



Local Government (Water Services Preliminary Arrangements) Act 2024

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Commencement see section 2

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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

- (1) This Act comes into force on the day after Royal assent.
- (2) However, sections 97 to 113, 117, 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.
- (4) An Order in Council made under this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

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

This note is not part of the Act.

Part 1

Preliminary provisions

3 Purpose

- (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
 - (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
 - (d) providing specific consultation and decision-making processes for territorial authorities to use when—
 - (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
 - (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

- (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:

- (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 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
 - (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.
- (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.

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

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 25

Crown water services specialist means a Crown water services specialist appointed under section 28

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

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
- (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

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
- (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

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)

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

ministerial appointee means—

- (a) a Crown facilitator for water services delivery plans appointed under section 25; or
- (b) a Crown water services specialist appointed under section 28

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
- (b) includes any related terms of payment

Secretary means the Secretary for Local Government

stormwater network—

- (a) means the infrastructure and processes that—
 - (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
- (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)

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—

- (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

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
- (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—

- (a) water supply network:
- (b) stormwater network:
- (c) wastewater network

water services council-controlled organisation or WSCCO—

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

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

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

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

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

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

- (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
 - (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.
- (2) Subsection (1) is subject to section 10(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 23 for the circumstances in which a water services delivery plan may be amended).

9 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 10, 11, 12, 13, 14, 16, 17, 18, 19, 22, and 23:
- (b) to the extent they are used in the sections listed in paragraph (a), the definitions in section 5.

10 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.
- (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.
- (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.

11 Extent of joint arrangement

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.

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.

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.

12 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' storm-

water networks, the joint plan must relate to the delivery of all water services in the joint service area.

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.

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- (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.

13 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:
- (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
 - (ii) the water services infrastructure associated with providing for population growth and development capacity:
 - (d) whether and to what extent water services—
 - (i) comply with current regulatory requirements:
 - (ii) will comply with any anticipated future regulatory requirements:
 - (e) if any water services do not comply with current regulatory requirements or will not comply with any anticipated future regulatory requirements,—
 - (i) a description of the non-compliance; and
 - (ii) a description of how the anticipated or proposed model or arrangements provided under paragraph (k) will assist to ensure water services will comply:
 - (f) 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:

- (g) financial projections for delivering water services over the period covered by the plan, including—
 - (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:
 - (h) an assessment of the current condition, lifespan, and value of the water services networks:
 - (i) a description of the asset management approach being used, including capital, maintenance, and operational programmes for delivering water services:
 - (j) a description of any issues, constraints, and risks that impact on delivering water services:
 - (k) 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 10 or will continue to deliver water services in its district alone):
 - (l) an explanation of how the revenue from, and delivery of, water services will be separated from the territorial authority's other functions and activities:
 - (m) a summary of any consultation undertaken as part of developing the information required to be included in the plan under paragraph (k):
 - (n) 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:
 - (o) an implementation plan—
 - (i) for delivering the proposed model or arrangements described under paragraph (k); 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:
 - (p) any other information prescribed in rules made by the Secretary under section 16.
- (2) For the purposes of subsection (1)(o), 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:

- (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.
- (3) A water services delivery plan must also comply with any requirements prescribed in rules made by the Secretary under section 16.

14 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:
 - (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
 - (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 13:
 - (d) information on the likely form of the joint arrangement, including whether it is anticipated it will involve water services being delivered by—
 - (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.
- (2) To the extent that further information about the joint arrangement is available when the plan is submitted to the Secretary under section 18, a joint water services delivery plan may also contain that information, including—
- (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 13 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).

- (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 16.

15 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—
 - (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
 - (b) in outline in relation to each of the subsequent financial years covered by the plan.

16 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:
 - (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—
 - (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):
 - (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:

- (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.
- (4) A rule is not invalid only because the consultation required under subsection (3) occurred before this Act came into force.
- (5) 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.
- (6) 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.
- (7) Rules made under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Legislation Act 2019 requirements for secondary legislation made under this section

Publication	The maker must publish it in accordance with the Legislation (Publication) Regulations 2021	LA19 s 74(1)(aa)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

17 Process to prepare and adopt water services delivery plan

- (1) A territorial authority must adopt a water services delivery plan by resolution.
- (2) In relation to an anticipated or proposed model or arrangement for delivering water services in its water services delivery plan (*see* section 13(1)(k)), a territorial authority must—
- (a) undertake consultation; and
- (b) ensure that its consultation and decision-making complies with sections 61 to 64.
- (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 62 to 64.
- (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—
- (a) may decide to consult; and

- (b) if it decides to consult, must do so in accordance with sections 62 to 64.

Submission of water services delivery plan

18 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
- (b) on or before a later date specified by the Minister under section 19.
- (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.
- (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.

19 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.
- (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
- (d) be made no later than 1 month before the last date for submitting a plan under section 18(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
- (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:
 - (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:
 - (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.
- (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,—
 - (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.
- (7) If the Minister decides not to grant an extension, the Minister must notify the applicant of that decision.
- (8) The Minister may grant an extension subject to any conditions that the Minister thinks reasonable in the circumstances.

Acceptance of water services delivery plan

20 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 18; 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:
- (a) a government department:

- (b) the Commission;
 - (c) Taumata Arowai;
 - (d) Crown Infrastructure Partners Limited;
 - (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
 - (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.
- (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
 - (b) if the Secretary has decided not to accept the plan, the reason for that decision.

21 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,—

- (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
 - (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***22 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 13, in the territorial authority's water services delivery plan.

23 Territorial authority may amend water services delivery plan

- (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 20(1); and
 - (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 13(1)(k)); and
 - (d) the territorial authority submits the amended plan no later than the date that is 24 months after the date on which this section comes into force.
- (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 18(3).
- (5) The Secretary must consider an amended plan and decide whether to accept the proposed amendments.
- (6) For the purposes of subsection (5), sections 20 and 21 apply with all necessary modifications.

24 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 13.

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

Crown facilitator for water services delivery plans

25 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.
- (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
 - (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
 - (iii) contrary to section 22, 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.
- (4) If the Minister appoints a panel to be a Crown facilitator, the Minister must appoint 1 member as the chairperson.

26 How Crown facilitator appointed

- (1) The Minister appoints a Crown facilitator by—
 - (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
 - (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
 - (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:
 - (d) if the Crown facilitator is a panel, the name of the chairperson of the panel:
 - (e) 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 36):
 - (f) 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:
- (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.

27 Role of Crown facilitator

- (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:
 - (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 20(3)(a)):
 - (d) direct the relevant territorial authority or group of territorial authorities how to do 1 or both of the following:
 - (i) prepare a water services delivery plan:
 - (ii) if the Secretary has required a water services delivery plan to be amended (*see* section 20(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:

- (f) assist the territorial authority or group of territorial authorities to give effect to an accepted water services delivery plan:
 - (g) advise the territorial authority or group of territorial authorities how to give effect to an accepted water services delivery plan:
 - (h) direct the territorial authority or group of territorial authorities to give effect to an accepted water services delivery plan:
 - (i) assist a territorial authority or group of territorial authorities to comply with the requirements in this Act:
 - (j) 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—
- (a) appointing a Crown water services specialist; or
 - (b) taking further action under Part 10 of the LGA2002.

Crown water services specialist

28 Minister may appoint Crown water services specialist

- (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.
- (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 18; or
 - (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 20(3)(a)), the plan does not comply with subpart 1; or
 - (d) contrary to section 22, the territorial authority or the group of territorial authorities has not given effect to its water services delivery plan; or
 - (e) 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.

- (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.

29 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
 - (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:
 - (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:
 - (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:
 - (e) 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 36):
 - (f) 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—
 - (a) in writing to each territorial authority to which the Crown water services specialist is appointed; and
 - (b) if the Crown water services specialist is a panel, in writing to each panel member; and

- (c) by notice in the *Gazette*.
- (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.

30 Role of Crown water services specialist

- (1) A Crown water services specialist may be appointed to do 1 or more of the following:
 - (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):
 - (c) direct the territorial authority or the group of territorial authorities to submit a specified water services delivery plan to the Secretary under section 18:
 - (d) assist the territorial authority or group of territorial authorities to give effect to an accepted water services delivery plan:
 - (e) advise the territorial authority or group of territorial authorities how to give effect to an accepted water services delivery plan:
 - (f) direct the territorial authority or group of territorial authorities to give effect to an accepted water services delivery plan:
 - (g) anything else specified in the specialist's terms of reference.
- (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.

31 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 33(c).
- (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.

Compare: 2002 No 84 s 258ZA(1)–(3)

*General provisions***32 Notice of proposed appointment of ministerial appointee**

- (1) Before appointing a ministerial appointee, the Minister must—
 - (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:
 - (i) that the reasons for making the appointment do not exist;
 - (ii) that for any other reason, the Minister should not make the appointment;
 - (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
 - (b) appoint the ministerial appointee under section 26 or 29.
- (3) This section does not apply if the territorial authority requested the Minister to make the appointment.

Compare: 2002 No 84 s 258Q

33 Obligation to co-operate

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.

34 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.
- (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 18(1):
 - (b) amend a water services delivery plan and resubmit it to the Secretary by the specified date under section 20(3)(a):
 - (c) have a water services delivery plan accepted by the Secretary within a reasonable period after submitting it for acceptance:
 - (d) give effect to proposals or undertakings specified in an accepted water services delivery plan relating to the future delivery of water services:
 - (e) comply with section 33 of this Act.
- (3) In subsection (2)(d), an **accepted water services delivery plan** means a plan that—
- (a) relates to the territorial authority or group of territorial authorities; and
 - (b) has been accepted by the Secretary under section 20.

35 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
 - (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.
- (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

36 Recovery of remuneration and expenses from local authority

- (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
 - (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.

- (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)

37 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.
- (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.

Compare: 2002 No 84 s 258Y

Subpart 3—Foundational information disclosure requirements

38 Purposes of this subpart

- (1) The purposes of this subpart are—
- (a) to promote the long-term benefit of consumers of water services; and
 - (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—
- (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
 - (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—
 - (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.

39 Application of this subpart

- (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;
 - (b) the Wellington Regional Council;
 - (c) a council-controlled organisation that delivers water services;
 - (d) a subsidiary of a council-controlled organisation that delivers water services.
- (2) Despite subsection (1)(c), an Order in Council must not specify that Watercare is a specified entity.
- (3) 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.
- (4) An Order in Council made under this section must include the following information:
 - (a) the name of the entity;
 - (b) the water services to which a determination made under section 42 may apply.
- (5) An Order in Council made under this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Legislation Act 2019 requirements for secondary legislation made under this section

Publication	PCO must publish it on the legislation website and notify it in the <i>Gazette</i>	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

40 Commission may consult at any time

- (1) For the purposes of this subpart, the Commission may consult any interested parties.
- (2) Subsection (1) applies whether or not an Order in Council has been made under section 39.

41 Meaning of specified entity

In this subpart, **specified entity** means an entity that is specified in an Order in Council made under section 39.

*Determinations***42 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 43).
- (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.
- (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.
- (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.
- (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

Legislation Act 2019 requirements for secondary legislation made under this section

Publication	The maker must publish it in accordance with the Legislation (Publication) Regulations 2021	LA19 s 74(1)(aa)
Presentation	It is not required to be presented to the House of Representatives because an exemption applies under Schedule 3 of the Legislation Act 2019	LA19 s 114
Disallowance	It is not disallowable because an exemption applies under Schedule 3 of the Legislation Act 2019	LA19 ss 115, 116

This note is not part of the Act.

43 Effect of determination

- (1) A specified entity to which a determination made under section 42 applies must—

- (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.
- (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.
- (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 purposes in section 38.
- (4) In complying with subsection (2)(b), the Commission must ensure that satisfactory provision exists to protect the confidentiality of any information that may reasonably be regarded as confidential or commercially sensitive.

Compare: 2023 No 54 s 34

44 Contents of determination

- (1) A determination made under section 42 must specify the following:
- (a) the specified entity to which it applies:
 - (b) the water services to which it applies:
 - (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:
 - (h) any methodologies that the specified entity must apply in preparing or compiling the information.
- (2) In making a determination under section 42, 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).

- (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:
 - (d) contracts:
 - (e) transactions with related parties:
 - (f) financial and non-financial performance measures:
 - (g) plans and forecasts, including (without limitation) plans and forecasts about demand, investments, prices, revenues, quality and service levels, capacity and spare capacity, and efficiency improvements:
 - (h) asset management plans:
 - (i) quality performance measures and statistics:
 - (j) assumptions, policies, and methodologies used or applied in the delivery of water services:
 - (k) consolidated information that includes information about goods or services that are not incidental to, or related to, water services, in which case section 45 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 45 applies.
- (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.
- (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:
 - (b) require independent audits of disclosed information:
 - (c) require the retention of data on which disclosed information is based, and associated documentation:
 - (d) exempt any specified entity or class of specified entity, or provide for exemptions, from any requirements of the determination, and provide for the revocation of exemptions:
 - (e) provide for transitional provisions:

- (f) impose any other requirements that the Commission considers necessary or desirable to promote the purpose of this subpart.
- (6) If a determination authorises a person to grant an exemption under subsection (5)(d),—
- (a) an instrument granting or revoking an exemption is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements), unless it applies only to 1 or more named persons; and
- (b) the determination must contain a statement to that effect.

Legislation Act 2019 requirements for secondary legislation made under this section

Publication	The maker must publish it in accordance with the Legislation (Publication) Regulations 2021	LA19 s 74(1)(aa)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Compare: 2023 No 54 s 35

45 Determination may require specified entity to provide additional information

- (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.
- (2) A determination made under section 42 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).
- (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 44, for all activities (including those related to the supply of other goods or services) undertaken by that entity; and
- (b) consolidated financial statements, and any other information referred to in section 44, for the supply of all other goods or services in aggregate; and
- (c) reconciliation of information provided under paragraphs (a) and (b) with information disclosed in accordance with information disclosure requirements applying to 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.

Compare: 2023 No 54 s 36

46 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.
- (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).

Legislation Act 2019 requirements for secondary legislation made under this section

Publication	The maker must publish it in accordance with the Legislation (Publication) Regulations 2021	LA19 s 74(1)(aa)
Presentation	It is not required to be presented to the House of Representatives because an exemption applies under Schedule 3 of the Legislation Act 2019	LA19 s 114
Disallowance	It is not disallowable because an exemption applies under Schedule 3 of the Legislation Act 2019	LA19 ss 115, 116

This note is not part of the Act.

47 Charge for providing copies to public

- (1) A specified entity that is required, by a determination made under section 42, to provide copies of statements and information to the public on request may charge for providing those copies.
- (2) The charge must be no more than is reasonably required to recover the costs of providing those copies.

Compare: 1986 No 5 s 53E; 2023 No 54 s 37

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

- (1) For the purpose of carrying out its functions and exercising its powers under 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:

- (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:
 - (d) by notice in writing, require any provider of water services—
 - (i) to prepare and produce forecasts, forward plans, or other information; and
 - (ii) to apply any methodology specified by the Commission in the preparation of forecasts, forward plans, or other information:
 - (e) by notice in writing, require any 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:
 - (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).
- (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.

Compare: 2023 No 54 s 138(1)

Levy

49 Levy

- (1) Every person who provides water services must pay to the Minister the levy determined in accordance with regulations made under subsection (2).
- (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:

- (b) including in levies, or providing for the inclusion in levies of, any short-fall in recovering those actual costs:
 - (c) refunding, or providing for refunds of, any over-recovery of those actual costs:
 - (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:
 - (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—
 - (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:
 - (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.
- (3) In subsection (2), **appropriation period**, in relation to any estimated costs, means—
- (a) a financial year; or
 - (b) if the estimated costs will be incurred under the authority of a multi-year appropriation or of a multi-year appropriation proposed in any Estimates, the financial years to which the multi-year appropriation applies.
- (4) In subsection (3),—
- Estimates**—
- (a) has the meaning given in section 2(1) of the Public Finance Act 1989; and
 - (b) includes Supplementary Estimates as defined in section 2(1) of that Act
- multi-year appropriation** means an appropriation authorised to apply for more than 1 financial year (*see* section 10 of the Public Finance Act 1989).

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

Legislation Act 2019 requirements for secondary legislation made under this section

Publication	PCO must publish it on the legislation website and notify it in the <i>Gazette</i>	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Sharing of information

50 Sharing of information and documents between Commission and department

- (1) The Commission and the department may share information with each other if the Commission or the department (whichever is the provider of the information) 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):
 - (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,—
 - (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
 - (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.

- (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.
- (7) The department or the Commission may share the information subject to any conditions they think are appropriate.

Pecuniary penalty orders

51 When High Court may make pecuniary penalty order

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

52 Maximum amount of pecuniary penalty

- (1) The maximum amount of a pecuniary penalty imposed under section 51 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.
- (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
 - (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.

Compare: 2023 No 54 s 84(1)

Orders about information disclosure

53 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.
- (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

54 Offence relating to requirement to disclose information

- (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 53 and fails to comply with the order by the date, or within the period, specified.
- (2) A person who commits an offence under subsection (1) is liable on conviction to a fine not exceeding \$200,000, in the case of an individual, or \$1 million, in any other case.

Compare: 2023 No 54 s 98

Miscellaneous provisions

55 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

- (a) section 98 (Commission may require person to supply information or documents or give evidence):

- (b) section 98A (power to search) as if the reference to regulation under Part 4 of the Commerce Act 1986 were a reference to secondary legislation made under this Act:
- (c) section 98G (Commission may exercise powers notwithstanding other proceedings):
- (d) section 99 (powers of Commission to take evidence):
Offences and administrative provisions
- (e) section 100 (powers of Commission to prohibit disclosure of information, documents, and evidence):
- (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):
- (j) section 106A (judicial notice):
- (k) section 109 (Commission may prescribe forms).

56 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).

57 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

Part 3

Alternative requirements and additional powers

Preliminary provisions

58 Purposes of this Part

The purposes of this Part are—

- (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—
 - (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
- (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 subparagraph (ii); and
- (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 65 to 68).

59 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
- (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

60 Alternatives to requirements in Local Government Act 2002

- (1) When a territorial authority complies with an alternative requirement specified in sections 61 to 64, 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.
- (3) In the circumstances described in section 58(a)(i), a territorial authority may decide to rely on none, any, or all of the alternative requirements set out in sections 61 to 64.
- (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.

61 Alternative requirement: decision making

- (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; or
 - (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 13(1)(k)).
- (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
 - (ii) 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
 - (c) must assess the advantages and disadvantages of all options identified.
- (3) For the purpose of section 60(1), the corresponding requirement for this section is in section 77(1)(a) and (b) of the LGA2002.

62 Alternative requirement: consultation

- (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; 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 13(1)(k)); or
 - (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 a territorial authority makes a decision described in subsection (1), it is required to undertake consultation only once.
- (3) 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).
- (4) Despite subsections (2) and (3), a territorial authority may decide to undertake further consultation before making the decision.

- (5) 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
 - (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.
- (6) This section applies despite anything to the contrary in the authority's significance and engagement policy adopted under section 76AA of the LGA2002.
- (7) 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—
 - (a) the consultation under this section; and
 - (b) the authority's consultation on its 2025–2034 long-term plan.
- (8) For the purpose of section 60(1), the corresponding requirement for this section is in section 56(1) of the LGA2002.

63 Alternative requirement: consultation on amendment to long-term plan

- (1) 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 13(1)(k)); or
 - (b) a proposal to establish, join, or amend a WSCCO or a joint local government arrangement under section 137 of the LGA2002.
- (2) The territorial authority is not required to consult on the proposal if the authority—
 - (a) has already consulted its community in relation to the proposal; and
 - (b) is satisfied that its community has a good understanding of the implications of the proposal; and
 - (c) is satisfied that it understands its community's views on the proposal.
- (3) This section applies despite anything to the contrary in the authority's significance and engagement policy adopted under section 76AA of the LGA2002.
- (4) For the purpose of section 60(1), the corresponding requirements for this section are in sections 93(5) and 97(2)(b) of the LGA2002.

64 Alternative requirement: information requirements for consultation

- (1) 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
 - (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 13(1)(k)); or
 - (c) on a part of its water services delivery plan, other than a model or arrangement described in paragraph (b).
- (2) When a territorial authority consults in the circumstances described in subsection (1), the authority must make the following information publicly available:
- (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 61(2), be the options identified under section 61(2)(a) and (b); or
 - (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
 - (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:
 - (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:
 - (g) any other relevant implications of the proposal that the authority considers will be of interest to the public.
- (3) For the purpose of section 60(1), the corresponding requirement for this section is in section 82A(2) of the LGA2002.
- (4) In this section,—

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
- (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.

Additional powers and exemption

65 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—

- (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
- (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
 - (ii) considering whether to become parties to the joint WSCCO, the joint arrangement, or the joint local government arrangement.

66 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:

- (a) identify and assess the options under section 61(2) of this Act or section 77(1) of the LGA2002;
- (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.
- (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.
- (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).

67 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
 - (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 the joint local government arrangement—
 - (a) approving corresponding amendments to their long-term plans; or
 - (b) adopting their long-term plans with corresponding provisions.

68 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
 - (b) is deciding whether or not to establish, join, or amend a joint local government arrangement under section 137 of the LGA2002; or
 - (c) 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 13(1)(k)); or
 - (d) has established, joined, or amended a WSCCO; or
 - (e) has established, joined, or amended a joint local government arrangement; or

- (f) 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.
- (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.

69 Repeal of section 68

Section 68 and this section are repealed on the date that is 5 years after this section comes into force.

Part 4 Watercare Services Limited

70 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
 - (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.
- (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—
 - (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) 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).

71 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.

*Crown monitor***72 Minister may appoint Crown monitor**

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

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

73 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

Crown monitor means the Crown monitor for the interim economic regulation of Watercare appointed under section 72.

74 How Crown monitor appointed

- (1) The Minister must appoint a Crown monitor by providing notice in writing to—
 - (a) the Crown monitor; and
 - (b) Watercare.
- (2) The notice must include the following information:
 - (a) the name of the Crown monitor; and
 - (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
 - (b) change the Crown monitor's terms of reference; or
 - (c) 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—

- (a) on an internet site maintained by, or on behalf of, the department; and
- (b) in a format that is readily accessible.

75 Role of Crown monitor

The role of the Crown monitor is to—

- (a) monitor, and report on, Watercare’s performance against the charter (*see* sections 86 and 87); and
- (b) take action to address any failure by Watercare to comply with the charter (*see* sections 91 to 96).

Watercare charter

76 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 may consult any person the Secretary considers appropriate.
- (3) After consulting under subsections (1) and (2), the Secretary must—
 - (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—
 - (a) each part of the charter separately (*see* section 78); and
 - (b) Part 2 of the charter after submitting Part 1 of the charter.

77 Watercare charter 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).

Legislation Act 2019 requirements for secondary legislation made under this section

Publication	PCO must publish it on the legislation website and notify it in the <i>Gazette</i>	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

78 Contents of Watercare charter

A Watercare charter must comprise the following 2 parts:

- (a) Part 1 of the charter (*see* section 79), 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:
- (b) Part 2 of the charter, which must—
 - (i) contain a price-quality path for Watercare (*see* section 83); 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 77).

Part 1 of Watercare charter

79 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 78(a)(i)) may relate to 1 or more of the following:
 - (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.

Financial performance objectives

- (2) Financial performance objectives contained in Part 1 of a Watercare charter (*see* section 78(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;
 - (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.

Customer compensation scheme

- (3) A customer compensation scheme contained in Part 1 of a Watercare charter (*see* section 78(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.

80 Watercare must submit business plan to Secretary

- (1) Watercare must submit a draft business plan to the 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 77.
- (3) A business plan must, for the period during which it applies, include—
 - (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
 - (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
 - (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).
- (4) Watercare must ensure that—
 - (a) the business plan that it submits complies with any requirements specified by the Secretary as to the form and content of the plan; and
 - (b) it provides each component of the plan to the Secretary in any order specified by the Secretary.
- (5) When specifying any form and content requirements of the business plan, the Secretary must have regard to, and ensure consistency with, Watercare’s obligations under Part 5 of the LGA2002.

81 Period covered by business plan submitted to Secretary

- (1) A business plan that Watercare submits under section 80 must cover a period of at least 10 consecutive financial years.
- (2) The Secretary may require that a business plan includes the required information—
 - (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.

82 Process for finalising business plan

- (1) After receiving a draft business plan under section 80, the Secretary—
 - (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.
- (2) 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.
- (3) Watercare must submit a final version of the business plan after—
 - (a) providing any additional information requested by the Secretary; and
 - (b) taking into account any comments made by the Secretary.
- (4) Watercare must ensure that the final version of the business plan that it submits is consistent with any requirements in the Watercare charter.
- (5) Watercare must submit the final version of the business plan within the time frame specified by the Secretary.

*Part 2 of Watercare charter***83 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 1 or more of the following:
 - (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.
- (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;

- (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.
- (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:
 - (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:
 - (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—
 - (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:
 - (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 Secretary) as true and accurate:
 - (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***84 Effect of charter**

- (1) After Part 2 of the Watercare charter is made under section 77, 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.

*Information disclosure***85 Crown monitor may require information disclosure**

- (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:
 - (a) financial statements (including projected financial statements):
 - (b) asset values and valuation reports:
 - (c) prices, terms and conditions relating to prices, and pricing methodologies:
 - (d) contracts:
 - (e) transactions with related parties:
 - (f) financial and non-financial performance measures:
 - (g) plans and forecasts, including (without limitation) plans and forecasts about demand, investments, prices, revenues, quality and service levels, capacity and spare capacity, and efficiency improvements:
 - (h) asset management plans:
 - (i) quality performance measures and statistics:
 - (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).
- (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:

- (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.
- (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—
 - (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

86 Crown monitor must monitor Watercare’s performance

- (1) The Crown monitor must monitor Watercare’s performance under the charter.
- (2) 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.
- (3) For the purposes of subsection (1), the Crown monitor is entitled to attend any meeting of the board of Watercare.
- (4) 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.

87 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):
 - (a) minimum service quality standards or performance targets:
 - (b) financial performance objectives:
 - (c) the price-quality path.
- (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.

88 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.

Crown monitor's and Secretary's expenses

89 Crown monitor's and Secretary's expenses recoverable from Watercare

- (1) This section applies to the following (the **expenses**):
 - (a) expenses incurred by the Crown monitor in relation to monitoring Watercare; and
 - (b) the remuneration of the Crown monitor; and
 - (c) expenses incurred by the Secretary in relation to preparing or amending the Watercare charter.
- (2) The Crown may recover the expenses from Watercare on any terms and conditions set by the Minister.
- (3) Before setting any terms and conditions, the Minister must consult—
 - (a) Auckland Council; and
 - (b) Watercare.
- (4) The terms and conditions may, for example, do 1 or more of the following:
 - (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.
- (5) The duty to reimburse the expenses is not the Crown lending money for the purposes of the Public Finance Act 1989.
- (6) 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

90 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 Secretary.

- (2) The purpose of the Commission's review and provision of comments is to help to optimise—
 - (a) the charter; and
 - (b) the application of the charter to Watercare; and
 - (c) decisions made by the Secretary in relation to the charter.
- (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).
- (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
 - (b) this section and the obligation under section 76(2)(a) for the Secretary to consult the Commission do not apply.

Enforcement

91 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—
 - (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;
 - (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.
- (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;
 - (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.
 - (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).

92 Maximum amount of pecuniary penalty

- (1) The maximum amount of a pecuniary penalty imposed under section 91 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
 - (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
 - (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.

93 Order to disclose information

- (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 85 requiring Watercare to disclose information; or
 - (b) to comply with the requirement to submit a business plan in accordance with section 80.
- (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:

- (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.

94 Maximum amount of pecuniary penalty

- (1) The maximum amount of a pecuniary penalty imposed under section 93 is \$5,000,000 in respect of each act or omission.
- (2) Watercare may not be liable to more than 1 pecuniary penalty in respect of the same conduct.

95 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 91 or 93.
- (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 91 or 93 (as applicable); and
 - (b) ends on the day on which the breach is remedied.

96 Appeal

- (1) A party to proceedings under section 91 or 93 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.
- (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 91 or 93 (as applicable).
- (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

97 Principal Act

Sections 98 to 106 amend the Local Government Act 2002.

98 Section 121 amended (The Crown not liable for debts)

Replace section 121(1) with:

- (1) The Crown is not liable to contribute to the payment of any debts or liabilities of—
- (a) any local authority; or
 - (b) Watercare Services Limited.

99 Section 122 amended (Disclosure document and loan documents to contain statement that the Crown does not guarantee financial products or loan)

In section 122(1) and (3), after “local authority”, insert “or Watercare Services Limited”.

100 Section 124 amended (Interpretation)

In section 124, insert in their appropriate alphabetical order:

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

Watercare means Watercare Services Limited, and includes any subsidiary of Watercare Services Limited

101 Section 127 amended (Duty to ensure communities have access to drinking water if existing suppliers facing significant problems)

After section 127(3)(a), insert:

- (aa) a **territorial authority** (despite the definition of that term in section 5(1)) includes Watercare:

102 Section 130 amended (Obligation to maintain water services)

- (1) In the heading to section 130, after “**water services**”, insert “: **general**”.
- (2) After section 130(4), insert:
- (5) In this section, **local government organisation** has the meaning given in section 124, except it—
 - (a) includes Auckland Council only in relation to its provision of 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.

103 New section 130A inserted (Obligation to maintain water services: Watercare)

After section 130, insert:

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—
 - (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,—
 - (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** has the meaning given to water supply and wastewater services in section 4(1) of the Local Government (Auckland Council) Act 2009.

104 Section 253 amended (Outline of Part)

In section 253(a) and (b), after “local authorities”, insert “or Watercare”.

105 Section 254 amended (How this Part works)

- (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.
- (2) In section 254(4) and (5), after “local authority”, insert “or Watercare”.

106 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.

Related amendments to Local Government (Auckland Council) Act 2009

107 Principal Act

Sections 108 to 113 amend the Local Government (Auckland Council) Act 2009.

108 Section 4 amended (Interpretation)

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

109 New section 56A and cross-headings inserted

After the Part 5 heading, insert:

*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.
- (2) To avoid doubt, nothing in this section precludes the Auckland Council and an Auckland water organisation entering into a contract for shared services.
- (3) In this section,—

borrowing—

 - (a) means the incurring by any means of debt to raise money; and
 - (b) includes the incurring of debt—
 - (i) under any contract or arrangement for hire purchase, deferred payment, instalment payment, sale and lease-back or buy-back, financial lease, loan, overdraft, or other arrangement for obtaining debt finance; or
 - (ii) by the drawing, acceptance, making, endorsement, issue, or sale of bills of exchange, promissory notes, and other negotiable instruments and debt securities; or
 - (iii) by the use, for any purpose, of funds received or invested by the Auckland water organisation for any other purpose if the Auckland

- land water organisation has resolved to repay, with or without interest, the funds used; or
- (iv) under any contract for services; but
- (c) does not include debt incurred in connection with the hire purchase of goods, the deferred purchase of goods or services, or the giving of credit for the purchase of goods or services if—
- (i) the period for which the indebtedness is outstanding is less than 91 days and the indebtedness is not incurred again promptly after payment; or
 - (ii) the goods or services are obtained in the ordinary course of the 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—
 - (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
- (d) does not include a contract for services that is entered into (or that was entered into before this section came into force)—
- (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

capital includes uncalled capital

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

110 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.
- (2) An Auckland water organisation must repay a debt under subsection (1) despite anything in section 56A.
- (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.

111 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—
 - (a) section 84(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.

112 New section 60A inserted (Charges as security)

After section 60, insert:

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
 - (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—
 - (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.
- (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.

- (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.
- (6) In this section, **Crown monitor** means a Crown monitor appointed under section 72 of the Local Government (Water Services Preliminary Arrangements) Act 2024.

113 Section 92 amended (Substantive council-controlled organisations must give effect to LTP and act consistently with other specified plans and strategies of Council)

After section 92(2), insert:

- (3) This section is subject to—
- (a) section 84(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.

Part 5

Amendments to Water Services Act 2021 and consequential amendments

Amendments to Water Services Act 2021

114 Principal Act

Sections 115 and 116 amend the Water Services Act 2021.

115 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.

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

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.
- (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
- (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).

Legislation Act 2019 requirements for secondary legislation made under this section

Publication PCO must publish it on the legislation website and notify it in the *Gazette* LA19 s 69(1)(c)

Presentation The Minister must present it to the House of Representatives LA19 s 114

Disallowance It may be disallowed by the House of Representatives LA19 ss 115, 116

This note is not part of the Act.

Consequential amendments

117 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

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

Schedule 2

Consequential amendments

s 117

Part 1

Amendments to primary legislation

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:

Local Government (Water Services Preliminary Arrangements) Act 2024		
Section 42	Exemption applies	Exemption applies
Section 46	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.

Ombudsmen Act 1975 (1975 No 9)

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

Crown monitor appointed under section 72 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:

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

- (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.
- (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.
- (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—
 - (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
 - (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.
- (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—
 - (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
 - (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”.

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
 - (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.

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****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”.

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.

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”.

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)
27 August 2024	Third reading
2 September 2024	Royal assent

This Act is administered by the Department of Internal Affairs.