

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

Government Bill

## **Explanatory note**

### **General policy statement**

This Bill establishes preliminary arrangements for local government water services delivery. It is an omnibus Bill that amends other Acts and is introduced in accordance with Standing Order 267(1)(a) as the amendments deal with an interrelated topic that can be regarded as implementing a single broad policy. The single broad policy for this Bill is to lay the foundation for a new framework of water services management and financially sustainable delivery models that meet regulatory standards, including a new water services delivery arrangement for Auckland. Councils will be able to use the provisions to start planning future water services delivery and undertake steps to establish, join, or amend council-controlled organisations from the day after Royal assent.

The Bill contains stand-alone provisions and also amends—

- the Local Government Act 2002; and
- the Local Government (Auckland Council) Act 2009; and
- the Local Government (Rating) Act 2002; and
- the Receiverships Act 1993; and
- the Civil Defence and Emergency Management Act 2002.

### **Introduction**

New Zealand's long-standing water infrastructure challenges require locally led and financially sustainable solutions. The Water Services Acts Repeal Act 2024 (the **Repeal Act**) put an end to the proposed 10 water services entities and confirmed that councils will continue to own and be responsible for water services. This Bill requires councils to provide transparent information about the current state of water services and to set out proposals to achieve financially sustainable water services that meet

regulatory standards. With greater oversight and support from the Government, councils will have the flexibility and discretion to determine the optimal structure, delivery method, and funding and financing arrangements for their water services.

A further Bill, to be introduced in December 2024, will set out a comprehensive range of options, tools and models that will enable councils to exercise those choices, contingent on meeting criteria for financial sustainability.

### **Relationship to other proposed legislation**

There are 3 legislative components to achieving the new framework for water services delivery. The Repeal Act reversed the previous approach to reforming water services delivery. This Bill is the second component and sets out the preliminary arrangements to put water services infrastructure on the path to long-term financial sustainability.

Further legislation will provide for the long-term replacement regime, including—

- long-term requirements for financial sustainability:
- establishing new classes of council-controlled water organisations and service delivery models:
- accountability, planning, and reporting regimes for water services:
- providing for comprehensive economic regulation (being developed in conjunction with the Minister of Commerce and Consumer Affairs):
- amendments to the regulatory settings for Taumata Arowai—the Water Services Regulator:
- establishing a regulatory backstop power:
- refinements to water services delivery system settings:
- detailed changes to the Local Government Act 2002 and other legislation to strengthen the delivery of water services.

### **Water services delivery plans**

The Bill requires territorial authorities to submit water services delivery plans (**plans**) within 12 months of the Bill's enactment.

The plans will provide detailed information on the current state of councils' water services arrangements for water supply (including drinking water), wastewater, and stormwater and set out a strategy for how they will achieve the delivery of financially sustainable water services and meet regulatory quality standards. The information on the current state of water services will lay the foundation for information disclosure as part of a future comprehensive economic regulation regime.

Territorial authorities may combine to prepare a joint plan to reflect joint arrangements. A joint plan must explain how water supply, wastewater, and stormwater services will be provided throughout the districts included in the joint plan. There is flexibility whether to include some or all stormwater services in a joint arrangement

to enable territorial authorities to make the right decisions for their local circumstances.

The plans must be provided to the Secretary for Local Government within 12 months of the Bill's enactment for consideration as to whether they comply with the requirements set out in the Bill. Extensions will be available based on criteria in the Bill, including extra time to consult on joint arrangements or finalise negotiations, and subject to any reasonable conditions.

#### **Additional information disclosure**

Foundational information disclosure will be provided through the plans to lay the groundwork for comprehensive economic regulation. The Bill provides for additional information disclosure for territorial authorities and council-controlled organisations providing water services where such disclosure promotes the long-term benefit of consumers and supports efficiency, innovation, and investment.

The additional information disclosure requirements will be applied to territorial authorities or water services council-controlled organisations by Order in Council made on the recommendation of the Minister of Local Government and the Minister of Commerce and Consumer Affairs. Determinations made by the Commerce Commission will outline the content of the additional information disclosure.

#### **Alternative consultation and decision-making process for water services council-controlled organisations**

The Bill sets out optional alternative consultation and decision-making requirements for territorial authorities to use if they wish to when establishing, joining, or amending a water services council-controlled organisation. Territorial authorities have the flexibility to use any or all of the alternative requirements instead of the existing processes in the Local Government Act 2002. If they do not use the alternative requirements in this Bill, the relevant requirements in the Local Government Act 2002 will continue to apply.

Under the alternative arrangements, territorial authorities may—

- identify 2 options for delivering water services (the status quo and the proposed new arrangement) in place of the requirement to identify all reasonably practicable options:
- consult only once and are not required to consult additionally on an amendment to the long-term plan resulting from a decision relating to water services council-controlled organisations:
- conditionally approve a long-term plan amendment subject to corresponding agreement from the other territorial authorities that are parties to a joint water services council-controlled organisation:
- consider in their decision making the impact of a joint water services council-controlled organisation on communities in the area covered, as well as in the territorial authority's district.

A joint committee between territorial authorities wanting to work together can be set up to undertake 1 or more of the process steps.

Councils will be temporarily exempted from the cost-effectiveness review laid out in section 17A of the Local Government Act 2002 that relates to a decision to establish, join, or amend a water services council-controlled organisation.

### **New financially sustainable model for Watercare**

The Bill enables Auckland Council to implement its preferred model for water services delivery. Watercare Services Limited (**Watercare**) is a registered company and 100% owned by Auckland Council. It provides water supply and wastewater services in Auckland. Auckland Council's preferred model envisages greater financial independence for Watercare by—

- shifting the legislative obligation to provide water supply and wastewater services from Auckland Council to Watercare:
- prohibiting Auckland Council from providing financial support to Watercare in any situation or under any conditions:
- enabling the Minister of Local Government to appoint a Crown review team, Crown monitor, or Crown manager to Watercare if a significant problem exists:
- introducing interim economic regulation under the oversight of a Crown monitor until further legislation establishes a long-term economic regulatory framework:
- enabling the Crown to reimburse Watercare for expenses incurred during an emergency.

The provisions enabling Auckland Council's preferred model for water services delivery will commence on a date set by Order in Council made by the Minister of Local Government or, at latest, 1 July 2025. The provisions relating to interim economic regulation will commence on the day after Royal assent.

Auckland Council's water services delivery plan will only need to cover stormwater services.

### **Secondary legislation**

The Bill contains provision for delegated decision-making powers through secondary legislation that—

- enable the Secretary for Local Government to make rules for additional matters to be included in water services delivery plans:
- subject councils to enhanced information disclosure requirements for their water services in addition to the information provided in water services delivery plans. This will be given effect to by an Order in Council:
- enable the Commerce Commission to make determinations to set out the additional information that a council must disclose:

- enable the Watercare Crown monitor to make a charter that imposes obligations on Watercare as part of interim economic regulation.

### Departmental disclosure statement

The Department of Internal Affairs is required to prepare a disclosure statement to assist with the scrutiny of this Bill. The disclosure statement provides access to information about the policy development of the Bill and identifies any significant or unusual legislative features of the Bill.

A copy of the statement can be found at <http://legislation.govt.nz/disclosure.aspx?type=bill&subtype=government&year=2024&no=52>

### Regulatory impact statement

The Department of Internal Affairs produced a regulatory impact statement on 14 March 2024 to help inform the main policy decisions taken by the Government relating to the contents of this Bill.

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

- <https://www.dia.govt.nz/Resource-material-Regulatory-Impact-Statements-Index>
- <https://treasury.govt.nz/publications/informationreleases/ris>

### Clause by clause analysis

*Clause 1* is the Title clause.

*Clause 2* provides that the majority of the Bill comes into force on the day after Royal assent. However, specified clauses come into force on a date set by Order in Council or 1 July 2025, whichever is earlier.

## Part 1

### Preliminary provisions

*Clause 3* sets out the purpose of the Bill. The purpose is to require territorial authorities to provide information relating to their delivery of water services, to provide consultation and decision-making processes for territorial authorities to establish, join, or amend council-controlled organisations that deliver water services, and to provide for Watercare Services Limited to provide water services in Auckland in a financially sustainable manner.

*Clause 4* sets out an overview of the Bill as follows:

- *Part 1* includes the preliminary provisions:
- *Part 2* provides for territorial authorities to prepare and submit water services delivery plans, sets out ministerial powers in relation to those plans, and requires territorial authorities to provide additional foundational information:

- *Part 3* sets out alternative and additional consultation and decision-making requirements for territorial authorities when they are establishing, joining, or amending a water services council-controlled organisation:
- *Part 4* provides for the appointment of a Crown monitor to make a Watercare charter, to ensure the separation of Watercare Services Limited and Auckland Council. The Crown monitor will monitor and report on Watercare Services Limited.

*Clause 5* defines terms used in the Bill.

*Clause 6* provides for transitional savings, and related provisions, as set out in *Schedule 1*.

*Clause 7* provides that the Bill, when enacted, will bind the Crown.

## **Part 2**

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

#### Subpart 1—Water services delivery plans

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

*Clause 8* requires each territorial authority to prepare a water services delivery plan, setting out the current state of the authority's water services, and demonstrating a commitment to delivering water services in the future.

*Clause 9* provides that, in certain circumstances, 2 or more territorial authorities may combine to deliver water services across the authorities' combined area.

*Clause 10* provides that a water services delivery plan must relate to all water services.

*Clause 11* lists the information that a water services delivery plan must contain.

*Clause 12* lists additional information that must be contained in a joint water services delivery plan.

*Clause 13* requires a water services delivery plan to cover a period of not less than 10 consecutive financial years, starting with the 2024–25 financial year. A plan must provide more detail for the first 3 years covered by the plan than for the following 7 years.

*Clause 14* provides that the Secretary for Local Government (the **Secretary**) may make rules relating to water services delivery plans.

*Clause 15* requires a territorial authority to adopt its water services delivery plan by resolution.

*Submission of water services delivery plan*

*Clause 16* requires a water services delivery plan to be submitted to the Secretary within 1 year of the Bill being enacted or by a later date specified by the Minister under *clause 17*.

*Clause 17* provides that the Minister may, on application from a territorial authority, grant an extension to the deadline for submitting a water services delivery plan.

*Acceptance of water services delivery plan*

*Clause 18* requires the Secretary to consider each water services delivery plan that is submitted, and to accept it if satisfied that the plan complies with the requirements set out in this Bill.

*Clause 19* provides that after the Secretary accepts a water services delivery plan, the applicant must publish the plan, and the Secretary must provide a copy to the Commerce Commission and Taumata Arowai.

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

*Crown facilitator for water services delivery plans*

*Clause 20* authorises the Minister to appoint a Crown facilitator for water services delivery plans, and sets out the grounds on which the Minister may make such an appointment.

*Clause 21* requires the Minister to give notice of appointing a Crown facilitator, and sets out what information must be included in the notice.

*Clause 22* sets out the role of a Crown facilitator for water services delivery plans.

*Crown water services specialist*

*Clause 23* authorises the Minister to appoint a Crown water services specialist, and sets out the grounds on which the Minister may make such an appointment.

*Clause 24* requires the Minister to give notice of appointing a Crown water services specialist, and sets out what information must be included in the notice.

*Clause 25* sets out the role of a Crown water services specialist.

*Clause 26* provides that any direction that a Crown water services specialist has given ceases to have effect when their appointment expires.

*General provisions*

*Clause 27* requires a territorial authority or group of territorial authorities to co-operate with a Crown facilitator for water services delivery plans or a Crown water services specialist (a **ministerial appointee**).

*Clause 28* provides that the Minister's powers under this subpart are in addition to, not in place of, the Minister's powers under Part 10 of the Local Government Act 2002 (the **LGA2002**).

*Clauses 29 and 30* relate to a ministerial appointee's entitlement to remuneration and expenses.

*Clause 31* specifies that a ministerial appointee is protected from liability for their acts or omissions done in good faith.

### Subpart 3—Foundational information: additional disclosure requirements

*Clause 32* sets out the purpose of *subpart 3*.

*Clause 33* provides that *subpart 3* applies to an entity (a **specified entity**) that is named in an Order in Council made by the Governor-General on the recommendation of the Minister and the Minister of Commerce and Consumer Affairs. Before making a recommendation, those Ministers must consider advice from the Secretary and the Commerce Commission.

*Clause 34* defines the term **specified entity**.

#### *Determinations*

*Clause 35* authorises the Commerce Commission to make a determination setting out the information that a specified entity must make publicly available and disclose to the Commerce Commission.

*Clause 36* provides that a specified entity that is covered by a determination made under *clause 35* must make the required information publicly available and provide a copy of the information to the Commission.

*Clause 37* lists what a determination made under *clause 35* must include, what the Commission may have regard to when making a determination, and what types of information a specified entity may be required to provide.

*Clause 38* provides that a determination may, in certain circumstances, require a specified entity to provide additional information that includes information in relation to goods and services that are not incidental to, or related to, delivering water services.

*Clause 39* authorises a specified entity to charge the public to provide information that a determination requires the entity to provide.

*Clause 40* provides that the Commerce Commission has additional monitoring and investigation powers to enable it to carry out its functions and exercise its powers under *Part 2* of the Bill.

#### *Sharing of information*

*Clause 41* authorises the Commerce Commission and the department to share information with each other for the purposes of the Bill. It also limits the purposes for which such shared information may be used.



### *Pecuniary penalty orders*

*Clause 42* authorises the High Court to order a person to pay a pecuniary penalty in the listed circumstances related to disclosing information under this subpart.

*Clause 43* sets the maximum pecuniary penalty at \$500,000 for an individual or \$5 million in any other case. It also lists matters that the court must have regard to, when determining the amount of a pecuniary penalty.

### *Orders about information disclosure*

*Clause 44* provides that the High Court may order a specified entity to comply with an obligation relating to disclosing information under *subpart 3 of Part 2*.

### *Offence*

*Clause 45* provides that it is an offence to intentionally contravene a requirement relating to an obligation to disclose information, or to fail to comply with an order under *clause 44*. The maximum fine for the offence is \$200,000 for an individual, or \$1,000,000 in all other cases.

### *Miscellaneous provisions*

*Clause 46* lists certain provisions in the Commerce Act 1986 that apply for the purposes of *subpart 3 of Part 3*.

### *Amendment to Local Government Act 2002*

*Clause 47* provides that *clause 48* amends the LGA2002.

*Clause 48* replaces section 255(2) of the LGA2002 so it provides that the Minister may also exercise powers under Part 10 of the LGA2002 in relation to territorial authorities or joint arrangements under the Bill.

## **Part 3**

### **Establishing water services council-controlled organisations**

#### *Preliminary provisions*

*Clause 49* sets out the purpose of *Part 3* of the Bill, which is to provide alternative provisions and greater flexibility in relation to a territorial authority using a council-controlled organisation (a CCO) under the LGA2002 to deliver water services.

#### *Alternative requirements*

*Clause 50* specifies that territorial authorities may rely on any of the alternative requirements set out in *clauses 51 to 54* in place of the corresponding obligations that would otherwise apply in the LGA2002. However, all other obligations in that Act continue to apply.

*Clause 51* provides that a territorial authority is only required to identify and assess the listed 2 options, rather than all reasonably practicable options as required under section 77(1)(a) and (b) of the LGA2002.

*Clause 52* provides that a territorial authority is only required to consult once before deciding whether to establish or join a CCO. However, an authority may decide to consult further, in which case it must have regard to the listed matters. This clause applies in place of the obligation to consult set out in section 56(1) of the LGA2002.

*Clause 53* provides that if a territorial authority is required to amend its long-term plan for the purposes of establishing, joining, or amending a CCO, it is not required to consult in certain circumstances. This clause applies in place of the obligation to consult in 93(5) of the LGA2002.

*Clause 54* sets out the information that a territorial authority must make publicly available when consulting in relation to establishing, joining, or amending a CCO. This clause applies in place of the information requirements set out in section 82A(2) of the LGA2002.

#### *Additional powers and exemption*

*Clause 55* provides that if a territorial authority is deciding whether to establish, join, or amend a CCO, it may consider additional listed factors. This clause applies despite sections 12(4) and 14(1)(g) of the LGA2002.

*Clause 56* provides that 2 or more territorial authorities may use joint committees to perform 1 or more of the listed tasks.

*Clause 57* authorises a territorial authority to conditionally approve amending its long-term plan if required for the purpose of establishing, joining, or amending a joint CCO with another territorial authority.

*Clause 58* provides a temporary exemption from the obligation in section 17A of the LGA2002 to do a cost-effectiveness review in relation to a CCO in certain circumstances.

*Clause 59* repeals *clauses 58 and 59* 5 years after the Bill is enacted.

## **Part 4**

### **Watercare Services Limited**

#### *Crown monitor*

*Clause 60* provides that the Minister may appoint a Crown monitor to Watercare. A Crown monitor must be a government department, a Crown entity, or a company named in Schedule 4A of the Public Finance Act 1989.

*Clause 61* requires the Minister to appoint the Crown monitor by providing notice to Watercare and to the Crown monitor.

*Clause 62* sets out the role of the Crown monitor, which includes making a charter for Watercare and monitoring and reporting on Watercare's performance.

### *Watercare charter*

*Clause 63* provides that the Crown monitor must prepare and make a Watercare charter. This clause also specifies that a charter must be made in 2 separate parts and lists what must be included in each part. A charter is secondary legislation.

#### *Part 1 of Watercare charter*

*Clause 64* sets out the details of what must be contained in Part 1 of a Watercare charter: minimum service quality standards, financial performance objectives, and a customer compensation scheme.

*Clause 65* requires Watercare to submit a draft business plan to the Crown monitor, and sets out the details of what must be contained in that plan. Watercare must submit the business plan within 4 months after the Crown monitor makes Part 1 of the Watercare charter.

*Clause 66* requires that each business plan that Watercare submits to the Crown monitor must cover a period of at least 10 consecutive financial years, with more detail provided in respect of the first 3 years than for the rest of the period.

*Clause 67* provides that when it receives a business plan from Watercare, the Crown monitor must review the plan and provide comments to Watercare, and may require Watercare to provide additional information. Watercare must then submit a finalised business plan that addresses the comments received and includes any requested additional information.

#### *Part 2 of Watercare charter*

*Clause 68* sets out the details of a price-quality path that must be contained in Part 2 of a Watercare charter.

#### *Effect of Watercare charter*

*Clause 69* provides that when the Crown monitor makes Part 2 of the charter, the charter is binding on Watercare. If there are any inconsistencies between the charter and Auckland Council's long-term plan, the charter prevails. When the charter applies, an agreement for services between Watercare and a customer must include information relating to the customer compensation scheme required by the charter.

#### *Information disclosure*

*Clause 70* provides that the Crown monitor may require Watercare to provide any information the Crown monitor requires to perform its role. The Crown monitor may also require Watercare to certify that any information provided is true and accurate.

#### *Crown monitor to monitor and report on performance*

*Clause 71* requires the Crown monitor to monitor Watercare's performance under the charter.

*Clause 72* requires the Crown monitor to report annually on Watercare's performance against specified components of the charter. The Crown monitor must provide the report to Auckland Council, the Minister, and the Minister of Commerce and Consumer Affairs.

*Clause 73* requires the Crown monitor to report quarterly on its own performance to the Minister.

#### *Crown monitor's expenses*

*Clause 74* provides that Watercare must reimburse the Crown for the Crown monitor's expenses incurred in monitoring Watercare.

#### *Commerce Commission's functions and powers*

*Clause 75* provides the Commerce Commission with its functions and powers for the purposes of this Bill.

#### *Enforcement*

*Clause 76* provides that the High Court may, if satisfied that Watercare contravened the charter (or attempted to contravene the charter), make various orders including an injunction or an order to pay a pecuniary penalty.

*Clause 77* provides that the maximum pecuniary penalty payable under *clause 76* is \$10,000,000 in respect of each act or omission. It also lists matters that the court must consider when determining the amount of a pecuniary penalty.

*Clause 78* provides that the High Court may, if satisfied that Watercare has failed to provide required information or submit a business plan under *clause 65*, make various orders including an order to pay a pecuniary penalty.

*Clause 79* provides that the maximum pecuniary penalty payable under *clause 78* is \$300,000 in respect of each act or omission.

*Clause 80* provides that the High Court may, in addition to a pecuniary penalty, impose a further penalty for each day of a continuing breach. The further penalty is \$500,000 each day for a breach under *clause 76*, or \$50,000 each day for a breach under *clause 78*.

*Clause 81* provides for a right of appeal to the Court of Appeal in relation to proceedings under *clause 76*, on a question of law.

#### *Related amendments to LGA2002*

*Clause 82* provides that *clauses 83 to 91* amend the LGA2002.

*Clauses 83 and 84* amend sections 121 and 122, to provide that the Crown is not liable for, or guarantee, any debts or liabilities of Watercare.

*Clause 85* amends section 124 by inserting definitions of Auckland and Watercare for the purposes of Part 7 of the LGA2002.

*Clause 86* amends section 127, which provides a duty to ensure that communities have access to drinking water in certain circumstances. The amendment extends the duty to Watercare.

*Clause 87* amends section 130, which places an obligation to provide water services on local government organisations. The amendment provides that the obligation only applies to Auckland Council in relation to stormwater services.

*Clause 88* inserts *new section 130A*, which extends the obligation in section 130 to Watercare in relation to water supply and wastewater services.

*Clauses 89, 90, and 91* amend sections 253, 254, and 255 to provide that the Ministers power's under Part 10 of the LGA2002 in relation to local authorities also extend to Watercare.

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

*Clause 92* provides that *clauses 93 to 99* amend the Local Government (Auckland Council) Act 2009.

*Clause 93* amends section 4 by amending the definition of Auckland water organisation so that it means Watercare.

*Clause 94* inserts *new section 56A* and cross-headings. *New section 56A* provides for the financial separation between Auckland Council and Watercare.

*Clause 95* inserts *new sections 57A and 57B*. *New section 57A* requires Watercare to repay any debt to Auckland Council within a period of 5 years. *New section 57B* provides that *new sections 57A and 57B* are repealed after 5 years.

*Clause 96* amends section 58 to reflect the financial separation between Auckland Council and Watercare.

*Clause 97* inserts *new section 60A*, which relates to the situation if a receiver is appointed in respect of a loan granted to Watercare.

*Clause 98* amends section 92 to reflect the financial separation between Auckland Council and Watercare.

#### *Consequential amendments*

*Clause 99 and Schedule 2* set out the consequential amendments the Bill makes to primary and secondary legislation in relation to Watercare.



*Hon Simeon Brown*

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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 82 to 99 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. 5
- (4) An Order in Council made under this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

## **Part 1**

### **Preliminary provisions**

10
**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 15
  - (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 provide other specified foundational information in relation to delivering water services, for the purpose of supporting economic regulation; and 20
  - (d) providing specific consultation and decision-making processes that territorial authorities may use to establish, join, or amend council-controlled organisations that will deliver water services; and
  - (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. 25

**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. 30
- (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: 35
  - (c) **subpart 3**, which sets out a framework for specified territorial authorities to disclose additional foundational information for the purposes of

economic regulation, and also includes provisions relating to information sharing and enforcement.

- (3) **Part 3** sets out consultation and decision-making processes that territorial authorities may use when establishing, joining, or amending a water services council-controlled organisation. 5
- (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 Interpretation 10

In this Act, unless the context otherwise requires,—

**amend**, in relation to a council-controlled organisation, means to amend—

- (a) the constitution of the organisation; or
- (b) any other rules or documents that constitute the organisation or govern its activities

**Commission** means the Commerce Commission established by section 8 of the Commerce Act 1986 15

**council-controlled organisation** has the meaning set out in section 6(1) of the Local Government Act 2002

**Crown facilitator** means a Crown facilitator for water services delivery plans appointed under **section 20** 20

**Crown water services specialist** means a Crown water services specialist appointed under **section 23**

**department** means the department, departmental agency, or interdepartmental venture (as named in Part 1, 2, or 4 of Schedule 2 of the Public Service Act 2020) that, with the authority of the Prime Minister, is responsible for the administration of this Act 25

**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— 30

- (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 35

**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
- joint arrangement** means an arrangement between 2 or more territorial authorities to deliver water services (*see section 9*)
- joint service area** means,— 5
- (a) in relation to a joint arrangement, the combined districts of the territorial authorities that are a party to the joint arrangement; or
  - (b) in relation to a joint WSCCO, the combined districts of the territorial authorities that control the joint WSCCO
- joint water services council-controlled organisation** or **joint WSCCO** 10  
means a water services council-controlled organisation—
- (a) controlled by 2 or more territorial authorities; or
  - (b) in which 2 or more territorial authorities are shareholders
- joint water services delivery plan** or **joint plan** means a water services delivery plan relating to 2 or more territorial authorities 15
- 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 20
- ministerial appointee** means—
- (a) a Crown facilitator for water services delivery plans appointed under **section 20**; or
  - (b) a Crown water services specialist appointed under **section 23**
- Secretary** means the Secretary for Local Government 25
- stormwater network** means the infrastructure and processes that—
- (a) are used to collect, treat, drain, reuse, or discharge stormwater in an urban area; 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 30  
organisation
- 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 35
- 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 5

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

- (a) water supply network:
- (b) stormwater network:
- (c) wastewater network 10

**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 15
- (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 20
- (b) includes a joint water services delivery plan

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

- (a) are used to provide firefighting water supplies or drinking water supply; and 25
- (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. 30

**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. 35

## Part 2

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

#### Subpart 1—Water services delivery plans

*Water services delivery plan: preparation and contents* 5

#### 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— 10
    - (i) ensures that the territorial authority will meet all relevant regulatory quality standards for its stormwater network, wastewater network, and water supply network; and
    - (ii) is financially sustainable for the territorial authority; and
    - (iii) ensures that the territorial authority will meet all drinking water quality standards; and 15
    - (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 9(3)**. 20

#### 9 Territorial authorities may enter into arrangement to submit joint plan

- (1) A territorial authority may, in the circumstances described in **subsection (2)**, enter into an arrangement with 1 or more other territorial authorities for the purpose of submitting a joint water services delivery plan in relation to delivering the water services in the joint service area covered by that arrangement. 25
- (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 a joint water services delivery plan.
- (3) If 2 or more territorial authorities enter into an arrangement 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. 30
- (4) 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 35



- 
- (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.
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**Example**

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

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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.

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

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

Territorial authorities A, B, and C join together to form a joint arrangement. The joint arrangement relates to the delivery of all water services for territorial authorities A and B, but territorial authority C joins the joint arrangement in relation to water services other than those services relating to its stormwater network. 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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**11 Contents of water services delivery plan**

- (1) A territorial authority's water services delivery plan must contain the following information in relation to the water services delivered in the authority's district:
- (a) a description of the current state of the water services network:
- (b) a description of the current levels of 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 comply with regulatory requirements:

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- (e) details of the capital and operational expenditure required—
- (i) to deliver the water services; and
  - (ii) to ensure that water services comply with regulatory requirements:
- (f) financial projections for delivering water services over the period covered by the plan, including— 5
- (i) the operating costs and revenue required to deliver water services; and
  - (ii) projected capital expenditure on water infrastructure; and
  - (iii) projected borrowing to deliver water services: 10
- (g) an assessment of the current condition, lifespan, and value of the water services network:
- (h) a description of the asset management approach being used, including capital, maintenance, and operational programmes for delivering water services: 15
- (i) a description of any issues, constraints, and risks that impact on delivering water services:
- (j) the anticipated or proposed model or arrangements for delivering water services (including whether the territorial authority is likely to enter into a joint arrangement under **section 9** or will continue to deliver water services in its district alone): 20
- (k) an explanation of how the revenue from, and delivery of, water services will be separated from the territorial authority’s other functions and activities:
- (l) a summary of any consultation undertaken as part of developing the information required to be included in the plan under **paragraphs (j) and (k)**: 25
- (m) an explanation of what the authority proposes to do to ensure that the delivery of water services will be financially sustainable by 30 June 2028: 30
- (n) any other information prescribed in rules made by the Secretary under **section 14**.
- (2) A water services delivery plan must also comply with any requirements prescribed in rules made by the Secretary under **section 14**.
- 12 Additional requirements for joint water service delivery plans** 35
- (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 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 services in relation to stormwater networks for the other territorial authorities: 5
- (c) all of the information listed in **section 11**:
- (d) information on the likely form of the joint arrangement, including whether it is anticipated it will involve water services being delivered by— 10
  - (i) a joint WSCCO; or
  - (ii) a joint local government arrangement or joint arrangement under section 137 of the LGA2002; or
  - (iii) another organisation or arrangement that the territorial authorities are considering. 15
- (2) A joint water services delivery plan may also contain the following information to the extent that the information is available when the plan is submitted to the Secretary under **section 16**:
  - (a) an indicative implementation plan and timeline for the delivery of water services under the joint plan: 20
  - (b) further information about the joint arrangement, including the ownership structure, the governance structure, and the control and financial rights of each territorial authority in the joint arrangement.
- (3) For the purposes of **subsection (1)(c)**, a joint plan must contain the information required under **section 11** in relation to— 25
  - (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. 30

### 13 Period covered by water services delivery plan

- (1) A water services delivery plan must cover a period of not less than 10 consecutive financial years, starting with the 2024–25 financial year. 35
- (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.
- 14 Secretary may make rules in relation to water services delivery plans**
- (1) The Secretary may make rules for 1 or more of the following purposes relating to water services delivery plans: 5
- (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— 10
- (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): 15
- (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: 20
- (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. 25
- (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 are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).
- 15 Process to prepare and adopt water services delivery plan** 30
- (1) A territorial authority must adopt a water services delivery plan by resolution.
- (2) Except as provided in **Part 3** of this Act, a territorial authority must comply with subpart 1 of Part 6 of the LGA2002 (Planning and decision-making) when preparing, adopting, or amending a water services delivery plan.
- (3) This Act does not require a territorial authority to consult in relation to a water services delivery plan, but another enactment (for example, the LGA2002) may require a territorial authority to consult. 35

*Submission of water services delivery plan*

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

- (1) A territorial authority or a joint arrangement (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 Act comes into force; or 5
  - (b) on or before a later date specified by the Minister under **section 17**.
- (2) Each water services delivery plan that is submitted to the Secretary for acceptance must include a certification that—
  - (a) the plan complies with this Act; and
  - (b) the information contained in the plan is true and accurate. 10
- (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. 15

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

- (1) A territorial authority or a joint arrangement (the **applicant**) may apply to the Minister for an extension to the deadline for submitting its water services delivery plan. 20
- (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 25
  - (d) be made no later than 1 month before the last date for submitting a plan under **section 16(1)(a)**.
- (3) The Minister may grant an extension only if the Minister is satisfied that—
  - (a) an application for the extension is made in accordance with **subsection (2)**; and 30
  - (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: 35

- (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: 5
  - (iv) any other reason that the Minister considers justifies granting the exemption.
- (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. 10
- (6) If the Minister grants an extension, the Minister must respond to the applicant, notifying it of the length of the extension and specifying the date by which the water services delivery plan must be submitted to the Secretary. 15
- (7) The Minister may grant an extension subject to any conditions that the Minister thinks reasonable in the circumstances.

*Acceptance of water services delivery plan*

**18 Secretary accepts water services delivery plan**

- (1) The Secretary must— 20
- (a) consider each water services delivery plan submitted under **section 16**; and
  - (b) accept a water services delivery plan only if satisfied that the plan complies with this Act.
- (2) In deciding whether to accept a water services delivery plan, the Secretary may consult 1 or more of the following: 25
- (a) a government department:
  - (b) the Commission:
  - (c) Taumata Arowai:
  - (d) Crown Infrastructure Partners Limited. 30
- (3) If the Secretary is not satisfied that a plan complies with the requirements in this Act, the Secretary must—
- (a) advise the territorial authority or joint arrangement why the Secretary is not satisfied with the plan and require the territorial authority or joint arrangement to amend the plan (which may be by including additional information) and resubmit it to the Secretary by a specified date; or 35
  - (b) decide not to accept the plan.

- (4) A territorial authority or joint arrangement 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 joint arrangement—
  - (a) whether the Secretary has accepted the plan; and 5
  - (b) if the Secretary has decided not to accept the plan, the reason for that decision.

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

If the Secretary notifies a territorial authority or joint arrangement that its water services delivery plan has been accepted,— 10

- (a) the territorial authority or joint arrangement 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 15
- (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. 20

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

*Crown facilitator for water services delivery plans*

**20 Minister may appoint Crown facilitator**

- (1) The Minister may, in the circumstances set out in **subsection (2)**, appoint a Crown facilitator for water services delivery plans to— 25
  - (a) a territorial authority; or
  - (b) a group of 2 or more territorial authorities that is proposing to submit a joint water services delivery plan.
- (2) The Minister may appoint a Crown facilitator if— 30
  - (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— 35

- (i) the territorial authority or the group is otherwise unlikely to submit its plan to the Secretary in accordance with this subpart; or
- (ii) in the case of a group of territorial authorities, the group is having difficulty agreeing on the terms of a joint plan.
- (3) The Minister may appoint either 1 person or a panel of 2 or more persons to be a Crown facilitator. 5
- (4) If the Minister appoints a panel to be a Crown facilitator, the Minister must appoint 1 member as the chairperson.
- 21 How Crown facilitator appointed**
- (1) The Minister appoints a Crown facilitator by— 10
- (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 15
- (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 20
- (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: 25
- (d) if the Crown facilitator is a panel, the name of the chairperson of the panel:
- (e) the name of each territorial authority to which the Crown facilitator has been appointed.
- (3) The Minister must notify any change in the membership of a Crown facilitator in writing to each territorial authority to which the Crown facilitator is appointed. 30
- 22 Role of Crown facilitator**
- (1) A Crown facilitator for water services delivery plans may be appointed to do 1 or more of the following: 35
- (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 18(3)(a)**): 5
- (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 18(3)(a)**), amend a water services delivery plan: 10
- (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 a territorial authority or group of territorial authorities to comply with the requirements in this Act: 15
- (g) anything else specified in the Crown facilitator’s terms of reference.
- (2) However, a Crown facilitator may be appointed to determine the terms of a joint arrangement in accordance with **subsection (1)(e)** only if the relevant territorial authorities agree to the Crown facilitator having that role. 20
- (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* 25

**23 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 form a joint arrangement. 30
- (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 35
  - (b) the territorial authority or the group has failed to submit its water services delivery plan to the Secretary in accordance with **section 16**; or
  - (c) the territorial authority or the group—

- (i) has submitted a water services delivery plan to the Secretary; but
- (ii) despite the Secretary requiring the plan to be amended (*see section 18(3)(a)*), the plan does not comply with **subpart 1**; or
- (d) a Crown facilitator for water services delivery plans appointed to the territorial authority or the group of territorial authorities has recommended that the Minister should make such an appointment, and the Minister agrees to do so. 5
- (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. 10
- 24 How Crown water services specialist is appointed**
- (1) The Minister appoints a Crown water services specialist by—
- (a) providing notice in writing to the person appointed to be the Crown water services specialist or, if the Minister appoints a panel, to each member of the panel; and 15
- (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*. 20
- (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 25
- (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: 30
- (d) if the Crown water services specialist is a panel, the name of the chairperson of the panel:
- (e) the name of each territorial authority to which the Crown water services specialist has been appointed.
- (3) The Minister must notify any change in the membership of a Crown water services specialist— 35
- (a) in writing to each territorial authority to which the Crown water services specialist is appointed; and

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

**25 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: 5
  - (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 16**: 10
  - (d) 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. 15

**26 Decisions and directions of Crown water services specialist**

- (1) This section applies to a territorial authority after the expiry of the term of a Crown water services specialist appointed to the territorial authority.
- (2) A direction given to the territorial authority by the Crown water services specialist ceases to have effect despite **section 27(c)**. 20
- (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. 25

Compare: 2002 No 84 s 258ZA(1)–(3)

*General provisions*

**27 Obligation to co-operate** 30

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 35

- (c) comply with any reasonable direction issued by the ministerial appointee.

## 28 Minister retains powers under Part 10 of LGA2002

- (1) The Minister's powers under this subpart are in addition to, not in place of, the Minister's powers under Part 10 (Powers of Minister to act in relation to local authorities) of the LGA2002. 5
- (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: 10
- (a) submit a water services delivery plan to the Secretary within the time frame specified in **section 16(1)**;
- (b) have a water services delivery plan accepted by the Secretary within a reasonable period after submitting it for acceptance;
- (c) give effect to proposals or undertakings specified in an accepted water services delivery plan relating to the future delivery of water services: 15
- (d) comply with **section 27** of this Act.
- (3) In **subsection (2)(c)**, an **accepted water services delivery plan** means a plan that—
- (a) relates to the territorial authority or group of territorial authorities; and 20
- (b) has been accepted by the Secretary under **section 18**.

## 29 Remuneration and expenses of ministerial appointee

- (1) A ministerial appointee is entitled—
- (a) to receive remuneration for services as a Crown facilitator or as a Crown water services specialist (as applicable) as determined by the Minister in accordance with the fees framework; and 25
- (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. 30
- (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. 30

Compare: 2002 No 84 s 258V

## 30 Recovery of expenses and remuneration from local authority

- (1) A territorial authority owes as a debt to the Crown any remuneration and expenses that the Crown incurs for the appointment of a ministerial appointee to the territorial authority (whether individually or as a group of territorial 35

authorities), including the payment of remuneration and expenses to the ministerial appointee.

- (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)

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**31 Protection from liability**

- (1) A ministerial appointee is not liable for any act done or omitted to be done by them in good faith in the performance or intended performance of their functions, responsibilities, and duties, or the exercise of their powers, as a ministerial appointee.

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- (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

**32 Purpose of this subpart**

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- (1) The purpose of this subpart is to promote the long-term benefit of consumers of water services provided by territorial authorities.
- (2) This subpart achieves that purpose by promoting outcomes that are consistent with outcomes produced in competitive markets such that territorial authorities—

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- (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

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- (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.

**33 Application of this subpart**

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- (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) a council-controlled organisation that delivers water services;
- (c) a subsidiary of a council-controlled organisation that delivers water services.

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- (2) Before making a recommendation under **subsection (1)**, the Minister and the Minister of Commerce and Consumer Affairs must—
- (a) consider advice from the Secretary and the Commission; and
  - (b) having considered that advice, believe that the entity to be specified in the Order in Council holds information that, if disclosed, would enable an interested person to assess whether the purpose of this subpart is being met. 5
- (3) An Order in Council made under this section must include the following information:
- (a) the name of the entity: 10
  - (b) the water services to which a determination made under **section 35** may apply.
- (4) An Order in Council made under this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

#### **34 Meaning of specified entity** 15

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

#### *Determinations*

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

- (1) The Commission may make a determination setting out the information that a specified entity must make publicly available and must disclose to the Commission (*see* **section 36**). 20
- (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. 25
- (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. 30
- (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. 35

- (8) A determination made under this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Compare: 2023 No 54 s 15

### 36 Effect of determination

- (1) A specified entity to which a determination made under **section 35** applies must— 5
- (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 makes the information available to the public. 10
- (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. 15 20
- (3) The Commission may, as part of a summary and an analysis, include an analysis of how effective the information disclosure requirements imposed on specified entities are in promoting the purpose in **section 32**.
- (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. 25

Compare: 2023 No 54 s 34

### 37 Contents of determination

- (1) A determination made under **section 35** must specify the following:
- (a) the specified entity to which it applies: 30
  - (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: 35
  - (g) when, and for how long, the specified entity must disclose the information:

- (h) any other methodologies that the specified entity must apply in preparing or compiling the information.
- (2) In making a determination under **section 35**, the Commission may have regard to the scale, complexity, and risk profile of each specified entity (or class of specified entity) to which the determination will apply (for example, by requiring more or less information to be disclosed). 5
- (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: 10
  - (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: 15
  - (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: 20
  - (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 38** applies: 25
  - (l) information about the financing of territorial authorities and water services council-controlled organisations that includes information about goods or services that are not incidental to, or related to, water services, in which case **section 38** applies.
- (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. 30
- (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: 35
  - (b) require independent audits of disclosed information:



- (c) require the retention of data on which disclosed information is based, and associated documentation:
- (d) provide for transitional provisions:
- (e) impose any other requirements that the Commission considers necessary or desirable to promote the purpose of this subpart. 5

Compare: 2023 No 54 s 35

**38 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 10
  - (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 35** may require a specified entity to disclose information referred to in **subsection (3)** only to the extent required to enable the Commission to monitor 1 or both of the matters referred to in **subsection (1)**. 15
- (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— 20
  - (a) consolidated financial statements, and any other information referred to in **section 37**, for all businesses (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 37**, for the supply of all other goods or services in aggregate; and 25
  - (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 30
  - (d) information about the financing of—
    - (i) all businesses (including those related to the supply of other goods or services) undertaken by that entity; and
    - (ii) the supply of all goods and services (including other goods or services) provided by that entity. 35

Compare: 2023 No 54 s 36

**39 Charge for providing copies to public**

- (1) A specified entity that is required, by a determination made under **section 35**, to provide copies of statements and information to the public on request may charge for providing those copies.
- (2) The charge must be no more than is reasonably required to recover the costs of providing those copies. 5
- Compare: 1986 No 5 s 53E; 2023 No 54 s 37

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

- (1) For the purpose of carrying out its functions and exercising its powers under this Part, the Commission may do any of the following: 10
- (a) consult any person the Commission considers may assist it:
- (b) investigate any of the following:
- (i) how effectively and efficiently a specified entity is delivering water services: 15
- (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. 20
- (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)

*Sharing of information*

- 41 Sharing of information and documents between Commission and department** 25
- (1) The Commission and the department may share information with each other if the provider of the information believes that sharing the information is for either of the following purposes:
- (a) understanding 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*); or 30
- (b) ensuring that sufficient information is available to interested persons to assess whether the purpose of this subpart is being met.
- (2) Any information received by the department or the Commission under this Act may only be used in connection with,— 35
- (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, the performance or exercise of its functions, duties, or powers under this Act or under the Commerce Act 1986.
- (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
- (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. 10
- (7) The department or the Commission may share the information subject to any conditions they think are appropriate.

*Pecuniary penalty orders*

- 42 When High Court may make pecuniary penalty order** 15
- (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 20
  - (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. 25
- (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 30
  - (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. 35

Compare: 2023 No 54 ss 83(1), 126

**43 Maximum amount of pecuniary penalty**

- (1) The maximum amount of a pecuniary penalty imposed under **section 42** is, in respect of each act or omission,—
- (a) \$500,000, in the case of an individual; or
  - (b) \$5 million, in any other case. 5
- (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 10
  - (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. 15
- Compare: 2023 No 54 s 84(1)

*Orders about information disclosure***44 Order requiring information disclosure requirement to be complied with**

- (1) The High Court may, on application by the Commission, order a specified entity to comply with an obligation that applies to the entity to disclose information under this subpart. 20
- (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* 25**45 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 30
  - (b) the person is subject to an order under **section 44** and fails to comply with the order by the date, or within the period, specified.
- (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. 35
- Compare: 2023 No 54 s 98

*Miscellaneous provisions*

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

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

*Powers relating to evidence* 5

- (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: 10
- (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): 15
- (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): 20
- (j) section 106A (judicial notice):
- (k) section 109 (Commission may prescribe forms).

*Amendment to Local Government Act 2002*

**47 Amendment to Local Government Act 2002**

**Section 48** amends the Local Government Act 2002. 25

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

Replace section 255(2) with:

- (2) Despite subsection (1), the Minister may exercise the powers in this Part in relation to—
  - (a) a local board, and, for that purpose, this Part applies, with any necessary modifications, as if a local board were a local authority; or 30
  - (b) a territorial authority, a group of territorial authorities, or a joint arrangement for the purposes of the Local Government (Water Services Preliminary Arrangements) Act **2024**, and, for those purposes, this Part applies, with any necessary modifications, as if the territorial authority, 35

the group of territorial authorities, or the joint arrangement were a local authority.

- (3) In **subsection (2)**, **joint arrangement** has the same meaning as in **section 5** of the Local Government (Water Services Preliminary Arrangements) Act **2024**.

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### Part 3

## Establishing water services council-controlled organisations

### *Preliminary provisions*

#### 49 Purpose of this Part

The purpose of this Part is—

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- (a) to set out alternative consultation and decision-making requirements that territorial authorities can use (in place of certain consultation and decision-making requirements set out in the LGA2002) when establishing, joining, or amending a water services council-controlled organisation (the **alternative requirements**) (*see sections 50 to 54*); and
- (b) to give territorial authorities greater flexibility in relation to WSCCOs by setting out additional powers to, or exemptions from, specific provisions in the LGA2002 (*see sections 55 to 58*).

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### *Alternative requirements*

#### 50 Alternatives to requirements in Local Government Act 2002

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- (1) If a territorial authority complies with an alternative requirement specified in **sections 51 to 54**, it need not comply with the corresponding requirement in the LGA2002.
- (2) However, except as specified in this Part, all other relevant requirements in the LGA2002 continue to apply. For example, the requirements in sections 77(1)(c), 81, and 82(2) of the LGA2002 continue to apply to a territorial authority whether or not it complies with the alternative requirements.
- (3) A territorial authority may decide to rely on none, any, or all of the alternative requirements set out in **sections 51 to 54**.
- (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.

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#### 51 Alternative requirement: decision making

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

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- (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 5
    - (ii) joining, forming, or amending (as the case may be) the WSCCO; 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 50(1)**, the corresponding requirement for this section is in section 77(1)(a) and (b) of the LGA2002. 10
- 52 Alternative requirement: consultation**
- (1) This section applies if a territorial authority is deciding whether or not to establish or join a water services council-controlled organisation.
- (2) Before the territorial authority decides whether or not to establish or join the WSCCO, the territorial authority is only required to undertake consultation once. 15
- (3) Despite **subsection (2)**, a territorial authority may decide to undertake further consultation before making the decision.
- (4) When deciding whether to undertake further consultation, a territorial authority must have regard to— 20
- (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 25
  - (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.
- (5) This section applies despite anything to the contrary in the authority’s significance and engagement policy adopted under section 76AA of the LGA2002. 30
- (6) A territorial authority that defers adopting its 2024–2034 long-term plan under clause 48 of Schedule 1AA of the LGA2002 may, to satisfy the requirement to consult on the decision under this section, combine—
- (a) the consultation under this section; and
  - (b) the authority’s consultation on its 2025–2034 long-term plan. 35
- (7) For the purpose of **section 50(1)**, the corresponding requirement for this section is in section 56(1) of the LGA2002.

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

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

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

- (1) When a territorial authority consults about whether or not to establish, join, or amend a WSCCO, the authority must make the following information publicly available: 15
- (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,— 20
    - (i) if the authority relies on the alternative requirement in **section 51(2)**, be at least the options identified under **section 51(2)(a) and (b)**; or
    - (ii) in all other cases, be the options identified under section 77(1) of the LGA2002: 25
  - (c) the likely consequences of proceeding with the proposal on the authority’s rates, debt, and levels of service:
  - (d) the likely consequences of not proceeding with the proposal on the authority’s rates, debt, and levels of service: 30
  - (e) if the proposal involves establishing, joining, or amending a joint WSCCO, the implications for communities throughout the joint service area of the joint WSCCO:
  - (f) if the proposal involves transferring ownership or control of a strategic asset to the WSCCO, a description of any accountability or monitoring arrangements the authority will use to assess the performance of the WSCCO in regard to the asset: 35
  - (g) any other relevant implications of the proposal that the authority considers will be of interest to the public.



- (2) For the purpose of **section 50(1)**, the corresponding requirement for this section is in section 82A(2) of the LGA2002.
- (3) In this section, **strategic asset** has the meaning set out in section 5(1) of the LGA2002.

*Additional powers and exemption* 5

**55 Ability to consider joint service area**

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

- (a) the impact of the joint WSCCO on the communities in the joint service area (as well as the impact on the authority’s district); and 10
- (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 parties to the joint WSCCO. 15

**56 Joint committees**

- (1) Two or more territorial authorities that are considering whether or not to establish or amend a joint WSCCO 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: 20
  - (a) identify and assess the options under **section 51(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: 25
  - (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. 30
- (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, some (but not all) of the territorial authorities may use a joint committee to perform the tasks listed in **subsection (1)**. 35

- 57 Ability to conditionally approve amending long-term plan**
- (1) This section applies if, for the purpose of establishing, joining, or amending a joint WSCCO, a territorial authority is required to—
- (a) amend its long-term plan; or
  - (b) provide for the joint WSCCO when adopting its long-term plan. 5
- (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—
- (a) approving corresponding amendments to their long-term plans; or
  - (b) adopting their long-term plans with corresponding provisions.
- 58 Exemption from cost-effectiveness review** 10
- (1) This section applies if a territorial authority—
- (a) is deciding whether or not to establish, join, or amend a WSCCO; or
  - (b) has established, joined, or amended a WSCCO.
- (2) The authority is not required to undertake a review under section 17A of the LGA2002 in relation to the WSCCO. 15
- 59 Repeal of section 58**
- Section 58** and this section are repealed on the date that is 5 years after this Act comes into force.

## Part 4

### Watercare Services Limited 20

#### *Crown monitor*

- 60 Minister may appoint Crown monitor**
- (1) The Minister may appoint one of the following to be a Crown monitor to Watercare:
- (a) an individual; or 25
  - (b) a Crown entity; or
  - (c) a company named in Schedule 4A of the Public Finance Act 1989.
- (2) In this section, **Crown entity** has the meaning set out in section 7(1) of the Crown Entities Act 2004.
- 61 How Crown monitor appointed** 30
- (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.
- (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 5
  - (b) end the Crown monitor’s appointment.
- (4) The department must, as soon as practicable after the Minister appoints a Crown monitor, changes the terms of an appointment, or 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 10
  - (b) in a format that is readily accessible.

**62 Role of Crown monitor**

- (1) The role of the Crown monitor is to—
  - (a) prepare a charter for Watercare (*see section 63*); and
  - (b) review, and provide comments on, Watercare’s business plan (*see section 67*); and 15
  - (c) monitor, and report on, Watercare’s performance against the charter (*see sections 71 and 72*); and
  - (d) take action to address any failure by Watercare to comply with the charter (*see sections 76 to 81*). 20
- (2) The Crown monitor may specify—
  - (a) the form and content of the business plan that Watercare must submit under **section 65**;
  - (b) the order in which Watercare must submit each component of a business plan. 25

*Watercare charter*

**63 Watercare charter**

- (1) A Crown monitor must prepare and make a Watercare charter.
- (2) A charter must comprise the following 2 parts:
  - (a) Part 1 of the charter must contain (*see section 64*)— 30
    - (i) minimum service quality standards for Watercare (which may include the time frame during which Watercare must meet the standards); and
    - (ii) financial performance objectives for Watercare; and
    - (iii) a customer compensation scheme for Watercare: 35
  - (b) Part 2 of the charter must—

- (i) contain a price-quality path for Watercare (*see section 68*); and
  - (ii) specify the time period during which the charter applies (which must start no earlier than the day after the date on which the Crown monitor makes Part 2 of the charter).
- (3) The Crown monitor must make— 5
- (a) the 2 parts of the charter separately; and
  - (b) Part 2 of the charter after it has made Part 1 of the charter.
- (4) Before making each part of a Watercare charter, the Crown monitor must consult the following:
- (a) Watercare: 10
  - (b) Auckland Council:
  - (c) Taumata Arowai:
  - (d) the Commerce Commission.
- (5) A charter made under this section is secondary legislation (*see Part 3 of the Legislation Act 2019 for publication requirements*). 15

*Part 1 of Watercare charter*

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

*Minimum service quality standards*

- (1) Minimum service quality standards contained in Part 1 of a Watercare charter may relate to 1 or more of the following: 20
- (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* 25

- (2) Financial performance objectives contained in Part 1 of a Watercare charter 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: 30
  - (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 must specify the compensation that Watercare must pay to a customer if Water- 35

care fails to meet a minimum service quality standard set out in the charter relating to that customer.

**65 Watercare must submit business plan to Crown monitor**

- (1) Watercare must submit a draft business plan to the Crown monitor.
- (2) Watercare must submit the draft business plan no later than 4 months after the date on which the Crown monitor makes Part 1 of the Watercare charter. 5
- (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 10
  - (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 15
  - (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 20
  - (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 Crown monitor as to the form and content of the plan; and 25
  - (b) it provides each component of the plan to the Crown monitor in any order specified by the Crown monitor.

**66 Period covered by business plan submitted to Crown monitor**

- (1) A business plan that Watercare submits under **section 65** must cover a period of at least 10 consecutive financial years. 30
- (2) The Crown monitor 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. 35

**67 Process for finalising business plan**

- (1) After receiving a draft business plan under **section 65**, the Crown monitor—
- (a) must review the plan; and
  - (b) may require Watercare to provide additional information relating to the plan; and 5
  - (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) Watercare must submit a final version of the business plan after—
- (a) providing any additional information requested by the Crown monitor; and 10
  - (b) giving effect to any comments made by the Crown monitor.
- (3) Watercare must submit the final version of the business plan within the time frame specified by the Crown monitor.

*Part 2 of Watercare charter*

15

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

- (1) A price-quality path for Watercare contained in Part 2 of a Watercare charter (a **price-quality path**) must include the information required by the Crown monitor, which may be 1 or more of the following:
- (a) the period to which it applies (which must not be more than 5 years): 20
  - (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. 25
- (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: 30
  - (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. 35

- (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: 5
  - (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: 10
  - (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 15
    - (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: 20
  - (i) requirements that any disclosed information, or any information from which disclosed information is derived, be verified by statutory declaration or certified (in the form specified by the Crown monitor) as true and accurate: 25
  - (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. 30

*Effect of Watercare charter*

**69 Effect of charter**

- (1) After the Crown monitor makes Part 2 of the Watercare charter, the charter is binding on Watercare during the time period to which it applies. 35

- (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. 5

*Information disclosure*

**70 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 duties, functions, or powers under this Act. 10
- (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: 15
  - (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: 20
  - (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: 25
  - (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: 30
- (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— 35
    - (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
- (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*
- 71 Crown monitor must monitor Watercare’s performance** 10
- (1) The Crown monitor must monitor Watercare’s performance under the charter.
- (2) For the purposes of **subsection (1)**, the Crown monitor is entitled to attend any meeting of the board of Watercare.
- 72 Crown monitor must make annual report**
- (1) No later than 30 November in each year, the Crown monitor must report on Watercare’s performance in the previous financial year against the following (contained in the Watercare charter): 15
- (a) minimum service quality standards or performance targets:
- (b) financial performance objectives:
- (c) the price-quality path. 20
- (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 25
- (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.
- 73 Crown monitor must make quarterly reports to Minister**
- (1) The Crown monitor must provide a quarterly report to the Minister. 30
- (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 expenses***74 Crown monitor's expenses are recoverable from Watercare**

- (1) The Crown monitor's expenses in relation to monitoring Watercare must be reimbursed—
- (a) by Watercare to the Crown monitor; and 5
  - (b) on any terms and conditions set by the Minister.
- (2) 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: 10
  - (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.
- (3) The duty to reimburse the expenses is not the Crown lending money for the purposes of the Public Finance Act 1989. 15
- Compare: 2022 No 77 Schedule 1 cl 35

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

- (1) For the purposes of this Act, the Commission may review Parts 1 and 2 of a draft Watercare charter and provide comments to the Crown monitor.
- (2) The purpose of the Commission's review and provision of comments is to help to optimise— 20
- (a) the charter; and
  - (b) the application of the charter to Watercare; and
  - (c) decisions made by the Crown monitor in relation to the charter.
- (3) As part of its function and powers under this Act, the Commission may engage with any party it considers practicable (for example, Taumata Arowai). 25
- (4) If the Minister appoints the Commission to be the Crown monitor,—
- (a) the Commission has the functions, powers, and duties required to perform that role; but
  - (b) **section 63(4)(d)** and this section do not apply. 30

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

- (1) The High Court may, on application by the Crown monitor, make 1 or more of the orders listed in **subsection (2)** if the court is satisfied that Watercare—
- (a) has contravened the Watercare charter; or 35

- (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: 5
    - (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: 10
    - (b) failing to comply with the requirements in any minimum service quality standards or performance targets, or in any financial performance objectives: 15
    - (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. 20
- 77 Maximum amount of pecuniary penalty**
- (1) The maximum amount of a pecuniary penalty imposed under **section 76** is \$10,000,000 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— 25
    - (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 30
    - (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. 35

**78 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 70** requiring Watercare to disclose information; or 5
  - (b) to comply with the requirement to submit a business plan in accordance with **section 65**; or
  - (c) to address the Crown monitor’s comments on a draft business plan, as required under **section 67(2)(b)**. 10
- (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. 15

**79 Maximum amount of pecuniary penalty**

- (1) The maximum amount of a pecuniary penalty imposed under **section 78** is \$300,000 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. 20

**80 Further penalty for continuing breach**

- (1) For a continuing breach, the High Court may impose, for each day or part of a day during which the breach continues, a further penalty in addition to a pecuniary penalty imposed under **section 76 or 78**. 25
- (2) The further penalty under **subsection (1)** is—
- (a) \$500,000 for a breach referred to in **section 76**; and
  - (b) \$50,000 for a breach referred to in **section 78**.
- (3) A further penalty under **subsection (1)** may be imposed only in respect of the period that— 30
- (a) begins on the day on which the pecuniary penalty was imposed under **section 76 or 78** (as applicable); and
  - (b) ends on the day on which the breach is remedied.

**81 Appeal**

- (1) A party to proceedings under **section 76** who is dissatisfied with an order or a decision of the High Court under that section may, with the leave of the Court 35

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 76**.
- (3) An appeal must be made by giving notice of appeal— 5
  - (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*

**82 Principal Act** 10  
**Sections 83 to 91** amend the Local Government Act 2002.

**83 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— 15
  - (a) any local authority; or
  - (b) Watercare Services Limited.

**84 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”. 20

**85 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 25
- Watercare** means Watercare Services Limited, and includes any subsidiary of Watercare Services Limited

**86 Section 127 amended (Duty to ensure communities have access to drinking water if existing suppliers facing significant problems)**  
 After section 127(3)(a), insert: 30

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

**87 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 storm-water services in Auckland; and
  - (b) excludes Watercare.

**88 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** means water supply and wastewater services.

**89 Section 253 amended (Outline of Part)**

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

**90 Section 254 amended (How this Part works)**

- (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”.

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

After section 255(2), insert:

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

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

<b>92</b>	<b>Principal Act</b>	5
	<b>Sections 93 to 98</b> amend the Local Government (Auckland Council) Act 2009.	
<b>93</b>	<b>Section 4 amended (Interpretation)</b>	
	In section 4(1), replace the definition of <b>Auckland water organisation</b> with:	
	<b>Auckland water organisation</b> means Watercare Services Limited, and includes any subsidiary of Watercare Services Limited	10
<b>94</b>	<b>New section 56A and cross-headings inserted</b>	
	After the Part 5 heading, insert:	
	<i>Auckland Council</i>	
<b>56A</b>	<b>Limits on Auckland Council</b>	15
(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	20
	(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	25
	(f) must not direct an Auckland water organisation in relation to any borrowing of any sort by that organisation.	
(2)	In this section,—	30
	<b>borrowing</b> —	
	(a) means the incurring by any means of debt to raise money; and	
	(b) includes the incurring of debt—	
	(i) under any contract or arrangement for hire purchase, deferred payment, instalment payment, sale and lease-back or buy-back, finan-	35

- cial 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 5
- (iii) by the use, for any purpose, of funds received or invested by the Auckland water organisation for any other purpose if the Auckland water organisation has resolved to repay, with or without interest, the funds used; or
- (iv) under any contract for services; but 10
- (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 15
- (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— 20
- (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 subsubparagraph in the then current borrowing management policy of the Auckland water organisation; and 25
- (d) does not include a contract for services that is entered into—
- (i) in the ordinary course of the Auckland Council’s or an Auckland water organisation’s performance of its lawful responsibilities; and 30
- (ii) on terms and conditions generally available to other parties of equivalent creditworthiness
- capital** includes uncalled capital 35
- 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— 40



- (i) a share in or proportion of an Auckland water organisation’s capital; or
- (ii) an Auckland water organisation’s surplus or residual economic value (after satisfying prior contractual claims); or
- (iii) an Auckland water organisation’s profitability or any other indicator of its success

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

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

**lend money or provide credit**—

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

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

Compare: 2022 No 77 s 171

*Auckland water organisations*

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

After section 57, insert:

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

- (1) If, on the date on which this section comes into force, an Auckland water organisation owes a debt to the Auckland Council in respect of water services

	infrastructure, the Auckland water organisation must repay that debt, including any interest payable.	
(2)	An Auckland water organisation must repay a debt under <b>subsection (1)</b> despite anything in <b>section 56A</b> .	
(3)	The repayment—	5
	(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.	
<b>57B</b>	<b>Repeal of section 57A</b>	
	This section and <b>section 57A</b> are repealed on the date that is 5 years after this section comes into force.	10
<b>96</b>	<b>Section 58 amended (Auckland water organisation must give effect to LTP and act consistently with other specified plans and strategies of Council)</b>	
	After section 58(3), insert:	
(4)	This section is subject to—	15
	(a) <b>section 69(2)</b> (effect of charter) of the Local Government (Water Services Preliminary Arrangements) Act <b>2024</b> ; and	
	(b) <b>section 56A</b> (limits on Auckland Council) of this Act.	
<b>97</b>	<b>New section 60A inserted (Charges as security)</b>	
	After section 60, insert:	20
<b>60A</b>	<b>Charges as security</b>	
(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	25
	(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—	30
	(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.	35

- (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 60** of the Local Government (Water Services Preliminary Arrangements) Act **2024**.

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

After section 92(2), insert:

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

*Consequential amendments*

**99 Consequential amendments relating to Watercare Services Limited**  
Amend the legislation specified in **Schedule 2** as set out in that schedule.

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

**s 6**

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

**5**

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

## Schedule 2

### Consequential amendments relating to Watercare Services Limited

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#### Part 1

#### Amendments to primary legislation

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

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

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

After section 19(2), insert:

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- (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.

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

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

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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:

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

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

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

- (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.
- (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.

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

(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”. 5

**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”. 10

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: 15

(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”. 20

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

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”. 25

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