

# Departmental Disclosure Statement

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Local Government (Water Services) Bill
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The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by the Department of Internal Affairs.

The Department of Internal Affairs certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

10 December 2024

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## Part One: General Policy Statement

This is an omnibus Bill introduced in accordance with Standing Order 267(1)(a) as the provisions deal with an interrelated topic that can be regarded as implementing a single broad policy. The single broad policy of the Bill is to set up a new regulatory framework for water services delivery. The Bill provides for:

- arrangements for the new water services delivery system;
- a new economic regulation and consumer protection regime for water services; and
- changes to the water quality regulatory framework and the water services regulator.

The Bill contains stand-alone provisions and amends a number of other Acts.

It is intended that the Bill will be divided by the select committee or at the committee of the whole House stage into separate Bills as follows:

- Parts 1 to 4, Part 6, and Schedules 1 to 4 will become the Local Government (Water Services) Bill; and
- Part 5, and Schedules 5 to 12 will become the Local Government (Water Services Repeals and Amendments) Bill.

### Introduction

This Bill establishes the new regulatory framework for water services delivery. It builds on the foundations set in the Local Government (Water Services Preliminary Arrangements) Act 2024 (**Preliminary Arrangements Act**).

The Preliminary Arrangements Act requires territorial authorities to prepare water services delivery plans, through which they must provide information about their water services and display a commitment to achieving a water services delivery model that is both financially sustainable and meets regulatory requirements. The plans are a one-off requirement and are to be submitted within 12 months of the enactment of the Preliminary Arrangements Act. This Bill informs the development of water services delivery plans and the regulatory settings in which future water service providers will operate.

### New water services delivery system

Territorial authorities will have flexibility and discretion to determine the optimal structure and delivery arrangements for their water services, within the requirements and parameters defined in the Bill. Each territorial authority must ensure that water services are provided in its district through one or more of the following means:

- providing water services itself directly;
- by transferring responsibility for providing water services to a water organisation (through a transfer agreement);
- a contract with another party to provide water services on behalf of the territorial authority;
- a joint water service provider arrangement; or
- another type of arrangement (other than a franchise or concession agreement).

The Bill enables one or more territorial authorities to establish, or become shareholders in, water organisations to provide water supply, wastewater, and/or stormwater services. Water organisations may be owned by local authorities (territorial authorities and regional councils) and by the trustees of consumer trusts – either as the sole shareholders, or as joint shareholders.

When majority owned by local authorities, water organisations will be council-controlled organisations (**CCOs**). CCOs that currently deliver water services are considered water organisations under the Bill, with some specific differences to the proposed legislative settings for Watercare where necessary based on the arrangements in the Preliminary Arrangements Act.

Under the consumer trust ownership model for water organisations, territorial authorities may establish a consumer trust for the purpose of the trustees owning, wholly or in part, a water organisation. The trustees of a consumer trust will act in the interests of the customers of the water organisation in which it has an ownership share, who will elect the trustees. The Bill includes other specific requirements for the consumer trust model.

Under the Bill, territorial authorities that provide water services directly, and water organisations, are referred to as water service providers. Core requirements that apply to all water service providers include:

- a set of objectives, including that each provider must manage and provide water services in a cost-effective and financially sustainable manner;
- compliance with financial principles, including a requirement that revenue received from the provision of water services must be spent on those services;
- operating within the planning and reporting framework for water services in the Bill; and
- restrictions against privatisation.

Additional requirements will apply to water organisations, including having an independent, competency-based board, being a company, and limiting their activities to the provision of water services. The Bill includes a process for exemptions from these additional requirements for water organisations. Applications for exemptions must meet certain criteria, including meeting core requirements and demonstrating that the exemption is likely to improve the financial sustainability of the water organisation.

Parts 1 to 7 of the Local Government Official Information and Meetings Act 1987 will apply to water organisations, but Part 7 will only apply to board meetings and not to other meetings such as board committees.

The Bill gives water organisations a range of powers that already apply to local authorities through other legislation, including powers to:

- charge customers for water services delivery;
- require development contributions for growth-related capital costs through a modified version of the development contributions regime in the Local Government Act 2002 (**LGA02**); and
- propose water services bylaws to territorial authorities.

### **A new planning and accountability framework for water services**

The Bill includes a new planning and accountability framework for water services, which applies to all water service providers instead of certain provisions in the LGA02. The Bill sets out the content and process requirements for three core documents:

- A statement of expectations, which is issued to a water organisation by its shareholders and sets out the strategic and performance expectations for the organisation. Each water organisation will be required to give effect to the statement of expectations, including in its water services strategy; and
- A water services strategy, which is prepared by all water service providers for the water services they are responsible for delivering. This is each provider's primary strategic, financial and infrastructure planning and accountability document. Shareholders will be able to determine the nature of their

- involvement in the process for preparing their water organisation's water services strategy; and
- A water services annual report, prepared by water service providers to provide transparency about their performance over the preceding financial year, and detailed financial statements relating to water services.

### **Ministerial powers to act in relation to water services**

The Bill extends the Ministerial powers in Part 10 of the LGA02 to apply to all water service providers and shareholders of water organisations, including consumer trusts. The definition of a problem is also extended to include more situations relevant to water services delivery, including non-compliance with the economic regulation regime. The Ministerial powers to act in relation to water services will include the ability to appoint two new Ministerial bodies: a Crown facilitator – water services, and Crown commissioners – water services.

### **Economic regulation and consumer protection**

The Bill provides for an economic regulation regime for water supply and wastewater services, with flexibility to include stormwater at a later date through designation by Order in Council. The regime will apply to local government water service suppliers (councils and water organisations) who are responsible for making core decisions about capital and operating expenditure and/or revenue recovery or charging levels.

Community suppliers, private schemes, Crown providers, and private third-party contractors will initially be excluded from the regime, with the ability to bring them in at a later stage through designation by Order in Council. Water service providers will need to specify any significant contracts for the provision of water services by third parties, their performance indicators, and the performance of each in their annual reports.

The new regime will give the Commerce Commission a number of regulatory tools, which can be adapted for different suppliers and services. Although information disclosure will be the key tool, the Bill also enables the Commerce Commission to apply minimum and/or maximum revenue thresholds. Quality regulation, performance regulation, and price-quality regulation (with the exception of Watercare Services Limited (**Watercare**)) could be introduced via designation if necessary.

The Commerce Commission is required to set the initial requirements for information disclosure within 6 months of the Bill being enacted. It is also required to apply price-quality regulation to Watercare from the day after the interim regulatory regime in the Preliminary Arrangements Act ends.

Alongside the economic regulation regime, the Bill sets up a consumer protection regime that will enable the Commerce Commission to collect and analyse information relating to consumer protections, such as service quality and customer engagement. If information gathered reveals that issues exist, the Bill contains a range of tools to allow consumer protections to be strengthened.

### **Stormwater network management and water services bylaws**

Territorial authorities must prepare stormwater network risk management plans to identify any hazards and assess risk relating to the network in the district. This responsibility may be transferred to a water organisation through a transfer agreement.

The Bill also provides for a new framework for water services bylaws, which covers new functions and provides graduated enforcement tools. Water organisations will be able to propose bylaws relating to water services to the relevant territorial authority. The territorial authority will have legislative authority to make a bylaw but may transfer

any powers related to the administration and enforcement of bylaws to the water organisation.

### **Change to the name of the water services regulator**

The name of the water services regulator will be changed, including to put the English name first. Its name will be the 'Water Services Authority – Taumata Arowai'.

### **Changes to the water quality regulatory framework**

The Bill makes changes affecting the water quality regulatory framework, including changes to the Water Services Act 2021 to reduce the regulatory burden of the drinking water quality regime and improve proportionality in the application of regulatory powers.

The Bill also amends the Water Services Authority's (the **Authority's**) operating principles in the Taumata Arowai – the Water Services Regulator Act 2020. The Authority will be required to consider the costs of regulatory compliance for drinking water suppliers, in particular mixed-use rural water suppliers, and ensure the regulation is proportionate to the scale, complexity, and risk profile of each supply. The Authority will also be required to proactively engage with suppliers and network operators to ensure that there is a path to compliance that takes into account the risk profile and capacity of each supply. The Bill also amends the Water Services Act 2021 to require the Authority to include specific information on mixed-use rural water suppliers in its annual drinking water regulation report and its drinking water compliance, monitoring, and enforcement strategy.

### **A new single standard for wastewater and stormwater environmental performance**

The Bill amends the Water Services Act 2021 and the Resource Management Act 1991 to provide for a single standard for wastewater and stormwater environmental performance. This will ensure that regional councils implement a single approach to resource consents, with a mechanism for exceptions. Regional councils will be unable to set additional requirements either higher or lower than the standard. Wastewater and stormwater environmental performance standards will be made by Order in Council.

### **National engineering design standards**

The Bill introduces a mechanism for the establishment of mandatory national engineering design standards to ensure consistent standards for the design and construction of water network infrastructure. National engineering design standards will be made by Order in Council.

### **Compliance and enforcement regime**

The Bill includes a compliance and enforcement regime, including offences and penalties which cover new functions, and graduated enforcement tools for water service providers. The Water Services Act 2021 is also amended to ensure its infringement regime can address an expanded range of issues.

## Part Two: Background Material and Policy Information

### Published reviews or evaluations

<b>2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?</b>	<b>YES</b>
<p>Reform of the water services sector began in 2017, triggered by the Government inquiry held for the 2016 water supply contamination incident in Havelock North. A 2017 report of the inquiry findings can be found at:</p> <p><a href="https://www.dia.govt.nz/Government-Inquiry-into-Havelock-North-Drinking-Water#Report-1">https://www.dia.govt.nz/Government-Inquiry-into-Havelock-North-Drinking-Water#Report-1</a></p> <p>Since then, there has been additional research related to the key challenges behind New Zealand water infrastructure and local government funding which has informed the policy to be given effect by this Bill, including the following reports:</p> <p><a href="https://tewaihangā.govt.nz/our-work/research-insights/sector-state-of-play-water">https://tewaihangā.govt.nz/our-work/research-insights/sector-state-of-play-water</a> (February 2021)</p> <p><a href="https://tewaihangā.govt.nz/our-work/research-insights/is-local-government-debt-constrained">https://tewaihangā.govt.nz/our-work/research-insights/is-local-government-debt-constrained</a> (March 2024)</p> <p><a href="https://tewaihangā.govt.nz/our-work/research-insights/valuing-water-sustainable-water-services-and-the-role-of-volumetric-charging">https://tewaihangā.govt.nz/our-work/research-insights/valuing-water-sustainable-water-services-and-the-role-of-volumetric-charging</a> (August 2024)</p>	

### Relevant international treaties

<b>2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?</b>	<b>NO</b>
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### Regulatory impact analysis

<b>2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?</b>	<b>YES</b>
<p>In June 2024, two Cabinet policy papers were considered by Cabinet: Local Water Done Well stage 3: water services delivery system and Local Water Done Well Stage 3: Water Services Regulatory System. These were accompanied by the Regulatory Impact Statement titled “Local Government Water Services Bill”.</p> <p>The subsequent July 2024 Cabinet policy paper Local Water Done Well stage 3: further decisions was accompanied by the Regulatory Impact Statement titled “Local Government Water Services Bill (2)”.</p> <p>The RISs were prepared by the Department of Internal Affairs. Copies are available on the Department’s website, and on the Treasury website.</p>	
<b>2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements?</b>	<b>NO</b>

The Treasury reviewed the outline of the policy proposals and determined that an internal DIA RIS panel would be sufficient for quality assurance of both regulatory impact statements.

An internal quality assurance panel considered the regulatory impact statement and considered that both RIAs partially meet the quality assurance criteria.

**2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?**

**NO**

### Extent of impact analysis available

**2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?**

**NO**

**2.5. For the policy to be given effect by this Bill, is there analysis available on:**

**(a) the size of the potential costs and benefits?**

**NO**

**(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?**

**NO**

Analysis of the potential costs and benefits of the reformed water services system is available in the regulatory impact statements. For the most part, the costs and benefits cannot be quantified. Overall benefits will arise from an improved approach to water services infrastructure and utilisation. The extent of that benefit will be significantly determined by the way and extent to which territorial authorities respond to the requirements of the Bill and make use of the new powers and regulatory tools it will provide them.

No one is expected to suffer a substantial unavoidable loss of income or wealth.

**2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:**

**(a) the level of effective compliance or non-compliance with applicable obligations or standards?**

**YES**

**(b) the nature and level of regulator effort put into encouraging or securing compliance?**

**YES**



The Bill will establish a new and enduring economic regulatory regime for water services. It is likely that there will be some uncertainty for water service providers about what economic regulation will involve, as the industry has not been subject to it before. To account for this, the proposed reforms take a staged approach, where stronger forms of regulation can be applied to specific providers where necessary. The regime is also modelled off the existing provisions in Part 4 of the Commerce Act 1986. This will help providers, and their legal and regulatory advisors, to draw on comparative case law and familiar concepts to achieve compliance. The Commerce Commission is also expected to engage in advocacy efforts to educate and upskill providers.

The Bill will amend the existing water quality regulatory system. A number of these amendments are designed to reduce the regulatory burden on certain water service providers (especially small-scale drinking water suppliers), with the intent of having a more proportionate regulatory framework. In this context, the potential benefits of the policy are likely to be impacted by the extent to which water service providers direct their focus to compliance where obligations and standards remain, and by the extent to which Taumata Arowai - the Water Services Regulator (to be renamed the Water Services Authority in the Bill) is proactive in issuing appropriate exemptions and acceptable solutions to reduce compliance costs.

The Bill has been designed to ensure that applicable obligations and standards are clear and fit for purpose, so that compliance is facilitated. The Bill also provides a full range of effective enforcement tools, ranging from the publication of plans and rules, straightforward directions and notices, through to infringement fines and serious penalties including fines and imprisonment.

## Part Three: Testing of Legislative Content

### Consistency with New Zealand's international obligations

<b>3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?</b>
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No relevant international obligations were identified during the development of the policy proposals in the Bill.
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### Consistency with the government's Treaty of Waitangi obligations

<b>3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?</b>
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<p>The Local Government Act 2002 requires local authorities to facilitate Māori participation in decision making processes within local government. The relationships, rights and interests that Māori have with water are often geographically or catchment specific and recognised at a local level, in agreements between mana whenua and councils. This Bill does not amend these requirements in the Local Government Act 2002. Existing requirements in Treaty settlement legislation will still apply to local authorities delivering water services, together with other arrangements that councils and Māori/iwi have entered into about the delivery of water services.</p>
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<p>The Department of Internal Affairs commissioned a Treaty settlement specialist to provide a stocktake of the relevant settlement Acts and how they interact with Local Water Done Well policies. The Department is engaging with the post-settlement governance entities (PSGEs) for the settlements that are likely to be directly impacted, and with iwi/Māori more broadly, on the policy intent and implications of the Bill.</p>
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### Consistency with the New Zealand Bill of Rights Act 1990

<b>3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?</b>	<b>YES</b>
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Advice provided to the Attorney-General by the Ministry of Justice is generally expected to be available on the Ministry of Justice's website at introduction of a bill, and can be accessed at <a href="https://www.justice.govt.nz/justice-sector-policy/constitutional-issues-and-human-rights/the-bill-of-rights-act/advice/">https://www.justice.govt.nz/justice-sector-policy/constitutional-issues-and-human-rights/the-bill-of-rights-act/advice/</a>
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## Offences, penalties and court jurisdictions

<b>3.4. Does this Bill create, amend, or remove:</b>	
<b>(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?</b>	<b>YES</b>
<b>(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?</b>	<b>YES</b>
<p>The Bill creates a number of new offences to enable the water service providers to discharge their duties, and effectively manage their infrastructure and provide services. These are listed in Appendix One and cover the following areas:</p> <ul style="list-style-type: none"> <li>• Governance of water organisations: consumer trusts</li> <li>• Offences and penalties relating to economic regulation and consumer protection</li> <li>• Infrastructure Offences</li> <li>• Offences relating to water supply network</li> <li>• Offences relating to wastewater networks</li> <li>• Offences relating to stormwater network</li> <li>• Other offences relating to water supply network, wastewater network, and stormwater network</li> <li>• Offences relating to plans, rules, directions, and compliance orders</li> <li>• Offences relating to duties associated with administration of Act</li> <li>• Offences and penalties relating to economic regulation and consumer protection</li> </ul> <p>The Bill includes criminal liability for strict liability offences, and for providing false or misleading information, punishable with fines or imprisonment or both. The Bill's offence and penalty structures draws from similar legislation in equivalent areas, including the Hazardous Substances and New Organisms Act 1996 and the Building Act 2004 Part 12. The Bill also includes enabling provisions to set infringement offences and penalties in bylaws and specifies offences against clauses 393, 398, 401, 402, 406, 408 - 419 as infringement offences.</p> <p>The enforcement regime is designed to disincentivise non-compliance with applicable standards and any behaviour by individuals, bodies corporate or unincorporated bodies which would put achievement of those standards at risk. Provision of infringement offences allows for a proportionate response to the nature of the offending and encourages effective engagement in preventative action.</p> <p>The Bill provides for a person affected by specified decisions of water service providers to apply for an internal review. The Bill also enables a person affected by those decisions to appeal to the District Court, High Court and then to the Court of Appeal or Supreme Court. Appeals concerning Māori land go through the Māori Land Court. Appeals to the Court of Appeal or Supreme Court may be made only on questions of law arising from appeals.</p> <p>The Bill also grants jurisdiction to the High Court to hear merits appeals on water services price-quality determinations made by the Commerce Commission.</p>	

<b>3.4.1. Was the Ministry of Justice consulted about these provisions?</b>	<b>YES</b>
The Department has engaged with the Ministry of Justice on the offences and penalties during drafting stages and supplied policy papers and Regulatory Impact Statements. Their feedback was considered and adopted as appropriate. This engagement will continue during the Select Committee process.	

## Privacy issues

<b>3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?</b>	<b>YES</b>
<p>Clause 101 (Rating information needed by water organisation) of the Bill requires water organisations to give the relevant territorial authority customer information that the authority reasonably requires to calculate entitlements to rebates under the Rates Rebates Act 1973 for the previous rating year.</p> <p>In Part 6, subpart 2, there are a number of compliance powers that, subject to specified safeguards, allow the water service providers to collect information from a person. Provisions have been included to clarify the purpose and use of information, and to clarify that the protections provided by the Privacy Act 2020 are preserved.</p>	

<b>3.5.1. Was the Privacy Commissioner consulted about these provisions?</b>	<b>NO</b>
The Privacy Commissioner was not consulted because the provisions replicate those in the Water Services Entities Act 2022 which was previously reviewed by the Commissioner.	

## External consultation

<b>3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?</b>	<b>YES</b>
Policy design was discussed in detail with an independent Technical Advisory Group; Auckland Council; Taumata Arowai-the Water Services Regulator; and the Commerce Commission. Relevant sections of the draft bill were consulted on with Taumata Arowai-the Water Services Regulator, the Commerce Commission, and the Infrastructure Commission.	

## Other testing of proposals

<b>3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?</b>	<b>NO</b>
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## Part Four: Significant Legislative Features

### Compulsory acquisition of private property

4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?	YES
<p>The Bill will consequentially amend the Public Works Act 1981 to include water service providers under the definition of local authority. The consequential amendment therefore confers the power for water service providers to acquire private land, obtain an easement over private land, or to lease private land to carry out work to water services for any public purpose.</p> <p>Clause 84 (Compensation) of the Bill entitles a person whose property is damaged when a water service provider carries out infrastructure work on private land to compensation. If the amount of compensation cannot be agreed, it will be determined in the manner provided for by the Public Works Act.</p>	

### Charges in the nature of a tax

4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?	YES
<p>Water organisations need legislative authority to charge for their services. The charge is compulsory and enforceable by law. The provisions are set out in Part 3, subpart 1 Charges for water services.</p> <p>Subpart 1 sets out the framework for setting charges, and includes provisions to manage specific issues, such as unconnected properties, liability for occupiers of Māori land, penalty rates in the event of non-payment, and making development contributions available to water organisations.</p> <p>Property owners will continue to be liable for the payment of water services bills, with owners of residential properties able to continue to pass through any consumption-based charges to tenants.</p> <p>The Bill also enables the levy regulation-making power in Part 4 of the Commerce Act 1986 to be applied to regulated water service providers with respect to economic regulation and consumer protection.</p>	

### Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	YES
<p>The Bill amends the Local Government (Water Services Preliminary Arrangements) Act 2024 to clarify that expenses incurred by the Crown monitor and recoverable from Watercare under section 89(1)(a) include expenses relating to all functions, duties and powers under the Act. On enactment of the Bill, this amendment will apply to expenses incurred by the Crown monitor from 3 September 2024. This obligation aligns with the expectations of the parties under the Preliminary Arrangements Act in terms of recoverable expenses of the Crown monitor.</p>	

## Strict liability or reversal of the usual burden of proof for offences

<b>4.4. Does this Bill:</b>	
<b>(a) create or amend a strict or absolute liability offence?</b>	<b>YES</b>
<b>(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?</b>	<b>NO</b>
<p>The Bill provides the following strict liability offences:</p> <ul style="list-style-type: none"> <li>• cl 225 (which inserts Part 4A, cl 57ZN(1)(b) into the Commerce Act 1986) Offence relating to Commission service quality codes</li> <li>• cl 398 Connecting to, disconnecting from, or discharging into wastewater network without authorisation</li> <li>• cl 401 Discharging trade waste without trade waste permit</li> <li>• cl 402 Breach of trade waste permit</li> <li>• cl 408 Discharging into water supply network without authorisation</li> <li>• cl 411 Breach of controlled drinking water catchment management plan</li> <li>• cl 417 Failure to comply with direction issued by compliance officer</li> <li>• cl 418 Failure to comply with compliance order or court order</li> <li>• cl 419 Tampering with water meter</li> </ul> <p>These offences have maximum fines between \$20,000 and \$500,000 for individuals and between \$100,000 and \$3 million for bodies corporate. Appropriate statutory defences are provided for in the Bill.</p>	

## Civil or criminal immunity

<b>4.5. Does this Bill create or amend a civil or criminal immunity for any person?</b>	<b>NO</b>
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## Significant decision-making powers

<b>4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?</b>	<b>YES</b>
<p>Part 2, subpart 4 of the Bill provides for water service providers to access private land to install new works with consent of the owner, or a District Court decision. Water service providers can also access existing works on land following notification to the owner. Owners can set reasonable conditions, and District Court decisions can be appealed. Specific processes are provided for Māori land to allow for equivalent protections for landowners, recognising the distinct nature of Māori land ownership. Land access without consent is allowed for in emergency situations.</p> <p>Part 3, subpart 4 provides that water service providers must make controlled catchment management plans, which can require permits for certain activities. Decisions to issue permits are reviewable.</p> <p>Under Subpart 5, water service providers can make decisions about the issuing of trade waste permits. These must be subject to the provider's trade waste plan and decisions are reviewable.</p>	

## Powers to make delegated legislation

<b>4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?</b>	<b>YES</b>
<p>Part 5, Subpart 2 creates the power for the Commerce Commission to exempt local authorities from compliance with any provision of new Subpart 12 of Part 4 of the Commerce Act 1986 (clause 226 which inserts new clause 57S).</p> <p>Part 6, Subpart 1 replaces bylaw making powers in the LGA02 for territorial authorities relating to water services. Bylaw making power remains with territorial authorities to ensure democratic accountability, but water organisations are able to propose new bylaws which territorial authorities must enact as long as relevant statutory criteria are met.</p>	

<b>4.8. Does this Bill create or amend any other powers to make delegated legislation?</b>	<b>YES</b>
<p>The Bill contains provisions for delegated decision-making powers through secondary legislation that allows:</p> <ul style="list-style-type: none"> <li>• local authorities to make new water services bylaws;</li> <li>• exemptions to some minimum requirements for water organisations to be made by Order in Council;</li> <li>• regulations to be made by Order in Council to govern the consumer trust delivery model and provide rules for consumer trust elections;</li> <li>• stormwater and additional entities to become subject to the economic regulation regime by designation through an Order in Council;</li> <li>• the Commerce Commission to issue determinations and determine and amend input methodologies for water services;</li> <li>• regulations to be made by Order in Council specifying requirements relating to consumer protections;</li> <li>• the Commerce Commission to develop and implement a service quality code;</li> <li>• regulations to be made by Order in Council to bring the economic regulation levy regime into effect;</li> <li>• wastewater and stormwater environmental performance standards to be made by Order in Council; and</li> <li>• regulations to be made by Order in Council for detailed requirements for national engineering design standards.</li> </ul> <p>This secondary legislation is necessary because there are likely to be technical requirements in specific detail that are highly subject to change as information develops. Containing them in the primary legislation may be too prescriptive and rigid. Secondary legislation also enables local authorities to make detailed rules appropriate to local circumstances within the legislative scheme. It allows the Commerce Commission to tailor the economic regulation regime appropriately, for example, by staging the application of different economic regulation tools to different providers to take account of particular circumstances, including risk and complexity.</p>	

## Any other unusual provisions or features

<b>4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?</b>	<b>NO</b>
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## Appendix One: Further Information Relating to Part Three

### Offences, penalties and court jurisdictions (question 3.4)

The Bill creates a number of new offences to enable the water service providers to discharge their duties, and effectively manage their infrastructure and provide services. Clause numbers are subject to change as Bill drafting continues (these numbers are from v 11.0).

#### Governance of water organisations: consumer trusts

- Clause 51 Financial statements and audits

#### Offences and penalties relating to economic regulation and consumer protection

- Clause 226 (which inserts Part 4A, clause 57ZI into the Commerce Act 1986): When court may make pecuniary penalty order
- Clause 226 (which inserts Part 4A, clause 57ZK into the Commerce Act 1986): Court may make compensatory orders for contravention of Commission service quality code
- Clause 226 (which inserts Part 4A, clause 57ZN into the Commerce Act 1986): Offence relating to Commission service quality codes
- Clause 227: Section 87 amended (Pecuniary penalty for contravening price-quality requirements)
- Clause 228: Section 87A amended (Compensation for contravention of price-quality requirement)
- Clause 229: Section 87B amended (Offence relating to price-quality regulation)

#### Infrastructure Offences

- Clause 393: Carrying out building work over or near water services infrastructure without approval.

#### Offences relating to water supply network

- Clause 394: Intentionally or recklessly engaging in conduct relating to water supply network that causes specified serious risk
- Clause 395: Negligently engaging in conduct relating to water supply network that causes specified serious risk

#### Offences relating to wastewater networks

- Clause 396: Intentionally or recklessly disposing of materials or substances into wastewater network
- Clause 397: Negligently disposing of materials or substances into wastewater network
- Clause 398: Connecting to, disconnecting from, or discharging into wastewater network without authorisation
- Clause 399: Intentionally or recklessly engaging in conduct relating to wastewater network that causes specified serious risk
- Clause 400: Negligently engaging in conduct relating to wastewater network that causes specified serious risk
- Clause 401: Discharging trade waste without trade waste permit
- Clause 402: Breach of trade waste permit

#### Offences relating to stormwater network

- Clause 403: Intentionally or recklessly disposing of or discharging materials or substances into stormwater network causing specified serious risk



- Clause 404: Negligently disposing of or discharging substances or materials into stormwater network
- Clause 405: Intentionally or recklessly engaging in conduct relating to stormwater network that causes specified serious risk
- Clause 406: Connecting to or disconnecting from, or discharging materials or substances into, stormwater network without authorisation
- Clause 407: Negligently engaging in conduct relating to stormwater network that causes specified serious risk

#### Other offences relating to water supply network, wastewater network, and stormwater network

- Clause 408: Discharging into water supply network without authorisation
- Clause 409: Connecting to or disconnecting from water supply network or supplying water to another person without authorisation
- Clause 410: Carrying out work on or in relation to water supply network, wastewater network, or stormwater network without authorisation

#### Offences relating to plans, rules, directions, and compliance orders

- Clause 411: Breach of controlled drinking water catchment management plan or permit
- Clause 412: Breach of requirement, condition, authorisation, or prohibition in stormwater network bylaw
- Clause 413: Failure to comply with rule relating to equipment or device
- Clause 414: Failure to notify water service provider of notifiable risk or hazard
- Clause 415: Failure to comply with water use restriction or limit
- Clause 416: Breach of rule relating to undertaking specified classes of work near, under, or above water supply system, wastewater network, or stormwater network
- Clause 417: Failure to comply with direction issued by compliance officer
- Clause 418: Failure to comply with compliance order or court order
- Clause 419: Tampering with water meter

#### Offences relating to duties associated with administration of the Act

- Clause 420: Hindering or obstructing employee or agent of water service provider
- Clause 421: Threatening or assaulting employee or agent of water service provider
- Clause 422: Pretending to be compliance officer, employee, or agent of water service provider.