section 11**, in the territorial authority's water services delivery plan.

**19B Territorial authority may amend water services delivery plan** 10

- (1) In the circumstances described in **subsection (2)**, a territorial authority may amend its water services delivery plan and resubmit the amended plan to the Secretary.
- (2) The circumstances are that—
  - (a) the territorial authority has submitted its water services delivery plan to the Secretary, and the Secretary has accepted the plan under **section 18(1)**; and 15
  - (b) the proposed amendments to the plan are significant and necessary due to exceptional circumstances; and
  - (c) the proposed amendments are to the model or arrangements for delivering water services, as set out in the water services delivery plan (*see section 11(1)(j)*); and 20
  - (d) the territorial authority submits the amended plan no later than the date that is ~~18 months~~ 24 months after the date on which this section comes into force. 25
- (3) An amended plan that is submitted to the Secretary for acceptance must include a certification that—
  - (a) the amended plan complies with this Act; and
  - (b) the information contained in the amended plan is true and accurate.
- (4) The certification must be made by the person specified in **section 16(3)**. 30
- (5) The Secretary must consider an amended plan and decide whether to accept the proposed amendments.
- (6) For the purposes of **subsection (5)**, **sections 18 and 19** apply with all necessary modifications.

**19C Secretary may require territorial authority to provide information for monitoring purposes**

The Secretary may require a territorial authority to provide information that enables the Secretary to monitor the territorial authority's compliance with the territorial authority's water services delivery plan, including the proposals or undertakings relating to the future delivery of water services that are specified in that plan in accordance with **section 11**. 5

Subpart 2—Ministerial powers in relation to water services delivery plans

*Crown facilitator for water services delivery plans* 10

**20 Minister may appoint Crown facilitator**

- (1) The Minister may, in the circumstances set out in **subsection (2)**, appoint a Crown facilitator for water services delivery plans to—
- (a) a territorial authority; or
  - (b) a group of 2 or more territorial authorities that is proposing to submit, or that has submitted, a joint water services delivery plan. 15
- (2) The Minister may appoint a Crown facilitator if—
- (a) the territorial authority or the group of territorial authorities requests, in writing to the Minister, that the Minister do so and the Minister decides to grant that request; or 20
  - (b) the Minister believes, on reasonable grounds, that it would be beneficial to appoint a Crown facilitator because—
    - (i) the territorial authority or the group is otherwise unlikely to submit its plan to the Secretary in accordance with **subpart 1**; or
    - (ii) in the case of a group of territorial authorities, the group is having difficulty agreeing on the terms of a joint plan; or 25
    - (iii) contrary to **section 19A**, the territorial authority or the group of territorial authorities has not given effect to its water services delivery plan.
- (3) The Minister may appoint either 1 person or a panel of 2 or more persons to be a Crown facilitator. 30
- (4) If the Minister appoints a panel to be a Crown facilitator, the Minister must appoint 1 member as the chairperson.

**21 How Crown facilitator appointed**

- (1) The Minister appoints a Crown facilitator by— 35

- (a) providing notice in writing to the person appointed to be the Crown facilitator or, if the Minister appoints a panel, to each member of the panel; and
- (b) providing notice in writing to the territorial authority or, in the case of an appointment to a group of territorial authorities, to each authority that is a member of the group; and 5
- (c) giving notice of the appointment in the *Gazette*.
- (2) A notice under **subsection (1)** must include the following information:
- (a) the terms of reference of the Crown facilitator, including—
- (i) an outline of the role the Crown facilitator has been appointed to undertake; and 10
- (ii) the extent of the Crown facilitator’s authority:
- (b) the name of the Crown facilitator or, if the Crown facilitator is a panel, the name of each member of the panel:
- (c) the start and end dates of the Crown facilitator’s appointment: 15
- (d) if the Crown facilitator is a panel, the name of the chairperson of the panel:
- (da) if the Crown facilitator is appointed to a group of 2 or more territorial authorities, details of how the remuneration and expenses of the Crown facilitator will be apportioned between the territorial authorities (*see* **section 30**): 20
- (e) the name of each territorial authority to which the Crown facilitator has been appointed.
- (3) If the Minister changes the membership of a Crown facilitator, the Minister must provide notice of the change, in writing, to the following: 25
- (a) each territorial authority to which the Crown facilitator is appointed; and
- (b) if the Crown facilitator is a panel, each panel member.
- (4) The department must publish each notice provided under **subsection (1) or (3)** on an internet site operated by or on behalf of the department.
- 22 Role of Crown facilitator** 30
- (1) A Crown facilitator for water services delivery plans may be appointed to do 1 or more of the following:
- (a) assist the relevant territorial authority or group of territorial authorities to prepare a water services delivery plan:
- (b) advise the relevant territorial authority or group of territorial authorities how to prepare a water services delivery plan: 35

- (c) assist the relevant territorial authority or group of territorial authorities to amend a draft water services delivery plan after being advised to do so by the Secretary (*see* **section 18(3)(a)**):
- (d) direct the relevant territorial authority or group of territorial authorities how to do 1 or both of the following: 5
  - (i) prepare a water services delivery plan:
  - (ii) if the Secretary has required a water services delivery plan to be amended (*see* **section 18(3)(a)**), amend a water services delivery plan:
- (e) assist 2 or more territorial authorities to agree on the terms of a joint arrangement, including, for example, by co-ordinating the negotiation process or by determining the terms of the joint arrangement: 10
- (ea) assist the territorial authority or group of territorial authorities to give effect to an accepted water services delivery plan:
- (eb) advise the territorial authority or group of territorial authorities how to give effect to an accepted water services delivery plan: 15
- (ec) direct the territorial authority or group of territorial authorities to give effect to an accepted water services delivery plan:
- (f) assist a territorial authority or group of territorial authorities to comply with the requirements in this Act: 20
- (g) anything else specified in the Crown facilitator’s terms of reference.
- (2) However, a Crown facilitator may be appointed to determine the terms of a joint arrangement in accordance with **subsection (1)(e)** only if the relevant territorial authorities agree to the Crown facilitator having that role.
- (3) As part of performing its role, a Crown facilitator may also recommend to the Minister that the Minister should take further action, for example, by— 25
  - (a) appointing a Crown water services specialist; or
  - (b) taking further action under Part 10 of the LGA2002.

*Crown water services specialist*

- 23 Minister may appoint Crown water services specialist** 30
- (1) The Minister may, in the circumstances set out in **subsection (2)**, appoint a Crown water services specialist to—
    - (a) a territorial authority; or
    - (b) a group of 2 or more territorial authorities that is proposing to submit, or that has submitted, a joint water services delivery plan. 35
  - (2) The Minister may appoint a Crown water services specialist if—

- (a) the territorial authority or the group of territorial authorities requests, in writing to the Minister, that the Minister do so and the Minister decides to grant that request; or
- (b) the territorial authority or the group has failed to submit its water services delivery plan to the Secretary in accordance with **section 16**; or 5
- (c) the territorial authority or the group—
- (i) has submitted a water services delivery plan to the Secretary; but
- (ii) despite the Secretary requiring the plan to be amended (*see section 18(3)(a)*), the plan does not comply with **subpart 1**; or
- (ca) contrary to **section 19A**, the territorial authority or the group of territorial authorities has not given effect to its water services delivery plan; or 10
- (d) a Crown facilitator for water services delivery plans appointed to the territorial authority or the group of territorial authorities has recommended that the Minister should make such an appointment, and the Minister agrees to do so. 15
- (3) The Minister may appoint 1 person or a panel of 2 or more persons to be a Crown water services specialist.
- (4) If the Minister appoints a panel to be a Crown water services specialist, the Minister must appoint 1 member as the chairperson. 20
- 24 How Crown water services specialist is appointed**
- (1) The Minister appoints a Crown water services specialist by—
- (a) providing notice in writing to the person appointed to be the Crown water services specialist or, if the Minister appoints a panel, to each member of the panel; and 25
- (b) providing in writing to the territorial authority or, in the case of an appointment to a group of territorial authorities, to each authority that is a member of the group; and
- (c) giving notice of the appointment in the *Gazette*.
- (2) A notice under **subsection (1)** must include the following information: 30
- (a) the terms of reference of the Crown water services specialist, including—
- (i) an outline of the role the Crown water services specialist has been appointed to undertake; and
- (ii) the extent of the Crown water services specialist’s authority: 35
- (b) the name of the Crown water services specialist or, if the Crown water services specialist is a panel, the name of each member of the panel:
- (c) the start and end dates of the Crown water services specialist’s appointment:

- (d) if the Crown water services specialist is a panel, the name of the chairperson of the panel:
- (da) if the Crown water services specialist is appointed to a group of 2 or more territorial authorities, details of how the remuneration and expenses of the Crown water services specialist will be apportioned between the territorial authorities (*see section 30*): 5
- (e) the name of each territorial authority to which the Crown water services specialist has been appointed.
- (3) The Minister must provide notice of any change in the membership of a Crown water services specialist— 10
  - (a) in writing to each territorial authority to which the Crown water services specialist is appointed; and
  - (aa) if the Crown water services specialist is a panel, in writing to each panel member; and
  - (b) by notice in the *Gazette*. 15
- (4) The department must publish each notice provided under **subsection (1) or (3)** on an internet site operated by or on behalf of the department.

## 25 Role of Crown water services specialist

- (1) A Crown water services specialist may be appointed to do 1 or more of the following: 20
  - (a) prepare a water services delivery plan for the territorial authority or the group of territorial authorities:
  - (b) direct the territorial authority or the group of territorial authorities to adopt a specified water services delivery plan (which may be a plan that the specialist has prepared): 25
  - (c) direct the territorial authority or the group of territorial authorities to submit a specified water services delivery plan to the Secretary under **section 16**:
  - (ca) assist the territorial authority or group of territorial authorities to give effect to an accepted water services delivery plan: 30
  - (cb) advise the territorial authority or group of territorial authorities how to give effect to an accepted water services delivery plan:
  - (cc) direct the territorial authority or group of territorial authorities to give effect to an accepted water services delivery plan:
  - (d) anything else specified in the specialist's terms of reference. 35
- (2) As part of performing its role, a Crown water services specialist may also recommend to the Minister that the Minister should take further action, for example, taking further action under Part 10 of the LGA2002.

- 26 Decisions and directions of Crown water services specialist**
- (1) This section applies to a territorial authority after the expiry of the term of a Crown water services specialist appointed to the territorial authority.
- (2) A direction given to the territorial authority by the Crown water services specialist ceases to have effect despite **section 27(c)**. 5
- (3) Despite **subsection (2)**, any decision made by the territorial authority giving effect to a direction continues in force unless and until the territorial authority revokes or amends the decision.
- (4) A territorial authority that revokes or amends a decision under **subsection (3)** must, as soon as reasonably practicable, notify the Secretary for Local Government that the authority has done so. 10
- Compare: 2002 No 84 s 258ZA(1)–(3)

*General provisions*

- 26A Notice of proposed appointment of ministerial appointee**
- (1) Before appointing a ministerial appointee, the Minister must— 15
- (a) give the relevant territorial authority written notice that—
- (i) the Minister intends to make the appointment; and
- (ii) sets out the reasons for the proposed appointment; and
- (iii) includes the proposed terms of reference; and
- (b) give the territorial authority an opportunity to satisfy the Minister of the following matters, as applicable, by a date specified in the notice, which must be no earlier than 10 working days after the date on which notice is given: 20
- (i) that the reasons for making the appointment do not exist:
- (ii) that for any other reason, the Minister should not make the appointment: 25
- (iii) that the Minister should appoint a different ministerial appointee.
- (2) The Minister must—
- (a) notify the territorial authority, in writing, if the Minister decides not to appoint the ministerial appointee; or 30
- (b) appoint the ministerial appointee under **section 21 or 24**.
- (3) This section does not apply if the territorial authority requested the Minister to make the appointment.

Compare: 2002 No 84 s 258Q

- 27 Obligation to co-operate** 35
- A territorial authority or a group of territorial authorities to which a ministerial appointee has been appointed must, as soon as reasonably practicable,—

- (a) co-operate with the ministerial appointee; and
- (b) comply with any reasonable request from the ministerial appointee to provide any relevant information that the territorial authority or the group of territorial authorities holds; and
- (c) comply with any reasonable direction issued by the ministerial appointee. 5

**28 Minister retains powers under Part 10 of LGA2002**

- (1) The Minister's powers under this subpart are in addition to, not in place of, the Minister's powers under Part 10 (Powers of Minister to act in relation to local authorities) of the LGA2002. 10
- (2) For the purpose of applying Part 10 of the LGA2002 in relation to a matter that arises under this Act, the definition of **problem** in section 256 of the LGA2002 must be read as including a failure by a territorial authority or group of territorial authorities to do 1 or more of the following:
  - (a) submit a water services delivery plan to the Secretary within the time frame specified in **section 16(1)**: 15
  - (aa) amend a water services delivery plan and resubmit it to the Secretary by the specified date under **section 18(3)(a)**:
  - (b) have a water services delivery plan accepted by the Secretary within a reasonable period after submitting it for acceptance: 20
  - (c) give effect to proposals or undertakings specified in an accepted water services delivery plan relating to the future delivery of water services:
  - (d) comply with **section 27** of this Act.
- (3) In **subsection (2)(c)**, an **accepted water services delivery plan** means a plan that— 25
  - (a) relates to the territorial authority or group of territorial authorities; and
  - (b) has been accepted by the Secretary under **section 18**.

**29 Remuneration and expenses of ministerial appointee**

- (1) A ministerial appointee is entitled—
  - (a) to receive remuneration for services as a Crown facilitator or as a Crown water services specialist (as applicable) as determined by the Minister in accordance with the fees framework; and 30
  - (b) to be reimbursed for actual and reasonable travelling and other expenses incurred in carrying out their office as a Crown facilitator or as a Crown water services specialist in accordance with the fees framework. 35

- (2) In this section, **fees framework** means the framework determined by the Government from time to time for the classification and remuneration of statutory and other bodies in which the Crown has an interest.

Compare: 2002 No 84 s 258V

### **30 Recovery of remuneration and expenses from local authority** 5

- (1) A territorial authority owes as a debt to the Crown—
- (a) any remuneration and expenses that the Crown incurs for the appointment of a ministerial appointee (including the payment of remuneration and expenses to the ministerial appointee) if the ministerial appointee is appointed to the authority individually; or 10
  - (b) the territorial authority's share of any remuneration and expenses that the Crown incurs for the appointment of a ministerial appointee (including the payment of remuneration and expenses to the ministerial appointee) if the ministerial appointee is appointed to a group of territorial authorities. 15
- (2) The Crown may recover remuneration and expenses under **subsection (1)** as a debt to the Crown.

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

### **31 Protection from liability**

- (1) A ministerial appointee is not liable for any act done or omitted to be done by them in good faith in the performance or intended performance of their functions, responsibilities, and duties, or the exercise of their powers, as a ministerial appointee. 20
- (2) **Subsection (1)** applies, without limitation, to acts done or omitted to be done when directing a territorial authority or a group of territorial authorities. 25

Compare: 2002 No 84 s 258Y

## Subpart 3—Foundational information disclosure requirements

### **32 Purposes of this subpart**

- (1) The purposes of this subpart are—
- (a) to promote the long-term benefit of consumers of water services; and 30
  - (b) to ensure that sufficient information is readily available to interested persons to assess whether the purpose in **paragraph (a)** is being met.
- (2) This subpart achieves the purpose in **subsection (1)(a)** by promoting outcomes that are consistent with outcomes produced in competitive markets such that providers of water services— 35
- (a) have incentives to—
    - (i) innovate and to invest in water services, including in replacement, upgraded, and new assets; and

- (ii) improve efficiency in providing water services; and
      - (iii) provide water services at a quality that reflects consumer demands; and
    - (b) share with consumers the benefits of efficiency gains in supplying water services, including through lower prices; and 5
    - (c) are limited in their ability to extract excessive profits.
  - (3) This subpart—
    - (a) relates only to delivering the purpose of this Act under **section 3(1) and (2)(c)**; and
    - (b) applies in relation to delivering water services only in circumstances where there is— 10
      - (i) little or no competition in delivering those water services; and
      - (ii) little or no likelihood of a substantial increase in the level of competition.
- 33 Application of this subpart** 15
- (1) This subpart applies to 1 or more of the following entities that have been specified by the Governor-General by Order in Council made on the recommendation of the Minister and the Minister of Commerce and Consumer Affairs:
    - (a) a territorial authority that delivers water services:
    - (aa) the Wellington Regional Council: 20
    - (b) a council-controlled organisation that delivers water services:
    - (c) a subsidiary of a council-controlled organisation that delivers water services.
  - (1A) Despite **subsection (1)(b)**, an Order in Council must not specify that Watercare is a specified entity. 25
  - (2) Before making a recommendation under **subsection (1)**, the Minister and the Minister of Commerce and Consumer Affairs must—
    - (a) consider advice from the Secretary and the Commission; and
    - (b) having considered that advice, believe that the entity to be specified in the Order in Council holds, can prepare, or can produce information that, if disclosed, would enable an interested person to assess whether the purpose of this subpart is being met. 30
  - (3) An Order in Council made under this section must include the following information:
    - (a) the name of the entity: 35
    - (b) the water services to which a determination made under **section 35** may apply.

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

### **33A Commission may consult at any time**

- (1) For the purposes of this subpart, the Commission may consult any interested parties. 5
- (2) **Subsection (1)** applies whether or not an Order in Council has been made under **section 33**.

### **34 Meaning of specified entity**

In this subpart, **specified entity** means an entity that is specified in an Order in Council made under **section 33**. 10

#### *Determinations*

### **35 Commission may make determination**

- (1) The Commission may make a determination setting out the information that a specified entity must publicly disclose and must disclose to the Commission (*see* **section 36**). 15
- (2) The Commission must consult interested parties before making a determination.
- (3) A determination may relate to all specified entities or to 1 or more specified entities.
- (4) It is not necessary for a single determination to address all matters relating to all water services and different parts of any determination may come into effect at different times. 20
- (5) A determination may require a specified entity to comply with the requirements set out in any other determination that has been made under this section.
- (6) The Commission may amend a determination in a material way only after the Commission has consulted interested parties, but may amend a determination in a non-material way without prior consultation. 25
- (7) As soon as practicable after making or amending a determination, the Commission must give to each specified entity to whom the determination relates notice of the determination or the amendment (as applicable) and where it is available. 30
- (8) A determination made under this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Compare: 2023 No 54 s 15

### **36 Effect of determination**

- (1) A specified entity to which a determination made under **section 35** applies must— 35

- (a) publicly disclose information in accordance with the requirements set out in the determination; and
  - (b) supply to the Commission a copy of all information disclosed in accordance with the determination within 5 working days after the specified entity first publicly discloses the information. 5
- (2) The Commission—
- (a) may monitor and analyse all information disclosed in accordance with this subpart; and
  - (b) must, as soon as practicable after any information is publicly disclosed, publish (on an internet site operated by or on behalf of the Commission) a summary and an analysis of that information for the purpose of promoting greater understanding of the performance of individual specified entities, their relative performance, and changes in their performance over time. 10
- (3) The Commission may, as part of a summary and an analysis, include an analysis of how effective the information disclosure requirements imposed on specified entities are in promoting the purpose in **section 32**. 15
- (4) In complying with **subsection (2)(b)**, the Commission must ensure that satisfactory provision exists to protect the confidentiality of any information that may reasonably be regarded as confidential or commercially sensitive. 20

Compare: 2023 No 54 s 34

**37 Contents of determination**

- (1) A determination made under **section 35** must specify the following:
- (a) the specified entity to which it applies:
  - (b) the water services to which it applies: 25
  - (c) any time frames that must be complied with or that apply:
  - (d) the information that the specified entity must disclose:
  - (e) the manner in which the information must be disclosed:
  - (f) the form of disclosure:
  - (g) when, and for how long, the specified entity must disclose the information: 30
  - (h) any methodologies that the specified entity must apply in preparing or compiling the information.
- (2) In making a determination under **section 35**, the Commission may have regard to the scale, complexity, and risk profile of each specified entity (or class of specified entity), or the type of water services being provided by each specified entity (or class of specified entity), to which the determination will apply (for example, by requiring more or less information to be disclosed). 35

- (3) A determination may require a specified entity to disclose information that includes, without limitation, 1 or more of the following:
- (a) financial statements (including projected financial statements):
  - (b) asset values and valuation reports:
  - (c) prices, terms and conditions relating to prices, and pricing methodologies: 5
  - (d) contracts:
  - (e) transactions with related parties:
  - (f) financial and non-financial performance measures:
  - (g) plans and forecasts, including (without limitation) plans and forecasts about demand, investments, prices, revenues, quality and service levels, capacity and spare capacity, and efficiency improvements: 10
  - (h) asset management plans:
  - (i) quality performance measures and statistics:
  - (j) assumptions, policies, and methodologies used or applied in the delivery of water services: 15
  - (k) consolidated information that includes information about goods or services that are not incidental to, or related to, water services, in which case **section 38** applies:
  - (l) information about the financing of territorial authorities (or regional councils, if the specified entity is the Wellington Regional Council) and water services council-controlled organisations that includes information about goods or services that are not incidental to, or related to, water services, in which case **section 38** applies. 20
- (4) In addition, a determination may require a specified entity to disclose information about how the entity is supporting and enabling planning processes, growth, and housing and urban development and, in particular, the entity's level of responsiveness in relation to those issues. 25
- (5) A determination may do 1 or more of the following:
- (a) require disclosed information, or information from which disclosed information is derived (in whole or in part), to be verified by statutory declaration: 30
  - (b) require independent audits of disclosed information:
  - (c) require the retention of data on which disclosed information is based, and associated documentation: 35
  - (ca) exempt any specified entity or class of specified entity, or provide for exemptions, from any requirements of the determination, and provide for the revocation of exemptions:
  - (d) provide for transitional provisions:

- (e) impose any other requirements that the Commission considers necessary or desirable to promote the purpose of this subpart.
  - (6) If a determination authorises a person to grant an exemption under **subsection (5)(ca)**,—
    - (a) an instrument granting or revoking an exemption is secondary legislation (see Part 3 of the Legislation Act 2019 for publication requirements), unless it applies only to 1 or more named persons; and 5
    - (b) the determination must contain a statement to that effect.
- Compare: 2023 No 54 s 35
- 38 Determination may require specified entity to provide additional information** 10
- (1) The purpose of this section is to enable the Commission to monitor—
    - (a) compliance with requirements to disclose information under this subpart in relation to delivering water services; and
    - (b) the ongoing capability of a specified entity to raise finance with respect to its delivery of water services by assessing the specified entity’s overall financial position. 15
  - (2) A determination made under **section 35** may require a specified entity to disclose information referred to in **subsection (3)** only to the extent required to enable the Commission to monitor 1 or both of the matters referred to in **subsection (1)**. 20
  - (3) If a specified entity provides goods or services that are not incidental to or related to delivering water services (**other goods or services**), a determination may require the entity to disclose—
    - (a) consolidated financial statements, and any other information referred to in **section 37**, for all activities (including those related to the supply of other goods or services) undertaken by that entity; and 25
    - (b) consolidated financial statements, and any other information referred to in **section 37**, for the supply of all other goods or services in aggregate; and 30
    - (c) reconciliation of information provided under **paragraphs (a) and (b)** with information disclosed in accordance with information disclosure requirements applying to delivering water services; and
    - (d) information about the financing of all activities (including those related to the supply of other goods or services) undertaken by that entity. 35

Compare: 2023 No 54 s 36

**38A Commission may exempt disclosure of commercially sensitive information**

- (1) The Commission may, on application, exempt a specified entity or class of specified entity, in respect of any information or class of information that the

- Commission considers to be commercially sensitive, from any obligation to publicly disclose that information as part of the requirement to disclose information under this subpart.
- (2) The Commission may grant the exemption on any terms and conditions that it thinks fit. 5
- (3) The Commission may vary or revoke any exemption.
- (4) The Commission must keep a list of all current exemptions made by it under this section available for public inspection free of charge during normal office hours of the Commission at the offices of the Commission.
- (5) An exemption, and any variation or revocation of it, made under this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements). 10
- 39 Charge for providing copies to public**
- (1) A specified entity that is required, by a determination made under **section 35**, to provide copies of statements and information to the public on request may charge for providing those copies. 15
- (2) The charge must be no more than is reasonably required to recover the costs of providing those copies.
- Compare: 1986 No 5 s 53E; 2023 No 54 s 37
- 40 Additional monitoring and investigation powers based on subpart 8 of Part 4 of Commerce Act 1986** 20
- (1) For the purpose of carrying out its functions and exercising its powers under this Part, the Commission may do any of the following:
- (a) consult any person the Commission considers may assist it:
- (b) investigate any of the following: 25
- (i) how effectively and efficiently a provider of water services is delivering water services:
- (ii) how any conditions relating to the quality of water services may be, or are being, fulfilled:
- (c) examine, consider, or investigate any activity, cost, revenue, transfer, asset valuation, circumstance, or event that is occurring or that has occurred during the previous 7 years: 30
- (d) by notice in writing, require any provider of water services—
- (i) to prepare and produce forecasts, forward plans, or other information; and 35
- (ii) to apply any methodology specified by the Commission in the preparation of forecasts, forward plans, or other information:

- (e) by notice in writing, require any provider of water services or any previous provider of water services to do either or both of the following:
  - (i) produce or supply to the Commission documents and information in relation to water services or the prices or operations of the provider in respect of water services: 5
  - (ii) answer any questions about any matter that the Commission has reason to believe may be relevant:
- (f) by notice in writing, require any provider of water services, at the time and place specified in the notice, to produce or supply to the Commission an expert opinion from an appropriately qualified person, or from a member of a class of appropriately qualified persons, as determined by the Commission in relation to the matters in **paragraph (b), (c), (d), or (e)(i)**. 10
- (2) The Commission's powers under **subsection (1)** are in addition to its powers under the rest of this Act and under section 98 of the Commerce Act 1986. 15  
Compare: 2023 No 54 s 138(1)

*Levy*

**40A Levy**

- (1) Every person who provides water services must pay to the Minister the levy determined in accordance with regulations made under **subsection (2)**. 20
- (2) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations—
  - (a) specifying the amount of levies, or method of calculating or ascertaining the amount of levies, on the basis that the estimated costs for an appropriation period of performing or exercising the Commission's functions, duties, and powers under this subpart, and of collecting the levy money, should be met fully out of levies: 25
  - (b) including in levies, or providing for the inclusion in levies of, any shortfall in recovering those actual costs:
  - (c) refunding, or providing for refunds of, any over-recovery of those actual costs: 30
  - (d) providing different levies for different classes of providers of water services:
  - (e) specifying the appropriation period or part appropriation period to which those levies apply, and applying to that appropriation period or part appropriation period and each subsequent appropriation period until revoked or replaced: 35
  - (f) providing for the payment and collection of those levies:

- (g) for the first appropriation period to which the levy applies to a provider of water services or class of provider of water services, including in the levy amount or method any costs incurred by the Commission in connection with preparing itself to perform or exercise, and performing or exercising, its functions, duties, and powers under this subpart, irrespective of the fact— 5
- (i) that the regulations are made and come into effect after that period; or
- (ii) that the water services become regulated after the costs were incurred: 10
- (h) requiring payment of a levy for an appropriation period or a part appropriation period, irrespective of the fact that the regulations may be made after that appropriation period has commenced:
- (i) exempting, or providing for exemptions from, and providing for waivers of, the whole or any part of the levy for any case or class of cases. 15
- (3) In **subsection (2), appropriation period**, in relation to any estimated costs, means—
- (a) a financial year; or
- (b) if the estimated costs will be incurred under the authority of a multi-year appropriation or of a multi-year appropriation proposed in any Estimates, the financial years to which the multi-year appropriation applies. 20
- (4) In **subsection (3)**,—
- Estimates**—
- (a) has the meaning given in section 2(1) of the Public Finance Act 1989; and 25
- (b) includes Supplementary Estimates as defined in section 2(1) of that Act
- multi-year appropriation** means an appropriation authorised to apply for more than 1 financial year (*see* section 10 of the Public Finance Act 1989).
- (5) The Crown may recover any unpaid levy as a debt to the Crown.
- (6) The Minister must consult with providers of water services before making a recommendation for the purposes of **subsection (2)**. 30
- (7) Regulations made under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

### *Sharing of information*

- 41 Sharing of information and documents between Commission and department** 35
- (1) The Commission and the department may share information with each other if the Commission or the department (whichever is the provider of the informa-

tion) believes that sharing the information is for either or both of the following purposes:

- (a) understanding the Wellington Regional Council's or a territorial authority's intention and commitment to deliver water services in a way that is consistent with the purpose of a water services delivery plan (*see section 8*): 5
- (b) ensuring that sufficient information is available to interested persons to assess whether the purposes of this subpart are being met.
- (2) Any information received by the department or the Commission under this Act may only be used in connection with,— 10
  - (a) in the case of the department, the performance or exercise of its functions, duties, or powers under this Act; or
  - (b) in the case of the Commission,—
    - (i) the performance or exercise of its functions, duties, or powers under this Act or under the Commerce Act 1986; or 15
    - (ii) the development of a long-term economic regulation regime for the delivery of water services.
- (3) The department or the Commission may share information under this section whether or not a request has been made.
- (4) The department and the Commission must ensure that appropriate protections are or will be in place to maintain the confidentiality of information shared under this section. 20
- (5) The department and the Commission may share commercially sensitive information under this section.
- (6) This section applies despite anything to the contrary in any contract, deed, or document. 25
- (7) The department or the Commission may share the information subject to any conditions they think are appropriate.

*Pecuniary penalty orders*

- 42 When High Court may make pecuniary penalty order** 30
- (1) The High Court may, on the application of the Commission, order a person to pay to the Crown a pecuniary penalty if the court is satisfied that the person has—
    - (a) contravened an obligation to disclose information under this subpart; or
    - (b) contravened an obligation to disclose information in the form or within the time required; or 35
    - (c) disclosed information under this subpart that is false or misleading; or

- (d) attempted to contravene an obligation to disclose information under this subpart; or
- (e) been involved in a contravention of an obligation to disclose information under this subpart.
- (2) In **subsection (1)(e)**, a person has been **involved in a contravention** if the person— 5
- (a) has aided, abetted, counselled, or procured the contravention; or
- (b) has induced the contravention, or attempted to induce it, whether by threats or promises or otherwise; or
- (c) has been in any way, directly or indirectly, knowingly concerned in, or party to, the contravention; or 10
- (d) has conspired with others to effect the contravention.
- (3) Proceedings under this section may be commenced at any time within 3 years after the contravention occurred.
- Compare: 2023 No 54 ss 83(1), 126 15

#### **43 Maximum amount of pecuniary penalty**

- (1) The maximum amount of a pecuniary penalty imposed under **section 42** is, in respect of each act or omission,—
- (a) \$500,000, in the case of an individual; or
- (b) \$5 million, in any other case. 20
- (2) In determining the amount of pecuniary penalty, the court must have regard to all relevant matters, including—
- (a) the nature and extent of the contravention; and
- (b) the circumstances in which the contravention took place (including whether the contravention was intentional, inadvertent, or caused by negligence); and 25
- (c) whether the person has previously been found by the court in proceedings under this subpart to have engaged in similar conduct.
- (3) A person may not be liable to more than 1 pecuniary penalty in respect of the same conduct. 30
- Compare: 2023 No 54 s 84(1)

#### *Orders about information disclosure*

#### **44 Order requiring information disclosure requirement to be complied with**

- (1) The High Court may, on application by the Commission, order a specified entity to comply with an obligation that applies to the entity to disclose information under this subpart. 35

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

Compare: 2023 No 54 s 92

*Offence*

**45 Offence relating to requirement to disclose information** 5

- (1) A person commits an offence if—
- (a) the person, knowing that water services are subject to an obligation to disclose information under this subpart, intentionally contravenes any requirement in relation to that obligation; or
  - (b) the person is subject to an order under **section 44** and fails to comply with the order by the date, or within the period, specified. 10

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

Compare: 2023 No 54 s 98

15

*Miscellaneous provisions*

**46 Application of Part 7 of Commerce Act 1986 (Miscellaneous provisions)**

For the purposes of this subpart, the following provisions of the Commerce Act 1986 apply with any necessary modifications:

*Powers relating to evidence* 20

- (a) section 98 (Commission may require person to supply information or documents or give evidence):
- (b) section 98A (power to search) as if the reference to regulation under Part 4 of the Commerce Act 1986 were a reference to secondary legislation made under this Act: 25
- (c) section 98G (Commission may exercise powers notwithstanding other proceedings):
- (d) section 99 (powers of Commission to take evidence):

*Offences and administrative provisions*

- (e) section 100 (powers of Commission to prohibit disclosure of information, documents, and evidence): 30
- (f) section 100A (Commission may state case for opinion of High Court):
- (g) section 103 (offences):
- (h) section 104 (determinations of Commission):
- (i) section 106 (proceedings privileged): 35
- (j) section 106A (judicial notice):

(k) section 109 (Commission may prescribe forms).

#### 46A Proceedings for pecuniary penalties

- (1) Any proceedings for a pecuniary penalty under this subpart are civil proceedings.
- (2) The usual rules of court and rules of evidence and procedure for civil proceedings apply (including the standard of proof). 5

#### 46B No pecuniary penalty and fine for same conduct

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

Compare: 2013 No 69 s 507 10

### Part 3

#### ~~Establishing water services council-controlled organisations and joint local government arrangements~~ Alternative requirements and additional powers

*Preliminary provisions* 15

#### 49 Purposes of this Part

The purposes of this Part are—

- (a) ~~to set out alternative consultation and decision-making requirements that territorial authorities can use in place of certain consultation and decision-making requirements set out in the LGA2002 (the **alternative requirements**) (see **sections 50 to 54**)—~~ 20
- (i) ~~when the territorial authorities are establishing, joining, or amending a water services council-controlled organisation (or are deciding whether or not to do so); or~~
- (ii) ~~when the territorial authorities are establishing, joining, or amending a joint local government arrangement under section 137 of the LGA2002 (or are deciding whether or not to do so); and~~ 25
- (a) to set out consultation and decision-making requirements, in place of certain consultation and decision-making requirements set out in the LGA2002 (the **alternative requirements**), that territorial authorities— 30
- (i) may use when establishing, joining, or amending—
- (A) a water services council-controlled organisation (or are deciding whether or not to do so); or
- (B) a joint local government arrangement under section 137 of the LGA2002 (or are deciding whether or not to do so); and 35

- (ii) must use when consulting or making decisions in relation to an anticipated or proposed model or arrangement for delivering water services; and
- (iii) must use if they decide to consult on a part of a water services delivery plan other than a model or arrangement described in **sub-paragraph (ii)**; and 5
- (b) to give territorial authorities greater flexibility in relation to WSCCOs, water services delivery plans, and joint local government arrangements by setting out additional powers to, or exemptions from, specific provisions in the LGA2002 (*see **sections 55 to 58***). 10

**49A Reference to territorial authority includes Wellington Regional Council**

In this Part and, to the extent they are used in this Part, in the definitions in **section 5**—

- (a) a reference to a territorial authority includes, where applicable, a reference to the Wellington Regional Council; and 15
- (b) a reference to a territorial authority’s district includes, where applicable, a reference to the relevant part of the Wellington Regional Council’s region.

*Alternative requirements*

**50 Alternatives to requirements in Local Government Act 2002** 20

- (1) ~~If~~When a territorial authority complies with an alternative requirement specified in **sections 51 to 54**, it need not comply with the corresponding requirement in the LGA2002.
- (2) However, except as specified in this Part, all other relevant requirements in the LGA2002 continue to apply. For example, the requirements in sections 77(1)(c), 81, and 82 of the LGA2002 continue to apply ~~to a territorial authority whether or not it complies with the alternative requirements.~~ 25
- (3) ~~A~~In the circumstances described in **section 49(a)(i)**, a territorial authority may decide to rely on none, any, or all of the alternative requirements set out in **sections 51 to 54**. 30
- (4) A territorial authority that does not rely on an alternative requirement must comply with the corresponding requirement in the LGA2002.
- (5) Section 76 of the LGA2002 does not apply to the extent that a territorial authority complies with an alternative requirement.

**51 Alternative requirement: decision making** 35

- (1) ~~This section applies if a territorial authority is deciding whether or not to establish, join, or amend—~~
  - (a) ~~a water services council-controlled organisation; or~~

- (b) ~~a joint local government arrangement under section 137 of the LGA2002.~~
- (1) This section applies if a territorial authority—
- (a) is deciding whether or not to establish, join, or amend—
- (i) a water services council-controlled organisation; 5
- (ii) a joint local government arrangement under section 137 of the LGA2002; or
- (b) before adopting its water services delivery plan, is making decisions in relation to an anticipated or proposed model or arrangement for delivering water services in its water services delivery plan (see **section 11(1)(j)**). 10
- (2) In the course of that decision-making process, the territorial authority—
- (a) must identify both of the following 2 options for delivering water services:
- (i) remaining with the existing approach for delivering water services; and 15
- (ii) ~~joining, forming, establishing, joining,~~ or amending (as the case may be) the WSCCO or the joint local government arrangement; but
- (b) may identify additional options for delivering water services; and 20
- (c) must assess the advantages and disadvantages of all options identified.
- (3) For the purpose of **section 50(1)**, the corresponding requirement for this section is in section 77(1)(a) and (b) of the LGA2002.
- 52 Alternative requirement: consultation**
- (1) ~~This section applies if a territorial authority is deciding whether or not to establish, join, or amend—~~ 25
- (a) ~~a water services council-controlled organisation; or~~
- (b) ~~a joint local government arrangement under section 137 of the LGA2002.~~
- (1) This section applies if a territorial authority— 30
- (a) is deciding whether or not to establish, join, or amend—
- (i) a water services council-controlled organisation; or
- (ii) a joint local government arrangement under section 137 of the LGA2002; or
- (b) when adopting its water services delivery plan, is making decisions in relation to an anticipated or proposed model or arrangement for delivering water services in its water services delivery plan (see **section 11(1)(j)**); or 35

- (c) decides to consult on a part of its water services delivery plan, other than a model or arrangement described in **paragraph (b)**.
- (2) ~~Before the territorial authority decides whether or not to establish, join, or amend the WSCCO or the joint local government arrangement, the territorial authority is only required to undertake consultation once.~~ 5
- (2) Before a territorial authority makes a decision described in **subsection (1)**, it is required to undertake consultation only once.
- (2A) A territorial authority that makes a decision described in **subsection (1)(a)** is not required to undertake any further consultation before making a decision described in **subsection (1)(b)**. 10
- (3) Despite ~~**subsection (2)**~~ **subsections (2) and (2A)**, a territorial authority may decide to undertake further consultation before making the decision.
- (4) When deciding whether to undertake further consultation, a territorial authority must have regard to—
- (a) the requirement in section 78(1) of the LGA2002; and 15
- (b) 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 decision; and
- (c) the nature and significance of the decision, including its likely impact from the perspective of the persons who will or may be affected by, or have an interest in, the decision. 20
- (5) This section applies despite anything to the contrary in the authority’s significance and engagement policy adopted under section 76AA of the LGA2002.
- (6) A territorial authority that defers adopting its 2024–2034 long-term plan under clause 48 of Schedule 1AA of the LGA2002 may, to satisfy the requirement to consult on the decision under this section, combine— 25
- (a) the consultation under this section; and
- (b) the authority’s consultation on its 2025–2034 long-term plan.
- (7) For the purpose of **section 50(1)**, the corresponding requirement for this section is in section 56(1) of the LGA2002. 30

**53 Alternative requirement: consultation on amendment to long-term plan**

- (1AA) This section applies if a territorial authority is required to amend its long-term plan for the purpose of—
- (a) a proposal to give effect to an anticipated or proposed model for delivering water services under a water services delivery plan (see **section 11(1)(j)**); or 35
- (b) a proposal to establish, join, or amend a WSCCO or a joint local government arrangement under section 137 of the LGA2002.

- (1) ~~If a territorial authority is required to amend its long-term plan for the purpose of establishing, joining, or amending a WSCCO or a joint local government arrangement under section 137 of the LGA2002, the authority is not required to consult on the amendment.~~ The territorial authority is not required to consult on the proposal if the authority— 5
- (a) ~~has already consulted its community in relation to the proposal to establish, join, or amend (as the case may be) a WSCCO or a joint local government arrangement; and~~
  - (b) is satisfied that its community has a good understanding of the implications of the proposal; and 10
  - (c) is satisfied that it understands its community's views on the proposal.
- (2) This section applies despite anything to the contrary in the authority's significance and engagement policy adopted under section 76AA of the LGA2002.
- (3) For the purpose of **section 50(1)**, the corresponding requirements for this section are in sections 93(5) and 97(2)(b) of the LGA2002. 15

#### 54 **Alternative requirement: information requirements for consultation**

(1AA) This section applies when a territorial authority consults—

- (a) in relation to whether or not to establish, join, or amend—
    - (i) a water services council-controlled organisation; or
    - (ii) a joint local government arrangement under section 137 of the LGA2002; or 20
  - (b) before adopting its water services delivery plan, in relation to an anticipated or proposed model or arrangement for delivering water services in its water services delivery plan (see **section 11(1)(j)**); or
  - (c) on a part of its water services delivery plan, other than a model or arrangement described in **paragraph (b)**. 25
- (1) When a territorial authority consults ~~about whether or not to establish, join, or amend a WSCCO or a joint local government arrangement under section 137 of the LGA2002~~ in the circumstances described in **subsection (1AA)**, the authority must make the following information publicly available: 30
- (a) the proposal, an explanation of the proposal, and the reasons for the proposal;
  - (b) an analysis of the reasonably practicable options (including the proposal), which must,—
    - (i) if the authority relies on the alternative requirement in **section 51(2)**, be the options identified under **section 51(2)(a) and (b)**; or 35
    - (ii) in all other cases, be the options identified under section 77(1) of the LGA2002:

- (c) how proceeding with the proposal is likely to affect—
    - (i) the authority’s rates, debt, and levels of service; and
    - (ii) any charges for water services:
  - (d) how not proceeding with the proposal is likely to affect—
    - (i) the authority’s rates, debt, and levels of service; and 5
    - (ii) any charges for water services:
  - (e) if the proposal involves establishing, joining, or amending a joint WSCCO or a joint local government arrangement, the implications for communities throughout the joint service area of the joint WSCCO or the joint local government arrangement: 10
  - (f) if the proposal involves transferring ownership or control of a strategic asset to the WSCCO or the joint local government arrangement, a description of any accountability or monitoring arrangements the authority will use to assess the performance of the WSCCO or the joint local government arrangement in regard to the asset: 15
  - (g) any other relevant implications of the proposal that the authority considers will be of interest to the public.
- (2) For the purpose of **section 50(1)**, the corresponding requirement for this section is in section 82A(2) of the LGA2002.
- (3) In this section,— 20
- publicly available** means that the territorial authority 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 purpose of the information, including, where practicable, on the territorial authority’s internet site; and 25
  - (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
- strategic asset** has the meaning set out in section 5(1) of the LGA2002. 30

*Additional powers and exemption*

**55 Ability to consider joint service area**

When deciding whether or not to establish, join, or amend a joint WSCCO, a joint arrangement, or a joint local government arrangement under section 137 of the LGA2002, a territorial authority may, despite sections 12(4) and 14(1)(g) of the LGA2002, also consider— 35

- (a) the impact of the joint WSCCO, the joint arrangement, or the joint local government arrangement on the communities in the joint service area (as well as the impact on the authority's district); and
- (b) the views of people in communities in the joint service area (as well as the views of people in the authority's communities); and 5
- (e) ~~the views of the other territorial authorities who are parties to the joint WSCCO or the joint local government arrangement.~~
- (c) the views of the other territorial authorities who are—
  - (i) parties to the joint WSCCO, the joint arrangement, or the joint local government arrangement; or 10
  - (ii) considering whether to become parties to the joint WSCCO, the joint arrangement, or the joint local government arrangement.

## 56 Joint committees

- (1) 2 or more territorial authorities that are considering whether or not to establish or amend a joint WSCCO, a joint arrangement, or a joint local government arrangement under section 137 of the LGA2002 may use a joint committee appointed under clause 30(1)(b) of Schedule 7 of the LGA2002 to perform 1 or more of the following tasks: 15
  - (a) identify and assess the options under **section 51(2)** of this Act or section 77(1) of the LGA2002: 20
  - (b) recommend a proposal to the territorial authorities for the purposes of consultation:
  - (c) if the territorial authorities have authorised the joint committee to do so, undertake consultation on behalf of the territorial authorities:
  - (d) following all required consultation, recommend a decision to the territorial authorities. 25
- (2) This section applies in addition to, and without limiting, any provision in Schedule 7 of the LGA2002 that relates to joint committees.
- (3) For the purposes of a joint committee performing any of the tasks listed in **subsection (1)**, a reference in Part 6 of the LGA2002 (planning, decision-making, and accountability) to a local authority may be read as a reference to the joint committee. 30
- (4) If 3 or more territorial authorities are considering whether or not to establish or amend a joint WSCCO, a joint arrangement, or a joint local government arrangement, some (but not all) of the territorial authorities may use a joint committee to perform the tasks listed in **subsection (1)**. 35

**57 Ability to conditionally approve amending long-term plan**

- (1) This section applies if, for the purpose of establishing, joining, or amending a joint WSCCO, a joint arrangement, or a joint local government arrangement under section 137 of the LGA2002, a territorial authority is required to—
- (a) amend its long-term plan; or 5
  - (b) provide for the joint WSCCO, the joint arrangement, or the joint local government arrangement when adopting its long-term plan.
- (2) The authority may approve the amendment or the adoption conditional on the other territorial authorities that are to be parties to the joint WSCCO, the joint arrangement, or to the joint local government arrangement— 10
- (a) approving corresponding amendments to their long-term plans; or
  - (b) adopting their long-term plans with corresponding provisions.

**58 Exemption from cost-effectiveness review**

- (1) This section applies if a territorial authority—
- (a) is deciding whether or not to establish, join, or amend a WSCCO; or 15
  - (aa) is deciding whether or not to establish, join, or amend a joint local government arrangement under section 137 of the LGA2002; or
  - (ab) is deciding whether or not to change its water services delivery arrangements as part of an anticipated or proposed model or arrangement for delivering water services in its water services delivery plan (see section 11(1)(j)); or 20
  - (b) has established, joined, or amended a WSCCO; or
  - (c) has established, joined, or amended a joint local government arrangement; or
  - (d) has changed its water services delivery arrangements as part of an anticipated or proposed model or arrangement for delivering water services in its water services delivery plan. 25
- (2) The authority is not required to undertake a review under section 17A of the LGA2002 in relation to the WSCCO, the anticipated or proposed model or arrangement for delivering water services, or the joint local government arrangement. 30

**59 Repeal of section 58**

**Section 58** and this section are repealed on the date that is 5 years after this section comes into force.

## Part 4

### Watercare Services Limited

#### 59A Purposes of this Part

- (1) The purposes of this Part are—
- (a) to promote the long-term benefit of consumers of water services provided by Watercare; and 5
  - (b) to ensure that sufficient information is readily available to interested persons to assess whether the purpose in **paragraph (a)** is being met; and
  - (c) to ensure that Watercare manages its operations efficiently with a view to keeping the overall costs of delivering water services at the minimum levels consistent with the effective conduct of its undertakings and the maintenance of the long-term integrity of its assets. 10
- (2) This Part achieves the purposes by promoting outcomes that are consistent with outcomes produced in competitive markets such that Watercare—
- (a) has incentives to— 15
    - (i) innovate and to invest in water services, including in replacement, upgraded, and new assets; and
    - (ii) improve efficiency in providing water services; and
    - (iii) provide water services at a quality that reflects consumer demands; and 20
  - (b) shares with consumers the benefits of efficiency gains in supplying water services, including through lower prices; and
  - (c) is limited in its ability to extract excessive profits.
- (3) This Part relates only to delivering the purpose of this Act under **section 3(2)(e)**. 25

#### 59B Application of this Part

This Part applies to water services provided by Watercare in circumstances if there is—

- (a) little or no competition in providing those services; and
- (b) little or no likelihood of a substantial increase in the level of competition. 30

#### *Crown monitor*

#### 60 Minister may appoint Crown monitor

The Minister may appoint one of the following to be a Crown monitor to Watercare: 35

- (a) an individual; or

- (b) a Crown entity; or
- (c) a company named in Schedule 4A of the Public Finance Act 1989.

#### 60A Definitions of Crown entity and Crown monitor

In this Part,—

**Crown entity** has the meaning set out in section 7(1) of the Crown Entities Act 2004 5

**Crown monitor** means the Crown monitor for the interim economic regulation of Watercare appointed under **section 60**.

#### 61 How Crown monitor appointed

- (1) The Minister must appoint a Crown monitor by providing notice in writing to— 10
  - (a) the Crown monitor; and
  - (b) Watercare.
- (2) The notice must include the following information:
  - (a) the name of the Crown monitor; and 15
  - ~~(b) the date on which the Crown monitor’s appointment starts.~~
  - (b) the date on which the Crown monitor’s appointment starts; and
  - (c) the terms of reference of the Crown monitor.
- (3) The Minister may, by notice in writing to Watercare and the Crown monitor,—
  - (a) change the terms of the Crown monitor’s appointment; or 20
  - (aa) change the Crown monitor’s terms of reference; or
  - (b) end the Crown monitor’s appointment.
- (4) The department must, as soon as practicable after the Minister appoints a Crown monitor, changes the terms of an appointment or the terms of reference, or ends an appointment, give public notification of the Minister having done so— 25
  - (a) on an internet site maintained by, or on behalf of, the department; and
  - (b) in a format that is readily accessible.

#### 62 Role of Crown monitor

The role of the Crown monitor is to— 30

- ~~(b) review, and provide comments on, Watercare’s business plan (see **section 67**); and~~
- (c) monitor, and report on, Watercare’s performance against the charter (*see sections 71 and 72*); and
- (d) take action to address any failure by Watercare to comply with the charter (*see sections 76 to 81*). 35

- (2) ~~The Crown monitor may specify—~~
- (a) ~~the form and content of the business plan that Watercare must submit under **section 65**;~~
  - (b) ~~the order in which Watercare must submit each component of a business plan.~~

5

*Watercare charter*

**62A Secretary to prepare Watercare charter**

- (1) The Secretary must prepare a Watercare charter in consultation with Auckland Council.
- (2) ~~When preparing a charter, the Secretary—~~ 10
- (a) ~~must consult Auckland Council, Watercare, Taumata Arowai, and the Commission on the draft charter; and~~
  - (b) ~~may consult—~~
    - (i) ~~any other Crown entity on the draft charter;~~
    - (ii) ~~any other person the Secretary considers appropriate on the draft charter.~~ 15
- (2) When preparing a charter, the Secretary may consult any person the Secretary considers appropriate.
- (3) After consulting under **subsection subsections (1) and (2)**, the Secretary must— 20
- (a) make any changes to the draft Watercare charter that the Secretary thinks fit to make as a result of the consultation; and
  - (b) then submit the charter to the Minister.
- (4) The Secretary must prepare and submit— 25
- (a) each part of the charter separately (*see* **section 63**); and
  - (b) Part 2 of the charter after submitting Part 1 of the charter.

**62B Watercare charter is made by Order in Council**

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make the Watercare charter or a part of the charter.
- (2) An Order in Council made under this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements). 30

**63 Contents of Watercare charter**

A Watercare charter must comprise the following 2 parts:

- (a) Part 1 of the charter (*see* **section 64**), which—

- (i) must contain minimum service quality standards for Watercare (which may include the time frame during which Watercare must meet the standards); and
- (ii) must contain financial performance objectives for Watercare; and
- (iii) may contain a customer compensation scheme for Watercare: 5
- (b) Part 2 of the charter, which must—
  - (i) contain a price-quality path for Watercare (*see* **section 68**); and
  - (ii) specify the time period during which the charter applies (which must start no earlier than the day after the date on which Part 2 of the charter is made under **section 62B**). 10

*Part 1 of Watercare charter*

**64 Content of Part 1 of Watercare charter**

*Minimum service quality standards*

- (1) Minimum service quality standards contained in Part 1 of a Watercare charter (*see* ~~**section 63(2)(a)(i)**~~ **section 63(a)(i)**) may relate to 1 or more of the following: 15
  - (a) services provided by Watercare to consumers:
  - (b) the performance of Watercare’s water supply network:
  - (c) the performance of Watercare’s wastewater network:
  - (d) the delivery of Watercare’s capital investment. 20

*Financial performance objectives*

- (2) Financial performance objectives contained in Part 1 of a Watercare charter (*see* ~~**section 63(2)(a)(ii)**~~ **section 63(a)(ii)**) may include 1 or more of the following:
  - (a) the maximum amount of revenue that Watercare may earn on water supply services and wastewater services: 25
  - (b) the approach that Watercare must use to recover the cost of its infrastructure through infrastructure growth charges:
  - (c) efficiency targets that Watercare must achieve:
  - (d) the minimum credit rating that Watercare must maintain. 30

*Customer compensation scheme*

- (3) A customer compensation scheme contained in Part 1 of a Watercare charter (*see* ~~**section 63(2)(a)(iii)**~~ **section 63(a)(iii)**) must specify the compensation that Watercare must pay to a customer if Watercare fails to meet a minimum service quality standard set out in the charter relating to that customer. 35

- 65 Watercare must submit business plan to ~~Crown monitor~~ Secretary**
- (1) Watercare must submit a draft business plan to the ~~Crown monitor~~ Secretary.
- (2) Watercare must submit the draft business plan no later than 4 months after the date on which Part 1 of the Watercare charter is made under **section 62B**.
- (3) A business plan must, for the period during which it applies, include— 5
- (a) the sources of, and Watercare’s intended approach to, funding, revenue, and pricing; and
  - (b) Watercare’s water infrastructure growth charging policy; and
  - (c) Watercare’s intended approach to pricing its services and charging customers; and 10
  - (d) Watercare’s financial strategy for each financial year covered by the plan; and
  - (e) Watercare’s intended efficiency improvements for operating and capital expenditure; and
  - (f) Watercare’s investment priorities for its infrastructure assets; and 15
  - (g) how Watercare will—
    - (i) operate, maintain, and renew its infrastructure assets; and
    - (ii) provide new infrastructure assets; and
  - (h) information about how the plan helps to achieve Watercare’s proposed activities and intentions (as set out in its statement of intent). 20
- (4) Watercare must ensure that—
- (a) the business plan that it submits complies with any requirements specified by the ~~Crown monitor~~ Secretary as to the form and content of the plan; and
  - (b) it provides each component of the plan to the ~~Crown monitor~~ in any order specified by the ~~Crown monitor~~ Secretary in any order specified by the Secretary. 25
- (5) When specifying any form and content requirements of the business plan, the ~~Crown monitor~~ Secretary must have regard to, and ensure consistency with, Watercare’s obligations under Part 5 of the LGA2002. 30
- 66 Period covered by business plan submitted to ~~Crown monitor~~ Secretary**
- (1) A business plan that Watercare submits under **section 65** must cover a period of at least 10 consecutive financial years.
- (2) The ~~Crown monitor~~ Secretary may require that a business plan includes the required information— 35
- (a) in detail in relation to each of the first 3 financial years covered by the plan; and

- (b) in outline in relation to each of the subsequent financial years covered by the plan.

**67 Process for finalising business plan**

- (1) After receiving a draft business plan under **section 65**, the ~~Crown monitor~~ Secretary— 5
- (a) must review the plan; and
- (b) may require Watercare to provide additional information relating to the plan; and
- (c) may provide written comments on the plan to Watercare; and
- (d) must specify a time frame for Watercare to submit a final version of the plan. 10
- (1A) Before providing written comments on the plan to Watercare under **subsection (1)(c)**, the Secretary—
- (a) must consult Auckland Council; and
- (b) may consult any other person the Secretary considers appropriate. 15
- (2) Watercare must submit a final version of the business plan after—
- (a) providing any additional information requested by the ~~Crown monitor~~ Secretary; and
- (b) taking into account any comments made by the ~~Crown monitor~~ Secretary. 20
- (2A) Watercare must ensure that the final version of the business plan that it submits is consistent with any requirements in the Watercare charter.
- (3) Watercare must submit the final version of the business plan within the time frame specified by the ~~Crown monitor~~ Secretary.

*Part 2 of Watercare charter* 25

**68 Content of Part 2 of Watercare charter**

- (1) A price-quality path for Watercare contained in Part 2 of a Watercare charter (a **price-quality path**) must include ~~the information required by the Crown monitor, which may be~~ 1 or more of the following: 30
- (a) the period to which it applies (which must not be more than 5 years):
- (b) the minimum or maximum price or prices that Watercare may charge:
- (c) the minimum or maximum revenue that Watercare may recover:
- (d) the minimum service quality standards, performance targets, or financial performance objectives that Watercare must meet.
- (2) A price-quality path may include incentives for Watercare to maintain or improve its services. 35

- (3) For the purposes of **subsection (2)**, the incentives may include (without limitation) any of the following:
- (a) penalties by way of a reduction in Watercare’s maximum prices or revenues based on whether, or by what amount, Watercare fails to meet the minimum service quality standards, performance targets, or financial performance objectives specified in Part 1 of the Watercare charter: 5
  - (b) rewards by way of an increase in Watercare’s maximum prices or revenue based on whether, or by what amount, Watercare meets or exceeds the minimum service quality standards, performance targets, or financial performance objectives specified in Part 1 of the Watercare charter. 10
- (4) A price-quality path may include any of the following performance requirements:
- (a) requirements to adopt a particular approach to risk management:
  - (b) requirements in relation to the condition of assets and remaining asset life: 15
  - (c) requirements to make particular types of investment:
  - (d) requirements to provide information about any investments planned for a particular period:
  - (e) requirements to consult the Crown monitor about certain kinds of investments and investment decisions: 20
  - (f) requirements to adopt asset management policies and practices:
  - (g) requirements to ring-fence minimum amounts of revenue for investment purposes:
  - (h) reporting requirements, including— 25
    - (i) to whom reports must be made; and
    - (ii) the timing of reports; and
    - (iii) special reporting requirements in asset management plans, if Watercare fails to meet minimum service quality standards or performance targets; and
    - (iv) any other matters relating to reporting, including requirements for additional information: 30
  - (i) requirements that any disclosed information, or any information from which disclosed information is derived, be verified by statutory declaration or certified (in the form specified by the ~~Crown monitor~~ Secretary) as true and accurate: 35
  - (j) requirements to undertake cost-benefit analysis before Watercare begins any specified projects:
  - (k) requirements relating to consultation and engagement with consumers:
  - (l) requirements based on comparative benchmarking of efficiency.

- (5) A requirement to ring-fence revenue (as referred to in **subsection (4)(g)**) may include a requirement not to spend the relevant funds without the approval of the Crown monitor.

*Effect of Watercare charter*

- 69 Effect of charter** 5
- (1) After Part 2 of the Watercare charter is made under **section 62B**, the charter is binding on Watercare during the time period to which it applies.
- (2) If there is any inconsistency between obligations in the charter and obligations in Auckland Council’s long-term plan, the obligations in the charter prevail.
- (3) Each agreement for services entered into between Watercare and a customer of Watercare during the time period to which the charter applies must include any information relating to a customer compensation scheme that the charter requires. 10

*Information disclosure*

- 70 Crown monitor may require information disclosure** 15
- (1) The Crown monitor may, by notice in writing, require Watercare to provide any information the Crown monitor considers may enable the Crown monitor to perform or exercise its functions, duties, or powers under this Act.
- (2) Information that the Crown monitor may require Watercare to disclose may include (without limitation) 1 or more of the following: 20
- (a) financial statements (including projected financial statements):
  - (b) asset values and valuation reports:
  - (c) prices, terms and conditions relating to prices, and pricing methodologies:
  - (d) contracts: 25
  - (e) transactions with related parties:
  - (f) financial and non-financial performance measures:
  - (g) plans and forecasts, including (without limitation) plans and forecasts about demand, investments, prices, revenues, quality and service levels, capacity and spare capacity, and efficiency improvements: 30
  - (h) asset management plans:
  - (i) quality performance measures and statistics:
  - (j) assumptions, policies, and methodologies used or applied in relation to relevant information, including in relation to the information listed in **paragraphs (a) to (i)**. 35

- (3) For the purpose of monitoring whether Watercare is complying with a price-quality path in Part 2 of the Watercare charter, the Crown monitor may, by notice in writing to Watercare, require it to provide 1 or more of the following:
- (a) a written statement advising whether Watercare is complying with the price-quality path: 5
  - (b) a written report analysing the written statement under **paragraph (a)**, signed by—
    - (i) an auditor; or
    - (ii) a suitably qualified and experienced independent expert:
  - (c) sufficient information for the Crown monitor to be satisfied that Watercare is complying with the price-quality path. 10
- (4) As part of requiring Watercare to disclose information under this section, the Crown monitor may require Watercare to provide a certificate confirming that the information it provides is true and accurate.
- (5) A certificate must be— 15
- (a) in the form specified by the Crown monitor; and
  - (b) signed by at least 1 director of Watercare.

*Crown monitor to monitor and report on performance*

**71 Crown monitor must monitor Watercare’s performance**

- (1) The Crown monitor must monitor Watercare’s performance under the charter. 20
- (1A) To avoid doubt, Watercare’s performance under the charter includes the performance of any service or network that Watercare manages through a contract with a third-party provider.
- (2) For the purposes of **subsection (1)**, the Crown monitor is entitled to attend any meeting of the board of Watercare. 25
- (3) However, the Crown monitor may only attend a meeting if it is or may be necessary to do so for the Crown monitor to perform or exercise its functions, duties, or powers under this Act.

**72 Crown monitor must make annual report**

- (1) No later than 30 November in each year, the Crown monitor must report on Watercare’s performance in the previous financial year against the following (contained in the Watercare charter): 30
- (a) minimum service quality standards or performance targets:
  - (b) financial performance objectives:
  - (c) the price-quality path. 35
- (2) The Crown monitor must—
- (a) provide the report to—

- (i) Auckland Council; and
- (ii) the Minister; and
- (iii) the Minister of Commerce and Consumer Affairs; and
- (b) as soon as reasonably practicable after complying with **paragraph (a)**, make the report available to the public on an internet site maintained by, or on behalf of, the Crown monitor in a format that is readily accessible. 5

**73 Crown monitor must make quarterly reports to Minister**

- (1) The Crown monitor must provide a quarterly report to the Minister.
- (2) A quarterly report must report on the Crown monitor's performance or exercise of its functions, duties, or powers under this Act. 10

*Crown monitor's and Secretary's expenses*

**74 Crown monitor's and Secretary's expenses are recoverable from Watercare**

(1AAA) This section applies to the following (the **expenses**):

- (a) expenses incurred by the Crown monitor in relation to monitoring Watercare; and 15
- (b) the remuneration of the Crown monitor; and
- (c) expenses incurred by the Secretary in relation to preparing or amending the Watercare charter.
- (1) The Crown may recover the expenses from Watercare on any terms and conditions set by the Minister. 20
- (1A) Before setting any terms and conditions, the Minister must consult—
  - (a) Auckland Council; and
  - (b) Watercare.
- (2) The terms and conditions may, for example, do 1 or more of the following: 25
  - (a) specify, or specify classes, descriptions, or kinds of, all or any of the expenses:
  - (b) impose a cap on classes of expenses or total expenses:
  - (c) specify a time period in which classes of, or total, expenses are incurred, for the purposes of calculating a cap. 30
- (3) The duty to reimburse the expenses is not the Crown lending money for the purposes of the Public Finance Act 1989.
- (4) The Crown may recover the expenses as a debt to the Crown.

Compare: 2022 No 77 Schedule 1 cl 35

*Commerce Commission's functions, duties, and powers***75 Commerce Commission's functions, duties, and powers**

- (1) For the purposes of this Act, the Commission may review Parts 1 and 2 of a draft Watercare charter and provide comments to the ~~Crown monitor~~ Secretary.
- (2) The purpose of the Commission's review and provision of comments is to help to optimise— 5
- (a) the charter; and
  - (b) the application of the charter to Watercare; and
  - (c) decisions made by the ~~Crown monitor~~ Secretary in relation to the charter. 10
- (3) As part of its functions, duties, and powers under this Act, the Commission may—
- (a) engage with any party it considers practicable (for example, Taumata Arowai); and
  - (b) unless it is appointed to be the Crown monitor, provide services to the Crown monitor or the Secretary (for example, under a service-level agreement). 15
- (4) If the Minister appoints the Commission to be the Crown monitor,—
- (a) the Commission has the functions, duties, and powers required to perform that role; but 20
  - (b) this section and the obligation under **section 62A(2)(a)** for the Secretary to consult the Commission do not apply.

*Enforcement***76 High Court may impose orders**

- (1) The High Court may, on application by the Crown monitor, make 1 or more of the orders listed in **subsection (2)** if the court is satisfied that Watercare— 25
- (a) has contravened the Watercare charter; or
  - (b) has attempted to contravene the Watercare charter.
- (2) The orders are as follows:
- (a) an order requiring Watercare to comply with the charter: 30
  - (b) an injunction restraining Watercare from contravening the charter:
  - (c) an order requiring Watercare to pay to the Crown a pecuniary penalty:
  - (d) any other order that the court considers appropriate in the circumstances, including an order directing Watercare to pay to the Crown the costs of the proceedings. 35
- (3) In this section, **contravening the charter** includes—

- (a) failing to comply with the requirements in a price-quality path, whether by charging a price for services that is higher than the maximum price permitted, or by receiving more revenue than is permitted, or in any other way:
- (b) failing to comply with the requirements in any minimum service quality standards or performance targets, or in any financial performance objectives: 5
- (c) failing to comply with the requirements relating to a customer compensation scheme.
- (4) Proceedings under this section are not able to be commenced later than 3 years after the contravention occurred. 10
- (5) Any proceedings under this section are civil proceedings.
- (6) The usual rules of court, and rules of evidence and procedure, for civil proceedings apply (including the standard of proof).
- 77 Maximum amount of pecuniary penalty** 15
- (1) The maximum amount of a pecuniary penalty imposed under **section 76** is \$5,000,000 in respect of each act or omission.
- (2) In determining the amount of pecuniary penalty, the court must have regard to all relevant matters, including—
  - (a) the nature and extent of the contravention; and 20
  - (b) the nature and extent of any loss or damage suffered by any person as a result of the contravention; and
  - (c) the circumstances in which the contravention took place (including whether the contravention was intentional, inadvertent, or caused by negligence); and 25
  - (d) whether the court, in proceedings under this Act or any other legislation, has previously found Watercare to have engaged in any similar conduct.
- (3) Watercare may not be liable to more than 1 pecuniary penalty in respect of the same conduct.
- 78 Order to disclose information** 30
- (1) The High Court may, on application by the Crown monitor, make 1 or more of the orders listed in **subsection (2)** if the court is satisfied that Watercare has failed—
  - (a) to comply with a notice under **section 70** requiring Watercare to disclose information; or 35
  - (b) to comply with the requirement to submit a business plan in accordance with **section 65**; ~~or~~

- (e) ~~to address the Crown monitor's comments on a draft business plan, as required under **section 67(2)(b)**.~~
- (2) The orders are as follows:
- (a) an order directing Watercare to comply with the relevant obligation:
- (b) an order requiring Watercare to pay to the Crown a pecuniary penalty: 5
- (c) any other order that the court considers appropriate in the circumstances, including an order directing Watercare to pay to the Crown the costs of the proceedings.
- 79 Maximum amount of pecuniary penalty**
- (1) The maximum amount of a pecuniary penalty imposed under **section 78** is \$5,000,000 in respect of each act or omission. 10
- (2) Watercare may not be liable to more than 1 pecuniary penalty in respect of the same conduct.
- 80 Further penalty for continuing breach**
- (1) For a continuing breach, the High Court may impose, for each day or part of a day during which the breach continues, a further penalty in addition to a pecuniary penalty imposed under **section 76 or 78**. 15
- (2) ~~The further penalty under **subsection (1)** is—~~
- (a) ~~\$500,000 for a breach referred to in **section 76**; and~~
- (b) ~~\$50,000 for a breach referred to in **section 78**.~~ 20
- (2) The maximum daily amount of a further penalty under **subsection (1)** is \$250,000.
- (3) A further penalty under **subsection (1)** may be imposed only in respect of the period that—
- (a) begins on the day after the day on which the pecuniary penalty was imposed under **section 76 or 78** (as applicable); and 25
- (b) ends on the day on which the breach is remedied.
- 81 Appeal**
- (1) A party to proceedings under **section 76 or 78** who is dissatisfied with an order or a decision of the High Court under that section may, with the leave of the Court of Appeal, appeal to that court on a question of law against the order or decision. 30
- (2) In determining an appeal under this section, the Court of Appeal may exercise any power of the High Court in respect of proceedings under **section 76 or 78** (as applicable). 35
- (3) An appeal must be made by giving notice of appeal—

- (a) not later than 20 working days after the date on which the order was made or notice of the decision was communicated to the appellant; or
- (b) within any further time that the Court of Appeal allows.

*Related amendments to LGA2002*

<b>82</b>	<b>Principal Act</b>	5
	<b>Sections 83 to 91</b> amend the Local Government Act 2002.	
<b>83</b>	<b>Section 121 amended (The Crown not liable for debts)</b>	
	Replace section 121(1) with:	
(1)	The Crown is not liable to contribute to the payment of any debts or liabilities of—	10
(a)	any local authority; or	
(b)	Watercare Services Limited.	
<b>84</b>	<b>Section 122 amended (Disclosure document and loan documents to contain statement that the Crown does not guarantee financial products or loan)</b>	
	In section 122(1) and (3), after “local authority”, insert “or Watercare Services Limited”.	15
<b>85</b>	<b>Section 124 amended (Interpretation)</b>	
	In section 124, insert in their appropriate alphabetical order:	
	<b>Auckland</b> has the meaning set out in section 4(1) of the Local Government (Auckland Council) Act 2009	20
	<b>Watercare</b> means Watercare Services Limited, and includes any subsidiary of Watercare Services Limited	
<b>86</b>	<b>Section 127 amended (Duty to ensure communities have access to drinking water if existing suppliers facing significant problems)</b>	
	After section 127(3)(a), insert:	25
(aa)	a <b>territorial authority</b> (despite the definition of that term in section 5(1)) includes Watercare:	
<b>87</b>	<b>Section 130 amended (Obligation to maintain water services)</b>	
(1)	In the heading to section 130, after “ <b>water services</b> ”, insert “: <b>general</b> ”.	
(2)	After section 130(4), insert:	30
(5)	In this section, <b>local government organisation</b> has the meaning given in section 124, except it—	

- (a) includes Auckland Council only in relation to its provision of ~~storm-water services in Auckland~~ water services in Auckland that are not water supply and wastewater services; and
- (b) excludes Watercare.
- (6) For the purpose of **subsection (5)(a)**, **water supply and wastewater services** has the same meaning as in section 4(1) of the Local Government (Auckland Council) Act 2009. 5
- 88 New section 130A inserted (Obligation to maintain water services: Watercare)**
- After section 130, insert: 10
- 130A Obligation to maintain water services: Watercare**
- (1) Watercare must continue to provide water services in Auckland and maintain its capacity to meet its obligations under this subpart.
- (2) In order to fulfil the obligations under this subpart, Watercare must— 15
- (a) not use assets of its water services as security for any purpose:
- (b) not divest its ownership or other interest in a water service:
- (c) not lose control of, sell, or otherwise dispose of the significant infrastructure necessary for providing water services in Auckland, unless, in doing so, it retains its capacity to meet its obligations:
- (d) not, in relation to a property to which it supplies water,— 20
- (i) restrict the water supply unless section 193 applies; or
- (ii) stop the water supply unless section 25 of the Water Services Act 2021 applies.
- (3) This section does not override sections 131 to 137.
- (4) In this section, **water services** means ~~water supply and wastewater services~~ has the meaning given to water supply and wastewater services in section 4(1) of the Local Government (Auckland Council) Act 2009. 25
- 89 Section 253 amended (Outline of Part)**
- In section 253(a) and (b), after “local authorities”, insert “or Watercare”.
- 90 Section 254 amended (How this Part works)** 30
- (1) Replace section 254(2) with:
- (2) Subpart 1 provides the Minister with a range of options in relation to a local authority or Watercare if they have a problem. The options are available only in relation to the local authority or Watercare itself, and not to any entity that the local authority or Watercare may control or have an interest in. 35
- (2) In section 254(4) and (5), after “local authority”, insert “or Watercare”.

**91 Section 255 amended (Application of this Part)**

After section 255(2), insert:

- (3) Despite subsection (1), the Minister may exercise the powers in section 257 to 258E in relation to Watercare and, for that purpose, sections 256 to 258E, 258N to 258Q, and 258S to 258ZA apply as if Watercare were a local authority.

5

*Related amendments to Local Government (Auckland Council) Act 2009*

**92 Principal Act**

**Sections 93 to 98** amend the Local Government (Auckland Council) Act 2009.

**93 Section 4 amended (Interpretation)**

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In section 4(1), replace the definition of **Auckland water organisation** with:

**Auckland water organisation** means Watercare Services Limited, and includes any subsidiary of Watercare Services Limited

**94 New section 56A and cross-headings inserted**

After the Part 5 heading, insert:

15

*Auckland Council*

**56A Limits on Auckland Council**

(1) The Auckland Council—

- (a) has no right, title, or interest (legal or equitable) in the assets, security, debts, or liabilities of an Auckland water organisation; and
- (b) must not receive any equity return, directly or indirectly, from an Auckland water organisation; and
- (c) must not give an Auckland water organisation any financial support or capital; and
- (d) must not lend money or provide credit to an Auckland water organisation; and
- (e) must not give any person any guarantee, indemnity, or security in relation to the performance of any obligation by an Auckland water organisation; and
- (f) must not direct an Auckland water organisation in relation to any borrowing of any sort by that organisation.

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(1A) To avoid doubt, nothing in this section precludes the Auckland Council and an Auckland water organisation entering into a contract for shared services.

(2) In this section,—

<b>borrowing—</b>	
(a) means the incurring by any means of debt to raise money; and	
(b) includes the incurring of debt—	
(i) under any contract or arrangement for hire purchase, deferred payment, instalment payment, sale and lease-back or buy-back, financial lease, loan, overdraft, or other arrangement for obtaining debt finance; or	5
(ii) by the drawing, acceptance, making, endorsement, issue, or sale of bills of exchange, promissory notes, and other negotiable instruments and debt securities; or	10
(iii) by the use, for any purpose, of funds received or invested by the Auckland water organisation for any other purpose if the Auckland water organisation has resolved to repay, with or without interest, the funds used; or	
(iv) under any contract for services; but	15
(c) does not include debt incurred in connection with the hire purchase of goods, the deferred purchase of goods or services, or the giving of credit for the purchase of goods or services if—	
(i) the period for which the indebtedness is outstanding is less than 91 days and the indebtedness is not incurred again promptly after payment; or	20
(ii) the goods or services are obtained in the ordinary course of the Auckland water organisation's performance of its lawful responsibilities, on terms and conditions available generally to parties of equivalent creditworthiness, for amounts not exceeding in aggregate an amount—	25
(A) determined by resolution of the Auckland water organisation as not being so significant as to require specific authorisation; or	
(B) recorded for the purposes of this subparagraph in the then current borrowing management policy of the Auckland water organisation; and	30
(d) does not include a contract for services that is entered into <u>(or that was entered into before this section came into force)</u> —	
(i) in the ordinary course of the Auckland Council's or an Auckland water organisation's performance of its lawful responsibilities; and	35
(ii) on terms and conditions generally available to other parties of equivalent creditworthiness	
<b>capital</b> includes uncalled capital	40

**equity return** means—

- (a) profits of an Auckland water organisation; or
- (b) distributions from an Auckland water organisation; or
- (c) any benefit derived, directly or indirectly, from an Auckland water organisation that represents, is calculated by reference to, or is determined by—
  - (i) a share in or proportion of an Auckland water organisation’s capital; or
  - (ii) an Auckland water organisation’s surplus or residual economic value (after satisfying prior contractual claims); or
  - (iii) an Auckland water organisation’s profitability or any other indicator of its success

**give financial support or capital** does not include to enter into any contract for services to sell or supply goods or services on credit—

- (a) in the ordinary course of the Auckland Council’s, or an Auckland water organisation’s, performance of its lawful responsibilities; and
- (b) on terms and conditions generally available to other parties of equivalent creditworthiness

**lend money or provide credit**—

- (a) includes, without limiting the generality of that expression,—
  - (i) to defer payment for any goods or services supplied or works constructed for any person, organisation, or government; and
  - (ii) to enter into hire purchase agreements or agreements that are of the same or a substantially similar nature; and
  - (iii) to enter into finance lease arrangements or arrangements that are of the same or a substantially similar nature; and
  - (iv) to subscribe for any debt securities or uncalled capital; but
- (b) does not include to enter into any contract for services to sell or supply goods or services on credit—
  - (i) in the ordinary course of the Auckland Council’s, or an Auckland water organisation’s, performance of its lawful responsibilities; and
  - (ii) on terms and conditions generally available to other parties of equivalent creditworthiness

**security** has the meaning set out in section 6(1) of the Financial Markets Conduct Act 2013.

Compare: 2022 No 77 s 171

*Auckland water organisations*

**95 New sections 57A and 57B inserted**

After section 57, insert:

**57A Auckland water organisation must repay debt to Auckland Council**

- (1) If, on the date on which this section comes into force, an Auckland water organisation owes a debt to the Auckland Council in respect of water services infrastructure, the Auckland water organisation must repay that debt, including any interest payable. 5
- (2) An Auckland water organisation must repay a debt under **subsection (1)** despite anything in **section 56A**. 10
- (3) The repayment—
- (a) may be made by instalments; but
  - (b) must be paid in full no later than the close of the day that is 5 years after this section comes into force.

**57B Repeal of section 57A**

This section and **section 57A** are repealed on the date that is 5 years after this section comes into force. 15

**96 Section 58 amended (Auckland water organisation must give effect to LTP and act consistently with other specified plans and strategies of Council)**

After section 58(3), insert:

- (4) This section is subject to— 20
- (a) **section 69(2)** (effect of charter) of the Local Government (Water Services Preliminary Arrangements) Act **2024**; and
  - (b) **section 56A** (limits on Auckland Council) of this Act.

**97 New section 60A inserted (Charges as security)**

After section 60, insert: 25

**60A Charges as security**

- (1) This section applies if—
- (a) an Auckland water organisation has granted a security interest over a charge or charging regime revenue as security for a loan or the performance of any obligations under an incidental arrangement; and 30
  - (b) a receiver has been appointed under section 40A or 40B of the Receiverships Act 1993 in respect of that loan or arrangement; and
  - (c) the Crown monitor has been informed of the appointment.
- (2) The receiver may, without further authority than this section, assess and collect in each financial year a charge under this section to recover sufficient funds to meet— 35

- (a) the payment of the Auckland water organisation’s commitments in respect of the loan or incidental arrangement during that year; and
- (b) the reasonable costs of administering, assessing, and collecting the charge.
- (3) However, a receiver may not create, or receive, any interest or security in water services infrastructure. 5
- (4) A charge under this section must be assessed as a uniform charge in the dollar on the water services charges of a property—
- (a) in Auckland; or
- (b) if the Auckland water organisation resolved that, at the time when the loan was being raised or the incidental arrangement was being entered into, it was for the benefit of only a specified area, that area. 10
- (5) A charge under this section over any 1 or more of the assets of an Auckland water organisation is subject to section 40D(5) and (6) of the Receiverships Act 1993. 15
- (6) In this section, **Crown monitor** means a Crown monitor appointed under **section 60** of the Local Government (Water Services Preliminary Arrangements) Act **2024**.
- 98 Section 92 amended (Substantive council-controlled organisations must give effect to LTP and act consistently with other specified plans and strategies of Council)** 20
- After section 92(2), insert:
- (3) This section is subject to—
- (a) **section 69(2)** (effect of charter) of the Local Government (Water Services Preliminary Arrangements) Act **2024**; and 25
- (b) **section 56A** (limits on Auckland Council) of this Act.

## Part 5

### Amendments to Water Services Act 2021 and consequential amendments

#### *Amendments to Water Services Act 2021* 30

#### 100 Principal Act

**Sections 101 and 102** amend the Water Services Act 2021.

#### 101 Section 138 amended (Wastewater environmental performance standards)

After section 138(3), insert:

- (3A) When making wastewater environmental performance standards under this section, Taumata Arowai must not have regard to the hierarchy of obligations in clause 1.3(5) of the National Policy Statement for Freshwater Management.
- (3B) **Subsection (3A)** applies despite any other provision of this Act.

**102 New section 138A inserted (Repeal of provisions relating to National Policy Statement for Freshwater Management)** 5

After section 138, insert:

**138A Repeal of provisions relating to National Policy Statement for Freshwater Management**

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, repeal **section 138(3A) and (3B)** and this section. 10
- (2) The Minister may make a recommendation under **subsection (1)** only when the Minister for the Environment—
- (a) recommends the approval of a new national policy statement under section 52 of the Resource Management Act 1991 to replace the National Policy Statement for Freshwater Management; or 15
- (b) reviews, changes, or revokes the National Policy Statement for Freshwater Management under section 53(1) of the Resource Management Act 1991.
- (3) An Order in Council made under this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements). 20

*Consequential amendments*

**103 Consequential amendments**

Amend the legislation specified in **Schedule 2** as set out in that schedule.

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

**s 6**

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

**5**

There are no transitional, savings, or related provisions in this Act as enacted.

## Schedule 2

### Consequential amendments

s 103

#### Part 1

#### Amendments to primary legislation

5

##### Civil Defence Emergency Management Act 2002 (2002 No 33)

In section 115A, after “local authority”, insert “or Watercare Services Limited” in each place.

##### Legislation Act 2019 (2019 No 58)

In Schedule 3, insert in its appropriate alphabetical order:

10

Local Government  
(Water Services  
Preliminary  
Arrangements) Act **2024**

**Section 35**

Exemption applies

Exemption applies

**Section 38A**

Exemption applies

Exemption applies

##### Local Government (Rating) Act 2002 (2002 No 6)

After section 19(2), insert:

(3) **Subsection (1)** does not apply to Auckland Council.

(4) In **subsection (3)**, **Auckland Council** means the local authority established by section 6(1) of the Local Government (Auckland Council) Act 2009.

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##### Ombudsmen Act 1975 (1975 No 9)

In Schedule 1, Part 2, insert in its appropriate alphabetical order:

Crown monitor appointed under **section 60** of the Local Government (Water Services Preliminary Arrangements) Act **2024**

##### Receiverships Act 1993 (1993 No 122)

In the cross-heading above section 40A, after “*authorities*”, insert “*and Watercare*”.

Before section 40A, insert:

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#### 40AAA Meaning of Watercare

In sections 40A to 40E, **Watercare** means Watercare Services Limited.

In section 40A, after “local authority”, insert “or Watercare”.

Replace section 40B with:

#### 40B Power of court to appoint receiver

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(1) Subject to sections 40D and 40E and this section, the High Court may,—

**Receiverships Act 1993 (1993 No 122)—continued**

- (a) on the application of any creditor of a local authority, appoint a receiver of any asset of the local authority or appoint a receiver for the purposes of section 115 of the Local Government Act 2002:
- (b) on the application of any creditor of Watercare, appoint a receiver of any asset of Watercare or appoint a receiver for the purposes of **section 60A** of the Local Government (Auckland Council) Act 2009. 5
- (2) An appointment under **subsection (1)** must be for the period, and with the rights, powers, and duties, and on any terms and conditions, including as to security and remuneration, that the court considers appropriate in all the circumstances. 10
- (3) When considering, in accordance with **subsection (2)**, the terms and conditions upon which a receiver can be appointed by a court in relation to a local authority, the court must—
  - (a) take account of the interests of both the secured and non-secured creditors of the local authority, as against— 15
    - (i) the interests of the local authority itself; and
    - (ii) the requirement of the local authority to provide those services that are essential for the maintenance of public health and safety; and
    - (iii) the interests of the ratepayers with property within the area of the local authority; and 20
    - (iv) the interests of the general public living within the area of the local authority; and
  - (b) take account of the interests of secured creditors as against the interests of non-secured creditors of the local authority. 25
- (4) When considering, in accordance with **subsection (2)**, the terms and conditions upon which a receiver can be appointed by a court in relation to Watercare, the court must—
  - (a) take account of the interests of both the secured and non-secured creditors of Watercare, as against— 30
    - (i) the interests of Watercare itself; and
    - (ii) the requirement of Watercare to provide those services that are essential for the maintenance of public health and safety; and
    - (iii) the interests of consumers with property in Auckland; and
    - (iv) the interests of the general public living in Auckland; and 35
  - (b) take account of the interests of secured creditors as against the interests of non-secured creditors of Watercare.

**Receiverships Act 1993 (1993 No 122)—continued**

(5) In this section, **Auckland** has the same meaning as in section 4(1) of the Local Government (Auckland Council) Act 2009.

In section 40D(1), after “local authority”, insert “or Watercare” in each place.

In section 40D(3), after “local authority”, insert “or Watercare”.

In section 40D(4), after “local authority’s”, insert “or Watercare’s”. 5

Replace section 40D(5) with:

(5) Subject to subsection (6), **subsection (5A)** applies to any land that is vested in a local authority or Watercare and is—

- (a) a reserve under the Reserves Act 1977; or
- (b) land over which the local authority or Watercare has no power of disposition; or 10
- (c) land in respect of which the local authority’s or Watercare’s power of disposition is conditional.

(5A) The power of disposition that a receiver of that local authority or Watercare has in respect of the land is limited to a power of disposition by way of lease or licence for a term or terms not exceeding in the aggregate 9 years. 15

In section 40D(6), after “local authority”, insert “or Watercare”.

In section 40E(1), (2), and (3)(a), after “local authority”, insert “or Watercare”.

**Part 2****Amendments to secondary legislation** 20**National Civil Defence Emergency Management Plan Order 2015 (LI 2015/140)**

In the Schedule, heading to Part 10, after “**local authorities**”, insert “**and Watercare Services Limited**”.

In the Schedule, clause 159(1) and (4), after “local authorities”, insert “and Watercare Services Limited”. 25

In the Schedule, clause 160, after “local authorities”, insert “or Watercare Services Limited”.

In the Schedule, after clause 161(7), insert:

(8) In this clause, **local authority** has the meaning given in clause 2(2) but also includes Watercare Services Limited. 30

In the Schedule, heading to clause 162, after “**local authorities**”, insert “**and Watercare Services Limited**”.

In the Schedule, clause 162, delete “by local authorities to”.

In the Schedule, clause 162(a), before “care”, insert “by local authorities to”.

**National Civil Defence Emergency Management Plan Order 2015 (LI 2015/140)**  
*—continued*

In the Schedule, clause 162(b) and (c), before “take”, insert “by local authorities and Watercare Services Limited to”.

In the Schedule, heading to clause 163, after “**local authorities**”, insert “**and Watercare Services Limited**”.

In the Schedule, clause 163(1), after “local authorities”, insert “or Watercare Services Limited”. 5

**Legislative history**

30 May 2024

Introduction (Bill 52–1), first reading and referral to Finance and Expenditure Committee

18 July 2024

Reported from Finance and Expenditure Committee (Bill 52–2)

30 July 2024

Second reading

20 August 2024

Committee of the whole House (Bill 52–3)