

Water Services Economic Efficiency and Consumer Protection Bill

Government Bill

As reported from the Finance and Expenditure Committee

Commentary

Recommendation

The Finance and Expenditure Committee has examined the Water Services Economic Efficiency and Consumer Protection Bill and recommends by majority that it be passed. We recommend all amendments by majority.

About the bill as introduced

The Water Services Economic Efficiency and Consumer Protection Bill is part of the water services reforms launched by the Government in July 2020. It would establish an economic regulation and consumer protection regime for the water services sector, including the entities established by the Water Services Entities Act 2022. The Commerce Commission would be empowered to oversee the regime. The position of Water Services Commissioner would be established on the Commission's board.

The bill would subject the new water services entities to the following forms of economic regulation: information disclosure, quality-only regulation, and price-quality regulation. It would also provide for rules and processes referred to as input methodologies for these forms of regulation.

- Information disclosure regulation would require the provider to publicly disclose information in accordance with the information disclosure requirements set out in the relevant determination provided for in clause 15.
- Quality regulation would require the provider to apply the “quality paths” (minimum standards) set by the Commission in respect of all water infrastructure services that the provider supplies, as specified in the determination provided for in clause 15.

- Price-quality regulation would require the provider to apply “price-quality paths” (maximum prices or revenue and minimum quality standards) set by the Commission in respect of all water infrastructure services that the provider supplies, as specified in the determination provided for in clause 15.

The Commission would be required to make and enforce a service quality code that would apply to the provision of water infrastructure services by regulated water services providers. The bill would establish an independent consumer dispute resolution service, subject to regular reviews by the Commission.

To fund the regime, the bill would provide for levies on regulated suppliers. It would also provide for remedies and enforcement mechanisms for breaches of regulatory obligations.

Changes to the reform announced

During our consideration of the bill, the Minister of Local Government announced his intention to make changes to the reform programme for water services entities. The changes would include increasing the number of publicly owned entities from four to 10. The Minister also signalled that the entities’ commencement would be staggered, starting from 1 July 2024, and ending no later than 1 July 2026.

We understand that these proposed changes would not affect the economic efficiency and consumer protection regime proposed by this bill, except for some dates and timeframes. Therefore, our report does not discuss any potential changes to the reforms following the Minister’s announcement.

Legislative scrutiny

As part of our consideration of the bill, we have examined its consistency with principles of legislative quality. We wish to bring the House’s attention to some issues relating to clauses 21, 22, 79(1)(a), and 141, which we discuss in more detail later in this commentary.

Proposed amendments

This commentary covers the main amendments we recommend to the bill as introduced. We do not discuss minor or technical amendments.

The economic regulation tools in the bill are far-reaching but appropriate

Part 2, clause 15 of the bill as introduced would provide for implementation of three types of economic regulation: information disclosure regulation, quality regulation, and price-quality regulation. In addition, as part of quality and price-quality regulation, the Commerce Commission would be able to impose performance requirements on regulated water services providers, such as requirements for the management of assets, investments, and revenue.

Clause 19 of the bill as introduced provides that information disclosure regulation would apply no later than 1 July 2027, and quality regulation would apply no later than the start of the first regulatory period. In the bill as introduced, these would be the same dates. Price-quality regulation would apply no later than the start of the second regulatory period, 3 years later. Clause 21 would allow the implementation date, and therefore also the start dates of the first and second regulatory periods, to be amended by Order in Council. Clause 22 as introduced provides the ability to change certain other dates—in particular, the dates by when the Commission has to make its initial input methodologies and determinations, that are central to the imposition of the different forms of economic regulation.

Some submitters considered that information disclosure by itself might be enough to achieve the purpose set out in clause 12, and questioned imposition of stricter types of regulation. They argued that price-quality regulation is unnecessary because it relates to the extraction of excessive profits, which they felt did not make sense for regulated water services providers that cannot pay dividends to shareholders. Some submitters also thought that the ability for the Commission to enforce performance requirements could be too onerous on regulated water services providers.

By contrast, the Commerce Commission supported the inclusion of quality and price-quality regulation in the bill. It considered that these forms of regulation would help to encourage efficiency.

We agree with the Commission. Information disclosure, while simple to implement, may not be enough to drive price stability and cost efficiency. As well as allowing flexibility to defer when price-quality regulation was introduced, the bill as introduced would allow the Minister, after a review carried out by the Commission, to dis-apply certain forms of regulation in the future.

It is true that regulated water services providers would not be able to pay dividends to shareholders. Nevertheless, they might be able to make excessive “profits” in the form of retained earnings. We see price-quality regulation as a tool that could incentivise improvements in efficiency over time for the regulated water services providers in the absence of demand from shareholders for a dividend.

We are mindful that both price-quality regulation and performance requirements would allow the Commission far-reaching powers over regulated water services providers’ operations. Even so, for the reasons stated above we consider the forms of economic regulation provided for in the bill to be appropriate. However, we recommend replacing clause 19(2) to provide that determinations made by the Commission under clause 15 could apply no earlier than the dates provided for in inserted clause 19(2).

The power to adjust dates through secondary legislation should have appropriate limits

Clauses 21 and 22 provide for the dates of certain milestones in the bill to be adjusted by Order in Council. Clause 21 provides that the implementation date may be deferred by up to 2 years. That power could only be exercised once. In the bill as intro-

duced, the implementation date is used to determine when other things could happen under the bill, such as when the first regulatory period would start, or when deregulation reviews could occur. Clause 22 would enable other dates to be changed—as noted above, the dates by when the Commission must make its initial input methodologies and determinations that are central to the imposition of the different forms of economic regulation. Under the bill as introduced, these dates can be either deferred or, in one limited case, brought forward.

The effect of these clauses is to allow primary legislation to be overridden by secondary legislation. They are a type of “Henry VIII” power as they authorise a body other than Parliament to amend, suspend, or override primary legislation. The Regulations Review Committee has previously expressed the view that a Henry VIII provision should be included in a bill only in exceptional circumstances.

We consider that these clauses provide for a degree of flexibility that is necessary for the successful implementation of economic regulation in the water services context. However, we recommend removing clause 21 altogether and amending clause 22 to limit the Governor-General’s ability to adjust, by Order in Council, the dates by which the Commission must make various determinations. These changes would mean that the powers to use secondary legislation to adjust dates set out in the bill were more targeted, and with more certainty as to their limits.

Coherence with other water services reform legislation

Clause 4 of the bill as introduced sets out the functions of the Commission. Clause 4(2)(d) would allow the Commission to make available, or co-operate in making available, reports, summaries, and information in connection with water infrastructure services. Some submitters suggested that the Commission should have a reporting function similar to other players in the water services regulatory system, such as Taumata Arowai, councils, or the regional representative groups. We agree that this should be a requirement spelled out in the bill.

Some submitters identified inconsistencies between definitions of terms used in this bill and in the Water Services Entities Act 2022 and the Water Services Legislation Bill. We propose that the definitions be aligned for clarity.

We recommend replacing clause 4 to give effect to these changes and to otherwise improve consistency with other parts of the bill and other water services reform legislation.

Iwi and Māori interests and Te Tiriti obligations

While considering the bill and its companion bill, the Water Services Legislation Bill, we received correspondence from Waikato and Waipā River Iwi advocating that provision be made in the two bills for Te Ture Whaimana, an important planning document for the Waikato River. The aim would be to ensure consistency with the specific regional statutory regime created by the Waikato and Waipā River Settlement Deeds and associated River Settlement Acts. They recommended inserting reference to the Water Services Economic Efficiency and Consumer Protection legislation into section

17 of the Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010 and section 18 of the Ngati Tuwharetoa, Raukawa, and Te Arawa River Iwi Waikato River Act 2010. They also recommended amendments to clause 5 of the bill as introduced. These amendments included:

- changing the weighting the Commerce Commission or Minister provides with respect to the Treaty, giving effect to Treaty settlement obligations and Te Mana o te Wai, so that, at the very least, they have “particular regard to” these (in the bill as introduced, decision makers are required to “take into account” these matters)
- specifically recognising Te Ture Whaimana in clause 5(2)(c)
- deleting clause 5(3).

We acknowledge the importance of the issues raised by Waikato and Waipā River Iwi, and have given them serious consideration. We acknowledge that water is a taonga of great importance to the partnership between the Crown and iwi, and that the Government is an agent of the Crown. However, on balance we consider that the bill as amended is consistent with Te Ture Whaimana, and we do not agree with the specific amendments suggested by Waikato and Waipā River Iwi. As to the suggested amendment to the Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act and the Ngati Tuwharetoa, Raukawa, and Te Arawa River Iwi Waikato River Act, we do not feel it would be appropriate for us to recommend changes to legislation that are not directly consequent to the bills referred to us for consideration.

Nevertheless, we recommend that the Government take account of this correspondence and the implications of changes in the water services area for Crown-Māori relations when undertaking further consideration of the bill and introducing additional primary and secondary legislation. We note that there is an ongoing process and conversation between Government and iwi aimed at finding appropriate solutions to the issues raised by Waikato and Waipā River Iwi.

Commission’s role in assessing water services entities’ systems and processes

Clause 6 sets out duties of the Commission relating to Te Tiriti o Waitangi/the Treaty of Waitangi. Clause 6(a) would require the Commission to ensure that it has the capacity and capability to uphold the principles of the Treaty for the purpose of complying with clause 5(2)(c). Clause 5(2)(c) would require the Commission or the responsible Minister to take into account the obligations of regulated water services providers. These obligations would include those relating to the Treaty, giving effect to Treaty settlement obligations, and Te Mana o te Wai.

We understand that the requirement under clause 6(a) for the Commission to uphold the principles of the Treaty would be limited to assessing whether the water services entities’ systems and processes reflect their obligations. It would not extend to assessing the substance of those obligations. We note that this bill forms part of a package of water reform legislation. The companion Water Services Legislation Bill would make the water services entities responsible for assessing the substance of Treaty settlement obligations and Te Mana o te Wai statements.

Nevertheless, the Treaty Provisions Oversight Group¹ advised that clause 6 of the bill as introduced is framed more broadly than necessary to achieve its policy objectives. We therefore recommend amending clause 6 to replace “complying with section 5(2)(c)” with “carrying out its duties under section 5(2)(c) and (3)”, and amending clause 6(a) to replace “uphold” with “give effect to”.

Qualifications of Water Services Commissioner

Clause 128(2) sets out the required qualifications for a person appointed as the Water Services Commissioner. The list of qualifications in the bill as introduced was based on the list for the Telecommunications Commissioner under section 9(5) of the Telecommunications Act 2001, and does not include knowledge of Te Tiriti. We consider such knowledge essential to the Commission’s role in supporting Māori-Crown relations. We therefore recommend amending the list of domains of knowledge or experience in clause 128(2) that may qualify a person for the Commissioner role, to include Te Tiriti o Waitangi/the Treaty of Waitangi and its principles, and perspectives of Māori and tikanga Māori.

The provisions for review should apply consistently to both price-quality regulation and consumer protection

Part 2, Subpart 7 (clauses 47 through 50) of the bill as introduced deals with reviews of water infrastructure services in relation to price-quality regulation. We believe these provisions should apply consistently to both price-quality regulation and consumer protection. We therefore recommend removing this subpart and instead inserting new subpart 2A in Part 5. This would provide for reviews of water infrastructure services that relate both to price-quality regulation, as provided for in Part 2 of the bill, and consumer protection, as provided for in Part 3.

In transferring these provisions to new Part 5, subpart 2A, we recommend several further changes, including the following:

- aligning the review provisions so they all require the Commission to do certain things (in the bill as introduced, some provisions use “must” and others “may”)
- specifying that the Commission must carry out a review if required to do so by the Minister (clause 139A(1))
- specifying that the Commission must consult on each proposed recommendation for its review and publish the reasons for its recommendations (clause 139B(3) and (5))

¹ The Treaty Provisions Oversight Group is administered by Te Arawhiti, the Office for Māori Crown Relations. It advises agencies on the drafting of legislative provisions. The group is made up of members from Te Arawhiti, Te Puni Kōkiri, the Crown Law Office, the Department of the Prime Minister and Cabinet, the Ministry of Justice, and the Parliamentary Counsel Office.

- specifying the outcomes of each review in detail, including what actions the Commission would be required to take following a Minister's decision (clauses 139E, 139G, 139I, 139K, 139M and 139O)
- removing the requirement for the deregulation review and designation review to only occur after the implementation date (clause 47(2), as introduced)
- allowing the Commission to review whether a partially regulated water services entity (for instance, a regulated water services provider that is only subject to information disclosure) should be subject to further regulation. This could include regulating further water infrastructure services if only 1 or 2 of its water infrastructure services are subject to regulation at the time.

Designation of water services entities following a review

Part 2, subpart 9 of the bill would establish a process by which water services entities that are not statutory water services entities may be designated to make them subject to regulation for the purposes of Part 2. Part 3, subpart 1 of the bill would establish the same process for the purposes of Part 3.

We recommend several changes to the designation provisions in both subparts, including the following:

- inserting clause 53A to ensure consistency with other subparts of Part 2
- amending clause 55 to provide that the Minister could only recommend that a water services entity be designated a statutory water services entity after considering a recommendation from the Commission following a review under clause 48, and provided they were satisfied of the required matters under that clause.
- inserting clause 56(e) and (f) to expand the list of points that a designation order must specify
- removing clause 57(2) to remove the limit on how long a designation order applied
- amending clause 57(3) to clarify what would cease to apply when a water services entity ceased to be designated for the purposes of Part 2
- amending clause 58 to clarify the relationship between a designation order and a subsequent deregulation decision by providing that a designation order may be revoked following a review under clause 47
- removing clause 64, the process requirements of which would be provided for in inserted clause 139B.

Consumer protection measures should not increase prices beyond what is necessary

Clause 60 sets out the purpose of Part 3 of the bill: to provide for consumer protection, and improvements in the quality of service provided to consumers by regulated water services providers and drinking water suppliers. Some submitters were con-

cerned that this clause could lead to unlimited service quality improvements beyond those demanded by consumers, which could unnecessarily increase the costs and prices of regulated water services providers. We agree, and therefore recommend amending clause 60 to insert the words “to reflect consumer demands”. Doing so would also align clause 60 with clause 12(b).

Scope and content of the service quality code

Part 3, subpart 2 of the bill would require the Commission to make a service quality code in relation to the provision of 1 or more types of water infrastructure service by regulated water services providers. Clause 70 would provide for the code’s contents. Some submitters felt that the bill should be more prescriptive about those contents. They suggested including requirements for the code to address such matters as:

- consumer rights, in the event of complaints
- redress where the quality of service did not meet appropriate standards
- conditions for the provision of water services to customers experiencing hardship or other types of vulnerability.

We agree that the bill should be more specific about the service code’s contents. We recommend inserting clause 70(2) to provide that the code may (without limitation) do 1 or more of the things set out in our proposed paragraphs (a) through (g). We think that the Commission should be required to actively consider the interests of vulnerable consumers when making the service quality code. To that end, we recommend inserting clause 72(2A).

We also recommend amending clause 70(1)(c) to insert a cross-reference to proposed new section 325(1) of the Water Services Entities Act 2022, as proposed in clause 22 of the Water Services Legislation Bill.

Scope and role of the consumer dispute resolution service

Part 3, subpart 3 of the bill would require regulated water services providers and drinking water suppliers to establish a consumer complaints process. Clause 74 would enable a consumer who was dissatisfied with the outcome of that process to ask the consumer dispute resolution service (CDRS) to review the complaint. Schedule 2 sets out various provisions relating to the CDRS, including its purpose and establishment. Clause 10 of Schedule 2 would make the CDRS responsible for administering the code.

Several submitters suggested that the bill should provide more detail on the scope and role of the CDRS, including with respect to the service quality code. We agree, and recommend that Schedule 2 set out the scope of the CDRS, including with respect to the service quality code. This should be to manage consumer complaints that it receives in relation to the service quality code and to investigate disputes relating to the service quality code. It should not include responsibility for administering the code.

We therefore recommend amalgamating clauses 1 and 10 of Schedule 2 into a single clause that clearly sets out that the scope and role of the CDRS, as well as the CDRS's relationship with the service quality code. Clause 1 should be amended to make clear that it is not the role of the CDRS to administer the code. Specifically, we recommend removing clause 10, amending clauses 1(1) and 1(2), and inserting clause 1(3).

We also consider that the price a regulated water services provider or drinking water supplier chooses to set should be outside the scope of the CDRS, because the CDRS provider is unlikely to have the expertise to determine appropriate prices. We therefore recommend inserting clause 1(4) in Schedule 2, to exclude prices and tariffs from the scope of the CDRS.

There should be a limit on compensation able to be ordered by the consumer dispute resolution service

Clause 3 of Schedule 2 would set out the rules and obligations that apply to the CDRS provider. The bill as introduced would not set any limit on the compensation that could be awarded by the CDRS provider. Some submitters felt that it should, and suggested that the limit be aligned with other dispute resolution schemes with limits ranging from \$15,000 to \$200,000.

We agree that there should be a limit specified in the bill. However, we consider that \$15,000 is too low, because it could narrow redress for consumers with higher-value disputes who cannot afford court proceedings. On the other hand, we consider that if a consumer had a dispute worth more than \$50,000, it would be more appropriately addressed by the District Court, which allows representation, unlike the CDRS. This is also informed by the definition of “consumer” in clause 7, which would include most New Zealand households, territorial authorities, and large businesses. We are also concerned that a limit above \$50,000 could lead to the CDRS becoming slow and formal like the courts.

We therefore recommend setting the limit at \$50,000. To give effect to this, we recommend amending clause 3(1)(l) of Schedule 2 by removing the text in brackets. Instead, we recommend inserting clause 3A in Schedule 2 to provide for limits on compensation able to be ordered by the consumer dispute resolution service.

Rights to representation in relation to dispute resolution, and relationship with other proceedings

Clause 74(2)(d) would give the CDRS provider the discretion to decide to take no (or no further) action on a complaint if the complainant did not have sufficient personal interest in the subject matter of the complaint. We think that consumer advocacy groups should be able to request action by the service provider on behalf of consumers, and are concerned that this clause would prevent them from doing so. We therefore recommend amending clause 74(2)(d) to enable this.

One of the purposes of the CDRS is to provide a means of dispute resolution that is separate from the courts. We therefore feel it is important to make clear that the

CDRS would not allow for legal representation. However, some forms of representation may be appropriate in certain circumstances. We recommend inserting clause 3B into Schedule 2 to specify these circumstances. For example, a person could be represented by someone else if they were found to have a sufficient reason for being unable to appear in person or unable to present their case adequately.

We also recommend clarifying the relationship between possible concurrent proceedings of the CDRS and a court. New clause 3C would enable concurrent referral of a dispute to the CDRS and to a court. However, it would provide that a dispute referred to a court would continue if concurrently referred to the CDRS, unless ordered otherwise by the court, or a binding decision or a settlement agreement was in force. If a binding decision or a settlement agreement was in force, the concurrent proceeding would be stayed, but only in so far as the proceedings concerned the parties affected by the settlement agreement or binding decision.

Appeals process for the consumer dispute resolution service

Clause 77(1) of the bill would apply if a dispute arising from an unresolved complaint were referred by the consumer dispute resolution service provider or a consumer to the CDRS, and a determination was made on the dispute under the rules of the CDRS. Clause 77(2) provides that determinations made by the CDRS would be binding on the regulated water services provider or drinking water supplier, except if the consumer lodged an appeal under clause 78 and the court modified or reversed the determination. Clause 78 specifies the timeframe consumers would have to appeal a CDRS determination, and the powers of the court in such cases. The bill as introduced would not give the regulated water services provider or drinking water supplier the same right of appeal.

We accept that restricting the right of appeal to consumers would benefit consumers and could hasten the resolution of disputes by limiting the number of appeals. Nevertheless, we think it is unfair to limit the right of appeal to only one party to a dispute, particularly where the other party has no option but to participate in the dispute resolution service. We therefore recommend replacing clause 77(2) to extend the right of appeal to regulated water services providers and drinking water suppliers.

Clause 79(1)(a) of the bill would give parties 5 working days to bring an application for appeal. We think it would be fairer to give them more time. We therefore recommend amending this to 20 working days.

Fees and levies to fund dispute resolution and advocacy

The bill provides for the economic regulation and consumer protection regime to be funded by levies paid by regulated water services providers. Clause 140 would enable the Governor-General, by Order in Council and on the recommendation of the Minister, to make regulations for various purposes, including fines and fees for infringements. Clause 141 would specifically enable the Governor-General to provide for regulated water services entities to pay a levy to the Crown, or a prescribed person on

behalf of the Crown. Clause 142 would provide for a levy for consumer dispute resolution services.

We consider that it is appropriate for regulated water services providers to cover the cost of the economic regulation and consumer protection regime, such as the cost of continued development of technical documents, standards, and codes of practice. However, we believe that dispute resolution services should be funded by a combination of levies and fees. A levy would provide certainty of funding and cover the service's basic operating costs. Fees for resolution of individual disputes would ensure that the costs of dispute resolution were distributed fairly between entities that have different numbers of disputes referred to the CDRS.

We therefore recommend inserting clause 140(ca) to provide for the payment of fees by water services providers and drinking water suppliers for dispute resolution under the consumer dispute resolution service. We recommend adding a levy power to fund consumer advocacy functions. We also recommend amending clause 141 to align it with levy provisions in other legislation relating to the Commerce Commission. To this end, we recommend replacing clause 141(3) through (9) with clause 141(2)(a) through (i) and new clause 141(3) through (8).

The Minister should be able to establish a Water Services Consumer Agency to advocate for consumers

We think that the Minister should be able to establish an agency to represent and advocate for the interests of consumers in the water services industry. We recommend inserting clause 145A to provide for this. We also recommend inserting clause 145B setting out the function of the agency, and clause 141(2)(a)(ii) to provide that the estimated costs incurred by the agency in performing its functions would be paid for by way of the levy provided for in clause 141.

We think the establishment of a consumer agency has 2 benefits: first, recognising that water is a critical public good needed by all people, it further protects consumers—including vulnerable consumers. Secondly, it ensures that the advocacy group is established intentionally and with a clear mandate, rather than organically through user groups where specific agendas may come into play.

Water services entities' responsiveness to the needs of urban development and growth

We think that the water services entities should support, enable, and be responsive to planning processes and growth, the construction of additional housing, and urban development in their areas. Because of this, we have specifically included the requirement that the dispute resolution mechanism be timely, practical and accessible. We feel that in the past, existing water services providers have not always been responsive to requests from developers that would support these aims. At the same time, we acknowledge that the entities would need to pursue these objectives in a way that was consistent with their role as water services providers, and with relevant local authority plans.

We think the way to balance these objectives and obligations is to require each entity to create a development code. We consider that the water services entities would be better placed than the Commission to determine the content of these codes. The codes' authors are likely to require technical expertise on relevant matters, due to the unique circumstances of each entity, which the entity is more likely to have. For this reason we think that each water services entity should be required to draft its own code. However, we consider that the Commission should be responsible for approving a code once it has assessed that the code complies with this bill.

The Commission should also be responsible for enforcing the code, to ensure that developers have a way to resolve disputes with entities that exceed the maximum value for disputes addressed by the consumer dispute resolution service provided for in Part 3, subpart 3 of the bill. This would give developers an alternative to seeking redress through the courts, which can be costly and time-consuming.

Therefore, we recommend inserting clause 4(1)(c)(v) to provide for the Commission to act as regulator of water infrastructure services under the bill, including by ensuring that the development codes provided for in the Water Services Legislation Bill are prepared and approved. We recommend inserting clause 81B to provide for the Commission's role in enforcing the codes. We recommend inserting clause 102B to provide that failure to comply with a development code would constitute an offence. We also recommend amendments to clauses 7, 81A, 84, 85, 88, 90, 101A, 102B, 104, 105, 106, and 130 to provide for the Commission's role with respect to development codes. Under these amendments, the provisions for enforcing development codes would be the same as those that apply to the enforcement of service quality codes.

Finally, we recommend several changes to the Water Services Legislation Bill, which are discussed in our commentary on that bill.

National Party differing view

The National Party supports appropriate economic and commercial regulation of water and wastewater services. However, National opposes this bill for the following reasons.

Firstly, we do not support the Government's proposed wider water reforms which will lead to loss of ownership and control by the territorial local authorities of their water and wastewater operations. Furthermore, we do not support the new proposed governance arrangements, particularly the enshrinement of co-governance in these entities.

In terms of the Water Services Economic Efficiency and Consumer Protection Bill, we believe the bill is an overreach. The extent of the economic oversight is more appropriate to an environment where there are privately owned entities competing in an open market. However, under the proposed industry structure, this is not the case. The more significant issue of economic oversight is to ensure that the water entities spend appropriately on infrastructure to improve the quality of their services and invest sufficiently to meet future demands and do this at reasonable cost.

ACT Party differing view

ACT engaged constructively through the select committee process because there are real problems with three waters infrastructure which need to be solved.

Water assets and networks need to function in a way that provides for urban intensification, suburban growth, and to protect the environment and human health.

ACT believes that the focus of reform to the water infrastructure sector must be on ensuring New Zealanders have access to affordable and safe drinking water, storm-water and wastewater infrastructure.

The cost and timing to provision of three waters infrastructure under current funding and financing models is a barrier to land development. This has led to a decrease in housing affordability compared to incomes, and a lack of land provisioned for urban development.

In addition, there has been consistent under-investment in existing underground pipe networks and wastewater infrastructure over many decades.

Despite regulations that require local government to have an asset management plan, to understand asset condition, to provide for depreciation and therefore asset renewals, they have not done so.

No action has been taken by central government to raise the standards of compliance with existing local government legislation as it relates to asset management, or to incentivise or penalise councils which fail to meet their statutory obligations.

The current system is not up to scratch, but the Government's three waters reforms are not the answer.

This bill anticipates that because of the Government's three waters reform, there is a risk that, without sufficient independent scrutiny, the new monopoly mega water services entities created by other legislation will act inefficiently, and water users could be subjected to excessive water charges.

The Government has therefore acted to establish an economic regulation and consumer protection regime for the three waters sector, and the Commerce Commission shall be the regulator.

The unfortunate Commerce Commission finds itself, not only in the awkward position of being a market regulator that is not regulating a market but a public service, but now a regulator of infrastructure needs as well, without the competency or tools to carry out that role.

Problems with the bill

The mechanisms contained in this bill are inadequate for a regulator to discover in a timely manner the current state of water infrastructure, assumed to be deficient in many towns and cities. This information will not be available until the end of the excessively long discovery period lasting 3 to 4 years.

Until the condition of these assets is discovered through investigation by asset owners, it is not possible to determine the cost to renew, maintain, and operate existing assets, many of which are at high risk of failure due to their age and deterioration.

There is capacity in the water engineering and contracting industry to carry out a rapid assessment of asset condition using CCTV, and in combination with pipe jetting and vacuuming to clear many blockages and prepare networks for subsequent routine maintenance activities.

If the Government was serious about understanding the condition of three waters assets, they could have simply required councils to carry out these asset condition surveys through amendments to the Local Government Act making this explicit, providing incentives where necessary, and penalties for failing to comply and report within acceptable timeframes.

There are inadequate mechanisms in the bill to negotiate, mediate, and arbitrate an outcome which gives effect to underlying planning and zoning provisions for growth. Land developers, manufacturers, and others that depend on timely provision of water services have pointed out that an entity may propose what they consider excessive fees and charges for connection, or for example simply refuse to provision services into areas identified for future urban growth.

Apart from the bill being fundamentally misconceived, the ACT Party also note the bill is incoherent. The role of the Commerce Commission is spread out over no less than six clauses (s.4 functions, s.5 matters to be considered, s.6 Treaty duties, s.12 pricing, s.14 infrastructure regulator, s.60, etc).

The Commission is not only being asked to go from being a regulator of markets, into now a regulator of Te Tiriti obligations (whatever those are—the bill is silent on this), Te Mana o te Wai (and its spiritual belief in mauri—a life force that permeates all things), mitigating and adapting to climate change and natural hazards, and supporting growth and development. Even just one of those criteria would be daunting, even for an agency that specialises in those areas.

However, if such criteria are being put into law, it is the responsibility of Parliament to clearly state what these are. Clause 7 provides many detailed interpretations of terms used in the bill. The bill should do the same with terms such as “te Tiriti o Waitangi” (presumably this means the actual text, in which case which version?), principles of the Treaty (in which case, what are these?), how “Te Mana o te Wai” is defined in a way that is scientifically credible and based in something other than spiritual belief), and what levels of growth and urban development are being sought (and are these subject to a cost–benefit analysis?).

ACT’s solution is simple. Water infrastructure is owned in common by the citizens of that area, and is managed by democratically elected councils. It is for councils, answerable to their voters, who deal with matters such as pricing and quality. Drinking water standards should be set by the water regulator Taumata Arowai. ACT proposes that councils report on their infrastructure needs and costs and how these will

be paid for to an independent Infrastructure Commissioner, who reports publicly on how councils are performing.

ACT proposes a practical Water Infrastructure Plan to return \$1.2 billion each year to local councils, a half-share of the GST collected by the Government on all new builds. Long-term 30-year central government-local government partnership agreements would plan water infrastructure upgrades tailored to specific regions. Public-private partnerships between councils and developers would deliver urgently needed major projects by attracting investment from financial entities such as KiwiSaver funds, ACC, and iwi.

ACT opposes this bill, and should we be a part of a future Government we will seek to repeal it, in part or in whole.

Appendix

Committee process

The Water Services Economic Efficiency and Consumer Protection Bill was referred to the committee on 13 December 2022. We invited the Minister of Commerce and Consumer Affairs to provide an initial briefing on the bill. He did so on 20 February 2023.

We called for submissions on the bill with a closing date of 12 February 2023. We received and considered submissions from 136 interested groups and individuals. We heard oral evidence from 95 submitters. We conducted hearings on both the Water Services Economic Efficiency and Consumer Protection Bill and the Water Services Legislation Bill in tandem. Therefore, we have treated the oral submissions as applying to both bills.

We received advice on the bill from the Ministry of Business, Innovation and Employment, the Department of Internal Affairs, and our independent adviser, Simon Peart. The Office of the Clerk provided advice on the bill's legislative quality. The Parliamentary Counsel Office assisted with legal drafting. The Regulations Review Committee reported to us on the powers contained in clauses 17, 21, 22, 47, 48, 69, and 141.

We recognise the time taken and effort made by submitters to assist us with our consideration. We also recognise the considerable volume of work within a short amount of time by government officials, the Parliamentary Counsel Office, our independent adviser, and the committee secretariat that went into drafting this bill and assisting us with our consideration. We wish to thank officials and staff for this significant effort.

Committee membership

Ingrid Leary (Chairperson from 17 April 2023)

Hon Rachel Brooking (Chairperson from 8 February to 12 April 2023 and member until 3 May 2023)

Hon Barbara Edmonds (Chairperson until 1 February 2023 and member until 8 February 2023)

Andrew Bayly

Glen Bennett (until 8 February 2023)

Hon Dr David Clark (from 8 February 2023)

Shanan Halbert (until 3 May 2023)

Anna Lorck

Dan Rosewarne (from 3 May 2023)

Damien Smith

Chlöe Swarbrick

Hon Phil Twyford (from 8 February 2023)

Simon Watts

Helen White (until 8 February and from 3 May 2023)

Nicola Willis

Simon Court, Hon Eugenie Sage, Vanushi Walters, and Hon Michael Woodhouse also participated in our consideration.

**Water Services Economic Efficiency and Consumer
Protection Bill**

Key to symbols used in reprinted bill

As reported from a select committee

text inserted by a majority

~~text deleted by a majority~~

Hon Dr Duncan Webb

Water Services Economic Efficiency and Consumer Protection Bill

Government Bill

Contents

	Page
1 Title	8
2 Commencement	8

Part 1

Preliminary provisions

3 Purpose <u>Overview</u>	8
4 Functions of Commission under this Act	9
4 <u>Commission's functions under this Act</u>	10
5 Matters to be considered by Commission and Minister	11
6 Duties of Commission relating to te Tiriti o Waitangi/the Treaty of Waitangi	12
7 Interpretation	12
8 Meaning of drinking water infrastructure services	17
9 Transitional, savings, and related provisions	17
10 Act binds the Crown	18

Part 2

Price and quality regulation

Subpart 1—General

11 Overview of this Part	18
12 Purpose of this Part	19
13 Interpretation	19
14 Regulation of water infrastructure services	20
15 Determinations made by Commission under this section	20
16 Amendment of section 15 determination	21
17 Power to exempt disclosure of commercially sensitive information	21

**Water Services Economic Efficiency and Consumer
Protection Bill**

	Subpart 2—Timing	
18	When initial input methodologies must be determined	22
19	When initial section 15 determinations must be made	22
20	Regulatory periods	23
21	Ability to change implementation date	23
22	Ability to change other dates for initial input methodologies and initial section 15 determinations	23
23	Minister's recommendation	24
<u>23</u>	<u>Minister's recommendation</u>	<u>25</u>
	Subpart 3—Input methodologies	
24	Purpose of input methodologies	25
25	Requirement for input methodologies	25
26	How input methodologies apply	25
27	Matters covered by input methodologies	26
28	Commission process for determining input methodologies	27
29	Status of input methodologies, amendments, and revocations	28
30	Changes to input methodologies	28
31	Review and date of publication of input methodologies	28
<u>31A</u>	<u>Commission may direct regulated water services provider to comply with relevant input methodology requirement</u>	<u>29</u>
<u>31B</u>	<u>Regulated water services provider must comply with direction from Commission</u>	<u>29</u>
	Subpart 4—Information disclosure regulation	
32	Purpose of information disclosure regulation	29
33	Effect of being subject to information disclosure regulation	29
34	Section 15 determination to set out information disclosure requirements	30
35	Information required may include information about goods or services not subject to regulation under this Part	31
36	Charge for providing copies to public	32
	Subpart 5—Quality regulation	
37	Purpose of quality regulation	32
38	Effect of being subject to quality regulation	33
39	Section 15 determination to set out quality path requirements	33
	Subpart 6—Price-quality regulation	
40	Purpose of price-quality regulation	35
41	Effect of being subject to price-quality regulation	35
42	Section 15 determination to set out price-quality path requirements	36
43	Wash-up mechanism for maximum revenues specified in initial price-quality paths	38
44	Smoothing revenues and prices	38

**Water Services Economic Efficiency and Consumer
Protection Bill**

45	Making new section 15 determination	38
46	What happens to price-quality path if input methodologies change	38
	<u>Subpart 7—Reviews</u>	
47	Deregulation reviews	39
48	Reviews of unregulated water services entities	40
49	Reviews in relation to timing of price quality regulation	41
50	Outcome of reviews	42
	Subpart 8—Commission review of funding and pricing plans <u>and</u> <u>tariff lists</u>	
51	Commission must review funding and pricing plans <u>and tariff lists</u>	43
52	Commission may give directions	43
53	Obligations of boards of regulated water services providers in response to direction from Commission	43
	Subpart 9—Designations of unregulated water services entities <u>following a review</u>	
<u>53A</u>	<u>Overview of subpart</u>	<u>43</u>
54	Designation of water services entities by Order in Council	44
55	Minister's recommendation	44
56	Content of designation	44
57	Duration of designation	45
58	Amendment and revocation of designation	45
	Part 3	
	Consumer protection	
	Subpart 1AAA—General	
59	Overview of this Part	46
60	Purpose of this Part	46
61	Interpretation	47
	Subpart 1—Designations <u>of water services entities following a</u> <u>review</u>	
<u>61A</u>	<u>Overview of subpart</u>	<u>47</u>
62	Designation of water services entities by Order in Council	48
63	Minister's recommendation	48
64	Commission's recommendation	49
65	Process for Commission's recommendation	49
66	Content of designation <u>order</u>	49
67	Duration of designation <u>order</u>	49
68	Amendment and revocation of designation <u>order</u>	50
	Subpart 2—Service quality code	
69	Commission must make service quality code	50
70	Contents of Commission's service quality code	50

**Water Services Economic Efficiency and Consumer
Protection Bill**

71	Regulated water services providers must comply with service quality code	51
72	Process for making or amending service quality code	51
	Subpart 3—Consumer complaints process and consumer dispute resolution service	
	<i>Consumer complaints process</i>	
73	Requirement for regulated water services provider and drinking water suppliers to provide information to consumers and have complaints process	52
74	Review of complaint outcome using consumer dispute resolution service	53
75	Commission must monitor compliance with complaints process	53
	<i>Consumer dispute resolution <u>service</u></i>	
76	Consumer dispute resolution service	54
77	Determinations binding on regulated water services providers and drinking water suppliers	54
78	Appeals against Applications to set aside determinations	55
79	Procedure on appeal section 78 applications	55
80	Compliance with rules, binding settlements, and determinations Enforcement of binding settlements and determinations	56
	<i>Commission review of consumer dispute resolution service</i>	
81	Commission must review consumer dispute resolution service	56
81A	<u>Compliance statement may be required for purposes of provision of this Part or Schedule 2</u>	<u>56</u>
81B	<u>Commission may give direction to comply with timetables and development codes</u>	<u>57</u>
	<i>Miscellaneous matters</i>	
82	Duties of dispute resolution service provider, regulated water services providers, and drinking water suppliers	57
	Part 4	
	Enforcement, monitoring, and appeals	
	Subpart 1—Civil liability	
83	Overview of civil liability	58
	<i>Pecuniary penalty orders</i>	
84	When court may make pecuniary penalty order	58
85	Maximum amount of pecuniary penalty	59
86	Considerations for court in determining pecuniary penalty	59
87	Court must order that recovery from pecuniary penalty be applied to Commission's actual costs	60

**Water Services Economic Efficiency and Consumer
Protection Bill**

	<i>Compensatory orders</i>	
88	When court may make compensatory orders	60
89	Terms of compensatory orders	60
	<i>Injunctions</i>	
90	Court may grant injunctions	61
91	When court may grant restraining injunctions	61
92	Commission's undertaking as to damages not required	62
	<u>Orders about information disclosure</u>	
<u>92A</u>	<u>Order requiring information disclosure requirement to be complied with</u>	<u>62</u>
	<i>Rules of procedure</i>	
93	Rules of civil procedure and civil standard of proof apply	62
94	Limit on proceedings	62
	<i>Relationship between proceedings and orders</i>	
95	More than 1 civil liability remedy may be given for same conduct	63
96	Only 1 pecuniary penalty order may be made for same conduct	63
97	No pecuniary penalty and criminal penalty for same conduct	63
	Subpart 2—Offences	
98	Order requiring information disclosure requirement to be complied with	63
99	Offences relating to information disclosure regulation	63
100	Offence relating to quality regulation	64
101	Offence relating to price-quality regulation	64
<u>101A</u>	<u>Offence relating to direction of Commission</u>	<u>64</u>
102	Offence relating to service quality code	65
<u>102A</u>	<u>Offence involving failure to advise consumers about, provide information, and report on complaints process</u>	<u>65</u>
<u>102B</u>	<u>Failure to comply with development code, etc</u>	<u>65</u>
	Subpart 3—Additional remedies and penalties relating to Part 3	
103	Overview of this subpart	66
	<i>Additional remedies in relation to breach of service quality code failure to comply with service quality code or a development code</i>	
104	Order to disclose information or publish advertisement	66
105	General orders for breach of service quality code <u>failure to comply with service quality code or development code</u>	66
106	Other order for breach of service quality code <u>failure to comply with service quality code or development code</u>	67
107	Certain provisions of subpart 1 apply in respect of proceedings under subpart 3	67

**Water Services Economic Efficiency and Consumer
Protection Bill**

	<i>Infringement offences</i>	
108	Interpretation	68
109	Infringement offences	68
110	Who may issue infringement notices	68
111	When infringement notice may be issued	68
112	Revocation of infringement notice before payment made	68
113	What infringement notice must contain	69
114	How infringement notice may be issued to person	69
115	Payment of infringement fees	70
116	Reminder notices	70
117	Relationship between infringement offences and other offences	70
	Subpart 4—Appeals	
118	Appeals against Commission determinations	70
119	Appeals against input methodology determinations	71
120	Process for appeals	72
121	Input methodology applies pending outcome of appeal	72
	Subpart 5—Miscellaneous provisions relating to enforcement	
122	Jurisdiction of High Court	72
123	Jurisdiction of District Court	73
124	Involvement in contravention	73
125	Illegal contracts provisions do not apply	73
126	Enforceability of other provisions not affected	74
	Part 5	
	Miscellaneous	
	Subpart 1—Water Services Commissioner	
	<i>Water Services Commissioner</i>	
127	Appointment of Water Services Commissioner	74
128	Minister’s recommendation	75
129	Further provisions relating to Water Services Commissioner	75
130	Who performs or exercises functions, duties, and powers of Commission	76
131	Further provisions relating to when Water Services Commissioner acts alone	77
132	Further provisions relating to when Water Services Commissioner acts with 2 or more other members	77
133	Accountability for collective duties	77
134	Alternate member to act instead of Water Services Commissioner in certain circumstances	78
135	Ability to delegate	78
<u>135</u>	<u>Ability to delegate</u>	<u>78</u>

**Water Services Economic Efficiency and Consumer
Protection Bill**

	Subpart 2—Application of Commerce Act 1986	
136	Application of Part 6 of Commerce Act 1986 (enforcement, remedies, and appeals)	79
137	Application of Part 7 of Commerce Act 1986 (miscellaneous provisions)	79
138	Additional monitoring and investigation powers based on subpart 8 of Part 4 of Commerce Act 1986	80
139	Powers of Commission under this Part	81
	<u>Subpart 2A—Reviews</u>	
	<u>Process</u>	
<u>139A</u>	<u>How review triggered</u>	<u>81</u>
<u>139B</u>	<u>Process requirements for Commission</u>	<u>82</u>
<u>139C</u>	<u>Minister’s decision</u>	<u>83</u>
	<u>Reviews relating to Part 2</u>	
<u>139D</u>	<u>Additional regulation reviews</u>	<u>83</u>
<u>139E</u>	<u>Outcome of additional regulation review</u>	<u>84</u>
<u>139F</u>	<u>Deregulation reviews</u>	<u>85</u>
<u>139G</u>	<u>Outcome of deregulation review</u>	<u>85</u>
<u>139H</u>	<u>Review in relation to early price-quality regulation</u>	<u>86</u>
<u>139I</u>	<u>Outcome of review in relation to early price-quality regulation</u>	<u>86</u>
<u>139J</u>	<u>Review in relation to late price-quality regulation</u>	<u>86</u>
<u>139K</u>	<u>Outcome of review in relation to late price-quality regulation</u>	<u>87</u>
	<u>Reviews relating to Part 3</u>	
<u>139L</u>	<u>Additional regulation reviews</u>	<u>87</u>
<u>139M</u>	<u>Outcome of additional regulation review</u>	<u>88</u>
<u>139N</u>	<u>Deregulation reviews</u>	<u>88</u>
<u>139O</u>	<u>Outcome of deregulation review</u>	<u>89</u>
	Subpart 3—Other provisions	
140	Regulations	90
141	Regulations relating to levy	90
142	Levy for consumer dispute resolution services	93
143	Recovery of fees and other money	94
144	Commission to have regard to economic policies of Government	94
145	Material may be incorporated by reference	95
<u>145</u>	<u>Material incorporated by reference</u>	<u>95</u>
<u>145A</u>	<u>Minister may establish Water Services Consumers Agency</u>	<u>95</u>
<u>145B</u>	<u>Function of Water Services Consumers Agency</u>	<u>96</u>
	<i>Amendments to Water Services Act 2021</i>	
146	Principal Act	96
147	Part 2, subpart 4 heading <u>Subpart 4 heading in Part 2 amended</u>	96

cl 1	Water Services Economic Efficiency and Consumer Protection Bill	
148	Section 38 amended (Requirement for supplier to provide information to consumers and have complaints process)	96
149	Sections 39 and 40 repealed	96
150	Section 57 amended (General exemptions)	96
151	Section 165 amended (Defence in prosecution for strict liability offence)	96
152	Section 169 amended (Liability of volunteers)	97
153	Cross-heading above section 188 amended	97
154	Section 188 amended (Offence involving failure to advise consumers about, provide, and report on complaint process)	97
155	Section 200 amended (Regulations)	97
	Schedule 1	98
	Transitional, savings, and related provisions	
	Schedule 2	99
	Consumer dispute resolution service	

The Parliament of New Zealand enacts as follows:

1	Title	
	This Act is the Water Services Economic Efficiency and Consumer Protection Act 2022 .	
2	Commencement	5
(1)	This Act comes into force on the day after the date on which it receives the Royal assent.	
(2)	However, Part 3 comes into force on 1 July 2024 .	
	Part 1	
	Preliminary provisions	10
3	<u>Purpose Overview</u>	
(1)	The purpose of this Act is to <u>This Act provides for—</u>	
(a)	the regulation of the price and quality of water infrastructure services, as set out in Part 2 ; and	
(b)	consumer protection for water infrastructure services, as set out in Part 3 .	15
(2)	The purpose of the regulation of the price and quality of water infrastructure services provided for in Part 2 is set out in section 12 .	
(3)	The purpose of consumer protection for water infrastructure services provided for in Part 3 is set out in section 60 .	20

- (4) This section is intended only as a guide to the general scheme and effect of this Act.

4 Functions of Commission under this Act

- (1) ~~In addition to the other functions conferred on the Commission by this Act, the Commission must—~~ 5
- (a) ~~monitor the quality of service provided by regulated water services providers; and~~
 - (b) ~~monitor whether outcomes in the markets described in **section 11** are consistent with outcomes produced in competitive markets; and~~
 - (c) ~~act as a regulator of water infrastructure services under this Act; and~~ 10
 - (d) ~~carry out any functions or duties under this Act it is required to carry out.~~
- (2) ~~The Commission may—~~
- (a) ~~consider, analyse, use, and make comments on the information provided publicly by statutory water services entities or Taumata Arowai under any legislation dealing with water services; and~~ 15
 - (b) ~~conduct inquiries, reviews, and studies (including international benchmarking) into any matter relating to the supply of water infrastructure services or the long term benefit of consumers of water infrastructure services in New Zealand; and~~ 20
 - (c) ~~carry out its role under **subsection (1)(c)** by—~~
 - (i) ~~issuing warnings, reports, or guidelines, or making comments, about any matter relating to water infrastructure services, regulated water services providers, or other persons engaged in the supply of water infrastructure services (including in relation to 1 or more particular persons); and~~ 25
 - (ii) ~~monitoring compliance with, investigating conduct that constitutes or may constitute a contravention or an involvement in a contravention of, and enforcing this Act (including any determinations made under **Part 2** and any service quality code made under **Part 3**); and~~ 30
 - (iii) ~~taking appropriate action in respect of persons that have contravened, are contravening, or are likely to contravene this Act, or have been involved, are involved, or are likely to be involved in a contravention of this Act (including any determinations made under **Part 2** and any service quality code made under **Part 3**); and~~ 35
 - (d) ~~make available, or co operate in making available, reports, summaries, and information about the things referred to in **paragraphs (a), (b), and (c)**; and~~ 40

Part 1 cl 4	Water Services Economic Efficiency and Consumer Protection Bill	
	(e) exercise any other power or carry out any other functions under this Act that the Commission may exercise or carry out.	
	(3) The Commission's functions under this Act do not extend to regulating the safety of drinking water (see section 11 of the Taumata Arowai the Water Services Regulator Act 2020, which describes the role of Taumata Arowai in that regard).	5
4	<u>Commission's functions under this Act</u>	
(1)	<u>In addition to the other functions conferred on the Commission by this Act, the Commission's functions under this Act are as follows:</u>	
	(a) <u>to monitor—</u>	10
	(i) <u>in relation to Part 2, whether outcomes relating to water infrastructure services in markets where there is little or no competition, and little or no likelihood of a substantial increase in competition, are consistent with outcomes produced in competitive markets; and</u>	15
	(ii) <u>in relation to Part 3, the quality of service provided by regulated water services providers:</u>	
	(b) <u>to carry out inquiries, reviews, and studies (including international benchmarking) into any matter relating to the supply of water infrastructure services:</u>	20
	(c) <u>to act as regulator of water infrastructure services under this Act, including by—</u>	
	(i) <u>issuing warnings, reports, or guidelines, or making comments, about any matter relating to water infrastructure services, regulated water services providers, or other persons engaged in the supply of water infrastructure services (including in relation to 1 or more particular persons); and</u>	25
	(ii) <u>performing or exercising duties and powers under this Act; and</u>	
	(iii) <u>monitoring compliance with and enforcing this Act (including any determinations made under Part 2, the service quality code made under Part 3, and regulations (if any) relating to the consumer complaints process provided for under Part 3), including by investigating conduct that constitutes or may constitute a contravention, an attempted contravention, or an involvement in a contravention; and</u>	30
	(iv) <u>taking appropriate action in respect of persons that have contravened, are contravening, have attempted to contravene, or are likely to contravene this Act, or have been involved, are involved, or are likely to be involved in a contravention of this Act (including any determinations made under Part 2 or the service quality code made under Part 3):</u>	35
		40

- (v) ensuring that the development codes required by **sections 293A to 294C and 295 of the Water Services Entities Act 2022** are prepared and approved:
 - (d) to make available, or co-operate in making available, information in connection with water infrastructure services (for example, reports or summaries about the things referred to in **paragraphs (a) to (c)**): 5
 - (e) to co-operate with—
 - (i) any other law enforcement or regulatory agency that carries out a role in relation to water infrastructure services; and
 - (ii) any overseas regulator that has functions in relation to water infrastructure services corresponding to those of the Commission under this Act: 10
 - (f) to keep under review the law and practices that are relevant to its other functions under this section (including overseas law and practices).
- (2) In carrying out its function under **subsection (1)(d)**, the Commission must ensure that satisfactory provision exists to protect the confidentiality of any information that may reasonably be regarded as confidential or commercially sensitive. 15
- (3) In carrying out its functions under this Act, the Commission may consider, analyse, use, and make comments on the information provided publicly by statutory water services entities or Taumata Arowai under any legislation dealing with water services. 20
- (4) **Subsection (3)** does not limit the Commission’s ability to use any other information in the course of carrying out its functions (for example, information provided directly to the Commission). 25
- (5) The Commission’s functions under this Act do not extend to regulating the safety of drinking water (see section 11 of the Taumata Arowai—the Water Services Regulator Act 2020, which describes the role of Taumata Arowai in that regard).
- 5 Matters to be considered by Commission and Minister** 30
 - (1) This section applies if the Commission or the Minister is required under this Act to make a recommendation, determination, or decision.
 - (2) The Commission or Minister must,—
 - (a) in a case where the Commission or Minister is acting under **Part 2**, make the recommendation, determination, or decision that the Commission or Minister considers best gives, or is likely to best give, effect to the purpose in **section 12**; and
 - (b) in a case where the Commission or Minister is acting under **Part 3**, make the recommendation, determination, or decision that the Commis-

- sion or Minister considers best gives, or is likely to best give, effect to the purpose in **section 60**; and
- (c) in making the recommendation, determination, or decision, take into account the obligations of regulated water services providers, including with respect to the following matters: 5
- (i) te Tiriti o Waitangi/the Treaty of Waitangi:
 - (ii) giving effect to Treaty settlement obligations:
 - (iii) Te Mana o te Wai:
 - (iv) mitigating and adapting to the effects of climate change and natural hazards; 10
 - (v) supporting and enabling planning processes, growth, and housing and urban development.
- (3) **Subsection (2)(c)** applies to the extent that the Commission or Minister considers it relevant to ~~ensuring that the recommendation, determination, or decision reflects the obligations referred to in that provision.~~ 15
- (4) If the Commission is required to make a recommendation, determination, or decision under any other legislation relating to water services,—
- (a) the Commission must comply with **subsections (2)(c) and (3)**, which apply with any necessary modifications; and
 - (b) compliance by the Commission with **paragraph (a)** must be treated as compliance with the requirements of any other legislation relating to water services in respect of the application of the following matters: 20
 - (i) te Tiriti o Waitangi/the Treaty of Waitangi; and
 - (ii) Treaty settlement obligations; and
 - (iii) Te Mana o te Wai. 25
- Compare: 2001 No 103 s 166
- 6 Duties of Commission relating to te Tiriti o Waitangi/the Treaty of Waitangi**
- The Commission must maintain systems and processes to ensure that, for the purpose of ~~complying with **section 5(2)(c)**~~ carrying out its duties under **section 5(2)(c) and (3)**, it has the capacity and capability to— 30
- (a) ~~uphold~~ give effect to the principles of te Tiriti o Waitangi/the Treaty of Waitangi; and
 - (b) engage with Māori and understand perspectives of Māori.
- 7 Interpretation** 35
- In this Act, unless the context otherwise requires,—
- backflow prevention device** has the same meaning as in section 5 of the Water Services Act 2021

claimant group, in relation to the definitions of Treaty settlement Act and Treaty settlement deed, means a group of Māori with Treaty of Waitangi claims against the Crown, whether or not those claims have been lodged with, or heard by, the Waitangi Tribunal under the Treaty of Waitangi Act 1975

Commission means the Commerce Commission established by section 8 of the Commerce Act 1986 5

competition means workable or effective competition

consumer ~~means a person who~~—

(a) ~~consumes or acquires~~ means a person who consumes, acquires, or is provided with water infrastructure services; and 10

(ab) includes a developer; but

(b) ~~in respect of stormwater infrastructure services, pays for those services~~

(b) for the purposes of **Part 3**, does not include a drinking water supplier

consumer dispute resolution service or service has the meaning set out in **section 61** 15

development code means a development code prepared by the board of a water services entity and approved by the Commission under **sections 293A to 294C and 295 of the Water Services Entities Act 2022** (and any amendments to it)

drinking water has the same meaning as in section 6 of the Water Services Act 2021 20

drinking water infrastructure services has the meaning given in **section 8**

drinking water supplier has the same meaning as in section 8 of the Water Services Act 2021

end-point treatment device has the same meaning as in section 5 of the Water Services Act 2021 25

first regulatory period means the regulatory period described in **section 20(1)**

funding and pricing plan means a funding and pricing plan prepared by the board of a regulated water services provider under any legislation dealing with water services 30

green stormwater infrastructure—

(a) means a natural or semi-natural area, feature, or process that mimics natural areas, features, or processes that are planned or managed to provide stormwater services; and 35

(b) includes an engineered system that ~~mimics natural processes~~ is an area, feature, or process that complies with **paragraph (a)**

information disclosure requirement ~~has the meaning given in **section 13**~~
means a requirement that applies to a regulated water services provider and is
specified in a **section 15** determination

input methodology means a description of any methodology, process, rule, or
matter that includes any of the matters listed in **section 27** and that is pub-
lished as referred to in **section 29**

interconnected and **interconnected bodies corporate** have the meanings set
out in section 2(7) of the Commerce Act 1986

market means a market in New Zealand for goods or services as well as other
goods or services that, as a matter of fact and commercial common sense, are
substitutable for them

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

National Policy Statement for Freshwater Management, in relation to the
definition of Te Mana o te Wai, means the National Policy Statement for Fresh-
water Management issued in 2020 under section 52 of the Resource Manage-
ment Act 1991 and any statement ~~issued under that section~~ that amends or
replaces the 2020 statement

overland flow path has the same meaning as in section 6 of the Water Services
Entities Act 2022

point of supply has the same meaning as in section 13 of the Water Services
Act 2021

price—

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

regulated water services provider,—

- (a) for the purposes of **Part 2** (price and quality regulation), has the mean-
ing set out in **section 13**; and
- (b) for the purposes of **Part 3** (consumer protection) and **Schedule 2**, has
the meaning set out in **section 61**; and
- (c) for the purposes of the rest of this Act, means a water services entity
~~who that~~ is a regulated water services provider within the meaning of
either **Part 2** or **Part 3**

regulations means regulations made under this Act

second regulatory period means the regulatory period immediately following
the first regulatory period

section 15 determination means a determination made by the Commission under **section 15** that sets out how any of the following types of regulation apply to a regulated water services provider:

- (a) information disclosure regulation:
- (b) quality regulation: 5
- (c) price-quality regulation

service provider has the meaning set out in **section 61**

service quality code means the ~~code that regulates the service quality of all or any water infrastructure services provided by regulated water services providers~~ service quality code referred to in **section 69** 10

statutory water services entity means a water services entity established under any legislation dealing with water services

stormwater infrastructure services—

- (a) means the collection, treatment, drainage, reuse, or discharge of stormwater in an urban area; ~~but and~~ 15
- (aa) includes services relating to—
 - (i) an overland flow path; and
 - (ii) green stormwater infrastructure; and
 - (iii) watercourses that are part of, or related to, the infrastructure used to carry out the services referred to in **paragraph (a)**; but 20
- (b) does not include services relating to a transport stormwater system

tariff list means a tariff list prepared by the board of a regulated water services provider under any legislation dealing with water services

Taumata Arowai means Taumata Arowai—the Water Services Regulator established by section 8 of the Taumata Arowai—the Water Services Regulator Act 2020 25

~~**Te Mana o te Wai** has the meaning set out in the National Policy Statement for Freshwater Management—~~

- (a) has the meaning set out in the National Policy Statement for Freshwater Management; and 30
- (b) applies, for the purposes of this Act, to water (as that term is defined in section 2(1) of the Resource Management Act 1991)

transport corridor manager means—

- (a) the New Zealand Transport Agency established under section 93 of the Land Transport Management Act 2003: 35
- (b) KiwiRail Limited:
- (c) Auckland Transport established under section 38 of the Local Government (Auckland Council) Act 2009:

- (d) any local authority that has, in relation to a road defined in section 315(1) of the Local Government Act 1974, jurisdiction over the road

transport stormwater system, for the purposes of the definition of stormwater infrastructure services,—

- (a) means the infrastructure owned or operated by, or processes used by, a transport corridor manager to collect, treat, drain, store, reuse, or discharge stormwater ~~affecting~~ relating to a transport corridor; and 5
- (b) includes—
- (i) an overland flow path; and
- (ii) green stormwater infrastructure; and 10
- (iii) watercourses that are part of, or related to, the infrastructure described in paragraph (a)

Treaty settlement Act means—

- (a) an Act listed in Schedule 3 of the Treaty of Waitangi Act 1975; and
- (b) any other Act that provides redress for Treaty of Waitangi claims, including Acts that provide collective redress or participation arrangements for claimant groups whose claims are, or are to be, settled by another Act 15

Treaty settlement deed means a deed or other agreement—

- (a) that is signed for and on behalf of the Crown by 1 or more Ministers of the Crown, and by representatives of a claimant group; and 20
- (b) that is in settlement of the Treaty of Waitangi claims of the members of that group, or in express anticipation, or on account, of that settlement

Treaty settlement obligation means an obligation under either of the following: 25

- (a) a Treaty settlement Act;
- (b) a Treaty settlement deed

wastewater infrastructure services means the collection, treatment, storage, transmission through reticulation, or discharge of wastewater

water infrastructure services means any 1 or more of the following: 30

- (a) water supply infrastructure services;
- (b) stormwater infrastructure services;
- (c) wastewater infrastructure services

water services means services relating to water supply, wastewater, and storm-water 35

water services entity means ~~a water services entity~~ an entity that provides water infrastructure services (whether or not it is a regulated water services provider)

water supply has the same meaning as in section 6 of the Water Services Entities Act 2022

water supply infrastructure services includes—

- (a) drinking water infrastructure services; and
- (b) the infrastructure required for— **water supply** 5
 - (i) ~~a drinking water supply as defined in section 9 of the Water Services Act 2021; and~~
 - (ii) ~~firefighting water supplies as defined in section 6 of the Fire and Emergency New Zealand Act 2017; and~~
 - (iii) ~~water supplied for agricultural or horticultural purposes~~ 10

urban area—

- (a) means an area identified in a district plan or a proposed district plan as being primarily zoned, or intended to be for residential, industrial, commercial and mixed use, or settlement activities, together with adjoining special-purpose and open-space and recreation zones, however described; but 15
- (b) does not include any other area zoned primarily for rural activities, however described.

8 Meaning of drinking water infrastructure services

- (1) In this Act, unless the context otherwise requires, **drinking water infrastructure services**— 20
 - (a) means the abstraction, storage, treatment, transmission, or transportation of drinking water for supply to consumers or a drinking water supplier; and
 - (b) includes services that are provided at or through— 25
 - (i) the point of supply; and
 - (ii) any end-point treatment device; and
 - (iii) any backflow prevention device.
- (2) However, services relating to the supply of drinking water from either of the following are not drinking water infrastructure services: 30
 - (a) a temporary drinking water supply provided under section 33 or 34 of the Water Services Act 2021;
 - (b) a domestic self-supply (as defined in section 10(1) of the Water Services Act 2021).

9 Transitional, savings, and related provisions 35

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

10 Act binds the Crown

This Act binds the Crown.

Part 2 Price and quality regulation

Subpart 1—General

5

11 Overview of this Part

~~This Part provides for the regulation of the price and quality of water infrastructure services in markets where there is little or no competition and little or no likelihood of a substantial increase in competition.~~

(1) In this Part,—

10

(a) subpart 1 contains general provisions, defines terms used in this Part, and provides for the Commission to make determinations specifying how each type of regulation applies to regulated water services providers:

(b) subpart 2 specifies when initial input methodologies and section 15 determinations must be made, enables those dates to be changed, and contains provisions about the length of regulatory periods:

15

(c) subpart 3 relates to input methodologies and provides for the Commission to determine input methodologies applying to the supply of water infrastructure services:

20

(d) subpart 4 relates to information disclosure regulation and provides that certain regulated water services providers are required to disclose information in accordance with requirements determined by the Commission:

(e) subpart 5 relates to quality regulation and provides that certain regulated water services providers are required to apply the quality paths determined by the Commission:

25

(f) subpart 6 relates to price-quality regulation and provides that certain regulated water services providers are required to apply the price-quality paths determined by the Commission:

(g) subpart 8 relates to reviews to be carried out by the Commission in relation to funding and pricing plans and tariff lists made available by regulated water services providers:

30

(h) subpart 9 provides for the designation of water services entities that are not statutory water services entities (the effect of which is that such entities become regulated water services providers subject to 1 or more types of regulation under this Part).

35

- (2) This section is intended only as a guide to the general scheme and effect of this Part.

Compare: ~~1986 No 5 s 52~~ 2001 No 103 s 163

12 Purpose of this Part

The purpose of this Part is to promote the long-term benefit of consumers of water infrastructure services in markets ~~referred to in section 44~~ where there is little or no competition, and little or no likelihood of a substantial increase in competition, by promoting outcomes that are consistent with outcomes produced in competitive markets so that regulated water services providers—

- (a) have incentives to innovate and to invest, including in replacement, upgraded, and new assets; and
- (b) have incentives to improve efficiency and provide services at a quality that reflects consumer demands; and
- (c) share with consumers the benefits of efficiency gains in the supply of water infrastructure services, including through lower prices; and
- (d) are limited in their ability to extract excessive profits.

Compare: 1986 No 5 s 52A

13 Interpretation

In this Part, unless the context otherwise requires,—

~~first regulatory period means the regulatory period described in section 20(4)~~

~~implementation date means the later of—~~

- (a) ~~1 July 2027; and~~
- (b) ~~any date specified by Order in Council in accordance with section 24~~

~~information disclosure requirement means a requirement that applies to a regulated water services provider and is specified in a section 15 determination~~

~~input methodology means a description of any methodology, process, rule, or matter that includes any of the matters listed in section 27 and that is published as referred to in section 29~~

publicly disclose, in relation to information required to be disclosed under information disclosure regulation, means to disclose information to the public in the manner required by a **section 15** determination

regulated water services provider means each of the following:

- (a) a statutory water services entity;
- (b) a water services entity that is designated under **section 54**;
- (c) a subsidiary of, or a successor to, a person referred to in **paragraph (a) or (b)**;

- (d) a person that is an interconnected body corporate in relation to a person referred to in **paragraph (a) or (b)**.

~~second regulatory period means the regulatory period immediately following the first regulatory period.~~

14 Regulation of water infrastructure services 5

- (1) Water infrastructure services are regulated as provided for by this Part.
- (2) A regulated water services provider must comply with—
- (a) the requirements of this Part that apply to the regulated water services provider; and
 - (b) every **section 15** determination that applies to the regulated water services provider; and
 - (c) in relation to an input methodology that is not specified in a **section 15** determination (see **section 26(1)(aa)**), every such input methodology that applies to the regulated water services provider.
- (3) The Commission may exercise any of its powers under this Act for the purpose of monitoring compliance by regulated water services providers with regulation under this Part. 15

Compare: 2001 No 103 s 167

15 Determinations made by Commission under this section

- (1) The Commission must make determinations under this section specifying how 1 or more of the following apply to regulated water services providers: 20
- (a) information disclosure regulation:
 - (b) quality regulation:
 - (c) price-quality regulation.
- (2) A determination must— 25
- (a) specify the regulated water services providers to which it applies; and
 - (b) specify the water infrastructure services in respect of which it applies; and
 - (c) set out, for each type of regulation to which it relates, the requirements under this ~~Act~~ Part that apply to each regulated water services provider to which the determination applies; and 30
 - (d) set out any time frames (including regulatory periods) that must be complied with or that apply; and
 - (e) specify any input methodologies that apply; and
 - (f) be consistent with this Part. 35

- (3) It is not necessary for a single determination to address all matters relating to all water infrastructure services, or to a regulated water services provider, and different parts of any determination may come into effect at different times.
- (4) A determination made under this section may require a regulated water services provider to comply with the requirements set out in any other determination that has been made under this section in respect of water infrastructure services. 5
- (5) A determination made under this section may relate to all regulated water services providers or to 1 or more regulated water services providers (for example, a determination relating to price-quality regulation may apply to an individual regulated water services provider and set price-quality paths that are specific to that provider). 10
- (6) A determination made under this section relating only to information disclosure or quality regulation may last for more than 1 regulatory period and remains in force until it is revoked. 15
- (7) A determination under this section and an amendment to a determination are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).
- (8) As soon as practicable after making a determination under this section, the Commission must give to each regulated water services provider to whom the determination relates notice of the determination and where it is available. 20

Compare: 2001 No 103 s 170

16 Amendment of **section 15** determination

- ~~(1) A **section 15** determination may be amended in a material way or revoked only after the Commission has consulted interested parties, but may be amended in a non-material way without prior consultation.~~ 25
- (1) The Commission must consult interested parties before amending or revoking a **section 15** determination.
- (1A) However, the Commission may amend a **section 15** determination without complying with **subsection (1)** if the Commission is satisfied that the amendment is only correcting a minor error or is otherwise of a minor nature only. 30
- (2) As soon as practicable after making an amendment, the Commission must give to each regulated water services provider to which the determination relates notice of the amendment and where it is available.

Compare: 2001 No 103 s 173

35

17 Power to exempt disclosure of commercially sensitive information

- (1) The Commission may, on application, exempt any person or class of persons, in respect of any information or class of information that the Commission considers to be commercially sensitive, from any obligation to make that informa-

tion publicly available as part of the requirements of information disclosure regulation, quality regulation, or price-quality regulation.

(1A) The Commission may only grant an exemption under this section if the Commission is satisfied that doing so would be consistent with the purpose of this Part.

5

(2) The Commission may grant the exemption on any terms and conditions that it thinks fit.

(2A) The Commission's reasons for granting an exemption must be published together with the exemption.

(3) An exemption granted under this section, and any variation or revocation of it, is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

10

Compare: 1986 No 5 s 53ZG

Subpart 2—Timing

18 When initial input methodologies must be determined

15

(1) The Commission must determine initial input methodologies relating to information disclosure and price-quality regulation of water infrastructure services no later than 1 July 2026.

(2) The Commission may determine initial input methodologies relating to quality regulation of water infrastructure services at any time after the initial input methodologies referred to in **subsection (1)** are determined.

20

(3) The Commission may determine further input methodologies relating to a type of regulation under this Part at any time after the initial input methodologies relating to that type of regulation have been determined in accordance with **subsection (1) or (2).**

25

Compare: 2001 No 103 s 178

19 When initial **section 15** determinations must be made

(1) The Commission must make initial determinations under **section 15**,—

(a) ~~in relation to information disclosure regulation, no later than 1 July 2027; and~~

30

(b) in relation to information disclosure and quality regulation, no later than the start of the first regulatory period; and

(c) in relation to price-quality regulation, no later than the start of the second regulatory period.

(2) ~~The Commission may make the initial **section 15** determination relating to information disclosure regulation in accordance with **subsection (1)(a)** even if the initial input methodologies for information disclosure regulation have not yet been made (*see* **section 18(1)**).~~

35

- (2) An initial **section 15** determination must not impose obligations on a regulated water services provider any earlier than,—
- (a) in relation to information disclosure regulation, 1 July 2024 (*see also clause 1A of Schedule 1*); and
 - (b) in relation to quality regulation, the start of the first regulatory period; and
 - (c) in relation to price-quality regulation, the start of the second regulatory period (unless the power under **section 22(1)(c)** is exercised).
- (3) The Commission must consult interested parties before making an initial **section 15** determination. 10
- Compare: 2001 No 103 s 172

20 Regulatory periods

- (1) The first regulatory period starts on ~~the implementation date~~ 1 July 2027 and lasts for a period of 3 years.
- (2) The duration of subsequent periods must be determined by the Commission and must be no longer than 6 years. 15
- (2A) In determining the duration of subsequent periods, the Commission may set different periods for different regulated water services providers as the Commission sees fit.
- (3) The Commission must notify the duration of each new regulatory period in a **section 15** determination, and must specify whether the period is common to all regulated water services providers or specific to 1 or more providers. 20
- Compare: 2001 No 103 s 207

~~21 Ability to change implementation date~~

- ~~(1) The Governor-General may, by Order in Council made at any time before 1 July 2027, defer the implementation date by up to 2 years. 25~~
- ~~(2) However, the implementation date may be deferred only once.~~
- ~~(3) An Order in Council made under this section deferring the implementation date—~~
- ~~(a) must be made on the recommendation of the Minister; and~~ 30
 - ~~(b) must specify a new implementation date; and~~
 - ~~(c) is secondary legislation (see Part 3 of the Legislation Act 2019 for publication requirements).~~

22 Ability to change ~~other~~ dates for initial input methodologies and initial **section 15** determinations 35

- (1) The Governor-General may, by Order in Council, do any 1 or more of the following:

- (a) at any time before 1 July 2026, defer by up to 3 years the date by which the Commission must determine ~~an initial input methodology~~ any of the initial input methodologies in accordance with **section 18(1)**;
 - (b) at any time before the date on which the Commission must make an initial **section 15** determination in accordance with **section 19(1)**, defer by up to 3 years the date by which the determination must be made: 5
 - (c) at any time before ~~31 December~~ 1 April 2026, bring forward by up to 3 years the date by which the Commission must make an initial determination in relation to price-quality regulation.
 - (1A) However,— 10
 - (a) the power to defer a date under **subsection (1)(a) or (b)** may be exercised only once in respect of each initial input methodology or initial **section 15** determination (as the case may be); and
 - (b) the power to bring forward a date under **subsection (1)(c)** may be exercised only once. 15
 - (2) A Order in Council made under this section—
 - (a) must be made on the recommendation of the Minister; and
 - (b) must specify a new date by which the Commission must determine the relevant initial input methodology or initial **section 15** determination (as the case may be); and 20
 - (c) is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).
- 23 Minister's recommendation**
- (1) ~~In making a recommendation under **section 21** or **section 22(1)(a) or (b)**, the Minister must consider the following:~~ 25
 - (a) ~~whether the purpose of this Part would be better met if 1 or more water infrastructure services were not yet subject to 1 or more forms of regulation under this Part:~~
 - (b) ~~in relation to a deferral of the date by which the Commission must make an initial **section 15** determination relating to price quality regulation in accordance with **section 19(1)(c)**, any recommendation from the Commission made under **section 49(1)(b)**.~~ 30
 - (2) ~~The Minister may make a recommendation under **section 22(1)(c)** only—~~
 - (a) ~~after receiving and considering a recommendation from the Commission under **section 49(1)(a)**; and~~ 35
 - (b) ~~in relation to a regulated water services provider that serves the Auckland and Northland areas.~~

23 Minister's recommendation

- (1) In making a recommendation that a date be deferred under **section 22**, the Minister must—
 - (a) be satisfied that the purpose of this Part would be better met if 1 or more water infrastructure services were not subject to 1 or more types of regulation under this Part on the latest date contemplated by this subpart; and 5
 - (b) in relation to a deferral of the date by which the Commission must make an initial **section 15** determination relating to price-quality regulation (in accordance with **section 19(1)(c)**), have considered any recommendation of the Commission made following a review carried out under **section 139J**. 10
- (2) The Minister may make a recommendation that a date be brought forward under **section 22(1)(c)** only—
 - (a) after receiving and considering a recommendation from the Commission under **section 139H**; and 15
 - (b) if the Minister is satisfied of the matter in **section 139H(1)(a)**; and
 - (c) in relation to a regulated water services provider that serves the Auckland and Northland areas.

Subpart 3—Input methodologies

24 Purpose of input methodologies 20

The purpose of input methodologies is to promote certainty for regulated water services providers and consumers in relation to the rules, requirements, and processes applying to the regulation, or proposed regulation, of water infrastructure services under this Part.

Compare: 2001 No 103 s 174 25

25 Requirement for input methodologies

- (1) The Commission—
 - (a) must determine ~~at least 1 input methodology in respect of each~~ **input methodologies in respect** of information disclosure regulation under **subpart 4** and price-quality regulation under **subpart 6**; and 30
 - (b) may determine input methodologies in respect of quality regulation under **subpart 5**.
- (2) This section does not affect ~~**section 19(2)**~~ **clause 1A(2)(a) of Schedule 1**.

26 How input methodologies apply

- (1) An input methodology relating to the supply of water infrastructure services must be applied— 35

- (a) by each relevant regulated water services provider in accordance with the relevant **section 15** determination; and
- (aa) in relation to an input methodology that is not specified in a **section 15** determination, by each regulated water services provider to which the relevant input methodology applies; and 5
- (b) by the Commission in recommending, deciding, or determining—
 - (i) how regulation under this Part should apply to water infrastructure services; or
 - (ii) the prices or quality standards applying to water infrastructure services. 10
- (2) However, **subsection (1)(b)** does not apply in relation to an initial determination made by the Commission relating to information disclosure regulation, if the initial determination is made (in accordance with **section 19(1)(a)(b)**) before the initial input methodologies have been determined (in accordance with **section 18(1)**). 15

Compare: 2001 No 103 s 175

27 Matters covered by input methodologies

- (1) The input methodologies relating to water infrastructure services must include, to the extent applicable to the type of regulation under consideration,—
 - (a) methodologies for evaluating or determining the following matters in respect of the supply of the water infrastructure services: 20
 - (i) cost of capital:
 - (ii) valuation of assets, including depreciation, and treatment of revaluations:
 - (iii) allocation of common costs, including (for example, between activities, businesses, regulated services, consumer classes, and geographic areas): 25
 - (iv) treatment of taxation; and
 - (b) regulatory processes and rules, such as—
 - (i) the specification and definition of prices, including identifying any costs that can be passed through to prices (which may not include the legal costs of any appeals under **section 118 or 119**); and 30
 - (ii) identifying circumstances in which price-quality paths may be reconsidered within a regulatory period; and 35
 - (c) methodologies for capital expenditure projects, including the following:
 - (i) requirements that the regulated water services provider must meet, including the scope and specificity of information required, the

- extent of independent verification and audit, and the extent of consultation and agreement with other parties; and
- (ii) the criteria the Commission will use to evaluate capital expenditure proposals; and
 - (iii) time frames and processes for evaluating capital expenditure proposals, including what happens if the Commission does not comply with those time frames. 5
- (2) Every input methodology must, as far as is reasonably practicable,—
- (a) set out the matters listed in **subsection (1)** in sufficient detail ~~to enable~~ so that each affected regulated water services provider is reasonably able to estimate the material effects of the methodology on the provider; and 10
 - (b) set out how the Commission intends to apply the input methodology to particular water infrastructure services; and
 - (c) be consistent with the other input methodologies that relate to the same type of services. 15
- (3) If the Commission determines an input methodology that is not specified in a **section 15** determination, the Commission must ensure that the input methodology—
- (a) states clearly that it is an input methodology of the sort referred to in **section 26(1)(aa)**; and 20
 - (b) specifies the regulated water services providers to which it applies; and
 - (c) specifies the water infrastructure services in respect of which it applies; and
 - (d) sets out any time frames that must be complied with or that apply; and
 - (e) is consistent with this Part. 25

Compare: 1986 No 5 s 52T

28 Commission process for determining input methodologies

- (1) When the Commission begins work on an input methodology, it must give public notice of its intention to do so that—
 - (a) outlines the process that will be followed; and 30
 - (b) sets out the proposed time frames.
- (2) During the course of its work on an input methodology, the Commission must give public notice of the draft methodology and consult interested parties before finalising the methodology.
- (3) See **clause 1 of Schedule 1**. 35

Compare: 2001 No 103 s 179

29 Status of input methodologies, amendments, and revocations

- (1) The following are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements):
 - (a) an input methodology:
 - (b) an amendment to an input methodology: 5
 - (c) the revocation by the Commission of an input methodology.
- (2) Secondary legislation referred to in **subsection (1)** must be published under the Legislation Act 2019,—
 - (a) if it is made by the Commission, within 10 working days after the Commission makes its determination; or 10
 - (b) if it is made by the High Court on appeal, within 10 working days after the Commission receives a copy of the High Court's decision.
- (3) If an input methodology or amendment is made by the High Court on appeal, the Legislation Act 2019 applies as if the Commission were the maker of the secondary legislation. 15
- (4) When a methodology or an amendment (but not a revocation) is published, the Commission must publish the reasons for determining the methodology, or for amending it, on the Commission's Internet site.

Compare: 2001 No 103 s 180

30 Changes to input methodologies 20

- (1) If the Commission proposes to amend or revoke an input methodology, **section 28** applies with any necessary modifications, as if the amendment or revocation were a new input methodology.
- (2) However, the Commission may amend an input methodology ~~to make a non-material change~~ without complying with **section 28** if the Commission is satisfied that the amendment is only correcting a minor error or is otherwise of a minor nature only. 25

Compare: 2001 No 103 s 181

31 Review and date of publication of input methodologies

- (1) The Commission must review each input methodology no later than 7 years after its date of publication and, after that, at intervals of no more than 7 years. 30
- (2) The **date of publication** of an input methodology is the date on which it is published under the Legislation Act 2019.
- (3) **Section 28** applies, with any necessary modifications, as if the review were a new input methodology. 35
- (4) *See also* **section 29**.

Compare: 1986 No 5 s 52Y; 2001 No 103 s 182

31A Commission may direct regulated water services provider to comply with relevant input methodology requirement

(1) If satisfied that a regulated water services provider has failed to comply with a requirement in a relevant input methodology, the Commission may, by written notice, direct the provider to comply with the relevant requirement. 5

(2) In this section, a **relevant input methodology** means an input methodology that is not specified in a **section 15** determination (see **section 26(1)(aa)**).

31B Regulated water services provider must comply with direction from Commission

A regulated water services provider that receives a direction from the Commission under **section 31A** must comply with it. 10

Subpart 4—Information disclosure regulation

32 Purpose of information disclosure regulation

The purpose of information disclosure regulation is to ensure that sufficient information is readily available to interested persons to assess whether the purpose of this Part is being met. 15

Compare: 2001 No 103 s 186

33 Effect of being subject to information disclosure regulation

(1) A regulated water services provider to which a **section 15** determination relating to information disclosure regulation applies must— 20

(a) publicly disclose information in accordance with the information disclosure requirements set out in the relevant **section 15** determination; and

(b) supply to the Commission a copy of all information disclosed in accordance with the **section 15** determination, within 5 working days after the information is first made available to the public; and 25

(c) supply to the Commission, in accordance with a written notice by the Commission, any further statements, reports, agreements, particulars, or other information required for the purpose of monitoring the regulated water services provider's compliance with the **section 15** determination. 30

(2) The Commission—

(a) may monitor and analyse all information disclosed in accordance with the information disclosure requirements (including information supplied under **subsection (1)(c)**); and 35

(b) must, as soon as practicable after any information is publicly disclosed, publish (on the Commission's Internet site) a summary and an analysis of that information for the purpose of promoting greater understanding

of the performance of individual regulated water services providers, their relative performance, and changes in their performance over time.

- (3) To avoid doubt, the Commission may, as part of a summary and an analysis, include an analysis of how effective the information disclosure requirements imposed on regulated water services providers are in promoting the purpose in **section 12**. 5

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

Compare: 2001 No 103 s 187 10

34 Section 15 determination to set out information disclosure requirements

- (1) A **section 15** determination relating to information disclosure regulation must specify the following:
- (a) the information to be disclosed:
 - (b) the manner in which the information is to be disclosed: 15
 - (c) the form of disclosure:
 - (d) when, and for how long, the information must be disclosed:
 - (e) any other methodologies that are required in the preparation or compilation of the information.
- (2) Information required to be disclosed may include (without limitation) 1 or 20 more of the following:
- (a) financial statements (including projected financial statements):
 - (b) asset values and valuation reports:
 - (c) prices, terms and conditions relating to prices, and pricing methodologies: 25
 - (d) contracts:
 - (e) transactions with related parties:
 - (f) financial and non-financial performance measures:
 - (g) plans and forecasts, including (without limitation) plans and forecasts about demand, investments, prices, revenues, quality and service levels, capacity and spare capacity, and efficiency improvements: 30
 - (h) asset management plans:
 - (i) quality performance measures and statistics:
 - (j) assumptions, policies, and methodologies used or applied in these or other areas: 35
 - (k) consolidated information that includes information about goods or services that are not subject to regulation under this Part, in which case **section 35** applies:

- (1) information about the financing of regulated water services providers that includes information about goods or services that are not subject to regulation under this Part, in which case **section 35** applies.
 - (2A) In addition, in relation to a statutory water services entity, information required to be disclosed must include information about how the entity is fulfilling its objective to support and enable planning processes, growth, and housing and urban development and, in particular, the entity's level of responsiveness in relation to those issues (see **section 12(d) of the Water Services Entities Act 2022**). 5
 - (3) The **section 15** determination may do 1 or more of the following: 10
 - (a) require disclosed information, or information from which disclosed information is derived (in whole or in part), to be verified by statutory declaration:
 - (b) require independent audits of disclosed information:
 - (c) require the retention of data on which disclosed information is based, and associated documentation: 15
 - (d) exempt any person or class of persons, or provide for exemptions, from any requirements of the determination, and revoke, or provide for the revocation of, exemptions:
 - (e) provide for transitional provisions: 20
 - (f) impose any other requirements that the Commission considers necessary or desirable to promote the purpose of information disclosure regulation.
 - (4) If a **section 15** determination authorises a person to grant exemptions referred to in **subsection (3)(d)**,—
 - (a) an instrument granting or revoking an exemption is secondary legislation (see Part 3 of the Legislation Act 2019 for publication requirements), unless it applies only to 1 or more named persons; and 25
 - (b) the determination must contain a statement to that effect.
 - (5) The Commission must consult interested parties before making a **section 15** determination relating to water infrastructure services that are subject to information disclosure regulation. 30
- Compare: 2001 No 103 s 188
- 35 Information required may include information about goods or services not subject to regulation under this Part**
- (1) The purpose of this section is to enable the Commission to monitor— 35
 - (a) compliance with information disclosure regulation applying to water infrastructure services; and

- (b) the ongoing capability of a regulated water services provider to raise finance with respect to its supply of regulated services, by assessing the provider's overall financial position.
- (2) A **section 15** determination may require information referred to in **subsection (3)** to be disclosed only to the extent required to enable the Commission to monitor 1 or both of the matters referred to in **subsection (1)**. 5
- (3) If a regulated water services provider provides goods or services that are not subject to regulation under this Part (**other goods or services**), the provider may be required to disclose—
 - (a) consolidated financial statements, and any other information referred to in **section 34**, for all businesses (including those related to the supply of other goods or services) undertaken by that provider; and 10
 - (b) consolidated financial statements, and any other information referred to in **section 34**, for the supply of all other goods or services in aggregate; and 15
 - (c) reconciliation of information provided under **paragraphs (a) and (b)** with information disclosed in accordance with information disclosure requirements applying to water infrastructure services; and
 - (d) information about the financing of—
 - (i) all businesses (including those related to the supply of other goods or services) undertaken by that provider; and 20
 - (ii) the supply of all goods and services (including other goods or services) provided by that provider.

Compare: 2001 No 103 s 189

36 Charge for providing copies to public 25

- (1) A person who is required, by a **section 15** determination, to provide copies of statements and information to the public on request may charge for providing those copies.
- (2) The charge must be no more than is reasonably required to recover the costs of providing those copies. 30

Compare: 2001 No 103 s 190

Subpart 5—Quality regulation

37 Purpose of quality regulation

The purpose of quality regulation is to regulate the quality and performance (other than in relation to prices) of water infrastructure services provided by regulated water services providers. 35

Compare: 2001 No 103 s 192

38 Effect of being subject to quality regulation

- (1) A regulated water services provider to which a **section 15** determination relating to quality regulation applies must apply the quality paths set by the Commission in the determination in respect of all water infrastructure services that are— 5
- (a) supplied by the provider; and
 - (b) specified in the determination.
- (2) For the purpose of monitoring compliance with this section, the Commission may, in addition to exercising its powers under section 98 of the Commerce Act 1986, issue a written notice to a regulated water services provider requiring it to provide any or all of the following: 10
- (a) a written statement that states whether the provider has complied with the quality paths applying to that provider:
 - (b) a report on the written statement referred to in **paragraph (a)** that is signed by an auditor in accordance with any form specified by the Commission: 15
 - (c) sufficient information to enable the Commission to properly determine whether a quality path has been complied with:
 - (d) a certificate, in the form specified by the Commission and signed by at least 1 board member of the provider, or, if there is no board, the person who operates the provider, confirming the truth and accuracy of any information provided under this section. 20

Compare: 2001 No 103 s 193

39 Section 15 determination to set out quality path requirements

- (1) A **section 15** determination relating to quality regulation must specify the quality paths that apply to each regulated water services provider ~~that is subject to quality regulation to which the determination applies.~~ 25
- (2) A quality path must specify the following:
- (a) the regulatory period to which it applies (~~but see **section 15(6)** including specifying whether the period is common to all regulated water services providers or specific to 1 or more providers~~): 30
 - (b) the quality standards that a regulated water services provider must meet:
 - (c) the date or dates on which the quality path (or any part of it) takes effect:
 - (d) the date or dates by which compliance must be demonstrated in accordance with **section 38(2)**. 35
- (3) A quality path may include—
- (a) incentives for a regulated water services provider to maintain or improve its quality of supply, and those incentives may include (without limitation) either of the following:

- (i) compensation schemes that set minimum standards of performance and require the provider to pay prescribed amounts of compensation if it fails to meet those standards:
 - (ii) the use of schemes that rate or rank various aspects of the provider's performance in meeting the required quality standards or any performance requirements; and 5
- (b) performance requirements, including any of the following:
 - (i) requirements to adopt a particular approach to risk management:
 - (ii) requirements in relation to the condition of assets and remaining asset life: 10
 - (iii) requirements to make particular types of investment:
 - (iv) requirements to provide information about any investments planned for a particular period:
 - (v) requirements to consult the Commission about certain kinds of investments and investment decisions: 15
 - (vi) requirements to adopt asset management policies and practices:
 - (vii) requirements to ring-fence minimum amounts of revenue for investment purposes:
 - (viii) reporting requirements, including—
 - (A) to whom reports must be made; and 20
 - (B) the timing of reports; and
 - (C) special reporting requirements in asset management plans, if the regulated water services provider fails to meet the quality standards; and
 - (D) any other matters relating to reporting, including requirements for additional information: 25
 - (ix) requirements that any disclosed information, or any information from which disclosed information is derived, be verified by statutory declaration or certified (in the form specified by the Commission) as true and accurate: 30
 - (x) requirements to undertake cost-benefit analysis before specified projects are begun:
 - (xi) requirements relating to consultation and engagement with consumers:
 - (xii) requirements based on comparative benchmarking of efficiency. 35
- (4) Quality standards, incentives, and performance requirements may be set or imposed only in respect of services that are subject to regulation under this Part.

- (5) A requirement to ring-fence revenue (as referred to in **subsection (3)(b)(vii)**) may include a requirement not to spend the relevant funds without the approval of the Commission.
 - (6) Quality standards may be prescribed in any way the Commission considers appropriate (such as targets, bands, formulas, or timetables for responsiveness to consumers). 5
 - (7) A quality path does not apply to a regulated water services provider until the date specified in the relevant **section 15** determination.
 - (8) The Commission must consult interested parties before making a **section 15** determination relating to water infrastructure services that are subject to quality regulation. 10
- Compare: 2001 No 103 s 194

Subpart 6—Price-quality regulation

40 Purpose of price-quality regulation

The purpose of price-quality regulation is to regulate the price, quality, and performance of water infrastructure services provided by regulated water services providers. 15

Compare: 2001 No 103 s 192

41 Effect of being subject to price-quality regulation

- (1) A regulated water services provider to which a **section 15** determination relating to price-quality regulation applies must apply the price-quality paths set by the Commission in the determination in respect of all water infrastructure services that are— 20
 - (a) supplied by the provider; and
 - (b) specified in the determination. 25
- (2) For the purpose of monitoring compliance with this section, the Commission may, in addition to exercising its powers under section 98 of the Commerce Act 1986, issue a written notice to a regulated water services provider requiring it to provide any or all of the following: 30
 - (a) a written statement that states whether the provider has complied with the price-quality paths applying to that entity: 30
 - (b) a report on the written statement referred to in **paragraph (a)** that is signed by an auditor in accordance with any form specified by the Commission:
 - (c) sufficient information to enable the Commission to properly determine whether a price-quality path has been complied with: 35
 - (d) a certificate, in the form specified by the Commission and signed by at least 1 board member of the provider, or, if there is no board, the person

who operates the provider, confirming the truth and accuracy of any information provided under this section.

Compare: 2001 No 103 s 193

42 Section 15 determination to set out price-quality path requirements

- (1) A **section 15** determination relating to price-quality regulation must specify the price-quality paths that apply to each regulated water services provider ~~that is subject to price-quality regulation~~ to which the determination applies. 5
- (2) A price-quality path must specify the following:
 - (a) the regulatory period to which it applies (including specifying whether the period is common to all regulated water services providers or specific to 1 or more providers): 10
 - (b) in relation to prices, 1 or both of the following:
 - (i) the maximum price or prices that a regulated water services provider may charge:
 - (ii) the maximum revenues that a regulated water services provider may recover: 15
 - (c) the quality standards that a regulated water services provider must meet:
 - (d) the date or dates on which the price-quality path (or any part of it) takes effect:
 - (e) the date or dates by which compliance must be demonstrated in accordance with **section 41(2).** 20
- (3) A price-quality path may include—
 - (a) incentives for a regulated water services provider to maintain or improve its quality of supply, and those incentives may include (without limitation) any of the following: 25
 - (i) penalties by way of a reduction in the provider's maximum prices or revenues based on whether, or by what amount, the provider fails to meet the required quality standards or any performance requirements:
 - (ii) rewards by way of an increase in the provider's maximum prices or revenues based on whether, or by what amount, the provider meets or exceeds the required quality standards or any performance requirements: 30
 - (iii) compensation schemes that set minimum standards of performance and require the provider to pay prescribed amounts of compensation if it fails to meet those standards: 35
 - (iv) the use of schemes that rate or rank various aspects of the provider's performance in meeting the required quality standards or any performance requirements; and

-
- (b) performance requirements, including any of the following:
 - (i) requirements to adopt a particular approach to risk management:
 - (ii) requirements in relation to the condition of assets and remaining asset life:
 - (iii) requirements to make particular types of investment: 5
 - (iv) requirements to provide information about any investments planned for a particular period:
 - (v) requirements to consult the Commission about certain kinds of investments and investment decisions:
 - (vi) requirements to adopt asset management policies and practices: 10
 - (vii) requirements to ring-fence minimum amounts of revenue for investment purposes:
 - (viii) reporting requirements, including—
 - (A) to whom reports must be made; and
 - (B) the timing of reports; and 15
 - (C) special reporting requirements in asset management plans, if the regulated water services provider fails to meet the quality standards; and
 - (D) any other matters relating to reporting, including requirements for additional information: 20
 - (ix) requirements that any disclosed information, or any information from which disclosed information is derived, be verified by statutory declaration or certified (in the form specified by the Commission) as true and accurate:
 - (x) requirements to undertake cost-benefit analysis before specified projects are begun: 25
 - (xi) requirements relating to consultation and engagement with consumers:
 - (xii) requirements based on comparative benchmarking of efficiency.
 - (4) Quality standards, incentives, and performance requirements may be set or imposed only in respect of services that are subject to regulation under this Part. 30
 - (5) A requirement to ring-fence revenue (as referred to in **subsection (3)(b)(vii)**) may include a requirement not to spend the relevant funds without the approval of the Commission. 35
 - (6) Quality standards may be prescribed in any way the Commission considers appropriate (such as targets, bands, formulas, or timetables for responsiveness to consumers).

Part 2 cl 43		Water Services Economic Efficiency and Consumer Protection Bill
(7)	A price-quality path does not apply to a regulated water services provider until the date specified in the relevant section 15 determination. Compare: 2001 No 103 s 194	
43	Wash-up mechanism for maximum revenues specified in initial price-quality paths	5
(1)	This section applies when the Commission specifies, in the price-quality paths for a regulatory period, the maximum revenues that a regulated water services provider may recover.	
(2)	The Commission may, in calculating the maximum revenues, apply a wash-up mechanism that provides for any over-recovery or under-recovery of revenue by the regulated water services provider during the previous regulatory period (if applicable) to be applied in a manner that is equivalent in present-value terms (as calculated in the manner that the Commission thinks fit) over 1 or more future regulatory periods. Compare: 2001 No 103 s 196	10 15
44	Smoothing revenues and prices	
(1)	This section applies when the Commission specifies maximum prices or maximum revenues for the purpose of section 42(2)(b) .	
(2)	The Commission may calculate the maximum price or revenue in a manner that is equivalent in present value terms (as calculated in the manner that the Commission thinks fit) over 2 or more regulatory periods (for example, by altering depreciation) if, in the Commission's opinion, it is necessary or desirable to do so to provide for the financeability of a regulated water services provider or to minimise price shocks to consumers. Compare: 2001 No 103 s 197	20 25
45	Making new section 15 determination	
(1)	Before the end of each regulatory period, the Commission must make a new section 15 determination specifying the price-quality paths that will apply for the following regulatory period.	
(2)	However, subsection (1) does not apply in respect of a regulatory period if price-quality regulation has not been imposed in that period.	30
(3)	In making a new section 15 determination, the Commission must consult interested parties in relation to the requirements listed in section 42 . Compare: 2001 No 103 s 203	
46	What happens to price-quality path if input methodologies change	35
(1)	The Commission must not reopen a price-quality path within a regulatory period on the grounds of a change in an input methodology, except as provided in subsection (2) .	

- (2) The Commission must reopen a price-quality path, and make a new price-quality path by amending the relevant **section 15** determination in accordance with **section 16**, if—
 - (a) an input methodology changes as a result of an appeal under **section 119**; and
 - (b) had the changed methodology applied at the time the price-quality path was set, it would have resulted in a materially different path being set.

5

Compare: 2001 No 103 s 204

Subpart 7—Reviews

- 47 Deregulation reviews** 10
- ~~(1) The Commission may, either on its own initiative or at the request of the Minister, review how 1 or more water infrastructure services are regulated under this Part if the Commission has reasonable grounds to consider that those services should no longer be subject to any 1 or more of the following:~~
 - ~~(a) information disclosure regulation;~~
 - ~~(b) quality regulation;~~
 - ~~(c) price quality regulation.~~ 15
- ~~(2) A review under this section may be carried out at any time after the implementation date.~~
- ~~(3) The Commission must, before the start of each regulatory period (except the first 2 regulatory periods), consider whether there are reasonable grounds to start a review.~~ 20
- ~~(4) For the purposes of **subsection (1)**, the Commission may, without limitation, describe a service under review with reference to any 1 or more of the following:~~
 - ~~(a) the geographic area in which the service is supplied;~~
 - ~~(b) the consumers of the service;~~
 - ~~(c) any other circumstances in which the service is supplied.~~ 25
- ~~(5) In carrying out a review, the Commission may consider—~~
 - ~~(a) whether the purpose of this Part would be better met if 1 or more water infrastructure services were no longer subject to 1 or more forms of regulation under this Part; and~~
 - ~~(b) any other information that the Commission believes to be relevant.~~ 30
- ~~(6) The Commission must make a recommendation to the Minister after a review.~~
- ~~(7) The Commission must—~~
 - ~~(a) consult interested persons about the review before making a recommendation to the Minister; and~~ 35

- (b) ~~make the recommendation publicly available as soon as practicable after making it, along with a statement of its reasons for making the recommendation.~~

Compare: 2001 No 103 s 210

48 ~~Reviews of unregulated water services entities~~

- (1) ~~The Commission may, either on its own initiative or at the request of the Minister, undertake reviews to determine whether 1 or more water services entities that are not subject to regulation under this Part (unregulated water services entities) should be subject to any 1 or more of the following in respect of 1 or more water infrastructure services:~~

- (a) ~~information disclosure regulation;~~
 (b) ~~quality regulation;~~
 (c) ~~price quality regulation.~~

- (2) ~~A review under this section may be carried out at any time after the implementation date.~~

- (3) ~~For the purposes of **subsection (1)**, the Commission may, without limitation, describe an unregulated water services entity under review with reference to any 1 or more of the following:~~

- (a) ~~the geographic area in which the entity provides water infrastructure services;~~
 (b) ~~the consumers of the water infrastructure services provided by the entity;~~
 (c) ~~any other matter it considers appropriate.~~

- (4) ~~For the purposes of **subsection (1)**, the Commission may, without limitation, describe any service provided by the unregulated water services entity under review with reference to any 1 or more of the following:~~

- (a) ~~the geographic area in which the service is supplied;~~
 (b) ~~the consumers of the service;~~
 (c) ~~any other circumstances in which the service is supplied.~~

- (5) ~~In carrying out a review, the Commission may consider —~~

- (a) ~~whether the purpose of this Part would be better met if 1 or more unregulated water services entities were subject to 1 or more forms of regulation under this Part in respect of 1 or more water infrastructure services; and~~
 (b) ~~any other information that the Commission believes to be relevant.~~

- (6) ~~The Commission must make a recommendation to the Minister after a review.~~

- (7) ~~If the Commission recommends to the Minister that 1 or more unregulated water services entities should be subject to 1 or more forms of regulation under this Part, the recommendation must —~~

- ~~(a) describe each unregulated water services entity; and~~
 - ~~(b) describe the water infrastructure services provided by any unregulated water services entity that should be regulated by this Part; and~~
 - ~~(c) specify the 1 or more forms of regulation that any unregulated water services entity should be subject to under this Part and when the relevant **section 15** determinations should apply; and~~
 - ~~(d) specify when input methodologies should apply for the entity.~~
 - ~~(8) The Commission must —~~
 - ~~(a) consult interested persons about the review before making a recommendation to the Minister; and~~
 - ~~(b) make the recommendation publicly available as soon as practicable after making it, along with a statement of its reasons for making the recommendation.~~
- 49 Reviews in relation to timing of price-quality regulation**
- ~~(1) The Commission may, either on its own initiative or at the request of the Minister, undertake reviews to determine whether price-quality regulation should apply in relation to 1 or more regulated water services providers —~~
 - ~~(a) from the start of the first regulatory period; or~~
 - ~~(b) from the start of the second regulatory period.~~
- ~~(2) However, the Commission may not undertake a review under **subsection (1)(a)** in relation to a regulated water services provider unless the provider serves the Auckland and Northland areas.~~
- ~~(3) If the Commission undertakes a review under this section, the Commission must, —~~
 - ~~(a) in the case of a review under **subsection (1)(a)**, complete the review before the start of the first regulatory period; and~~
 - ~~(b) in the case of a review under **subsection (1)(b)**, complete the review before the start of the second regulatory period; and~~
 - ~~(c) in either case, make a recommendation to the Minister.~~
- ~~(4) In carrying out a review under **subsection (1)(a)**, the Commission must take into account the following:~~
 - ~~(a) whether the purpose of this Part would be better met if the regulated water services provider that serves the Auckland and Northland areas were subject to price-quality regulation from the start of the first regulatory period; and~~
 - ~~(b) any other information that the Commission believes to be relevant.~~
- ~~(5) In carrying out a review under **subsection (1)(b)**, the Commission must consider —~~

- (a) ~~whether the purpose of this Part would be better met if 1 or more regulated water services providers were not subject to price quality regulation from the start of the second regulatory period; and~~
- (b) ~~any other information that the Commission believes to be relevant.~~
- (6) ~~If the Minister requests that the Commission undertake a review under **subsection (1)**, the Minister must make the request,~~ 5
 - (a) ~~in relation to a review under **subsection (1)(a)**, no later than 2 years before the start of the first regulatory period; and~~
 - (b) ~~in relation to a review under **subsection (1)(b)**, no later than 2 years before the start of the second regulatory period.~~ 10
- 50 Outcome of reviews**
- (1) ~~The Minister may, on receiving a recommendation from the Commission under **sections 47 to 49**, do either of the following:~~
 - (a) ~~accept or reject the Commission's recommendation;~~
 - (b) ~~request that the Commission reconsider any matter (such as an error, an oversight, or competing policy interests).~~ 15
- (2) ~~If the Minister accepts a recommendation made as a result of a review carried out under **section 47**, the Commission must take whatever action is required (if any) in order to implement the recommendation.~~
- (3) ~~The action taken by the Commission may include any 1 or more of the following:~~ 20
 - (a) ~~making a new **section 15** determination, or amending any existing **section 15** determination, to exclude 1 or more water infrastructure services from 1 or more forms of regulation under this Part;~~
 - (b) ~~determining new input methodologies, or amending any existing input methodologies, as may be required;~~ 25
 - (c) ~~taking any other action the Commission considers to be necessary or desirable in the circumstances.~~
- (4) ~~In relation to the outcome of a review carried out under **section 48**, see **subpart 9**, which relates to the Minister's ability to recommend that water services entities be designated for the purposes of this Part.~~ 30
- (5) ~~In relation to the outcome of a review carried out under **section 49**, see **sections 21 to 23**, which relate to the Minister's ability to change certain dates, including in relation to price quality regulation.~~

Subpart 8—Commission review of funding and pricing plans and tariff lists

51 Commission must review funding and pricing plans and tariff lists

- (1) The Commission must review any funding and pricing plan and tariff list made publicly available by the chief executive of a regulated water services provider under any legislation dealing with water services. 5
- (2) In carrying out a review, the Commission must consider ~~any charging principles set out in any legislation dealing with water services.~~ the following:
- (a) any charging principles set out in any legislation dealing with water services: 10
- (b) regulations made under any legislation dealing with water services, to the extent the Commission considers the regulations to be relevant:
- (c) requirements in determinations made by the Commission under this Part, to the extent the Commission considers them to be relevant.
- (3) The Commission must complete its review and give directions under **section 52** (if any) as soon as practicable after a funding and pricing plan or tariff list (as the case may be) is made publicly available. 15
- (4) This section and **section 52** do not apply in respect of an initial funding and pricing plan prepared in accordance with Schedule 1 of the Water Services Entities Act 2022. 20

52 Commission may give directions

If the Commission considers that a funding and pricing plan or tariff list is inconsistent with any ~~charging principles set out in any legislation dealing with water services~~ of the things described in **section 51(2)**, the Commission may direct the board of a regulated water services provider to ~~reconsider the plan.~~ do either or both of the following: 25

- (a) reconsider the plan or tariff list (as the case may be):
- (b) change the plan or tariff list (as the case may be), according to the Commission's directions.

53 Obligations of boards of regulated water services providers in response to direction from Commission 30

A board of a regulated water services provider that receives a direction from the Commission under **section 52** must comply with it.

Subpart 9—Designations of ~~unregulated~~ water services entities following a review 35

53A Overview of subpart

- (1) This subpart—

- (a) establishes a process under which water services entities that are not statutory water services entities may become subject to regulation under this Part (specifically, by being designated under **section 54**); and
 - (b) enables the level of regulation applying to an entity designated in that way to be adjusted to increase or decrease the requirements that apply to the entity by amending or revoking the relevant designation order under **section 58**.
 - (2) In each case, the process for making, amending, or revoking a designation order requires a review to be carried out by the Commission under **subpart 2A of Part 5**.
 - (3) This section is intended only as a guide to the general scheme and effect of this subpart.
- 54 Designation of water services entities by Order in Council**
- (1) The Governor-General may, on the recommendation of the Minister, make an Order in Council declaring a water services entity that is not a statutory water services entity to be designated for the purposes of this Part.
 - (2) A designation order is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).
- 55 Minister's recommendation**
- (1) The Minister may recommend to the Governor-General that a water services entity be designated for the purposes of this Part only ~~after receiving a recommendation from the Commission as a result of a review carried out under **section 48**~~ if—
 - (a) the Minister has received and considered a recommendation from the Commission following a review carried out under **section 139D or 139F**; and
 - (b) the Minister is satisfied that the purpose of this Part (*see* **section 12**) would be better met if the designation were made.
 - (2) *See also* **section 139E**.
- 56 Content of designation**
- A designation order must specify all of the following:
 - (a) the water services entity that is designated;
 - (b) at least 1 person that is an operator of the water services entity;
 - (c) ~~the form type~~ of regulation under this Part that will apply in respect of the water services entity (being 1 or more of information disclosure, quality, and price-quality regulation);
 - (d) the services provided by the water services entity to which the regulation will apply;

- (e) when any input methodologies apply;
- (f) when the relevant type of regulation will apply.

57 Duration of designation

- (1) A designation order continues in force until the date on which the order is revoked or replaced, whichever occurs first. 5
- ~~(2) A designation order must state its revocation date, which must be no later than 10 years after the date on which the order commences.~~
- (3) If a water services entity ceases to be designated for the purposes of this Part, any standard or direction that applies to the entity — of the following that apply to the entity, cease to apply to the entity: 10
 - ~~(a) expires if the standard or direction applies only to that entity; or~~
 - ~~(b) ceases to apply to the entity in any other case.~~
 - (a) a **section 15** determination;
 - (b) an input methodology;
 - (c) a requirement under any of **subparts 4 to 6** of this Part; 15
 - (d) a direction given under **section 52**.

58 Amendment and revocation of designation

- (1) A designation order may be amended or revoked using the process in ~~section 48, which applies~~ **sections 54 to 56**, which apply with any necessary modifications. 20
- ~~(2) However,~~
 - ~~(a) the Commission may recommend that a designation order be amended without complying with **section 48** if the Commission is satisfied that the amendment is only correcting a minor error or is otherwise of a minor nature only (for example, a name change of an entity); and~~ 25
 - ~~(b) **section 48(8)(b)** does not apply in relation to a recommendation by the Commission that a designation order be revoked.~~
- (2) However, **section 55** does not apply to an order amending a designation order if the Minister is satisfied that the amendment is only correcting a minor error or is otherwise of a minor nature only (for example, a name change of an entity). 30
- (3) To avoid doubt, an amendment to a designation order may be directed at (without limitation)—
 - (a) imposing additional regulation under this Part on an entity to which the designation relates in respect of 1 or more water infrastructure services (see **section 139E(1)(c)**); or 35

- (b) excluding an entity to which the designation relates (or 1 or more water infrastructure services) from 1 or more types of regulation under this Part (see **section 139G(1)(b)**).

Part 3

Consumer protection

5

Subpart 1AAA—General

59 Overview of this Part

~~This Part provides for—~~

- (a) ~~the designation of water services entities that are not statutory water services entities (the effect of which is that such entities become regulated water services providers for the purposes of this Part);~~ 10
- (b) ~~the making and operation of a service quality code;~~
- (c) ~~a consumer quality complaints service and a consumer disputes resolution service;~~
- (d) ~~the setting by the Commission of a reasonable penalty rate for debt owed by a consumer to a water services entity.~~ 15

(1) In this Part,—

- (a) this subpart contains general provisions and defines terms used in this Part;
- (b) **subpart 1** provides for the designation of water services entities that are not statutory water services entities (the effect of which is that such entities become regulated water services providers for the purposes of this Part); 20
- (c) **subpart 2** requires the making and operation of a service quality code, including a requirement that the Commission set a reasonable penalty rate for debt owed by a consumer to a water services entity; 25
- (d) **subpart 3—**
 - (i) requires each regulated water services provider or drinking water supplier to establish a consumer complaints process; and
 - (ii) establishes a consumer dispute resolution service. 30

(2) This section is intended only as a guide to the general scheme and effect of this Part.

60 Purpose of this Part

The purpose of this Part is to provide for consumer protection, and improvements in the quality of service provided to consumers to reflect consumer demands, by regulated water services providers and drinking water suppliers. 35

61 Interpretation

In this Part, unless the context otherwise requires,—

~~consumer dispute resolution service means the dispute resolution service approved under **section 76** and **Schedule 2**~~

consumer dispute resolution service or service means—

(a) the dispute resolution service authorised under **section 76** and approved under **Schedule 2**; and

(b) if, at the same time, 2 or more consumer dispute resolution services are approved services, each consumer dispute resolution service or the particular consumer dispute resolution service in question, as the case requires

regulated water services provider means each of the following:

(a) a statutory water services entity:

(b) a water services entity that is designated under **section 62** ~~for the purposes of this Part:~~

(c) a subsidiary of, or a successor to, a person referred to in **paragraph (a) or (b)**:

(d) a person that is an interconnected body corporate in relation to a person referred to in **paragraph (a) or (b)**

~~service provider means the person who owns or operates the consumer disputes resolution service.~~

service provider means—

(a) the person who operates the consumer dispute resolution service; and

(b) if, at the same time, 2 or more consumer dispute resolution services are approved services, the person who operates each consumer dispute resolution service or the particular consumer dispute resolution service in question, as the case requires

water services consumer protection requirements means the following:

(a) the service quality code;

(b) the consumer complaints process established by **section 73** and the regulations (if any) referred to in that section:

(c) the consumer dispute resolution service.

Subpart 1—Designations of water services entities following a review

61A Overview of subpart

(1) This subpart—

- (a) establishes a process under which water services entities that are not statutory water services entities may become subject to regulation under this Part (specifically, by being designated under **section 62**); and
 - (b) enables the level of regulation applying to an entity designated in that way to be adjusted to increase or decrease their obligations to comply with requirements or provisions in this Part by amending or revoking the relevant designation order under **section 68**. 5
- (2) In each case, the process for making, amending, or revoking a designation order requires a review to be carried out by the Commission under **subpart 2A of Part 5**. 10
- (3) This section is intended only as a guide to the general scheme and effect of this subpart.
- 62 Designation of water services entities by Order in Council**
- (1) The Governor-General may, on the recommendation of the Minister, make an Order in Council declaring a water services entity that is not a statutory water services entity to be designated for the purposes of this Part. 15
- (2) A designation order made under this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).
- 63 Minister's recommendation**
- (1) The Minister may recommend to the Governor-General that a water services entity be designated for the purposes of this Part only ~~after receiving a recommendation from the Commission, if—~~ 20
 - (a) the Minister has received and considered a recommendation from the Commission following a review carried out under **section 139L** or **139N**; and 25
 - (b) the Minister is satisfied that the purpose of this Part would be better met if the designation were made.
- (2) ~~In deciding whether to make a recommendation that a designation order be made, the Minister may do any of the following:~~ 30
 - (a) ~~accept or reject the Commission's recommendation;~~
 - (b) ~~request that the Commission reconsider any matter (such as an error, an oversight, or competing policy interests);~~
 - (c) ~~make any other decision that the Minister considers is in the public interest.~~
- (2) See also **section 139M**. 35

64 ~~Commission's recommendation~~

- (1) ~~The Commission may recommend to the Minister that a water services entity that is not a statutory water services entity be designated for the purposes of this Part.~~
- (2) ~~In deciding whether to make a recommendation, the Commission must take into account the following:~~ 5
- ~~(a) the number of consumers served by the water services entity;~~
 - ~~(b) the service quality provided to consumers by the water services entity;~~
 - ~~(c) the extent to which designating the water services entity is likely to lead to an improvement in the service quality provided to customers by the water services entity;~~ 10
 - ~~(d) any other matter the Commission considers relevant.~~

65 ~~Process for Commission's recommendation~~

- (1) ~~Before making a recommendation under **section 64**, the Commission must—~~
- ~~(a) consult any group or representatives of any group representing the interests of water services consumers as the Minister considers appropriate;~~ 15
 - ~~(b) consult affected operators of the water services entity about the proposed designation (including the Commission's reasons for proposing to make a recommendation).~~
- (2) ~~The Commission must make the recommendation publicly available as soon as practicable after making it, along with a statement of its reasons for making the recommendation.~~ 20

66 Content of designation order

A designation order must specify all of the following:

- (a) the water services entity that is designated: 25
- (b) at least 1 person that is an operator of the water services entity;
- (c) the prescribed consumer protection legislation water services consumer protection requirements that will apply in respect of the water services entity;
- (d) the services provided by the water services entity to which ~~that consumer protection legislation~~ those water services consumer protection requirements will apply:; 30
- (e) when the water services consumer protection requirements will apply to the water services entity.

67 Duration of designation order 35

- (1) A designation order continues in force until the date on which the order is revoked or replaced, whichever occurs first.

- (2) ~~A designation order must state its revocation date, which must be no later than 10 years after the date on which the order commences.~~
- (3) If a water services entity ceases to be designated for the purposes of this Part, any ~~standard or direction that applies~~ requirements of this Part that apply to the entity (whether under the service quality code or otherwise)— cease to apply to the entity. 5
- (a) ~~expires if the standard or direction applies only to that entity; or~~
- (b) ~~ceases to apply to the entity in any other case.~~
- 68 Amendment and revocation of designation order**
- (1) A designation order may be amended or revoked using the process in ~~section 65, except that~~ **sections 62 to 66**, which apply with any necessary modifications. 10
- (a) ~~section 65 does not apply to an order that amends a designation order if the Commission is satisfied that the amendment is only correcting a minor error or is otherwise of a minor nature only (for example, a name change of an entity);~~ 15
- (b) ~~section 65(2) does not apply to a revocation order.~~
- (2) However, section 63 does not apply to an order amending a designation order if the Minister is satisfied that the amendment is only correcting a minor error or is otherwise of a minor nature only (for example, a name change of an entity). 20
- (3) To avoid doubt, an amendment to a designation order may be directed at (without limitation)—
- (a) making an entity to which the designation relates subject to additional provisions or requirements of this Part in respect of 1 or more water infrastructure services (see **section 139M(1)(b)**); or 25
- (b) removing obligations on an entity to which the designation relates to comply with provisions or requirements of this Part in respect of 1 or more water infrastructure services (see **section 139O(1)(a)**).

Subpart 2—Service quality code 30

69 Commission must make service quality code

- (1) The Commission must, not later than **1 July 2027**, make a service quality code in relation to the provision of 1 or more types of water infrastructure service by regulated water services providers.
- (2) The service quality code is secondary legislation (see Part 3 of the Legislation Act 2019 for publication requirements). 35

70 Contents of Commission's service quality code

- (1) The service quality code must—

- (a) specify which water infrastructure services it applies to; and
 - (b) specify which regulated water services providers it applies to; and
 - (c) specify a penalty rate for unpaid debt owed to regulated water services providers by consumers, or a method of calculating the penalty due, or both, for the purposes of **section 325(1) of the Water Services Entities Act 2022**; and 5
 - (d) promote the purpose of this Part set out in **section 60**.
 - (2) The service quality code may (without limitation) do 1 or more of the following:
 - (a) specify a consumer's rights when they make a complaint to a regulated water services provider: 10
 - (b) specify the type and frequency of communications that a regulated water services provider must have with consumers about—
 - (i) outages; and
 - (ii) the time taken to respond to outages and faults: 15
 - (c) contain rules about the transparency of billing practices, and the way in which account queries must be responded to:
 - (d) set out the types of redress available to consumers when the quality of service does not meet appropriate standards (for example, in relation to pressure flow rates): 20
 - (e) specify conditions for the provision of water infrastructure services to consumers experiencing hardship or who have other vulnerabilities (for example, the obligations of regulated water services providers when responding to non-payment by consumers):
 - (f) specify requirements for consulting consumers: 25
 - (g) provide for any other matter that the Commission considers appropriate.
- 71 Regulated water services providers must comply with service quality code**
- Regulated water services providers must comply with the provisions of the service quality code.
- 72 Process for making or amending service quality code** 30
- (1) In order to make the service quality code, the Commission must—
 - (a) give public notice of the process that will be followed to make the code; and
 - (b) consult interested persons; and
 - (c) give public notice of a draft code. 35
 - (2) A person is entitled to make a submission to the Commission not later than 30 working days after the date on which public notice of the draft code is given.

(2A) The Commission must—

- (a) take reasonable steps to identify classes of vulnerable consumers; and
- (b) consider the impact of the provision of water services on vulnerable consumers and take the interests of those persons into account when making the service quality code. 5
- (3) The Commission may make the code only if the Commission is satisfied that the draft code meets all the requirements set out in this subpart.
- (4) The Commission may amend or revoke and replace a code if the Commission considers that the code ~~no longer meets all the requirements set out in this subpart.~~ should be changed to better promote the purpose of this Part. 10
- (5) The same procedure that applies to making a code in **subsections (1) to (3)** must be followed to make an amendment or a revocation and replacement, with any necessary modifications, except that **subsections (1) to (3)** do not apply if the Commission is satisfied that an amendment is only correcting a minor error or is otherwise of a minor nature only. 15

Subpart 3—Consumer complaints process and consumer dispute
resolution service

Consumer complaints process

- 73 Requirement for regulated water services provider and drinking water suppliers to provide information to consumers and have complaints process** 20
- (1) A regulated water services provider or drinking water supplier must, in accordance with regulations (if any) that apply to the provider or supplier,—
 - (a) provide any prescribed information to consumers; and
 - (b) establish, maintain, and administer a consumer complaints process; and 25
 - (c) report annually to the Commission on its consumer complaints process.
 - (2) A regulated water services provider or drinking water supplier must ensure that complaints by consumers are dealt with—
 - (a) in accordance with its consumer complaints process; and
 - (b) in an efficient and effective manner. 30
 - (3) Regulations referred to in this section may make different provisions for—
 - (a) different kinds of regulated water services providers or drinking water suppliers; and
 - (b) different classes of water infrastructure services. 35

Compare: 2021 No 36 s 38

74 Review of complaint outcome using consumer dispute resolution service

- (1) A consumer who is not satisfied with the outcome of a complaint dealt with using a consumer complaints process under this subpart may, in the form approved by the service provider, request the service provider for the consumer dispute resolution service to provide dispute resolution services. 5
- (2) The service provider may, at its discretion, decide to take no action or, as the case may require, no further action on any complaint if, ~~in the opinion of the provider,~~ the provider is satisfied on reasonable grounds that—
 - (a) the length of time that has elapsed between the date when the subject matter of the complaint arose and the date when the complaint was made is such that an investigation of the complaint is no longer practicable or desirable; or 10
 - (b) the complaint is trivial, frivolous, or vexatious, or is not made in good faith; or
 - (c) the person alleged to be aggrieved does not want action to be taken or, as the case may be, continued; or 15
 - (d) the complainant does not have sufficient personal interest in the subject matter of the complaint and is not a person or organisation representing consumers; or
 - (e) ~~there is in all the circumstances an adequate remedy or right of appeal, other than the right to petition the House of Representatives or to make a complaint to an Ombudsman, that it would be reasonable for the aggrieved person to exercise.~~ 20
 - (e) the complaint would be more appropriately dealt with by a court, a tribunal, or another appropriate authority; or 25
 - (f) adequate steps have been taken by the regulated water services provider or drinking water supplier to address the complaint, or the person who made the complaint has been adequately compensated for any loss (for example, by insurance).

Compare: 2021 No 36 s 39 30

75 Commission must monitor compliance with complaints process

The Commission must ~~monitor compliance with sections 73 and 74.~~

- (a) monitor compliance by regulated water service providers and drinking water suppliers with **section 73**; and
- (b) in doing so, may have regard to the scale, complexity, and risk profile of a regulated water services provider or drinking water supplier. 35

*Consumer dispute resolution service***76 Consumer dispute resolution service**

- (1) The consumer dispute resolution service for the resolution of disputes is the dispute resolution service—
- (a) that is authorised under this section and approved by the Minister under **Schedule 2**; and 5
 - (b) that the Minister declares under that schedule to be the dispute resolution service for the purpose of this Part or a dispute resolution service author-
ised under **subsection (1B)(a), (b), or (c)** and approved under **Schedule 2**; and 10
 - (c) whose provider is approved by the Minister.
- (1A) There must only be 1 consumer dispute resolution service for all of New Zea-
land unless **subsection (1B)** applies.
- (1B) There may be 2 or more approved consumer dispute resolution services, at any
one time, if 1 or more of the following apply: 15
- (a) the Minister has reasonable grounds to believe that having only 1
approved dispute resolution service would operate to the disadvantage of
consumers:
 - (b) following a review of the disputes resolution service by the Commission,
the Minister determines that having 2 or more approved dispute reso-
lution services is appropriate: 20
 - (c) the Minister approves the continuation of a dispute resolution service,
after another dispute resolution service is approved to act in its place,
until the successor dispute resolution service is fully operational.
- (2) Before approving a dispute resolution service under **Schedule 2**, the Minister 25
must consult—
- (a) the Minister responsible for Taumata Arowai:
 - (b) the Minister responsible for the administration of the Water Services Act
2021 (if a different Minister from the Minister referred to in **paragraph**
(a)): 30
 - (ba) the Commission.
 - ~~(c) all regulated water services providers:~~
 - ~~(d) representatives of drinking water suppliers who are not regulated water
services providers.~~

**77 Determinations binding on regulated water services providers and
drinking water suppliers** 35

- (1) This section applies if a dispute arising from an unresolved complaint is
referred by ~~the service provider or~~ a consumer to the consumer dispute reso-

lution service and a determination is made on the dispute under the rules of the service.

- (2) ~~The determination is binding on the regulated water services provider or drinking water supplier, as the case requires, except if the consumer lodges an appeal under **section 78** against the determination and the court modifies or reverses the determination.~~ 5

- (2) The determination is binding on the relevant regulated water services provider or drinking water supplier, as the case requires, unless the consumer, regulated water services provider, or drinking water supplier lodges an application under **section 78** to set aside the determination and the court modifies or reverses the determination. 10

Compare: 2001 No 103 s 242

78 ~~Appeals against~~ Applications to set aside determinations

- (1) A consumer or a regulated water services provider or a drinking water supplier may, within the time allowed under **section 79(1)**, ~~appeal~~ apply to the court ~~against~~ to set aside any determination referred to in **section 77**. 15

- (2) ~~The court may confirm, modify, or reverse the determination appealed against.~~

- (2) The court may modify or reverse the determination that is the subject of the application if the court is satisfied that the terms of the determination are manifestly unreasonable but otherwise must confirm the determination. 20

- (3) The decision of the court on the ~~appeal~~ application is binding on all persons named as parties in the determination, and there is no right of appeal against the court's decision.

Compare: 2001 No 103 s 243; 2021 No 36 s 93

79 ~~Procedure on appeal~~ section 78 applications 25

- (1) An ~~appeal~~ application under **section 78** must be brought and determined in accordance with the rules of court, except that—

- (a) ~~an appeal~~ the application must be brought within ~~5-20~~ 5-20 working days after the determination ~~appealed against~~ is notified to the party wanting to lodge the ~~appeal~~ application, or any further time the court allows on ~~an a~~ a further application made before or after that period ends; and 30

- (b) ~~the service provider and the maker of the determination appealed against~~ that is the subject of the application (if a person engaged by the service provider), ~~are~~ is not entitled to be represented ~~at the hearing of the appeal in connection with the application~~; and 35

- (c) the court ~~on appeal~~ may not refer the determination back to the service provider of the consumer dispute resolution service for any purpose.

- (2) The court may hear all evidence provided and representations made by or on behalf of any party to the ~~appeal~~ application that the court considers relevant to

the ~~appeal~~ application, whether or not the evidence would otherwise be admissible in a court.

Compare: 2001 No 103 s 244

- 80** ~~Compliance with rules, binding settlements, and determinations~~ **Enforcement of binding settlements and determinations** 5
- (1) Each party to a dispute that is referred to the consumer dispute resolution service must comply with the rules of the service.
 - (2) On an application ~~of~~ by the service provider, the court may require a person who is a party to a dispute to do any of the following:
 - (a) comply with the rules of the service: 10
 - (b) comply with the terms of a binding settlement or determination made under the rules of the service.
 - (3) If the court is satisfied that the terms of a binding settlement ~~or determination~~ are manifestly unreasonable, the court's order under **subsection (2)(b)** may modify the terms of the binding settlement ~~or determination~~, but only to the extent that the modification results in a binding settlement ~~or determination~~ that could have been made ~~under~~ by the consumer dispute resolution service. 15
 - (4) If an order requiring a regulated water services provider, drinking water supplier, or other person to comply with a binding settlement includes a requirement that the person pay an amount of money to a person, that order (or part of the order) may be enforced as if it were a judgment by the court for the payment of a sum of money. 20

Compare: 2001 No 103 s 245

Commission review of consumer dispute resolution service

- 81** **Commission must review consumer dispute resolution service** 25
- The Commission must review the consumer dispute resolution service, using the process and in accordance with the timetable set out in **Schedule 2**.
- 81A** **Compliance statement may be required for purposes of provision of this Part or Schedule 2**
- For the purpose of monitoring compliance with a provision of this Part or **Schedule 2** or each development code (as provided for in **section 293A to 294C and 295 of the Water Services Entities Act 2022**), the Commission may, in addition to exercising its powers under section 98 of the Commerce Act 1986, issue a written notice to a regulated water services provider or drinking water supplier, requiring it to provide any or all of the following: 30
- (a) a written statement of whether the provider or supplier has complied with the provision: 35

- (b) a report on the written statement that is signed by an auditor in accordance with any form specified by the Commission:
- (c) sufficient information to enable the Commission to properly determine whether the provision has been complied with:
- (d) a certificate in the form specified by the Commission, and signed by at least 1 board member of the regulated water services provider or drinking water supplier or, if there is no board, the person who operates the provider or supplier, confirming the truth and accuracy of any information provided under this section.

5

81B Commission may give direction to comply with timetables and development codes

10

The Commission may direct—

- (a) a regulated water services provider to comply with the service quality code:
- (b) the board of a statutory water services entity to—
 - (i) if the Commission considers that **Part 1 or Part 2** of a draft development code has not been submitted or resubmitted within a reasonable time or the time specified by the Commission, to submit or resubmit that Part within a specified time:
 - (ii) comply with its own development code (as prepared and approved under **section 293A to 294C and 295 of the Water Services Entities Act 2022**).

15

20

Miscellaneous matters

82 Duties of ~~dispute resolution~~ service provider, regulated water services providers, and drinking water suppliers

25

- (1) If, in the course of dealing with any complaint or while dispute resolution services are being provided, the service provider becomes aware that—
 - (a) there is or may be a serious risk to public health arising from the provision of or omission to provide water infrastructure services, the service provider must promptly notify the matter to Taumata Arowai and the relevant medical officer of health:
 - (b) a regulated water services provider or drinking water supplier is facing a significant problem or potential problem (within the meaning of section ~~127(3) of the Local Government Act 2002~~ 179 of the Water Services Entities Act 2022), the service provider must promptly notify the matter to Taumata Arowai.
- (2) The service provider, regulated water services providers, and drinking water suppliers must, ~~in an agreed manner~~, share with the Commission and Taumata

30

35

Arowai information about issues, trends, and patterns arising out of consumer complaints.

Part 4

Enforcement, monitoring, and appeals

Subpart 1—Civil liability 5

83 Overview of civil liability

(1) The following remedies (**civil liability remedies**) are available under this subpart:

- (a) a pecuniary penalty order (on application by the Commission only):
- (b) a compensatory order: 10
- (c) an injunction.

(2) This section is a guide only to the general scheme and effect of this subpart.

Pecuniary penalty orders

84 When court may make pecuniary penalty order

(1) The court may, on the application of the Commission, order a person to pay to the Crown ~~the pecuniary penalty that the court determines to be appropriate a~~ pecuniary penalty if the court is satisfied that the person has— 15

- (a) contravened an information disclosure requirement; or
- (b) contravened a quality or price-quality requirement; or
- (c) ~~contravened a code made under this Act~~ the service quality code made under **section 69**; or 20

(ca) contravened **section 53**; or

(cb) contravened a development code:

(d) attempted to contravene any of the things referred to in **paragraphs (a) to (e) (cb)**; or 25

(e) been involved ~~(see **section 124**)~~ in a contravention of any of the things referred to in **paragraphs (a) to (e) (cb)**.

(2) For the purposes of this Part,—

contravening a quality or price-quality requirement—

- (a) refers to a requirement imposed by a **section 15** determination, in relation to water infrastructure services generally or any particular water infrastructure services that are subject to quality or price-quality regulation imposed under **Part 2**; and 30
- (b) means any or all of the following:

- (i) failing to comply with the requirements for prices, whether by charging a price for the water infrastructure services that is higher than the maximum permitted, or by receiving more revenue than is permitted, or in any other way:
- (ii) refusing or failing to comply with any quality standards required under the quality or price-quality regulation: 5
- (iii) refusing or failing to comply with any incentives or performance requirements set out in a **section 15** determination relating to quality or price-quality regulation

contravening an information disclosure requirement includes all or any of the following: 10

- (a) failing to disclose information required to be disclosed:
- (b) failing to disclose information in the form or within the time required:
- (c) disclosing under an information disclosure requirement information that is false or misleading. 15

(3) See **section 124** in relation to the meaning of involvement in a contravention.

Compare: 1986 No 5 ss 80, 87; 2001 No 103 s 215

85 Maximum amount of pecuniary penalty

- (1) The maximum amount of a pecuniary penalty is—
 - (a) \$500,000, in the case of an individual; or 20
 - (b) \$5 million, in any other case.

(2) Despite **subsection (1)**, the maximum amount of a pecuniary penalty is \$300,000 for—

- (a) a contravention of the service quality code under **section 84(1)(c)** or a contravention of a development code under **section 84(1)(ca)**; 25
- (b) an attempted contravention of the service quality code or a development code under **section 84(1)(d)**;
- (c) involvement in the contravention of the service quality code or a development code under **section 84(1)(e)**.

Compare: 2001 No 103 s 215(3) 30

86 Considerations for court in determining pecuniary penalty

- (1) In determining the amount of a pecuniary penalty that a person (A) must pay, the court must have regard to all relevant matters (to the extent they are known), including—
 - (a) the nature and extent of A's conduct; and 35
 - (b) the nature and extent of any loss or damage suffered by any person because of A's conduct; and
 - (c) any gains made or losses avoided by A; and

- (d) whether a person has paid an amount of compensation, reparation, or restitution, or taken other steps to avoid or mitigate any actual or potential adverse effects of A's conduct; and
 - (e) the circumstances in which A's conduct took place; and
 - (f) whether or not A has previously been found by a court in proceedings under this Act, or any other legislation, to have engaged in any similar conduct. 5
- (2) In this section, **A's conduct** means the conduct of A for which A is liable to the pecuniary penalty. 10
- Compare: 2001 No 103 s 215

87 Court must order that recovery from pecuniary penalty be applied to Commission's actual costs

If the court orders that a person pay a pecuniary penalty, the court must also order that the penalty must be applied first to pay the Commission's actual costs in bringing the proceeding. 15

Compare: 1988 No 234 s 42Z; 2013 No 69 s 493

Compensatory orders

88 When court may make compensatory orders

- (1) If the court orders a person to pay a pecuniary penalty order under **section 84 in respect of a specified matter**, the court may, in addition, order the person to pay compensation to any person who has suffered, or is likely to suffer, loss or damage as a result of the contravention (an **aggrieved person**). 20
- (2) An application for an order under this section may be made by the Commission or any aggrieved person.
- (3) The court may make a compensatory order whether or not the aggrieved person is a party to the proceeding. 25
- (4) In this section, **specified matter** means—
 - (a) a contravention, an attempted contravention, or involvement in the contravention of a quality or price-quality requirement:
 - (b) a contravention of the service quality code: 30
 - (c) a contravention of a development code.

Compare: 1986 No 5 s 87A

89 Terms of compensatory orders

- (1) If **section 88** applies, the court may make any order it thinks just to compensate an aggrieved person in whole or in part for the loss or damage, or to prevent or reduce the loss or damage, referred to in that section. 35
- (2) An order may include an order to direct a relevant person to pay to the aggrieved person the amount of the loss or damage (in whole or in part).

- (3) **Subsection (2)** does not limit **subsection (1)**.
- (4) In this section, **relevant person** means—
- (a) any person in contravention; or
 - (b) any person involved (*see* **section 124**) in the contravention.
- Compare: 2013 No 69 s 495

5

Injunctions

90 Court may grant injunctions

The court may, on application by the Commission or any other person, grant an injunction—

- (a) restraining a person from engaging in conduct that constitutes or would constitute a contravention, an attempted contravention, or involvement (*see* **section 124**) in a contravention of a quality or price-quality requirement, an information disclosure requirement, ~~or a code made under this Act~~ the service quality code, **section 53**, or any development code; or
- (b) requiring a person to do an act or a thing if—
 - (i) that person has refused or failed, or is refusing or failing, or is proposing to refuse or fail, to do that act or thing; and
 - (ii) the refusal or failure was, is, or would be a contravention of a quality or price-quality requirement, an information disclosure requirement, ~~or a code made under this Act~~ the service quality code, **section 53**, or any development code.

Compare: 2013 No 69 s 480

91 When court may grant restraining injunctions

- (1) The court may grant an injunction restraining a person from engaging in conduct ~~of a particular kind~~ described in **section 90(a)** if—
 - (a) it is satisfied that the person has engaged in conduct of that kind; or
 - (b) it appears to the court that, if an injunction is not granted, it is likely that the person will engage in conduct of that kind.
- (2) The court may grant an interim injunction restraining a person from engaging in conduct of a particular kind if in its opinion it is desirable to do so.
- (3) **Subsections (1)(a) and (2)** apply whether or not it appears to the court that the person intends to engage again, or to continue to engage, in conduct of that kind.
- (4) **Subsections (1)(b) and (2)** apply whether or not—
 - (a) the person has previously engaged in conduct of that kind; or

- (b) there is an imminent danger of substantial damage to any other person if the person engages in conduct of that kind.
- (5) In determining whether to grant an interim injunction under this section, the court must give any weight that the court considers appropriate to the interest of consumers. 5
- (6) In any proceedings under this section the Commission, on the order of the court, may obtain discovery and administer interrogatories.
- (7) The court may at any time rescind or vary an injunction granted under this Act.
Compare: 1986 No 5 s 88; 2013 No 69 s 481; 2022 No 21 s 48

92 Commission's undertaking as to damages not required 10

- (1) If the Commission applies to the court for the grant of an interim injunction under this subpart, the court must not, as a condition of granting an interim injunction, require the Commission to give an undertaking as to damages.
- (2) In determining the Commission's application for the grant of an interim injunction, the court must not take into account that the Commission is not required to give an undertaking as to damages. 15
Compare: 1986 No 5 s 88A; 2013 No 69 s 482; 2022 No 21 s 50

Orders about information disclosure

92A Order requiring information disclosure requirement to be complied with

- (1) The court may, on application by the Commission, order a regulated water services provider to comply with an information disclosure requirement that applies to the provider. 20
- (2) An order under this section must specify the date by which, or period within which, the provider must comply with the requirement.

Rules of procedure 25

93 Rules of civil procedure and civil standard of proof apply

A proceeding under this subpart is a civil proceeding and the usual rules of court and rules of evidence and procedure for civil proceedings apply (including the standard of proof).

94 Limit on proceedings 30

- (1) A proceeding under this subpart must be commenced within 3 years after the matter giving rise to the contravention, attempted contravention, or involvement in the contravention was discovered or ought reasonably to have been discovered.
- (2) However, an application for compensation under **section 88** must be made within 1 year of the relevant pecuniary penalty order. 35

- (3) No proceeding under this subpart may be commenced 10 years or more after the matter giving rise to the contravention, attempted contravention, or involvement in the contravention occurred.
- (4) *See section 124* in relation to the meaning of “involvement in a contravention”.

5

Relationship between proceedings and orders

95 More than 1 civil liability remedy may be given for same conduct

The court may grant a civil liability remedy of one kind against a person even though the court has granted another civil liability remedy of a different kind against the person for the same conduct.

10

Example

The court may make a compensatory order and a pecuniary penalty order for the same conduct.

96 Only 1 pecuniary penalty order may be made for same conduct

- (1) If conduct by a person constitutes a contravention, an attempted contravention, or an involvement in the contravention of 2 or more provisions, a proceeding may be brought against that person for the contravention, attempted contravention, or involvement in the contravention of any 1 or more of the provisions, but no person is liable to more than 1 pecuniary penalty order for the same conduct.
- (2) *See section 124* in relation to the meaning of “involvement in a contravention”.

15

20

97 No pecuniary penalty and criminal penalty for same conduct

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

25

Subpart 2—Offences

98 ~~Order requiring information disclosure requirement to be complied with~~

- (1) ~~The court may, on application by the Commission, order a regulated water services provider to comply with an information disclosure requirement that applies to the provider.~~
- (2) ~~An order under this section must specify the date by which, or period within which, the provider must comply with the requirement.~~

30

Compare: 1986 No 5 s 86A

99 Offences relating to information disclosure regulation

- (1) A person commits an offence if—

35

- (a) the person, knowing that water infrastructure services are subject to information disclosure regulation, intentionally contravenes any information disclosure requirement relating to those services; or
 - (b) the person is subject to an order under **section 90 or 98 92A** and fails to comply with the order by the date, or within the period, specified. 5
- (2) A person who commits an offence under **subsection (1)** is liable on conviction to a fine not exceeding \$200,000, in the case of an individual, or \$1 million, in any other case.
- Compare: 1986 No 5 s 86B
- 100 Offence relating to quality regulation 10**
- (1) A person commits an offence if—
 - (a) the person, knowing that water infrastructure services are subject to quality regulation, intentionally contravenes a quality requirement in respect of the supply of the services; or
 - (b) the person is subject to an order under **section 90** and fails to comply with the order. 15
- (2) A person who commits an offence under **subsection (1)** is liable on conviction to a fine not exceeding \$200,000, in the case of an individual, or \$1 million, in any other case.
- Compare: 1986 No 5 s 87B 20
- 101 Offence relating to price-quality regulation**
- (1) A person commits an offence if—
 - (a) the person, knowing that water infrastructure services are subject to price-quality regulation, intentionally contravenes a price-quality requirement in respect of the services; or 25
 - (b) the person is subject to an order under **section 90** and fails to comply with the order.
- (2) A person who commits an offence under **subsection (1)** is liable on conviction to a fine not exceeding \$200,000, in the case of an individual, or \$1 million, in any other case. 30
- Compare: 1986 No 5 s 87B
- 101A Offence relating to direction of Commission**
- (1) A person commits an offence if the person fails to comply with **section 53** or **section 81B**.
- (2) A person who commits an offence under **subsection (1)** is liable on conviction to a fine not exceeding \$200,000, in the case of an individual, or \$1 million, in any other case. 35

102 Offence relating to service quality code

- (1) A person commits an offence if—
- (a) the person, knowing that particular water infrastructure services are subject to the service quality code, intentionally contravenes a code requirement in respect of the services; or 5
 - (b) the person is subject to an order under **section 90** and fails to comply with the order.
- (2) A person who commits an offence under **subsection (1)** is liable on conviction to a fine not exceeding \$200,000, in the case of an individual, or \$1 million, in any other case. 10
- Compare: 1986 No 5 s 87B

102A Offence involving failure to advise consumers about, provide information, and report on complaints process

- (1) A regulated water services provider or drinking water supplier commits an offence against this section if the provider or supplier fails to,— 15
- (a) in accordance with any regulations that apply to the provider or supplier,—
 - (i) comply with the duty under **section 73(1)(a)** to provide consumers with prescribed information; or
 - (ii) comply with the duty under **section 73(1)(b)** to establish, maintain, and administer a consumer complaints process; or 20
 - (iii) comply with the duty under **section 73(1)(c)** to report annually to the Commission on its consumer complaints process; or
 - (b) comply with the duty under **section 73(2)** to deal with consumer complaints. 25
- (2) A regulated water services provider or drinking water supplier who commits an offence against **subsection (1)** is liable on conviction,—
- (a) for an individual, to a fine not exceeding \$10,000;
 - (b) for a body corporate or an unincorporated body, to a fine not exceeding \$200,000. 30

102B Failure to comply with development code, etc

- (1) A person commits an offence if—
- (a) the person, knowing that particular water connection or disconnection services are subject to a development code, intentionally contravenes a code requirement in respect of these services; or 35
 - (b) the person is subject to an order under **section 90** and fails to comply with the order.

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

Subpart 3—Additional remedies and penalties relating to **Part 3**

103 Overview of this subpart 5

This subpart sets out orders that may be made specifically for breaches of **Part 3** (which relates to consumer protection) and procedural matters relating to infringement offences for breaches of **Part 3** and other things done or made under **Part 3**.

Additional remedies in relation to ~~breach of service quality code~~failure to comply with service quality code or a development code 10

104 Order to disclose information or publish advertisement

- (1) The court may make ~~one~~ either or both of the following orders if the court is satisfied, on the application of the Commission, that a person has failed without reasonable excuse to comply with the service quality code or a development code: 15
- (a) an order requiring that person, or any other person involved in the ~~contravention~~ failure to comply, to disclose to the public, or to a particular person or class of persons, the information or class of information that is specified in the order, being information that is in the possession of the person to whom the order is directed or to which that person has access: 20
- (b) an order requiring that person, or any other person involved in the ~~contravention~~ failure to comply, to publish corrective statements the terms of which are specified in, or are to be determined in accordance with, the order. 25
- (2) The information must be disclosed or published—
- (a) in the manner and at the times that are specified in the order; and
- (b) at the person's own expense.
- (3) The court may hear and determine an application in conjunction with any other proceedings under this Part. 30
- (4) See **section 124** in relation to the meaning of “involvement in a contravention”. 30

Compare: 2001 No 103 s 156MA

105 General orders for ~~breach of service quality code~~failure to comply with service quality code or development code 35

- (1) The court may make 1 or more of the following orders if the court is satisfied, on the application of the Commission, that a person (**person X**) has ~~committed~~

~~a breach of~~ failed without reasonable excuse to comply with the service quality code or a development code:

- (a) an order directing person X to refund money or return property to any other person:
- (b) an order directing person X to pay to any other person the amount of any loss or damage caused to that other person by the conduct of person X: 5
- (c) an order directing person X, at person X's own expense, to supply a service to any other person:
- (d) an order declaring all or part of a contract made between person X and any other person, or a collateral arrangement relating to such a contract,— 10
 - (i) to be void; and
 - (ii) if the court thinks fit, to have been void at all times on and after a date specified in the order, which may be before the date on which the order is made: 15
- (e) an order in respect of a contract made between person X and any other person, or a collateral arrangement relating to such a contract,—
 - (i) varying the contract or the arrangement in the manner specified in the order; and
 - (ii) if the court thinks fit, declaring the varied contract or arrangement to have had effect on and after a date specified in the order, which may be before the date on which the order is made. 20
- (2) The court may hear and determine an application under **subsection (1)** in conjunction with any other proceedings under this Part. 25
Compare: 2001 No 103 s 156MB

106 Other order for ~~breach of service quality code~~ failure to comply with service quality code or development code

- (1) The court may, if the court is satisfied, on the application of the Commission or a consumer, that a person has ~~committed a breach of~~ failed without reasonable excuse to comply with the service quality code or a development code, make an order directing the person, at the person's own expense, to supply a service to a consumer. 30
- (2) The court may hear and determine an application under **subsection (1)** in conjunction with any other proceedings under this Part. 35
Compare: 2001 No 103 s 156MC

107 Certain provisions of subpart 1 apply in respect of proceedings under subpart 3

- (1) The provisions of **sections 93 to 97** apply in respect of proceedings under this subpart.

- (2) For the purposes of this Act, the remedies set out in **sections 104 to 106** are civil liability remedies.

Infringement offences

108 Interpretation

In **sections 109 to 117**,—

5

enforcement officer means a person employed or engaged by the chief executive of the Commission who is—

- (a) suitably qualified and trained; and
- (b) designated by the chief executive as an enforcement officer for the purposes of this Act

10

infringement fee, in relation to an infringement offence, means the infringement fee for the offence prescribed in the regulations

infringement offence means an offence in the regulations relating to ~~a consumer protection provision in Part 3~~, the service quality code, the consumer complaints process, the consumer dispute resolution service, the rules of that service, or anything else done or made under **Part 3** that is prescribed as an infringement offence against those regulations.

15

109 Infringement offences

- (1) A person who is alleged to have committed an infringement offence may—
- (a) be proceeded against by the filing of a charging document under section 14 of the Criminal Procedure Act 2011; or
 - (b) be issued with an infringement notice under **section 111**.
- (2) Proceedings commenced in the way described in **subsection (1)(a)** do not require the leave of a District Court Judge or Registrar under section 21(1)(a) of the Summary Proceedings Act 1957.
- (3) See section 21 of the Summary Proceedings Act 1957 for the procedure that applies if an infringement notice is issued.

20

25

110 Who may issue infringement notices

The Commission may issue infringement notices under this Act.

111 When infringement notice may be issued

30

The Commission may issue an infringement notice to a person if the Commission believes on reasonable grounds that the person is committing, or has committed, an infringement offence.

112 Revocation of infringement notice before payment made

- (1) The Commission may revoke an infringement notice before—
- (a) the infringement fee is paid; or

35

- (b) an order for payment of a fine is made or deemed to be made by a court under section 21 of the Summary Proceedings Act 1957.
- (2) The Commission must take reasonable steps to ensure that the person to whom the notice was issued is made aware of the revocation of the notice.
- (3) The revocation of an infringement notice before the infringement fee is paid is not a bar to any further action as described in **section 109(1)(a) or (b)** against the person to whom the notice was issued in respect of the same matter. 5

113 What infringement notice must contain

An infringement notice must be in the form prescribed in the regulations and must contain the following particulars: 10

- (a) details of the alleged infringement offence that fairly inform a person of the time, place, and nature of the alleged offence:
- (b) the amount of the infringement fee:
- (c) the address of the place where the infringement notice may be paid:
- (d) how the infringement fee may be paid: 15
- (e) the time period within which the infringement fee must be paid:
- (f) a summary of the provisions of section 21(10) of the Summary Proceedings Act 1957:
- (g) a statement that the person served with the notice has a right to request a hearing: 20
- (h) a statement of what will happen if the person served with the notice neither pays the infringement fee nor requests a hearing:
- (i) any other matters prescribed in the regulations.

114 How infringement notice may be issued to person

- (1) An infringement notice may be issued to a person who the Commission believes is committing or has committed the infringement offence by— 25
 - (a) delivering it to the person or, if the person refuses to accept it, bringing it to the person's notice; or
 - (b) leaving it for the person at the person's last known place of residence with another person who appears to be of or over the age of 14 years; or 30
 - (c) leaving it for the person at the person's place of business or work with another person; or
 - (d) sending it to the person by prepaid post addressed to the person's last known place of residence or place of business or work; or
 - (e) sending it to an electronic address of the person in any case where the person does not have a known place of residence or business in New Zealand. 35
- (2) Unless the contrary is shown,—

- (a) an infringement notice (or a copy of it) sent by prepaid post to a person under **subsection (1)** is to be treated as having been served on that person on the fifth working day after the date on which it was posted; and
- (b) an infringement notice sent to a valid electronic address is to be treated as having been served at the time the electronic communication first entered an information system that is outside the control of the chief executive ~~or enforcement officer~~ of the Commission or an enforcement officer engaged by the Commission. 5

115 Payment of infringement fees

All infringement fees paid for infringement offences must be paid into a Crown Bank Account. 10

116 Reminder notices

A reminder notice must be in the form prescribed in the regulations and must include the same particulars, or substantially the same particulars, as the infringement notice. 15

117 Relationship between infringement offences and other offences

A person may be prosecuted or convicted of any offence referred to in this Act (rather than proceeding under **sections 109 to 116**), even if their conduct is, or may be, an infringement offence.

Subpart 4—Appeals 20

118 Appeals against Commission determinations

- (1) A regulated water services provider ~~or any other person~~ a consumer of water infrastructure services to which the determination relates, or a representative of such a consumer, may appeal to the court under this subsection against any determination of the Commission under this Act, other than the following: 25
 - (a) a **section 15** determination, or any part of a **section 15** determination, that sets out how information disclosure regulation or quality regulation applies to a regulated water services provider:
 - (b) an input methodology determination under **subpart 3 of Part 2** (for which a separate appeal right is given under **section 119**). 30
- (2) A person may appeal to the court under this subsection on a question of law against any determination of the Commission under this Act (including a determination referred to in **subsection (1)**), except if the person has appealed, or is able to appeal, on the question of law against the determination under **section 119**. 35
- (3) An appeal under this section must be made by giving notice of appeal within 20 working days after the date of the determination appealed against or within any further time that the court may allow.

- (4) Sections 77 and 93 to 97 of the Commerce Act 1986 apply with any necessary modifications in respect of an appeal under this section.
 - (5) To avoid doubt, a recommendation to the Minister by the Commission is not a determination for the purposes of this section.
 - (6) In this section, **input methodology determination** has the same meaning as in **section 119(2)**. 5
Compare: 2001 No 103 s 224
- 119 Appeals against input methodology determinations**
- (1) Any person who gave views on an input methodology determination to the Commission as part of the process under **section 28**, and who, in the opinion of the court, has a significant interest in the matter, may appeal to the court against the determination. 10
 - (2) In this section, **input methodology determination** means any of the following:
 - (a) the initial determination of an input methodology: 15
 - (b) any determination by the Commission that amends or revokes an input methodology:
 - (c) any determination by the Commission of an input methodology after a review of the input methodology.
 - (3) In determining an appeal against an input methodology determination, the court may do any of the following: 20
 - (a) decline the appeal and confirm the input methodology, or the amendment or revocation of the input methodology, set out in the determination:
 - (b) allow the appeal by—
 - (i) amending the input methodology; or 25
 - (ii) revoking the input methodology and substituting a new one; or
 - (iii) referring the input methodology determination back to the Commission with directions as to the particular matters that require amendment; or
 - (iv) if the revocation of an input methodology is not confirmed, confirming that the input methodology still applies. 30
 - (4) The court may exercise its powers under **subsection (3)(b)** only if it is satisfied that the amended, substituted, or confirmed input methodology is (or will be, in the case of **subsection (3)(b)(iii))** materially better in meeting the purpose of **Part 2** or the purpose in **section 24**, or both. 35
 - (5) If the court allows an appeal, the Commission may seek clarification from the court on any matter for the purpose of implementing the court's decision.

- (6) There is a right of appeal under section 97 of the Commerce Act 1986 to the Court of Appeal against any decision or order of the High Court under this section on a point of law only.

Compare: 2001 No 103 s 183

120 Process for appeals 5

- (1) An appeal under **section 119(1)** must be brought within 20 working days after the date on which the input methodology is published.
- (2) The appeal must be by way of rehearing and must be conducted solely on the basis of the documentary information and views that were before the Commission when it made its determination, and no party may introduce any new material during the appeal. 10
- (3) The High Court must sit with 2 lay members (unless the court considers that only 1 is required).
- (4) Each of the lay members must have relevant experience and be appointed from the pool of people appointed under section 77 of the Commerce Act 1986 to be members of the court for the purpose of hearing the appeal. 15
- (5) Section 77 of the Commerce Act 1986 applies, and section 77(14) of that Act is not limited by **subsection (3)** of this section.

Compare: 2001 No 103 s 184

121 Input methodology applies pending outcome of appeal 20

- (1) The court may not stay the application of **section 26** with respect to any input methodology until any appeal against it is finally determined.
- (2) **Section 26** continues to apply with respect to every input methodology until any appeal against the input methodology is finally determined.

Compare: 2001 No 103 s 185 25

Subpart 5—Miscellaneous provisions relating to enforcement

122 Jurisdiction of High Court

- (1) The High Court may hear and determine the following matters:
- (a) ~~applications for orders, or for a court to exercise any other power, under any provision of this Part:~~ 30
- (a) proceedings for the recovery of pecuniary penalties under **section 84**:
- (aa) applications for orders under any of **sections 88, 92A, 104, 105, and 106**:
- (ab) applications for injunctions under **section 90**:
- (ac) appeals under **section 118 or 119**: 35
- (b) appeals arising from any proceeding in the District Court under this Part.

- (2) Section 75 of the Commerce Act 1986 applies with any necessary modifications to the extent that a provision referred to in that section applies for the purposes of this Act.
- (3) The provisions of the Criminal Procedure Act 2011 apply in relation to the jurisdiction of the High Court to determine criminal proceedings.

5

Compare: 1986 No 5 s 75

123 Jurisdiction of District Court

- (1) ~~The District Court may hear and determine applications for orders, or for a court to exercise any other power, under any of the provisions of this Part if—~~
 - (a) ~~the amount claimed does not exceed \$350,000; or~~
 - (b) ~~no amount is claimed; or~~
 - (c) ~~the occasion for the making of the order or the exercise of the power arises in the course of civil proceedings properly before the court; or~~
 - (d) ~~the parties consent, under section 81 of the District Court Act 2016, to the District Court having jurisdiction to hear and determine the application.~~

10

15

- (1) The District Court may hear and determine—
 - (a) applications for orders, or for a court to exercise any other power, under a provision of **Part 3** or **Schedule 2**; and
 - (b) proceedings for an offence against any provision of **subpart 2** of this Part or an offence referred to in **section 109** (infringement offences).

20

- (2) Section 76 of the Commerce Act 1986 applies with any necessary modifications to the extent that a provision referred to in that section applies for the purposes of this Act.
- (3) The provisions of the Criminal Procedure Act 2011 apply in relation to the jurisdiction of the District Court to determine criminal proceedings.

25

124 Involvement in contravention

In this Act, a person is **involved in a contravention** if the person—

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

30

125 Illegal contracts provisions do not apply

35

- (1) Subpart 5 of Part 2 of the Contract and Commercial Law Act 2017 does not apply to any ~~a contract entered into in contravention of a civil liability provi~~

~~sion or to any contract that contains a provision the giving effect to of which would constitute a contravention of a civil liability provision. that—~~

- (a) is entered into in contravention of a civil liability provision; or
- (b) contains a particular provision that if given effect to would contravene a civil liability provision or would result in a person contravening a civil liability provision.

5

- (2) In this section, **civil liability provision** means a provision the breach of which may be the subject of civil proceedings under this Part.

Compare: 1986 No 5 s 89(5)

126 Enforceability of other provisions not affected

10

(1AAA) This section applies if a contract—

- (a) is entered into in contravention of a civil liability provision by reason that the contract contains a particular provision; or
- (b) contains a particular provision that if given effect to would contravene a civil liability provision or would result in a person contravening a civil liability provision.

15

- (1) Despite any legislation or rule of law, ~~if a contract is entered into in contravention of a civil liability provision because the contract contains a particular provision, or the contract contains a provision that if given effect to would contravene a civil liability provision, the enforceability of any other provision of the contract is not affected by the existence of that~~ the particular provision does not affect the enforceability of any other provision of the contract.

20

- (2) In this section, **civil liability provision** means a provision the breach of which may be the subject of civil proceedings under this Part.

Compare: 1986 No 5 s 89(6)

25

Part 5 Miscellaneous

Subpart 1—Water Services Commissioner

Water Services Commissioner

127 Appointment of Water Services Commissioner

30

- (1) There must be a Water Services Commissioner.
- (2) The Water Services Commissioner must be appointed by the Governor-General on the recommendation of the responsible Minister.
- (3) The appointment must be made by written notice to the appointee.
- (4) The responsible Minister must ensure that the following are notified in the *Gazette* as soon as is reasonably practicable after an appointment is made:

35

- (a) the name of the appointee; and
 - (b) the date on which the appointment takes effect; and
 - (c) the terms of the appointment.
- (5) In this section and **section 128, responsible Minister** means the responsible Minister, in relation to the Commission, within the meaning of section 10(1) of the Crown Entities Act 2004. 5

Compare: 2004 No 115 s 28

128 Minister's recommendation

- (1) The responsible Minister may only recommend that a person be appointed as the Water Services Commissioner if— 10
- (a) the person is or will be a member of the Commission ~~appointed under (see section 9(2) of the Commerce Act 1986);~~ and
 - (b) in the opinion of the responsible Minister, the person is qualified for appointment, having regard to the functions and powers of the Commission under this Act and any other legislation. 15
- (2) For the purposes of **subsection (1)(b)**, a person is **qualified for appointment** because of that person's knowledge of, or experience in, ~~the water services industry or any other industry, commerce, economics, law, accountancy, public administration, or consumer affairs.~~ 20
- (a) the water services industry; or
 - (b) any other industry, commerce, economics, law, accountancy, public administration, or consumer affairs, or te Tiriti o Waitangi/the Treaty of Waitangi and its principles, and perspectives of Māori and tikanga Māori. 25

Compare: 2001 No 103 s 9(4), (5)

129 Further provisions relating to Water Services Commissioner

- (1) A person may only be removed from office as the Water Services Commissioner for just cause (within the meaning of section 40 of the Crown Entities Act 2004).
- (2) If a person is removed under **subsection (1)**, they are also removed from office as a member of the Commission as if they had been removed under section 13(1) of the Commerce Act 1986 (including the notice requirements under section 39 of the Crown Entities Act 2004). 30
- (3) If a person's term of office as the Water Services Commissioner expires or the person resigns from that office, the person ~~may continue to act (and must be treated) as if they were the Water Services Commissioner for the purpose of completing the determination of any matter before that person, as the Water Services Commissioner, that commenced before the term of office expired or before the resignation took effect (as the case may be).~~ 35

- (a) may continue to act as if they were the Water Services Commissioner for the purpose of completing the determination of any matter before that person, as the Water Services Commissioner, that commenced before the term of office expired or the resignation took effect; and
 - (b) must be treated as if they were the Water Services Commissioner for that purpose. 5
- (4) In other respects, the following provisions of the Crown Entities Act 2004 apply in relation to a Water Services Commissioner with all necessary modifications:
 - (a) section 34 (validity of members' acts): 10
 - (b) section 35 (validity of appointments):
 - (c) clause 2 of Schedule 5 (term of appointment):
 - (d) clause 3 of Schedule 5 (resignation):
 - (e) clause 4(2) and (3) of Schedule 5 (removal).

Compare: 1986 No 5 ss 12(2), (3), 13(4) 15
- 130 Who performs or exercises functions, duties, and powers of Commission**
 - (1) The functions, duties, and powers of the Commission under this Act must be performed or exercised by—
 - (a) the Water Services Commissioner alone; or
 - (b) if the Water Services Commissioner requests and the chairperson of the Commission agrees, by the Water Services Commissioner with 2 or more other members of the Commission. 20
 - (2) However, if, in the opinion of the Water Services Commissioner, the function, duty, or power is ~~to do~~ any of the following, ~~the function, duty, or power~~ it must be performed or exercised by the Water Services Commissioner with 2 or more other members of the Commission: 25
 - (a) ~~make~~ making every determination in respect of information disclosure regulation, quality regulation, and price-quality regulation under ~~section 45~~ **Part 2**: 30
 - (b) ~~make every~~ making a determination in respect of input methodologies under ~~section 25, 28, 30, or 34~~ **Part 2**: 30
 - (c) ~~make~~ making a recommendation to the Minister under ~~section 47, 48, or 49~~ **subpart 2A** of this Part:
 - (d) ~~make~~ making the service quality code under **section 69** ~~or amending it under~~ **section 72**: 35
 - (e) approving each development code prepared under sections 293A to 294C and 295 of the Water Services Entities Act 2022 and any amendments to such a code.

- (3) The quorum requirement in section 15(4) of the Commerce Act 1986 does not apply if the Water Services Commissioner is performing their functions alone under this section.

Compare: 2001 No 103 s 10(1)(a), (c)

~~131 Further provisions relating to when Water Services Commissioner acts alone~~ 5

- (1) ~~This section applies if, under **section 130**, the Water Services Commissioner is performing or exercising a function, duty, or power alone.~~

- (2) ~~The Water Services Commissioner has the authority, in the Commission's name, to perform or exercise that function, duty, or power.~~ 10

Compare: 2001 No 103 s 10(4)

132 Further provisions relating to when Water Services Commissioner acts with 2 or more other members

- (1) This section applies if, under **section 130**, the Water Services Commissioner is performing or exercising a function, duty, or power with 2 or more other members of the Commission. 15

- (2) The chairperson of the Commission must determine which other members must perform or exercise that function, duty, or power with the Water Services Commissioner.

- (3) ~~When acting with the Water Services Commissioner, those other members have the authority, in the Commission's name, to perform or exercise the function, duty, or power.~~ 20

- (4) ~~**Subsection (3)** is an exception to section 25(1) of the Crown Entities Act 2004.~~

- (5) ~~Clauses 6 to 13 of Schedule 5 of the Crown Entities Act 2004 (with all necessary modifications) govern the proceedings of the Water Services Commissioner acting with those other members, except that —~~ 25

(a) ~~the chairperson is the Water Services Commissioner; and~~

(b) ~~the quorum for a meeting is the same as in section 16 of the Commerce Act 1986.~~ 30

- (3) In addition to their general vote, the Water Services Commissioner has, in the case of an equality of votes, a casting vote (and clause 12(2) of Schedule 5 of the Crown Entities Act 2004 does not apply).

Compare: 2001 No 103 s 10(1)(ab), (3); 2004 No 115 Schedule 5 cl 12(2)

~~133 Accountability for collective duties~~ 35

- (1) ~~This section applies in relation to the performance or exercise of functions, duties, and powers, under **section 130**, by the Water Services Commissioner alone or the Water Services Commissioner with 2 or more other members of the Commission (as the case may be).~~

~~(2) In relation to those functions, duties, and powers, only the Water Services Commissioner alone or the Water Services Commissioner acting with those other members (as the case may be) must comply with the collective duties under sections 49 and 50 of the Crown Entities Act 2004.~~

~~(3) This section applies despite section 26(a) of the Crown Entities Act 2004.~~

5

134 Alternate member to act instead of Water Services Commissioner in certain circumstances

(1) This section applies if—

(a) there is no Water Services Commissioner; or

(b) the Water Services Commissioner is for any reason unable to perform or exercise a function, duty, or power that they would otherwise have performed or exercised under this Act.

10

(2) That function, duty, or power must be performed or exercised by a member of the Commission who is appointed by the chairperson of the Commission for that purpose.

15

(3) Every reference in this Act to the Water Services Commissioner must, unless the context otherwise requires, be read as a reference to that member.

Compare: 2001 No 103 s 10(2)

~~135 Ability to delegate~~

~~(1) A function, duty, or power that, under **section 130(2)**, the Water Services Commissioner must perform with 2 or more other members of the Commission is not capable of delegation.~~

20

~~(2) In the case of any other function, duty, or power of the Commission under this Act, the Water Services Commissioner's consent must be obtained before a delegation, under section 73 of the Crown Entities Act 2004, is made of that function, duty, or power.~~

25

~~(3) **Subsection (2)** applies despite section 73 of the Crown Entities Act 2004.~~

~~Compare: 2001 No 103 s 17~~

135 Ability to delegate

(1) The consent of both the Water Services Commissioner and the chairperson of the Commission must be obtained before a delegation, under section 73 of the Crown Entities Act 2004, is made of any function, duty, or power that, under **section 130(2)** of this Act, the Water Services Commissioner must perform or exercise with 2 or more other members of the Commission.

30

(2) The consent of the Water Services Commissioner must be obtained before a delegation, under section 73 of the Crown Entities Act 2004, is made of any other function, duty, or power of the Water Services Commissioner under this Act.

35

Subpart 2—Application of Commerce Act 1986

136 Application of Part 6 of Commerce Act 1986 (enforcement, remedies, and appeals)

The following provisions of the Commerce Act 1986 apply with any necessary modifications:

5

- (a) section 74A (Commission may accept undertakings):
- (b) section 74B (matters included in undertakings):
- (c) section 74C (enforcement of undertakings):
- (d) section 77 (additional members of High Court for purposes of appellate jurisdiction in respect of Commission determinations): 10
- ~~(e) section 78 (lay members of High Court in certain cases):~~
- (f) section 79 (evidence not otherwise admissible):
- (g) section 90 (conduct by employees, agents, and others):
- (h) sections 91 to 97 (appeals against determinations of Commission).

137 Application of Part 7 of Commerce Act 1986 (miscellaneous provisions) 15

- (1) The following provisions of the Commerce Act 1986 apply with any necessary modifications:

Powers relating to evidence

- (a) section 98 (Commission may require person to supply information or documents or give evidence): 20
- (b) section 98A (power to search) as if the reference to regulation under Part 4 of the Commerce Act 1986 were a reference to secondary legislation made under this Act:
- (c) section 98G (Commission may exercise powers notwithstanding other proceedings): 25
- (d) section 99 (powers of Commission to take evidence):

Assistance to overseas regulators

- (e) sections 99B to 99P (assistance to overseas regulators), as if—
 - (i) references to an overseas regulator were references to an overseas body that has functions in relation to a water services industry corresponding to those of the Commission under this Act; and 30
 - (ii) references to competition law were references to a water services industry:

Offence, regulations, and administrative provisions

- (f) section 100 (powers of Commission to prohibit disclosure of information, documents, and evidence): 35

Part 5 cl 138		Water Services Economic Efficiency and Consumer Protection Bill
	(g)	section 100A (commission may state case for opinion of High Court):
	(h)	section 101 (notices):
	(i)	section 102 (service of notices):
	(j)	section 103 (offences) as if the reference to section 53ZD were a reference to section 138 of this Act:
	(k)	section 104 (determinations of Commission):
	(l)	section 106 (proceedings privileged):
	(m)	section 106A (judicial notice):
	(n)	section 109 (Commission may prescribe forms).
(2)		For the purposes of subsection (1)(j) , the necessary modifications include (without limitation) treating a notice under any of sections 31A, 33(1)(c), 38(2), 41(2), 81A, and 138 of this Act as a notice referred to in section 103(1)(a) of the Commerce Act 1986.
138		Additional monitoring and investigation powers based on subpart 8 of Part 4 of Commerce Act 1986
(1)		For the purpose of carrying out its functions and exercising its powers under Parts 2 and 3 of this Act, the Commission may, in addition to exercising its powers under this Act and section 98 of the Commerce Act 1986, do any of the following:
	(a)	consult any person the Commissioner <u>Commission</u> considers may assist it:
	(b)	investigate any of the following:
	(i)	how effectively and efficiently a regulated water services provider is supplying water infrastructure services:
	(ii)	how any standard or direction being considered by the Commission may be applied, or how any standard or direction has been applied, in considering standards or directions:
	(iii)	how any formula, methodology, <u>quality path</u> , or price-quality path being considered by the Commissioner <u>Commission</u> may be applied, or how any formula, methodology, <u>quality path</u> , or price-quality provision path determined or authorised by the Commissioner has been applied, in considering proposed prices or quality standards <u>or incentives for a regulated water services provider to maintain or improve its quality of supply or performance requirements</u> :
	(iv)	how any conditions relating to the quality of the water infrastructure services may be, or are being, fulfilled:

- (c) examine, consider, or investigate any activity, cost, revenue, transfer, asset valuation, circumstance, or event that is occurring or that has occurred during the previous 7 years:
- (d) by notice in writing, require any person—
 - (i) to prepare and produce forecasts, forward plans, or other information; and
 - (ii) to apply any methodology specified by the Commission in the preparation of forecasts, forward plans, or other information:
- (e) by notice in writing, require any person that the Commission has reason to believe may have information or documents relevant to an investigation, audit, or inquiry to do either or both of the following:
 - (i) produce or supply to the Commission documents and information in relation to water infrastructure services or the prices or operations of the person in respect of water infrastructure services:
 - (ii) answer any questions about any matter that the Commission has reason to believe may be relevant to the investigation, audit, or inquiry:
- (f) by notice in writing, require any person, at the time and place specified in the notice, to produce or supply to the Commission an expert opinion from an appropriately qualified person, or a member of a class of appropriately qualified persons, as determined by the Commission, in relation to the matters in **paragraphs (b), (c), and (d)(i) (d) and (e)(i).**
- (2) In this section, a **direction** means a direction given under **section 52** or any action, recommendation, or other thing that the Commission may take, make, or do under **subpart 2 or 3 of Part 3.**

Compare: 1986 No 5 s 53ZD; 2022 No 21 s 37

139 Powers of Commission under this Part

For the purposes of carrying out its functions and exercising its powers under this ~~Part~~ Act and the Commerce Act 1986, the Commission may, in addition to exercising its powers under this Act and section 98 of the Commerce Act 1986, use any information previously disclosed to the Commission under this Act or the Commerce Act 1986.

Subpart 2A—Reviews

Process

139A How review triggered 35

- (1) The Commission—
 - (a) must carry out a review under this subpart if required to do so by the Minister; and

- (b) may carry out a review under this subpart on its own initiative.
- (2) Any requirement by the Minister must—
 - (a) be in writing; and
 - (b) specify the date by which the Commission must make a recommendation to the Minister.

5

139B Process requirements for Commission

- (1) At the start of a review, the Commission must give public notice of the review that—
 - (a) outlines the process that will be followed; and
 - (b) sets out the proposed time frames.
- (2) The Commission must make 1 or more recommendations to the Minister after carrying out a review.
- (3) Before making a recommendation to the Minister, the Commission must consult interested persons about each proposed recommendation (including the Commission's reasons for proposing to make the recommendation).
- (4) For the purposes of a review carried out under **section 139L or 139N** (which provide for reviews relating to **Part 3**), the reference in **subsection (3)** to **interested persons** includes Taumata Arowai.
- (5) The Commission must make a recommendation publicly available as soon as practicable after making it, along with a statement of its reasons for making the recommendation.
- (6) To avoid doubt, a recommendation made by the Commission is not a determination of the Commission.
- (7) In carrying out a review and making a recommendation under this subpart, the Commission may, without limitation, describe—
 - (a) a water services entity, regulated water services provider, or drinking water supplier under review with reference to any 1 or more of the following:
 - (i) the geographic area in which the entity, provider, or supplier provides water infrastructure services or drinking water;
 - (ii) the consumers of the water infrastructure services or drinking water provided by the entity, provider, or supplier;
 - (iii) any other matter it considers appropriate; and
 - (b) any service provided by a water services entity, regulated water services provider, or drinking water supplier under review with reference to any 1 or more of the following:
 - (i) the geographic area in which the service is supplied;
 - (ii) the consumers of the service;

10

15

20

25

30

35

- (iii) any other circumstances in which the service is supplied.

139C Minister's decision

The Minister may, on receiving a recommendation from the Commission, do any 1 or more of the following:

- (a) accept the Commission's recommendation (in whole or in part): 5
(b) reject the Commission's recommendation (in whole or in part):
(c) request that the Commission reconsider any matter (such as an error, an oversight, or competing policy interests):
(d) make any other decision that the Minister considers promotes the purpose of the relevant Part of this Act. 10

*Reviews relating to **Part 2***

139D Additional regulation reviews

- (1) In carrying out a review under this section, the Commission must consider the following:
- (a) whether the purpose of **Part 2** would be better met— 15
(i) if 1 or more water services entities that are not subject to regulation under **Part 2** (**unregulated water services entities**) were subject to 1 or more types of regulation under **Part 2** in respect of 1 or more water infrastructure services; or
(ii) if 1 or more regulated water services providers were subject to additional regulation under **Part 2** in respect of 1 or more water infrastructure services; or 20
(iii) if both the scenarios in **subparagraphs (i) and (ii)** were to apply; and
(b) any other information that the Commission believes to be relevant. 25
- (2) If the Commission recommends to the Minister that 1 or more unregulated water services entities be subject to 1 or more types of regulation under **Part 2**, or that a regulated water services provider be subject to additional regulation under **Part 2** (or both), the recommendation must—
- (a) describe each unregulated water services entity or regulated water services provider that is the subject of the recommendation; and 30
(b) describe the water infrastructure services provided by the entity or provider that the Commission considers should be regulated under **Part 2**; and
(c) specify the 1 or more types of regulation that the Commission considers the entity or provider should be subject to under **Part 2** and when the relevant **section 15** determinations should apply; and 35

- (d) specify when input methodologies should apply for the entity or provider.

139E Outcome of additional regulation review

- (1) Following a review carried out under **section 139D**, the actions that the Minister may take include any 1 or more of the following: 5
- (a) directing the Commission to—
- (i) make a new **section 15** determination, or amend any existing **section 15** determination, in order to impose additional regulation under **Part 2** on 1 or more regulated water services providers in respect of 1 or more water infrastructure services; and 10
- (ii) determine new input methodologies, or amend any existing input methodologies, that are required as a result; and
- (iii) take any other action that the Minister considers to be necessary or desirable in the circumstances in order to give effect to the Minister's decision: 15
- (b) making a recommendation to the Governor-General that a designation order be made under **section 54** declaring a water services entity (other than a statutory water services entity) to be designated for the purposes of **Part 2** (see **section 56** in relation to the content of a designation order): 20
- (c) making a recommendation to the Governor-General that a designation order made under **section 54** be amended in order to impose additional regulation under **Part 2** on 1 or more regulated water services providers in respect of 1 or more water infrastructure services (see **section 56** in relation to the content of a designation order): 25
- (d) either of the actions referred to in **section 139G(1)(a) and (b)**.
- (2) The Minister must not direct the Commission to take any action that would result in a statutory water services entity no longer being subject to information disclosure regulation under **Part 2**.
- (3) The Minister may take 1 or more of the actions referred to in **subsection (1)** only if— 30
- (a) the Minister has received and considered a recommendation from the Commission following a review carried out under **section 139D or 139F**; and
- (b) the Minister is satisfied that the purpose of **Part 2** would be better met if the action were taken. 35
- (4) If the Minister makes a direction under **subsection (1)(a)**, the Commission must comply with it.
- (5) Sections 114 to 115A of the Crown Entities Act 2004 do not apply in relation to a direction made under **subsection (1)(a)**. 40

139F Deregulation reviews

- (1) In carrying out a review under this section, the Commission must consider—
- (a) whether the purpose of **Part 2** would be better met if 1 or more regulated water services providers were no longer subject to 1 or more types of regulation under **Part 2** in respect of 1 or more water infrastructure services; and 5
 - (b) any other information that the Commission believes to be relevant.
- (2) However, the Commission must not, as part of a review carried out under this section, consider whether a statutory water services entity should no longer be subject to information disclosure regulation under **Part 2** or make any recommendation to that effect. 10
- (3) The Commission must, before the start of each regulatory period (except the first 2 regulatory periods), consider whether there are reasonable grounds to carry out a review under this section.

139G Outcome of deregulation review 15

- (1) Following a review carried out under **section 139F**, the actions that the Minister may take include any 1 or more of the following:
- (a) directing the Commission to—
 - (i) make a new **section 15** determination, or amend or revoke any existing **section 15** determination, in order to exclude 1 or more regulated water services providers or 1 or more water infrastructure services from 1 or more types of regulation under **Part 2**; and 20
 - (ii) determine new input methodologies, or amend any existing input methodologies, that are required as a result; and
 - (iii) take any other action that the Minister considers to be necessary or desirable in the circumstances in order to give effect to the Minister's decision: 25
 - (b) making a recommendation to the Governor-General that a designation order made under **section 54** be amended or revoked to exclude 1 or more regulated water services providers or 1 or more water infrastructure services from 1 or more types of regulation under **Part 2** (see **section 58**): 30
 - (c) any of the actions referred to in **section 139E(1)(a), (b) and (c)**.
- (2) The Minister must not direct the Commission to take any action that would result in a statutory water services entity no longer being subject to information disclosure regulation under **Part 2**. 35
- (3) The Minister may take 1 or more of the actions referred to in **subsection (1)** only if—

- (a) the Minister has received and considered a recommendation from the Commission following a review carried out under **section 139D or 139F**; and
 - (b) the Minister is satisfied that the purpose of **Part 2** would be better met if the action were taken.
 - (4) If the Minister makes a direction under **subclause (1)(a)**, the Commission must comply with it.
 - (5) Sections 114 to 115A of the Crown Entities Act 2004 do not apply in relation to a direction made under **subsection (1)(a)**.
- 139H Review in relation to early price-quality regulation**
- (1) In carrying out a review under this section, the Commission must consider—
 - (a) whether the purpose of **Part 2** would be better met if the regulated water services provider that serves the Auckland and Northland areas were subject to price-quality regulation from the start of the first regulatory period; and
 - (b) any other information that the Commission believes to be relevant.
 - (2) If the Minister requires the Commission to carry out a review under this section, the Minister must do so no later than 2 years before the start of the first regulatory period.
 - (3) If the Commission carries out a review under this section, the Commission must complete the review and make a recommendation to the Minister no later than 1 year before the start of the first regulatory period.
- 139I Outcome of review in relation to early price-quality regulation**

In relation to the outcome of a review carried out under **section 139H**, see **sections 22(1)(c) and 23(2)**, which relate to the ability to bring forward the date by which the Commission must make an initial **section 15** determination in relation to price-quality regulation.
- 139J Review in relation to late price-quality regulation**
 - (1) In carrying out a review under this section, the Commission must consider—
 - (a) whether the purpose of **Part 2** would be better met if 1 or more regulated water services providers were not subject to price-quality regulation from the start of the second regulatory period; and
 - (b) any other information that the Commission believes to be relevant.
 - (2) If the Minister requires the Commission to carry out a review under this section, the Minister must do so no later than 2 years before the start of the second regulatory period.

- (3) If the Commission carries out a review under this section, the Commission must complete the review and make a recommendation to the Minister no later than 1 year before the start of the second regulatory period.

139K Outcome of review in relation to late price-quality regulation

In relation to the outcome of a review carried out under **section 139J**, see **sections 22(1)(a) and (b) and 23(1)**, which relate to the ability to defer certain dates, including in relation to price-quality regulation.

*Reviews relating to **Part 3***

139L Additional regulation reviews

- (1) In carrying out a review under this section, the Commission must consider— 10
- (a) whether the purpose of **Part 3** would be better met—
- (i) if 1 or more water services entities that are not subject to any provisions or requirements of **Part 3** (unregulated water services entities) were subject to 1 or more provisions or requirements of **Part 3** in respect of 1 or more water infrastructure services; or 15
- (ii) if 1 or more regulated water services providers were subject to additional provisions or requirements of **Part 3** in respect of 1 or more water infrastructure services; or
- (iii) if both the scenarios in **subparagraphs (i) and (ii)** were to apply; and 20
- (b) in relation to the matters in **paragraph (a)**, the following:
- (i) the number of consumers served by each water services entity under review;
- (ii) the service quality provided to consumers by each water services entity under review; 25
- (iii) the extent to which designating the water services entity or applying additional requirements or provisions to an entity that is a regulated water services provider is likely to lead to an improvement in the service quality provided to consumers by the water services entity; and 30
- (c) any other matter the Commission considers to be relevant.
- (2) If the Commission recommends to the Minister that 1 or more water services entities should be subject to all or any provisions or requirements of **Part 3**, the recommendation must include the information specified in **section 66(a) to (e)** in respect of each water services entity that is the subject of the recommendation. 35

139M Outcome of additional regulation review

- (1) Following a review under **section 139L**, the actions that the Minister may take include any 1 or more of the following:

 - (a) making a recommendation to the Governor-General that a designation order be made under **section 62** declaring a water services entity (other than a statutory water services entity) to be designated for the purposes of **Part 3** (see **section 66** in relation to the content of a designation order): 5
 - (b) making a recommendation to the Governor-General that a designation order made under **section 62** be amended in order to impose additional provisions or requirements of **Part 3** on 1 or more regulated water services providers in respect of 1 or more water infrastructure services (see **section 66** in relation to the content of a designation order): 10
 - (c) the actions referred to in **section 139O**.
- (2) The Minister may not take any action that would result in— 15

 - (a) a statutory water services entity no longer being subject to any provision or requirement of **Part 3**; or
 - (b) a drinking water supplier no longer being subject to the requirements of **subpart 3 of Part 3** (relating to the consumer complaints process and the consumer dispute resolution service). 20
- (3) The Minister may take 1 or more of the actions referred to in **subsection (1)** only if—

 - (a) the Minister has received and considered a recommendation from the Commission following a review carried out under **section 139L or 139N**; and 25
 - (b) the Minister is satisfied that the purpose of **Part 3** would be better met if the action were taken.

139N Deregulation reviews

- (1) In carrying out a review under this section, the Commission must consider the following: 30

 - (a) whether the purpose of **Part 3** would be better met if 1 or more regulated water services providers designated under **section 62** were no longer subject to all or any provisions or requirements of **Part 3** in respect of 1 or more water infrastructure services; and
 - (b) any other information the Commission considers to be relevant. 35
- (2) The Commission must not, as part of a review carried out under this section, consider whether—

- (a) a statutory water services entity should no longer be subject to any provision or requirement of **Part 3** or make any recommendation to that effect; or
- (b) a drinking water supplier should no longer subject to the requirements of **subpart 3 of Part 3** (relating to the consumer complaints process and the consumer dispute resolution service) or make any recommendation to that effect. 5
- (3) If the Commission recommends to the Minister that 1 or more regulated water services providers should no longer be subject to any specified provision or requirement of **Part 3** in respect of 1 or more water infrastructure services, the recommendation must— 10
 - (a) describe each regulated water services provider that is the subject of the recommendation; and
 - (b) describe each water infrastructure service provided by the provider that is the subject of the recommendation; and 15
 - (c) specify the provisions or requirements of **Part 3** that are the subject of the recommendation.

139O Outcome of deregulation review

- (1) Following a review carried out under **section 139N**, the actions that the Minister may take include 1 or more of the following: 20
 - (a) recommending to the Governor-General that a designation order made under **section 62** be amended or revoked in order to exclude 1 or more regulated water services providers from any or all of the provisions or requirements of **Part 3** (see **section 68**):
 - (b) the actions referred to in **section 139M(1)(a) and (b)**. 25
- (2) The Minister may not take any action that would result in—
 - (a) a statutory water services entity no longer being subject to any provision or requirement of **Part 3**; or
 - (b) a drinking water supplier no longer being subject to the requirements of **subpart 3 of Part 3** (relating to the consumer complaints process and the consumer dispute resolution service). 30
- (3) The Minister may take 1 or more of the actions referred to in **subsection (1)** only if—
 - (a) the Minister has received and considered a recommendation from the Commission following a review carried out under **section 139L or 139N**; and 35
 - (b) the Minister is satisfied that the purpose of **Part 3** would be better met if the action were taken.

Subpart 3—Other provisions

140 Regulations

- (1) The Governor-General may, by Order in Council, made on the recommendation of the Minister, make regulations for all or any of the following purposes:
 - (a) providing for anything this Act says may or must be provided for by regulations: 5
 - (b) prescribing infringement offences by—
 - (i) prescribing a duty, restriction, or prohibition for conduct that is similar to conduct, or similar to an element of conduct, for which there is a duty, restriction, or prohibition under any provision of this Act or regulations; and 10
 - (ii) providing that a contravention of the prescribed duty, restriction, or prohibition is an infringement offence:
 - (c) prescribing for those infringement offences—
 - (i) fines not exceeding— 15
 - (A) \$2,000, for an individual:
 - (B) \$6,000, in any other case:
 - (ii) infringement fees not exceeding—
 - (A) \$1,000, for an individual:
 - (B) \$3,000, in any other case: 20
 - (ca) providing for the payment of fees by regulated water services providers and drinking water suppliers for dispute resolution under the consumer dispute resolution service:
 - (d) providing for anything incidental that is necessary for carrying out, or giving full effect to, this Act. 25
- (2) Regulations made under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

141 Regulations relating to levy

- (1) Every regulated water services provider must pay to the Crown, or a prescribed person on behalf of the Crown, a levy prescribed by regulations. 30
- (2) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations ~~providing for the levy.~~
 - (a) specifying the amount of levies, or method of calculating or ascertaining the amount of levies, on the basis that the following costs should be met fully out of the levy: 35
 - (i) the estimated costs for an appropriation period of performing the Commission's functions, powers, and duties under this Act, the

- Water Services Entities Act 2022, and any other water services legislation:
- (ii) the estimated costs incurred by the Water Services Consumer Agency in performing its function under this Act:
 - (iii) the costs of collecting the levy money; and 5
 - (b) including in levies, or providing for the inclusion in levies, any shortfall in recovering those actual costs; and
 - (c) refunding, or providing for refunds of, any over-recovery of those actual costs; and
 - (d) providing different levies for different classes of regulated water services provider or drinking water supplier; and 10
 - (e) specifying the appropriation period or part appropriation period to which those levies apply, and applying to that appropriation period or part appropriation period and each subsequent appropriation period until revoked or replaced; and 15
 - (f) providing for the payment and collection of those levies; and
 - (g) for the first appropriation period to which the levy applies to a regulated water services provider or class of providers, including in the levy amount or method costs incurred by the Commission in connection with preparing itself to perform, and performing, its functions, powers, and duties under this Act, irrespective of the fact— 20
 - (i) that the regulations are made and come into effect after that period; or
 - (ii) that the goods or services become regulated after the costs were incurred (for example, costs incurred by the Commission in preparing input methodologies); and 25
 - (h) requiring payment of a levy for an appropriation period or a part of an appropriation period, irrespective of the fact that the regulations may be made after that appropriation period or part has commenced; and
 - (i) exempting or providing for exemptions from, and providing for waivers of, the whole or any part of the levy for any case or class of cases. 30
- (3) ~~The levy must be prescribed on the basis that the following costs should be met fully out of the levy:~~
- (a) ~~a portion of the costs of the Commission in performing or exercising its functions, powers, and duties under this Act and any other enactment, where the size of the portion to be met by the levy under this Act is determined by the Minister; and~~ 35
 - (b) ~~the costs of collecting the levy money.~~

- (4) ~~The levy may be prescribed on the basis that any actual cost that could have been, but has not been, recovered as a levy shortfall for a year may be recovered (along with any financing charge) over any period of up to 5 years.~~
- (5) ~~The regulations may—~~
- (a) ~~specify the amount of the levy, or method of calculating or ascertaining the amount of the levy:~~ 5
 - (b) ~~include in the levy, or provide for the inclusion in the levy, any shortfall in recovering the actual costs:~~
 - (c) ~~refund, or provide for refunds of, any over recovery of the actual costs:~~
 - (d) ~~provide for the payment and collection of the levy:~~ 10
 - (e) ~~provide different levies for different classes of regulated water services providers:~~
 - (f) ~~specify the financial year or part financial year to which a levy applies, and apply that levy to that financial year or part financial year and each subsequent financial year until the levy is revoked or replaced:~~ 15
 - (g) ~~require payment of a levy for a financial year or part financial year, irrespective of the fact—~~
 - (i) ~~that the regulations may be made after that financial year has commenced; and~~
 - (ii) ~~that the services become regulated after the costs were incurred (for example, costs incurred by the Commission in preparing input methodologies):~~ 20
 - (h) ~~provide for waivers or refunds of the whole or any part of a levy for any case or class of cases.~~
- (6) ~~The amount of any unpaid levy is recoverable in any court of competent jurisdiction as a debt due to the Commission, or to any other person prescribed for the purposes of this subsection, on behalf of the Crown.~~ 25
- (7) ~~The Commission, or any other person prescribed for the purposes of this subsection, must ensure that—~~
- (a) ~~each levy payment is paid into a Crown Bank Account and is separately accounted for; or~~ 30
 - (b) ~~by the 20th day of the month after the month in which the Commission or other person receives a levy payment, the levy payment is paid into a Crown Bank Account.~~
- (8) ~~Regulations made under this section are secondary legislation (see Part 3 of the Legislation Act 2019 for publication requirements).~~ 35
- (9) ~~If regulations made under this section authorise a person to grant waivers or refunds referred to in subsection (5)(h),—~~

- (a) ~~an instrument granting a waiver or refund is secondary legislation (see Part 3 of the Legislation Act 2019 for publication requirements), unless it applies only in a particular case; and~~
- (b) ~~the regulations must contain a statement to that effect.~~
- (3) In **subsection (2), appropriation period**, in relation to any estimated costs, means— 5
- (a) a financial year; or
- (b) if the estimated costs will be incurred under the authority of a multi-year appropriation or of a multi-year appropriation proposed in any Estimates, the financial years to which the multi-year appropriation applies. 10
- (4) In **subsection (3),—**
Estimates—
- (a) has the meaning given in section 2(1) of the Public Finance Act 1989; and
- (b) includes Supplementary Estimates as defined in section 2(1) of that Act 15
multi-year appropriation means an appropriation authorised to apply for more than 1 financial year (see section 10 of the Public Finance Act 1989).
- (5) The amount of any unpaid levy is recoverable in any court of competent jurisdiction as a debt due to the Crown.
- (6) The Minister must consult regulated water services providers, or representatives of those providers, before making a recommendation for the purposes of **subsection (2).** 20
- (7) Regulations made under this section are secondary legislation (see Part 3 of the Legislation Act 2019 for publication requirements).
- (8) If regulations authorise a person to grant exemptions or waivers referred to in **subsection (2)(i),—** 25
- (a) an instrument granting an exemption or a waiver is secondary legislation (see Part 3 of the Legislation Act 2019 for publication requirements), unless it applies only in a particular case; and
- (b) the regulations must contain a statement to that effect. 30
- Compare: 1986 No 5 s 53ZE; 2011 No 5 s 68

142 Levy for consumer dispute resolution services

- (1) Every regulated water services provider and drinking water supplier must pay to the Minister in each financial year or part financial year (as the case may require) a prescribed levy. 35
- (2) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations providing for the levy.

- (3) The levy must be prescribed on the basis that the following costs should be met fully out of the levy:
 - (a) a portion of the costs of the service provider for the consumer disputes resolution service, where the size of the portion to be met by the levy under this Act is determined by the Minister; and 5
 - (b) the cost of collecting the levy money.
 - (4) **Section 141(4) to-(9) (7)** applies to a levy referred to in this section.
 - (5) Regulations made under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).
 - (6) If regulations made under this section authorise a person to grant waivers or refunds referred to in **section 141(5)(h)**,— 10
 - (a) an instrument granting a waiver or refund is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements), unless it applies only in a particular case; and
 - (b) the regulations must contain a statement to that effect. 15
- Compare: 2001 No 103 s 155ZN(2), (4)

143 Recovery of fees and other money

- (1) All fees and other money payable to the Crown under this Act or the regulations, or under any permit granted under this Act, is recoverable as money due to the Crown and, without limiting any other method of recovery, may be recovered in any court of competent jurisdiction as a debt due to the Crown. 20
- (2) All fees payable under this Act or the regulations must be paid into a Departmental Bank Account, and all other money payable to the Crown under this Act, or the regulations, or under any permit granted under this Act, must be paid into a Crown Bank Account. 25
- (3) To avoid doubt, any interest payable on fees must be paid into a Crown Bank Account.

144 Commission to have regard to economic policies of Government

- (1) In the exercise of its powers under this Act, the Commission must have regard to any economic policies of the Government that the Minister gives to the Commission in a written statement. 30
- (2) The Minister must, as soon as practicable after giving a statement of economic policy of the Government to the Commission,—
 - (a) arrange for a copy of the statement to be published in the *Gazette*; and
 - (b) present a copy of the statement to the House of Representatives. 35
- (3) The statement of economic policy of the Government is not a direction for the purposes of Part 3 of the Crown Entities Act 2004.

Compare: 1986 No 5 s 26

~~145~~ Material may be incorporated by reference

~~(1) Schedule 5 of the Commerce Act 1986 applies if the Commission wishes to incorporate material by reference in any of the following documents:~~

~~(a) a **section 15** determination;~~

~~(b) an input methodology.~~

5

~~(2) Schedule 5 of that Act applies—~~

~~(a) as if every reference in that schedule to a Part 4 determination were a reference to a **section 15** determination or an input methodology, as the case requires; and~~

~~(b) with any other necessary modifications.~~

10

~~Compare: 1986 No 5 s 53ZF~~

145 Material incorporated by reference

(1) This section applies for the purposes of section 66(2)(b) of the Legislation Act 2019.

(2) If material incorporated by reference in secondary legislation made under this Act is amended or replaced by the originator of the material after the secondary legislation is made, legal effect may be given to that amendment or replacement material if—

15

(a) the amendment or replacement material is of the same general character as the original material; and

20

(b) the maker of the secondary legislation issues a notice to adopt the amendment or replacement material as having legal effect as part of the secondary legislation.

(3) If material incorporated by reference in secondary legislation made under this Act expires, is revoked, or otherwise ceases to have effect, the material ceases to have legal effect as part of the secondary legislation if the maker of the secondary legislation issues a notice stating that the material ceases to have that legal effect.

25

(4) A notice issued under **subsection (2)(b) or (3)** must be published in the *Gazette* and publicised by the maker of the secondary legislation.

30

(5) This section does not limit section 66(2)(a) of the Legislation Act 2019.

(6) In this section, **material** has the meaning given in section 63 of the Legislation Act 2019.

145A Minister may establish Water Services Consumers Agency

(1) The Minister may establish a Water Services Consumers Agency by approving 1 or more persons to perform the function of the agency.

35

(2) The Minister may approve 1 or more persons to perform the function of the agency, and each person approved may perform all or any part of that function.

- (3) In **subsection (2)**, **person** includes any instrument of the Crown (for example, a public service agency, as that term is defined in section 5 of the Public Service Act 2020).
- (4) In approving a person or persons under **subsection (2)**, the Minister must be satisfied that the person has (or the persons collectively have) the ability to perform the function of the agency. 5
- (5) The agency may determine its own procedure, subject to any directions given to it by the Minister.

145B Function of Water Services Consumers Agency

- (1) The function of the Water Services Consumers Agency is to represent and advocate for the interests of consumers in the water services industry. 10
- (2) The agency may carry out its function by, for example,—
- (a) promoting the interests of consumers to relevant public service agencies and Crown entities; and
 - (b) providing evidence-based advocacy on behalf of consumers, whether in response to policy proposals or on its own initiative. 15

Amendments to Water Services Act 2021

146 Principal Act

Sections 147 to 155 amend the Water Services Act 2021.

- 147 ~~Part 2, subpart 4 heading~~ Subpart 4 heading in Part 2 amended** 20
- In Part 2, in the ~~heading to subpart 4 heading~~, replace “complaints” with “information”.

148 Section 38 amended (Requirement for supplier to provide information to consumers and have complaints process)

- (1) In the heading to section 38, delete “**and have complaints process**”. 25
- (2) Repeal section 38(1)(b) and (c) and (2).

149 Sections 39 and 40 repealed

Repeal sections 39 and 40.

150 Section 57 amended (General exemptions)

~~Repeal section 57(1)(i).~~

In section 57(1)(i), delete “and have a consumer complaints process”.

151 Section 165 amended (Defence in prosecution for strict liability offence)

In section 165(1), replace the item relating to section 188 with:

188 Failure to provide consumers with prescribed information

152 Section 169 amended (Liability of volunteers)

In section 165~~9~~²(1), replace the item relating to section 188 with:

188	Failure to provide consumers with prescribed information
-----	--

153 Cross-heading above section 188 amended

In the cross-heading above section 188, replace “*complaints*” with “*information*”.

5

154 Section 188 amended (Offence involving failure to advise consumers about, provide, and report on complaint process)

(1) Replace the heading to section 188 with “**Offence involving failure to provide consumers with prescribed information**”.

(2) Repeal section 188(1)(a)(ii) and (iii) and (b).

10

155 Section 200 amended (Regulations)

Repeal section 200(1)(a)(iii), (b), and (c).

Schedule 1

Transitional, savings, and related provisions

s 9

Part 1

Provisions relating to this Act as enacted

5

1AAA Interpretation

In this schedule, **establishment date** has the same meaning as in clause 1 of Schedule 1 of the Water Services Entities Act 2022.

1 ~~Consultation on~~ Preparation of input methodologies

Any work done or action taken (including any consultation) by the Commission on input methodologies before ~~section 28 commences~~ either of the following dates may be taken into account as part of the work required to be done by the Commission to comply with the requirements of **section 28(1) and (2)**:

10

- (a) the date on which **section 28** commences: 15
- (b) the establishment date.

1A Preparation of section 15 determinations

- (1) Any work done or action taken (including any consultation) by the Commission on **section 15** determinations before either of the following dates may be taken into account as part of the work required to be done by the Commission to comply with the requirements of **section 19(3)**: 20

- (a) the date on which **section 19** commences:
- (b) the establishment date.

- (2) The Commission may make the initial **section 15** determination relating to information disclosure in accordance with **section 19(1)(b)** even if— 25

- (a) the initial input methodologies for information disclosure have not yet been made (see **section 18(1)**); or
- (b) the establishment date has not yet occurred.

2 Completion of complaints made under sections 38 to 40 of Water Services Act 2021 30

Any complaint made before the commencement of this clause in accordance with a complaints process operated under sections 38 to 40 of the Water Services Act 2021 must be dealt with under those provisions as if **sections 147 to 155** of this Act had not come into force.

Schedule 2

Consumer dispute resolution service

s 76

- 1 Purpose of consumer dispute resolution service and purpose of service provider** 5
- (1) The purpose of the consumer dispute resolution service is to ensure that, if a person has a dispute, arising from an unresolved complaint, with a regulated water services provider about the provision of water infrastructure services (including any breaches of rights or obligations under the service quality code) or a drinking water supplier about the supply provision of drinking water, the person has access to a dispute resolution service for resolving that dispute. 10
 - (2) To achieve ~~the~~ that purpose, a service must be established in accordance with section 76 and this schedule that—
 - (a) provides for a range of dispute resolution processes, including facilitative, evaluative, and determinative processes, so that— 15
 - (i) each dispute can be resolved through the process assessed to be the most appropriate to the particular dispute, having regard to the nature and circumstances of that dispute; and
 - (ii) if the dispute cannot be resolved by agreement between the parties, the dispute is determined by a neutral third party whose decision is legally binding on the regulated water services provider or drinking water supplier, as the case requires; and 20
 - (iii) the service combines both formality and flexibility in a manner most likely to achieve the purposes referred to in **paragraph (b)**; and 25
 - (iv) the service makes available dispute resolution processes—
 - (A) recognised under tikanga, for use where appropriate; and
 - (B) that implement te ao Māori approaches:
 - (b) provides for disputes to be assessed promptly after they are received for the purposes of— 30
 - (i) identifying the process that is the most appropriate for resolving the dispute; and
 - (ii) ensuring that the dispute is resolved within the time provided in the rules of the service, whether by agreement between the parties or determination by a neutral third party. 35
 - (3) The purpose of the service provider that operates the consumer dispute resolution service is to—**
 - (a) operate that service; and**

- (b) manage and investigate unresolved consumer complaints that it receives, including in relation to alleged breaches of the service quality code; and
 - (c) promote awareness of the service.
- (4) However, to avoid doubt, it is not the role of a service provider to investigate prices or tariffs set for the provision of water infrastructure services or the supply of drinking water. 5
- 2 **Interpretation**

In this schedule, unless the context otherwise requires, ~~approved consumer dispute resolution service or approved service~~ is the dispute resolution service approved by the Minister under ~~clause 6.~~ 10

consumer dispute resolution service or service has the same meaning as in section 61

service provider has the same meaning as in section 61.

~~Approved Service: rules and obligations~~
- 3 **Rules of ~~approved service~~** 15
 - (1) The rules of the approved service must provide for, or set out, the following:
 - (a) who may refer disputes to the service for resolution:
 - (b) how disputes may be referred to the service:
 - (c) the kinds of disputes that the service will deal with:
 - (d) when a dispute referred to the service may be investigated under the service: 20
 - (da) who, and on what terms or conditions, the service provider for the service may appoint to conduct dispute resolution on the service provider's behalf:
 - (e) that any investigation as part of a process for resolving a dispute must be undertaken in a way that is consistent with the rules of natural justice: 25
 - (f) when a neutral third party may make a determination on a dispute referred to the service:
 - (g) that a hearing for the purposes of making a determination on a dispute is to be conducted on the papers, unless the person making the determination thinks that an oral hearing is required: 30
 - (h) the procedure for conducting a hearing on the papers:
 - (i) the time within which a determination on a dispute is to be made:
 - (j) that a determination must be made in writing and include the reasons of the decision maker: 35
 - (k) that, in relation to a dispute, any information may be considered, and any inquiry may be made, that is fair and reasonable in the circumstances:

- (l) the kinds of remedial action that the service may require regulated water services providers or drinking water suppliers to take in order to resolve disputes ~~(for example, a requirement to compensate up to a certain amount stated in the rules, or to carry out reinstatement work):~~
- (m) that the service may stop investigating and resolving a dispute if any party to the dispute takes alternative court action against another party to the dispute: 5
- (n) how the service provider will promote knowledge about, and access to, the service to members and persons entitled to make a complaint.
- (2) ~~The responsible person~~ service provider for the ~~approved~~ service must publicise the rules. 10

Limits on compensation

3A Limits on compensation able to be ordered by consumer dispute resolution service

The maximum amount of compensation that a person who determines a dispute may order is \$50,000. 15

Rights to representation

3B Right to representation in relation to dispute resolution

- (1) The parties are not entitled to be represented in relation to dispute resolution proceedings unless it appears to the person conducting the dispute resolution to be proper in all the circumstances to allow representation and the person proposed to be the representative is approved by the person conducting the dispute resolution. 20
- (2) Despite **subclause (1)**, the following parties may be represented by a representative who is approved by the person conducting the dispute resolution: 25
 - (a) the Crown, if the representative is an officer or employee of the Crown:
 - (b) a corporation or an unincorporated body of persons, if the representative is an officer or employee or a member of the corporation or body or holds, directly or indirectly, at least a 50% interest in it:
 - (c) a person jointly liable or entitled with another or others, if the representative is one of the persons jointly liable or entitled or, in the case of a partnership, is an employee of those persons: 30
 - (d) a minor, or other person under a disability:
 - (e) any other person, if the person conducting the dispute resolution is satisfied that for sufficient cause that person is unable to appear in person or is unable to present their case adequately. 35
- (3) The person conducting the dispute resolution must not approve as a representative any person who is, or has been, enrolled as a barrister and solicitor, or

who, in the opinion of the persons conducting the dispute resolution, is, or has been, regularly engaged in advocacy work before tribunals, but this prohibition does not apply if—

(a) the person proposed for approval under **subsection (1) or (2)** is a person or one of the persons jointly liable or entitled with another or others; 5
or

(b) the party seeking to be represented is a company and the person proposed for approval under **subsection (1) or (2)** is the majority shareholder of the company.

(4) If the person conducting the dispute resolution approves any person under **subsection (1) or (2)**, the person conducting the dispute resolution may impose in respect of the approval any conditions that it considers necessary to ensure that any other party to the dispute resolution is not substantially disadvantaged by the approval. 10

Relationship with other proceedings 15

3C Relationship with other proceedings

(1) The referral of a dispute to the consumer dispute resolution service does not affect any right any person may have to commence or continue a proceeding in any court (a **concurrent proceeding**).

(2) However, if a concurrent proceeding is, or has been, commenced in relation to the matters that are the subject of a dispute referred to dispute resolution, the concurrent proceeding continues— 20

(a) unless the court directs that it is to be stayed while the proceeding before the dispute resolution system and any rights to apply to set aside a determination continue; or 25

(b) unless a binding decision or a settlement agreement is in force, in which case it is stayed, but only in so far as the proceedings concern the parties affected by the settlement agreement or binding decision.

~~Approved~~ Consumer Dispute Resolution Service: approval and withdrawal of approval 30

4 Application for approval

(1) The service provider of a proposed consumer dispute resolution service may apply to the Minister for approval of the proposed service as the ~~approved~~ consumer dispute resolution service.

(2) The application must include— 35

(a) the rules of the proposed service; and

- (b) any other information that the Minister, by notice in the *Gazette*, prescribes as being required to be included in an application under this clause; and
- (c) the prescribed fee (if any).
- (3) The Minister may ask an applicant to supply any further information or documentation in support of the application. 5

5 Mandatory considerations for approval

- (1) When considering an application made under **clause 4**, the Minister must have regard to the following considerations in light of the principles listed in **subclause (2)**: 10
 - (a) whether the proposed service is capable of meeting the purpose of the consumer dispute resolution service as set out in **clause 1(1)**:
 - (aa) if **section 76(1B)(a)** applies, whether the provision of an additional approved service is necessary or desirable:
 - (ab) if the Commission has recommended the establishment of an additional service under **section 76(1B)(b)**, whether the approval of an additional service is necessary or desirable: 15
 - (ac) if **section 76(1B)(c)** applies, whether continuing an approved service is desirable for transitional purposes (*see section 76*):
 - (b) whether the proposed service is capable of dealing with the wide range of disputes that persons and entities are entitled to refer to it: 20
 - (c) whether the applicant has adequate funding to enable it to operate the proposed service in accordance with ~~its purpose~~ the purpose of the applicant (if approved as the service provider) under **clause 9(2)** and the rules of the service: 25
 - (d) whether the applicant's directors and senior managers are competent to manage a dispute resolution service:
 - (e) whether the rules of the proposed service are adequate and comply with—
 - (i) the principles listed in **subclause (2)**; and 30
 - (ii) the requirements of **clause 3** (rules of ~~approved~~ service).
- (2) The principles are—
 - (a) accessibility:
 - (b) independence:
 - (c) fairness: 35
 - (d) accountability:
 - (e) efficiency:
 - (f) effectiveness.

- (3) The Minister may not approve a proposed service as the consumer dispute resolution service unless the Minister is satisfied that the rules of the service are adequate and comply with—
- (a) **clause 3**; and
 - (b) the principles specified in **subclause (2)**. 5
- 6 Minister must decide application for approval**
- (1) After considering an application made under **clause 4**, the Minister may—
- (a) approve the proposed service as the ~~approved~~ consumer dispute resolution service; or
 - (b) decline the application. 10
- (2) The Minister may decide whether to approve the proposed service or decline the application only after ~~consulting regulated water services providers~~ carrying out consultation in accordance with **section 76(2)**.
- (3) A failure to consult the persons referred to in **subclause (2)** does not affect the validity of any approval of the service. 15
- 7 Decision must be notified and publicised**
- The Minister must, as soon as practicable after deciding an application,—
- (a) notify the applicant of the decision; and
 - (b) if the decision is to approve the application, ensure that the approval is publicised. 20
- 8 Rules of ~~approved~~ service must not change without ministerial approval**
- (1) The rules of the ~~approved~~ service must not be changed unless the Minister approves the change.
- (1A) Before approving a change to the rules of the service, the Minister must consult the persons listed in **section 76(2)**. 25
- (2) If the service provider of the ~~approved~~ service notifies the Minister of a proposed rule change, the rule change is deemed to be approved by the Minister 45 working days after the date of notification, unless the Minister declines approval within that 45-day period.
- (3) Despite **subclause (2)**,— 30
- (a) the Minister may require the provider of the ~~approved~~ service to provide further information before the Minister decides whether to approve or decline the proposed rule change; and
 - (b) if the Minister requires further information to be provided, the rule change is deemed to be approved by the Minister 45 working days after the Minister receives that information, unless the Minister declines approval within the 45-day period. 35

- (4) The Minister may decline approval for a rule change only ~~on the grounds that if the Minister is not satisfied that, if the rules were changed as proposed, they would not comply with the principles listed in **clause 5(2)** or the purpose in **clause 4.**~~ the principles listed in **clause 5(2)**; or 5
- (a) the requirements in **clause 3**; or
- (c) the purpose in **clause 1**.
- (5) Despite **subclauses (1) and (1A)**, the rules of the service may be amended by the service provider without notifying the Minister or the Minister complying with **subclause (1A)**, if the service provider is satisfied that the change is minor in nature or for the purpose of correcting an error. 10
- 8A Withdrawal of approval**
- (1) The Minister may, at any time after the expiry of the notice period, withdraw the approval of the service for any or all of the following reasons:
- (a) the service is not, or is no longer, capable of meeting the purpose set out in **clause 1**: 15
- (b) there are low levels of support for the service among persons that the Minister considers are substantially affected by the scheme;
- (c) there has been a failure to comply with the rules of the service;
- (d) the service provider has not publicised the rules of the service as required by **clause 3**: 20
- (e) the service provider has not notified the Minister before changing the rules of the service as required by **clause 8**:
- (f) the service provider has not supplied the Minister with information as required by **clause 11**. 25
- (2) If the Minister withdraws the service's approval under **subclause (1)**, the withdrawal takes effect from the date on which the service provider is notified under **clause 8D**.
- (3) In addition, the Minister must withdraw the approval of the service if the provider of the service requests, in which case the withdrawal takes effect from the date on which that is 3 months after the date of the request. 30
- (4) If approval of the service (the **old service**) is withdrawn, any dispute that was referred to the old service, if not resolved before the new service begins operation, is transferred to the new service on the date the new service approved in place of the old service begins operation, unless the party that referred the dispute to the old service agrees otherwise. 35
- (5) For the purposes of this clause and **clauses 8B and 8C**, notice period means the notice period specified in the Minister's notice of intention to withdraw approval under **clause 8B**.

8B Notice of intention to withdraw approval

- (1) The Minister must notify the service provider of the Minister's intention to withdraw the consumer dispute resolution service's approval.
- (2) The Minister's notice must—
- (a) state that the Minister intends to withdraw the service's approval; and 5
 - (b) identify which of the reasons described in **clause 8A** apply; and
 - (c) state why the Minister considers that those reasons apply; and
 - (d) specify the notice period, which must be at least 3 months, during which the service provider may object, under **clause 8C**, to the intended withdrawal. 10

8C Objection to intended withdrawal of approval

- (1) During the notice period, the service provider may object (with reasons) to the intended withdrawal of approval.
- (2) The Minister must consider any objection that is received before the end of the notice period. 15

8D Notification and publication of withdrawal of approval

The Minister must, as soon as practicable after withdrawing the consumer dispute resolution service's approval,—

- (a) notify the service provider; and
- (b) ensure that the Ministry publishes notice of the withdrawal. 20

9 Commission review of consumer dispute resolution service

- (1) The Commission must review the consumer dispute resolution service at least once every 3 years.
- (2) As part of a review of the service, the Commission may, without limitation, consider the following: 25
- (a) the purpose of the service:
 - (b) the service provider and the person it engages to conduct dispute resolution on its behalf:
 - (c) the effectiveness of the service in resolving complaints by consumers against regulated water services providers and drinking water suppliers: 30
 - (d) the adequacy of the rules of the service:
 - (e) whether, in the opinion of the Commission, the rules of the service comply with the following principles:
- (i) accessibility:
 - (ii) independence: 35
 - (iii) fairness:

- (iv) accountability:
 - (v) efficiency:
 - (vi) effectiveness:
 - (f) whether any recommendations for improving the service made under **subclause (4)** have been implemented: 5
 - (g) the purpose of the service provider set out in **clause-40 1(2)**:
 - (h) the procedures that are used for receiving, investigating, and resolving complaints:
 - (i) how promptly complaints are dealt with.
 - (3) The Commission may require the following persons to provide the Commis- 10
sion with any information relevant to the matters included in **subclause (2)**:
 - (a) any person who conducts dispute resolution under the service:
 - (b) the service provider.
 - (4) After each review, the Commission must provide a report to the service pro- 15
vider on any recommendations for improving the service and when the recom-
mendations should be implemented.
 - (5) If the Commission considers that any recommendations made under **sub-
clause (4)** have not been implemented satisfactorily, the Commission must
provide a report to the Minister of—
 - (a) the recommendations for improving the service made under **subclause** 20
(4); and
 - (b) whether those recommendations have been implemented; and
 - (c) whether, in the Commission’s opinion,—
 - (i) the service fails to achieve the purpose set out in **clause 1(1)**; or
 - (ii) the service provider fails to achieve the purpose set out **clause** 25
40 1(2).
 - (6) If the Commission proposes to report, under **subclause (5)(c)**, that the ser-
vice fails to achieve the purpose set out in **clause 1(1)** or that the service pro-
vider fails to achieve the purpose set in **clause-40 1(3)**, the Commission must
give the service provider 20 working days to make submissions on a draft 30
report.
 - (7) The Commission may, when carrying out its review of the service, consult any
interested persons that the Commission considers appropriate.
- 10 Purpose of service provider**
- ~~The purpose of the service provider, in relation to the consumer dispute reso- 35
lution service, is—~~
- ~~(a) to operate the service; and~~
 - ~~(b) to administer the service quality code; and~~

-
- ~~(e) to manage consumer complaints relating to the code; and~~
 - ~~(d) to investigate disputes relating to the code; and~~
 - ~~(e) to promote awareness of the service and the code; and~~
 - ~~(f) to monitor compliance with the service and the code; and~~
 - ~~(g) to enforce the provisions of the service and the code.~~ 5
- 11 Provision of information**
- (1) The service provider of the ~~approved~~ consumer dispute resolution service must, on request by the Minister, provide information on the following:
 - (a) matters relating to any information or reports that the service provider of the ~~approved~~ service is required to provide under the rules of the service: 10
 - (b) the service's compliance with the principles listed in **clause 5(2)**.
 - (1A) The service provider of the service must, on request by the Commission provide information on the administration of the minimum service levels specified in the service quality code.
 - (2) Nothing in this clause ~~or clause 12~~ authorises a breach of the Privacy Act 2020 or any obligation of confidentiality. 15
- ~~Approved consumer dispute resolution service: rules of service and appointment of service provider~~*
- 12 Regulations setting out rules for service**
- ~~(1) The Governor General may, by Order in Council made on the recommendation of the Minister, make regulations for the operation of the approved consumer dispute resolution service.~~ 20
 - ~~(2) The regulations must—~~
 - ~~(a) set out the rules of the service, which must comply with **clause 3**; and~~
 - ~~(b) be consistent with the purpose in **clause 4**.~~ 25
 - ~~(3) Before recommending that regulations be made, the Minister must consult—~~
 - ~~(a) regulated water services providers;~~
 - ~~(b) representatives of drinking water suppliers and consumers;~~
 - ~~(c) any other persons (or their representatives) that the Minister considers are likely to be substantially affected by the recommendation.~~ 30
 - ~~(4) However, a failure to consult the persons referred to in **subclause (3)** does not affect the validity of the regulations.~~
 - ~~(5) Regulations made under this clause are secondary legislation (see Part 3 of the Legislation Act 2019 for publication requirements).~~

- ~~13 Order in Council appointing service provider of approved service~~**
- ~~(1) The Governor General may, by Order in Council made on the recommendation of the Minister, appoint a person to provide the approved service.~~
- ~~(2) The Minister may make a recommendation under this clause only if the Minister is satisfied that the person appointed as the service provider —~~ 5
- ~~(a) is a formally constituted dispute resolution body; and~~
- ~~(b) is capable of providing the service in accordance with the purpose in **clause 1** and the rules of the service.~~
- ~~(3) An order made under this clause is secondary legislation (see Part 3 of the Legislation Act 2019 for publication requirements).~~ 10

Legislative history

8 December 2022
13 December 2022

Introduction (Bill 192–1)
First reading and referral to Finance and Expenditure Committee