

Resource Management Amendment Bill

Government Bill

Explanatory note

General policy statement

The overarching objectives of the Resource Management Amendment Bill (the **Bill**) are to reduce complexity, increase certainty, restore public participation opportunities, and improve Resource Management Act 1991 (**RMA**) processes. The Bill also supports the urgent need to improve freshwater management and outcomes in New Zealand.

The Bill principally amends the RMA and the Resource Legislation Amendment Act 2017 (**RLAA**). The Bill includes consequential amendments to the District Court Act 2016, Judicial Conduct Commissioner and Judicial Conduct Panel Act 2004, Remuneration Authority Act 1977, and Judicial Salaries and Allowances (2018/19) Determination 2018.

Proposals

This Bill repeals a number of changes made by the RLAA, and provides a number of improvements and clarifications to existing RMA processes in relation to resource consents, compliance and enforcement, and Environment Court matters.

Reducing complexity, increasing certainty, and restoring public participation by repealing changes made by RLAA

Reducing the powers of the Minister for Environment to prohibit or overturn local plan rules

Section 360D of the RMA enables regulations to prohibit or overturn rules in council plans that duplicate or overlap with other legislation. This Bill repeals the ability to make such regulations.

Removing preclusions on public notification and appeals for subdivision and residential activity resource consents, and restrictions on scope of appeals

Certain types of resource consent applications cannot currently be notified to the public for submissions, or appealed to the Environment Court by applicants or submitters. The Bill re-enables submissions and appeals when appropriate, for subdivision and residential activity applications, and removes the ability for regulations to prevent notification of other types of applications. The Bill also reintroduces the ability for submitters to appeal resource consent decisions regarding issues that were not included in their original submission.

Repealing regulation-making power for additional fast-track activities

District land use resource consent applications with a controlled activity status are subject to a 10-working-day “fast-track” process, rather than the standard 20-working-day process. The Bill repeals the ability to fast-track other types or classes of activities, or to prescribe information requirements for fast-track applications, by regulation.

Reversing change to subdivision presumption

Under the original RMA, subdivision was presumed to be restricted unless explicitly permitted by a district plan rule. The RLAA reversed this, so that subdivision would be permitted unless explicitly restricted by a district plan. This Bill reinstates the original presumption, which existing district plans were initially formulated under.

Reinstating use of financial contributions except for notices of requirement lodged by Minister of Education or Minister of Defence

Consent authorities can currently require resource consent holders to pay financial contributions (money or land) as consent conditions in particular circumstances. The RLAA contains provisions to phase out financial contributions so that consent authorities would no longer be able to require these from April 2022 onwards. The Bill repeals the relevant RLAA provisions so that consent authorities can continue to charge financial contributions after April 2022.

In order to avoid a risk that unreasonable delays and costs are imposed on the development of Crown assets (including new State schools and defence facilities), the Bill restricts the ability to recommend or impose financial contribution conditions on any notices of requirement lodged by the Minister of Education or the Minister of Defence as a requiring authority.

Improving resource management processes and enforcement provisions

Enabling applicants to have processing of non-notified resource consent applications suspended

Resource consent applicants are currently able to suspend processing of their limited and publicly notified applications for up to 130 working days by request to the con-

sent authority. The Bill enables applicants to also suspend processing of their non-notified applications for up to 20 working days.

Enabling consent authorities to suspend processing resource consent applications until fixed administrative charges are paid

Consent authorities are able to fix, in advance, charges payable by resource consent applicants to cover processing and administration costs. The Bill enables consent authorities to suspend their processing of resource consent applications, and pause the applicable statutory time frames, when fixed charges payable at lodgement or notification are outstanding (until they are paid).

Extending time period to lodge retrospective resource consent applications for emergency works

During states of emergency, persons exercising emergency powers can undertake particular activities without being subject to the general restrictions of the RMA. In these situations, the person must advise the relevant consent authority of their activity, and then apply retrospectively for any necessary resource consents within 20 working days. The Bill extends this period to 60 working days.

Enabling review of conditions of multiple resource consents concurrently

The Bill makes 3 amendments to provisions for review of consent conditions, in response to new regional plan rules relating to freshwater. The Bill—

- makes explicit that, in response to a rule, a regional council can review conditions of multiple consents concurrently;
- allows regional land use consents to be reviewed;
- allows these reviews to be initiated as soon as the relevant rule is operative (even if other rules in the plan are, for example, still under appeal).

Increasing maximum infringement fees under the RMA

The current maximum infringement fees that can be set in regulations under the RMA are \$2,000 for stock exclusion infringement offences, and \$1,000 for all other infringement offences. Specific infringement fees are set in the Resource Management (Infringement Offences) Regulations 1999. The Bill increases the maximum infringement fees that can be set in regulations under the RMA. The Bill includes the following proposed figures:

- \$2,000 for natural persons; and
- \$4,000 for all other persons (for example, companies or trusts).

Extending statutory limitation period to file charges for prosecutions under the RMA

Currently a 6-month statutory limitation period applies for a person to file charges for certain offences under the RMA. The Bill increases this to 12 months, which is consistent with the statutory limitation period under the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012.

Enabling Environmental Protection Authority to take enforcement action under the RMA

Responsibility for enforcement under the RMA generally sits with local government. The Bill empowers the Environmental Protection Authority (**EPA**) to also undertake investigation and enforcement actions under the RMA. This is to enhance accountability and provide support for those currently responsible for RMA enforcement. Specifically, the Bill provides for the EPA to—

- authorise enforcement officers:
- apply to the Environment Court for declarations:
- commence investigation and enforcement actions where no local authority is involved:
- assist councils in investigation and enforcement actions already under way:
- intervene, and take over the investigation and enforcement functions of councils in relation to specific cases, with procedures to be followed in such cases:
- apply to the court to recover just and reasonable costs of investigations and prosecutions from convicted offenders:
- gather information from councils to exercise enforcement actions:
- report on the performance of its enforcement functions in its annual report, including the outcomes of enforcement actions it has taken (where it would not prejudice the maintenance of the law).

Protecting special advisors to Environment Court

The Environment Court can appoint special advisors to provide technical assistance in complex cases. Technical advisors in other jurisdictions are protected against legal proceedings for actions they take while acting in good faith in the performance of their duties. The Bill gives special advisors to the Environment Court similar protection from legal proceedings.

Change in title for Principal Environment Judge

The Bill changes the title of the Principal Environment Judge to Chief Environment Court Judge to better reflect the role and responsibilities of the head of a court.

Alternate Environment Judges

The Bill also makes 2 amendments relating to the appointment of alternate Environment Judges. The Bill—

- clarifies that acting Maori Land Court Judges and acting District Court Judges may be appointed as alternate Environment Judges:
- enables retired Environment Judges (who are not already Maori Land Court Judges or acting Maori Land Court Judges, District Court Judges or acting District Court Judges) to be appointed as alternate Environment Judges, if the

Chief (formerly Principal) Environment Judge is satisfied that this is needed for the operation of the Environment Court.

Clarification of process for making national environmental standards

A single board of inquiry process may be followed to make a national environmental standard (NES), a national policy statement (NPS), or both. The RMA prescribes final procedural requirements for the relevant Minister to follow in response to a board of inquiry or other recommendation for an NPS, but not for an NES. The Bill makes a minor amendment to clarify that the same steps that apply to an NPS also apply to an NES.

Improving freshwater management

New specialised planning process for freshwater

To support the urgent need to improve freshwater management, the Bill provides a new plan-making process that councils must use for proposed regional policy statements or regional plans (or changes) for freshwater. The Bill requires that councils notify changes to their regional policy statements and regional plans to implement the National Policy Statement for Freshwater Management (NPS-FM) no later than 31 December 2023, and make final decisions by 31 December 2025.

The Bill provides for the Minister for the Environment to appoint freshwater hearings commissioners, chaired by a retired or current Environment Judge. Hearing panels are to be then convened. Each panel will generally comprise 2 freshwater hearings commissioners, 2 accredited local councillors (or commissioners nominated by council), and 1 accredited person with an understanding of tikanga Māori and mātauranga Māori (selected from nominations from local tangata whenua). These panels will have enhanced hearing powers, including directing conferencing of experts, appointing special advisors, cross-examination, and mediation.

Each panel must provide recommendations to the relevant council on submissions and any related freshwater planning matters, and can recommend changes to the proposed documents. The council must make decisions on the panel's recommendations within 20 working days, and can accept or reject them (and provide alternative provisions).

The Bill provides for merits appeals to the Environment Court on those parts of the panel's recommendations that were rejected by the council, and further appeals on points of law to the High Court. Where the council accepts the panel's recommendations, the Bill enables appeals to the High Court on points of law and further appeals to the Court of Appeal (subject to leave being granted).

Repealing and replacing collaborative planning process

To reduce complexity, the Bill repeals the collaborative planning process that was introduced by the Resource Legislation Amendment Act 2017, which will be replaced in Part 4 of Schedule 1 of the RMA by the new freshwater planning process.

Departmental disclosure statement

The Ministry for the Environment 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=2019&no=180>

Regulatory impact assessments

The Ministry for the Environment produced regulatory impact assessments in June and September 2019 to help inform the main policy decisions taken by the Government relating to the contents of this Bill.

Copies of these regulatory impact assessments can be found at—

- <https://www.mfe.govt.nz/rma/improving-our-resource-management-system>
- <http://www.treasury.govt.nz/publications/informationreleases/ria>

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 provides for the commencement of the provisions of the Act. *Clauses 24 and 26* are to come into force on the day that is 3 months after Royal assent. The rest of the Act comes into force on the day after the date on which it receives the Royal assent.

Part 1

Amendments to Resource Management Act 1991

Clause 3 provides that *Part 1* amends the Resource Management Act 1991 (the Act).

Clause 4 amends section 2 (which defines terms used in the Act) to replace the definition of enforcement officer with a definition that includes enforcement officers authorised by the EPA, to define terms relating to the freshwater planning process, and to clarify the definition of fresh water.

Clause 5 amends section 4 to include the EPA as one of the bodies that may bring certain proceedings against an instrument of the Crown. This is a result of the new enforcement functions of the EPA conferred by this Bill.

Clause 6 amends section 11 to reinstate the restrictions in the Act relating to subdivisions before it was amended by the Resource Legislation Amendment Act 2017. Currently, a person may subdivide land if—

- the subdivision—
 - is expressly allowed by a resource consent; or

- does not contravene a national environmental standard, a rule in a district plan, or a rule in a proposed district plan for the same district (if any); and
- the subdivision is shown on specified survey plans.

New section 11(1)(a) permits a person to subdivide land if—

- the subdivision is expressly allowed by a national environmental standard, a rule in a district plan, a rule in a proposed district plan for the same district (if this is a proposed plan), or a resource consent; and
- the subdivision is shown on specified survey plans.

Clause 7 replaces the reference to Principal Environment Judge in section 29(1)(l) with a reference to Chief Environment Court Judge.

Clause 8 amends section 38 to reflect that enforcement offers may also be authorised by the EPA under *new section 343I*.

Clause 9 amends section 42C to provide that the EPA's functions include the enforcement functions conferred by *new section 343F*.

Clause 10 amends section 44, in relation to the requirement that the Minister comply (among other things) with section 46A(3) before recommending a national environmental standard to be made by regulations. The amendment provides that the Minister must consider any report or recommendation under section 46A(4)(c) or 51 and may make any changes or no changes to the proposed national environmental standard as the Minister thinks fit.

Clauses 11 and 12 amend sections 46A and 48 to correct minor errors in those sections.

Clause 13 repeals subpart 4 of Part 5, which relates to the collaborative planning process, and replaces it with a new subpart that establishes the freshwater planning process. Regional councils must comply with the freshwater planning process when preparing a freshwater planning instrument. A freshwater planning instrument means a proposed regional plan, regional policy statement, or change or variation that—

- gives effect to the National Policy Statement for Freshwater Management 2020; or
- otherwise relates to freshwater.

No later than 6 months after a regional council publicly notifies a freshwater planning instrument, it must submit certain documents to the Chief Freshwater Commissioner to commence the freshwater planning process. The public hearing of submissions on the freshwater planning instrument will be conducted by a freshwater hearings panel convened by the Chief Freshwater Commissioner. The panel will comprise 5 freshwater hearings commissioners of which 2 are appointed by the Minister, 2 are appointed on the nomination of the regional council, and 1 appointed on the nomination of local tangata whenua. (*New clause 57 of Schedule 1* allows the Chief Freshwater Commissioner to adjust the size of the panel in certain circumstances.)

The freshwater hearings panel must conduct the public hearing of submissions in accordance with its powers and the procedures set out in *new Part 4 of Schedule 1*. After the hearing of public submissions is finished, the panel must make recommendations to the regional council on the freshwater planning instrument. The regional council may accept or reject any recommendation. A person who made a submission may appeal (in accordance with *new Part 4 of Schedule 1*) in respect of the regional council's decision to reject or accept a recommendation.

Clause 14 repeals section 80C(4)(b) as a consequence of the removal of the collaborative planning process.

Clauses 15 and 16 relate to fast-track applications for a resource consent. The definition of fast-track application in section 87AAC(1) is amended so that it no longer includes an activity prescribed under section 360G(1)(a). Section 88 is consequentially amended because section 360G is repealed.

Clause 17(1) amends the table in section 88B. The first column of the table lists provisions in the Act that prescribe time limits that a consent authority must comply with when processing or determining an application for a resource consent. The second column of the table lists provisions that require certain time periods to be excluded from the time limits in the first column. The table is updated to reflect that the period during which a non-notified application is suspended under *new section 91D* must be excluded from the time limit in section 95.

Clause 17(2) amends section 88B to provide that any time period that the consent authority decides to exclude under *new section 88H* must be excluded from the time limit described in section 95.

Clause 18 makes a minor amendment to section 88E.

Clause 19 inserts *new sections 88G and 88H*.

New section 88G prescribes the period that must be excluded from every applicable time limit under section 88B, if the processing of a non-notified application is suspended under *new section 91D*.

New section 88H relates to administrative charges (fixed under section 36) that an applicant must pay on lodgement or on notification of a resource consent application. *New section 88H* enables the consent authority to exclude from the time limit described in section 95 the period during which an applicant has failed to pay an administrative charge.

Clauses 20 to 22 amend sections 91A to 91C to clarify that those provisions apply to notified applications in contrast to *new sections 91D to 91F*, which apply to non-notified applications.

Clause 23 inserts *new sections 91D to 91F*, which relate to the suspension of processing by a consent authority of a non-notified application at the request of an applicant. *New sections 91D to 91F* are based on the provisions in sections 91A to 91C in relation to notified applicants. However, if the processing of a non-notified application has been suspended for a total of 20 working days, the consent authority must either return the application to the applicant or continue to process the application. The

period of any suspension must be excluded from every applicable time limit in section 88B.

Clause 24 amends section 95A, which states how a consent authority must determine whether to publicly notify an application for a resource consent. Currently, an application for a restricted discretionary or discretionary activity is precluded from public notification if the activity is a subdivision of land or a residential activity. The amendment removes that preclusion. Section 95A(5)(b)(iv) is repealed because section 360H is repealed.

Clause 25 amends section 95B because section 360H is repealed.

Clause 26 amends section 120 by removing—

- the restrictions on appeals against decisions relating to subdivisions and residential activities; and
- the requirement that submitters may appeal only on matters raised in their submission.

Clause 27(1) replaces section 128(1)(b) to enable a consent authority to review a coastal, water, or discharge permit, or a land use consent granted by a regional council, if—

- a regional plan contains a rule that relates to maximum or minimum levels or flows or rates of use of water, or minimum standards of water quality or air quality, or ranges of temperature or pressure of geothermal water; and
- the rule, the plan, or the part of the plan that contains the rule has been made operative; and
- the regional council considers it is appropriate to review the conditions of the permit or consent in order to enable the levels, flows, rates, or standards set by the rule to be met.

Clause 27(2) and (3) amends section 128 to enable a consent authority to review the conditions of resource consents together if those consents are affected by a rule referred to in *new section 128(1)(b)*.

Clause 28 amends section 129 to require a consent authority to advise a consent holder that the authority intends to review the conditions of the resource consent alongside other resource consents affected by a rule referred to in *new section 128(1)(b)*.

Clause 29 amends section 149P to restrict conditions that a board of inquiry may impose when considering a notice of requirement for a designation. If the requiring authority is the Minister of Education or the Minister of Defence, a board may not impose a condition requiring a financial contribution.

Clause 30 makes a similar amendment to that made by *clause 29* in relation to the conditions that may be imposed by the Environment Court under section 149U.

Clause 31 amends section 170 as a result of the removal of the collaborative planning process.

Clause 32 amends section 171 to provide that if the requiring authority is the Minister of Education or the Minister of Defence, a territorial authority may not recommend a condition requiring a financial contribution.

Clauses 33 to 35 amend sections 174, 198E, and 198K to provide that if the requiring authority is the Minister of Education or the Minister of Defence, the Environment Court may not impose a condition requiring a financial contribution.

Clause 36 makes a consequential amendment to section 248.

Clause 37 amends section 249 to enable an acting District Court Judge, an acting Maori Land Court Judge, and a retired Environment Judge to be eligible for appointment as an alternate Environment Judge.

Clause 38 amends section 250 to provide for the appointment of acting District Court Judges and acting Maori Land Court Judges as Environment Judges or alternate Environment Judges, and the appointment of retired Environment Judges as alternate Environment Judges.

Clauses 39 to 45 replace references to Principal Environment Judge with references to Chief Environment Court Judge in sections 250A to 252, 255, and 259.

Clause 46 amends section 261 to confer immunity from legal proceedings on special advisors when acting in good faith in the performance of their duties.

Clauses 47 to 52 replace references to Principal Environment Judge with references to Chief Environment Court Judge in sections 265, 279, 280, 281, 288A, and 288B.

Clauses 53 to 58 amend sections 311, 316, 324, 325, 325A, and 325B as a consequence of the EPA's new enforcement functions. The amendments enable the EPA to carry out certain enforcement activities that a local authority is permitted to carry out.

Clause 59 amends section 330B, which allows certain activities (which would otherwise contravene sections 9, 12, 13, 14, and 15) to be carried out during a state of emergency declared under the Civil Defence Emergency Management Act 2002. The amendment enables the person authorising the activity to apply to the appropriate consent authority within 60 working days (instead of 20 working days) to obtain the necessary resource consents for the activity.

Clauses 60 and 61 amend sections 332 and 336 as a consequence of the EPA's new enforcement functions. The amendments enable the EPA to carry out certain enforcement activities that a local authority is permitted to carry out.

Clause 62 extends the limitation period in section 338(4) in respect of an offence against certain provisions of the Act. The limitation period is extended from 6 to 12 months after the date on which the contravention giving rise to the offence becomes known.

Clauses 63 and 64 amend sections 339C and 342, which relate to the payment of fines when the EPA is assisting a local authority in a proceeding.

Clause 65 amends section 343D to require any infringement fee relating to an infringement notice issued by the EPA to be credited to a Crown Bank Account.

Clause 66 inserts *new Part 12A*, which provides for the EPA's new enforcement functions.

New section 343E defines terms used in *new Part 12A*. A key term is the definition of enforcement action, which means—

- an inspection, investigation, or other activity carried out in accordance with the Act for the purpose of determining whether there is or has been—
 - a contravention of a provision of the Act, any regulations, a rule in a plan, a national environmental standard, or a resource consent; or
 - a failure to comply with a requirement of an enforcement order or abatement notice; or
- an application for an enforcement under section 316 or an interim enforcement order under section 320; or
- the service of an abatement notice under section 322; or
- the laying of a charge relating to an offence described in section 338; or
- the issuing of an infringement notice under section 343C; or
- an inspection, investigation, other activity carried out in accordance with this Act for the purpose of an application, an abatement notice, a charge, or an infringement notice described above.

New section 343F enables the EPA to perform any of the following enforcement functions if satisfied that performing the function is necessary or desirable to promote the purpose of the Act:

- the EPA may take enforcement action and any subsequent action in relation to an incident if the local authority has not commenced taking any enforcement action in relation to the same incident:
- the EPA may, with the agreement of a local authority, assist the local authority with an enforcement action in relation to an incident and any subsequent action:
- the EPA may intervene in an enforcement action of a local authority in relation to an incident by taking over the enforcement action and taking any subsequent action.

New section 343G applies when the EPA intervenes in an enforcement action of a local authority. The EPA may not intervene in an enforcement action that has already been executed by a local authority in respect of a person.

New section 343H enables the EPA to change its enforcement function in relation to an incident if it considers that the circumstances require the change in function.

New section 343I provides for the appointment of EPA enforcement officers.

New section 343J enables the EPA to require information from a local authority that the EPA requires for an enforcement action.

New section 343K states matters that the EPA must provide in its annual report required under section 150 of the Crown Entities Act 2004.

New section 343L enables the court to order a person convicted of an offence under the Act to pay the EPA's costs relating to the prosecution.

Clauses 67 and 68 amend sections 353 and 355B as a consequence of the EPA's new enforcement functions.

Clause 69 consequentially amends section 357.

Clause 70 amends section 360(1) in relation to infringement fees and notices for infringement offences prescribed under that section.

Currently, section 360(1)(bb) enables regulations to prescribe an infringement fee not exceeding \$2,000 for infringement offences prescribed under section 360(1)(ho) (exclusion of stock from water bodies). An infringement fee not exceeding \$1,000 may be prescribed for other infringement offences.

Section 360(1)(bb) is replaced with a provision that enables regulations to prescribe, in respect of any infringement offence prescribed under that section, an infringement fee—

- not exceeding \$2,000, in the case of a natural person; and
- not exceeding \$4,000, for a person other than a natural person.

Clause 71 repeals sections 360D, 360E, 360G, and 360H. Sections 360D and 360E enable regulations to prohibit or remove rules that duplicate, overlap with, or deal with subject matter already included in other legislation. Sections 360G and 360H enable regulations to prescribe matters relating to a consent authority's identification of—

- fast-track applications; and
- activities that are to be precluded from public notification or limited notification; and
- who may be considered an affected person in respect of an application for a resource consent.

Clause 72 amends Schedule 1 by—

- repealing clauses 4(2) to (2B) and 21(3A); and
- replacing Part 4 with a *new Part 4*, which relates to the freshwater planning process that all freshwater planning instruments must undergo.

New Part 4 of Schedule 1, among other things—

- requires that a regional council must, no later than 6 months after it has publicly notified a freshwater planning instrument, submit specified documents to the Chief Freshwater Commissioner; and
- requires the Chief Freshwater Commissioner to convene a freshwater hearings panel to hear public submissions on the freshwater planning document; and

- provides for the composition of a freshwater hearings panel, including nominations for appointment of freshwater hearings commissioners to the panel from the regional council and local tangata whenua; and
- provides for the functions and powers of the freshwater hearings panel; and
- requires the freshwater hearings panel to make recommendations to the regional council after the hearing of public submissions on the freshwater planning instrument; and
- requires the regional council to publicly notify its response to those recommendations; and
- sets out appeals that may be made in relation to the freshwater planning instrument; and
- provides for the appointment by the Minister of freshwater hearings commissioners, including the Chief Freshwater Commissioner.

Clause 73 amends Schedule 12 to provide for transitional matters as a result of the changes made by this Bill.

Part 2

Amendments to other enactments

Subpart 1—Amendments to Resource Management Legislation Amendment Act 2017

Clause 74 provides this subpart amends the Resource Legislation Amendment Act 2017.

Clause 75 repeals section 2(2).

Clause 76 repeals subpart 3 of Part 1.

Clause 77 repeals Schedules 4 and 5.

Subpart 2—Consequential amendments to other enactments

Clause 78 provides for the consequential amendments to enactments as set out in the *Schedule*.

Hon David Parker

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Part 2

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Schedule

Consequential amendments

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Resource Management Amendment Act **2019**.

2 Commencement

- (1) This Act, except as provided in **subsection (2)**, comes into force on the day after the date on which it receives the Royal assent. 5
- (2) **Sections 24 and 26** come into force on the day that is 3 months after the date on which this Act receives the Royal assent.

Part 1 Amendments to Resource Management Act 1991

3 Amendments to Resource Management Act 1991

This Part amends the Resource Management Act 1991 (the **principal Act**).

4 Section 2 amended (Interpretation) 5

(1) In section 2(1), insert in their appropriate alphabetical order:

Chief Freshwater Commissioner means the Chief Freshwater Commissioner appointed under **clause 62(3) of Schedule 1**

freshwater hearings panel means a panel convened under **clause 38 of Schedule 1** 10

freshwater planning instrument has the meaning given to it by **section 80A(2) and (7)**

freshwater planning process means the process set out in **subpart 4 of Part 5 (section 80A) and Part 4 of Schedule 1**

(2) In section 2(1), repeal the definition of **collaborative planning process**. 15

(3) In section 2(1), replace the definition of **enforcement officer** with:

enforcement officer,—

(a) in sections 327, 328, and 333, means an enforcement officer authorised under section 38; and

(b) in the rest of this Act, means an enforcement officer authorised under section 38 or **343I** 20

(4) In section 2(1), replace the definition of **fresh water** with:

freshwater or **fresh water** means all water except coastal water and geothermal water

5 Section 4 amended (Act to bind the Crown) 25

(1) In section 4(6)(b), after “authority”, insert “or the EPA”.

(2) In section 4(9)(c)(i), after “authority”, insert “, the EPA,”.

6 Section 11 amended (Restrictions on subdivision of land)

(1) Replace section 11(1)(a) with:

(a) first, expressly allowed by a national environmental standard, a rule in a district plan as well as a rule in a proposed district plan for the same district (if there is one), or a resource consent; and second, is shown on one of the following: 30

(i) a survey plan, as defined in paragraph (a)(i) of the definition of survey plan in section 2(1), deposited under Part 10 by the Registrar-General of Land; or 35

- (ii) a survey plan, as defined in paragraph (a)(ii) of the definition of survey plan in section 2(1), approved as described in section 228 by the Chief Surveyor; or
- (iii) a survey plan, as defined in paragraph (b) of the definition of survey plan in section 2(1), deposited under Part 10 by the Registrar-General of Land; or 5
- (2) Repeal section 11(1A).
- 7 Section 29 amended (Delegation of functions by Ministers)**
- In section 29(1)(l), replace “Principal Environment Judge” with “Chief Environment Court Judge”. 10
- 8 Section 38 amended (Authorisation and responsibilities of enforcement officers)**
- (1) In section 38(5), after “officer”, insert “authorised under this section”.
- (2) In section 38(6), after “officer”, insert “authorised under this section”.
- 9 Section 42C amended (Functions of EPA)** 15
- Replace section 42C(f) with:
- (f) to perform the enforcement functions conferred by **section 343F**; and
- (g) if requested by the Minister, to provide secretarial and support services to assist the Chief Freshwater Commissioner in the exercise of his or her functions and powers in respect of the freshwater planning process; and 20
- (h) to exercise any other functions specified in this Act.
- 10 Section 44 amended (Restriction on power to make national environmental standards)**
- After section 44(1), insert:
- (2) For the purposes of subsection (1)(a), the Minister— 25
- (a) must consider a report and any recommendations made to the Minister under section 46A(4)(c) or 51, as the case requires; and
- (b) may make any changes, or no changes, to the proposed national environmental standard as the Minister thinks fit.
- 11 Section 46A amended (Single process for preparing national directions)** 30
- In section 46A(7), replace “360H” with “360C”.
- 12 Section 48 amended (Public notification of proposal for national direction and inquiry)**
- In section 48(1)(a), replace “policy statement” with “direction”.

13 Subpart 4 of Part 5 replaced

Replace subpart 4 of Part 5 with:

Subpart 4—Freshwater planning process

80A Freshwater planning process

- (1) The purpose of this subpart is to require all freshwater planning instruments to undergo the freshwater planning process. 5
- (2) A **freshwater planning instrument** means—
- (a) a proposed regional plan or regional policy statement for the purpose of giving effect to the National Policy Statement for Freshwater Management 2020: 10
- (b) a proposed regional plan or regional policy statement that relates to freshwater (other than for the purpose described in **paragraph (a)**):
- (c) a change or variation to a proposed regional plan or regional policy statement if the change or variation— 15
- (i) is for the purpose described in **paragraph (a)**; or
- (ii) otherwise relates to freshwater.
- (3) A regional council must prepare a freshwater planning instrument in accordance with this subpart and **Part 4 of Schedule 1**.
- (4) A regional council must— 20
- (a) publicly notify the freshwater planning instrument; and
- (b) if the purpose of the freshwater planning instrument is to give effect to the National Policy Statement for Freshwater Management 2020, publicly notify the freshwater planning instrument by 31 December 2023; and
- (c) no later than 6 months after it has publicly notified the freshwater planning instrument, submit the documents required by **clause 37(1) of Schedule 1** (the **required documents**) to the Chief Freshwater Commissioner; and 25
- (d) at least 20 working days before submitting the required documents, provide the Chief Freshwater Commissioner with— 30
- (i) its notice of intention to submit those documents; and
- (ii) the regional council and local tangata whenua nominations for appointment to the freshwater hearings panel required by **clause 58(1)(b) and (c) of Schedule 1**.
- (5) The following is an outline of the rest of the freshwater planning process set out in **Part 4 of Schedule 1**: 35

- (a) the Chief Freshwater Commissioner must convene a freshwater hearings panel to conduct the public hearing of submissions on the freshwater planning instrument:
- (b) the freshwater hearings panel must conduct the public hearing of submissions in accordance with its powers and the procedures set out in **Part 4 of Schedule 1**: 5
- (c) after the public hearing of submissions is concluded, the freshwater hearings panel must make recommendations to the regional council on the freshwater planning instrument:
- (d) the regional council may accept or reject any recommendation. However,— 10
- (i) the regional council must provide reasons for rejecting a recommendation; and
- (ii) a person who made a submission on the freshwater planning instrument may make an appeal (in accordance with **Part 4 of Schedule 1**) in respect of the regional council's decision to reject or accept a recommendation. 15
- (6) For the purpose of this subpart, the following clauses of Part 1 of Schedule 1 apply:
- (a) clauses 1(3), 1A, 1B, 2(1), 3 to 3C, 4A, 5, 6, 7(1) and (2), and 8A; and 20
- (b) clauses 16, 16A, 16B, 17, 20, and 20A.
- (7) In **subsection (2)**, a proposed regional plan does not include a proposed regional coastal plan or a change or variation to that plan.
- (8) Section 37(1)(a) does not apply to any time period specified in this subpart or **Part 4 of Schedule 1**. 25
- (9) In **subsection (4)**, **publicly notify**, in relation to a freshwater planning instrument, means to publicly notify the instrument in accordance with clause 5 of Schedule 1.
- (10) **Subsection (5)** is by way of explanation only and does not limit or affect the other provisions of this Act. 30
- 14 Section 80C amended (Application to responsible Minister for direction)**
Repeal section 80C(4)(b).
- 15 Section 87AAC amended (Meaning of fast-track application)**
Replace section 87AAC(1) with:
- (1) An application is a **fast-track application** if the application— 35
- (a) is for a resource consent for a controlled activity (but no other activity) that requires consent under a district plan (other than a subdivision of land); and

(b)	includes an address for service that is an electronic address.	
16	Section 88 amended (Making an application)	
(1)	Replace section 88(2)(b) and (c) with:	
(b)	include the information relating to the activity, including an assessment of the activity's effects on the environment, that is required by Schedule 4.	5
(2)	In section 88(3)(b), delete “or (c) (as applicable)”.	
17	Section 88B amended (Time limits from which time periods are excluded in relation to applications)	
(1)	In section 88B(3), table, item relating to section 95, second column, below the item relating to section 88F(2), insert “ Section 88G ”.	10
(2)	After section 88B(3), insert:	
(4)	If a consent authority decides under section 88H to exclude a time period because of non-payment of administrative charges, the time period described in section 88H(2) must be excluded from the time limit described in section 95.	15
18	Section 88E amended (Excluded time periods relating to other matters)	
	In section 88E, heading above subsection (7), replace “ <i>application processing</i> ” with “ <i>processing of notified application</i> ”.	
19	New sections 88G and 88H inserted	
	After section 88F, insert:	20
88G	Exclusion of period when processing of non-notified application suspended	
(1)	Subsection (2) applies when a non-notified application is suspended under section 91D .	
(2)	The period that must be excluded from every applicable time limit under section 88B is the period—	25
(a)	starting from the date on which the suspension started; and	
(b)	ending on the date on which the suspension ceased.	
88H	Excluded time periods relating to non-payment of administrative charges	
(1)	Subsection (2) applies if—	
(a)	an application for a resource consent is lodged with a consent authority; and	30
(b)	a charge fixed under section 36 is payable when the application is lodged or when the application is notified by the consent authority under section 95; and	
(c)	the applicant does not pay the charge when it is payable.	35

- (2) The consent authority may exclude from every applicable time limit in section 95, the period—
- (a) starting from the date on which payment is due; and
 - (b) ending on the date on which payment is made.
- 20 Section 91A amended (Applicant may have processing of application suspended)** 5
In the heading to section 91A, after “of”, insert “notified”.
- 21 Section 91B amended (When suspension of processing cease)**
In the heading to section 91B, after “processing”, insert “of notified application”. 10
- 22 Section 91C amended (Application may be returned if suspended after certain period)**
In the heading to section 91C, replace “Application” with “Notified application”. 15
- 23 New sections 91D to 91F inserted** 15
After section 91C, insert:
- 91D Applicant may have processing of non-notified application suspended**
- (1) A consent authority must suspend the processing of a non-notified application when a request is received in accordance with this section.
 - (2) The applicant may request the consent authority to suspend the processing of a non-notified application at any time in the period— 20
 - (a) starting on the date that the application is first lodged with the authority; and
 - (b) ending when—
 - (i) the hearing is completed, if a hearing is held for the application; 25
 - or
 - (ii) the consent authority gives notice to the applicant of its decision on the application, if a hearing is not held for the application; or
 - (iii) the application is notified.
 - (3) However, a request must not be made if— 30
 - (a) the applicant has lodged a notice of motion with the Environment Court under section 87G(2)(a); or
 - (b) the Minister has made a direction under section 142(2) in relation to the application; or

- (c) a total of 20 working days have been excluded from time limits under section 88B as a result of any previous request under this section in relation to the application.
- (4) The request must be made by written or electronic notice.
- (5) If processing is suspended under this section, the consent authority must give written or electronic notice to the applicant specifying the date on which the suspension started. 5
- 91E When suspension of processing of non-notified application ceases**
- (1) A consent authority must cease to suspend the processing of a non-notified application when— 10
- (a) a request is received in accordance with this section; or
- (b) the applicant lodges a notice of motion with the Environment Court under section 87G(2)(a); or
- (c) the Minister makes a direction under section 142(2) in relation to the application; or 15
- (d) the consent authority decides under **section 91F** to continue to process the application.
- (2) The applicant may request the consent authority to cease to suspend the processing of a non-notified application if it is currently suspended.
- (3) The request must be made by written or electronic notice. 20
- (4) If a suspension is ceased under this section, the consent authority must give written or electronic notice to the applicant specifying the date on which the suspension ceased.
- 91F Non-notified application may be returned after certain period**
- (1) **Subsection (2)** applies if the processing of the non-notified application has been suspended for a total of 20 working days in response to 1 or more requests under **section 91D**. 25
- (2) The consent authority must decide to—
- (a) return the application to the applicant; or
- (b) continue to process the application. 30
- (3) If the consent authority decides to return the application,—
- (a) it must be returned together with a written explanation as to why it is being returned; but
- (b) the applicant may object to the consent authority under section 357(3A).
- (4) If, after an application has been returned, the application is lodged again with the consent authority, the application is to be treated as a new application. 35

24 Section 95A amended (Public notification of consent applications)

- (1) Repeal section 95A(5)(b)(ii) and (iv).
- (2) Repeal section 95A(6).

25 Section 95B amended (Limited notification of consent applications)

- (1) Replace section 95B(6)(b) with: 5
 - (b) the application is for a controlled activity (but no other activities) that requires a resource consent under a district plan (other than a subdivision of land).
- (2) Replace section 95B(7) with:
- (7) In the case of a boundary activity, determine in accordance with section 95E whether an owner of an allotment with an infringed boundary is an affected person. 10

26 Section 120 amended (Right to appeal)

Replace section 120(1A) and (1B) with:

- (1A) However, there is no right of appeal under this section against the whole or any part of a decision of a consent authority referred to in subsection (1) to the extent that the decision relates to a boundary activity, unless the boundary activity is a non-complying activity. 15
- (1B) In exercising a right of appeal under subsection (1)(b), a person is not confined to matters raised in the person's submission (excluding any part of the submission that is struck out under section 41D). 20

27 Section 128 amended (Circumstances when consent conditions can be reviewed)

- (1) Replace section 128(1)(b) with:
 - (b) in the case of a coastal, water, or discharge permit, or a land use consent granted by a regional council, if— 25
 - (i) a regional plan contains a rule that relates to maximum or minimum levels or flows or rates of use of water, or minimum standards of water quality or air quality, or ranges of temperature or pressure of geothermal water; and 30
 - (ii) the rule, the plan, or the part of the plan that contains the rule has been made operative; and
 - (iii) the regional council considers that it is appropriate to review the conditions of the permit or consent in order to enable the levels, flows, rates, or standards set by the rule, the plan, or the part of the plan to be met; or 35
- (2) After section 128(1)(c), insert:
 - (d) if the review is part of a review carried out under **subsection (2A)**.

- (3) After section 128(2), insert:
- (2A) If more than 1 resource consent is affected by the rule referred to in **section 128(1)(b)(i)**, the consent authority may review the conditions of those resource consents together for the purpose of managing the effects of the activities carried out under those resource consents. 5
- 28 Section 129 amended (Notice of review)**
After section 129(1)(e), insert:
- (f) must, if **section 128(2A)** applies, advise that the consent authority intends to review the conditions of the resource consent together with its review of the conditions of other resource consents that are also affected by the rule referred to in **section 128(1)(b)(i)**. 10
- 29 Section 149P amended (Consideration of matter by board)**
After section 149P(4), insert:
- (4A) However, if the requiring authority is the Minister of Education or the Minister of Defence, the board of inquiry may not impose a condition under subsection (4)(b)(iii) requiring a financial contribution (as defined in section 108(9)). 15
- 30 Section 149U amended (Consideration of matter by Environment Court)**
After section 149U(4), insert:
- (4A) However, if the requiring authority is the Minister of Education or the Minister of Defence, the court may not impose a condition under subsection (4)(b)(iii) requiring a financial contribution (as defined in section 108(9)). 20
- 31 Section 170 amended (Discretion to include requirement in proposed plan)**
- (1) In section 170(2), delete “, (4),”.
- (2) Replace section (2)(b) and (c) with:
- (b) seek the consent of the requiring authority to use that planning process for considering the requirement. 25
- (3) Repeal section 170(3) to (6) and the heading above section 170(3).
- 32 Section 171 amended (Recommendation by territorial authority)**
After section 171(2), insert:
- (2A) However, if the requiring authority is the Minister of Education or the Minister of Defence, the territorial authority may not recommend imposing a condition requiring a financial contribution (as defined in section 108(9)). 30
- 33 Section 174 amended (Appeals)**
After section 174(4), insert:

- (5) However, if the requiring authority is the Minister of Education or the Minister of Defence, the court may not impose a condition under subsection (4)(c) requiring a financial contribution (as defined in section 108(9)).
- 34 Section 198E amended (Environment Court decides)**
After section 198E(6), insert: 5
- (6A) However, if the requiring authority is the Minister of Education or the Minister of Defence, the court may not impose a condition under subsection (6)(b)(iii) requiring a financial contribution (as defined in section 108(9)).
- 35 Section 198K amended (Environment Court decides)**
After section 198K(5), insert: 10
- (5A) However, if the requiring authority is the Minister of Education or the Minister of Defence, the court may not impose a condition under subsection (5)(b)(iii) requiring a financial contribution (as defined in section 108(9)).
- 36 Section 248 amended (Membership of Environment Court)**
In section 248(a), replace “section 250” with “sections 249 and 250”. 15
- 37 Section 249 amended (Eligibility for appointment as an Environment Judge or alternate Environment Judge)**
Replace section 249(2) with:
- (2) A person may not be appointed or hold office as an alternate Environment Judge unless— 20
- (a) the person is a District Court Judge, an acting District Court Judge, a Maori Land Court Judge, or an acting Maori Land Court Judge; or
- (b) the person is a retired Environment Judge under the age of 75 years and the Chief Environment Court Judge certifies to the Attorney-General that the appointment is necessary for the proper conduct of the Environment Court. 25
- 38 Section 250 amended (Appointment of Environment Judges and alternate Environment Judges)**
Replace sections 250(1) and (2) with:
- (1) The Governor-General may, on the recommendation of the Attorney-General, after consulting the Minister for the Environment and the Minister for Māori Affairs,— 30
- (a) appoint a person as an Environment Judge in accordance with section 249(1); or
- (b) appoint a person as an alternate Environment Judge— 35
- (i) in accordance with **section 249(2)(a)**; or
- (ii) in accordance with **section 249(2)(b)**.

- (2) A person appointed under **subsection (1)(a) or (b)(i)** holds office as an Environment Judge or as an alternate Environment Judge for the term that the person holds office as a District Court Judge, an acting District Court Judge, a Maori Land Court Judge, or an acting Maori Land Court Judge, unless the person sooner resigns or is removed from office under this Act. 5
- (2A) When acting as an Environment Judge, an alternate Environment Judge appointed under **subsection (1)(b)(ii)** has the jurisdiction, powers, protections, privileges, and immunities of a District Court Judge under the District Court Act 2016. 10
- (2B) A retired Environment Judge— 10
- (a) may be appointed as an alternate Environment Judge for a term of not more than 2 years and may be reappointed for 1 or more terms; but
- (b) must not be appointed— 15
- (i) for a term that extends beyond the date on which the Judge reaches the age of 75 years; or
- (ii) for multiple terms collectively totalling more than 5 years.
- 39 Section 250A amended (Judge not to undertake other employment or hold other office)**
- In section 250A(1) and (2), replace “Principal Environment Judge” with “Chief Environment Court Judge”. 20
- 40 Section 250B amended (Protocol relating to activities of Judges)**
- In section 250B(2), replace “Principal Environment Judge” with “Chief Environment Court Judge”.
- 41 Section 251 amended (Principal Environment Judge)**
- (1) Replace the heading to section 251 with “**Chief Environment Court Judge**”. 25
- (2) In section 251(1) and (2), replace “Principal Environment Judge” with “Chief Environment Court Judge”.
- 42 Section 251A amended (Appointment of acting Principal Environment Judge)**
- (1) In the heading to section 251A, replace “**Principal Environment Judge**” with “**Chief Environment Court Judge**”. 30
- (2) In section 251A(1)(a) and (b), (2), and (3), replace “Principal Environment Judge” with “Chief Environment Court Judge” in each place.
- 43 Section 252 amended (When an alternate Environment Judge may act)**
- In section 252(1), replace “Principal Environment Judge” with “Chief Environment Court Judge”. 35

- 44 Section 255 amended (When a Deputy Environment Commissioner may act)**
In section 255(1)(b), replace “Principal Environment Judge” with “Chief Environment Court Judge”.
- 45 Section 259 amended (Special advisors)** 5
In section 259(1), replace “Principal Environment Judge” with “Chief Environment Court Judge”.
- 46 Section 261 amended (Protection from legal proceedings)**
After section 261(3), insert:
- (4) No action lies against a special advisor appointed under section 259 for anything the special advisor says or does, or omits to say or do, while acting in good faith in the performance of the special advisor’s duties. 10
- 47 Section 265 amended (Environment Court sittings)**
In section 265(1)(c), replace “Principal Environment Judge” with “Chief Environment Court Judge”. 15
- 48 Section 279 amended (Powers of Environment Judge sitting alone)**
In section 279(2)(a) and (5)(a) and (b), replace “Principal Environment Judge” with “Chief Environment Court Judge”.
- 49 Section 280 amended (Powers of Environment Commissioner sitting without Environment Judge)** 20
In section 280(1), replace “Principal Environment Judge” with “Chief Environment Court Judge” in each place.
- 50 Section 281 amended (Waivers and directions)**
In section 281(5), replace “Principal Environment Judge” with “Chief Environment Court Judge” in each place. 25
- 51 Section 288A amended (Information regarding reserved judgments)**
In section 288A, replace “Principal Environment Judge” with “Chief Environment Court Judge”.
- 52 Section 288B amended (Recusal guidelines)**
In section 288B, replace “Principal Environment Judge” with “Chief Environment Court Judge”. 30
- 53 Section 311 amended (Application for declaration)**
In section 311(2), after “consent authority”, insert “, the EPA,”.

- 54 Section 316 amended (Application for enforcement order)**
- (1) Replace section 316(2) with:
- (2) An application may at any time be made in the prescribed form to the Environment Court by—
- (a) a local authority, a consent authority, or the EPA for an enforcement order of the kind specified in section 314(1)(da); and
 - (b) a local authority or consent authority for an enforcement order of the kind specified in section 314(1)(e).
- (2) In section 316(5), after “consent authority”, insert “, the EPA,”.
- 55 Section 324 amended (Form and content of abatement notice)**
- (1) In section 324(g), replace “the local authority”, with “an enforcement officer”.
- (2) In section 324(h), after “notice”, insert “or the address of the EPA, if the notice is issued by an enforcement officer appointed by the EPA”.
- 56 Section 325 amended (Appeals)**
- (1) In section 325(2)(c), replace “local authority or consent authority whose decision is appealed” with “relevant authority (whose abatement notice is appealed against)”.
- (2) In section 325(3B)(c), replace “local authority or consent authority” with “relevant authority”.
- (3) In section 325(3D)(ii), replace “local authority or consent authority” with “relevant authority”.
- (4) In section 325(3F), replace “local authority or consent authority” with “relevant authority”.
- (5) After section 325(6), insert:
- (7) In this section, **relevant authority** means the local authority, the consent authority, or the EPA.
- 57 Section 325A amended (Cancellation of abatement notice)**
- Replace section 325A(1) with:
- (1) In this section, **relevant authority** means any of the following which or who authorised the enforcement officer who issued the abatement notice:
- (a) the local authority;
 - (b) the Minister of Conservation;
 - (c) the EPA.

- 58 Section 325B amended (Restrictions on certain applications for enforcement orders and abatement notices)**
In section 325B(2), replace “or a consent authority” with “a consent authority, or the EPA”.
- 59 Section 330B amended (Emergency works under Civil Defence Emergency Management Act 2002)** 5
In section 330B(3), replace “20 working days” with “60 working days”.
- 60 Section 332 amended (Power of entry for inspection)**
In section 332(1), replace “or consent authority” with “, consent authority, or by the EPA”. 10
- 61 Section 336 amended (Return of property seized under sections 323 and 328)**
- (1) In section 336(1), replace “local authority, consent authority,” with “relevant authority”.
- (2) In section 336(2), replace “local authority, consent authority,” with “relevant authority”. 15
- (3) In section 336(2)(b), replace “local authority, consent authority,” with “relevant authority”.
- (4) In section 336(3), replace “local authority, consent authority,” with “relevant authority”. 20
- (5) In section 336(5), replace “local authority, the consent authority,” with “relevant authority”.
- (6) After section 336(6), insert:
- (7) In this section, **relevant authority** means the local authority, the consent authority, or the EPA. 25
- 62 Section 338 amended (Offences against this Act)**
In section 338(4), replace “6 months” with “12 months”.
- 63 Section 339C amended (Amount of fine or other monetary penalty recoverable by distress and sale of ship or from agent)**
After section 339C(2), insert: 30
- (2A) For the purpose of subsection (2), any proceedings in relation to the offence that were commenced by or on behalf of a local authority include any proceedings in which the EPA was assisting the local authority (*see section 343F(b)*).
- 64 Section 342 amended (Fines to be paid to local authority instituting prosecution)** 35
After section 342(5), insert:

- (6) If the court orders the payment of a fine for an offence prosecuted by the EPA acting under **section 343F(b)**,—
- (a) 10% of the fine must be credited to a Crown Bank Account; and
 - (b) the balance of the fine must be credited to the local authority that the EPA was assisting.

5

65 Section 343D amended (Entitlement to infringement fees)

In section 343D, insert as subsection (2):

- (2) However, any infringement fee relating to an infringement notice issued by an enforcement officer appointed by the EPA must be paid into a Crown Bank Account.

10

66 New Part 12A inserted

After section 343D, insert:

Part 12A
Enforcement functions of EPA

343E Terms used in this Part

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- (1) In this Part,—

enforcement action means—

- (a) an inspection, investigation, or other activity carried out in accordance with this Act for the purpose of determining whether there is or has been—
 - (i) a contravention of a provision of this Act, any regulations, a rule in a plan, a national environmental standard, or a resource consent; or
 - (ii) a failure to comply with a requirement of an enforcement order or abatement notice; or
- (b) an application for an enforcement order under section 316; or
- (c) an application for an interim enforcement order under section 320; or
- (d) the service of an abatement notice under section 322; or
- (e) the laying of a charge relating to an offence described in section 338; or
- (f) the issuing of an infringement notice under section 343C; or
- (g) an inspection, investigation, or other activity carried out in accordance with this Act for the purpose of an enforcement action described in **paragraphs (b) to (f)**

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enforcement function means a function of the EPA described in **section 343F**

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incident means an occurrence that may, directly or indirectly, be linked to—	
(a) a contravention or possible contravention of a provision of this Act, any regulations, a rule in a plan, a national environmental standard, or a resource consent; or	
(b) a failure or possible failure to comply with a requirement of an enforcement order or an abatement notice	5
subsequent action —	
(a) means a prosecution, proceeding, application, or other activity that the EPA or a local authority may carry out under this Act in relation to an enforcement action that has been executed; and	10
(b) includes an inspection, investigation, or other activity carried out in accordance with this Act for the purpose of an activity described in paragraph (a) .	
(2) In paragraph (a) of the definition of enforcement action in subsection (1) , other activity includes, without limitation, an application for a declaration under section 311.	15
(3) In this Part, an enforcement action is executed when, as the case may be, the application for the enforcement order or interim order is made, the abatement notice is served, the charge is laid, or the infringement notice is issued.	
343F Enforcement functions of EPA	20
The EPA may perform any of the following enforcement functions if satisfied that the performance of the function is necessary or desirable to promote the purpose of this Act:	
(a) the EPA may take an enforcement action and any subsequent action in relation to an incident if the local authority has not commenced taking any enforcement action in relation to the same incident:	25
(b) the EPA may, with the agreement of a local authority, assist the local authority with an enforcement action in relation to an incident and any subsequent action:	
(c) the EPA may intervene in an enforcement action of a local authority in relation to an incident by taking over the enforcement action and taking any subsequent action.	30
343G Intervention by EPA	
(1) If the EPA intervenes in an enforcement action of a local authority in relation to an incident,—	35
(a) the EPA must notify the chief executive of the local authority in writing of the incident to which the intervention relates and the date on which the intervention takes effect; and	
(b) the local authority must,—	

- (i) on receipt of the notice, cease any enforcement action in relation to the incident, except for an enforcement action described in **paragraph (a) or (g)** of the definition of enforcement action in **section 343E(1)**; and
- (ii) from the date specified in the notice, cease all enforcement action in relation to the incident; and 5
- (c) the EPA takes over all enforcement action in relation to the incident from the date specified in the notice; and
- (d) only the EPA may take any enforcement action or subsequent action in relation to the incident unless **subsection (3)** applies. 10
- (2) When intervening in an enforcement action of a local authority, the EPA must not intervene in relation to an enforcement action that the local authority has already executed in respect of a person.
- (3) If the EPA decides to cease its intervention,—
- (a) it must notify the chief executive of the local authority in writing of its decision and the date on which it takes effect; and 15
- (b) it must specify in the notice the date on which the intervention will cease; and
- (c) the local authority may take an enforcement action or subsequent action in relation to the incident from the date referred to in **paragraph (b)**. 20
- (4) To avoid doubt, **subsection (2)** does not prevent the EPA from taking an enforcement action in relation to another incident in respect of the same person.
- 343H EPA may change enforcement functions**
- (1) The EPA may change its enforcement function in relation to an incident to another function described in **section 343F** if the EPA considers that the circumstances require it. 25
- (2) If the EPA decides to change to an intervention function described in **section 343F(c)**, it must include its reasons for the change in the notice required under **section 343G(1)**. 30
- 343I EPA enforcement officers**
- (1) The EPA may authorise a person described in **subsection (2)** to be an enforcement officer for the purpose of carrying out its enforcement functions under this Act.
- (2) A person may be authorised as an enforcement officer if the person— 35
- (a) has appropriate experience, technical competence, and qualifications relevant to the area of responsibilities proposed to be allocated to the person; or
- (b) is an employee of the EPA who is suitably qualified and trained.

- (3) The EPA must supply each enforcement officer with a warrant that—
- (a) states the full name of the person; and
 - (b) includes a summary of the powers conferred on the person under this Act.
- (4) An enforcement officer may exercise the powers under this Act, in accordance with his or her warrant, only for the purposes for which he or she was appointed. 5
- (5) An enforcement officer exercising a power under this Act must have with him or her, and must produce if required to do so, his or her warrant and evidence of his or her identity. 10
- (6) An enforcement officer who holds a warrant issued under this section must, on the termination of the officer's appointment, surrender the warrant to the EPA.
- Compare: 2012 No 72 ss 138, 139
- 343J EPA may require information from local authority**
- (1) The EPA may require a local authority to provide information that the EPA requires for taking an enforcement action in relation to an incident. 15
 - (2) The EPA must notify the chief executive of the local authority in writing and specify the incident for which information is required.
 - (3) A local authority must provide the required information to the EPA as soon as is reasonably practicable, but no later than 10 working days after the chief executive is notified. 20
- 343K Additional reporting requirements**
- (1) The annual report of the EPA under section 150 of the Crown Entities Act 2004 must include information about the performance of the EPA's enforcement functions, including the number and type of enforcement actions executed by the EPA. 25
 - (2) The EPA is not required to provide information under **subsection (1)** that would prejudice the maintenance of law, including the prevention, investigation, or detection of offences, or the right to a fair trial.
- 343L Order for payment of EPA's costs in bringing a prosecution** 30
- (1) On the application of the EPA, the court may order a person convicted of an offence under this Act to pay to the EPA a sum that the court thinks just and reasonable towards the costs of the prosecution (including the costs of investigating the offence and any associated costs).
 - (2) If the court makes an order under **subsection (1)**, it must not make an order under section 4 of the Costs in Criminal Cases Act 1967. 35

- (3) If the court makes an order under **subsection (1)** in respect of a Crown organisation, any costs and fees awarded must be paid from the funds of that organisation.
Compare: 2015 No 70 s 152
- 67 Section 353 amended (Notices and consents in relation to Maori land)** 5
In section 353, after “local authority”, insert “or the EPA”.
- 68 Section 355B amended (Enforcement powers against unlawful reclamations)**
- (1) In section 355B(1), replace “and a regional council” with “, a regional council, and the EPA”. 10
- (2) In section 355B(2), replace “or a regional council” with “, a regional council, or the EPA”.
- (3) In section 355B(3), replace “or a regional council” with “, a regional council, and the EPA”.
- 69 Section 357 amended (Right of objection against certain decisions)** 15
In section 357(3A), after “section 91C(2)”, insert “or **91F(2)**”.
- 70 Section 360 amended (Regulations)**
Replace section 360(1)(bb) and (bc) with:
- (bb) prescribing infringement fees (which may be different fees for different offences)— 20
- (i) not exceeding \$2,000, in the case of a natural person, for an infringement offence prescribed under this subsection:
- (ii) not exceeding \$4,000, in the case of a person other than a natural person, for an infringement offence prescribed under this subsection: 25
- (iii) not exceeding \$100 per stock unit for each infringement offence prescribed under paragraph (ho) that is differentiated on the basis of the number of stock units, to a maximum fee of—
- (A) \$2,000 for each infringement offence in the case of a natural person; and 30
- (B) \$4,000 for each infringement offence in the case of a person other than a natural person:
- (bc) prescribing, in relation to infringement offences against this Act, the form and content of infringement notices and reminder notices:
- 71 Sections 360D, 360E, 360G, and 360H repealed** 35
Repeal sections 360D, 360E, 360G, and 360H.

72 Schedule 1 amended

- (1) In Schedule 1, repeal clauses 4(2) to (2B) and 21(3A).
 (2) Replace Part 4 of Schedule 1 with:

Part 4		
Freshwater planning process		5
36	Interpretation	
	In this Part,—	
	hearings means any hearing or part of a hearing of submissions on a freshwater planning instrument conducted by a freshwater hearings panel	
	relevant regional council means the regional council responsible for a freshwater planning instrument.	10
Subpart 1—Freshwater planning process		
<i>Commencement of freshwater planning process</i>		
37	Regional council must submit freshwater planning documents and give nominations to Chief Freshwater Commissioner	15
(1)	A regional council must, no later than 6 months after it has publicly notified a freshwater planning instrument, submit the following documents to the Chief Freshwater Commissioner:	
	(a) the freshwater planning instrument that was publicly notified:	
	(b) any variation made to the freshwater planning instrument under clause 16A:	20
	(c) the regional council’s evaluation report prepared under section 32:	
	(d) the submissions on the freshwater planning instrument received by the closing date for submissions:	
	(e) the regional council’s summary of the decisions requested by submitters:	25
	(f) any further submissions on the freshwater planning instrument received by the closing date for further submissions:	
	(g) any submissions received after the closing date for submissions or further submissions:	
	(h) any information about when the submissions described in paragraph (g) were received:	30
	(i) the planning documents that are recognised by an iwi authority and lodged with the regional council:	
	(j) any documentation relevant to any obligations arising under any relevant iwi participation legislation or Mana Whakahono a Rohe.	35

- (2) A regional council must, at least 20 working days before it submits the documents under **subclause (1)**, provide the Chief Freshwater Commissioner with—
- (a) a written notice of its intention to submit those documents to the Chief Freshwater Commissioner; and 5
 - (b) nominations for appointments to the freshwater hearings panel that are required by **clause 58(1)(b) and (c)**.
- 38 Chief Freshwater Commissioner must convene freshwater hearings panel**
- As soon as practicable after receiving the documents described in **clause 37(1)**, the Chief Freshwater Commissioner must, in accordance with **clause 58**, convene a freshwater hearings panel for the freshwater planning instrument to which those documents relate. 10
- Hearing of submissions on freshwater planning instrument*
- 39 Functions of freshwater hearings panel**
- The functions of every freshwater hearings panel are— 15
- (a) to conduct a public hearing of submissions on a freshwater planning instrument referred to it by the Chief Freshwater Commissioner; and
 - (b) to make recommendations, after the hearing of submissions is concluded, to the relevant regional council; and
 - (c) to hear any objections made in accordance with **clause 40(3)**. 20
- 40 Powers of freshwater hearings panel**
- (1) A freshwater hearings panel has the same duties and powers as a local authority under the following provisions:
- (a) section 39 (which provides for how hearings are to be conducted), except section 39(2)(c) and (d): 25
 - (b) section 39C (which sets out the effect of a lack of accreditation):
 - (c) section 40 (which provides for the persons who may be heard at a hearing):
 - (d) section 41 (which provides for the application of certain provisions of the Commissions of Inquiry Act 1908): 30
 - (e) section 41A (which relates to the control of hearings):
 - (f) section 41B (which provides for the giving of directions as to the time for providing evidence in relation to a hearing):
 - (g) section 41C (which sets out the directions and requests that may be given before or at a hearing), except section 41C(4): 35
 - (h) section 41D (which provides for submissions to be struck out before or at a hearing):

- (i) section 42 (which provides for the protection of sensitive information):
- (j) section 42A (which provides for the ability to commission hearing reports).
- (2) At the hearing of submissions, a freshwater hearings panel may—
- (a) permit a party to question any other party or witness; and 5
- (b) permit cross-examination.
- (3) If a freshwater hearings panel exercises a power under section 41D,—
- (a) a person whose submission is struck out has a right of objection under section 357 as if the references in that section to an authority were a reference to a freshwater hearings panel; and 10
- (b) sections 357C, 357D, and 358 apply to the freshwater hearings panel as the body to which an objection is made under section 357.
- (4) A freshwater hearings panel may decide to accept or reject any late submission.
- 41 Council must attend hearings**
- (1) The relevant regional council must attend the hearings to assist a freshwater hearings panel in 1 or more of the following ways: 15
- (a) to clarify or discuss matters in the freshwater planning instrument:
- (b) to give evidence:
- (c) to speak to submissions or address issues raised by them:
- (d) to provide any other relevant information as requested by the panel. 20
- (2) Despite **subclause (1)**, the freshwater hearings panel may excuse the relevant regional council from attending or remaining at any particular hearing.
- (3) A failure by a relevant regional council or a freshwater hearings panel to comply with this clause does not invalidate the hearing or the hearings session.
- (4) To avoid doubt, this clause does not limit or prevent the relevant regional council from— 25
- (a) making a submission on the freshwater planning instrument:
- (b) being heard on that submission.
- 42 Consequences of submitter not attending pre-hearing session meeting**
- (1) This clause applies if a submitter who is required by a freshwater hearings panel to attend a meeting before the hearing of the person's submission fails to do so without reasonable excuse. 30
- (2) The freshwater hearings panel may decline to consider the person's submission.
- (3) If the freshwater hearings panel declines under **subclause (2)**, the person— 35
- (a) has no rights of appeal under **subpart 2** of this Part; and

- (b) may not become a party to proceedings as the result of any appeal right exercised by another person under this Part.
- (4) However, the person may object under section 41D.
- 43 Conference of experts**
- (1) A freshwater hearings panel may, at any time during a hearing, direct that a conference of experts be held for the purpose of— 5
- (a) clarifying a matter or an issue relating to the freshwater planning instrument; or
- (b) facilitating resolution of a matter or an issue relating to the freshwater planning instrument. 10
- (2) A conference may be facilitated by a member of the freshwater hearings panel or a person appointed by the panel.
- (3) The facilitator of a conference must, after the conference, prepare a report on the conference and provide it in writing or electronically to—
- (a) the freshwater hearings panel; and 15
- (b) the persons who attended the conference.
- (4) A facilitator must act under **subclause (3)** only if the freshwater hearings panel requires him or her to do so.
- (5) A report prepared under **subclause (3)** must not, without a person's consent, include any material that the person communicated or made available at the conference on a without prejudice basis. 20
- (6) To avoid doubt, the relevant regional council may attend a conference under this clause only if authorised to do so by the freshwater hearings panel.
- 44 Alternative dispute resolution**
- (1) A freshwater hearings panel may, at any time during a hearing, refer to mediation or any other alternative dispute resolution process the persons listed in **subclause (2)** if— 25
- (a) the panel considers that it is—
- (i) appropriate to do so; and
- (ii) likely to resolve issues between the parties that relate to the freshwater planning instrument; and 30
- (b) each person has consented (other than the relevant regional council, which must participate if referred by the panel).
- (2) The persons are—
- (a) 1 or more submitters; and 35
- (b) the relevant regional council; and

- (c) any other person that the freshwater hearings panel considers appropriate.
- (3) The freshwater hearings panel must appoint the mediator or person facilitating the mediation or other dispute resolution process (the **mediator**).
- (4) The person who conducts the mediation or other process must report the outcome to the freshwater hearings panel. 5
- (5) In reporting the outcome under **subclause (4)**, material must not be included, without a person's consent, if the material was communicated or made available by the person at the mediation or other process on a without prejudice basis. 10
- 45 Freshwater hearings panel may commission reports**
- (1) A freshwater hearings panel may, at any time during a hearing, require the relevant regional council, or commission a consultant or any other person, to prepare a report on—
- (a) 1 or more submissions; or 15
- (b) any matter arising from a hearing; or
- (c) any other matter that the panel considers necessary for the purpose of the panel making its recommendations.
- (2) The report does not need to repeat information included in any submission.
- (3) Instead, the report may— 20
- (a) adopt all of the information; or
- (b) adopt any part of the information by referring to the part adopted.
- (4) The freshwater hearings panel—
- (a) may consider the report at the hearing or when making its recommendations, or both; and 25
- (b) must require the relevant regional council to make the report available for inspection on its Internet site and at its offices.
- (5) The freshwater hearings panel may request and receive, from the person who prepared the report, any information and advice that is relevant and reasonably necessary for the panel to make its recommendations under **clause 48**. 30
- 46 Freshwater hearings panel may appoint special advisor**
- The chairperson of a freshwater hearings panel may appoint as a special advisor a person who is able to assist the panel in any hearing.
- Other procedural matters*
- 47 Procedures of freshwater hearings panel** 35
- (1) Every freshwater hearings panel must—

- (a) regulate its own proceedings in a manner that is appropriate and fair in the circumstances; and
- (b) keep a full record of proceedings.
- (2) Parts 1 to 6 and sections 48 and 53 of the Local Government Official Information and Meetings Act 1987 apply to a freshwater hearings panel as if that panel were a committee appointed by a local authority under the Local Government Act 2002. 5
- Process for recommendations of freshwater hearings panel*
- 48 Freshwater hearings panel must make recommendations to regional council on freshwater planning instrument** 10
- (1) A freshwater hearings panel must make recommendations on the freshwater planning instrument.
- (2) The freshwater hearings panel—
- (a) is not limited in making recommendations only within the scope of submissions made on the freshwater planning instrument; and 15
- (b) may make recommendations on any other matters relating to the freshwater planning instrument identified by the panel or any other person during the hearing.
- Recommendations must be provided in reports*
- (3) The freshwater hearings panel must provide its recommendations to the relevant regional council in 1 or more written reports. 20
- (4) Each report must include—
- (a) the panel’s recommendations on the provisions of the freshwater planning instrument covered by the report, and identify any recommendations that are out of scope of the submissions made in respect those provisions; and 25
- (b) the panel’s decisions on the provisions and matters raised in submissions made in respect of the provisions covered by the report; and
- (c) the panel’s reasons for accepting or rejecting submissions and, for this purpose, may address the submissions by grouping them according to— 30
- (i) the provisions of the freshwater planning instrument to which they relate; or
- (ii) the matters to which they relate; and
- (d) the panel’s recommendations and identify any recommendations that are beyond the scope of the submissions received on the freshwater planning instrument. 35
- (5) Each report may also include—

- (a) matters relating to any consequential alterations necessary to the freshwater planning instrument arising from submissions; and
- (b) any other matter that the panel considers relevant to the freshwater planning instrument that arises from submissions or otherwise.
- (6) To avoid doubt, a panel is not required to make recommendations in a report that address each submission individually. 5
- 49 Matters that affect recommendations**
- (1) A freshwater hearings panel, in formulating its recommendations, must have regard to—
- (a) any reports prepared under **clause 45**; and 10
- (b) the matters in sections 66 to 70B and 77A to 77D, if the freshwater planning instrument is a regional plan; and
- (c) the matters in section 61 and 62, if the freshwater planning instrument is a regional policy statement; and
- (d) any reports produced as a result of pre-hearing meetings, a conference of experts, mediation, or other alternative dispute resolution directed by the panel; and 15
- (e) any technical or other reports commissioned by the panel.
- (2) The freshwater hearings panel must include in the recommendations a further evaluation of the freshwater planning instrument undertaken in accordance with section 32AA. 20
- 50 Deadline for recommendations**
- A freshwater hearings panel must provide its report under **clause 48** to the relevant regional council no later than the date that is 20 working days before the expiry of 2 years after the date on which the freshwater planning instrument was publicly notified by the relevant regional council. 25
- Regional council's response to recommendations*
- 51 Relevant regional council to consider recommendations and notify decisions on them**
- (1) The relevant regional council must— 30
- (a) decide whether to accept or reject each recommendation of the freshwater hearings panel; and
- (b) for each rejected recommendation, decide an alternative solution, which—
- (i) may or may not include elements of both the freshwater planning instrument as notified and the freshwater hearings panel's recom- 35

- mendation in respect of that part of the freshwater planning instrument; but
- (ii) must be within the scope of the submissions.
- (2) When making decisions under **subclause (1)**, the relevant regional council—
- (a) is not required to consult any person or consider submissions or other evidence from any person; and 5
- (b) must not consider any submission or other evidence unless it was made available to the freshwater hearings panel before the panel made the recommendation that is the subject of the relevant regional council's decision. 10
- (3) To avoid doubt, the relevant regional council may accept recommendations of the freshwater hearings panel that are beyond the scope of the submissions made on the freshwater planning instrument.
- (4) The relevant regional council must, no later than 20 working days after it is provided with the report, publicly notify its decisions under **subclause (1)** in a way that sets out the following information: 15
- (a) each recommendation of the freshwater hearings panel that it accepts;
- (b) each recommendation of the freshwater hearings panel that it rejects and the reasons for doing so;
- (c) the alternative solution for each rejected recommendation. 20
- (5) After the regional council publicly notifies its decisions under **subclause (1)**, it must comply with clause 11 as if the decisions were notified under clause 10(4)(b).
- 52 Variations to freshwater planning instrument**
- (1) If at any time after complying with **clause 37(1)**, a relevant regional council identifies an error or omission in the freshwater planning instrument for which a variation to the instrument is needed, the council must— 25
- (a) notify the Chief Freshwater Commissioner in writing of the need for the variation; and
- (b) provide any additional information requested by the Chief Freshwater Commissioner for the purpose of **subclause (2)**. 30
- (2) The Chief Freshwater Commissioner must determine whether to accept or reject the variation.
- (3) In making a determination, the Chief Freshwater Commissioner must consider— 35
- (a) whether the variation is needed to correct a significant defect in the freshwater planning instrument; and
- (b) whether the variation is needed for the effective functioning of the freshwater planning instrument; and

- (c) the impact that accepting the variation would have on the decision date of the freshwater planning instrument.
- (4) The Chief Freshwater Commissioner must advise the relevant regional council in writing of the outcome of the determination.

Subpart 2—Appeals

5

53 Appeal rights

The only appeal rights available in respect of a freshwater planning instrument are as follows:

- (a) the right of appeal to the Environment Court under **clause 54**; and
- (b) the right of appeal to the High Court under **clause 55**.

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54 Right of appeal to Environment Court

- (1) A person who made a submission on a freshwater planning instrument may appeal to the Environment Court in respect of a provision or matter relating to the freshwater planning instrument—

- (a) that the person addressed in the submission; and
- (b) in relation to which the relevant regional council rejected a recommendation of the freshwater hearings panel and decided an alternative solution which resulted in—
 - (i) a provision being included in the freshwater planning instrument; or
 - (ii) a matter being excluded from the freshwater planning instrument.

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- (2) The Environment Court must treat an appeal under this clause as if it were a hearing under clause 15, and except as otherwise provided in this clause, clauses 14(5) and 15 and Parts 11 and 11A apply to the appeal.

55 Right of appeal to High Court on question of law

25

- (1) A person who made a submission on a freshwater planning instrument may appeal to the High Court in respect of a provision or matter relating to the freshwater planning instrument—

- (a) that the person addressed in the submission; and
- (b) in relation to which the relevant regional council accepted a recommendation of the freshwater hearings panel which resulted in—
 - (i) a provision being included in a freshwater planning instrument; or
 - (ii) a matter being excluded from a freshwater planning instrument.

30

- (2) An appeal under this clause may be on a question of law only.

- (3) Except as otherwise provided in this clause, sections 299(2) and 300 to 307 apply.

35

56 Judicial review

- (1) Nothing in this Part limits or affects any right of judicial review a person may have in respect of any matter to which this Part applies.
- (2) However, a person must not both apply for judicial review of a decision made under this Part and appeal to the High Court under **clause 55** in respect of the decision unless the person lodges the applications for judicial review and appeal together. 5
- (3) If applications for judicial review and appeal are lodged together, the High Court must try to hear the judicial review and appeal proceedings together, but need not if the court considers it impracticable to do so in the circumstances of the particular case. 10

Subpart 3—Freshwater hearings panels

57 Chief Freshwater Commissioner’s powers and functions in relation to freshwater hearings panels

The Chief Freshwater Commissioner has the following powers and functions: 15

- (a) to decide when freshwater hearings panels are to be convened:
- (b) to determine, after considering the documents submitted by a regional council under **clause 37(1)** in relation to a freshwater planning instrument, the appropriate size and composition of a freshwater hearings panel in accordance with **clause 58**: 20
- (c) to consider nominations for appointment of freshwater hearings commissioners made under **clause 58(1)(b) and (c)**:
- (d) to appoint to a freshwater hearings panel— 25
- (i) freshwater hearings commissioners described in **clause 58(1)(b) and (c)**; and
- (ii) freshwater hearings commissioners appointed by the Minister under **clause 62**:
- (e) to appoint the chairperson of the freshwater hearings panel.

58 Composition of freshwater hearings panel

- (1) Each freshwater hearings panel must comprise no more than 5 freshwater hearings commissioners as follows: 30
- (a) 2 freshwater hearings commissioners appointed by the Minister under **clause 62**; and
- (b) 2 freshwater hearings commissioners who— 35
- (i) are nominated by the relevant regional council; and
- (ii) may or may not be elected regional council members; and

- (c) 1 freshwater hearings commissioner with an understanding of tikanga Māori and mātauranga Māori who—
- (i) is nominated by local tangata whenua; or
 - (ii) if no nomination is made, is appointed by the Chief Freshwater Commissioner. 5
- (2) However, the number of freshwater hearings commissioners on a freshwater hearings panel—
- (a) may exceed 5 if the Chief Freshwater Commissioner considers there are unique circumstances in the region to which the freshwater planning instrument applies; or 10
 - (b) may be fewer than 5 (but no less than 3) if the Chief Freshwater Commissioner considers that the scale and complexity of the freshwater planning instrument does not warrant the appointment of 5 freshwater hearings commissioners.
- (3) When appointing fewer than 5 freshwater hearings commissioners to a freshwater hearings panel, the Chief Freshwater Commissioner must ensure that the panel includes— 15
- (a) 1 freshwater hearings commissioner described in **subclause (1)(b)**; and
 - (b) 1 freshwater hearings commissioner described in **subclause (1)(c)**; and
 - (c) 1 freshwater hearings commissioner appointed by the Minister under **clause 62**. 20
- (4) When appointing more than 5 freshwater hearings commissioners to a freshwater hearings panel, the Chief Freshwater Commissioner must ensure that the panel includes the 5 freshwater hearings commissioners referred to in **subclause (1)(a) to (c)**. 25
- (5) The Chief Freshwater Commissioner must convene each freshwater hearings panel in a manner that is consistent with any relevant iwi participation legislation, Mana Whakahono a Rohe, or joint management agreement.
- (6) A freshwater hearings commissioner must be accredited under section 39A unless the Chief Freshwater Commissioner is satisfied there are exceptional circumstances in relation to the freshwater hearings panel to which the commissioner is appointed. 30
- 59 Appointment of chairperson of freshwater hearings panel**
- (1) The Chief Freshwater Commissioner must appoint the chairperson of a freshwater hearings panel. 35
 - (2) The chairperson must be a freshwater hearings commissioner appointed by the Minister under **clause 62**.
 - (3) In the event of an equality of votes, the chairperson has a casting vote.

60	Liability of members of freshwater hearings panel	
	A member of a freshwater hearings panel is not liable for anything the member does, or omits to do, in good faith in performing the functions and duties or exercising the powers of a panel.	
61	Funding of freshwater hearings panel and related activities	5
(1)	The relevant regional council is responsible for all costs incurred by the freshwater hearings panel and for the activities related to the performance or exercise of the panel's functions and powers under this Part.	
(2)	Without limiting subclause (1) , the relevant regional council is responsible for—	10
(a)	the remuneration and expenses of the members of the freshwater hearings panel; and	
(b)	the administrative costs of each hearing session, including venue hire and public notices; and	
(c)	the remuneration of any expert, mediator or other dispute resolution facilitator, or other person whose services are engaged by the panel under this Part; and	15
(d)	the allowances payable to any witness called by the panel.	
(3)	For the purposes of subclause (1) , each member of the freshwater hearings panel must be paid—	20
(a)	remuneration by way of salary, fees, or allowances at a rate determined by the Chief Freshwater Commissioner in consultation with the Minister; and	
(b)	actual and reasonable travelling and other expenses incurred in carrying out his or her office in accordance with the Fees and Travelling Allowances Act 1951, and that Act applies as if the members were members of a statutory Board within the meaning of that Act.	25
	Subpart 4—Freshwater hearings commissioners appointed by Minister	
62	Minister may appoint freshwater hearings commissioners	
(1)	The Minister may appoint freshwater hearings commissioners under this subpart.	30
(2)	The Minister must appoint freshwater hearings commissioners who—	
(a)	are accredited under section 39A; and	
(b)	collectively have knowledge of and expertise in relation to—	
(i)	judicial processes and cross-examination; and	35
(ii)	freshwater quality and freshwater ecology; and	
(iii)	this Act; and	

- (iv) tikanga Māori and mātauranga Māori.
- (3) The Minister must appoint as Chief Freshwater Commissioner a person who is an Environment Court Judge or retired Environment Court Judge.
- 63 How freshwater hearings commissioners appointed**
- (1) The Minister must give a person appointed as a freshwater hearings commissioner under this subpart a written notice of appointment. 5
- (2) The notice of appointment must—
- (a) state the date on which the appointment takes effect; and
- (b) state the term of the appointment; and
- (c) specify the terms of reference for the freshwater hearings commissioner. 10
- 64 When freshwater hearings commissioner’s appointment ceases**
- (1) A person appointed as a freshwater hearings commissioner will remain in that office until the earliest of the following:
- (a) the person’s term of appointment ends:
- (b) the person dies: 15
- (c) the person resigns by giving 20 working days’ written notice to the Minister.
- (2) The Minister may, at any time for just cause, by written notice, terminate the appointment of a freshwater hearings commissioner.
- (3) The Minister may, at any time for just cause, remove a freshwater hearings commissioner by written notice to that person (with a copy to the Chief Freshwater Commissioner). 20
- (4) The notice must state—
- (a) the date on which the removal takes effect, which must not be earlier than the date on which the notice is received by the freshwater hearings commissioner; and 25
- (b) the reasons for the removal.
- (5) A freshwater hearings commissioner is not entitled to any compensation or other payment or benefit relating to the person ceasing, for any reason, to be a freshwater hearings commissioner. 30
- (6) In **subclause (2), just cause** includes misconduct, inability to perform the functions of office, neglect of duty, and breach of the collective duties of the freshwater hearings panel or the individual duties of members of the panel.
- (7) To avoid doubt, this clause applies only to freshwater hearings commissioners appointed under this subpart. 35
- 73 Schedule 12 amended**
- In Schedule 12, after clause 16, insert:

Part 3

Provisions relating to Resource Management Amendment Act 2019

17 Interpretation

In this Part,—

amendment Act means the Resource Management Amendment Act **2019** 5

commencement date means the date on which the amendment Act received the Royal assent.

18 Planning instruments relating to freshwater notified after commencement date

(1) This clause applies to the following planning instruments: 10

(a) a proposed regional plan or regional policy statement for the purpose of giving effect to the National Policy Statement for Freshwater Management 2020:

(b) a proposed regional plan or regional policy statement that relates to freshwater but not for the purpose of giving effect to the National Policy Statement for Freshwater Management 2020 or the National Policy Statement for Freshwater Management 2014 (amended 2017); and 15

(c) a change or variation to a proposed regional plan or regional policy statement if the change or variation—

(i) is for the purpose of giving effect to the National Policy Statement for Freshwater Management 2020; or 20

(ii) relates to freshwater in the manner described in **paragraph (b)**.

(2) A planning instrument to which this clause applies must, if it was publicly notified after the commencement date, undergo the freshwater planning process.

19 Planning instruments relating to freshwater notified before commencement 25

(1) In this clause, a **planning instrument** means a proposed regional plan or regional policy statement that—

(a) is for the purpose of giving effect to the National Policy Statement for Freshwater Management 2014 (amended 2017) or otherwise relates to freshwater; and 30

(b) was publicly notified before the commencement date.

(2) This Act applies to the planning instrument as if the amendment Act had not been enacted.

(3) A variation to a planning instrument must be dealt with as if the amendment Act had not been enacted, regardless of whether— 35

	(a) the variation was publicly notified before or after the commencement date; or	
	(b) the variation in any way gives effect to the National Policy Statement for Freshwater Management 2020.	
20	Matters affecting resource consent applications lodged before specified date	5
(1)	An amendment made by the amendment Act does not, except as permitted by subclause (3) , apply in respect of a specified matter if, immediately before the specified date, the matter has been lodged with a local authority or the EPA.	
(2)	A person exercising their right of appeal in relation to a specified matter that was lodged with a local authority before the specified date is entitled to appeal in accordance with section 120(1B) only if, and to the extent that, the person has time to appeal in accordance with section 121.	10
(3)	In this clause,—	
	section 120(1B) means section 120(1B) as inserted by the amendment Act	15
	specified date means the date of commencement of section 26 of the amendment Act	
	specified matter means—	
	(a) a decision of a consent authority in respect of an application for a resource consent; or	20
	(b) an application for a resource consent in respect of a subdivision or a residential activity.	
21	Conditions that may be imposed on notices of requirement	
	Sections 149P, 149U, 171, 174, 198E, and 198K, as amended by the amendment Act, apply to notices of requirement given under section 168 after the commencement date.	25
22	New time frames for resource consents relating to emergency work	
	Section 330B(3), as amended by the amendment Act, applies to an activity if the appropriate consent authority was advised of the activity on or after the commencement date.	30
23	Application of limitation period in section 338(4)	
	Section 338(4), as amended by the amendment Act, applies to an offence committed on or after the commencement date.	
24	Performance of EPA enforcement functions	
	The EPA may, in the performance of its enforcement functions specified in section 343F , take an enforcement action in relation an incident (within the	35

meaning of **section 343E**) that occurred or started to occur before or after the commencement date.

- 25 National environmental standards and boards of inquiry**
 Sections 44, 46A, and 48 as amended by the amendment Act, apply only in respect of—
- (a) a board of inquiry appointed under section 47 after the commencement date; or
 - (b) a process established under section 46A(4) after the commencement date.

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Part 2

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Amendments to other enactments

Subpart 1—Amendments to Resource Legislation Amendment Act 2017

- 74 Amendments to Resource Legislation Amendment Act 2017**
This subpart amends the Resource Legislation Amendment Act 2017.

- 75 Section 2 amended (Commencement)** 15
 Repeal section 2(2).

- 76 Subpart 3 of Part 1 repealed**
 Repeal subpart 3 of Part 1.

- 77 Schedules 4 and 5 repealed**
 Repeal Schedules 4 and 5. 20

Subpart 2—Consequential amendments to other enactments

- 78 Consequential amendments to other enactments**
 Amend the enactments specified in the Schedule as set out in that schedule.

Schedule

Consequential amendments

s 78

Part 1

Amendments to Acts

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District Court Act 2016 (2016 No 49)

In section 30(3), replace “Principal Environment Judge” with “Chief Environment Court Judge”.

Judicial Conduct Commissioner and Judicial Conduct Panel Act 2004 (2004 No 38)

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In section 5, definition of **Head of Bench**, paragraph (g), replace “Principal Environment Judge” with “Chief Environment Court Judge”.

Remuneration Authority Act 1977 (1977 No 110)

In section 12B(1)(b), replace “Principal Environment Judge” with “Chief Environment Court Judge”.

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Part 2

Amendments to legislative instruments

Judicial Salaries and Allowances (2018/19) Determination 2018 (LI 2018/279)

In the Schedule, replace “Principal Environment Judge” with “Chief Environment Court Judge”.

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