

Water Services Bill

Government Bill

As reported from the Health Committee

Commentary

Recommendation

The Health Committee has examined the Water Services Bill and recommends that it be passed with the amendments shown.

About the bill as introduced

The purpose of the bill is to ensure that drinking water suppliers provide safe drinking water to consumers. It seeks to do so by providing a regulatory framework for drinking water that is consistent with internationally accepted best practice. The framework includes a duty for drinking water suppliers to have a drinking water safety plan and consistently comply with legislative requirements. The bill would also provide:

- a risk management framework for source water that would enable risks to be identified, monitored, and managed
- mechanisms that would enable the regulation of drinking water to be proportionate to the scale, complexity, and risk profile of each drinking water supply
- mechanisms that would enable knowledge and expertise to be developed among suppliers of drinking water and across the water services sector
- a framework that would continuously and progressively improve the quality of water services.

The bill would repeal Part 2A of the Health Act 1956, which relates to drinking water, and replace it with a stand-alone Act. It would also amend several other Acts, including the Local Government Act 2002 and the Resource Management Act 1991. The amendments all relate to the Government's decision to comprehensively reform the regulatory system for drinking water.

Legislative scrutiny

As part of our consideration of the bill, we have examined its consistency with principles of legislative quality. We discuss later in this commentary the issues that we noticed or that were raised by the Regulations Review Committee.

We also examined clauses 7, 14, 36, and 107. These clauses relate to the meaning of “safe” in relation to drinking water, the effect and interpretation of Te Mana o te Wai, notification duties of a drinking water supplier, and the power to obtain information. After receiving advice, we are satisfied that our concerns have been addressed.

Proposed amendments

This commentary covers the main amendments we recommend to the bill as introduced.

We do not discuss minor, technical, or purely consequential amendments. We also do not discuss various changes that are based on amendments being made to other Acts by the Secondary Legislation Act 2021. That Act seeks to improve and support the law relating to the making of secondary legislation. It would apply the framework for access to, and scrutiny of, secondary legislation that was provided for in the Legislation Act 2019.

The applicable provisions of the Secondary Legislation Act and the Legislation Act are not yet in force. The Secondary Legislation Act will include amendments covering all Acts enacted before the 2020 election. We were advised that equivalent amendments need to be made to bills that are currently before the House. Accordingly, we propose comparable amendments to this bill.

Purpose of the bill

Clause 3 sets out the bill’s purpose. We recommend amending it to reflect that sub-clauses (a) to (c) specifically relate to the regulation of drinking water, whereas sub-clauses (d) and (e), as introduced, relate to water services generally.

We also recommend inserting clause 3(2)(a) to specify that an additional purpose, relating to water services generally, is to establish a framework to provide transparency about the performance of wastewater and stormwater infrastructure. We consider that this amendment would better express the objectives of the bill.

Definitions of certain terms

Definition of “source”

Clause 5 of the bill defines “source” as “the freshwater body from which water is abstracted for use in a drinking water supply”. We recommend amending this definition to recognise other sources of water, such as roof-collection for non-domestic use, and to future-proof for new technologies and practices. Our proposed amendment would make it clear that the source of a drinking water supply could include rainwater and water bodies other than freshwater sources.

Meaning of “drinking water”

Clause 6 of the bill provides a definition of “drinking water”. We do not believe that a food business that uses water as part of food preparation or manufacturing should have to comply with duplicate regulatory requirements in food safety and drinking water legislation. Accordingly, we recommend inserting clause 6(b)(ii), which would exclude water if its use is regulated under the Food Act 2014, the Animal Products Act 1999, or the Wine Act 2003.

Meaning of “domestic dwelling”

Clause 10 provides a definition of “domestic dwelling”. Clause 10(3) specifies that the terms “premises” and “residential premises” would have the meanings given in section 2(1) of the Residential Tenancies Act 1986. As introduced, the definition would include land, as well as buildings. We understand that, in the context of this definition, the term “premises” is only intended to refer to dwellings. We recommend amending clause 10 to reflect this intention.

Meaning of “drinking water supply”

Clause 9(2) would enable Taumata Arowai to declare that a person was a drinking water supplier. We understand that this provision would ensure that Taumata Arowai could give a person certainty about whether they are captured by the regulatory framework of the legislation.

We recommend amending this clause to make it clear that Taumata Arowai could also declare that a person was not a drinking water supplier.

Meaning of “point of supply”

Clause 13 provides that “point of supply” in relation to a drinking water supply would mean:

- if the supply is a reticulated network, the toby, reservoir float valve, or other final point of supply to which the consumer’s own infrastructure connects
- if the supply is from a non-reticulated supply, water carrier, community water tap, or other type of supply, the final point of the supply at which the consumer can consume, use or collect drinking water
- if the supply includes an end-point treatment device, the end-point treatment device.

We recommend several amendments to clause 13 to clarify how it would apply.

As introduced, the clause would mean that water carriers would have a statutory responsibility for the consumer’s tank and internal plumbing.¹ We recommend

¹ Clause 5 defines a “water carrier” as a “drinking water supplier that transports drinking water (other than by reticulation) for the purpose of supplying it to consumers or another drinking water supplier”.

amending clause 13 to specify that water carriers would not be responsible for a consumer's supply arrangements beyond the point of supply.

We also recommend amending clause 13 to make it clear that, where a drinking water supplier supplies a supplier, each supplier would be responsible for their own infrastructure.

End-point treatment devices

Clauses 49 and 50 of the bill would enable Taumata Arowai, the new water services regulator, to issue acceptable solutions or verification methods for drinking water for use in establishing compliance. Acceptable solutions are arrangements that would specify tailored approaches, particularly for small, rural drinking water suppliers, rather than requiring them to comply with the full regulatory regime.

We were advised that Taumata Arowai is currently developing three acceptable solutions with the aim of providing a pathway to compliance for small suppliers.² Two of these acceptable solutions involve end-point treatment devices, where a person would have to install an off-the-shelf water treatment system that is of a reasonable quality and competently operate it to comply with the acceptable solution.³

Clause 52 of the bill sets out the expectation and requirement for Taumata Arowai to publicly consult on the development of acceptable solutions. These acceptable solutions are critical for small water suppliers like holiday homes sharing a bore, marae, rural schemes, and other small water schemes. We understand that Taumata Arowai is committed to developing tailored approaches that deliver the outcome of safe drinking water and also are fit for purpose and not overly onerous on these small suppliers. We acknowledge these solutions are understandably not yet fully defined and, while some exposure drafts are already in discussion, some of us consider that this creates some uncertainty and anxiety for these small suppliers as to what their precise obligations will be. It is critical that any acceptable solution is very clear, practical, and easy to implement.

Although clause 56 would enable Taumata Arowai to exempt suppliers from certain requirements, some of us are concerned that there is no guarantee that exemptions would be granted. The risk is then that small suppliers would opt out of supplying drinking water. This would put pressure on territorial authorities, as a "last person standing", which would then be responsible for ensuring that these communities continue to have access to drinking water.

² The proposed acceptable solutions relate to rural and agricultural supplies, roof water supplies, and spring and bore supplies.

³ For example, one draft acceptable solution proposes a combination of a centralised treatment and a point-of-entry treatment for dwellings. Point-of-entry treatment involves installing an off-the-shelf cartridge filter and UV light systems to treat drinking water where it enters a building.

Definition of “end-point treatment”

Clause 5 would define “end-point treatment” as “treatment of drinking water at the final point of the supply at which the consumer can consume, use, or collect drinking water”. We note that end-point treatment devices can include systems for household water filtration and water filtration systems found beneath a kitchen sink. They can also include devices that a property owner installs as personal preference.

We recommend amending clause 5 to make it clear that the definition would only apply to an end-point treatment that was part of an acceptable solution or verification method under clause 49.

Duties relating to end-point treatment

If a drinking water supply includes end-point treatment, clause 28 provides that the drinking water supplier would be responsible for installing, maintaining, and ongoing testing of the treatment device.

We recommend amending this clause to specify that end-point treatment could only be used as part of an acceptable solution or verification method under clauses 49 and 50. We consider that this amendment is needed to provide clarity about the devices that could be used and who would be responsible for installing, maintaining, and testing them. Further, if drinking water suppliers were allowed to use end-point treatment as part of a drinking water safety plan, large suppliers could shift from centralised treatment processes. This could create risk and be a very difficult system to administer.

Duties of drinking water suppliers**Supplying safe drinking water and complying with drinking water standards**

Clause 21 provides that a drinking water supplier has a duty to supply safe drinking water. Clause 22 would require a drinking water supplier to ensure that the drinking water they supplied complied with the drinking water standards.

The clauses set out the actions that a supplier would need to take if there was a reasonable likelihood that their drinking water was, or could be, unsafe or did not comply with the standards.

Clause 21(2)(f) specifies that a drinking water supplier would need to take all practicable steps to advise affected consumers that drinking water is or may be unsafe, and how it should be treated. Clause 22(2)(f) would require the supplier to take all practicable steps to advise affected consumers that drinking water did not comply with the drinking water standards, and how it should be treated.

We recommend amending both of these clauses to require suppliers also to inform any other affected drinking water suppliers if drinking water was or could be unsafe.

We note that in some instances drinking water should not be consumed at all. Therefore, we recommend replacing the requirement in both clauses about advising consumers how water should be treated. Our proposed amendment would instead require

suppliers to advise consumers and secondary drinking water suppliers about the measures they should take to protect public health.

Providing a sufficient quantity of drinking water

Under clause 25, a drinking water supplier would need to ensure that a sufficient quantity of drinking water was provided to each point of supply to which they supplied drinking water. We recommend amending clause 25(1) to specify that this clause would not apply to water carriers. This is because water carriers would agree supply arrangements with consumers through contracts or other arrangements.

Protecting against the risk of backflow

Clause 27 sets out the obligations for a drinking water supplier to protect against the risk of a backflow.⁴ This would apply to a drinking water supply that included reticulation.

Clause 27(2)(b) provides that if there is a risk of backflow the drinking water supplier could require the owner of the premises to install, maintain, and test a backflow prevention device that incorporated a verifiable monitoring system. The system would need to comply with an acceptable solution or verification method under section 49.

We recommend amending clause 27(2)(b) by replacing the reference to “section 49” with “in accordance with any requirements imposed by the supplier”. This reflects that Taumata Arowai would be able to make compliance rules under clause 49 and would ensure that suppliers had control over backflow devices installed by building owners.

Ensuring that certain devices did not compromise fire extinguisher systems

Clause 27(3) provides that a backflow prevention device would need to operate in a way that did not compromise the operation of any automatic fire sprinkler system connected to the drinking water supply. We note that, as introduced, this clause does not apply to other fire extinguisher systems, such as hydrants. To prevent other fire extinguisher systems being compromised by backflow protection devices, we recommend amending clause 27(3) so that it would apply to all types of fire extinguisher systems.

We also recommend an equivalent amendment to clause 28(3), which is about duties relating to end-point treatment.

Drinking water safety plans

The bill would require the owner of a drinking water supply to have a drinking water safety plan that complied with legislative requirements. The owner would need to

⁴ Clause 5 defines “backflow” as “the unplanned reversal of flow of water or mixtures of water and contaminants into the water supply system”.

implement the plan and ensure that their drinking water supply operated according to the plan. They would also need to lodge a copy of the plan with Taumata Arowai.

Requirements of a drinking water safety plan

Clause 31 sets out the requirements of a drinking water safety plan. Clause 31(1)(j) specifies that a safety plan would need to provide for the use of residual disinfection in the supply unless an exemption was obtained under section 57.⁵ This clause would apply to a drinking water supply that included reticulation. The majority of us recommend amending clause 31(1)(j) to make it clear that the requirement is mandatory unless exempted.

We note that acceptable solutions may also provide an avenue for not requiring residual disinfection. We further note that the bill has been amended to enable a class exemption from residual disinfection, which may be another possible avenue for smaller suppliers.

Some of us do not consider that the use of residual disinfection should be mandatory, given comments from submitters who believe they have maintained a safe supply without it.

Reviewing drinking water safety plans and monitoring compliance

Clause 32 would require Taumata Arowai to review drinking water safety plans and monitor compliance with them. The review would be based on the scale and complexity of the drinking water supply and the risks relating to it.

A number of submitters suggested that the clause be amended to provide appropriate review requirements for small suppliers. We consider that Taumata Arowai needs discretion as a regulator to ensure that it can direct its resources appropriately. Any review or monitoring function should also be proportionate to the scale, complexity, and risk profile of supplies.

To make it clearer how clause 32 would apply, we recommend amending it to explicitly state Taumata Arowai's functions. We also recommend amending this clause to specify that Taumata Arowai would need to consider the scale, complexity, and risk profile of drinking water supplies when deciding how to carry out the functions.

Requirements for notifications and record keeping

Notifying Taumata Arowai of a notifiable risk or hazard

As introduced, clause 35 would enable Taumata Arowai, by notice in the *Gazette*, to declare notifiable risks or hazards relating to or affecting the supply of drinking water. The clause also sets out the actions required of a drinking water supplier when they become aware of a notifiable risk or hazard.

⁵ Section 57 relates to exemptions for residual disinfection.

The Regulations Review Committee noted that, unlike other empowering provisions in Part 2, the bill is unclear whether the declarations by Taumata Arowai would be disallowable instruments. It considered that the declarations have significant legislative effect so they would be disallowable under section 39 of the Legislation Act 2012.

We agree with the Regulations Review Committee and recommend inserting clause 35(4) to specify that the notice declaring notifiable risks or hazards would be classified as secondary legislation (a disallowable instrument).

We consider that clause 35 should also be amended to focus on managing or controlling risks or hazards, rather than stopping the notifiable event or rectifying the situation. This is because some matters could be outside the control of a supplier and, consequently, managing them would be a more appropriate response. We recommend amending clause 35(2)(d) accordingly.

We believe that Taumata Arowai should be required to notify the relevant medical officer of health when a notifiable event occurred. We recommend inserting clause 35(3) to reflect this.

Notification duties of drinking water supplier

Clause 36(1) sets out the notification requirements for a drinking water supplier when it plans to cease or reduce supplying water. They would have to notify Taumata Arowai and affected territorial authorities of their intention or proposal. We recommend several amendments to this clause.

As introduced, clause 36(1)(d) relates to reducing or limiting the volume of water supplied to consumers. We recommend amending this clause to clarify that it would apply to drinking water.

Clause 36(1)(b) and (d) relates to a permanent or ongoing reduction or cessation of supply. We recommend inserting clause 36(1A) to clarify how the clause interacts with clause 25, which deals with temporarily restricting or interrupting the supply of water.

We recommend inserting a requirement in clause 36(1)(b) and (d) that any affected drinking water supplier should be notified of plans to cease or reduce the supply of water.

We recommend amending clause 36(3) by inserting a 30-day notice period for notifications. Our proposed amendment would ensure that Taumata Arowai had sufficient time to maintain a water supply and that consumers were not adversely affected.

Reviewing consumer complaints

Clause 39 provides that a drinking water consumer who was unsatisfied with the outcome of a complaint to a drinking water supplier could ask Taumata Arowai to review the complaint. We recommend amending this clause to enable Taumata Arowai to appoint a third party to undertake the dispute resolution process.

Source water risk management plans

Clause 42 would require a drinking water supplier to prepare a source water risk management plan. It would be based on the scale, complexity, and risk of the drinking water supply.

We note that secondary drinking water suppliers would not have a source of drinking water within the meaning of the legislation. As a result, we recommend inserting clause 41A to provide that a source water risk management plan would not be required for suppliers that did not have a source.

Interaction between compliance rules and certain offences

Clause 48 would enable Taumata Arowai to make rules setting out requirements relating to the performance of functions or duties by drinking water suppliers and other persons.

The Regulations Review Committee noted that the compliance rules could apply to duties underpinning the offences provided for in the bill. It considered that the rules informed the content of the criminal offences in clauses 162 and 164.

The Regulations Review Committee observed that the offences in clauses 162(2) and 164(2) would carry maximum fines of \$600,000 and a term of imprisonment of five years for an individual and a maximum fine of \$3 million for a body corporate.⁶

Clause 48(5)(b) states that compliance rules are not legislative instruments. The Regulations Review Committee considered that this may be inappropriate because the rules inform the content of offences that are punishable by imprisonment. It recognised the importance of the content of criminal offences having high levels of accessibility and accountability. The Regulations Review Committee recommended that this could be achieved by amending clause 48(5) to provide that all compliance rules would be legislative instruments. Alternatively, if a compliance rule was capable of informing the content of the criminal offences in clauses 162(1) or 164(1), it should be a legislative instrument.

We also noted that proposed offences under clauses 162 to 168, 170 to 171, and 182 relate to failure to comply with duties, which are defined in other clauses in the bill. We pointed out that it is possible that the compliance rules setting out requirements relating to the performance of duties could affect the offences. We requested advice on two matters: whether the bill contained any limitations on the rules that Taumata Arowai would be empowered to make, and whether oversight was reduced because the rules were being made by Taumata Arowai, rather than by Order in Council.

We understand that other statutory regimes contain similar powers to make rules or other instruments. Clause 52 would require Taumata Arowai to consult publicly

⁶ Clause 162 would create an offence involving recklessness in supplying unsafe drinking water. Clause 164 would create an offence involving recklessness in failing to take immediate action when drinking water was unsafe.

before making compliance rules, which is consistent with other statutory regimes. Further, we were told that the power to make compliance rules is not unfettered because Taumata Arowai could only set requirements relating to the performance of functions or duties under Part 2 of the bill.

We also received advice that breaching a compliance rule would not be an offence under the legislation. Although failure to comply with a rule could be used as part of the evidential background, it would not be used on its own to determine offending. Also, the level of fines would be similar to other statutory regimes where regulatory agencies directly set the rules and instruments, rather than by Order in Council.

For the reasons above, we do not believe that compliance rules should be Orders in Council.

However, we consider that Taumata Arowai's powers should be more explicitly stated given their importance and the need for legal clarity. We therefore recommend amending clause 48 to specify that Taumata Arowai could require or prohibit a particular way of treating drinking water

Acceptable solutions and verification methods

Clause 49 would enable Taumata Arowai to issue an acceptable solution or verification method which would be used to establish compliance with legislative requirements. Clause 50 sets out the effect of complying with an acceptable solution or a verification method.

We recommend replacing references to “acceptable solutions” in clauses 49 and 50 with “drinking water acceptable solutions”. This would prevent confusion with the acceptable solutions and verification methods issued under the Building Act 2004.

We also recommend amending clauses 49 and 50 to provide the following:

- A drinking water supplier could not be treated as having complied with clause 21(1) (safe drinking water) or 22(2) (drinking water standards) merely by complying with an acceptable solution or verification method. This amendment would make it clear that a supplier would still need to meet their core responsibilities.
- A person who complied with an acceptable solution or verification method would not have to comply with clause 30 (requiring suppliers to have a drinking water safety plan). We consider that this would enable small suppliers to meet legislative requirements more simply.
- An acceptable solution could include requirements relating to the treatment of drinking water.

Consultation requirements for Taumata Arowai

As introduced, clause 52 provides that Taumata Arowai would need to ensure that adequate public consultation had been undertaken before making certain instruments. The instruments are drinking water standards, aesthetic values, compliance rules, or acceptable solutions or verification methods.

For consistency with other regimes, we recommend deleting “adequate” from clauses 52(1) and (2).

We also recommend inserting clause 51(4) to state that failing to comply with the consultation requirements would not affect the validity of the instruments once made. We understand that these types of provision are common in consultation requirements.

Drinking water supply register

Registering a drinking water supply

Clause 53 specifies the requirements for registering a drinking water supply. Under clause 53(2)(b), an application to register a drinking water supply would need to contain the location of the drinking water supply. This would need to include the location of each abstraction point for the drinking water supply.

We note that abstraction points would not apply for any drinking water suppliers that received their drinking water from another supplier. Therefore, we recommend amending clause 53(2)(b) to make it clear that a supplier who did not have a source of drinking water would not be required to specify an abstraction point.

We recommend amending clause 53(2)(d) by replacing “number of persons expected to be using the drinking water supply” to “estimated number of consumers”. Our proposed amendment would be consistent with wording used in other parts of the bill.

Registering a drinking water supplier

Clause 54 provides that Taumata Arowai would need to keep and maintain a register of drinking water suppliers which contained the information specified in section 53(2).⁷ Taumata Arowai would also need to keep and maintain a publicly available version of the register that contained certain information from section 53(2).

We note that the wording of clause 54(2), as introduced, would mean that only information specified in clause 53(2) could be on the public register. This could limit Taumata Arowai’s ability to include relevant information on the register that may be of public interest. To allow more flexibility, we recommend amending clause 54 to enable the public register to include information about a water supply that Taumata Arowai considered was in the public interest to disclose.

Exemptions to requirements for drinking water suppliers

Clause 56 would enable Taumata Arowai to exempt any drinking water supplier or class of drinking water supplier from compliance with the following requirements (relevant clause numbers are in brackets):

- supplying safe drinking water (21)

⁷ That section relates to the information that an application to register a drinking water supply must include.

- complying with drinking water standards (22)
- taking reasonable steps to provide aesthetically acceptable drinking water (24)
- providing a sufficient quantity of drinking water to consumers at each point of supply (25)
- protecting against the risk of backflow (27)
- ensuring end-point treatment (28)
- having a drinking water safety plan (30)
- keeping records (section 37)
- providing information to consumers and having a consumer complaints process (section 38).

Some submitters noted that they have provided demonstrably safe drinking water from high quality groundwater to a large number of consumers without residual disinfection, and wanted to be able to continue to do this.

We recommend amending the heading of clause 56 from “Exemptions” to “General exemptions.” This would more clearly differentiate between the exemptions given under clauses 57 (Exemption: residual disinfection) and 62 (Exemption during drinking water emergency).

We recommend deleting several of the examples of supply that could be eligible for a general exemption, contained in clause 56(1). We consider that the examples could be misleading and could mean that suppliers expected that they would be granted an exemption when the legislation commenced.

Clause 56(7) would enable the chief executive of Taumata Arowai to replace an exemption before or when it expired. Instead, we recommend amending clause 56 to make it clear that an exemption would expire after 5 years unless it expired or was revoked or replaced before then.

The Regulations Review Committee expressed concern about the ability of Parliament and others to scrutinise whether exemptions under these clauses are consistent with Parliament’s intention. It recommended that clause 56 be amended to require the reasons for granting class exemptions to be included in the exemption instrument. We agree with this proposal and recommend amending clause 56 to this effect.

To provide an additional safeguard, we recommend amending clause 52 to require Taumata Arowai to publicly consult under clause 52 before making a class exemption. We note that Taumata Arowai would also be required to publish all general exemptions, together with reasons for the exemption, in the *Gazette* and on its website as they are stated to be secondary legislation.

Exemption from residual disinfection

Clause 57 provides that Taumata Arowai could exempt a drinking water supplier from the requirement to use residual disinfection in a drinking water supply that included reticulation. As introduced, this clause would apply on a case-by-case basis. We

understand that this reflects the findings and recommendations made by the Havelock North inquiry in relation to chlorinating reticulated drinking water supplies.

Some submitters suggested that very small reticulated supplies should not be legally required to chlorinate drinking water. They were concerned about risks to consumers and suppliers because handling and storing chlorine or chlorine compounds is complex and inherently dangerous. The risk is compounded by the number of very small supplies in New Zealand that are operated by volunteers who may be inadequately trained and qualified to handle chlorine.

We share these concerns, and suggest amendments to address them. We recommend amending clause 57 to enable exemptions to be given to classes of suppliers, with the following requirements to provide further protections and improve transparency:

- The chief executive would need to be satisfied that the exemption was consistent with the main purpose of the legislation.
- Taumata Arowai would need to publicly consult under clause 52.
- Parliament could disallow class exemptions.
- Reasons should be given for, and published with, the exemption.
- The exemption should be published in the *Gazette* and on Taumata Arowai's website.

We recommend amending clause 57 to make it clear that an exemption could relate to residual disinfection of the whole supply or certain treatment processes used in part of a supply.

Clause 57(8) provides that an exemption would expire 5 years after the date that it took effect, unless it was replaced or revoked before then. We recommend amending clause 57 to make it clear that an exemption would expire after 5 years, unless it expired or was replaced or revoked before then.

Emergency powers

Declaring a drinking water emergency

Clause 58 would enable Taumata Arowai to declare a drinking water emergency if it reasonably believed that there was a serious risk to public health. Before declaring the emergency, it would need to consult with the Minister responsible for the legislation. Taumata Arowai would also need to take all practicable steps to work with affected drinking water suppliers and territorial authorities to ensure that consumers were informed about the drinking water emergency.

We consider that Taumata Arowai should also be obliged to notify the relevant medical officer of health where there are serious risks to public health. We recommend amending clause 58 accordingly.

Drinking water emergencies

Exemption during drinking water emergency

Clause 62 would enable Taumata Arowai to exempt any drinking water supplier, or class of drinking water supplier, from complying with certain requirements in the legislation.

Clause 62(3)(b) provides that Taumata Arowai could include a requirement for the supplier to advise consumers that drinking water should be boiled before it was consumed. We recommend amending this clause by replicating our proposed amendments in clauses 21(2)(f) and 22(2)(f). That is, drinking water suppliers would be required to advise consumers and drinking water suppliers about measures they should take to protect public health.

The Regulations Review Committee noted that clause 62 contains no purpose or criteria for exercising the power to grant an exemption. It also does not include a requirement to provide reasons for the decision. The Regulations Review Committee considered that this would significantly inhibit Parliament's ability to scrutinise these exemptions, and should be addressed. It recommended that clause 62 be amended to specify the purposes or the criteria for granting exemptions during drinking water emergencies. The Regulations Review Committee also recommended that the clause require the reasons for granting class exemptions to be included in the exemption instrument.

We note that a drinking water emergency is significant and do not believe that a purpose or criteria for granting an exemption is needed. We consider that clause 58 already contains safeguards relating to the declaration of an emergency.

Laboratory accreditation and testing

Duty to use an accredited laboratory to analyse water

Clause 72 would require a drinking water supplier to use an accredited laboratory to analyse source water, raw water, and drinking water. The analysis would be as part of any monitoring requirements in compliance rules or a drinking water safety plan.

Clause 72(2) provides that a laboratory would have to notify Taumata Arowai if the results of the analysis indicated that drinking water did not comply with drinking water standards. We recommend several amendments to this clause.

We recommend amending clause 72(2) to require the laboratory to also inform the drinking water supplier of any non-compliance.

We note that, as introduced, clause 72(2) only refers to compliance with the drinking water standards. However, compliance rules could also contain requirements that the laboratory accreditation process would assess. Therefore, we recommend amending clause 72(2) to also refer to the compliance rules.

We believe that clause 72(2) is unclear whether a laboratory would need to notify Taumata Arowai in a specific situation. The situation is if testing results indicated a

breach of drinking water standards where the analysis occurred outside the requirements of a drinking water safety plan. We consider that this situation involves a gap because the laboratory could know that drinking water was unsafe or potentially unsafe but would have no legal duty to notify the regulator. To address this gap, we recommend amending clause 72(2).

Requirements for laboratory accreditation body

Clause 74 would require Taumata Arowai to prescribe requirements that an appointed laboratory accreditation body would need to apply to accredited laboratories that analyse water.

Clause 74(1)(d) would enable Taumata Arowai to set the minimum frequency of audits that a laboratory accreditation would need to conduct. To align with terminology used by accreditation agencies, we recommend amending clause 74(d) by replacing “audits” with “assessments”.

The bill as introduced would not enable Taumata Arowai to raise concerns about the performance of a laboratory with the accreditation body and require its investigation. Given that this is an important feature of an accreditation regime, we recommend amending clause 74. Our proposed amendment would empower Taumata Arowai to prescribe procedures for the investigation of complaints about laboratories.

We also consider that Taumata Arowai should be able to prescribe notification requirements relating to the analysis of source water, raw water, or drinking water. This would ensure that non-compliant results were reported within time frames and to appropriate people. We recommend amending clause 74 accordingly.

Charging for accreditations and audits

Clause 75 would enable a laboratory accreditation body to charge for an application for accreditation or a renewal, or an audit conducted under section 74(d) by the accreditation body. Taumata Arowai would need to prescribe the amount by notice in the *Gazette*.

The Regulations Review Committee expressed concern that this power does not provide appropriate accountability for the compulsory fee. It recommended that the clause be amended to require fees to be prescribed by Order in Council or be expressly described as disallowable instruments.

We also noted that clauses 190 to 192 contain provisions about charging fees and levies, which would be made by Order in Council. However, clause 75 would allow Taumata Arowai to prescribe the amount that a laboratory body could charge an accredited laboratory to apply for accreditation and an audit.

The Legislation Guidelines state that legislation must set out the manner by which fees should be determined. It should also identify any procedural requirement that must be satisfied in connection with the fee, and payment cannot be waived or refunded without authorisation from an Act.

We sought advice on why Taumata Arowai would have the authority to set this charge.

We received advice that section 37(1)(o) of the Standards and Accreditation Act 2015 enables International Accreditation New Zealand (IANZ) to charge fees. It applies to accreditation under that Act and for any other services provided. This power is used to set fees for accreditation. We consider that this approach should be retained and we recommend amending clause 75 accordingly.

We also recommend amending clause 75 to enable the laboratory accreditation body to charge for investigations conducted under clause 74 in response to a complaint.

Suspending or revoking an accreditation

Clause 79 would enable the laboratory accreditation body to suspend or revoke, or amend the scope of, an accreditation under section 76 (Accreditation). Clause 80 provides that the laboratory accreditation body would have to notify Taumata Arowai when it accredited a laboratory. However, the bill, as introduced, does not contain a requirement for a laboratory accreditation body to notify Taumata Arowai when it amends the scope of, renews, suspends, or revokes an accreditation. We recommend inserting this requirement in clause 80.

Recovering costs from a drinking water supplier

Clause 85 would enable Taumata Arowai to recover from a drinking water supplier all costs, charges, and expenses incurred for the purposes of section 82. That section relates to non-performance by a drinking water supplier.

We were advised that this clause is intended to apply in situations where Taumata Arowai appoints an operator. It would enable Taumata Arowai to claim costs directly from the drinking water supplier. To make this clear, we recommend amending clause 85 to specify that Taumata Arowai could seek costs incurred by an operator as part of an appointment.

Seeking further information during an internal review

In the event of an internal review, clause 89(4)(a) provides that Taumata Arowai could seek further information from the applicant. They would need to provide the information within a period specified by Taumata Arowai that is not less than 7 days. We recommend amending this clause to clarify that “7 days” refers to working days.

Appeals

Clause 92 would enable a person to appeal to the District Court against certain decisions. We recommend amending clause 92(1) to include unreasonableness as the ground for appeal. Our proposed amendment is intended to more clearly align with section 135 of the Health and Safety at Work Act 2015.

Clause 92(3) provides that the notice of appeal would need to state the reasons for the appeal and the relief sought. It would also need to be lodged with the District Court and served on Taumata Arowai.

We consider that the requirement relating to a notice of appeal in clause 92(3) duplicates existing requirements in the District Court Rules. Therefore, we recommend that this subclause be deleted.

We note that the bill does not empower the District Court to refer the decision or compliance order back to the decision maker. We recommend amending clause 92 to this effect.

Issuing directions and serving compliance orders

Clauses 102 to 117 set out the powers of compliance officers who would be appointed under section 97 of the legislation. Clause 103 would enable them to issue a direction to a drinking water supplier, while clause 104 would empower them to direct any person to take action. This clause would apply when the compliance officer reasonably believed that serious risks to public health existed.

Clause 118 would enable the chief executive of Taumata Arowai to serve a compliance order on any person.

To remove uncertainty about whether directions or compliance orders could require the treatment of drinking water, we recommend amending clauses 103, 104, and 118. Our proposed amendment would specify that directions or compliance orders could include a requirement to treat drinking water in any way the chief executive or compliance officer considered necessary.

Clause 105(3) provides that a person who received a direction from a compliance officer under section 104(3) would need to comply with that direction. We recommend deleting this clause as it duplicates clause 104(4).

Obtaining information

Clause 107 would empower a compliance officer to obtain information for the purpose of performing or exercising their powers or functions. Under clause 107(1)(c), they could direct a person to supply certain documents to the compliance officer in a manner that the officer specified. To better define the circumstances in which this clause would apply, we recommend inserting a requirement that the manner be reasonable.

Entering a place without a search warrant

Clause 110 would enable a compliance officer to enter certain places without a search warrant. The places would be any area where infrastructure and processes were used to collect, treat, or transmit drinking water for supply to consumers. The officer would need to reasonably believe that entry was required because of a serious risk to public health.

We understand that comparable regimes enable entry for compliance officers to ensure compliance with regulatory requirements.⁸ Further, the clause as introduced would mean that compliance officers for Taumata Arowai would be unable to engage in legitimate inspection functions. We consider that this would hinder the regulator's ability to monitor compliance among suppliers and could result in risks to public health not being promptly detected. Therefore, we recommend inserting a new clause 109A and amending clause 110 to align with the Health and Safety at Work Act and the Food Act.

Clause 110(5) provides that a compliance officer would need to consider the kawa of the marae when exercising the power of entry at a marae or building associated with a marae. A number of submitters were opposed to entry onto marae without a search warrant. They considered that marae should be treated similarly to private homes, where consent is required for private entry. We agree with this approach and recommend amending clause 110 accordingly.

Protection from civil and criminal liability

Clause 112 would enable Taumata Arowai to authorise a specified person to enter and search a place, vehicle, or other thing. A specified person would be defined as a compliance officer, an employee of Taumata Arowai, or any other person who Taumata Arowai was satisfied was suitably qualified and trained.

Clause 117 would protect a compliance officer, a person helping them, Taumata Arowai, and its chief executive from civil and criminal liability in certain circumstances. They would be protected for any act or omission related to the performance of their duties or exercise of their powers which was in good faith and with reasonable cause.

We consider that a "specified person" in clause 112 should have the same protections as the listed persons in clause 117. We recommend inserting "a specified person" into clause 117(1).

We believe that people who are performing statutory functions for Taumata Arowai should also be immune from civil and criminal liability. We recommend amending clause 117 to this effect.

Drinking water compliance, monitoring, and enforcement strategy

Clause 134 would require Taumata Arowai to prepare a drinking water compliance, monitoring, and enforcement strategy. Under clause 134(6)(a), the strategy would need to include Taumata Arowai's intended approach to reviewing drinking water safety plans and monitoring compliance with them. We recommend amending this clause to align with our proposed changes to clause 32. Those changes relate to the functions that Taumata Arowai would be required to perform.

⁸ Examples of comparable regimes include the Health and Safety at Work Act 2015 and the Food Act 2014.

Monitoring and reporting on the environmental performance of wastewater and stormwater networks

Subpart 7 of Part 3 of the bill as introduced would enable Taumata Arowai to monitor and report on the environmental performance of wastewater and stormwater networks. In July 2021, the Parliamentary Commissioner for the Environment (PCE) wrote to us about this subpart. He was concerned that the references to “environmental performance” could imply that Taumata Arowai was being established as an environmental regulator. Regional councils currently undertake that role under the Resource Management Act. The PCE was also concerned that there was a risk that the legislation would establish two national level environmental regulators. He considered that this could create a fragmented and contradictory approach to environmental management.

We agree with the PCE’s concerns about the way this wording could be perceived. To clarify the role of Taumata Arowai as the regulator focusing on the performance of wastewater and stormwater infrastructure, we recommend replacing the references to “environmental performance” in clauses 136, 137, 140, and 141 with “infrastructure performance measures”.

Clause 140 would require Taumata Arowai to develop, publish, and maintain environmental performance measures for wastewater and stormwater networks. When developing or amending a measure, Taumata Arowai would have to consult wastewater and stormwater network operators, regional councils, and other people it considered appropriate.

We believe that the requirements for public consultation should replicate the provisions in clause 52. We recommend amending clause 140 to reflect this.⁹

Infringement offences

Definition of infringement offences

Clause 190 would enable the Governor-General, by Order in Council, to specify the offences under the legislation that would be infringement offences. Clause 143 defines the term “infringement offence” as “an offence under subpart 10 that is declared by regulations made under section 190 to be an infringement offence for the purposes of the Act”.

As introduced, clause 143 provides that the infringement offences would be limited to this piece of legislation. We consider that this would unnecessarily limit the ability to prescribe infringement offences and would result in infringement offences restricting the same conduct as the primary offences. We recommend adopting the approach used in the Health and Safety at Work Act and the Food Act. Both Acts allow

⁹ Clause 52 would require Taumata Arowai to ensure that adequate consultation had been undertaken before making drinking water standards, aesthetic values, compliance rules, and acceptable solutions or verification methods.

infringement offences to be prescribed under provisions in the Act and by regulation. We recommend amending clause 143 to this effect.

The Regulations Review Committee noted that infringement offences are generally suitable only for relatively minor breaches of the law. It noted two important characteristics of the types of behaviour that are suitable to be infringements. First, the offence should be a straightforward question of fact. Second, it should involve strict or absolute liability—that is, the prosecution does not need to prove any mental element such as recklessness or intent.

Clauses 162 and 164 would create offences for drinking water suppliers with a duty under sections 21, 22, or 35. They entail the supplier having engaged in conduct that exposed an individual to serious risk of death, injury, or illness, and being reckless about that risk. The Regulations Review Committee observed that the offences in clauses 162 and 164 are not strict liability offences because they require proof of a mental element, which is recklessness. It recommended that clause 190(1)(g) be amended to specifically exclude the offences in clauses 162 and 164.

Subpart 10 of Part 3 includes 21 proposed offences with a range of maximum penalties, including fines of between \$10,000 and \$3 million, or terms of imprisonment not exceeding 5 years. We note that the Legislation Guidelines state that infringement offences should be reserved for prohibiting certain conduct. That is conduct which is of concern to the community but does not justify a criminal conviction, significant fine, or imprisonment being imposed.

For the reasons above, we recommend that clause 143 be amended to exclude the offences in clauses 162 and 164.

Issuing infringement notices

Clause 145 would enable the chief executive or a compliance officer to issue an infringement notice to a person. They would have to reasonably believe that the person was committing or had committed an infringement offence.

Clause 145(2) provides that the infringement notice could be delivered in person or sent by post. We recommend inserting clause 144B to allow the infringement notice to be served by email given that this is a popular mode of communication.

Our proposed new clause 144B would also make it clear when an infringement notice would be treated as having been served.

Offences involving recklessness and failing to take immediate action

We note that the Legislation Guidelines state that offences need to be clearly defined so that people know what behaviour is prohibited. The description of the conduct should be precise and rationally connected with the harm targeted by the policy objective. We consider that, as introduced, clauses 162 and 164 are unclear as to whether the reckless conduct needs to relate to the duty that the drinking water supplier would have under the legislation. They are also unclear about whether the conduct needs to relate to an individual to whom the drinking water supplier owes a duty.

We consider that the offences should more clearly link the offence to the conduct. Therefore, we recommend amending clauses 162 and 164 to state that the conduct would need to relate to the individual to whom the supplier owed the duty.

Offence involving contamination of raw water or drinking water

We note that section 69ZZO of the Health Act contains an offence for people who knowingly or recklessly do something that is likely to contaminate any raw water. However, the bill as introduced does not contain an equivalent offence. We recommend inserting this offence as clause 163A.

Supervision and training orders

Clause 188(2) would enable the court to make an order requiring an offender to undertake, or arrange for one or more workers to undertake, a specified course of training. We recommend replacing the reference to “workers” with “employees” in this clause. We consider that, as introduced, this clause could refer to any person involved, such as a director, partner, or owner.

Maximum infringement fees

Clause 190(1)(i) would enable the Governor-General to make recommendations prescribing the amounts of fees payable for infringement offences. The maximum amount would be \$1,000, with fees increasing if a person had previously committed an infringement offence.

We recommend amending clause 190(1)(i) to set the maximum infringement fee at \$1,000 for individuals and \$3,000 for body corporates or unincorporated bodies. We consider that this reflects that companies generally have more resources so a larger fine would act as a better deterrent. We understand that this approach is similar to the Health and Safety at Work Act and the Immigration Act 2009.

Prescribing levies to recover costs of Taumata Arowai

Clause 191 would enable the Government to make regulations prescribing a levy. This would be for the purposes of recovering Taumata Arowai’s costs to perform its functions, powers, and duties under legislation. For clarity about who could be levied, we recommend amending this clause to specify that it would apply to drinking water suppliers, wastewater network operators, and stormwater network operators.

Transitional provisions

Schedule 1 sets out the bill’s transitional provisions. Clause 2 provides that a drinking water supply that is registered under the Health Act 1956 would be registered when the legislation commenced. A drinking water supply that is not registered under the Health Act would need to register the supply within 12 months of the commencement date.

Under clause 4, a current drinking water safety plan approved under the Health Act would be treated as a drinking water safety plan under this water services legislation.

If a drinking water supply supplied 500 or more consumers for at least 60 days a year, the supplier would need to provide a safety plan within 1 year after the commencement date. In all other cases, the supplier would need to provide a safety plan within 5 years of the commencement date.

We recommend a number of changes to the transitional provisions. Our proposed amendments seek to better suit the needs of small suppliers, including rural and marae suppliers, and to provide certainty to suppliers about the requirements. The amendments would also align with the Government's proposed reforms that would establish water service entities.

We note that the transitional arrangements in the bill as introduced are based on a population threshold. A number of submitters expressed concern about ambiguity for supplies where populations fluctuate. As a result, we recommend amending this approach so that the transitional provisions would be based on registered and unregistered supplies.

We recommend amending clauses 2 and 4 of Schedule 1 and inserting new clause 4A to treat supplies registered under the Health Act as registered supplies on the day that the legislation commences. They would need to have a compliant drinking water safety plan by the end of year 1.

We were advised that water carriers have been identified as an inherently risky supplier and that regulatory oversight associated with the supplies is currently minimal. Consequently, we consider that registered and unregistered water carriers should be required to comply with the regime by the end of year 1.

We recommend amending the transitional provisions to require water carriers to comply with several requirements from day 1. They are clause 21 (safe drinking water), clause 22 (compliance with drinking water standard), and directions or compliance orders (clauses 103, 104, and 118).

We consider that unregistered water suppliers should be required to supply safe drinking water from day 1, register by the end of year 3, and comply with all legislation by year 5. We recommend amending the transitional provisions accordingly.

We note that some classes of supplier involve more risk and might need to transition sooner than the proposed five years. To address these situations, we recommend inserting a regulation-making power in the transitional provisions. It would enable classes of supply to be brought into the regime sooner.

Under section 69ZY(2) of the Health Act, the Director-General of Health has recognised two levels of laboratory. Level one laboratories are accredited by IANZ and level two laboratories are recognised by the Director-General but not accredited. We recommend inserting clause 8 to provide that laboratories recognised by the Director-General would be accredited laboratories. This would be for a maximum of three years or until they were accredited under clause 76 (Accreditation) of the legislation.

New Zealand National Party differing view

Through the committee's scrutiny, we have been very supportive of the obligations the legislation creates for larger water suppliers like councils, and that will prevent the kind of poor public health outcomes linked to water quality that we have recently seen in Havelock North and Otago.

However, our major concern and focus has been to ensure that the obligations on small water suppliers (like rural water schemes, holiday home owners sharing a bore, marae, and subdivision water schemes) are fit for purpose and not overly onerous on these small water suppliers.

While we acknowledge the intent to develop "acceptable solutions" for small water suppliers, these solutions are not yet fully defined and thus create immense uncertainty and anxiety for these small suppliers as to what their precise obligations will be. We think this is unfair.

We are also extremely concerned by the pace and quantum of obligations and reforms the Government has placed on the rural sector in general. Therefore, we are particularly eager to ensure that this legislation does not add further to that overload and burden on our rural communities at this time.

Given these concerns, our view is that the bill should simply expand the exemption from domestic supply for a single dwelling to also include small water suppliers supplying fewer than 30 endpoint users.

ACT New Zealand differing view

The ACT New Zealand party would like to state its support for the National Party differing view.

Appendix

Committee process

The Water Services Bill was referred to the committee on 8 December 2020. We invited the Minister of Local Government to provide an initial briefing on the bill. They did so on 10 March 2021.

The closing date for submissions on the bill was 2 March 2021. We received and considered 977 submissions from interested groups and individuals. We heard oral evidence from 130 submitters at hearings in Wellington and by Zoom.

We received advice on the bill from the Department of Internal Affairs. 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 35, 48, 56, 62, 75, and 190.

Committee membership

Dr Liz Craig (Chairperson)

Matt Doocey

Dr Elizabeth Kerekere

Dr Anae Neru Leavasa

Dr Tracey McLellan

Sarah Pallett

Dr Gaurav Sharma

Penny Simmonds

Brooke van Velden

Simon Watts

Simon Court, Christopher Luxon, and Hon Eugenie Sage took part in our consideration of this item of business.

Key to symbols used in reprinted bill

As reported from a select committee

text inserted unanimously

~~text deleted unanimously~~

Hon Nanaia Mahuta

Water Services Bill

Government Bill

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Schedule 1

Transitional, savings, and related provisions

Schedule 2

Amendments and revocation to enactments

The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Water Services Act **2020**.

2 Commencement

- (1) This Act comes into force on the earlier of— 5
- (a) a date appointed by the Governor-General by Order in Council; and
 - (b) the date that is 2 years after the date on which this Act receives the Royal assent.
- (2) One or more Orders in Council may be made under **subsection (1)(a)** appointing different dates for different provisions. 10

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

Part 1 Preliminary provisions

Subpart 1—Purpose and overview 5

3 Purpose of this Act

- (1) The main purpose of this Act is to ensure that drinking water suppliers provide safe drinking water to consumers by—
- (a) providing a drinking water regulatory framework that is consistent with internationally accepted best practice, including a duty on drinking water suppliers to— 10
 - (i) have a drinking water safety plan; and
 - (ii) comply with legislative requirements (such as drinking water standards) on a consistent basis; and
 - (b) providing a source water risk management framework that, together with the Resource Management Act 1991, regulations made under that Act, and the National Policy Statement for Freshwater Management, enables risks to source water to be properly identified, managed, and monitored; and 15
 - (c) providing mechanisms that enable the regulation of drinking water to be proportionate to the scale, complexity, and risk profile of each drinking water supply; and 20
 - ~~(d) providing mechanisms that build and maintain capability among drinking water suppliers and across the wider water services sector; and~~
 - ~~(e) providing a framework for the continuous and progressive improvement of the quality of water services in New Zealand.~~ 25
- (2) This Act has the following additional purposes:
- (a) to establish a framework to provide transparency about the performance of wastewater and stormwater infrastructure; and
 - (b) to provide mechanisms that build and maintain capability among drinking water suppliers and across the wider water services sector; and 30
 - (c) to establish a framework for the continuous and progressive improvement of the quality of water services in New Zealand.

4 Overview of this Act

- (1) In this Act,— 35

- (a) this Part contains the purpose of this Act, definitions, key terms and key principles, and other preliminary provisions:
- (b) **Part 2**—
- (i) contains provisions relating to the supply of drinking water:
- (ii) includes occupational regulation provisions in **subpart 10** that apply to the operators of both drinking water supplies and waste-water networks: 5
- (c) **Part 3** contains monitoring, compliance, and enforcement provisions:
- (d) **Part 4** contains regulation-making powers and miscellaneous provisions: 10
- (e) **Part 5** contains amendments to the Local Government Act 2002.
- (2) This section is only a guide to the general scheme and effect of this Act.

Subpart 2—Interpretation

General

- 5 Interpretation** 15
- In this Act, unless the context otherwise requires,—
- abstraction point** means the location at which source water is abstracted for use in a drinking water supply (for example, the location at which water is abstracted from a river, stream, lake, or aquifer)
- acceptable solution or verification method** means a drinking water acceptable solution or verification method issued under **section 49** 20
- agent** includes a contractor
- approved form** means a form provided by Taumata Arowai
- backflow** means the unplanned reversal of flow of water or mixtures of water and contaminants into the water supply system 25
- backflow prevention device** means a device that prevents backflow
- chief executive** means the chief executive of Taumata Arowai
- compliance, monitoring, and enforcement strategy** means the compliance, monitoring, and enforcement strategy developed under **section 134**
- compliance officer** means a compliance officer appointed under **section 97** 30
- compliance rules** means compliance rules made under **section 48**
- consumer** means a person who consumes or uses drinking water supplied by a drinking water supplier
- council-controlled organisation** has the meaning given to it by section 6 of the Local Government Act 2002 35

- Crown organisation** has the same meaning as in section 4 of the Crown Organisations (Criminal Liability) Act 2002
- ~~**department** means a department named in Schedule 1 of the State Sector Act 1988~~ a department listed in Part 1 of Schedule 2 of the Public Service Act 2020
- domestic dwelling** has the meaning set out in **section 10** 5
- domestic self-supply** has the meaning set out in **section 10**
- drinking water** has the meaning set out in **section 6**
- drinking water safety plan** means the drinking water safety plan required by **section 30**
- drinking water standards** means the standards ~~issued or adopted~~ made under **section 46** 10
- drinking water supplier** has the meaning set out in **section 8**
- drinking water supply** has the meaning set out in **section 9**
- end-point treatment** means treatment of drinking water at the final point of the supply at which the consumer can consume, use, or collect drinking water 15
- end-point treatment device** means a device used for end-point treatment as part of an acceptable solution or verification method
- illness** means any acute or chronic illness
- legislative requirement** means a requirement imposed by—
- (a) this Act; or 20
 - ~~(b) an Order in Council made under this Act; or~~
 - ~~(c) an instrument issued by Taumata Arowai that is a disallowable instrument for the purposes of the Legislation Act 2012; or~~
 - (b) secondary legislation made under this Act; or
 - (d) a direction issued by a compliance officer under **section 103**; or 25
 - (e) a compliance order issued under **section 118**
- local authority** has the same meaning as in section 5(1) of the Local Government Act 2002
- medical officer of health** means a medical officer of health appointed under the Health Act 1956 30
- 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** means the National Policy Statement for Freshwater Management issued in 2020 under section 52 35
of the Resource Management Act 1991 and any statement issued under that section that amends or replaces the 2020 statement

New Zealand Defence Force has the same meaning as the term Defence Force in section 2(1) of the Defence Act 1990

officer, in relation to a drinking water supply,—

- (a) if the owner or operator is a company,—
 - (i) means any person occupying the position of a director of the company by whatever name called; and 5
 - (ii) includes any other person occupying a position in relation to the company that allows the person to exercise significant influence over the management of the drinking water supply (for example, a chief executive): 10
- (b) if the owner or operator is a partnership (other than a limited partnership), means any partner:
- (c) if the owner or operator is a limited partnership, means any general partner:
- (d) if the owner or operator is a body corporate or an unincorporated body, other than a company, partnership, or limited partnership, 15
 - (i) means any person occupying a position in the body that is comparable with that of a director of a company; and
 - (ii) includes any other person occupying a position in relation to the body that allows the person to exercise significant influence over the management of the drinking water supply (for example, a chief executive): 20
- (e) does not include a person who merely advises or makes recommendations to a person referred to in any of **paragraphs (a) to (d)**, or who completes discrete operational tasks concerning the supply: 25
- (f) does not include a Minister of the Crown acting in that capacity

operator has the meaning set out in **section 11**

owner has the meaning set out in **section 12**

point of supply has the meaning set out in **section 13**

raw water means water that has been abstracted from a source, but has not been subject to any treatment or other processes that may be required to make it safe to consume 30

registered, in relation to a drinking water supply, means a drinking water supply registered in accordance with the requirements of **subpart 7 of Part 2**

safe, in relation to drinking water, has the meaning set out in **section 7** 35

source, source water, and source of a drinking water supply mean ~~the freshwater body from which water is abstracted for use in a drinking water supply (for example a river, stream, lake, or aquifer)~~

(a) the water body from which water is abstracted for use in a drinking water supply (for example a river, stream, lake, or aquifer); and 5

(b) rainwater

source water risk management plan means a plan required by **section 42**

stormwater network means the infrastructure and processes that are used to collect, treat, drain, and discharge stormwater from a ~~built area or transport corridor in an urban area~~ 10

stormwater network operator means—

(a) each of the following, to the extent that they operate a stormwater network or supervise its operation or aspects of its operation:

(i) a local authority, council-controlled organisation, or subsidiary of a council-controlled organisation: 15

(ii) a department:

(iii) the New Zealand Defence Force; and

(b) any person who operates a stormwater network, or any aspect of a stormwater network, for, or on behalf of, an organisation specified in **paragraph (a)** 20

sufficient quantity, in relation to the drinking water supplied to a point of supply, has the meaning set out in **section 25(2)**

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

unplanned, in relation to the supply of drinking water, has the meaning set out in **section 34(2)**

urban area—

(a) means an area identified in a district plan or proposed district plan as being primarily zoned for residential, industrial, or commercial activities, together with adjoining special-purpose and open-space zones, however described; but 30

(b) does not include an area zoned primarily for rural or rural-residential activities, however described

wastewater network means the infrastructure and processes used to collect, store, transmit through reticulation, treat, and discharge wastewater 35

wastewater network operator means—

(a) each of the following, to the extent that they operate a wastewater network or supervise its operation or aspects of its operation:

- (i) a local authority, council-controlled organisation, or subsidiary of a council-controlled organisation that operates a wastewater network:
 - (ii) a department:
 - (iii) the New Zealand Defence Force; and 5
- (b) any person who operates a wastewater network, or any aspect of a wastewater network, for, or on behalf of, an organisation specified in **paragraph (a)**; and
- (c) an organisation or individual involved in the operation of a wastewater network if the organisation or individual is authorised or included on a register in accordance with regulations made under **section 190** 10

water carrier means a drinking water supplier that transports drinking water (other than by reticulation) for the purpose of supplying it to consumers or another drinking water supplier.

Key terms 15

6 **Meaning of drinking water**

In this Act, unless the context otherwise requires, **drinking water**—

- (a) means water that is used for—
 - (i) human consumption; or
 - (ii) oral hygiene; or 20
 - (iii) preparing food, drink, or other products for human consumption; or
 - (iv) washing utensils that are used for eating and drinking, or for preparing, serving, or storing food or drink for human consumption; but 25
- (b) does not include—~~bottled water that is prepared or manufactured by a food business, and is regulated, under the Food Act 2014.~~
 - (i) bottled water that is prepared or manufactured by a food business, and is regulated, under the Food Act 2014; and
 - (ii) water, if its use is regulated under the Food Act 2014, the Animal Products Act 1999, or the Wine Act 2003. 30

Examples

Water that is used for washing potatoes by a horticultural business, where the use is regulated under the Food Act 2014, is not drinking water.

Water that is used for the cleaning of processing machines by a poultry processor or by a business that operates under a registered risk management programme under the Animal Products Act 1999 is not drinking water if the use of the water is regulated under that Act. 35

7 Meaning of safe in relation to drinking water

- (1) In this Act, unless the context otherwise requires, **safe**, in relation to drinking water, means drinking water that is unlikely to cause a serious risk of death, injury, or illness,—
- (a) immediately or over time; and 5
 - (b) whether or not the serious risk is caused by—
 - (i) the consumption or use of drinking water; or
 - (ii) other causes together with the consumption or use of drinking water.
- (2) For the purposes of **subsection (1)**, the assessment of serious risk must take into account, among other factors, compliance with drinking water standards. 10
- (3) Drinking water is not unsafe merely because—
- (a) a person objects to it, or substances in it, because of personal preference; or
 - (b) it does not comply with aesthetic values; or 15
 - (c) it contains substances that ~~are within~~ comply with minimum or maximum acceptable values for chemical, radiological, microbiological, or other characteristics of drinking water in the drinking water standards.

8 Meaning of drinking water supplier

- In this Act, unless the context otherwise requires, **drinking water supplier**— 20
- (a) means a person who supplies drinking water through a drinking water supply; and
 - (b) includes a person who ought reasonably to know that the water they are supplying is or will be used as drinking water; and
 - (c) includes the owner and the operator of a drinking water supply; and 25
 - (d) includes a person described in **paragraph (a), (b), or (c)** who supplies drinking water to another drinking water supplier; but
 - (e) does not include a domestic self-supplier.

9 Meaning of drinking water supply

- (1) In this Act, unless the context otherwise requires, **drinking water supply**— 30
- (a) means the infrastructure and processes used to abstract, store, treat, transmit, or transport drinking water for supply to consumers or another drinking water supplier; and
 - (b) includes—
 - (i) the point of supply; and 35
 - (ii) any end-point treatment device; and
 - (iii) any backflow prevention device; but

- (c) does not include a temporary drinking water supply provided for under **section 33 or 34** or a domestic self-supply.
- (2) Taumata Arowai may, by notice in the *Gazette*, declare the provision of water by a person ~~to be a drinking water supply if Taumata Arowai is satisfied, on reasonable grounds, that the water is or will be used as drinking water.~~ 5
- (a) to be a drinking water supply if Taumata Arowai is satisfied, on reasonable grounds, that the water is or will be used as drinking water; or
- (b) to not be a drinking water supply if Taumata Arowai is satisfied, on reasonable grounds, that the water is not or will not be used as drinking water. 10

10 Meaning of domestic self-supply and domestic dwelling

- (1) In this Act, unless the context otherwise requires, **domestic self-supply** means a stand-alone ~~or single~~ domestic dwelling that has its own supply of drinking water, and **domestic self-supplier** has a corresponding meaning.
- (2) ~~In this Act, unless the context otherwise requires, **domestic dwelling** means premises that are principally used as residential premises, whether they are—~~ 15
- (a) ~~tenanted on a long- or short-term basis; or~~
- (b) ~~occupied permanently or temporarily (for example, a holiday home).~~
- (3) ~~In this Act, unless the context otherwise requires, **premises** and **residential premises** have the meanings given in section 2(1) of the Residential Tenancies Act 1986.~~ 20
- (2) In this Act,—
- domestic dwelling** means a building that is used as a single household unit, whether it is—
- (a) tenanted on a long- or short-term basis; or 25
- (b) occupied permanently or temporarily (for example, a holiday home)
- household unit** has the meaning given to it by section 7 of the Building Act 2004.

Examples

A single property with tenants on a lease that is supplied by a rainwater tank is a domestic self-supply. 30

A single holiday house that is supplied by a rainwater tank and is rented to tourists on a short-term basis is a domestic self-supply.

A multi-dwelling building (for example, multiple separate apartments contained in a single building) that has its own bore water supply is not a domestic self-supply. 35

A marae wharekai (dining hall) or community hall that has its own river water supply is not a domestic self-supply.

A café building supplied by a rainwater tank is not a domestic self-supply.

11 Meaning of operator

In this Act, unless the context otherwise requires, **operator**, in relation to a drinking water supply,—

- (a) means the person who operates the supply or supervises its operation or aspects of its operation; and 5
- (b) includes an organisation or individual involved in the operation of a drinking water supply if the organisation or individual is authorised or included on a register in accordance with regulations made under **section 190**.

12 Meaning of owner

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(1) In this Act, unless the context otherwise requires, **owner**, in relation to a drinking water supply, means the person who has effective control of the drinking water supply.

(2) The matters that may be considered for the purpose of determining whether a person has effective control of a drinking water supply include whether the person— 15

- (a) owns the drinking water infrastructure; or
- (b) owns or has long-term control of the land on which the drinking water infrastructure is based; or
- (c) directs or has control over decisions about the funding or maintenance of the drinking water infrastructure, or collects fees, levies, or other charges from consumers in relation to the infrastructure; or 20
- (d) controls how the management of the supply is resourced (for example, has the power to subcontract work).

13 Meaning of point of supply

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In this Act, unless the context otherwise requires, **point of supply**, in relation to a drinking water supply, means,—

- (a) if the supply is a reticulated network, the toby, reservoir float valve, or other final point of the supply to which the consumer's or another drinking water supplier's own infrastructure connects; or 30
- (b) if the supply is from a non-reticulated supply, ~~water carrier,~~ community water tap, or other type of supply, the final point of the supply at which the consumer or another drinking water supplier can consume, use, or collect drinking water; or
- (c) if the supply includes an end-point treatment device, the end-point treatment device; ~~or~~ 35
- (d) if the supply is from a water carrier, the final point at which drinking water is supplied to the consumer's or another drinking water supplier's own infrastructure.

Subpart 3—Key principles relating to functions, powers, and duties

14 Effect and interpretation of Te Mana o te Wai

- (1) In this Act, **Te Mana o te Wai** has the meaning set out in the National Policy Statement for Freshwater Management.
- (2) When exercising or performing a function, power, or duty under this Act, a person must give effect to Te Mana o te Wai, to the extent that Te Mana o te Wai applies to the function, power, or duty. 5

15 Duties not transferable

A duty imposed on a person by or under this Act may not be transferred to another person. 10

Compare: 2015 No 70 s 31

16 Person may have more than 1 duty

A person may have more than 1 duty imposed on the person by or under this Act if—

- (a) the person belongs to more than 1 class of duty holder; or 15
- (b) the Act otherwise imposes more than 1 duty on the person.

Compare: 2015 No 70 s 32

17 More than 1 person may have same duty

- (1) More than 1 person may have the same duty imposed by or under this Act at the same time. 20
- (2) Each duty holder must comply with that duty to the standard required by or under this Act even if another duty holder has the same duty.
- (3) If more than 1 person has a duty for the same matter, each person—
 - (a) retains responsibility for that person’s duty in relation to the matter; and
 - (b) must discharge that person’s duty to the extent to which the person has the ability to influence and control the matter, or would have had that ability but for an agreement or arrangement purporting to limit or remove that ability. 25

Compare: 2015 No 70 s 33

Subpart 4—General 30

18 Transitional, savings, and related provisions

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

19 Act binds the Crown

- (1) This Act binds the Crown. 35

- (2) An instrument of the Crown that is a Crown organisation (whether or not a body corporate)—
- (a) must be treated as if it were a separate legal personality for the purpose of complying with this Act; and
 - (b) may be a drinking water supplier in its own right. 5
- (3) An instrument of the Crown that is not a Crown organisation or a body corporate—
- (a) does not have separate legal personality; and
 - (b) must not be a drinking water supplier in its own right.
- (4) This section is subject to **section 20**. 10
Compare: 2015 No 70 s 5
- 20 Enforcement of Act against the Crown**
- (1) This Act may be enforced against the Crown only in the manner provided in this section. 15
Prosecution of offences
- (2) An instrument of the Crown may be prosecuted for an offence against this Act, but only if—
- (a) the instrument is a Crown organisation; and
 - (b) the proceedings are commenced—
 - (i) against the Crown organisation in its own name and the proceedings do not cite the Crown as a defendant; and 20
 - (ii) in accordance with the Crown Organisations (Criminal Liability) Act 2002.
- Issue of infringement notices*
- (3) An infringement notice may be served on an instrument of the Crown in accordance with this Act, but only if— 25
- (a) the instrument is a Crown organisation; and
 - (b) the instrument is liable to be proceeded against for the alleged offence under **subsection (2)**; and
 - (c) the notice is served on the Crown organisation in its own name. 30
- Injunctions*
- (4) Despite section 17(1)(a) of the Crown Proceedings Act 1950, an injunction may be granted or another order made against an instrument of the Crown in accordance with this Act, but only if— 35
- (a) the instrument is a Crown organisation; and
 - (b) the order or injunction is made against the Crown organisation in its own name.

Directions and compliance orders issued under this Act

- (5) A direction issued under **section 103** may be issued against an instrument of the Crown, but only if—
- (a) the instrument is a Crown organisation; and
 - (b) the direction is issued against the Crown organisation in its own name. 5
- (6) A compliance order served under **section 118** may be served on an instrument of the Crown in accordance with this Act, but only if—
- (a) the instrument is a Crown organisation; and
 - (b) the order is served on the Crown organisation in its own name. 10
- District Court orders*
- (7) An order may be made by the District Court against an instrument of the Crown in accordance with this Act, but only if—
- (a) the instrument is a Crown organisation; and
 - (b) the order is made against the Crown organisation in its own name. 15
- Compare: 2015 No 70 s 6

Part 2**Provisions relating to supply of drinking water**

Subpart 1—Duties of drinking water suppliers

21 Duty to supply safe drinking water

- (1) A drinking water supplier must ensure that the drinking water supplied by the supplier is safe. 20
- (2) If there is a reasonable likelihood that a supplier's drinking water is or may be unsafe, the supplier must—
- (a) take immediate action to ensure that public health is protected; and
 - (b) notify Taumata Arowai that the drinking water is or may be unsafe; and 25
 - (c) investigate the source or cause of the problem; and
 - (d) take remedial action to rectify the problem; and
 - (e) identify and implement measures required to ensure that the problem does not reoccur; and
 - (f) take all practicable steps, to the satisfaction of Taumata Arowai, to advise affected consumers and drinking water suppliers that drinking water is or may be unsafe and how it should be treated what measures should be taken to protect public health (for example, ~~by boiling~~). 30
- (3) The duty under **subsection (1)** does not apply beyond the point of supply.

- 22 Duty to comply with drinking water standards**
- (1) A drinking water supplier must ensure that the drinking water supplied by the supplier complies with the drinking water standards.
- (2) If a supplier's drinking water does not comply with the drinking water standards, the supplier must— 5
- (a) take immediate action to ensure that public health is protected; and
 - (b) notify Taumata Arowai of the non-compliance; and
 - (c) investigate the source or cause of the non-compliance; and
 - (d) take remedial action to rectify the situation; and
 - (e) identify and implement measures required to ensure that the event does not reoccur; and 10
 - (f) take all practicable steps, to the satisfaction of Taumata Arowai, to advise affected consumers and drinking water suppliers that drinking water does not comply with the drinking water standards and ~~how it should be treated~~ what measures should be taken to protect public health (for example, ~~by~~ boiling). 15
- (3) The duty under **subsection (1)** does not apply beyond the point of supply.
Compare: 1956 No 65 s 69V
- 23 Duty of owner of drinking water supply to register supply**
- (1) Every individual drinking water supply must be registered under **section 54**. 20
- (2) The owner of a drinking water supply must ensure that the supply is registered in accordance with the requirements of **subpart 7**.
Compare: 1956 No 65 s 69K(1), (2)
- 24 Duty to take reasonable steps to supply aesthetically acceptable drinking water** 25
- A drinking water supplier must take all reasonably practicable steps to supply drinking water that complies with aesthetic values issued ~~or adopted by~~ Taumata Arowai under **section 47**.
- 25 Duty to provide sufficient quantity of drinking water**
- (1) A drinking water supplier (other than a water carrier) must ensure that a sufficient quantity of drinking water is provided to each point of supply to which that supplier supplies drinking water. 30
- (2) In this Act, **sufficient quantity**, in relation to the drinking water supplied to a point of supply, means—
- (a) the quantity of drinking water that is sufficient to support the ordinary drinking water needs of consumers at the point of supply; or 35
 - (b) if compliance rules have been made under ~~section 48~~ prescribing the quantity of drinking water or a formula for determining the quantity of

drinking water that is sufficient to support the ordinary drinking water needs of consumers at a point of supply, the amount specified in, or calculated according to the formula set out in, those rules.

- (3) **Subsection (1)** does not prevent a drinking water supplier restricting or interrupting the provision of drinking water to a point of supply if, in the opinion of the supplier, the action is necessary because of— 5
- (a) maintenance, improvement, or repairs to the drinking water supply or related infrastructure; or
 - (b) risks to public health; or
 - (c) environmental factors affecting a source of a drinking water supply; or 10
 - (d) an emergency; or
 - (e) cultural factors affecting a source of a drinking water supply (for example, a rahui rāhui).

Examples

A drinking water supplier may need to restrict or interrupt the supply of drinking water where infrastructure such as a pipeline or treatment plant is damaged. 15

A drinking water supplier may need to restrict or interrupt supply of drinking water where contamination of the supply occurs and public health is at risk.

A drinking water supplier may need to restrict or interrupt supply of drinking water where a drought occurs and the source of the drinking water supply can no longer support continuous supply to consumers. 20

A drinking water supplier may need to restrict or interrupt supply of drinking water in case of a fire emergency.

A drinking water supplier may need to restrict or interrupt supply of drinking water where a person has drowned and a rahui-rāhui is placed over the source of a drinking water supply. 25

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- (4) Any planned restriction or interruption of the supply of drinking water by a drinking water supplier must not exceed 8 hours on any 1 occasion unless—
- (a) the supplier—
 - (i) has obtained the prior approval of Taumata Arowai; or 30
 - (ii) complies with a compliance rule that relates to the restriction or interruption of supply for more than 8 hours and that applies to the supplier; and
 - (b) the supplier has taken, and continues to take, all practicable steps to advise affected consumers of the interruption or restriction. 35
- (5) A restriction or interruption of the supply of drinking water that is unforeseen or due to an emergency must not exceed 8 hours on any 1 occasion unless the drinking water supplier—

- (a) has notified Taumata Arowai of the reasons for the interruption or restriction as soon as practicable and, in any event, no later than 24 hours after the commencement of the interruption or restriction; and
- (b) has taken, and continues to take, all practicable steps to advise affected consumers of the interruption or restriction. 5
- (6) In any event where the restriction or interruption of the supply of drinking water exceeds 8 hours, the drinking water supplier must make arrangements to ensure that a sufficient quantity of drinking water is available to affected consumers through an alternative supply (for example, by water carrier).
- (7) To avoid doubt, a drinking water supplier— 10
- (a) may restrict supply to a point of supply if the relevant customer has unpaid accounts for any previous supply of drinking water or has failed to remedy water leaks that the customer is obliged to remedy; but
- (b) must, despite any non-payment or failure referred to in **paragraph (a)**, continue to provide a sufficient quantity of drinking water in accordance with **subsection (1)**. 15
- (8) This section is subject to **section 26** and to any contrary provisions in the Civil Defence Emergency Management Act 2002.
Compare: 1956 No 65 s 69S
- 26 Duties where sufficient quantity of drinking water at imminent risk** 20
- (1) If any drinking water supplier considers that the supplier's ability to maintain a sufficient quantity of drinking water in accordance with **section 25** is or may be at imminent risk for any reason, the supplier must—
- (a) notify Taumata Arowai, Fire and Emergency New Zealand, and the local authorities in the area where the water is supplied of the circumstances giving rise to the risk; and 25
- (b) request that 1 or more of those local authorities exercise their powers under any enactment (for example, by making a bylaw to restrict the use of water for other than essential purposes) to assist that supplier to continue to provide a sufficient quantity of drinking water; and 30
- (c) if the supplier supplies drinking water to another drinking water supplier, notify that other drinking water supplier of the circumstances giving rise to the risk.
- (2) The supplier must also notify further parties if so required by Taumata Arowai.
Compare: 1956 No 65 s 69T 35
- 27 Duty to protect against risk of backflow**
- (1) If a drinking water supply includes reticulation, the drinking water supplier must ensure that the supply arrangements protect against the risk of backflow.

- (2) If there is a risk of backflow in a reticulated drinking water supply, the drinking water supplier may—
- (a) install a backflow prevention device and require the owner of the premises to reimburse the supplier for the cost of installation, maintenance, and ongoing testing of the device; or 5
 - (b) require the owner of the premises to install, maintain, and test a backflow prevention device that incorporates a verifiable monitoring system that complies with an acceptable solution or verification method under **section 49** in accordance with any requirements imposed by the supplier. 10
- (3) A person who installs a backflow protection device must take all reasonable steps to ensure it operates in a way that does not compromise the operation of any ~~automatic fire sprinkler system~~ fire extinguisher system connected to the drinking water supply. 15
- Compare: 1956 No 65 s 69ZZZ

28 ~~Duty to ensure~~ Duties relating to end-point treatment

(1AAA) A drinking water supplier may only use end-point treatment of a drinking water supply if the end-point treatment is used to satisfy an acceptable solution or verification method.

- (1) If a drinking water supply includes end-point treatment, the drinking water supplier is responsible for the installation, maintenance, and ongoing testing of an end-point treatment device. 20
 - (2) A drinking water supplier may,—
 - (a) install an end-point treatment device and require the owner of the premises to reimburse the supplier for the cost of installation, maintenance, and ongoing testing of the device; or 25
 - (b) require the owner of the premises to install, maintain, and test an end-point treatment device that incorporates a verifiable monitoring system that complies with an acceptable solution or verification method ~~under section 49.~~ 30
 - (3) A person who installs an end-point treatment device must take all reasonable steps to ensure that it operates in a way that does not compromise the operation of any ~~automatic fire sprinkler system~~ fire extinguisher system connected to the drinking water supply. 35
- Compare: 1956 No 65 s 69ZZZ

29 Duty of officers, employees, and agents to exercise due diligence

- (1) If a drinking water supplier has a duty under a legislative requirement, every officer, employee, and agent of the drinking water supplier must exercise due diligence to ensure that the drinking water supplier complies with that duty.

- (2) For the purposes of **subsection (1)**, an officer, employee, or agent of a drinking water supplier must exercise the care, diligence, and skill that a reasonable officer, employee, or agent would exercise in the same circumstances, taking into account (without limitation)—
- (a) the scale, complexity, and risk of the drinking water supply; and 5
 - (b) the position of the officer, employee, or agent and the nature of the responsibilities they undertake.
- (3) Despite **subsection (1)**, a member of the governing body of a local authority elected in accordance with the Local Electoral Act 2001 does not have a duty to exercise due diligence to ensure that any council-controlled organisation complies with its duties under legislative requirements, unless that member is also an officer of that council-controlled organisation. 10
- (4) In this section, **due diligence** includes taking reasonable steps—
- (a) to acquire, and keep up to date, knowledge of the supply of safe drinking water and other drinking water supply matters; and 15
 - (b) to gain an understanding of—
 - (i) the nature of the relevant drinking water supply, its source water, its drinking water safety plan and its implementation, and the consumers the supply serves; and
 - (ii) the hazards and risks associated with the drinking water supply and its operation; and 20
 - (iii) how to identify, minimise, and control or eliminate the hazards or risks as part of the operation of the drinking water supply; and
 - (c) to ensure that the drinking water supplier—
 - (i) has available for use, and uses, appropriate resources and processes to implement its drinking water safety plan; and 25
 - (ii) has appropriate processes for identifying and considering information regarding hazards and risk, and for responding to them; and
 - (iii) has, and implements, processes for complying with any duty of the supplier under any legislative requirement. 30

Compare: 2015 No 70 s 44

Subpart 2—Drinking water safety plans

30 Owner must have drinking water safety plan

- (1) An owner of a drinking water supply must prepare a drinking water safety plan in relation to the owner's supply that complies with legislative requirements. 35
- (2) The owner must lodge with Taumata Arowai—
- (a) a copy of the plan; and

- (b) if the owner makes material changes to, or replaces, the plan, a copy of the amended or replacement plan as soon as is reasonably practicable after the amendment or replacement is made.
- (3) The owner must—
- (a) implement the plan; and 5
- (b) ensure that the owner’s drinking water supply is operated in accordance with the plan.
- (4) An owner of a drinking water supply may satisfy the requirement in **subsection (3)(b)** in respect of a drinking water plan or an aspect of the plan by employing or engaging an operator. 10
- Compare: 1956 No 65 s 69Z(1), (4), (5)

31 Drinking water safety plans

- (1) A drinking water safety plan must—
- (a) be proportionate to the scale and complexity of, and the risks that relate to, the drinking water supply; and 15
- (b) identify any hazards that relate to the drinking water supply, including emerging or potential hazards; and
- (c) assess any risks that are associated with those hazards; and
- (d) identify how those risks will be managed, controlled, or eliminated to ensure that drinking water is safe and complies with legislative requirements; and 20
- (e) identify how the drinking water safety plan will be reviewed on an ongoing basis, and how its implementation will be amended, if necessary, to ensure that drinking water is safe and complies with legislative requirements; and 25
- (f) identify how the drinking water supply will be monitored to ensure that drinking water is safe and complies with legislative requirements; and
- (g) include procedures to verify that the drinking water safety plan is working effectively; and
- (h) include a multi-barrier approach to drinking water safety that will be implemented as part of the plan; and 30
- (i) include a source water risk management plan ~~under if required by~~ **section 42**; and
- (j) where a drinking water supply includes reticulation, require, and provide for the use of₂ residual disinfection in the supply unless an exemption is obtained under **section 57**; and 35
- (k) identify how a supplier will meet the supplier’s duty under **section 25** to ensure that a sufficient quantity of drinking water is provided to each point of supply; and

- (l) identify how a supplier will respond to events and emergencies; and
 - (m) comply with any requirements set out in compliance rules ~~made under section 48.~~
- (2) A **multi-barrier approach to drinking water safety** is one that Taumata Arowai considers will— 5
- (a) prevent hazards from entering the raw water; and
 - (b) remove particles, pathogens, and chemical and radiological hazards from the water by physical treatment; and
 - (c) kill or inactivate pathogens in the water by disinfection; and
 - (d) maintain the quality of water in the reticulation system. 10

Compare: 1956 No 65 s 69Z(2), (3)

32 Taumata Arowai to review drinking water safety plans and monitor compliance

- (1) ~~Taumata Arowai must review drinking water safety plans and monitor compliance with drinking water safety plans based on the scale and complexity of, and the risks that relate to, the drinking water supplies. perform the following functions in accordance with the compliance, monitoring, and enforcement strategy:~~ 15
- (a) review drinking water safety plans, including for compliance with legislative requirements: 20
 - (b) monitor compliance with drinking water safety plans by drinking water suppliers:
 - (c) monitor compliance with source water risk management plans, including any undertakings made by third parties to the plan, by drinking water suppliers: 25
 - (d) monitor compliance with other legislative requirements, including (for example) acceptable solutions or verification methods, by drinking water suppliers:
 - (e) establish ongoing monitoring and review arrangements to ensure that risks and hazards that relate to drinking water supplies are being appropriately identified and assessed by drinking water suppliers and (if necessary) changes to drinking water safety plans are made to reflect changes in the risks and hazards. 30
- (2) The requirement in **subsection (1)** includes—
- (a) ~~compliance of drinking water safety plans with legislative requirements; and~~ 35
 - (b) ~~operational implementation of drinking water safety plans; and~~
 - (c) ~~compliance with source water risk management plans, including any undertakings made by third parties to the plan; and~~

- (d) ~~ongoing review arrangements in place to ensure that risks and hazards that relate to drinking water supplies are being appropriately identified and assessed by drinking water suppliers and (if necessary) changes to the plans are made to reflect changes in the risks and hazards.~~
- (2) Taumata Arowai must have regard to the scale, complexity, and risk profile of drinking water supplies when performing the functions in **subsection (1)**. 5

33 Planned events

- (1) This section applies to a planned event, such as a festival or other organised gathering or camp, where the organiser intends to supply drinking water to persons attending the event. 10
- (2) If this section applies, the event organiser must—
- (a) arrange for drinking water to be supplied from a registered drinking water supply, (for example, by a water carrier); or
- (b) apply to Taumata Arowai for registration of a temporary drinking water supply. 15
- (3) An applicant for registration of a temporary drinking water supply must lodge with the application a temporary drinking water safety plan in an approved form.
- (4) Taumata Arowai may register a temporary drinking water supply, subject to any conditions it considers necessary to ensure that the drinking water is safe and complies with drinking water standards. 20
- (5) If the event organiser supplies drinking water from a temporary drinking water supply, the event organiser must ensure that the drinking water is supplied in accordance with—
- (a) the requirements of the temporary drinking water safety plan; and 25
- (b) any conditions imposed by Taumata Arowai.

Compare: 1956 No 65 ss 69G, 69ZI, 69ZJ

34 Unplanned supply of drinking water

- (1) This section applies if drinking water is supplied on an unplanned basis.
- (2) In this Act, **unplanned**, in relation to the supply of drinking water, means the temporary supply of drinking water from an unregistered drinking water supply to any place where—
- (a) the usual drinking water supply to that place has failed or is unsafe to drink; and
- (b) the persons at that place cannot reasonably access a sufficient quantity of drinking water from a registered drinking water supply. 35
- (3) A person who supplies drinking water on an unplanned basis must—

- (a) comply with **sections 21 and 22**, as far as is reasonably practicable; and
- (b) notify Taumata Arowai immediately of the temporary drinking water supply arrangement and comply with any directions issued by Taumata Arowai under **section 103**. 5
- (4) If a person supplies drinking water from an unregistered drinking water supply on an unplanned basis for more than 60 days in any 12-month period, they must register the supply and comply with legislative requirements (except if a state of emergency declaration or transition period under the Civil Defence Emergency Management Act 2002 is in effect). 10

Subpart 3—Requirements relating to notifications and record keeping

35 Duty to notify Taumata Arowai of notifiable risk or hazard

- (1) Taumata Arowai may, by notice ~~in the *Gazette*~~, declare risks or hazards that relate to or affect the supply of drinking water to be notifiable risks or hazards.
- (2) A drinking water supplier must, immediately after becoming aware that a notifiable risk or hazard exists,— 15
- (a) take immediate action to ensure that public health is protected; and
- (b) notify Taumata Arowai of the notifiable risk or hazard in an approved form; and
- (c) investigate the source or the cause of the notifiable risk or hazard; and 20
- (d) ~~take remedial action to rectify the situation~~ prevent, reduce, or eliminate the risk or hazard; and
- (e) take all practicable steps, to the satisfaction of Taumata Arowai, to advise affected ~~customers~~ consumers and drinking water suppliers about the notifiable risk or hazard; and 25
- (f) identify and implement measures required to ensure that the notifiable risk or hazard does not reoccur.
- (3) Taumata Arowai must, on receiving notification under **subsection (2)(b)**, notify the relevant medical officer of health that a notifiable risk or hazard exists. 30
- (4) A declaration made under this section is secondary legislation (*see* Part 3 of the *Legislation Act 2019* for publication requirements).

36 Notification duties of drinking water supplier

Notification regarding cessation or reduction of supply

- (1) A drinking water supplier must notify Taumata Arowai, and every territorial authority whose district contains consumers or drinking water suppliers supplied by the supplier, of the supplier's intention or proposal— 35

- (a) to cease to be the owner of a registered drinking water supply, including the details of the intended new owner if ownership of the supply is to be transferred; or
- (b) to cease supply of drinking water to consumers or drinking water suppliers; or 5
- (c) to limit connections to the supply; or
- (d) to reduce or limit the volume of drinking water supplied to consumers or drinking water suppliers.
- (1A) **Subsection (1)(b) and (d)** does not apply to a restriction or an interruption of supply of drinking water to which **section 25(4), (5), or (7)** applies. 10
Notification regarding operation of other suppliers
- (2) A drinking water supplier must notify Taumata Arowai of—
- (a) instances known to the supplier of persons being supplied drinking water from an unregistered drinking water supply; and
- (b) material instances known to the supplier of the failure of another drinking water supplier to supply drinking water in accordance with the requirements of the drinking water safety plan, the drinking water standards, any enforceable undertaking entered into with the chief executive, or the requirements of any compliance order or other direction issued by Taumata Arowai or a compliance officer; and 15 20
- (c) any material concern they have regarding the ability of the operator of a drinking water supply to maintain authorisation in accordance with **sections 67 and 70**.
- (3) A notification ~~under **subsection (1) or (2)** must be made as soon as is practicable in the circumstances and in an approved form.~~ must be made in an approved form, and if made— 25
- (a) under **subsection (1)**, must be made at least 30 days before the event is intended or proposed to occur; and
- (b) under **subsection (2)**, must be made as soon as practicable in the circumstances. 30

Compare: 1956 No 65 s 69ZH

37 Drinking water suppliers to keep records

- (1) A drinking water supplier must keep and maintain records of—
- (a) the supplier's drinking water supply, its operation, and its compliance with legislative requirements; and 35
- (b) the results of any monitoring to ensure that drinking water is safe and complies with legislative requirements; and
- (c) the supplier's actions in response to any direction, enforceable undertaking, or compliance order issued or accepted under this Act; and

- (d) any other matter specified in compliance rules ~~made under~~ **section 48**.
- (2) Taumata Arowai may require, on request, records under **subsection (1)** to be made available to Taumata Arowai—
- (a) as soon as is reasonably practicable; or
- (b) at particular times (for example, according to a schedule); or
- (c) continuously.

5

Compare: 1956 No 65 s 69ZD

Subpart 4—Consumer complaints

- 38 Requirement for supplier to provide information to consumers and have complaints process** 10
- (1) A drinking water supplier must, in accordance with regulations that apply to the supplier,—
- (a) provide any prescribed information to consumers; and
- (b) establish, maintain, and administer a consumer complaints process; and
- (c) report annually to Taumata Arowai on its consumer complaints process. 15
- (2) A drinking water supplier must ensure that complaints are dealt with—
- (a) in accordance with its consumer complaints process; and
- (b) in an efficient and effective manner.
- 39 Review by Taumata Arowai**
- (1) A drinking water consumer who is not satisfied with the outcome of a complaint under this subpart may, in the approved form, request Taumata Arowai to review the complaint. 20
- (2) ~~Taumata Arowai must—investigate the drinking water supplier’s handling of the complaint and take any action that Taumata Arowai considers necessary as a result of Taumata Arowai’s findings.~~ 25
- (a) investigate the drinking water supplier’s handling of the complaint; and
- (b) take any action that Taumata Arowai considers necessary as a result of Taumata Arowai’s investigation findings.
- (2A) Taumata Arowai may appoint a person to provide a dispute resolution process on its behalf for the purposes of **subsection (2)**. 30
- (3) Taumata Arowai 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 Taumata Arowai,—
- (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 35

- (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
- (d) the complainant does not have sufficient personal interest in the subject matter of the complaint; or 5
- (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. 10
- 40 Taumata Arowai to monitor ~~and enforce~~ compliance with complaints process**
- Taumata Arowai must ~~— monitor compliance with this subpart based on the scale and complexity of, and the risk to, drinking water supplies.~~
- (a) monitor compliance with this subpart; and 15
- (b) have regard to the scale, complexity, and risk profile of a drinking water supplier when performing the functions in this subpart.
- Subpart 5—Source water
- 41 Purpose of subpart**
- The purpose of this subpart is to provide a framework to ensure that, together with measures set out in the Resource Management Act 1991, regulations made under that Act, and the National Policy Statement for Freshwater Management,— 20
- (a) the risks and hazards to source water are identified, assessed, managed, and monitored by drinking water suppliers and local authorities; and 25
- (b) information on source water, and measures to manage risks and hazards to source water, are published on a regular basis by regional councils.
- 41A Application**
- Sections 42 and 43 do not apply to a drinking water supplier whose drinking water supply arrangement does not have a source.** 30
- Examples**
- Sections 42 and 43 do not apply to a water carrier that fills tankers from another drinking water supplier’s reticulated supply.**
- Sections 42 and 43 do not apply to a drinking water supplier that is supplied by another drinking water supplier’s reticulated supply.** 35

42 Source water risk management plans

- (1) A drinking water supplier must prepare and implement a source water risk management plan based on the scale, complexity, and risk of the drinking water supply.
- (2) A source water risk management plan must— 5
- (a) identify any hazards that relate to the source water, including emerging or potential hazards; and
 - (b) assess any risks that are associated with those hazards; and
 - (c) identify how those risks will be managed, controlled, monitored, or eliminated as part of a drinking water safety plan; and 10
 - (d) have regard to any values identified by local authorities under the National Policy Statement for Freshwater Management that relate to a freshwater body that the supplier uses as a source of a drinking water supply.
- (3) A source water risk management plan is part of the supplier’s drinking water safety plan and, unless the context otherwise requires, references in this Act to a drinking water safety plan must be read as including a reference to a source water risk management plan. 15
- (4) Local authorities must contribute to the development and implementation of source water risk management plans prepared by drinking water suppliers, including by— 20
- (a) providing information to suppliers in accordance with compliance rules issued by ~~Taumata Arowai~~ under **section 48**, including information about—
 - (i) land-use activities, potential sources of contamination, and other water users that could directly or indirectly affect the quality or quantity of the source of a drinking water supply; and 25
 - (ii) water quality monitoring of the source of a drinking water supply conducted by a regional council; and
 - (iii) any known risks or hazards that could affect the source of a drinking water supply; and 30
 - (b) undertaking any actions to address risks or hazards to the source of a drinking water supply that local authorities have agreed to undertake on behalf of a drinking water supplier, as specified in a schedule attached to a source water risk management plan or otherwise agreed in writing. 35

43 Suppliers to monitor source water quality

- (1) A drinking water supplier must monitor the quality of the supplier’s source water at the abstraction point in accordance with a programme set out in the supplier’s drinking water safety plan.

- (2) Compliance rules ~~issued under **section 48**~~ may specify the monitoring requirements for source water that are proportionate to the scale and complexity of each drinking water supply and any known risks or hazards to the source of a drinking water supply.
- (3) A drinking water supplier must report the results of the supplier's source water quality monitoring to Taumata Arowai, and Taumata Arowai must provide regional councils with monitoring results annually. 5
- 44 Information sharing with local authorities**
- Information sharing between Taumata Arowai and local authorities*
- (1) Taumata Arowai must provide local authorities with information on the location of drinking water abstraction points provided by drinking water suppliers. 10
- (2) Local authorities must inform Taumata Arowai of any inaccuracies they consider exist in the information on the location of drinking water abstraction points.
- Information sharing between suppliers and local authorities* 15
- (3) A drinking water supplier must inform the appropriate local authorities, as soon as practicable, of any known risks or hazards to a source of a drinking water supply or related infrastructure that could affect the provision of safe drinking water, including the risks or hazards identified in source water risk management plans. 20
- (4) Local authorities must inform drinking water suppliers, as soon as practicable, of any known risks or hazards that could affect a source of a drinking water supply or related infrastructure.
- 45 Regional councils to publish information about source water**
- (1) Regional councils must publish and provide Taumata Arowai with information on source water quality and quantity in their region annually, including any changes to source water quality and quantity. 25
- (2) Regional councils must assess the effectiveness of regulatory and non-regulatory interventions to manage risks or hazards to source water in their region at least once every 3 years and make this information available to the public on Internet sites maintained by or on behalf of the councils. 30
- (3) Taumata Arowai may ~~issue~~ make compliance rules ~~under **section 48**~~ to ~~for~~ regional councils on the format and content of the information they are required to publish under this section.
- Subpart 6—Standards, rules, directions, and other instruments 35
- 46 Power to make issue or adopt drinking water standards**
- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, and following consultation undertaken in accordance with **sec-**

tion 52, ~~issue or adopt~~ make regulations to set standards (drinking water standards) that relate to either or both of the following:

- (a) drinking water composition:
- (b) outcomes of the treatment of drinking water.
- (2) Drinking water standards may, without limitation, specify or provide for— 5
 - (a) minimum or maximum amounts of substances that may be present in drinking water; and
 - (b) minimum or maximum acceptable values for chemical, radiological, microbiological, and other characteristics of drinking water.
- (3) Drinking water standards must not include any requirement that fluoride be added to drinking water. 10
- (4) ~~Drinking water standards are disallowable instruments and legislative instruments for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act.~~
- (4) Regulations made under this section are secondary legislation (see Part 3 of the Legislation Act 2019 for publication requirements). 15

Compare: 1956 No 65 s 69O

47 Aesthetic values for drinking water

- (1) Taumata Arowai must, by notice, ~~issue or adopt~~ aesthetic values that relate to drinking water. 20
- (2) Aesthetic values—
 - (a) ~~must be notified in the *Gazette* and published in accordance with **section 195**; and~~
 - (b) ~~are disallowable instruments, but not legislative instruments, for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act.~~ 25
- (3) Aesthetic values may, without limitation, specify or provide for minimum or maximum values for substances and other characteristics that relate to the acceptability of drinking water to consumers (such as appearance, taste, or odour). 30
- (4) A notice made under this section is secondary legislation (see Part 3 of the Legislation Act 2019 for publication requirements).

48 Compliance rules

- (1) Taumata Arowai may make compliance rules setting out requirements relating to the performance of functions or duties under this Part by— 35
 - (a) drinking water suppliers; and
 - (b) other persons who have functions or duties under this Part (for example, local authorities).

- (2) To avoid doubt, ~~the power in **subsection (1)** is not limited by any other provision in this Part.~~
- (a) the power in **subsection (1)** is not limited by any other provision in this Part; and
- (b) a compliance rule may— 5
- (i) require the treatment of drinking water in a particular way; or
- (ii) prohibit the treatment of drinking water in a particular way.
- (3) A person with a function or duty under this Part must comply with all applicable compliance rules made under **subsection (1)**.
- (4) Compliance rules— 10
- (a) may apply in respect of all drinking water supplies or classes of drinking water supply; but
- (b) must not apply in respect of an individual water supply or local authority.
- (5) Compliance rules made under this section are secondary legislation (see Part 3 of the Legislation Act 2019 for publication requirements). 15
- (5) Compliance rules—
- (a) ~~must be notified in the *Gazette* and published in accordance with **section 195**; and~~
- (b) ~~are disallowable instruments, but not legislative instruments, for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act.~~ 20
- 49 Acceptable solutions and or verification methods for drinking water**
- (1) Taumata Arowai may, by notice ~~in the *Gazette*~~, issue ~~an a drinking water acceptable solution or verification method for use in establishing compliance with legislative requirements.~~ 25
- (2) ~~Acceptable solutions and verification methods—~~
- (a) ~~must be published in accordance with **section 195**; and~~
- (b) ~~are disallowable instruments, but not legislative instruments, for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act.~~ 30
- (3) A drinking water acceptable solution or verification method may—
- (a) provide an alternative to the requirements in **section 30** for a specified class of drinking water supplier; and
- (b) require the treatment of drinking water by a specified class of drinking water supplier. 35
- (4) Taumata Arowai must not issue a drinking water acceptable solution or verification method unless satisfied that the solution or method is consistent with the

- main purpose of this Act (other than the duty to have a drinking water safety plan).
- (5) A drinking water acceptable solution or verification method issued under this section is secondary legislation (see Part 3 of the Legislation Act 2019 for publication requirements). 5
- Compare: 2004 No 72 s 22
- 50 Compliance with acceptable solution or verification method for drinking water**
- (1) A person who complies with an applicable acceptable solution or verification method must, for the purposes of this Act, be treated as having complied with the legislative requirements to which that acceptable solution or verification method relates (other than the duties under **sections 21 and 22**). 10
- (1A) A person who complies with an applicable acceptable solution or verification method that provides an alternative to the requirements in **section 30** must be treated as having complied with those requirements. 15
- (2) A person may comply with an acceptable solution or verification method in order to comply with the legislative requirements to which that acceptable solution or verification method relates, but doing so is not the only means of complying with those legislative requirements. 20
- Compare: 2004 No 72 s 23
- 51 Templates and models**
- (1) Taumata Arowai may, by notice in the *Gazette*, issue a template or model for drinking water safety plans or components of plans.
- (2) Templates and models issued under **subsection (1)** must be published in accordance with **section 195**. 25
- 52 Taumata Arowai consultation requirements**
- (1) Taumata Arowai must ensure that ~~adequate~~ public consultation has been carried out before the following instruments are made:
- (a) drinking water standards:
- (b) aesthetic values: 30
- (c) compliance rules:
- (d) acceptable solutions or verification methods.
- (2) ~~Adequate public~~ Public consultation must include—
- (a) adequate and appropriate notice of the content of the proposed instrument; and 35
- (b) a reasonable opportunity for interested persons to make submissions; and
- (c) appropriate consideration of any submissions received.

- (3) Despite **subsection (1)**, Taumata Arowai need not consult the public if Taumata Arowai is satisfied that—
- (a) the instrument needs to be made—
 - (i) urgently; or
 - (ii) to deal with transitional issues; or
 - (b) an amendment to an instrument is minor and will not adversely and substantially affect the interest of any person.
- (4) A failure to comply with this section does not affect the validity of any of the instruments to which it applies.
- Compare: 1956 No 65 s 69P

Subpart 7—Drinking water supply register

53 Application to register drinking water supply

- (1) An application to register a drinking water supply must be in an approved form.
- (2) The application must include the following information:
- (a) the legal name and contact details of the owner of the drinking water supply, and the owner's trading name (if applicable):
 - (b) the location of the drinking water supply, including, if applicable, the location of each abstraction point for the drinking water supply:
 - (c) the area the drinking water supply supplies:
 - (d) ~~the number of persons expected to be using the drinking water supply~~ estimated number of consumers:
 - (e) a description of the drinking water supply:
 - (f) the legal name and contact details of the drinking water supply operator (if different from the owner), and the operator's trading name (if applicable):
 - (g) the information that relates to the authorisation of the operator of the drinking water supply (if any):
 - (h) any other information prescribed by Taumata Arowai by notice in the *Gazette*.
- (3) The information required by **subsection (2)** must be provided in accordance with any requirements specified by Taumata Arowai by notice in the *Gazette*.
- (4) The application must be accompanied by the fee or levy (if any) prescribed in regulations made under **section 190 or 191**.

- (5) Taumata Arowai must register the supply within 20 working days after receiving the application unless Taumata Arowai considers that the application is incomplete or requires amendment.

Compare: 1956 No 65 s 69K(3), (4)

54 Register of drinking water supplies 5

- (1) Taumata Arowai must keep and maintain a register of drinking water supplies that contains the information specified in **section 53(2)**.
- (2) Taumata Arowai must also keep and maintain a separate publicly available version of the register that contains only—
- (a) the information specified in **section 53(2)(a), (c), (d), (f), and (g)**; and 10
 - (b) any other information ~~specified in **section 53(2)**~~ about a registered drinking water supply that Taumata Arowai considers is in the public interest to disclose.
- (3) Taumata Arowai may withhold any information from the publicly available version of the register if it considers it is in the public interest to do so, which may include the protection of— 15
- (a) the privacy of natural persons; or
 - (b) the security of a drinking water supply.
- (4) Taumata Arowai may maintain the register and the publicly available version in any form, including as a single register or in different parts for different classes or categories of owners, operators, or supplies. 20
- (5) Registration of a drinking water supply is valid for 12 months.

Compare: 1956 No 65 s 69J

55 Duty to renew annual registration and notify changes 25

- (1) The owner of a registered drinking water supply must, in each 12-month period, during a month allocated for the purpose by Taumata Arowai, apply for a renewal of registration of the owner's supply.
- (2) At the time of applying to Taumata Arowai for renewal of registration of a drinking water supply, the owner of the drinking water supply must— 30
- (a) confirm that the information provided under **section 53(2)** is correct at the time of registration renewal; and
 - (b) confirm that the drinking water safety plan is still current and, if not, lodge a new or amended plan.
- (3) The owner of a drinking water supply must immediately notify Taumata Arowai of any change to the information provided under **section 53(2)**. 35
- (4) An application and a notification under this section must be in an approved form.

- (5) An application under this section must be accompanied by the prescribed fee or levy (if any).

Compare: 1956 No 65 s 69M

Subpart 8—Exemptions to requirements on drinking water suppliers

56	<u>General exemptions</u>Exemptions	5
(1)	The chief executive may, by notice in the <i>Gazette</i>, exempt any <u>a</u> drinking water supplier or class of drinking water supplier from compliance with the following requirements in this Act:	
(a)	to supply safe drinking water (<i>see</i> section 21):	
(b)	to comply with drinking water standards (<i>see</i> section 22):	10
(c)	to take reasonable steps to provide aesthetically acceptable drinking water (<i>see</i> section 24):	
(d)	to provide a sufficient quantity of drinking water to consumers at each point of supply (<i>see</i> section 25):	
(e)	to protect against the risk of backflow (<i>see</i> section 27):	15
(f)	to ensure requirements relating to end-point treatment (<i>see</i> section 28):	
(g)	to have a drinking water safety plan (<i>see</i> section 30):	
(h)	to keep records (<i>see</i> section 37):	
(i)	to provide information to consumers and have a consumer complaints process (<i>see</i> section 38).	20
<hr/>		
	Examples	
	A number of backcountry huts and isolated campsites in a district. A person who supplies drinking water at backcountry huts or isolated campsites in a district, where it is impractical to provide safe drinking water and water may have to be boiled, could be exempted from requirements under a class exemption.	25
	A marae on a rainwater tank supply could be exempted while Taumata Arowai works with its owners on how to meet regulatory requirements.	
	A set of farm buildings on a bore water supply might be exempted from requirements, on the condition that it samples and tests the bore water on a quarterly basis and the exemption is notified to the relevant territorial authority for inclusion on the land information memorandum relating to the farm.	30
(2)	An exemption must exempt a drinking water supplier, or class of supplier, from all the requirements described in subsection (1) .	
(3)	An application for an exemption under this section must be accompanied by the prescribed fee (if any).	35
(4)	The chief executive must not grant an exemption unless they are satisfied that the exemption is consistent with the main purpose of this Act. <u>an exemption unless—</u>	

- (a) satisfied that the exemption is consistent with the main purpose of this Act (other than the duty to have a drinking water safety plan); and
- (b) for an exemption in respect of a class of drinking water supplier, the chief executive has consulted the public in accordance with **section 52(2) and (3)**. 5
- (5) The chief executive may grant the exemption on any conditions that the chief executive thinks fit.
- (6) Without limiting the power in **subsection (5)**, the conditions may include a requirement—
- (a) that the drinking water supplier take appropriate measures to minimise the risk to public health; and 10
- (b) that the drinking water supplier take appropriate measures to warn consumers of the need to boil any drinking water from the water supply before it is consumed, including requirements about appropriate signs at taps; and 15
- (c) relating to the composition of the drinking water; and
- (d) to monitor the quality of the drinking water; and
- (e) that, where land is supplied with drinking water, the exemption and any conditions will be notified by Taumata Arowai to the relevant territorial authority for inclusion on the land information memorandum. 20
- ~~(7) The chief executive may replace an exemption either before or when it expires.~~
- ~~(8) An exemption may continue in force for not more than 5 years (and at the close of the date that is 5 years after the exemption first comes into force, the exemption must be treated as having been revoked unless it is sooner revoked or expires) expires on the close of the day that is 5 years after the date on which it took effect, unless it is sooner replaced or revoked.~~ 25
- ~~(9) An exemption granted under this section is secondary legislation (see Part 3 of the Legislation Act 2019 for publication requirements) that applies to a class of drinking water supplier is a disallowable instrument, but not a legislative instrument, for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act.~~ 30
- ~~(10) The chief executive's reasons for granting the exemption must be published with the exemption.~~
- 57 Exemption: residual disinfection**
- (1) The chief executive may exempt a drinking water supplier or class of drinking water supplier from the requirement to use residual disinfection in— 35
- (a) a supply that includes reticulation; or
- (b) any part of a supply that includes reticulation.

- (2) The chief executive may grant the exemption on any conditions that the chief executive thinks fit.
- (3) The chief executive must not grant the exemption unless—
- (a) satisfied that the exemption is consistent with the main purpose of this Act; and 5
- (b) for an exemption in respect of an individual drinking water supplier, the supplier satisfies the chief executive that drinking water supplied by the supplier will comply with all other legislative requirements and the drinking water safety plan on an ongoing basis; and
- (c) for an exemption in respect of a class of drinking water supplier, the chief executive has consulted the public in accordance with **section 52(2) and (3)**. 10
- (4) An application for an exemption under this section must be accompanied by the prescribed fee (if any).
- (5) An exemption may continue in force for not more than 5 years (and at the close of the date that is 5 years after the exemption first comes into force, the exemption must be treated as having been revoked unless it is sooner revoked or expires). 15
- (6) The chief executive must publish an exemption granted in respect of an individual drinking water supplier on an Internet site maintained by or on behalf of Taumata Arowai. 20
- (7) An exemption granted in respect of a class of drinking water supplier under this section is secondary legislation (see Part 3 of the Legislation Act 2019 for publication requirements).
- (8) The chief executive's reasons for granting an exemption must be published with the exemption. 25

57 Exemption: residual disinfection

- (1) ~~This section applies to a drinking water supply that includes reticulation.~~
- (2) ~~Subject to **subsection (5)**, the drinking water safety plan must provide for the use of residual disinfection in the supply.~~ 30
- (3) ~~If the drinking water safety plan does not provide for the use of residual disinfection,—~~
- (a) ~~the drinking water supplier must advise the chief executive and apply for an exemption under **subsection (5)**; and~~
- (b) ~~the drinking water supplier must, if required by the chief executive, satisfy the chief executive that drinking water supplied by the supplier will comply with legislative requirements and the drinking water safety plan on an ongoing basis.~~ 35

- (4) ~~An application for an exemption must be accompanied by the prescribed fee (if any).~~
- (5) ~~Taumata Arowai may exempt a drinking water supplier from the requirement to use residual disinfection in the supply on any conditions that Taumata Arowai thinks fit.~~ 5
- (6) ~~A drinking water supplier granted an exemption that is subject to conditions must comply with those conditions.~~
- (7) ~~Taumata Arowai may replace an exemption either before or when it expires.~~
- (8) ~~An exemption expires on the close of the day that is 5 years after the date on which it took effect, unless it is sooner replaced or revoked.~~ 10

Subpart 9—Emergency powers

58 Taumata Arowai may declare drinking water emergency

- (1) Taumata Arowai may declare a drinking water emergency if it believes, on reasonable grounds, that there is a serious risk to public health.
- (2) In this subpart, **serious risk to public health** means a serious risk to public health relating to— 15
- (a) the drinking water supplied to consumers; or
 - (b) the ongoing supply (including domestic self-supplies) of a sufficient quantity of drinking water in a geographical area.
- (3) Taumata Arowai must consult the Minister before declaring a drinking water emergency or amending a drinking water emergency declaration. 20
- (4) A drinking water emergency declaration must specify—
- (a) the nature of the emergency; and
 - (b) the purpose of the declaration; and
 - (c) the geographical area or specific drinking water supply to which the declaration relates; and 25
 - (d) the period of time during which the declaration remains in force.
- (5) Taumata Arowai may amend a drinking water emergency declaration.
- (6) As soon as practicable after making or amending a drinking water emergency declaration, Taumata Arowai must— 30
- (a) give a copy of the declaration or amended declaration to every affected drinking water supplier and territorial authority and the relevant medical officer of health; and
 - (b) publish a copy of the declaration or amended declaration in the *Gazette*; and 35

- (c) take all practicable steps, working with affected drinking water supplies and territorial authorities, to ensure that consumers are informed about the drinking water emergency.
- (7) After receiving a drinking water emergency declaration, a drinking water supplier and a territorial authority must advise, to the satisfaction of Taumata Arowai, affected consumers about the drinking water emergency. 5
- Compare: 1956 No 65 s 69ZZA
- 59 Maximum duration of drinking water emergency declaration**
- No drinking water emergency declaration may remain in force for longer than 28 days unless regulations are made under **section 65** extending the period of the drinking water emergency declaration. 10
- Compare: 1956 No 65 s 69ZZB
- 60 Drinking water emergency may be declared or continued even if other emergency declared**
- (1) A drinking water emergency— 15
- (a) may be declared even if an emergency has been declared under another enactment:
- (b) remains in force in accordance with **section 59**, even if an emergency has been declared under another enactment.
- (2) Despite **subsection (1)**, if an emergency is declared under the Civil Defence Emergency Management Act 2002 or the Hazardous Substances and New Organisms Act 1996, or a biosecurity emergency is declared under the Biosecurity Act 1993, any compliance officer or employee of Taumata Arowai is, when exercising any powers conferred by **section 61**, subject to the direction of,— 20
- (a) in the case of an emergency declared under the Civil Defence Emergency Management Act 2002, the Controller (within the meaning of section 4 of that Act); or 25
- (b) in the case of an emergency declared under section 136 of the Hazardous Substances and New Organisms Act 1996, the relevant office holder who appointed the enforcement officer who declared the emergency under that Act, unless Taumata Arowai directs otherwise; or 30
- (c) in the case of a biosecurity emergency declared under section 144 of the Biosecurity Act 1993, the Minister (within the meaning of section 145 of that Act), unless Taumata Arowai directs otherwise. 35
- Compare: 1956 No 65 s 69ZZC
- 61 Special powers of Taumata Arowai during drinking water emergency**
- (1) If a drinking water emergency declaration is in force ~~has been declared under **section 58(1)**~~, Taumata Arowai may exercise all or any of the powers in **sub-**

- section (2)** for the purpose of preventing, reducing, or eliminating the serious risk to public health.
- (2) The powers are to—
- (a) take immediate action, or direct any person to take immediate action, that Taumata Arowai believes, on reasonable grounds, will prevent, reduce, or eliminate the serious risk to public health: 5
 - (b) direct any person to stop, or prohibit any person from starting, anything that Taumata Arowai believes, on reasonable grounds, is a cause of, or contributes to, the serious risk to public health:
 - (c) requisition any property in order to prevent, reduce, or eliminate the serious risk to public health: 10
 - (d) destroy any property or any other thing in order to prevent, reduce, or eliminate the serious risk to public health:
 - (e) require all persons within a specified area to use an alternative drinking water supply: 15
 - (f) do emergency work, or direct a territorial authority to do emergency work, to ensure that an alternative supply of drinking water is available to affected persons:
 - (g) direct a territorial authority to supply drinking water to affected persons (whether in the district of that territorial authority or in the district of another territorial authority): 20
 - (h) direct a drinking water supplier to make arrangements to ensure that an alternative drinking water supply is available to affected consumers (for example, by water carrier):
 - (i) direct the closure of any public place, or any part of a public place: 25
 - (j) direct the cancellation of any public event, function, or gathering at any place:
 - (k) take any other action that Taumata Arowai believes is reasonably necessary to prevent, reduce, or eliminate the serious risk to public health.
- (3) Taumata Arowai must consult the Minister before exercising a power under **subsection (2)(f) or (g)** in relation to a territorial authority. 30
- (4) Every person who receives a direction, prohibition, or requirement from Taumata Arowai under **subsection (2)** must comply with that direction, prohibition, or requirement.
- (5) Taumata Arowai must issue a direction, prohibition, or requirement under **subsection (2)(a) to (h), or (k)** in accordance with the requirements in **section 123**. 35
- (6) A direction given under **subsection (2)(i) or (j)** is secondary legislation (see Part 3 of the Legislation Act 2019 for publication requirements).

Compare: 1956 No 65 s 69ZZD

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62 Exemption during drinking water emergency

- (1) If a drinking water emergency declaration is in force ~~has been declared under **section 58(1)**~~, Taumata Arowai may exempt any drinking water supplier, or class of drinking water supplier, from compliance with any or all of the requirements in **sections 21, 22, 24, 25, 27, 28, 30, 37, and 38**. 5
- (2) Taumata Arowai may grant an exemption from the requirements on any conditions that Taumata Arowai thinks fit.
- (3) Without limiting the power in **subsection (2)**, the conditions may include a requirement—
- (a) that the drinking water supplier take appropriate measures to minimise the serious risk to public health; and 10
 - (b) ~~that the drinking water supplier take appropriate measures to warn consumers of the need to boil any drinking water from the water supply before it is consumed~~ advise affected consumers and drinking water suppliers of measures that they should take to protect public health; and 15
 - (c) relating to the composition of the drinking water; and
 - (d) to monitor the quality of the drinking water.
- (4) ~~Taumata Arowai must publish a notice of any exemption in the *Gazette* as soon as practicable after it is granted.~~
- (5) The exempt drinking water supplier and the territorial authority that is responsible for the geographical area to which the exemption relates must take all practicable steps to inform affected consumers of the exemption for the period during which it remains in force. 20
- (6) ~~Taumata Arowai may replace an exemption granted under this section before it expires.~~ 25
- (7) An exemption expires when the drinking water emergency to which it relates is no longer in force, unless earlier revoked.
- (8) An exemption granted under this section is secondary legislation (see Part 3 of the Legislation Act 2019 for publication requirements) ~~that applies to a class of drinking water supplier is a disallowable instrument, but not a legislative instrument, for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act.~~ 30

63 Compensation for property requisitioned or destroyed

- (1) Reasonable compensation is payable for any loss or destruction of property if Taumata Arowai, or any person acting at Taumata Arowai's direction under **section 61**,— 35
- (a) requisitions any property from any person for use in a drinking water emergency; or

- (b) destroys any property in order to prevent, reduce, or eliminate the serious risk to public health.
- (2) Reasonable compensation under **subsection (1)** is payable, on written application by any person having an interest in the property, by Taumata Arowai out of money appropriated by Parliament for the purpose. 5
- (3) Compensation is not payable under this section to any person who caused or contributed substantially to the duty that brought about the requisition or destruction.
- (4) Taumata Arowai may require a drinking water supplier who has caused or contributed substantially to an emergency to reimburse Taumata Arowai for all or part of any compensation paid by Taumata Arowai under this section in relation to that emergency. 10
- (5) A person may appeal to the District Court under **section 92** against—
- (a) Taumata Arowai’s decision to pay or refuse to pay compensation under this section; or 15
- (b) the amount of compensation determined to be payable under this section; or
- (c) the determination of liability of any person to reimburse Taumata Arowai under **subsection (4)**. 20
- Compare: 1956 No 65 s 69ZZE 20

64 Actions taken under emergency powers may be exempted from requirements of Part 3 of Resource Management Act 1991

- (1) If any action under **section 61** is an activity that breaches the provisions of Part 3 of the Resource Management Act 1991, Taumata Arowai may exempt the action taken from those provisions during the period specified under **section 58(4)(d)**. 25
- (2) Before granting an exemption, Taumata Arowai—
- (a) must consult the relevant consent authority (to the extent that is practicable in the circumstances); and
- (b) may consult any other persons that Taumata Arowai considers appropriate. 30
- (3) A failure to comply with **subsection (2)** does not affect the validity of any exemption given under this section.
- (4) Despite **subsection (1)**, if, during any period in which an exemption by Taumata Arowai is in force, a consent authority refuses to issue a resource consent in respect of the action which is the subject of the exemption, the exemption, if not expiring earlier, expires at the close of 5 working days after the date of the decision of the consent authority unless— 35
- (a) regulations extending the exemption are made under **section 65**; or

- (b) any appeal is lodged against the decision of the consent authority, in which case the exemption expires on the determination of the appeal or at the time specified by the court that determines the appeal.

Compare: 1956 No 65 s 69ZZF(1)–(3)

- 65 Regulations relating to emergency situations** 5
- (1) If any action has been exempted from Part 3 of the Resource Management Act 1991 under **section 64** and Taumata Arowai considers that it is necessary, on the grounds prescribed in **section 58(1)**, to continue the action beyond the period specified under **section 58(4)(d)**,—
- (a) Taumata Arowai may request the Minister to recommend the making of regulations that extend the exemption; and 10
- (b) the Minister may recommend that the regulations be made; and
- (c) the Governor-General may, by Order in Council, make regulations for that purpose.
- (2) If Taumata Arowai considers that it is necessary, on the grounds prescribed in **section 58(1)**, to extend a drinking water emergency declaration beyond the period specified under **section 58(4)(d)**,— 15
- (a) Taumata Arowai may request the Minister to recommend the making of regulations that extend the period, up to a maximum of 2 years, during which a drinking water emergency declaration under **section 58** remains in force; and 20
- (b) the Minister may recommend that the regulations be made; and
- (c) the Governor-General may, by Order in Council, make regulations for that purpose.
- ~~(3) Regulations made under this section— 25~~
- ~~(a) come into force on the date of their notification in the *Gazette* or at the time specified in the regulations, whichever is later; and~~
- ~~(b) continue in force until revoked or until a date not later than the day 2 years after the regulations came into force, on which date the regulations expire and are deemed to have been revoked. 30~~
- (3) The regulations are revoked at the close of the day that is 2 years after the date on which they first come into force, unless they are earlier revoked.
- (4) Regulations made under this section are secondary legislation (see Part 3 of the Legislation Act 2019 for publication requirements).
- Compare: 1956 No 65 s 69ZZF(5), (6) 35

66 Effect of exemption

If an exemption is granted under **section 64** or extended under **section 65(1)**, the provisions of Part 3 of the Resource Management Act 1991 do not

apply to the actions taken under **section 61** to which the exemption relates while the exemption remains in force.

Compare: 1956 No 65 s 69ZZG

Subpart 10—Authorisations

- 67 Requirement for operators to be authorised** 5
- A person must not operate a drinking water supply, a wastewater network, or a class of drinking water supply or wastewater network if—
- (a) regulations require the operator to be authorised; and
 - (b) the person is not authorised in accordance with the regulations.
- Compare: 2015 No 70 s 206(1) 10
- 68 Requirement for prescribed skills, qualifications, or experience in respect of drinking water supply or wastewater network**
- A person must not certify, assess, test, or operate a drinking water supply, a wastewater network, or a class of drinking water supply or wastewater network if regulations require that, in order to do so, the person must— 15
- (a) have prescribed skills, qualifications, or experience and the person does not have the prescribed skills, qualifications, or experience; or
 - (b) be supervised by a person with prescribed skills, qualifications, or experience, and the person is not supervised by a person with the prescribed skills, qualifications, or experience. 20
- Compare: 2015 No 70 s 207
- 69 Requirement for prescribed skills, qualifications, or experience for water sampling**
- A person must not sample source water, raw water, or drinking water if regulations require that, in order to do so, the person must— 25
- (a) have prescribed skills, qualifications, or experience and the person does not have the prescribed skills, qualifications, or experience; or
 - (b) be supervised by a person with the prescribed skills, qualifications or experience, and the person is not supervised by a person with the prescribed skills, qualifications, or experience. 30
- 70 Requirement to comply with conditions of authorisation**
- A person must comply with the conditions of any authorisation given to that person that are prescribed in or under regulations.
- Compare: 2015 No 70 s 208

71 Regulations relating to authorisations

- Regulations made under **section 190** may prescribe matters relating to authorisations (including licences, certifications, registrations, and permits), qualifications, skills, and experience for the purposes of this subpart, including providing for— 5
- (a) requirements to be authorised:
 - (b) the grant, issue, renewal, variation, suspension, cancellation, expiry, and replacement of authorisations:
 - (c) the evidence and information to be provided in relation to applications (for example, statutory declarations, qualifications, or compliance certificates): 10
 - (d) exemptions from a requirement to be authorised:
 - (e) variations of authorisations by Taumata Arowai, whether on application or otherwise:
 - (f) the authorisation of persons who are to be involved in the authorisation of other persons (for example, as trainers, assessors, auditors, reviewers, or compliance certifiers): 15
 - (g) the authorisation of persons to authorise other persons (for example, through accreditation, certification, or verification):
 - (h) the grant, issue, renewal, suspension, or cancellation of authorisations granted by persons referred to in **paragraph (f)**: 20
 - (i) processes for the review of or appeal against decisions in respect of authorisations, including ensuring that the person concerned is given a reasonable opportunity to be heard:
 - (j) the eligibility requirements for applicants for authorisations: 25
 - (k) the grounds and processes for regular monitoring, auditing, or review of authorisations, including powers to request or require information from authorised persons:
 - (l) the grounds and processes for training or supervision in relation to authorisations: 30
 - (m) conditions of authorisations:
 - (n) fees for the applications for the grant, issue, renewal, variation, audit, or review of authorisations, or the basis on which the amount of fee is to be calculated or ascertained:
 - (o) the keeping of 1 or more registers of authorisations, and for access to those registers: 35
 - (p) the recognition of authorisations granted under other enactments or by other jurisdictions, and any exceptions to such recognition:
 - (q) time frames within which persons must obtain authorisations.

Subpart 11—Laboratory accreditation and testing

72 Duty to use accredited laboratory to analyse water

- (1) A drinking water supplier must use an accredited laboratory to analyse source water, raw water, and drinking water as part of any monitoring requirements in compliance rules or a drinking water safety plan. 5
- (2) If the results of an accredited laboratory's analysis (whether or not the analysis has been requested to comply with **subsection (1)**) indicate that drinking water does not comply with the drinking water standards or compliance rules, the laboratory must notify Taumata Arowai and the drinking water supplier as soon as practicable after the results are known. 10
- (3) In this subpart, **accredited laboratory** means a person accredited under **section 76** to perform the functions of a laboratory that analyses source water, raw water, and drinking water.

73 Taumata Arowai may appoint accreditation body

- (1) Taumata Arowai may, by notice in the *Gazette*,— 15
- (a) appoint a person as a laboratory accreditation body; and
- (b) revoke the appointment at any time.
- (2) A reference in this subpart to a **laboratory accreditation body** is a reference to— 20
- (a) the person appointed under **subsection (1)(a)**; or
- (b) if no person is appointed, Taumata Arowai.

Compare: 1956 No 65 s 69ZY; 2004 No 72 s 248

74 Requirements relating to laboratories for ~~laboratory accreditation body~~

- (1) Taumata Arowai must, by notice ~~in the~~ *Gazette*, prescribe— 25
- (a) the criteria and standards for accreditation of a laboratory; and
- (b) different classes of accreditation, if Taumata Arowai thinks it appropriate; and
- (c) the time frame for validity and required renewal of accreditation; and
- (d) the minimum frequency of ~~audits—assessments~~ that the laboratory accreditation body must conduct ~~on~~ of laboratories that analyse source water, raw water, and drinking water (which must be at least once every 3 years); and 30
- (e) forms and procedures that relate to accreditation; and
- (ea) procedures for the investigation by a laboratory accreditation body of complaints relating to laboratories; and 35
- (eb) notification requirements for laboratories relating to analysis of source water, raw water, or drinking water; and

- (f) any other matters Taumata Arowai considers necessary or appropriate.
- (2) A notice made under this section is secondary legislation (see Part 3 of the Legislation Act 2019 for publication requirements).
- Compare: 2004 No 72 s 249
- 75 Charges** 5
- (1) A laboratory accreditation body may charge an accredited laboratory the following fees prescribed by the laboratory accreditation body by notice: the amount (if any) prescribed by Taumata Arowai by notice in the *Gazette* for—
- (a) ~~an application for, or a renewal of, accreditation:~~
- (b) ~~an audit conducted under **section 74(d)** by the accreditation body on the operator of the laboratory.~~ 10
- (a) a fee for—
- (i) an application for, or a renewal of, accreditation:
- (ii) an assessment conducted under **section 74(1)(d)**:
- (iii) an investigation conducted under **section 74(1)(ea)**: 15
- (b) an annual fee for each full or partial year of accreditation:
- (c) any other fee that is necessary to recover the costs associated with providing accreditation services.
- (2) A notice made under this section is secondary legislation (see Part 3 of the Legislation Act 2019 for publication requirements). 20
- Compare: 2004 No 72 s 249A
- 76 Accreditation**
- The laboratory accreditation body may, on the application of a person made in accordance with **section 78**, accredit that person to perform the functions of a laboratory that analyses source water, raw water, and drinking water. 25
- Compare: 2004 No 72 s 250
- 77 Criteria for accreditation**
- Before granting accreditation, the laboratory accreditation body must be satisfied that the applicant meets the criteria and standards for accreditation prescribed by Taumata Arowai under **section 74**. 30
- Compare: 2004 No 72 s 251
- 78 Application for accreditation**
- An application for accreditation under **section 76** must—
- (a) be made in writing; and
- (b) be given in the manner (if any) prescribed by the laboratory accreditation body; and 35

- (c) contain the information (if any) prescribed by the laboratory accreditation body.

Compare: 2004 No 72 s 253

79 Suspension or revocation of accreditation

- (1) The laboratory accreditation body may suspend or revoke, or amend the scope of, an accreditation under **section 76** in accordance with this section. 5
- (2) The laboratory accreditation body may suspend or revoke an accreditation only if it—
- (a) is satisfied that the laboratory no longer meets the prescribed criteria and standards for accreditation; and 10
- (b) has first given the laboratory concerned a reasonable opportunity to be heard.
- (3) The laboratory accreditation body must notify Taumata Arowai if it has concerns that it believes could lead to the suspension or revocation of the accreditation of a laboratory. 15
- (4) Despite **subsection (2)(a)**, the laboratory accreditation body must not revoke the accreditation of a laboratory if—
- (a) the prescribed criteria and standards for accreditation are amended; and
- (b) the laboratory no longer meets those criteria and standards solely as a result of the amendments. 20
- (5) The limit in **subsection (4)** applies only during the period of 3 months after the date on which the amendments come into force.

Compare: 2004 No 72 s 254

80 Laboratory accreditation body must notify Taumata Arowai of grant of, or change to, accreditation 25

- (1) The laboratory accreditation body must notify Taumata Arowai when it grants, amends the scope of, renews, suspends, or revokes the accreditation of ~~an accreditation to~~ a laboratory.
- (2) The notification must be given—
- (a) in the manner notified by Taumata Arowai to the laboratory accreditation body from time to time; and 30
- (b) within 7 working days after the action ~~the grant~~ to which it relates.
- (3) Taumata Arowai must make the appropriate changes to the relevant entries in the register of accredited laboratories.

Compare: 2004 No 72 s 255

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81 Register of accredited laboratories

Taumata Arowai must keep and maintain a register of accredited laboratories.

Subpart 12—Statutory management and transfer of operations

82 Non-performance by drinking water supplier

- (1) This section applies if the chief executive considers, in accordance with **section 83**, that—
- (a) a drinking water supplier has persistently failed to comply with 1 or more legislative requirements; or 5
 - (b) there is a serious risk to public health relating to a drinking water supply.
- (2) The chief executive may—
- (a) appoint 1 or more operators to act in place of the supplier to perform all or any of the supplier’s functions or duties as an operator under this Act; or 10
 - (b) require the drinking water supplier to appoint 1 or more operators to act in place of the supplier to perform all or any of the supplier’s functions or duties as an operator under this Act.

Compare: 2004 No 72 s 277

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83 Criteria for appointment or renewal of appointment

- (1) In determining whether an appointment under **section 82** should be made, the chief executive must consider—
- (a) the previous compliance record of the drinking water supplier, including any compliance action or prosecution initiated by the chief executive and the outcome; and 20
 - (b) the likelihood that the drinking water supplier will be able to comply with the supplier’s functions or duties as an operator under this Act; and
 - (c) the risk to public health posed by the drinking water supplier’s previous compliance record and likely compliance in the future; and 25
 - (d) the extent to which the requirements in **sections 67, 68, and 70**, and the requirements prescribed by regulations made under **section 190**, have been met in respect of the drinking water supply; and
 - (e) the likelihood that the drinking water supplier will be able to meet the requirements in **sections 67, 68, and 70**, and the requirements prescribed by regulations made under **section 190**, in respect of the drinking water supply; and 30
 - (f) the results of any assessment under **section 125** of the Local Government Act 2002.
- (2) If **section 82(1)** applies in respect of a drinking water supplier that is not a territorial authority, the chief executive must consult the territorial authority or authorities responsible for the area in which the drinking water supply is located before making an appointment under **section 82(2)**. 35

- (3) In deciding whether to renew an appointment made under **section 82(2)**, the chief executive must—
- (a) consider—
 - (i) the matters specified in **subsection (1)**; and
 - (ii) the results of any consultation undertaken under **subsection (2)**; and
 - (b) revoke the appointment and direct the supplier to resume the performance of the supplier's functions or duties if the chief executive considers that the supplier is capable of doing so.
- (4) If **subsection (3)(b)** applies, the chief executive must give the person appointed under **section 82(2)** notice of the revocation of that person's appointment.
- Compare: 2004 No 72 s 278

84 Effect of appointment

If a person is appointed under **section 82**,—

- (a) that person has all the drinking water supplier's functions and duties specified in the appointment, and the powers necessary to perform those functions or duties, as if they had been imposed or conferred on that person directly by this Act and not by the appointment; and
- (b) this Act applies accordingly.

Compare: 2004 No 72 s 279

85 Costs may be recovered from drinking water supplier

- (1) This section applies to all costs, charges, and expenses incurred by ~~—Taumata Arowai for the purposes of **section 82**.~~
- (a) Taumata Arowai, for the purposes of **section 82**; and
 - (b) a person appointed under **section 82**, in respect of their functions and duties under **section 84**.
- (2) The costs, charges, and expenses may be recovered from the drinking water supplier concerned as a debt due to Taumata Arowai.

Compare: 2004 No 72 s 280

86 Requirements for appointment

- (1) The chief executive must specify in writing—
- (a) the period for which the appointment is made; and
 - (b) the supplier's functions and duties under this Act that the appointed person is required to perform.
- (2) The appointment may—
- (a) be on any conditions that the chief executive thinks fit; and
 - (b) be renewed in accordance with **section 83**.

- (3) A person appointed under **section 82** may resign from the person's appointment by giving not less than 90 working days' written notice of the intention to resign to the chief executive.

Compare: 2004 No 72 s 281

87 Notice of appointment to drinking water supplier 5

- (1) The chief executive must notify a drinking water supplier of an appointment under **section 82** not less than 90 days before the commencement of the appointment.

- (2) The notice must—
- (a) be in writing; and 10
 - (b) specify the period for which the appointment is made; and
 - (c) specify the supplier's functions and duties under this Act that the appointed person is required to perform; and
 - (d) contain the contact information for the chief executive of Taumata Arowai described in **section 123(2)**. 15

Subpart 13—Review and appeals

Internal review

88 Application for internal review

- (1) A person affected by a decision to which this section applies (the **reviewable decision**) or the person's representative may apply to Taumata Arowai for a review (an **internal review**) of the decision within— 20

- (a) 20 working days after the day on which the decision first came to the affected person's notice; or
- (b) any longer period that Taumata Arowai allows.

- (2) This section applies to the following decisions: 25

- (a) any directions issued by Taumata Arowai or a compliance officer;
- (b) any conditions issued by Taumata Arowai under **section 33** that apply to a temporary drinking water safety-supply;
- (c) any decision by the chief executive to grant or refuse to grant an exemption under **section 56 or 57**: 30
- (d) any decision to refuse to authorise, or to amend, suspend, or revoke, an authorisation under regulations made under **section 190**.

- (3) The application must be made in the manner and form required by Taumata Arowai.

Compare: 2015 No 70 s 131 35

89 Decision of Taumata Arowai

- (1) Taumata Arowai must review the reviewable decision and make a decision—
- (a) as soon as practicable; and
 - (b) in any case, within 20 working days after the application for internal review is received. 5
- (2) However, the individual who made the reviewable decision must not review the decision.
- (3) Taumata Arowai's decision may—
- (a) confirm or vary the reviewable decision; or
 - (b) set aside the reviewable decision; or 10
 - (c) set aside the reviewable decision and substitute another decision that Taumata Arowai considers appropriate.
- (4) Taumata Arowai may seek further information from the applicant, and, if it does,—
- (a) the applicant must provide the information within the period (not less than 7 working days) specified by Taumata Arowai in the request for information; and 15
 - (b) the period specified in **subsection (1)(b)** ceases to run until the applicant provides the information to Taumata Arowai.
- (5) If the applicant does not provide the further information within the required time, Taumata Arowai may make a decision on the internal review on the basis of the information held by Taumata Arowai. 20
- (6) If the reviewable decision is not varied or set aside within the period specified in **subsection (1)(b)**, the decision is to be treated as having been confirmed by Taumata Arowai. 25

Compare: 2015 No 70 s 132

90 Notice of decision on internal review

As soon as practicable after making a decision in accordance with **section 89**, Taumata Arowai must give the applicant in writing—

- (a) the decision on the internal review; and 30
- (b) the reasons for the decision.

Compare: 2015 No 70 s 133

91 Stay of reviewable decision on internal review

- (1) If an application is made for an internal review of a decision, Taumata Arowai may stay the operation of the decision. 35
- (2) Taumata Arowai may stay the operation of a decision—
- (a) on Taumata Arowai's own initiative; or

- (b) on the application of the applicant for review.
- (3) Taumata Arowai must make a decision on an application for a stay within 3 working days after Taumata Arowai receives the application.
- (4) If Taumata Arowai has not made a decision on an application under **subsection (2)(b)** within the time set out in **subsection (3)**, Taumata Arowai is to be treated as having made a decision to grant a stay. 5
- (5) A stay of the operation of a decision pending a decision on an internal review continues until the reviewer has made a decision on the review.

Compare: 2015 No 70 s 134

Appeals 10

92 Appeal

- (1) A person may appeal to the District Court against any of the following on the grounds that it is unreasonable—
- (a) ~~the matters a decision or determination~~ specified in **section 63(5)**;
- (b) Taumata Arowai's decision under **section 89** on an internal review; 15
- (c) the whole or any part of a compliance order issued under **section 118**.
- (2) The appeal must be lodged within 20 working days after the day on which the decision or determination first came to the person's notice or the compliance order was served on the person.
- (3) ~~The notice of appeal must—~~ 20
- (a) ~~state the reasons for the appeal and the relief sought; and~~
- (b) ~~be lodged with the District Court and served on Taumata Arowai.~~
- (4) On an appeal under **subsection (1)**, the court must inquire into the decision, determination, or compliance order and may—
- (a) confirm or vary the decision, determination, or compliance order; or 25
- (b) set aside the decision or determination, or cancel the compliance order; or
- (c) set aside the decision or determination and substitute another decision or determination that the court considers appropriate; or
- (d) cancel the compliance order and substitute another compliance order that the court considers appropriate; or 30
- (e) refer the decision, determination, or compliance order back to the decision maker with the court's opinion, together with any directions as to how the matter should be dealt with.

Compare: 2015 No 70 s 135

35

93 Interim order by District Court

- (1) At any time before the final determination of an appeal, the District Court may make an interim order.
- (2) An interim order may be subject to any conditions that the District Court thinks fit. 5
- (3) If the District Court makes an interim order, the Registrar of that court must send a copy of the order to Taumata Arowai.

Compare: 2013 No 148 s 23

94 Appeal to High Court

- (1) A person may appeal to the High Court on a question of law only from a decision by the District Court that determines an appeal under **section 92(1)**. 10
- (2) An appeal must be made by giving notice of appeal no later than 20 working days after the date on which notice of the decision was communicated to the appellant or any further time that the High Court may allow.
- (3) However, nothing in this section affects the right of any person to apply for judicial review. 15

Compare: 2013 No 148 s 22

95 Appeals to Court of Appeal or Supreme Court

- (1) A party to an appeal under **section 94** may appeal to the Court of Appeal or the Supreme Court against any determination of the High Court on a question of law arising in that appeal, with the leave of the court appealed to. 20
- (2) The Court of Appeal or the Supreme Court hearing an appeal under this section has the same power to adjudicate on the appeal as the High Court had.
- (3) **Subsection (1)** is subject to section 75 of the Senior Courts Act 2016 (which provides that the Supreme Court must not give leave to appeal directly to it against a decision made in a court other than the Court of Appeal unless it is satisfied that there are exceptional circumstances that justify taking the proposed appeal directly to the Supreme Court). 25

96 Effect of appeal against compliance order

An appeal under **sections 92 to 95** against a compliance order has the following effects: 30

- (a) the chief executive whose compliance order is appealed against must not revoke or amend the order while the order is the subject of an appeal or while the time for the person's appeal rights is running; and
- (b) an appeal against a compliance order does not operate as a stay of that order unless the court orders otherwise. 35

Compare: 1999 No 142 s 156H

Part 3

Enforcement and other matters

Subpart 1—Provisions relating to appointment of compliance officers

97 Appointment of compliance officers

- (1) Taumata Arowai may, by notice in writing, appoint any of the following as a compliance officer: 5
- (a) an employee of Taumata Arowai:
 - (b) an employee of a department (within the meaning of the State Sector Act 1988):
 - (c) an employee of the State services (within the meaning of the State Sector Act 1988): 10
 - (d) any other person who Taumata Arowai is satisfied—
 - (i) is suitably qualified and trained:
 - (ii) belongs to a class of persons who are suitably qualified and trained to exercise any or all of the powers of, and carry out any or all of the duties of, a compliance officer. 15
- (2) A compliance officer's compliance powers are subject to any conditions or limitations specified in the notice of the officer's appointment.
- (3) However, the exercise of a compliance power by a compliance officer is not invalid merely because it did not comply with the conditions specified in the notice of the ~~inspector's~~ officer's appointment. 20

Compare: 2015 No 70 s 163

98 Identity cards

- (1) Taumata Arowai must give each compliance officer an identity card that—
- (a) states the person's name and appointment as a compliance officer; and 25
 - (b) includes any other matter prescribed by regulations made under **section 190**.
- (2) A compliance officer must, when exercising compliance powers under this Act, produce their identity card for inspection on request.
- (3) A person who ceases to be a compliance officer must as soon as practicable return the identity card to Taumata Arowai. 30

Compare: 2015 No 70 s 164

99 Suspension and ending of appointment of compliance officers

- (1) Taumata Arowai may suspend or end the appointment of a compliance officer at any time. 35

- (2) To avoid doubt, a person's appointment as a compliance officer ends when the person ceases to be eligible for appointment as a compliance officer.

Compare: 2015 No 70 s 165

100 Compliance officers subject to Taumata Arowai's directions

- (1) A compliance officer (whether or not an employee) is subject to directions from Taumata Arowai in the exercise of the officer's compliance powers. 5

- (2) A direction under **subsection (1)** may be of a general nature or may relate to a specified matter or specified class of matter.

- (3) A failure to comply with a direction under **subsection (1)** does not invalidate the exercise of a compliance officer's compliance power. 10

Compare: 2015 No 70 s 166

101 Chief executive has powers of compliance officer

The chief executive has all the powers that a compliance officer has under this Act.

Compare: 2015 No 70 s 167

15

Subpart 2—Powers of compliance officers

Purpose

102 Purpose of powers in this subpart

A compliance officer may exercise a power under this subpart only for 1 or more of the following purposes: 20

- (a) to ensure that legislative requirements have been, are being, or will be complied with:
- (b) to ensure that a drinking water supplier has been, is, or will be complying with a drinking water safety plan:
- (c) to ensure that local authorities and others are complying with any undertakings made as part of a source water risk management plan: 25
- (d) to respond to serious risks to public health relating to drinking water:
- (e) to investigate anything that might have contaminated drinking water and poses a risk to human life or public health:
- (f) to investigate the commission of offences under this Act: 30
- (g) to bring proceedings in relation to any compliance orders, enforceable undertakings, or offences under this Act.

Compare: 1956 No 65 s 69ZN

Directions

103 Directions

- (1) A compliance officer may issue a direction to a drinking water supplier, or to any person supplying drinking water under **section 34**, for the purposes in **section 102(a) to (d)**. 5
- (2) A drinking water supplier or other person to whom a direction is issued must comply with the direction within any time frame (including immediately) specified in the direction (if any).
- (3) A direction may be amended or revoked at any time.
- (4) The amendment or revocation of a direction does not have retrospective effect. 10
- (5) A compliance officer must issue a direction under this section in accordance with the requirements in **section 123**.
- (6) To avoid doubt, a direction issued under this section may require the treatment of drinking water.

Dealing with serious risk to public health 15

104 Compliance officer powers where serious risk to public health exists

- (1) This section applies if a compliance officer believes, on reasonable grounds, that there is a serious risk to public health.
- (2) In this subpart, **serious risk to public health** means a serious risk relating to—
 - (a) the drinking water supplied to consumers; or 20
 - (b) the ongoing supply of a sufficient quantity of drinking water to consumers.
- (3) If this section applies, the compliance officer may—
 - (a) take immediate action, or direct any person to take immediate action, to prevent, reduce, or eliminate the serious risk to public health: 25
 - (b) direct any person to stop, or prohibit any person from starting, anything that Taumata Arowai believes, on reasonable grounds, is a cause of, or contributes to, the serious risk to public health:
 - (c) direct all persons within a specific area to use an alternative drinking water supply: 30
 - (d) direct a drinking water supplier to make arrangements to ensure that an alternative drinking water supply is available to affected persons (for example, by water carrier).
- (4) Every person who is directed by a compliance officer under **subsection (3)** must comply with that direction. 35
- (5) A compliance officer must issue a direction under this section in accordance with the requirements in **section 123**.

- (6) To avoid doubt, a direction issued under this section may require the treatment of drinking water.

Compare: 1956 No 65 s 69ZO(1), (2)

105 Requirements relating to exercise of section 104 powers

- (1) The exercise of any power referred to in **section 104(3)** that would otherwise involve the contravention of any of sections 9, 12, 13, 14, and 15 of the Resource Management Act 1991 is not a contravention of any of those sections if, before the exercise of the power, the compliance officer—
- (a) consults the relevant consent authority and takes account of any views expressed by the authority about the way in which the power is to be exercised; and
- (b) obtains the consent of Taumata Arowai to the exercise of the power.
- (2) A compliance officer must—
- (a) take all practicable steps to consult affected drinking water suppliers before exercising a power referred to in **section 104(3)**; and
- (b) in every case, take all reasonable steps to comply with rules that relate to health and safety at any place, while the officer exercises any power referred to in **section 104(3)** in that case.
- (3) ~~A person who is directed by a compliance officer, under **section 104(3)**, to take any action, or not to take any action, must comply with that direction.~~
- (4) A direction imposed under **section 104(3)** ceases to have effect at the expiry of 72 hours after it is imposed unless, before the expiry of that period, Taumata Arowai—
- (a) is satisfied that the direction ought to continue in effect; and
- (b) has declared a drinking water emergency under **section 58** in relation to the risk of harm that was the reason for imposing that direction.

Compare: 1956 No 65 s 69ZO(3)–(5)

Power to take samples

106 Power to take and test samples

- A compliance officer may, as they consider necessary,—
- (a) take and test samples of, and conduct inquiries or inspection in relation to, all or any of the following:
- (i) a source of a drinking water supply;
- (ii) raw water;
- (iii) drinking water; and
- (b) direct any drinking water supplier to take a specified action referred to in **paragraph (a)** and to report to the officer with the results; and

- (c) direct a drinking water supplier to test samples at any facility the officer considers necessary, such as an accredited laboratory.

Compare: 1956 No 65 s 69ZP(1)(e)–(h)

Power to obtain information

- 107 Power to obtain information** 5
- (1) A compliance officer may, for the purpose of performing or exercising their functions or powers,—
- (a) inspect, at all reasonable times, all records and documents of every description in the possession or control of a drinking water supplier that are required to be kept under this Act; and 10
- (b) make copies of, or take extracts from, those records and documents; and
- (c) direct any person who has possession or control of those records and documents to supply to the compliance officer, in ~~a~~ any reasonable manner that the officer specifies, all or any of those records or documents; and 15
- (d) take photographs, video recordings, and other visual images; and
- (e) take audio sound recordings; and
- (f) make electronic records.
- (2) The compliance officer must, no later than 10 working days after directing a person to supply documents under this section, provide the person with an inventory of all documents taken. 20
- (3) Subpart 5 of Part 4 of the Search and Surveillance Act 2012 (privilege and confidentiality) applies to anything done under this section.
- (4) Nothing in this section limits any enactment that imposes a prohibition or restriction on the availability of any information. 25
- Compare: 1956 No 65 s 69ZP; 2014 No 32 s 300

- 108 Power to require name and address**
- (1) A compliance officer may require a person to provide the person's name and residential address if—
- (a) the officer finds the person committing an offence against this Act; or 30
- (b) the officer finds the person in circumstances that lead, or has information that leads, the officer to reasonably suspect the person has committed an offence against this Act.
- (2) When asking a person to provide their name and residential address, the compliance officer must— 35
- (a) tell the person the reason for the requirement to provide their name and residential address; and

- (b) warn the person that it is an offence to fail to provide their name and residential address, unless the person has a reasonable excuse.
- (3) If the compliance officer reasonably believes that the name and residential address a person provides are false, the compliance officer may require the person to give evidence of their correctness. 5
- (4) Subpart 5 of Part 4 of the Search and Surveillance Act 2012 (privilege and confidentiality) applies to anything done under this section.
- (5) Nothing in this section limits any enactment that imposes a prohibition or restriction on the availability of any information. 10
- Compare: 2015 No 70 s 175

109 Power to question drinking water supplier

- (1) A compliance officer may direct a drinking water supplier to answer any question for the purpose of—
- (a) ensuring that the legislative requirements have been, are being, or will be complied with; or 15
- (b) ensuring that a drinking water supplier has been, is, or will be complying with a drinking water safety plan; or
- (c) investigating anything that might have, or might potentially have, contaminated drinking water and poses a risk to human life or public health.
- (2) The supplier must answer the questions, subject to **subsections (3) and (4)**. 20
- (3) Subpart 5 of Part 4 of the Search and Surveillance Act 2012 (privilege and confidentiality) applies to anything done under this section.
- (4) Nothing in this section limits any enactment that imposes a prohibition or restriction on the availability of any information.

109A Powers of entry and inspection 25

- (1) A compliance officer may exercise a power under **subsection (2)** for 1 or more of the purposes in **section 102(a) to (e)**.
- (2) A compliance officer may, in respect of a place described in **subsection (4)**,—
- (a) enter the place; and 30
- (b) inspect the place; and
- (c) exercise the powers in **section 106**.
- (3) Before exercising the power to enter a place, the compliance officer must make reasonable efforts to contact the owner, occupier, or person in charge of the place. 35
- (4) The places are any area where infrastructure and processes are used to collect, treat, or transmit drinking water for supply to consumers, including—
- (a) the point of supply:

- (b) any end-point treatment device:
- (c) any backflow prevention device.
- (5) A compliance officer must not enter a home or a marae under this section, except with the consent of an occupier.
- (6) A compliance officer must not enter a defence area (within the meaning of section 2(1) of the Defence Act 1990) under this section, except in accordance with a written agreement between Taumata Arowai and the Chief of Defence Force. 5
- 110 Power to enter without search warrant**
- (1) ~~A compliance officer may enter a place described in **subsection (3)** without a search warrant only if the officer believes, on reasonable grounds, that entry is required in relation to a serious risk to public health.~~ 10
- (1) A compliance officer may exercise a power under **subsection (1A)** if the officer believes, on reasonable grounds, that the exercise of the power is required in relation to a serious risk to public health. 15
- (1A) A compliance officer may, in respect of a place described in **subsection (3)**,—
- (a) enter the place without a search warrant; and
- (b) search the place; and
- (c) exercise any of the powers in **sections 103 to 109.** 20
- (2) Before exercising the power to enter a place without a search warrant, the compliance officer must make reasonable efforts to contact the owner, occupier, or person in charge of the place.
- (3) The places are any area where infrastructure and processes are used to collect, treat, or transmit drinking water for supply to consumers, including— 25
- (a) the point of supply:
- (b) any end-point treatment device:
- (c) any backflow prevention device.
- (4) Part 4 of the Search and Surveillance Act 2012 (other than subparts 2, 3, 6, and 8 and sections 118 and 119) applies to anything done under this section. 30
- (5) ~~Any exercise of the power of entry at a marae or a building associated with a marae must take account of the kawa of the marae so far as practicable in the circumstances.~~
- (6) A compliance officer must not enter a home or a marae under this section, except with the consent of an occupier. 35
- (7) A compliance officer must not enter a defence area (within the meaning of section 2(1) of the Defence Act 1990) under this section, except in accordance

with a written agreement between Taumata Arowai and the Chief of Defence Force.

Compare: 2014 No 32 s 311

111 Notice of entry

- (1) If a compliance officer enters any place under this Act and is unable, despite reasonable efforts, to find any person in charge, the officer must, before leaving the place, leave a written notice stating— 5
- (a) the officer’s identity; and
 - (b) the officer’s contact information; and
 - (c) the date and time of entry; and 10
 - (d) the officer’s reasons for entering.
- (2) In this section, **contact information** includes—
- (a) the name of the officer; and
 - (b) 1 or more of the following: 15
 - (i) telephone number:
 - (ii) email address:
 - (iii) physical or postal address.

Compare: 2015 No 70 s 171

112 Power of Taumata Arowai to authorise making of applications for search warrants 20

- (1) Taumata Arowai may authorise a specified person to enter and search a place, vehicle, or other thing for the purpose of ascertaining whether a person has engaged in or is engaging in conduct that contravenes or may contravene any legislative requirement or drinking water safety plan, if Taumata Arowai is satisfied that there are reasonable grounds— 25
- (a) to suspect that person has engaged in or is engaging in conduct that constitutes or may constitute a contravention; and
 - (b) to believe that the search will find evidential material in or on any part of the place, vehicle, or thing.
- (2) A specified person authorised under **subsection (1)** may enter and search the place, vehicle, or other thing if— 30
- (a) the occupier of the place, or the person in charge of the vehicle or thing, (as the case may be) consents; or
 - (b) the specified person obtains a warrant under **subsection (3)**.
- (3) An issuing officer may issue a search warrant in relation to a place, vehicle, or thing on an application made in the manner provided by subpart 3 of Part 4 of the Search and Surveillance Act 2012 by a specified person authorised under 35

- subsection (1)**, if the issuing officer is satisfied that there are reasonable grounds—
- (a) to suspect that a person has engaged in or is engaging in conduct that contravenes or may contravene any legislative requirement or drinking water safety plan; and 5
 - (b) to believe that the search will find evidential material in or on any part of the place, vehicle, or thing.
- (4) In this section, **specified person** means—
- (a) a compliance officer; or
 - (b) an employee of Taumata Arowai; or 10
 - (c) any other person who Taumata Arowai is satisfied is suitably qualified and trained.
- (5) Despite **subsection (4)**, a constable may apply for a warrant to be issued under **subsection (3)** without an authorisation from Taumata Arowai under **subsection (1)**. 15
- (6) The provisions of subpart 2 of Part 3 and Part 4 of the Search and Surveillance Act 2012 (except section 118 and 119) apply, with any necessary modifications.
- Compare: 2015 No 70 s 173
- 113 Continuation of powers of entry and inspection without search warrants** 20
- A compliance officer who, in the course of exercising a power under **section 110**, finds evidence of contravention of any relevant legislative requirement or drinking water safety plan is not required to obtain a search warrant under **section 112** to continue exercising powers under **section 110**.
- Compare: 2015 No 70 s 174 25
- 114 Conditions of entry, search, and seizure**
- (1) A compliance officer must take all reasonable steps to ensure that any equipment the officer has taken into a place is—
 - (a) free from contamination; and
 - (b) in good working order. 30
 - (2) Section 110(e) of the Search and Surveillance Act 2012 applies.
- Compare: 2014 No 32 s 299
- 115 Building Act 2004**
- (1) If a compliance officer, in the course of performing functions or exercising powers under this Act, believes that any building or sitework that relates to the supply of drinking water does not comply with the Building Act 2004 or the building code, the officer must notify the appropriate territorial authority in writing and include details of the officer’s opinion. 35

- (2) For the purposes of this section, **building, building code, sitework, and territorial authority** have the meanings given to them by section 7 of the Building Act 2004.
Compare: 1956 No 65 s 128A
- 116 Power to ask for assistance** 5
- (1) A compliance officer who considers it necessary to do so may ask a person for assistance in performing the officer's functions or duties, or exercising the officer's powers (other than exercising a power of entry), under this Act.
- (2) If the person agrees to assist, they—
- (a) must act under the supervision of, and as instructed by, the officer; and 10
- (b) may accompany the officer into any place that the officer enters.
- Compare: 2014 No 32 s 297
- 117 Protection of persons acting under authority of Act**
- (1) This section applies to the following persons:
- (a) a compliance officer: 15
- (b) the chief executive:
- (c) a person called to assist a compliance officer:
- (d) Taumata Arowai;
- (e) an operator appointed under **section 82(2)**:
- (f) a specified person authorised under **section 112(1)**. 20
- (2) The person is protected from civil and criminal liability, however it may arise, for any act that the person does or omits to do in the performance or purported performance of the person's functions or duties, or the exercise or purported exercise of the person's powers, under this Act—
- (a) in good faith; and 25
- (b) with reasonable cause.
- (3) *See also* section 6 of the Crown Proceedings Act 1950.
Compare: 2014 No 32 s 351

Subpart 3—Compliance orders

- 118 Power to issue compliance order** 30
- (1) The chief executive may serve a compliance order on any person—
- (a) requiring that person to stop, or prohibiting that person from starting, anything done or to be done by, or on behalf of, that person that the chief executive believes, on reasonable grounds,—

- (i) contravenes, or is likely to contravene, any legislative requirement or drinking water safety plan (including any undertakings given by third parties to the plan); or
- (ii) will or may create a serious risk to public health that relates to a drinking water supply; or 5
- (b) requiring that person to do something that the chief executive believes, on reasonable grounds, will—
 - (i) ensure compliance by, or on behalf of, that person with the legislative requirements or drinking water safety plan (including any undertakings given by third parties to the plan); or 10
 - (ii) prevent, reduce, or eliminate any serious risk to public health that relates to a drinking water supply.
- (2) A compliance order may be made subject to directions and conditions (for example, directions to amend a drinking water safety plan).
- (3) To avoid doubt, a compliance order served under this section may require the treatment of drinking water. 15
Compare: 1956 No 65 s 69ZZH

119 Compliance with compliance order

- (1) A person on whom a compliance order is served must—
 - (a) comply with the order within the period specified in it; and 20
 - (b) unless the order directs otherwise, pay all the costs and expenses of complying with it.
- (2) This section is subject to the rights of appeal in **sections 92 to 95**.
Compare: 1956 No 65 s 69ZZI

120 Form and content of compliance order 25

A compliance order must state—

- (a) the name of the person to whom it relates; and
- (b) the reasons for the order; and
- (c) the action required to be taken, stopped, or not taken; and
- (d) the period within which the action must be taken or stopped, being a reasonable period within which to take the action required or to stop the action. 30

Compare: 1956 No 65 s 69ZZJ

121 Chief executive may vary or cancel order

Except as provided in **section 96**, a compliance order may be amended or revoked by the chief executive at any time. 35

Compare: 2015 No 70 s 114

122 Formal irregularities or defects in order

A compliance order is not invalid merely because of any defect, irregularity, omission, or want of form in the order unless the defect, irregularity, omission, or want of form causes or is likely to cause a miscarriage of justice.

Compare: 2015 No 70 s 115

5

123 General provisions relating to directions and orders

(1) A direction, prohibition, or requirement issued under **section 61, 103, or 104** and a compliance order issued under **section 118**—

- (a) must be in writing; and
- (b) must contain contact information for Taumata Arowai and the compliance officer (if applicable); and 10
- (c) must state that a person has a right of review under **section 88** ~~and or~~ a right of appeal under **section 92**; and
- (d) may be addressed to any person under the person's legal name or usual business name or style. 15

(2) In this section, **contact information** includes—

- (a) the name of the chief executive, and the name of the compliance officer (if applicable); and
- (b) 1 or more of the following:
 - (i) telephone number: 20
 - (ii) email address:
 - (iii) physical or postal address.

Compare: 2015 No 70 s 112

Subpart 4—Remedial action

124 When chief executive may carry out remedial action 25

- (1) This section applies if a person fails to comply with the whole or any part of a compliance order that is issued to the person.
- (2) The chief executive may take any remedial action the chief executive believes reasonable to address risks to public health after giving written notice to the person of— 30
 - (a) the chief executive's intention to take that action; and
 - (b) the person's liability for the costs of that action.

Compare: 2015 No 70 s 119

125 Power of chief executive to take other remedial action

- (1) This section applies if the chief executive reasonably believes that— 35
 - (a) circumstances exist in which a compliance order can be issued; and

- (b) a compliance order cannot be issued at a place because, after taking reasonable steps, the person to whom the order could be issued cannot be found.
- (2) The chief executive may take any remedial action necessary to address risks to public health. 5
Compare: 2015 No 70 s 120
- 126 Costs of remedial or other action**
- Taumata Arowai may recover as a debt due to Taumata Arowai the reasonable costs of any remedial action taken under—
- (a) **section 124** from the person to whom a compliance order is issued; or 10
(b) **section 125** from any person to whom a compliance order could have been issued in relation to the matter.
- Compare: 2015 No 70 s 121
- 127 Civil proceedings relating to non-compliance with compliance order**
- (1) On application by the chief executive, the District Court may make an order— 15
(a) compelling a person to comply with a compliance order; or
(b) restraining a person from contravening a compliance order.
- (2) The District Court may make an order—
(a) under **subsection (1)(a)** if it is satisfied that the person has refused or failed to comply with a compliance order: 20
(b) under **subsection (1)(b)** if it is satisfied that the person has contravened, is contravening, or is likely to contravene a compliance order.
- (3) The District Court may make an order under this section—
(a) whether or not proceedings have been brought for an offence against this Act in connection with any matter in relation to which the compliance order was issued; and 25
(b) whether or not the compliance period for the compliance order has expired.
- Compare: 2015 No 70 s 122
- Subpart 5—Enforceable undertakings** 30
- 128 Chief executive may accept enforceable undertakings**
- (1) The chief executive may accept an enforceable undertaking given by a person in writing in connection with a matter that relates to a contravention or an alleged contravention by the person of this Act, a legislative requirement, or a drinking water safety plan. 35

- (2) The chief executive must not accept an enforceable undertaking under **subsection (1)** if the chief executive believes that the contravention or alleged contravention would amount to an offence against **section 162 or 164**.
- (3) The giving of an enforceable undertaking does not constitute an admission of guilt by the person giving it in relation to the contravention or alleged contravention to which the undertaking relates. 5

Compare: 2015 No 70 s 123

129 Notice of decision and reasons for decision

- (1) The chief executive must give the person seeking to make an enforceable undertaking written notice of— 10
- (a) the decision to accept or reject the undertaking; and
 - (b) the reasons for the decision.
- (2) Taumata Arowai must make available to the public, on an Internet site maintained by or on behalf of Taumata Arowai, notice of a decision to accept an enforceable undertaking and the reasons for that decision. 15
- (3) In the case of an enforceable undertaking given by a drinking water supplier, Taumata Arowai must take steps to bring the undertaking to the attention of the community consumers and any drinking water supplier served by the supplier.

Compare: 2015 No 70 s 124

130 When enforceable undertaking is enforceable 20

An enforceable undertaking takes effect and becomes enforceable when the chief executive's decision to accept the undertaking is given to the person who made the undertaking, or at any later date specified by the chief executive.

Compare: 2015 No 70 s 125

131 Contravention of enforceable undertaking 25

- (1) The chief executive may apply to the High Court for an order if a person contravenes an enforceable undertaking.
- (2) If the court is satisfied that the person who made the enforceable undertaking has contravened the undertaking, the court may make either or both of the following orders: 30
- (a) an order directing the person to comply with the undertaking;
 - (b) a civil pecuniary penalty not exceeding \$50,000 for an individual or \$300,000 in any other case;
 - (c) an order discharging the undertaking.
- (3) In addition to the orders referred to in **subsection (2)**, the court may make 35 any other order that the court considers appropriate in the circumstances, including orders directing the person to pay to Taumata Arowai—
- (a) the reasonable costs of the proceedings; and

- (b) the reasonable costs of Taumata Arowai in monitoring compliance with the enforceable undertaking in the future.
- (4) This section does not prevent proceedings being brought for the contravention or alleged contravention of this Act or regulations made under this Act to which the enforceable undertaking relates. 5

Compare: 2015 No 70 s 127

132 Withdrawal or variation of enforceable undertaking

- (1) A person who has given an enforceable undertaking may at any time, with the written agreement of the chief executive,—
- (a) withdraw the undertaking; or 10
- (b) vary the undertaking.
- (2) However, the provisions of the undertaking cannot be varied to provide for a different alleged contravention of this Act or regulations made under this Act.
- (3) Taumata Arowai must make available to the public, on an Internet site maintained by or on behalf of Taumata Arowai, notice of the withdrawal or variation of an enforceable undertaking. 15
- (4) In the case of an enforceable undertaking given by a drinking water supplier, Taumata Arowai must take steps to bring the withdrawal or variation of the undertaking to the attention of the community served by the supplier.

Compare: 2015 No 70 s 128

20

133 Proceedings for alleged contravention

- (1) No proceedings (whether civil or criminal) for a contravention or an alleged contravention of this Act or regulations made under this Act may be brought against—
- (a) a person who made an undertaking in relation to that contravention, while the undertaking is enforceable and there is no contravention of the undertaking; 25
- (b) a person who made, and has completely discharged, an enforceable undertaking in relation to that contravention.
- (2) The chief executive may accept an enforceable undertaking in relation to a contravention or an alleged contravention before proceedings in relation to that contravention have been completed. 30
- (3) If the chief executive accepts an enforceable undertaking before the proceedings are completed, the chief executive must take all reasonable steps to have the proceedings discontinued as soon as practicable. 35

Compare: 2015 No 70 s 129

Subpart 6—Planning and reporting requirements of Taumata Arowai

134 Drinking water compliance, monitoring, and enforcement strategy

- (1) The board of Taumata Arowai must prepare a drinking water compliance, monitoring, and enforcement strategy.
- (2) The board must review the strategy at least every 3 years. 5
- (3) The board may amend the strategy at any time.
- (4) The board may delegate to the chief executive the functions of preparing and amending the strategy.
- (5) The purpose of the strategy is to—
 - (a) provide transparency about Taumata Arowai’s intended approach to achieving compliance with drinking water regulatory requirements over a 3-year period, and the outcomes sought from that approach; and 10
 - (b) provide the basis on which Taumata Arowai is accountable for the performance of its regulatory functions and the use of its regulatory powers.
- (6) The strategy must include Taumata Arowai’s intended approach to— 15
 - (a) ~~the review of drinking water safety plans and monitoring compliance with drinking water safety plans performing the functions in **section 32(1)**~~; and
 - (b) achieving and enforcing compliance with drinking water legislation and standards, including how Taumata Arowai intends to— 20
 - (i) support drinking water suppliers of different types, sizes, and abilities to build and maintain capability to comply with their regulatory responsibilities; and
 - (ii) target its activities and prioritise its resources to focus on the suppliers, supplies, or practices that pose the greatest risk to drinking water safety; and 25
 - (iii) ~~undertake perform~~ its regulatory functions and apply its regulatory powers; and
 - (c) exemptions issued under **sections 56 and 57**.
- (7) The chief executive must have regard to the strategy when performing the chief executive’s functions. 30
- (8) Taumata Arowai must ensure that the strategy is published in accordance with **section 195**.

135 Taumata Arowai to publish annual drinking water regulation report

- (1) Taumata Arowai must ensure that, before 1 July in each year, it prepares a report on— 35

- (a) the extent to which persons (such as drinking water suppliers and local authorities) are complying with this Act and other enactments that relate to drinking water; and
 - (b) the safety of drinking water supplied by drinking water suppliers; and
 - (c) compliance rates of drinking water suppliers with the drinking water standards; and 5
 - (d) the extent to which the risks and hazards to source water are being identified, managed, and monitored; and
 - (e) capability among drinking water suppliers and across the wider water services sector; and 10
 - (f) the performance of Taumata Arowai's functions, including Taumata Arowai's performance in achieving the objectives and targets of the compliance, monitoring, and enforcement strategy; and
 - (g) the extent to which this Act is meeting its main purpose.
- (2) Taumata Arowai must provide a copy of the report to the Minister and the report must be presented to the House of Representatives. 15
- (3) Taumata Arowai must ensure that the report is published in accordance with **section 195**.

Subpart 7—Monitoring and reporting on environmental infrastructure performance of wastewater and stormwater networks 20

136 Monitoring and reporting on environmental infrastructure performance of wastewater and stormwater networks

Taumata Arowai must monitor and report in accordance with this subpart on the environmental infrastructure performance of wastewater and stormwater networks and network operators for the purposes of— 25

- (a) providing transparency about—
 - (i) the environmental infrastructure performance of wastewater and stormwater networks and network operators; and
 - (ii) the extent to which wastewater and stormwater networks are complying with applicable standards, conditions, or requirements (whether under legislation or as part of a resource consent); and 30
 - (iii) the extent to which wastewater and stormwater network operators are avoiding, remedying, or mitigating any adverse effects on the environment arising from the operation of wastewater and stormwater networks; and 35
- (b) enabling comparisons to be made between the performance of different wastewater networks and network operators; and

- (c) enabling comparisons to be made between the performance of different stormwater networks and network operators; and
- (d) enabling the identification of, and development of advice and guidance on,—
- (i) ~~good~~best practices that relate to the design, management, and operation of wastewater and stormwater networks; and
- (ii) risks and issues that relate to performance and practice. 5
- 137 Collection of information for monitoring and reporting on environmental infrastructure performance** 10
- (1) Taumata Arowai may collect, or require a person to provide, the information it considers necessary to achieve the purposes specified in **section 136**.
- (2) Any person required to provide information under **subsection (1)** must provide the information to Taumata Arowai in accordance with any regulations made under **section 190**.
- 138 Civil proceedings relating to non-compliance with section 137** 15
- (1) Taumata Arowai may apply to the High Court for an order if a person does not comply with **section 137(2)**.
- (2) If the court is satisfied that the person has not complied with **section 137(2)**, the court may make either or both of the following orders:
- (a) an order directing the person to comply with **section 137(2)**: 20
- (b) a civil pecuniary penalty not exceeding \$50,000.
- (3) In addition to the orders referred to in **subsection (2)**, the court may make any other order that the court considers appropriate in the circumstances, including orders directing the person to pay to Taumata Arowai the reasonable costs of the proceedings. 25
- 139 Network registers**
- (1) Taumata Arowai must establish and maintain—
- (a) a register of wastewater networks; and
- (b) a register of stormwater networks.
- (2) Taumata Arowai may maintain the registers in any form, including in different parts for different classes of network or network operators, or according to different geographical areas. 30
- (3) Taumata Arowai may include any information on the registers about wastewater and stormwater networks that it considers necessary to achieve the purposes specified in **section 136**. 35
- (4) Taumata Arowai must make the registers publicly available on an Internet site maintained by or on behalf of Taumata Arowai.

140 Environmental Infrastructure performance measures for networks

- (1) Taumata Arowai must develop, publish, and maintain ~~environmental infrastructure~~ performance measures for wastewater and stormwater networks.
- (2) When developing or amending an ~~environmental infrastructure~~ performance measure, Taumata Arowai must consult wastewater and stormwater network operators, regional councils, and any other person it considers appropriate in accordance with **section 52(2) and (3)**. 5

141 Annual reporting on wastewater and stormwater networks

Taumata Arowai must, on an annual basis, publish a report on—

- (a) the ~~environmental infrastructure~~ performance of wastewater and stormwater networks and network operators, including their performance against ~~environmental infrastructure~~ performance measures; and 10
- (b) the extent to which wastewater and stormwater networks are complying with applicable standards, conditions, or requirements (whether under legislation or as part of a resource consent); and 15
- (c) the extent to which wastewater and stormwater network operators are avoiding, remedying, or mitigating any adverse effects on the environment arising from the operation of wastewater and stormwater networks; and
- (d) wastewater and stormwater best practices, including— 20
 - (i) examples of ~~good~~ best practices; and
 - (ii) specific risks or concerns that relate to individual performance and practices or system-wide performance and practices, or both; and
- (e) recommendations for any actions that might be taken to address matters raised in the report. 25

142 Further provisions relating to reporting

- (1) To avoid doubt, the reporting requirements in **sections 135 and 136** are in addition to the obligation to prepare, present, and publish an annual report under section 150 of the Crown Entities Act 2004. 30
- (2) Taumata Arowai must give effect to the reporting duties in **sections 136 and 141** in a report that is—
 - (a) separate from Taumata Arowai's annual report; and
 - (b) published in accordance with **section 195**.

Subpart 8—Infringement offences 35

143 Interpretation

In this subpart,—

infringement fee, in relation to an infringement offence, means the infringement fee for the offence prescribed for the purposes of this section specified in regulations made under **section 190**

~~**infringement offence** means an offence against **subpart 10** that is declared by regulations made under **section 190** to be an infringement offence for the purposes of this Act.~~ 5

infringement offence means one of the following that is declared by regulations made under **section 190** to be an infringement offence for the purposes of this Act:

- (a) an offence against a provision in **subpart 10** of this Part, other than an offence against **section 162 or 164**: 10
- (b) an offence against regulations made under this Act.

Compare: 2015 No 70 s 136

144 Proceedings for infringement offence ~~Infringement offences~~

- (1) A person who is alleged to have committed an infringement offence may— 15
 - (a) be proceeded against by the filing of a charging document under section 14 of the Criminal Procedure Act 2011; or
 - (b) ~~be served~~issued with an infringement notice under **section 145144A**.
- (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. 20
- (3) See section 21 of the Summary Proceedings Act 1957 for the procedure that applies if an infringement notice is issued.

Compare: 2015 No 70 s 137

144A When infringement notice may be issued 25

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

144B How infringement notice may be served 30

- (1) The chief executive or a compliance officer may serve an infringement notice on the person alleged to have committed an infringement offence by—
 - (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 35
 - (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. 5
- (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)(d)** 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 10
- (b) an infringement notice sent to a valid electronic address under **subsection (1)(e)** 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 the compliance officer.
- (3) In this section, **information system** means a system for producing, sending, receiving, storing, displaying, or otherwise processing electronic communications. 15

145 What infringement notice must contain **Infringement notices**

- (1) ~~The chief executive or a compliance officer may issue an infringement notice to a person if the chief executive or compliance officer believes on reasonable grounds that the person is committing, or has committed, an infringement offence.~~ 20
- (2) ~~The chief executive or a compliance officer may deliver the infringement notice (or a copy of it) in person to the person alleged to have committed an infringement offence or send the notice by post addressed to that person's last known place of residence or business.~~ 25
- (3) ~~An infringement notice (or a copy of it) sent by post to a person under **subsection (2)** is to be treated as having been served on that person when it was posted.~~
- (4) An infringement notice must be in the prescribed form prescribed in the regulations and must contain the following particulars: 30
- (a) ~~any details of the alleged infringement offence that are sufficient to fairly inform a person of the time, place, and nature of the alleged offence; and~~
- (b) ~~the amount of the infringement fee; and~~ 35
- (c) ~~the address of the place at which the infringement fee may be paid; and~~
- (ca) how the infringement fee may be paid;
- (d) ~~the time within which the infringement fee must be paid; and~~

- (e) a summary of the provisions of section 21(10) of the Summary Proceedings Act 1957;~~;~~ ~~and~~
- (f) a statement that the person served with the notice has a right to request a hearing;~~;~~ ~~and~~
- (g) a statement of what will happen if the person served with the notice neither pays the infringement fee nor requests a hearing;~~;~~ ~~and~~ 5
- (h) any other particulars ~~that may be prescribed~~ prescribed in the regulations.
- (5) If an infringement notice has been issued under this section, the procedure under section 21 of the Summary Proceedings Act 1957 may be used in respect of the offence to which the infringement notice relates and, in that case, the provisions of that section apply with all necessary modifications. 10

Compare: 2015 No 70 s 138

146 Revocation of infringement notice before payment is made

- (1) The chief executive or a compliance officer may revoke an infringement notice issued under **section 145144A** before ~~— the infringement fee is paid or 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.~~ 15
- (a) the infringement fee is paid; or
- (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. 20
- (2) The chief executive or compliance officer 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 144(1)(a) or (b)** against the person to whom the notice was issued in respect of the same matter. 25
- (2) ~~An infringement notice is revoked by giving written notice to the person to whom it was issued that the notice is revoked.~~

Compare: 2015 No 70 s 139

30

147 Payment of infringement fees

All infringement fees paid ~~in respect of~~ for infringement offences must be paid into a Crown Bank Account.

Compare: 2015 No 70 s 140

147A Reminder notices

35

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.

Subpart 9—Criminal proceedings

148 Meaning of enforcement action

In this subpart, unless the context otherwise requires, **enforcement action** means,—

- (a) ~~in relation to the chief executive,~~ the filing of a charging document by the chief executive under section 14 of the Criminal Procedure Act 2011, or the issuing of an infringement notice by the chief executive or a compliance officer in respect of an offence under this Act; and 5
- (b) ~~in relation to a person other than the chief executive,~~ the filing of a charging document by a person other than the chief executive under section 14 of the Criminal Procedure Act 2011 in respect of an offence under this Act. 10

Compare: 2015 No 70 s 141

149 Person may notify chief executive of interest in knowing of enforcement action 15

- (1) A person may notify the chief executive in the manner determined by the chief executive that the person has an interest in knowing whether a particular incident, situation, or set of circumstances has been, is, or is to be subject to the taking of enforcement action by the chief executive or a compliance officer. 15
- (2) If the chief executive receives a notification under **subsection (1)**, the chief executive must notify the person in writing— 20
 - (a) whether ~~or not~~ any enforcement action in respect of the incident, situation, or set of circumstances has been taken; and
 - (b) if enforcement action has not been taken, whether the chief executive or compliance officer intends to take enforcement action in respect of the incident, situation, or set of circumstances. 25

Compare: 2015 No 70 s 142

150 Prosecutions by chief executive

Subject to **section 151**, a prosecution for an offence under this Act may be brought only by the chief executive. 30

Compare: 2015 No 70 s 143

151 Private prosecutions

- (1) A person other than the chief executive may file a charging document in respect of an offence under this Act if— 35
 - (a) the chief executive or a compliance officer has not taken, and does not intend to take, enforcement action against any person in respect of the same incident, situation, or set of circumstances; and

- (b) the person has received notification from Taumata Arowai under **section 149(2)** that the chief executive ~~or compliance officer~~—
- (i) has not taken enforcement action or prosecution action against any person in respect of the same incident, situation, or set of circumstances; and 5
 - (ii) does not intend to take any enforcement action.
- (2) For the purposes of **subsection (1)**, if ~~the chief executive is unable to take enforcement action or prosecution action~~ cannot be taken against any person in respect of the same incident, situation, or set of circumstances because the person is dead, the chief executive ~~or compliance officer~~ must be treated as intending to take enforcement action or prosecution action. 10

Compare: 2015 No 70 s 144

152 Continuing or repeated matters

Nothing in this Act prevents the chief executive or another person from taking enforcement action in respect of an incident, situation, or set of circumstances, despite enforcement action having been taken in respect of that incident, situation, or set of circumstances, if the incident, situation, or set of circumstances is continuing or repeated. 15

Compare: 2015 No 70 s 145

Limitation periods for prosecutions 20

153 Limitation period for prosecutions brought by chief executive

- (1) Despite section 25 of the Criminal Procedure Act 2011, proceedings for an offence under this Act may be brought by the chief executive within the latest of the following periods to occur:
- (a) within 12 months after the date on which the incident, situation, or set of circumstances to which the offence relates first became known, or ought reasonably to have become known, to the chief executive: 25
 - (b) within 6 months after the date on which a coroner completes and signs a certificate of findings under section 94 of the Coroners Act 2006 if it appears from the certificate of findings (or the proceedings of an inquiry) that an offence has been committed under this Act: 30
 - (c) if an enforceable undertaking has been given in relation to the offence, within 6 months after—
 - (i) the enforceable undertaking is contravened; or
 - (ii) it comes to the notice of the chief executive that the enforceable undertaking has been contravened; or 35
 - (iii) the chief executive has agreed under **section 132(1)** to the withdrawal of the enforceable undertaking.

- (2) **Subsection (1)** is subject to **section 154**.

Compare: 2015 No 70 s 146

154 Extension of time if chief executive needs longer to decide whether to bring prosecution

- (1) This section applies if the chief executive considers that they will not be able to file a charging document by the end of the period specified in **section 153(1)(a), (b), or (c)**. 5
- (2) The District Court may, on application by the chief executive made before the end of the relevant period specified in **section 153(1)(a), (b), or (c)**, extend the time available for filing a charging document for a further period not exceeding 12 months from the date of expiry of that relevant specified period. 10
- (3) The court must not grant an extension under **subsection (2)** unless it is satisfied that—
- (a) the chief executive reasonably requires longer than the relevant specified period to decide whether to file a charging document; and 15
 - (b) the reason for requiring the longer period is that the investigation of the events and issues surrounding the alleged offence is complex or time-consuming; and
 - (c) it is in the public interest in the circumstances that a charging document is able to be filed after the relevant specified period expires; and 20
 - (d) filing the charging document after the relevant specified period expires will not unfairly prejudice the proposed defendant in defending the charge.
- (4) The court must give the following persons an opportunity to be heard:
- (a) the chief executive: 25
 - (b) the proposed defendant:
 - (c) any other person who has an interest in whether a charging document should be filed, being a person described in **section 149(1)**.

Compare: 2015 No 70 s 147

155 Certain proceedings may be brought after end of limitation period if fresh evidence discovered 30

Despite anything in **section 153 or 154**, the proceedings for an offence against **subpart 10** may be brought after the end of the applicable limitation period if fresh evidence relevant to the offence is discovered and the court is satisfied that the evidence could not reasonably have been discovered within that period. 35

Compare: 2015 No 70 s 149

*Defence for strict liability offences***156 Defence in prosecution for strict liability offence**

- (1) This section applies in a prosecution for an offence against any section listed in the following table:

Section	Description
163	Negligence in supply of unsafe drinking water
163A	<u>Offence involving contamination of raw water or drinking water</u>
165	Negligence in failure to take immediate action when drinking water unsafe
166	Failure to notify Taumata Arowai of notifiable risk or hazard
167	Failure to provide sufficient quantity of drinking water
168	Supplying drinking water from unregistered supply
169	Providing false or misleading information
170	Failure to notify changes in details on register
171	Failure to comply with requirements relating to drinking water safety plan
172	Failure to comply with condition, direction, prohibition, or requirement
173	Failure to comply with compliance order or court order
174	Failure to keep and maintain records
175	Failure to comply with emergency directions
176	Breach of requirements relating to authorisations
177	Offences relating to planned events or unplanned supply of drinking water
178	Failure to advise consumers about, provide, and report on complaint process
182	Failure to comply with duty of due diligence

- (2) The defendant has a defence if the defendant proves that— 5
- (a) the commission of the offence was due to—
- (i) the act or omission of another person; or
- (ii) an accident; or
- (iii) some other cause outside the defendant’s control; and
- (b) the defendant took all reasonable precautions and exercised due diligence, as defined in **section 29**, to avoid the commission of the offence or offences of the same kind. 10
- (3) For the purposes of this section, the court may take into account all relevant matters, including—
- (a) the likelihood of the hazard or risk concerned, including the risk to public health, occurring; and 15
- (b) the degree of harm that might result from the hazard or risk; and
- (c) what the person concerned knows, or ought reasonably to know, about—
- (i) the hazard or risk; and
- (ii) ways of eliminating or minimising the risk; and 20
- (d) the availability and suitability of ways to eliminate or minimise the risk.

Compare: 2014 No 32 s 251

*Liability of certain persons***157 Liability of body corporate or unincorporated body**

- (1) This section applies when—
- (a) a body corporate or an unincorporated body is charged with an offence against this Act; and 5
 - (b) for the purpose of the prosecution, it is necessary to establish the body corporate's or unincorporated body's state of mind.
- (2) It is sufficient to show that an officer, employee, or agent of the body corporate or unincorporated body, acting within the scope of their actual or apparent authority, had the state of mind. 10

Compare: 2014 No 32 s 245

158 Liability of body corporate, unincorporated body, principal, or individual

- (1) This section applies when—
- (a) a body corporate or an unincorporated body is charged with an offence against this Act for an action or omission of an officer, employee, or agent: 15
 - (b) a principal is charged with an offence against this Act for an action or omission of an agent:
 - (c) an individual is charged with an offence against this Act for an action or omission of an employee or agent. 20
- (2) The action or omission is treated as also the action or omission of the body corporate, unincorporated body, principal, or individual.

Compare: 2014 No 32 s 246

159 Liability of officers, employees, and agents of drinking water supplier

- (1) This section applies when a drinking water supplier that is a body corporate or an unincorporated body commits an offence against this Act. 25
- (2) An officer, employee, or agent of the drinking water supplier does not commit an offence against this Act, except where the officer, employee, or agent commits an offence against **section 176, 180, 181, or 182**.

160 Liability of volunteers 30

- (1) **Subsection (2)** applies in a prosecution for an offence against any section listed in the following table:

Section	Description
163	Negligence in supply of unsafe drinking water
165	Negligence in failure to take immediate action when drinking water unsafe
167	Failure to provide sufficient quantity of drinking water
178	Failure to advise consumers about, provide, and report on complaint process
182	Failure to comply with duty of due diligence

- (2) A volunteer acting in that capacity may not be charged with an offence to which this subsection applies.
- (3) In this section, **volunteer** means a person who is acting on a voluntary basis (whether or not the person receives out-of-pocket expenses).

161 Liability of elected officials 5

- (1) The following office holders, acting in that capacity, may not be charged with an offence against any section of this Act:
- (a) a member of a local authority, local board, or community board elected or appointed under the Local Electoral Act 2001:
 - (b) a trustee of a board of a school appointed or elected under the Education Act 1989. 10
- (2) In this section,—
- board** and **trustee**, in relation to a school, have the same meanings as in section 92(1) of the Education Act 1989
- community board** means a board established under section 49(1) of the Local Government Act 2002 15
- local authority** and **local board** have the same meanings as in section 5(1) of the Local Government Act 2002.

Subpart 10—Offences

Offences relating to supply of unsafe drinking water 20

162 Offence involving recklessness in supply of unsafe drinking water

- (1) A drinking water supplier commits an offence against this section if the supplier—
- (a) has a duty under—
 - (i) **section 21** to supply drinking water that is safe; or 25
 - (ii) **section 22** to supply drinking water that complies with the drinking water standards; and
 - (b) without reasonable excuse, engages in conduct that exposes any individual to whom the supplier has a duty under **paragraph (a)** to a serious risk of death, injury, or illness; and 30
 - (c) is reckless as to the serious risk to an individual of death, injury, or illness.
- (2) A supplier who commits an offence against **subsection (1)** is liable on conviction,—
- (a) for an individual, to a term of imprisonment not exceeding 5 years or a fine not exceeding \$600,000, or both: 35

- (b) for a body corporate or an unincorporated body, to a fine not exceeding \$3 million.

Compare: 2015 No 70 s 47

163 Offence involving negligence in supply of unsafe drinking water

- (1) A drinking water supplier commits an offence against this section if— 5
- (a) the supplier has a duty under—
- (i) **section 21** to supply drinking water that is safe; or
- (ii) **section 22** to supply drinking water that complies with the drinking water standards; and
- (b) the supplier fails to comply with that duty; and 10
- (c) that failure exposes any individual to a serious risk of death, injury, or illness.
- (2) A supplier who commits an offence against **subsection (1)** is liable on conviction,—
- (a) for an individual, to a fine not exceeding \$300,000: 15
- (b) for a body corporate or an unincorporated body, to a fine not exceeding \$1.5 million.

Compare: 2015 No 70 s 48

163A Offence involving contamination of raw water or drinking water

- (1) A person commits an offence against this section if the person does any act likely to contaminate any raw water or drinking water, knowing that the act is likely to contaminate that water, or being reckless as to the consequences of that act. 20
- (2) A person who commits an offence under **subsection (1)** is liable on conviction to imprisonment for a term not exceeding 5 years, or to a fine not exceeding \$600,000, or both. 25

Compare: 1956 No 65 s 69ZZO

Offences relating to failure to take immediate action to protect public health when drinking water unsafe

- 164 Offence involving recklessness in failure to take immediate action when drinking water unsafe** 30
- (1) A drinking water supplier commits an offence against this section if the supplier—
- (a) has a duty under **section 21(2)(a), 22(2)(a), or 35(2)(a)** to take immediate action to ensure that public health is protected; and 35

- (b) without reasonable excuse, engages in conduct that exposes any individual to whom the supplier has a duty under **paragraph (a)** to a serious risk of death, injury, or illness; and
- (c) is reckless as to the serious risk to an individual of death, injury, or illness. 5
- (2) A supplier who commits an offence against **subsection (1)** is liable on conviction,—
- (a) for an individual, to a term of imprisonment not exceeding 5 years or a fine not exceeding \$600,000, or both:
- (b) for a body corporate or an unincorporated body, to a fine not exceeding \$3 million. 10
- 165 Offence involving negligence in failure to take immediate action when drinking water unsafe**
- (1) A drinking water supplier commits an offence against this section if—
- (a) the supplier has a duty under **section 21(2)(a), 22(2)(a), or 35(2)(a)** to take immediate action to ensure that public health is protected; and 15
- (b) the supplier fails to comply with that duty; and
- (c) that failure exposes any individual to a serious risk of death, injury, or illness.
- (2) A supplier who commits an offence against **subsection (1)** is liable on conviction,— 20
- (a) for an individual, to a fine not exceeding \$300,000:
- (b) for a body corporate or an unincorporated body, to a fine not exceeding \$1.5 million.
- Offence relating to duty to notify notifiable risk or hazard* 25
- 166 Offence involving failure to notify Taumata Arowai of notifiable risk or hazard**
- (1) A drinking water supplier commits an offence against this section if the supplier—
- (a) has a duty under **section 35(2)(b)** to notify Taumata Arowai of a notifiable risk or hazard; and 30
- (b) fails to comply with that duty.
- (2) A supplier who commits an offence against **subsection (1)** is liable on conviction,—
- (a) for an individual, to a fine not exceeding \$50,000: 35
- (b) for a body corporate or an unincorporated body, to a fine not exceeding \$200,000.

*Offence relating to duty to provide sufficient quantity of drinking water***167 Offence involving failure to provide sufficient quantity of drinking water**

- (1) A drinking water supplier commits an offence against this section if the supplier—
- (a) has a duty under **section 25** to provide a sufficient quantity of drinking water; and 5
 - (b) fails to comply with that duty.
- (2) A supplier who commits an offence against **subsection (1)** is liable on conviction,—
- (a) for an individual, to a fine not exceeding \$50,000; and 10
 - (b) for a body corporate or an unincorporated body, to a fine not exceeding \$200,000.

*Offences relating to duty to register drinking water supply***168 Offence involving supply of drinking water from unregistered supply**

- (1) A person commits an offence against this section if the person— 15
- (a) has a duty under **section 23(2)** to register a drinking water supply; and
 - (b) supplies drinking water from a drinking water supply that is not registered under that section.
- (2) A person who commits an offence against **subsection (1)** is liable on conviction,— 20
- (a) for an individual, to a fine not exceeding \$50,000; and
 - (b) for a body corporate or an unincorporated body, to a fine not exceeding \$200,000.

169 Offence involving provision of false or misleading information

- (1) A drinking water supplier commits an offence against this section if the supplier— 25
- (a) provides information in an application to register, or renew the registration of, a drinking water supply knowing that the information is false or misleading, or omits from the application any information that the person ought reasonably to have known and included in the application; or 30
 - (b) provides information in a drinking water safety plan knowing that the information is false or misleading, or omits from the plan any information that the person ought reasonably to have known and included in the plan; or
 - (c) makes any false or misleading statement or any material omission in any information, document, record, communication, or return for any purpose of this Act; or 35

- (d) destroys, cancels, conceals, alters, obliterates, or fails to provide any information, document, record, communication, or return that is required to be kept or communicated for any purpose of this Act; or
 - (e) falsifies, removes, suppresses, or tampers with any samples, test procedures, test results, or evidence that is required for any purpose of this Act, including as part of the operation of a ~~regulated~~ drinking water supply. 5
- (2) A supplier who commits an offence against **subsection (1)** is liable on conviction,—
- (a) for an individual, to a fine not exceeding \$50,000:
 - (b) for a body corporate or an unincorporated body, to a fine not exceeding \$250,000. 10

170 Offence involving failure to notify changes in details on register

- (1) A drinking water supplier commits an offence against this section if the supplier—
- (a) has a duty under **section 55(3)** to notify Taumata Arowai of any change of any particulars that are recorded in the register in respect of the person's drinking water supply; and 15
 - (b) fails to comply with that duty.
- (2) A supplier who commits an offence against **subsection (1)** is liable on conviction,— 20
- (a) for an individual, to a fine not exceeding \$50,000:
 - (b) for a body corporate or an unincorporated body, to a fine not exceeding \$250,000.

Offence relating to drinking water safety plans

- ### 171 Offence involving drinking water safety plan 25
- (1) A drinking water supplier commits an offence against this section if the supplier—
- (a) has a duty under—
 - (i) **section 30**; or
 - (ii) **section 57**, including the duty to comply with any condition to an exemption; and 30
 - (b) fails to comply with that condition or duty.
- (2) A supplier who commits an offence against **subsection (1)** is liable on conviction,—
- (a) for an individual, to a fine not exceeding \$50,000; and 35
 - (b) for a body corporate or an unincorporated body, to a fine not exceeding \$200,000.

*Offences relating to exemptions, directions, and compliance orders***172 Offence involving failure to comply with condition or direction**

- (1) A drinking water supplier commits an offence against this section if the supplier fails to comply with—
- (a) a condition that applies to an exemption under **section 56**; or 5
 - (b) a direction issued by a compliance officer under **section 103**.
- (2) A supplier who commits an offence against **subsection (1)** is liable on conviction,—
- (a) for an individual, to a fine not exceeding \$25,000; and
 - (b) for a body corporate or an unincorporated body, to a fine not exceeding \$100,000. 10

173 Offence involving failure to comply with compliance order or court order

- (1) A person commits an offence against this section if the person fails to comply with the terms of a compliance order issued under **section 118** or an order of the court made under this Act. 15
- (2) A person who commits an offence against **subsection (1)** is liable on conviction,—
- (a) for an individual, to a fine not exceeding \$75,000:
 - (b) for a body corporate or an unincorporated body, to a fine not exceeding \$300,000. 20

*Offence involving failure to keep and maintain records***174 Offence involving failure to keep and maintain records**

- (1) A drinking water supplier commits an offence against this section if the supplier fails to keep and maintain records in accordance with **section 37** or the requirements of compliance rules made under **section 48**. 25
- (2) A supplier who commits an offence against **subsection (1)** is liable on conviction,—
- (a) for an individual, to a fine not exceeding \$50,000:
 - (b) for a body corporate or an unincorporated body, to a fine not exceeding \$200,000. 30

*Offence involving failure to comply with emergency directions***175 Offence involving failure to comply with emergency directions or conditions**

- (1) A person commits an offence against this section if the person fails to comply with— 35

- (a) a direction, prohibition, or requirement issued by Taumata Arowai under **section 61**; or
 - (b) a condition of an exemption issued by Taumata Arowai under **section 62**; or
 - (c) a direction issued by a compliance officer under **section 104**. 5
- (2) A person who commits an offence against **subsection (1)** is liable on conviction,—
- (a) for an individual, to a fine not exceeding \$50,000:
 - (b) for a body corporate or an unincorporated body, to a fine not exceeding \$200,000. 10

Offence relating to authorisations

176 Offence involving breach of requirements relating to authorisations

- (1) A person commits an offence against this section if the person fails to comply with a requirement under **section 67, 68, 69, or 70** or any regulations made under **section 190** in relation to **section 71**. 15
- (2) A person who commits an offence against **subsection (1)** is liable on conviction,—
 - (a) for an individual, to a fine not exceeding \$50,000:
 - (b) for a body corporate or an unincorporated body, to a fine not exceeding \$100,000. 20

Offence relating to planned events or unplanned supply of drinking water

177 Offence relating to planned events or unplanned supply of drinking water

- (1) A person commits an offence against this section if the person—
 - (a) fails to register a temporary drinking water supply arrangement under **section 33(2)(b)**; or 25
 - (b) fails to comply with the requirements of a temporary drinking water safety plan or any conditions imposed by Taumata Arowai under **section 33(5)**; or
 - (c) fails to immediately notify Taumata Arowai of a temporary drinking water supply arrangement under **section 34(3)(b)**; or 30
 - (ed) fails to register a drinking water supply in accordance with **section 34(4)**.
- (2) A person who commits an offence against **subsection (1)** is liable on conviction,—
 - (a) for an individual, to a fine not exceeding \$50,000: 35

- (b) for a body corporate or an unincorporated body, to a fine not exceeding \$200,000.

Offence relating to consumer complaints

- 178 Offence involving failure to advise consumers about, provide, and report on complaint process** 5
- (1) A drinking water supplier commits an offence against this section if the supplier fails,—
- (a) in accordance with regulations that apply to the supplier,—
- (i) to comply with the duty under **section 38(1)(a)** to provide consumers with prescribed information; or 10
- (ii) to comply with the duty under **section 38(1)(b)** to establish, maintain, and administer a complaints process; or
- (iii) to comply with the duty under **section 38(1)(c)** report annually to Taumata Arowai on its consumer complaints process; or
- (b) to comply with the duty under **section 38(2)** to deal with consumer complaints. 15
- (2) A 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. 20

Offences relating to duties associated with administration of Act

- 179 Offence involving hindering or obstructing Taumata Arowai**
- (1) A person commits an offence against this section if the person intentionally hinders or obstructs an employee or agent of Taumata Arowai who is performing a function or duty, or exercising a power, under this Act. 25
- (2) A person who commits an offence against **subsection (1)** is liable on conviction,—
- (a) for an individual, to a fine not exceeding \$10,000:
- (b) for an individual who is a drinking water supplier, to a fine not exceeding \$75,000: 30
- (c) for a body corporate or an unincorporated body that is a drinking water supplier, to a fine not exceeding \$250,000.

Compare: 2014 No 32 s 235

180 Offence involving threatening or assaulting employee or agent of Taumata Arowai

- (1) A person commits an offence against this section if the person intentionally threatens or assaults an employee or agent of Taumata Arowai who is performing a function or duty, or exercising a power, under this Act. 5
- (2) A person who commits an offence against **subsection (1)** is liable on conviction,—
- (a) for an individual, to a fine not exceeding \$50,000:
- (b) for an individual who is a drinking water supplier, to a fine not exceeding \$75,000: 10
- (c) for a body corporate or an unincorporated body that is a drinking water supplier, to a fine not exceeding \$250,000.

Compare: 2014 No 32 s 236

181 Offence involving deception by pretending to be employee or agent of Taumata Arowai, or authorised person 15

- (1) A person commits an offence if, with intent to deceive, the person pretends to be—
- (a) an employee or agent of Taumata Arowai; or
- (b) a person who has been authorised under regulations made under **section 190** in relation to **section 71**. 20
- (2) A person who commits an offence against **subsection (1)** is liable on conviction,—
- (a) for an individual, to a fine not exceeding \$50,000:
- (b) for an individual who is a drinking water supplier, to a fine not exceeding \$75,000: 25
- (c) for a body corporate or an unincorporated body that is a drinking water supplier, to a fine not exceeding \$250,000.

Compare: 2014 No 32 s 237

182 Offence for failing to comply with duty of due diligence

- (1) A person commits an offence against this section if the person— 30
- (a) has a duty under **section 29**; and
- (b) fails to comply with that duty.
- (2) A person who commits an offence against **subsection (1)** is liable on conviction,—
- (a) for an individual who is an employee or an agent of a drinking water supplier, to a fine not exceeding \$50,000: 35
- (b) for an individual who is an officer of a drinking water supplier, to a fine not exceeding \$100,000.

- (3) An officer, employee, or agent of a drinking water supplier may be convicted or found guilty of an offence against this section whether or not the drinking water supplier has been convicted or found guilty of an offence against a provision to which the duty under **section 29** relates.

Compare: 2015 No 70 ss 49, 50

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Subpart 11—Sentencing for offences

183 Application of subpart

This subpart applies if a court convicts a person (an **offender**) or finds an offender guilty of an offence under this Act or regulations made under this Act.

Compare: 2015 No 70 s 150

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184 Sentencing criteria

- (1) This section applies when a court is determining how to sentence or otherwise deal with an offender convicted of an offence against **subpart 10**.

- (2) The court must apply the Sentencing Act 2002 and must have particular regard to—

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- (a) sections 7 to 10 of that Act; and
- (b) the risk of, and the potential for, illness, injury, or death that could have occurred; and
- (c) whether death, serious injury, or serious illness occurred or could reasonably have been expected to have occurred; and
- (d) the compliance record of the person (including, without limitation, any warning, direction, infringement notice, or compliance order issued to the person or enforceable undertaking agreed to by the person) to the extent that it shows whether any aggravating factor is present; and
- (e) the degree of departure from prevailing standards in the person's sector or industry as an aggravating factor.

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Compare: 2015 No 70 s 151

185 Order for payment of chief executive's costs in bringing prosecution

- (1) On the application of the chief executive, the court may order the offender to pay to the chief executive a sum that it thinks just and reasonable towards the costs of the prosecution (including the costs of investigating the offending and any associated costs).

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- (2) If the court makes an order under **subsection (1)**, it must not make an order under section 4 of the Costs in Criminal Cases Act 1967.

- (3) If the court makes an order under subsection (1) in respect of a Crown organisation, any costs and fees awarded must be paid from the funds of that organisation.

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Compare: 2015 No 70 s 152

186 Release on giving of court-ordered enforceable undertaking

- (1) The court may (with or without recording a conviction) adjourn a proceeding for up to 2 years and make an order for the release of the offender if the offender gives an undertaking with specified conditions (a **court-ordered enforceable undertaking**). 5
- (2) A court-ordered enforceable undertaking must specify the following conditions:
- (a) that the offender appears before the court if called on to do so during the period of the adjournment and, if the court so specifies, at the time to which the further hearing is adjourned: 10
 - (b) that the offender does not commit, during the period of the adjournment, any offence against this Act:
 - (c) that the offender observes any special conditions imposed by the court.
- (3) An offender who has given a court-ordered enforceable undertaking under this section may be called on to appear before the court by order of the court. 15
- (4) An order under **subsection (3)** must be served on the offender not less than 4 days before the time specified in it for the appearance.
- (5) If the court is satisfied at the time to which a further hearing of a proceeding is adjourned that the offender has observed the conditions of the court-ordered enforceable undertaking, it must discharge the offender without any further hearing of the proceeding. 20
- (6) Taumata Arowai must make available to the public, on an Internet site maintained by or on behalf of Taumata Arowai, notice of a court-ordered enforceable undertaking made in accordance with **subsection (1)**, unless the court orders otherwise. 25

Compare: 2015 No 70 s 156

187 Injunctions

If a court finds a person guilty of an offence against this Act, the court may issue an injunction requiring the offender to cease any particular conduct or action that constitutes a contravention of this Act or regulations. 30

Compare: 2015 No 70 s 157

188 Supervision and training orders

- (1) The court may make an order requiring an offender to work under supervision for a period that the court specifies in the order.
- (2) The court may make an order requiring an offender to undertake, or arrange for 1 or more ~~workers-employees~~ to undertake, a specified course of training. 35

Compare: 2015 No 70 s 158

189 Restriction or prohibition

- (1) The court may make—
- (a) a restriction order, which specifies the ways in which the person is restricted in operating a drinking water supply; or
 - (b) a prohibition order, which prohibits the person from operating a drinking water supply or specified aspects of the supply. 5
- (2) The following provisions apply if the person wants a restriction order or prohibition order cancelled:
- (a) the person may apply to the court to cancel it:
 - (b) the application must be served on the chief executive: 10
 - (c) an employee or agent of ~~the chief executive~~ Taumata Arowai may appear and be heard to help the court to determine whether to grant the application.
- (3) The court may—
- (a) cancel the order from the date stated in the order; or 15
 - (b) change the order from the date stated in the order; or
 - (c) change a prohibition order to a restriction order; or
 - (d) refuse the application, in which case the court may specify the earliest date on which the person may make a further application for cancellation. 20
- (4) The court must take into account—
- (a) the nature of the offence of which the person was convicted; and
 - (b) the steps taken (if any) to remedy the problem that resulted in the order; and
 - (c) the person's conduct since the order was made; and 25
 - (d) the person's character; and
 - (e) any other circumstances of the case.
- (5) If the court changes the order or refuses the application, the person may apply for cancellation again—
- (a) once the date that the court specified under **subsection (3)(d)** has passed; or 30
 - (b) once there has been a material change in the person's circumstances.

Compare: 2014 No 32 s 273

Part 4

Miscellaneous provisions

190 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: 5
- (a) prescribing the information that drinking water suppliers, or classes of drinking water supplier, must provide to consumers, including—
- (i) the legislative requirements that apply to a supplier's drinking water supply; and
- (ii) whether drinking water that is supplied by a supplier meets those legislative requirements; and 10
- (iii) how a consumer may make a complaint to a drinking water supplier; and
- (iv) the form in which information must be provided to consumers, and its frequency: 15
- (b) prescribing requirements relating to consumer complaints that drinking water suppliers, or classes of drinking water supplier, must meet, including requirements for—
- (i) the investigation of consumer complaints; and
- (ii) the time frame for decisions on consumer complaints; and 20
- (iii) notification of decisions on complaints, including any action that was taken to resolve the matters that gave rise to the complaint; and
- (iv) records that must be kept by drinking water suppliers about consumer complaints: 25
- (c) prescribing requirements for annual reporting about consumer complaints to Taumata Arowai by drinking water suppliers, or classes of drinking water supplier, including—
- (i) the number of complaints that have been received; and
- (ii) the outcome of complaints, including any action taken: 30
- (d) prescribing matters relating to identity cards:
- (e) prescribing the time frame, and form and manner, in which information required to be provided to Taumata Arowai under this Act must be provided:
- (f) prescribing fees or charges for doing any act or providing any service for the purposes of this Act or regulations: 35

- (g) identifying the offences in or under this Act that are infringement offences, including offences for the breach of or failure to comply with a specified provision, direction, condition, notice, or requirement:
- (h) prescribing infringement notices, infringement reminder notices, and infringement forms of any other kind: 5
- (i) prescribing the amounts, up to a maximum of \$1,000 for an individual and \$3,000 for a body corporate or an unincorporated body, of infringement fees that are payable for infringement offences, including different fees for a first offence, a second offence, and subsequent offences:
- (j) providing for any other matters contemplated by this Act, necessary for its administration, or necessary for giving it full effect. 10
- (2) Regulations made under **subsection (1)(f)** may—
- (a) specify the amount of the fees or charges, or a method of calculating or ascertaining the amount of the fees or charges; and
- (b) prescribe different fees and charges for different classes of person; and 15
- (c) prescribe the manner in which fees or charges must be calculated; and
- (d) prescribe the circumstances and way in which fees or charges can be refunded, waived, or reduced.
- (3) Regulations made under this section are secondary legislation (see Part 3 of the Legislation Act 2019 for publication requirements). 20

191 Levy

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations prescribing a levy for the purpose of recovering any or all of the costs of Taumata Arowai that relate to the performance or exercise of its functions, powers, and duties under this Act or any other enactment: that is payable by 1 or more of the following: 25
- (a) drinking water suppliers:
- (b) wastewater network operators:
- (c) stormwater network operators.
- (2) Before making a recommendation under **subsection (1)**, the Minister must— 30
- (a) determine the costs of Taumata Arowai, including the costs of collecting the levy, to be covered by the levy; and
- (b) request, and have regard to, advice from Taumata Arowai on the proposed levy; and
- (c) consult the persons listed in **subsection (1)** ~~drinking water suppliers, or representatives of suppliers,~~ who will be affected by the levy. 35
- (3) Regulations made under this section must—

- (a) specify the amount of the levy, or method of calculating or ascertaining the amount of the levy; and
 - (b) provide for the payment and collection of the levy; and
 - (c) specify the financial year or part financial year to which the levy applies.
- (4) Regulations made under this section may— 5
- (a) specify the criteria or other requirements for setting or resetting the levy; and
 - (b) prescribe different levies for different classes of person; and
 - (c) prescribe the circumstances and the way in which the levy, or any part of the levy, can be refunded or waived. 10
- (5) Taumata Arowai must—
- (a) pay into a Crown Bank Account each levy payment received under the regulations; and
 - (b) ensure that each payment is separately accounted for.
- (6) Regulations made under this section are secondary legislation (see Part 3 of the Legislation Act 2019 for publication requirements). 15

Compare: 2015 No 70 s 215

192 Recovery of fees and levies

Taumata Arowai may recover any fee or levy payable to Taumata Arowai in any court of competent jurisdiction as a debt due on behalf of the Crown. 20

193 Delegations

- (1) The chief executive may delegate any of the chief executive's functions or powers under this Act to any employee of Taumata Arowai.
- (2) A person to whom any functions or powers are delegated may perform those functions or exercise those powers in the same manner and with the same effect as if they had been conferred on that person directly by this Act and not by delegation (subject to any general or special directions given or conditions imposed by the chief executive). 25
- (3) A delegation under this section—
- (a) must be in writing signed by the chief executive; and 30
 - (b) is revocable at will in writing signed by the chief executive.
- (4) A person purporting to act under a delegation is, in the absence of proof to the contrary, presumed to be acting in accordance with the terms of the delegation.
- (5) A delegation does not prevent the chief executive from performing any function or exercising any power or affect the chief executive's responsibility for the actions of any person acting under the delegation. 35

- (6) If the chief executive ceases to hold office, the delegation continues to have effect as if it were made by the chief executive's successor in office.
- (7) The chief executive must not delegate the power of delegation under this section.
- 194 Information sharing with regulatory agencies** 5
- (1) Subject to any enactment,—
- (a) Taumata Arowai may provide a regulatory agency with any information, or a copy of any document, that it—
- (i) holds in relation to the performance or exercise of its functions, duties, or powers; and 10
- (ii) considers may assist the regulatory agency in the performance or exercise of the regulatory agency's functions, duties, or powers; and
- (b) a regulatory agency may provide Taumata Arowai with any information, or a copy of any document, that it— 15
- (i) holds in relation to the performance or exercise of its functions, duties, or powers under or in relation to any enactment; and
- (ii) considers may assist Taumata Arowai in the performance or exercise of its functions, duties, or powers.
- (2) If **subsection (1)(a) or (b)** applies, Taumata Arowai or the regulatory agency (as the case may be) may impose conditions that it thinks fit relating to the provision of the information or document, including conditions relating to— 20
- (a) the storage and use of, or access to, anything provided:
- (b) the copying, returning, or disposing of copies of any documents provided. 25
- (3) Nothing in ~~this section~~ **subsection (2)** limits the Privacy Act 1993 2020.
- (4) This section applies despite anything to the contrary in any contract, deed, or document.
- (5) In this section, ~~—~~ **regulatory agency** means ~~any of the following persons or agencies:~~ 30
- (a) ~~the New Zealand Police:~~
- (b) ~~the New Zealand Transport Agency:~~
- (c) ~~the Department of Internal Affairs, including any statutory officer who carries out work for that business or undertaking:~~
- (d) ~~the Environmental Protection Agency:~~ 35
- (e) ~~Fire and Emergency New Zealand:~~
- (f) ~~a medical officer of health:~~

- (g) ~~the Ministry for the Environment, including any statutory officer who carries out work for that business or undertaking:~~
- (h) ~~the Ministry of Health:~~
- (i) ~~the Ministry of Business, Innovation, and Employment, including any statutory officer who carries out work for that business or undertaking:~~ 5
- (j) ~~a local authority:~~
- (k) ~~an agency prescribed by Taumata Arowai by notice in the *Gazette*.~~
- agency means—**
- (a) a department or departmental agency (within the meaning of section 5 of the Public Service Act 2020): 10
- (b) a Crown entity (within the meaning of section 7 of the Crown Entities Act 2004)
- regulatory agency means any of the following persons or agencies:**
- (a) the New Zealand Police:
- (b) the New Zealand Transport Agency: 15
- (c) the Commerce Commission:
- (d) the Department of Internal Affairs, including any statutory officer who carries out work for that business or undertaking:
- (e) the Environmental Protection Agency:
- (f) Fire and Emergency New Zealand: 20
- (g) a medical officer of health:
- (h) the Ministry for the Environment, including any statutory officer who carries out work for that business or undertaking:
- (i) the Ministry of Health:
- (j) the Ministry of Business, Innovation, and Employment, including any statutory officer who carries out work for that business or undertaking: 25
- (k) the Ministry for Primary Industries:
- (l) a local authority:
- (m) an agency prescribed by Taumata Arowai by notice.
- (6) ~~In this section, **medical officer of health** means a medical officer of health appointed under the Health Act 1956.~~ 30
- (6) A notice made under this section is secondary legislation (see Part 3 of the Legislation Act 2019 for publication requirements).
- Compare: 2015 No 70 s 197
- 195 Publication of instruments** 35
- (1) Taumata Arowai must ensure that the following instruments are published in accordance with **subsection (2)**:

- (a) ~~drinking water standards:~~
 - (b) ~~aesthetic values:~~
 - (c) ~~compliance rules:~~
 - (d) ~~acceptable solutions or verification methods:~~
 - (e) templates and models: 5
 - (f) ~~general practice guidelines:~~
 - (g) environmental reporting infrastructure performance measures for wastewater networks and stormwater networks.
- (2) The instruments must be—
- (a) publicly available free of charge on an Internet site maintained by or on behalf of Taumata Arowai; and 10
 - (b) available for purchase at a reasonable price at the offices of Taumata Arowai.

196 Amendments and revocation to other enactments

- (1) ~~Amend the enactments specified in **Schedule 2** as set out in that schedule.~~ 15
Amend the Acts specified in **Part 1** of **Schedule 2** as set out in that Part.
- (2) Amend the instruments specified in **Part 2** of **Schedule 2** as set out in that Part.
- (3) Revoke the instrument specified in **Part 3** of **Schedule 2**.

Part 5 20

Amendments to Local Government Act 2002

197 Amendments to Local Government Act 2002

This Part amends the Local Government Act 2002.

198 Subpart 1 of Part 7 replaced

In Part 7, replace subpart 1 with: 25

Subpart 1—Specific obligations to make assessments of drinking water, wastewater, and sanitary services and to ensure communities have access to safe drinking water

124 Interpretation

In this Part,— 30

assessment,—

- (a) in relation to drinking water,—
 - (i) means an assessment of drinking water services available to communities in the district of the territorial authority, including private

	and community-owned or community-operated drinking water supplies; but	
	(ii) does not include assessments in relation to domestic self-suppliers; and	
(b)	in relation to wastewater and other sanitary services,—	5
	(i) means an assessment of wastewater services and other sanitary services available to communities in the district of the territorial authority; but	
	(ii) does not include assessments in relation to individual properties	
	domestic self-supplier has the meaning given in section 10 of the Water Services Act 2020	10
	drinking water has the meaning given in section 6 of the Water Services Act 2020	
	drinking water services means the supply of drinking water to communities to the point of supply of each dwelling house and commercial premise to which drinking water is supplied	15
	local government organisation means a local authority, council-controlled organisation, or subsidiary of a council-controlled organisation, that provides water services	
	point of supply has the meaning given in section 13 of the Water Services Act 2020	20
	sanitary services has the same meaning as sanitary works in section 25(1)(a), (b), (d), (h), and (i) of the Health Act 1956	
	sufficient quantity , in relation to the drinking water supplied to a point of supply, has the meaning given in section 25 of the Water Services Act 2020	25
	Taumata Arowai means Taumata Arowai—the Water Services Regulator established under section 8 of the Taumata Arowai—the Water Services Regulator Act 2020	
	wastewater services means sewerage, treatment and disposal of sewage, and stormwater drainage.	30
125	Requirement to assess drinking water services	
(1)	A territorial authority must inform itself about the access that each community in its district has to drinking water services by undertaking an assessment of drinking water services in accordance with this section.	
(2)	An assessment of drinking water services must—	35
	(a) identify each community that receives a drinking water service; and	
	(b) describe the nature of existing drinking water services to the community; and	
	(c) describe the characteristics of the community; and	

- (d) assess the extent to which the community is currently receiving, and will continue to receive, a sufficient quantity of drinking water, including a consideration of—
- (i) the community’s existing access to drinking water services; and
 - (ii) any reasonably foreseeable risks to the community’s access to drinking water services in the future; and
 - (iii) the current and estimated future demands for drinking water services within the community; and
- (e) describe the safety and quality of drinking water currently being supplied to the community, using information collected and made available by Taumata Arowai and any other organisations that the territorial authority considers relevant; and
- (f) identify and assess any other public health risks relating to the drinking water services supplied to the community; and
- (fa) include an assessment of wastewater and sanitary services in accordance with **section 128**; and
- (g) based on the assessment under **paragraphs (b) to (fa)**,—
- (i) assess the consequences if the community loses access to drinking water services in the future, or is provided with drinking water services that are deficient in any way, including the implications for that community’s public health; and
 - (ii) outline a plan to provide for the community’s ongoing access to drinking water services.
- (3) A territorial authority must conduct an assessment of drinking water services under **subsection (2)**—
- (a) at least once every 3 years, which may be carried out when other assessments are carried out or at different times; or
 - (b) at an earlier date than required by **paragraph (a)**, if the territorial authority is made aware of concerns about the access that a community has to drinking water services.
- (4) A territorial authority must provide opportunities for any person to alert the territorial authority at any time to concerns about a community’s access to drinking water services.
- (5) For the purposes of this section,—
- (a) references to assessments include—
 - (i) assessing a service for the first time; and
 - (ii) reviewing and updating an existing assessment:
 - (b) the scope of each assessment must include—

<ul style="list-style-type: none"> (i) communities that receive drinking water services from the territorial authority or other local government organisation; and (ii) communities that do not receive drinking water services from the territorial authority or other local government organisation; and (iii) all types of water supply arrangements, including communities (and households within those communities) that do not receive drinking water services supplied by network reticulation: 	5
<ul style="list-style-type: none"> (c) territorial authorities need not consider within an assessment drinking water services that are owned or operated by the Crown: 	
<ul style="list-style-type: none"> (d) an assessment may be carried out by the territorial authority, or undertaken on its behalf (whether in whole or in part) by another appropriate organisation, including an iwi or Māori organisation. 	10
126 Requirements following assessment of community drinking water service	
<ul style="list-style-type: none"> (1) On completion of an assessment of a community drinking water service, a territorial authority must— 	15
<ul style="list-style-type: none"> (a) make the assessment available to the public on an Internet site maintained by or on behalf of the territorial authority; and (b) provide Taumata Arowai with a copy of the assessment in electronic form. 	
<ul style="list-style-type: none"> (2) A territorial authority must also notify Taumata Arowai about— 	20
<ul style="list-style-type: none"> (a) any suppliers of drinking water services that are, or appear to be, failing to meet the supplier's statutory obligations or are at risk of doing so; and (b) any other matters of concern arising from the assessment, including potential risks to communities affected by the assessment that relate to— 	
<ul style="list-style-type: none"> (i) any absence of, or deficiency in, a drinking water service; or (ii) a drinking water supplier that is at risk of ceasing to provide a service. 	25
<ul style="list-style-type: none"> (3) A territorial authority must also consider the findings and implications of the assessment in relation to— 	
<ul style="list-style-type: none"> (a) the territorial authority's current and future infrastructure strategy and long-term plan; and (b) the territorial authority's district plan prepared under the Resource Management Act 1991; and (c) the territorial authority's broader duty to improve, promote, and protect public health within its district in accordance with section 23 of the Health Act 1956. 	30 35

127	Duty to ensure communities have access to drinking water if existing suppliers facing significant problems	
(1)	Subsection (2) applies if—	
	(a) a territorial authority's or Taumata Arowai's assessment of a drinking water supply is that the supplier (not being the territorial authority) is facing a significant problem or potential problem with any of its drinking water services, and the territorial authority has notified Taumata Arowai of those concerns and discussed them with Taumata Arowai; or	5
	(b) Taumata Arowai requires the territorial authority to take action under subsection (2) .	10
(2)	If this subsection applies, a territorial authority must—	
	(a) work collaboratively with the supplier, the consumers of the supply, and Taumata Arowai to identify, as the circumstances allow and within a time frame determined by Taumata Arowai, 1 or more of the following:	
	(i) an immediate solution to the problem:	15
	(ii) a temporary solution to the problem:	
	(iii) a long-term, permanent solution to the problem; and	
	(b) ensure that drinking water is provided to the affected consumers, on a temporary or permanent basis, if—	
	(i) the supplier is unable to continue to provide a service that meets the statutory requirements; and	20
	(ii) an alternative solution is not readily available, or cannot be agreed by the parties involved within the time frame determined by Taumata Arowai.	
(3)	For the purposes of this section,—	25
	(a) a significant problem or potential problem includes where—	
	(i) a drinking water supplier has persistently failed to comply with legislative requirements; or	
	(ii) there is a serious risk to public health relating to the drinking water services provided by a drinking water supplier; or	30
	(iii) a drinking water supplier has ceased to operate a drinking water service, or is, in Taumata Arowai's opinion, at significant risk of ceasing to operate a service:	
	(b) if a territorial authority is obliged to ensure access to drinking water, the territorial authority may consider a range of options to fulfil its obligation, including—	35
	(i) taking over the management and operations of the drinking water service, on a temporary or permanent basis:	

(ii)	ensuring drinking water continues to be provided through alternative supply arrangements:	
(c)	nothing in paragraph (b) obliges a territorial authority to provide the supply via a reticulated network:	
(d)	if a territorial authority takes over the management and operations of a drinking water service on a permanent basis, the territorial authority, Taumata Arowai, the former supplier, and (if relevant) the affected consumers must work together to determine how to deal with—	5
(i)	any assets and liabilities that may relate to the service; and	
(ii)	any legal or other issues that may affect the territorial authority's ability to manage and operate the service, such as access to the land on, or beneath which, assets are situated; and	10
(iii)	how the territorial authority might be compensated for the costs incurred in taking over responsibility for the service:	
(e)	a territorial authority may charge for any drinking water services that are provided to affected consumers, and may recover its costs from the previous supplier, but, when making decisions about future charges and funding arrangements, the territorial authority must—	15
(i)	take reasonable steps to ascertain and consider the financial circumstances facing the affected consumers; and	20
(ii)	consider the range of funding sources provided for in its revenue and financing policy, including the potential use of general rates; and	
(iii)	on request, demonstrate that it has considered those factors.	
(4)	<i>See also subpart 12 of Part 2 of the Water Services Act 2020 (statutory management and transfer of operations).</i>	25
128	Requirement to assess wastewater and other sanitary services	
(1)	A territorial authority must, from time to time , assess the provision within its district of—	
(a)	wastewater services; and	30
(b)	other sanitary services.	
(2)	The purpose of an assessment under subsection (1) is to assess, from a public health perspective, the adequacy of wastewater services and other sanitary services available to communities within a territorial authority's district, in light of—	35
(a)	the health risks to communities arising from any absence of, or deficiency in, the services; and	
(b)	the quality of the services currently available to communities within the district; and	

- (c) the current and estimated future demands for any of those services; and
- (d) the actual or potential consequences of stormwater and sewage discharges within the district.
- (3) One type of service may be assessed in conjunction with another type of service.

5

198A Section 130 amended (Obligation to maintain water services)

In section 130(3)(d)(ii), replace “section 69S of the Health Act 1956” with “**section 25 of the Water Services Act 2020**”.

199 Section 131 amended (Power to close down or transfer small water services)

10

In section 131(2)(b) and (c)(i), replace “; and”, with “or Taumata Arowai; and”.

200 Schedule 1AA amended

In Schedule 1AA, after Part 24, insert:

Part 5
Provisions relating to Water Services Act 2020

15

2523 Requirements in subpart 1 of Part 7

Territorial authorities must, in accordance with **subpart 1 of Part 7**, review and update their existing assessments of drinking water supplies or (if none exist) undertake new assessments for every community in their districts in accordance with the following time frames:

20

- (a) for communities that receive a drinking water service from the territorial authority or other local government organisation, within 1 year of the commencement of **section 200** of the **Water Services Act 2020**, or at the same time as the territorial authority’s preparation of its next long-term plan, whichever is earlier; or
- (b) for communities that do not receive a drinking water service from the territorial authority or other local government organisation, within 3 years of the commencement of **section 200** of the **Water Services Act 2020**.

25

201 Schedule 10 amended

30

In Schedule 10, replace clause 6(a) with:

- (a) assessment of drinking water, wastewater, and other sanitary services under ~~**section 127 or 128**~~ **sections 125 and 128**:

Schedule 1

Transitional, savings, and related provisions

s 18

Part 1

Provisions relating to this Act as enacted

5

1 Interpretation

In this Part, unless the context otherwise requires, **commencement date** means the day on which this Part comes into force.

2 Registration

- (1) ~~A drinking water supply for which a person is, on the commencement date, registered under section 69J of the Health Act 1956 is registered in accordance with **subpart 7 of Part 2** of this Act on the commencement date.~~ 10
- (2) ~~A person who, immediately before the commencement date, owns a drinking water supply and is not registered under section 69J of the Health Act 1956 must apply to register the supply under **section 23** of this Act within 12 months after the commencement date.~~ 15

3 Drinking water standards

- (1) The *Drinking-water Standards for New Zealand 2005 (Revised 2018)*, as in force under Part 2A of the Health Act 1956 immediately before the commencement date, continue in force and may be amended or revoked as if they were drinking water standards under this Act. 20
- (2) Taumata Arowai must review the *Drinking-water Standards of New Zealand 2005 (Revised 2018)* within 5 years after the commencement date to determine whether they are fit for purpose.

4 Drinking water safety plans

25

- (1) Every water safety plan approved by a drinking water assessor under the Health Act 1956 that is in effect immediately before the commencement date must be treated as a drinking water safety plan to which **section 30(3)** of this Act applies, until ~~subclause (3) applies~~ the date by which the applicable requirement in **clause 4A(3), 4B(2)(b), or 4C(2)(c)** is required to be complied with. 30
- (2) To avoid doubt, **subclause (1)** applies irrespective of the expiry date of the water safety plan under the Health Act 1956.
- (3) Despite **section 30(2)**,—
- (a) ~~if a drinking water supply supplies 500 or more consumers for at least 60 days per year, the drinking water supplier must provide Taumata Arowai~~ 35

- with a drinking water safety plan that complies with **section 30(1)** within 1 year after the commencement date; and
- (b) in any other case, the drinking water supplier must provide Taumata Arowai with a drinking water safety plan that complies with **section 30(1)** within 5 years after the commencement date. 5
- (4) A drinking water supplier must calculate the number of consumers it supplies in accordance with a methodology approved by Taumata Arowai.
- 4A Application of Act to drinking water supplies registered under Health Act 1956**
- (1) This clause applies to a drinking water supply and a supplier who, immediately before the commencement date, is registered under section 69J of the Health Act 1956. 10
- (2) The drinking water supply is registered in accordance with **subpart 7 of Part 2** on the commencement date.
- (3) The drinking water supplier must provide Taumata Arowai with a drinking water safety plan that complies with **section 30(1)** within 1 year after the commencement date. 15
- (4) Except as provided in **subclause (3)** or in regulations made under **clause 9**, this Act applies to the drinking water supplier from the commencement date.
- 4B Application of Act to water carriers not registered under Health Act 1956** 20
- (1) This clause applies to a water carrier who, immediately before the commencement date, is not registered under section 69J of the Health Act 1956.
- (2) The water carrier—
- (a) must apply to register the supply under **section 53** within 1 year after the commencement date; and 25
- (b) must provide Taumata Arowai with a drinking water safety plan that complies with **section 30(1)** within 1 year after the commencement date; and
- (c) must comply, on and from the commencement date, with— 30
- (i) **sections 21(1) and 22(1)**; and
- (ii) any directions or compliance orders issued under **section 103, 104, or 118**.
- (3) Except as provided in **subclause (2)** and in regulations made under **clause 9**, this Act applies to a water carrier from the earlier of the following: 35
- (a) the date on which the water carrier complies with the requirement in **subclause (2)(b)**;
- (b) the date by which the requirement in **subclause (2)(b)** is required to be complied with.

4C Application of Act to other drinking water suppliers not registered under Health Act 1956

- (1) This clause applies to a drinking water supplier (other than a water carrier) who, immediately before the commencement date, is not registered under section 69J of the Health Act 1956. 5
- (2) A drinking water supplier—
- (a) must comply, on and from the commencement date, with—
- (i) **section 21(1);** and
- (ii) any directions or compliance orders issued under **section 103, 104, or 118;** and 10
- (b) must apply to register the supply under **section 53** within 3 years after the commencement date; and
- (c) must provide Taumata Arowai with a drinking water safety plan that complies with **section 30(1)** within 5 years after the commencement date; and 15
- (d) is not liable for an offence committed against this Act during the period starting with the commencement date and ending on the date that is 5 years after the commencement date, except—
- (i) for an offence committed against **section 172, 173, 175, 179, 180, or 181;** and 20
- (ii) as provided in **paragraph (e);** and
- (e) is liable for an offence committed against **section 168, 169, or 170** during the period starting with the date that is 3 years after the commencement date and ending on the date that is 5 years after the commencement date. 25
- (3) Except as provided in **subclause (2)** and in regulations made under **clause 9**, this Act applies to a drinking water supplier from the earlier of the following:
- (a) the date on which the supplier complies with the requirement in **subclause (2)(c);** 30
- (b) the date by which the requirement in **subclause (2)(c)** is required to be complied with.

5 Authorisation requirements

Despite **section 67**, every local authority and council-controlled organisation that operates a drinking water supply must be authorised, or have its drinking water supply operated by an authorised supplier, within 5 years after the commencement date. 35

- 6 First drinking water compliance, monitoring, and enforcement strategy**
The board of Taumata Arowai must be treated as complying with its obligation to prepare and publish its first drinking water compliance, monitoring, and enforcement strategy if it does so within 12 months after the commencement of that section. 5
- 7 First assessment of drinking water services**
Despite **section 125(3)** of the Local Government Act 2002, every territorial authority must complete an assessment of drinking water services in accordance with **section 125** by 1 July 2026.
- 8 Accreditation of laboratories** 10
A laboratory recognised by the Director-General of Health under section 69ZY of the Health Act 1956 immediately before the commencement date is an accredited laboratory for the purposes of **section 72** until the earlier of the following:
- (a) the date on which the laboratory is accredited under **section 76**: 15
(b) the date that is 3 years after the commencement date.
- 9 Transitional regulation-making power**
- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations to apply a provision or provisions of this Act to a person or class of persons on a date that is sooner than that specified in this Part. 20
- (2) The Minister may make a recommendation under this clause only after consulting the persons Taumata Arowai considers are affected by the regulations.
- (3) Regulations made under this clause are revoked on the date that is 5 years after the commencement date, unless earlier revoked. 25
- (4) This clause is repealed on the date that is 5 years after the commencement date.
- (5) Regulations made under this clause are secondary legislation (see Part 3 of the Legislation Act 2019 for publication requirements).
- Part 2**
- Provisions relating to Legislation Act 2019** 30
- 10 Application of Part**
This Part applies until the main commencement date (as defined in clause 2 of Schedule 1 of the Legislation Act 2019).
- 11 Definition of legislative requirement** 35
In addition to the definition in **section 5**, legislative requirement includes a requirement imposed by—

- (a) an Order in Council made under this Act; or
- (b) an instrument issued by Taumata Arowai that is a disallowable instrument for the purposes of the Legislation Act 2012.

12 Declaration of notifiable risks or hazards

- (1) This clause applies to a declaration of notifiable risks or hazards under **section 35**. 5
- (2) A declaration must be published in the *Gazette* and on an Internet site maintained by or on behalf of Taumata Arowai.
- (3) A declaration is a disallowable instrument, but not a legislative instrument, for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act. 10

13 Notice of aesthetic values, compliance rules, and acceptable solutions or verification methods

- (1) This clause applies to—
 - (a) a notice of aesthetic values made under **section 47**; and 15
 - (b) compliance rules made under **section 48**; and
 - (c) an acceptable solution or verification method issued under **section 49**.
- (2) An instrument to which this clause applies must be—
 - (a) published and made available in accordance with **section 195** as if that section applied to it; and 20
 - (b) notified in the *Gazette*.
- (3) An instrument to which this clause applies is a disallowable instrument, but not a legislative instrument, for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act.

14 Exemptions

- (1) This clause applies to—
 - (a) an exemption granted under **section 56 or 62**; and
 - (b) an exemption granted in respect of a class of drinking water supplier under **section 57**.
- (2) An exemption must be published in the *Gazette* and on an Internet site maintained by or on behalf of Taumata Arowai. 30
- (3) An exemption is a disallowable instrument, but not a legislative instrument, for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act.

15 Direction by Taumata Arowai

- (1) This clause applies to a direction given under **section 61(2)(i) or (j)**. 35

-
- (2) A direction must be published in the *Gazette* and on an Internet site maintained by or on behalf of Taumata Arowai.
- (3) A direction is a disallowable instrument, but not a legislative instrument, for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act. 5
- 16 Notices relating to laboratories**
- (1) This clause applies to a notice made under **section 74 or 75**.
- (2) A notice must be published in the *Gazette* and on an Internet site maintained by or on behalf of Taumata Arowai.
- (3) A notice is a disallowable instrument, but not a legislative instrument, for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act. 10
- 17 Notice of prescribed agency**
- (1) This clause applies to a notice made under **section 194(5)(k)**.
- (2) A notice must be published in the *Gazette* and on an Internet site maintained by or on behalf of Taumata Arowai. 15
- (3) A notice is a disallowable instrument, but not a legislative instrument, for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act.

Schedule 2
Amendments and revocation to enactments

s 196

Part 1
Amendments to Acts

5

Building Act 2004 (2004 No 72)

In section 7, insert in their appropriate alphabetical order:

drinking water standards means the standards ~~issued or adopted~~ made under **section 46** of the **Water Services Act 2020**

potable water means water that—

10

- (a) is safe to drink; and
- (b) complies with the drinking water standards

Civil Defence Emergency Management Act 2002 (2002 No 33)

In section 4, definition of **emergency services**, after “Fire and Emergency New Zealand,”, insert “Taumata Arowai,”.

15

In section 4, insert in its appropriate alphabetical order:

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

Gore District Council (Otama Rural Water Supply) Act 2019 (2019 No 1) (L)

In section 4, insert in its appropriate alphabetical order:

20

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

In section 8(3), replace “the Medical Officer of Health” with “Taumata Arowai”.

Health Act 1956 (1956 No 65)

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

25

drinking water standards means the standards ~~issued or adopted~~ made under **section 46** of the **Water Services Act 2020**

potable water means water that—

- (a) is safe to drink; and
- (b) complies with the drinking water standards

30

In section 23(f), delete “, drinking water,”.

Repeal Part 2A.

Repeal section 129(6).

Local Government Official Information and Meetings Act 1987 (1987 No 174)

Repeal section 44A(2)(ba).

In section 44A(2)(bb)(i) and (ii), replace “networked supplier” with “drinking water supplier”.

After section 44A(2)(bb)(iii), insert:

- (iv) any exemption that has been notified by Taumata Arowai to the territorial authority under **section 56** of the **Water Services Act 2020**:

5

Ombudsmen Act 1975 (1975 No 9)

In Schedule 1, Part 2, delete “Drinking-water assessors appointed under section 69ZK of the Health Act 1956”.

10

Resource Management Act 1991 (1991 No 69)

After section 104F, insert:

104G Consideration of activities affecting drinking water supply source water

When considering an application for a resource consent, the consent authority must have regard to—

15

- (a) the actual or potential effect of the proposed activity on the source of a drinking water supply that is registered under **section 54** of the **Water Services Act 2020**; and
- (b) any risks that the proposed activity may pose to the source of a drinking water supply that are identified in a source water risk management plan prepared in accordance with the requirements of the **Water Services Act 2020**.

20

Search and Surveillance Act 2012 (2012 No 24)

In the Schedule, insert in its appropriate alphabetical order:

25

Water Services Act 2020	107	<u>Compliance officer may inspect and copy documents and direct person to produce documents, and may take photographs and make recordings and electronic records</u>	<u>Subpart 4</u>
	108	<u>Compliance officer may require person to provide person’s name and residential address</u>	<u>Subpart 4</u>
	109	<u>Compliance officer may direct drinking water supplier to answer questions</u>	<u>Subpart 4</u>
	110	<u>Compliance officer may, without warrant, enter and search place and may exercise powers under sections 103 to 109 of that</u>	<u>All (except subparts 2, 3, 6, and 8 and sections 118 and 119)</u>

Search and Surveillance Act 2012 (2012 No 24)—continued

Act if officer believes, on reasonable grounds, that is required in relation to serious risk to public health

Taumata Arowai—the Water Services Regulator Act 2020 (2020 No 52)

In section 4, replace the definition of **domestic dwelling** with:

domestic dwelling has the meaning given by **section 10** of the **Water Services Act 2020**

In section 4, replace the definition of **domestic self-supplier** and examples with: 5

domestic self-supplier has the meaning given by **section 10** of the **Water Services Act 2020**

In section 4, replace the definition of **drinking water** with:

drinking water has the meaning given by **section 6** of the **Water Services Act 2020** 10

In section 4, replace the definition of **drinking water supplier** with:

drinking water supplier has the meaning given by **section 8** of the **Water Services Act 2020**

In section 4, replace the definition of **stormwater network** with:

stormwater network means the infrastructure and processes that are used to collect, treat, drain, and discharge stormwater from an urban area 15

In section 4, replace the definition of **stormwater network operator** with:

stormwater network operator means—

(a) each of the following, to the extent that they operate a stormwater network or supervise its operation or aspects of its operation: 20

(i) a local authority, council-controlled organisation, or subsidiary of a council-controlled organisation:

(ii) a department listed in Part 1 of Schedule 2 of the Public Service Act 2020:

(iii) the New Zealand Defence Force; and 25

(b) any person who operates a stormwater network, or any aspect of a stormwater network, for, or on behalf of, an organisation specified in paragraph (a)

In section 4, replace the definition of **Te Mana o te Wai** with:

Te Mana o te Wai has the meaning set out in the National Policy Statement for Freshwater Management issued in 2020 under section 52 of the Resource Management Act 1991 and any statement issued under that section that amends or replaces the 2020 statement 30

Taumata Arowai—the Water Services Regulator Act 2020 (2020 No 52)—*continued*

In section 4, definition of **wastewater network**, after “collect,”, insert “store.”

In section 4, replace the definition of **wastewater network operator** with:

wastewater network operator means—

- (a) each of the following, to the extent that they operate a wastewater network or supervise its operation or aspects of its operation:
 - (i) a local authority, council-controlled organisation, or subsidiary of a council-controlled organisation that operates a wastewater network:
 - (ii) a department listed in Part 1 of Schedule 2 of the Public Service Act 2020:
 - (iii) the New Zealand Defence Force; and
- (b) any person who operates a wastewater network, or any aspect of a wastewater network, for, or on behalf of, an organisation specified in **paragraph (a)**; and
- (c) an organisation or individual involved in the operation of a wastewater network if the organisation or individual is authorised or included on a register in accordance with regulations made under **section 190** of the **Water Services Act 2020**.

Repeal section 11(e).

In section 11(i), replace “good” with “best”.

In section 11, insert as subsection (2):

- (2) The chief executive’s statutorily independent functions are to—
 - (a) monitor and enforce compliance with relevant drinking water legislation and standards, and other regulatory requirements for which Taumata Arowai has responsibility; and
 - (b) grant exemptions under the **Water Services Act 2020**; and
 - (c) if a drinking water supplier is not properly performing the supplier’s functions or duties under an enactment that relates to drinking water, appoint, or require the drinking water supplier to appoint, an alternative operator of the supplier’s drinking water supply.

Urban Development Act 2020 (2020 No 42)

Replace section 161(3)(d)(iii) with:

- (iii) any drinking water standards made under **section 46** of the **Water Services Act 2020**.

Part 2

Amendments to legislative instruments

Building Regulations 1992 (SR 1992/150)

In Schedule 1, clause A2, insert in their appropriate alphabetical order:

drinking water standards means the standards ~~issued or adopted~~ made under **section 46** of the **Water Services Act 2020** 5

potable water means water that—

- (a) is safe to drink; and
- (b) complies with the drinking water standards

Camping-Grounds Regulations 1985 (SR 1985/261) 10

In clause 2, insert in their appropriate alphabetical order:

drinking water standards means the standards ~~issued or adopted~~ made under **section 46** of the **Water Services Act 2020**

potable water means water that—

- (a) is safe to drink; and 15
- (b) complies with the drinking water standards

In the Schedule, Part 2, clause 1, delete “wholesome and”.

Corrections Regulations 2005 (SR 2005/53)

In clause 3, insert in their appropriate alphabetical order:

drinking water standards means the standards ~~issued or adopted~~ made under **section 46** of the **Water Services Act 2020** 20

potable water means water that—

- (a) is safe to drink; and
- (b) complies with the drinking water standards

Education (Hostels) Regulations 2005 (SR 2005/332) 25

In clause 4, insert in their appropriate alphabetical order:

drinking water standards means the standards ~~issued or adopted~~ made under **section 46** of the **Water Services Act 2020**

potable water means water that—

- (a) is safe to drink; and 30
- (b) complies with the drinking water standards

Food Regulations 2015 (LI 2015/310)

In regulation 156(1)(b), replace “drinking-water supplier” with “drinking water supplier”.

Food Regulations 2015 (LI 2015/310)—continued

In regulation 156(2)(b), replace “drinking-water standard” with “drinking water standard”.

Replace regulation 156(3) with:

- (3) In this regulation,—
- drinking water standards** means the standards ~~issued or adopted~~ made under **section 46** of the **Water Services Act 2020** 5
 - drinking water supplier** has the meaning given by **section 8** of the **Water Services Act 2020**
 - potable water** means water that— 10
 - (a) is safe to drink; and
 - (b) complies with the drinking water standards.

Housing Improvement Regulations 1947 (SR 1947/200)

In clause 2, insert in their appropriate alphabetical order:

- drinking water standards** means the standards ~~issued or adopted~~ made under **section 46** of the **Water Services Act 2020** 15
- potable water** means water that—
 - (a) is safe to drink; and
 - (b) complies with the drinking water standards

Medicines Regulations 1984 (SR 1984/143)

In regulation 58B(1), replace “drinking-water” with “drinking water”. 20

In regulation 58B(4), replace the definition of **drinking water** and **drinking-water supply** with:

- drinking water** has the same meaning as in **section 6** of the **Water Services Act 2020**
- drinking water supply** has the same meaning as in **section 9** of the **Water Services Act 2020** 25

Resource Management (National Environmental Standards for Sources of Human Drinking Water) Regulations 2007 (SR 2007/396)

In regulation 3(1), replace the definition of **Drinking-water Standard** with:

- Drinking-water Standard** means— 30
 - (a) the *Drinking-water Standards for New Zealand 2005* continued by the **Water Services Act 2020**, as amended under that Act; and
 - (b) if the *Drinking-water Standards for New Zealand 2005* are revoked under the **Water Services Act 2020**, any drinking water standards made under that Act 35

Resource Management (National Environmental Standards for Sources of Human Drinking Water) Regulations 2007 (SR 2007/396)—continued

In regulation 3(1), replace the definition of **registered drinking-water supply** with:

registered drinking-water supply means a drinking water supply that is listed in the register of drinking water supplies kept and maintained by Taumata Arowai under **section 54** of the **Water Services Act 2020**

Part 3

5

Revocation of instrument

Health (Deferral of General Application of Sections 69S to 69ZC) Order 2009 (SR 2009/176)

Legislative history

28 July 2020
8 December 2020

Introduction (Bill 314–1)
First reading and referral to Health Committee