

This version is a replacement of the previously published version, which contained a typographical error on page 12 of the commentary.

Resource Management Amendment Bill

Government Bill

As reported from the Environment Committee

Commentary

Recommendation

The Environment Committee has examined the Resource Management Amendment Bill and recommends by majority that it be passed with the amendments shown.

Introduction

The Resource Management Act 1991 (the RMA) is New Zealand's principal statute for managing the environment. Its purpose is to promote sustainable management of New Zealand's natural and physical resources. It does this by providing provisions and procedures for central government and local government (regional councils and territorial authorities) to follow when making decisions that affect the environment.

This bill is the first stage of proposed changes to the resource management system. The second stage will depend on a wider review of the resource management system that is currently under way.

This bill seeks to:

- reduce complexity in existing RMA processes, increase certainty for participants, and restore previous opportunities for public participation
- improve existing resource management processes and enforcement provisions
- improve freshwater management.

The bill would make two notable changes to the existing resource management system:

- New enforcement powers would be given to the Environmental Protection Authority.
- A new planning process for freshwater management would be introduced.

The bill would amend the Resource Management Act and the Resource Legislation Amendment Act 2017, and make consequential amendments to other Acts.

Proposed amendments

This commentary covers the main amendments that we recommend (by majority) to the bill as introduced. We do not discuss all minor, technical, or consequential amendments.

The commentary can be broken down into four main areas:

- improvements to general resource management processes
- the Environmental Protection Authority's new enforcement powers
- the new freshwater planning process and related changes
- clarifying the relationship between the RMA and aspects of climate change mitigation.

Resource management processes

We propose some changes to the provisions related to improving resource management processes and enforcement.

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

Under section 91A of the RMA, an applicant can put on hold their application for a resource consent, as long as it has been notified (with public or limited notification). This can be done at any time between notification of the application and the close of a hearing. Processing can be suspended for a maximum of 130 working days. After that period, the application must then either be returned to the applicant, or continue to be processed by the council.

Under current law, non-notified consent applications cannot be suspended by the applicants.

The bill as introduced would enable applicants to suspend the processing of non-notified consent applications for up to 20 working days. Processing could be suspended before a decision about notification has been made, or up until the hearing is completed (if any), or the consent decision is issued (if there is no hearing). This new regime would be created under clauses 17–23, 69, and 73 of the bill.

Some of us support the regime as provided for in the bill. However, we consider that the commencement of this new regime should be delayed by three months from the timing proposed in the bill. This would give councils more time to update their processes and procedures. We recommend amending clause 2(2) of the bill accordingly, so that the regime would come into effect 3 months after the commencement of the bill.

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

Section 36 of the RMA enables councils to set administrative charges to recover costs associated with their RMA functions from applicants. If a charge is not paid by the applicant, the council is not required to carry out the action to which the charge relates.

However, the RMA does not give councils the ability to suspend the statutory time period for processing a resource consent to allow for time when administrative charges remained unpaid. Clauses 17 and 18 of the bill as introduced would allow councils to exclude such a time period from the statutory time limit, in respect of unpaid fixed charges required when the consent application is lodged or notified.

We recommend amending clause 2(2) of the bill to delay the commencement of these provisions until 3 months later than proposed in the bill. This would give councils more time to update their processes and procedures.

Environmental Protection Authority could take enforcement action under the RMA

As noted at the start of our commentary, the bill would give new powers to the EPA. They would enable the EPA to initiate its own RMA investigations, to assist councils with their RMA investigations, and to intervene in RMA cases to become the lead agency of an investigation and subsequent enforcement actions.

The proposed new functions of the EPA are set out in clause 66 of the bill, which would insert new Part 12A into the RMA.

We recommend two changes to clause 66.

Situations where councils could resume enforcement actions

New section 343G(3) would provide what must or may happen if the EPA decided to cease its intervention in a council's enforcement action. Paragraph (c) states that a local authority may then take its own enforcement action or subsequent action in relation to the incident.

We think it should be clarified that, if the EPA ceases an intervention, a local authority may also resume any enforcement action that the local authority had commenced prior to the EPA's intervention. We recommend amending new section 343G(3)(c) accordingly.

We sought advice about how enforcement actions may switch between the EPA and a local authority, to clarify that this provision would not enable multiple lines of prosecution. We were informed that it would not be possible for a potentially liable party to be subject to double jeopardy (where a party is prosecuted twice for the same offence).

Definition of enforcement action

New section 343E(1) would provide definitions for new Part 12A. In the definition of “enforcement action”, we recommend amending paragraph (e) by replacing the words “laying of a charge” with “filing of a charging document” for clarity.

Freshwater management

Under the RMA, regional and unitary councils regulate activities that affect freshwater through their regional policy statements and plans, as well as through the issuing of consents.

The Government can provide national direction about how the provisions of the RMA are to be implemented. This can be through direct regulation (such as setting a national environmental standard) or by directing councils on the content of regional policy statements and plans. The latter is done through a national policy statement.

The National Policy Statement for Freshwater Management 2014 (NPS–FM) is the current national direction from the Government to councils about freshwater. It came into force in 2011, and was amended in 2014 and 2017. It is in the process of being amended in 2020.

As mentioned at the start of this commentary, a significant reform from this bill would be the introduction of a new freshwater planning process for regional or unitary councils that are carrying out regional freshwater functions. Those councils would be required to follow the new freshwater planning process for proposed regional policy statements and regional plans (including changes to them) that contain provisions that give effect to the National Policy Statement for Freshwater Management or otherwise relate to freshwater.

It is intended that the new freshwater planning process would assist regional and unitary councils to meet the 2025 deadline for implementing the requirements of the National Policy Statement for Freshwater Management.

Clause 13 of the bill would replace subpart 4 in Part 5 of the RMA. New subpart 4 would require all freshwater planning instruments to undergo the new freshwater planning process. New subpart 4 would also have the effect of repealing the existing optional “collaborative planning process” under the RMA, which we discuss later.

The bill would establish the position of Chief Freshwater Commissioner. The Chief Freshwater Commissioner would convene freshwater hearings panels. Regional councils would be required to prepare regional planning documents, notify, and call for submissions on their freshwater planning instruments. Regional councils would then refer the regional planning documents and information to the Chief Freshwater Commissioner. The Chief Freshwater Commissioner would refer this to a freshwater hearings panel to make recommendations. The council would then make a decision about those recommendations. As we discuss later, there would be limited rights of appeal on questions of law and questions of fact.

Definition of freshwater commissioner

We recommend amending clause 4 by inserting a definition of “freshwater commissioner”, which has been referred to as “freshwater hearings commissioner” throughout the bill as introduced. Freshwater commissioners are members of the freshwater hearings panel, but not all panel members are freshwater commissioners. We recommend making this change throughout the bill. This would also help to differentiate the role from that of the “Chief Freshwater Commissioner”. We discuss the member composition of freshwater hearings panels later in our commentary.

Freshwater planning instruments must undergo the freshwater planning process

Clause 13, new subpart 4 of Part 5, makes it clear that all freshwater planning instruments must undergo the new freshwater planning process.

In clause 73 of the bill, new clauses 18 and 19 of new Part 3 of Schedule 12 of the RMA would mean that freshwater planning instruments relating to freshwater that are notified prior to the commencement date would be assessed under the existing law. We note this would include any variations to those freshwater instruments, whether or not the variation was notified before or after enactment.

Some of us propose some changes to clause 13 of the bill.

Meaning of “freshwater planning instrument”

Proposed new section 80A(2) states what a freshwater planning instrument is. It includes a proposed regional plan or regional policy statement with the purpose of giving effect to the National Policy Statement for Freshwater Management 2020, or otherwise relates to freshwater. It also includes changes or variations to those regional plans and regional policy statements.

Some of us generally support the definition as introduced. However, to ensure the new section remains workable in the future, we recommend removing reference to the specific 2020 national policy statement, and referring instead to “any national policy statement for freshwater management”.

Planning instruments that are only partly about freshwater

We recognise that what constitutes a “freshwater planning instrument” may not be clear-cut, and that some planning instruments may have some provisions that relate to freshwater, and other provisions that do not.

New section 80A(4)(a) would require a regional council to notify the public of the new freshwater planning instrument. Some of us think that, at that stage, the council should provide a statement about whether the whole instrument will undergo the freshwater planning process (under Part 4 of Schedule 1), or if only part of it will. The part that does not would undergo the standard planning process (under Part 1 of Schedule 1). Some of us believe this approach would provide greater transparency and reduce confusion.

To effect this change, we recommend amending new section 80A(3), and inserting new clause 72(1)(A) which would insert new clause 5(2A) into Schedule 1 of the RMA.

Chief Freshwater Commissioner can extend timeframes

We recommend inserting new clause 46A to provide the Chief Freshwater Commissioner the power to extend the time frames stipulated in new clauses 37, 40, 50, and 51. To do so, a request must be made by the regional council or the chair of a freshwater hearing panel. Some of us consider that an extension could be granted more than once, but cumulatively must not be for more than 12 months.

The new freshwater planning process in clause 72

Clause 72 of the bill would amend Schedule 1 of the RMA. It would do this by:

- repealing clauses 4(2) to (2B) and 21(3A) of Schedule 1
- replacing Part 4 of Schedule 1.

This would have the effect of replacing provisions about the collaborative planning process—which this bill would repeal—with provisions about the new freshwater planning process.

We note that clause 72 of the bill would insert new clauses (as opposed to sections) because they would be in a schedule of the RMA. For clarity, we refer to these as “new clauses”.

Regional council must submit freshwater planning documents to the Chief Freshwater Commissioner

Clause 72 of the bill would introduce new clause 37(1) into Schedule 1 of the RMA. New clause 37(1) would list the documents that would need to be submitted by the regional council to the Chief Freshwater Commissioner no later than 6 months following public notification of a planning instrument. We recommend including joint management agreements in this list. We also recommend including a requirement to submit “any other relevant information”.

We also recommend making it clear that a regional council must comply with a requirement by the freshwater hearings panel to provide it with a hearing report, if requested to do so. We recommend inserting new clause 41(5) accordingly.

Freshwater hearings panels

Clause 72 of the bill would also insert new clauses into Schedule 1 of the RMA specifying the role of freshwater hearings panels.

Functions of freshwater hearings panels

New clause 39 would set out the functions of freshwater hearings panels. They would include conducting a public hearing of submissions, making recommendations to a regional council after a hearing, and hearing objections from people whose submissions were struck out.

For consistency with the provisions of the RMA, we recommend removing the word “public” from function (a). However, we note that this would not change the public nature of the hearing of submissions.

Powers of freshwater hearings panel during hearings of submissions

New clause 40 sets out the powers of freshwater hearings panels.

As introduced, new subclause (2) would allow a freshwater hearings panel (at a hearing of submissions) to:

- permit a party to question any other party or witness
- permit cross-examination.

Submitters had mixed views about cross-examination. We are concerned about the risk of an imbalance of power between parties during cross-examination, and the potential for this to add costs and time to the process. We do not think that the bill, as introduced, sufficiently addresses these risks.

Therefore, some of us propose that there should be restrictions added to cross-examination.

First, we recommend clarifying that cross-examination should be at the request of a party, and would not be the default position.

Second, we recommend cross-examination should only be permitted by the panel if it is satisfied cross-examination is necessary in the interests of justice.

We also recommend it should be made clear that the panel may:

- prohibit cross-examination
- regulate the conduct of any cross-examination.

We recommend moving the provisions relating to cross-examination from new clause 40 to new clause 47, which relates to the procedures of the freshwater hearings panels. We recommend amending new clause 47 accordingly.

We recommend that the panel should be able to appoint a “friend of submitter” for the purpose of providing support to the submitter in relation to the hearings. However, the panel should be required to consult the relevant regional council and the submitter before making the appointment. We recommend amending new clause 46 accordingly.

Pre-hearing meetings

We recommend inserting new clause 40A to clarify processes for pre-hearing meetings. Some of us think that a chairperson of a freshwater hearings panel should be able to convene a pre-hearing meeting to: clarify an issue or matter, facilitate the resolution of an issue or matter, or deal with an administrative or procedural matter. The chairperson should be able to invite any submitter, the relevant council, or any person considered to have relevant expertise, to participate in the pre-hearing meeting.

The chairperson of the panel should appoint a chairperson for the pre-hearing meeting. The pre-hearing meeting chairperson should then provide a report to the freshwater hearing panel about the outcomes of the pre-hearing meeting.

Consequences of submitter not attending a pre-hearing session meeting

As introduced, new clause 42 would set out what would happen if a submitter did not attend a pre-hearing meeting (without a reasonable excuse). The panel could decline to consider the person's submission. It would limit the person's appeal rights, although the person could make an objection.

We consider this provision is too onerous in light of the problem it is trying to remedy. We recommend that proposed clause 42 of Schedule 1 be deleted from clause 72 of the bill.

Conference of experts

New clause 43 would enable a panel to convene a conference of experts during a hearing to clarify or facilitate resolution of a matter or issue relating to the freshwater planning instrument.

Some of us support the concept of a conference of experts. We recommend some improvements:

- The panel may authorise an expert to represent the relevant regional council.
- The attendees of the conference should provide a report on the outcomes of the conference, and provide it direct to the panel.
- If the conference requires a facilitator, the panel should appoint an independent facilitator (who is not a panel member).

We recommend amending new clause 43 accordingly.

Freshwater hearings panel may commission reports

New clause 45 would enable a freshwater hearings panel to commission certain reports from a relevant council, consultant, or any other person "at any time during a hearing". Some of us think it would be beneficial to enable freshwater hearings panels to also commission reports before a hearing. This could allow more time to prepare reports. It would be consistent with the Auckland Unitary Plan process under the Local Government (Auckland Transitional Provisions) Act 2010.

Freshwater hearings panel may appoint special advisor

As introduced, new clause 46 would enable the chairperson of a freshwater hearings panel to appoint a special advisor to assist the panel in any hearing. We note that, in the recommendations above, the committee proposed to amend new clause 46 to accommodate the new "friend of submitter" concept.

We recommend making it clear that a special advisor appointed by the panel's chairperson is not a member of the panel, but can assist the panel in any hearing.

Procedures relating to official information

As introduced, new clause 47(2) that would be inserted into Schedule 1 of the RMA provides that certain provisions of the Local Government Official Information and Meetings Act 1987 would apply to the freshwater hearings panels.

Some of us agree that those official information requirements should apply to freshwater hearings panels. However, some of us consider that this should be specified in the Local Government Official Information and Meetings Act, rather than the RMA. We therefore recommend deleting new clause 47(2) and making a consequential amendment to the Local Government Official Information and Meetings Act.

Recommendations to be made by freshwater hearings panels

New clause 48 in new Part 4 of Schedule 1 specifies what freshwater hearings panels would need to do when making recommendations to regional councils on freshwater planning instruments. Notably, any recommendation must be provided in a report, and include the reasoning. Recommendations would not be limited to matters contained in the submissions.

Matters that affect recommendations

New clause 49 states the matters that a freshwater hearings panel would need to have regard to when formulating its recommendations. Some of us consider that, in addition to the matters listed, a panel should also:

- take into account any reported outcomes from alternative dispute resolution
- have regard to any advice received from a special advisor under new clause 46.

Additionally, some of us consider that the freshwater hearings panel must be sure that key RMA provisions relating to the preparation of plans would be complied with, if their recommendations were to be accepted.

We recommend amending new clause 49 accordingly.

Deadline for recommendations by freshwater hearings panels

New clause 50 would require a freshwater hearings panel to provide its recommendations (made under new clause 48) at least 20 working days before the expiry of 2 years after the date the freshwater planning instrument was notified by the relevant regional council. This is on the basis that regional councils would have 20 working days to make decisions about the recommendations. However, as we discuss later, some of us propose to give regional councils 40 working days to make decisions. Accordingly, we recommend amending clause 50 to change 20 days to 40 days. We note the possibility that the time frames could be extended on a case-by-case basis by the Chief Freshwater Commissioner, if requested to do so.

Regional council's response to recommendations by a freshwater hearings panel

New clause 51 sets out the process that regional councils would need to follow when considering the recommendations of freshwater hearings panels. It would also specify

the timeframe for making final decisions and providing notification of the final decisions.

Scope of recommendations and council's alternatives

As noted earlier, panels can make recommendations outside the scope of the issues raised in submissions. However, in that case, new clause 51(1)(b) would require that where the council rejected a recommendation, it must develop an alternative that is within the scope of submissions (or retain the original provision as notified). Some of us believe it is unworkable to prevent a council from developing an alternative that is outside the scope of submissions when the panel's recommendation was outside the scope. Therefore, we recommend amending new clause 51(1)(c) to allow a council to develop an alternative outside the scope of submissions in such a scenario. We note that if a rejected recommendation was within the scope of submissions, the council would be limited to alternatives within the scope of submissions.

We recommend inserting new clause 51(1)(d) to clarify that, if a council is rejecting a recommendation and adopting an alternative solution, an assessment of that solution should be provided in the further evaluation report required under section 32AA of the RMA.

Iwi participation legislation, Mana Whakahono ā Rohe, and joint management agreements

Some of us consider that decisions made under new clause 51 by a regional council should be in a manner that is consistent with any relevant iwi participation legislation, Mana Whakahono ā Rohe, or joint management agreement. We recommend inserting new clause 51(1A) and amending new clause 51(2) accordingly.

Public notification of decision

New clause 51(4) would require the regional council to publicly notify its decisions about the recommendations within 20 working days of getting the panel's report. We acknowledge that this timing may be too short, particularly if a council were developing an alternative solution. We recommend changing it to 40 working days. We note that an extension could be provided by the Chief Freshwater Commissioner in our proposals discussed earlier.

Some of us think the council should also be required to publicly notify the availability of the panel's report, the council's decisions, and where they can be viewed. We recommend inserting new clause 51(7) accordingly.

We recommend inserting new clause 51(6) to clarify that, from the date the council's decision was publicly notified, the freshwater planning instrument would be amended in accordance with the council's decision.

Variations to freshwater planning instruments

As introduced, new clause 52 would enable a regional council to seek a variation to the freshwater planning instrument if it were to identify an error or omission in it. The

Chief Freshwater Commissioner would decide whether to accept the variation, after considering the factors listed in the clause.

We propose some changes to the process for variations:

- The scope of variations should not be limited to errors or omissions, as that would not be consistent with Part 1 of Schedule 1 of the RMA.
- The Chief Freshwater Commissioner should consult the relevant freshwater hearings panel before determining whether to accept a variation.
- If a freshwater hearing panel recommended a variation to a freshwater planning document, the regional council would still need to comply with clause 52(1).
- Clauses 16A and 16B of Schedule 1 of the RMA would apply to any variation. If a council initiated a variation prior to meeting the time requirements in new clause 37(1), the variation would need to be merged into the freshwater planning instrument.

We recommend amending new clause 52 accordingly.

Appeals in respect of a freshwater planning instrument—clause 72

Appeal rights available

New clause 53 would specify what appeal rights are available to submitters on a freshwater planning instrument. As introduced, appeals on merit could be made to the Environment Court (new clause 54), and appeals on questions of law could be made to the High Court (new clause 55).

We recommend making it clear that there would be no avenue of appeal to the Supreme Court.

We recommend clarifying that there would be appeal rights to the Court of Appeal on questions of law, if leave was given.

Right of appeal to the Environment Court

New clause 54 would provide the basis for appeals by submitters on the merits of a regional council's decision to reject a recommendation by a freshwater hearings panel and follow an alternative solution. As introduced, the submitter must have addressed the provision or matter in their submission.

We recommend inserting new clause 54(1A) to clarify that a submitter could appeal to the Environment Court if a council decided to reject a recommendation of a freshwater panel that was outside the scope of submissions.

The Environment Court would be required to treat an appeal as if it were a hearing under clause 15(1) or (2) of Schedule 1 of the RMA.

Right of appeal on questions of law

New clause 55 would set out the appeal rights for a submitter on a question of law in respect of a panel recommendation that was accepted by the regional council. As introduced, a submitter could appeal to the High Court about a provision or matter

relating to the freshwater planning instrument, if it had been addressed in their submission. Under this provision, the appeal must relate to a provision or matter in relation to which the regional council accepted a recommendation of the panel.

We recommend clarifying that a submitter could appeal to the High Court about a matter that was not in their submission but was the result of a council accepting a recommendation that is outside the scope of submissions.

We note that appeal rights to the Court of Appeal would be available, subject to leave been granted.

Judicial review

New clause 56 would specify the procedure for judicial review. Judicial review applications are limited under the RMA; section 296 of the RMA precludes an application for judicial review where there is a right of appeal to the Environment Court.

We recommend amending new clause 56 to clarify that section 296 of the RMA applies to the freshwater planning process. Otherwise, the High Court could hear a judicial review, and subsequently receive an appeal on the Environment Court decision.

Chief Freshwater Commissioner's role in relation to freshwater hearings panels—clause 72

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

New clause 57 of new Part 4 of the RMA would specify the powers and functions of the Chief Freshwater Commissioner, in relation to freshwater hearings panels. Those powers and functions include deciding when to convene a freshwater hearings panel, determining its size and composition, and appointing the panel members and chairperson.

We recommended including in new clause 57 the ability for the Chief Freshwater Commissioner to split freshwater hearings panels into two panels, if the Commissioner thinks it appropriate in the circumstances. Some of us think there are situations where this could be beneficial. For example, it would help to facilitate hearings that have a large number of submitters.

Chief Freshwater Commissioner's powers to appoint panel members

Some of us think that the Chief Freshwater Commissioner should be given additional duties to manage the appointment of panel members.

We recommend inserting new clause 60A to allow the following:

- The Chief Freshwater Commissioner could remove a member from a panel at any time for just cause. "Just cause" would include misconduct, inability to perform the role, and neglect or breach of duties. A member who is removed should be notified in writing, and would not be entitled to compensation for their removal.

- The Chief Freshwater Commissioner could appoint new members to the panel in accordance with the appointments process in new clause 58.

Composition of freshwater hearings panels

As mentioned above, the Chief Freshwater Commissioner would determine the size and composition of freshwater hearings panels. New clause 58 would specify the composition of freshwater hearings panels. As introduced, each panel would consist of 5 members: 2 freshwater commissioners appointed by the Minister; 2 members nominated by the relevant regional council; and 1 member with an understanding of tikanga Māori and mātauranga Māori who is nominated by local tangata whenua (or, if there is no nomination from local tangata whenua, nominated by the Chief Freshwater Commissioner).

New clause 58(2) to (4) would allow the Commissioner to appoint fewer or more than 5 members to a panel under certain circumstances. We recommend amending sub-clause (2)(a) so that the Chief Freshwater Commissioner could appoint more than 5 members if they considered there were “special”, rather than “unique”, circumstances.

Under new clause 58(5), the Chief Freshwater Commissioner would be required to convene the panel in a manner consistent with any iwi participation legislation, Mana Whakahono ā Rohe, or joint management agreement.

We consider it important that the collective knowledge and expertise of a freshwater hearings panel is taken into account by the Chief Freshwater Commissioner. Therefore, we recommend including an express provision in new clause 58 that would require the Chief Freshwater Commissioner to consider the need for the panel to have collective knowledge and expertise in relation to:

- judicial processes and cross-examination
- freshwater quality, quantity, and ecology
- the Resource Management Act
- tikanga Māori and mātauranga Māori
- te Mana o te Wai
- water use in the local community
- subject areas likely to be relevant to the work of the panel.

We recommend inserting new clause 58(6) accordingly.

Under (renumbered) new clause 58(7), each panel member would need to be accredited under section 39A of the RMA unless the Chief Freshwater Commissioner was satisfied there were “exceptional circumstances”. It is intended that this would cover situations where the panel would benefit from having a member with particular expertise; for example, in groundwater knowledge. Some of us consider that the term “special circumstances” is more appropriate, and recommend amending the clause accordingly.

Appointment of chairperson of freshwater hearings panel

Under new clause 59, the Chief Freshwater Commissioner would appoint the chairperson of a freshwater hearings panel. In the bill as introduced, the chairperson must be a freshwater commissioner appointed by the Minister.

We recommend inserting new clause 59(1A) to require the Chief Freshwater Commissioner, when appointing a chairperson, to consider the desirability of the chairperson having knowledge and expertise about judicial processes and cross-examination.

Funding of freshwater hearings panels and related activities

New clause 61 would specify that the funding for freshwater hearings is the responsibility of the relevant regional council. The costs would include remuneration and expenses of panel members and any experts appointed by the panel, and administrative costs of hearings.

Earlier we recommended that the panels should be able to appoint a “friend of submitter” for a submitter. The cost for this should also be a part of the panel’s costs met by the relevant regional council.

We acknowledge that there are concerns about the unquantified costs for freshwater hearings panel members. Some of us consider that remuneration should be set by the Minister, rather than by the Chief Freshwater Commissioner or expressly under this bill. We recommend amending new clause 61(3) accordingly.

An exception to the above would be for local council members who are appointed to a freshwater hearings panel. Those panel members should be paid at a rate determined by the relevant council. We recommend inserting new clause 61(4) accordingly.

Minister appoints freshwater hearings commissioners—clause 72

As outlined earlier, at least 2 of the 5 freshwater hearings panel members should be freshwater commissioners. New clause 62 provides that the Minister would appoint people to the role of freshwater commissioner. We recommend a small change to sub-clause (2), to include freshwater “quantity” as one of the areas of knowledge and expertise for a freshwater commissioner.

We also recommend amending new clause 63 to require the Minister to specify, in the written notice of appointment as a freshwater commissioner, how the costs would be met. The costs must differentiate between those relating to hearings panels (which would be met by the regional council), and those that are for other purposes, as directed by the Chief Freshwater Commissioner (which would be met by the Crown).

Ability for the Minister to “call in” regional policy statements

When regional councils and territorial authorities are considering proposals under the RMA, the Minister for the Environment may “call in” matters relating to those proposals if the Minister considers it a proposal of national significance. Those matters would be referred for decision by a board of inquiry or the Environment Court. The RMA specifies what matters could be called in by the Minister. They include resource

consent applications, notices of requirement, and council and private plan changes. They do not include changes to a regional policy statement, or whole regional plans. The RMA also provides what factors the Minister must consider when determining whether the proposal is one of national significance.

Some of us consider that there is benefit in widening the matters that could be called in by the Minister. We recommend including a change or variation to a regional policy statement, or a request for such a change. To give effect to this, we recommend inserting new clauses 28A to 28K into the bill.

Regulation-making power for stock exclusion

During our consideration it was brought to our attention that section 360 of the RMA only applies to the water body, and not the margins of water bodies. This means that regulations could not be made under section 360 to exclude stock from margins, so councils would not be able to issue infringement notices for stock on these margins.

Section 360(1)(hn) allows regulations to restrict stock from water bodies. Regulations can also prescribe technical requirements, such as specifications for the means of exclusion (for example, fencing requirements or riparian planting).

Some of us think that section 360(1)(hn) of the RMA should be amended so that the regulation-making power is extended to allow regulations to exclude stock from the margins of water bodies, estuaries, and coastal lakes and lagoons. Accordingly, we recommend inserting clause 70(2) into the bill.

Repealing and replacing the collaborative planning process

The “collaborative planning process” was introduced in 2017 as an optional alternative to the standard planning process that councils can use to change their plans. Its purpose is to facilitate engagement during the early stages of plan development to avoid the costs of any disputes at later stages. It was envisioned that the collaborative planning process would be especially useful for freshwater planning, although it was not limited to freshwater planning matters. It appears that the collaborative planning process has not been used to date, and this bill would repeal it.

Some of us support the repeal of the collaborative planning process regime, noting that councils can still engage in collaboration outside of the statutory regime. We recommend some further drafting changes within the bill to remove reference to the collaborative planning process in the RMA.

Climate change

A significant number of submissions raised the matter of climate change, and how the RMA interacts with climate change policy.

The Resource Management (Energy and Climate Change) Amendment Act 2004 inserted sections 70A, 70B, 104E, and 104F into the RMA. Sections 70A and 104E prevent regional councils from considering the effects on climate change when making rules or assessing applications relating to discharges of greenhouse gases. There are some exceptions to this: one is when the use and development of renewable

energy enables a reduction in a discharge. Another is for compliance with a national environmental standard as provided for in sections 70B or 104E. Climate change policy at the time was focused on a national-level pre-eminent carbon pricing scheme. Non-price measures such as RMA regulation were thought to be an unnecessary double-up.

The climate change policy framework has since evolved. The policy goal is to transition to net zero carbon emissions by the second half of the 21st Century.

The Climate Change Response (Zero Carbon) Amendment Act 2019 requires the following to be published by the Minister for Climate Change:

- the first emissions reduction plan
- the first national adaptation plan.

The Climate Change Response (Zero Carbon) Amendment Act expressly permits decision-makers acting under other legislation to take into account statutory emissions targets, emissions budgets, and emissions reduction plans made pursuant to that Act. This conflicts with the express provisions in the RMA, as discussed above.

We understand that the RMA's wider role as part of climate change policy is being considered as part of the wider RMA system review currently under way. The first emissions reduction plan is due to be gazetted by the end of 2021, although the wider RMA review is unlikely to be completed before then.

Given the above, some of us think that this bill should explicitly remove statutory barriers to consideration of climate change in decision-making under the RMA. However, it would be important to allow sufficient time to prepare for these changes. We discuss the specific changes we recommend below.

Councils should consider climate change when making and amending regional policy statements, regional plans, and district plans

Sections 61, 66, and 74 of the RMA provide a list of matters that regional councils and territorial authorities must have regard to when making and amending regional policy statements, regional plans, and district plans. We recommend amending those sections of the RMA to add "emissions reductions plans" and "national adaptation plans" to the list of matters that local authorities must have regard to when making and amending regional policy statements, regional plans, and district plans.

Accordingly, we recommend inserting clauses 12C, 12D, and 12G into the bill. We also recommend 31 December 2021 as the commencement date for these provisions to ensure there is sufficient time to make policy arrangements.

Authorities should be able to consider climate change when making decisions under the RMA

As we have noted, sections 70A and 104E of the RMA prevent decision-makers under the RMA from considering greenhouse gas emissions. Sections 70B and 104F specify some exceptions.

Some of us have proposed allowing councils to consider emission reductions plans when making and amending regional policy statements, regional plans, and district plans. Because sections 70A and 104E would prevent this, we recommend repealing sections 70A and 104E of the RMA. We also recommend repealing sections 70B and 104F as these exceptions would no longer be relevant. We recommend inserting clauses 12E, 12F, 25A, and 25B to effect these changes.

We acknowledge that it will be vital to have direction at a national level about how local government should make decisions about climate change mitigation under the RMA. Otherwise, there could be risks of inconsistencies, overlap of regulations between councils and emissions pricing, and litigation. Therefore, we recommend a delayed commencement for these changes, of 31 December 2021, to ensure there is sufficient time to make the policy arrangements. This date would also align with the deadline for the first emissions reduction plan.

In clause 73 of the bill, we recommend inserting new clause 26 into new Part 3 of Schedule 12 of the RMA. This would provide transitional provisions to clarify when existing sections 70A, 70B, 104E, and 104F would still apply.

Boards of inquiries and the Environment Court

Section 142 of the RMA allows the Minister to “call in” a matter from resource consent authorities if the Minister considers the matter one of national significance. Those matters could include an application for a resource consent or plan change. If the Minister calls in the matter, it is referred to either a board of inquiry or the Environment Court for a decision. The board or the court is bound by the same limits as the original decision-maker. Therefore, the changes proposed above (about councils taking into account emissions reduction plans and national adaptation) would apply to the board or court.

We note that when the Minister is deciding whether a matter is of national significance, environmental changes and international obligations are factors that can be considered.¹

Some of us consider that a board of inquiry or the Environment Court should be able to take global environmental impacts (including climate change mitigation) into account from the date of the bill’s commencement, rather than 31 December 2021. When an emissions reduction plan and national direction are gazetted, they could then also be taken into account.

Accordingly, we recommend amending clause 73 to insert new clause 27 into Schedule 12 of the RMA.

Some of us believe this would help to ensure that large-scale projects that may have high emissions are not brought forward to take advantage of the delayed commencement referred to above.

¹ Resource Management Act 1991, section 142(3)(a)(v).

Other matters we considered

During our consideration, we considered several issues that have not resulted to changes to this bill, for various reasons.

We note that a significant number of submissions commented on district planning rules for urban tree protection. We note that consideration of a more efficient process for identifying trees for protection may be considered as part of the wider resource management system review.

One member was of the view that urban tree protection should be reinstated, especially given the high number of submissions from the public to this effect. Other members were satisfied that intention will be achieved through future RMA changes.

National Party view

The National Party does not support this bill.

In November, the Government appointed an expert Resource Management Review Panel, chaired by retired Appeal Court judge Hon Tony Randerson to produce reform proposals. The panel is due to report in May this year.

Resource management is complex. The Resource Management Act (RMA) has already had 18 substantive amendments since it became law almost 30 years ago. It is both the primary environmental legislation and the primary development and planning legislation. We believe that another substantial amendment when the Government's own expert panel will report back in a few months makes little sense.

It is the National Party view that this bill is not a suitable vehicle to bring about substantial change to the RMA including introducing climate change obligations into RMA decision making without adequate public consultation nor costings. This is especially so, when this bill proposes to introduce a right for submitters to cross-examine other submitters.

The National Party is of the view that any substantive changes to the RMA should be made with a full understanding of the expert panel's recommendations to avoid unnecessary additional disruption to current users of the RMA processes.

The National Party is concerned that this bill will add further cost, uncertainty, and delay to RMA processes at a time when there is an accepted need by many that the processes are serving neither the environment nor development.

Appendix

Committee process

The Resource Management Amendment Bill was referred to the committee on 26 September 2019. The closing date for submissions was 7 November 2019. We received and considered 385 submissions from interested groups and individuals. We heard oral evidence from 59 submitters at hearings in Auckland and Wellington.

We received advice from the Ministry for the Environment.

Committee membership

Dr Duncan Webb (Chairperson)

Dr Liz Craig

Hon Jacqui Dean (from 19 February 2020)

Sarah Dowie (until 19 February 2020)

Hon Nathan Guy

Jenny Marcroft

Hon Scott Simpson

Erica Stanford

Chlöe Swarbrick

Angie Warren-Clark

Resource Management Amendment Bill

Key to symbols used in reprinted bill

As reported from a select committee

text inserted by a majority

~~text deleted by a majority~~

Hon David Parker

Resource Management Amendment Bill

Government Bill

Contents

	Page
1 Title	5
2 Commencement	5
Part 1	
Amendments to Resource Management Act 1991	
3 Amendments to Resource Management Act 1991	6
4 Section 2 amended (Interpretation)	6
5 Section 4 amended (Act to bind the Crown)	6
6 Section 11 amended (Restrictions on subdivision of land)	6
7 Section 29 amended (Delegation of functions by Ministers)	7
8 Section 38 amended (Authorisation and responsibilities of enforcement officers)	7
9 Section 42C amended (Functions of EPA)	7
10 Section 44 amended (Restriction on power to make national environmental standards)	7
11 Section 46A amended (Single process for preparing national directions)	7
12 Section 48 amended (Public notification of proposal for national direction and inquiry)	8
<u>12A</u> <u>Section 51 amended (Matters to be considered and board of inquiry's report)</u>	<u>8</u>
<u>12B</u> <u>Section 58R amended (Contents of Mana Whakahono a Rohe)</u>	<u>8</u>
<u>12C</u> <u>Section 61 amended (Matters to be considered by regional council (policy statements))</u>	<u>8</u>
<u>12D</u> <u>Section 66 amended (Matters to be considered by regional council (plans))</u>	<u>8</u>

Resource Management Amendment Bill

<u>12E</u>	<u>Section 70A repealed (Application to climate change of rules relating to discharge of greenhouse gases)</u>	<u>8</u>
<u>12F</u>	<u>Section 70B repealed (Implementation of national environmental standards)</u>	<u>8</u>
<u>12G</u>	<u>Section 74 amended (Matters to be considered by territorial authority)</u>	<u>8</u>
13	Subpart 4 of Part 5 replaced	9
Subpart 4—Freshwater planning process		
	80A Freshwater planning process	9
14	Section 80C amended (Application to responsible Minister for direction)	11
15	Section 87AAC amended (Meaning of fast-track application)	11
16	Section 88 amended (Making an application)	11
17	Section 88B amended (Time limits from which time periods are excluded in relation to applications)	11
18	Section 88E amended (Excluded time periods relating to other matters)	11
19	New sections 88G and 88H inserted	11
	88G Exclusion of period when processing of non-notified application suspended	11
	88H Excluded time periods relating to non-payment of administrative charges	12
20	Section 91A amended (Applicant may have processing of application suspended)	12
21	Section 91B amended (When suspension of processing cease)	12
22	Section 91C amended (Application may be returned if suspended after certain period)	12
23	New sections 91D to 91F inserted	12
	91D Applicant may have processing of non-notified application suspended	12
	91E When suspension of processing of non-notified application ceases	13
	91F Non-notified application may be returned after certain period	13
24	Section 95A amended (Public notification of consent applications)	14
25	Section 95B amended (Limited notification of consent applications)	14
<u>25A</u>	<u>Section 104E repealed (Applications relating to discharge of greenhouse gases)</u>	<u>14</u>
<u>25B</u>	<u>Section 104F repealed (Implementation of national environmental standards)</u>	<u>14</u>
26	Section 120 amended (Right to appeal)	14
27	Section 128 amended (Circumstances when consent conditions can be reviewed)	15

Resource Management Amendment Bill

28	Section 129 amended (Notice of review)	15
<u>28A</u>	<u>Section 140 amended (Outline of this Part)</u>	<u>15</u>
<u>28B</u>	<u>Section 141 amended (Interpretation)</u>	<u>15</u>
<u>28C</u>	<u>Section 142 amended (Minister may call in matter that is or is part of proposal of national significance)</u>	<u>16</u>
<u>28D</u>	<u>Section 143 amended (Restriction on when local authority may request call in)</u>	<u>16</u>
<u>28E</u>	<u>Section 149C amended (EPA must give public notice of Minister's direction)</u>	<u>16</u>
<u>28F</u>	<u>Section 149E amended (EPA to receive submissions on matter if public notice of direction has been given)</u>	<u>16</u>
<u>28G</u>	<u>Section 149F amended (EPA to receive further submissions if matter is request, change, or variation)</u>	<u>17</u>
<u>28H</u>	<u>Section 149H amended (Local authority may not notify further change or variation in certain circumstances)</u>	<u>17</u>
<u>28I</u>	<u>Section 149I amended (Limitation on withdrawal of change or variation)</u>	<u>17</u>
<u>28J</u>	<u>Section 149M amended (Process if matter is request for regional plan or change and particular circumstances apply)</u>	<u>17</u>
<u>28K</u>	<u>Section 149N amended (Process if section 149M applies or proposed plan or change not yet prepared)</u>	<u>17</u>
29	Section 149P amended (Consideration of matter by board)	17
30	Section 149U amended (Consideration of matter by Environment Court)	18
<u>30A</u>	<u>Section 149W amended (Local authority to implement decision of board or court about proposed regional plan or change or variation)</u>	<u>18</u>
31	Section 170 amended (Discretion to include requirement in proposed plan)	19
32	Section 171 amended (Recommendation by territorial authority)	19
33	Section 174 amended (Appeals)	19
<u>33A</u>	<u>Section 187 amended (Meaning of heritage order and heritage protection authority)</u>	<u>19</u>
34	Section 198E amended (Environment Court decides)	19
35	Section 198K amended (Environment Court decides)	19
<u>35A</u>	<u>Section 202 amended (Minister's obligations upon receipt of application)</u>	<u>20</u>
36	Section 248 amended (Membership of Environment Court)	20
37	Section 249 amended (Eligibility for appointment as an Environment Judge or alternate Environment Judge)	20
38	Section 250 amended (Appointment of Environment Judges and alternate Environment Judges)	20
39	Section 250A amended (Judge not to undertake other employment or hold other office)	21
40	Section 250B amended (Protocol relating to activities of Judges)	21

Resource Management Amendment Bill

41	Section 251 amended (Principal Environment Judge)	21
42	Section 251A amended (Appointment of acting Principal Environment Judge)	21
43	Section 252 amended (When an alternate Environment Judge may act)	21
<u>43A</u>	<u>Section 254 amended (Appointment of Environment Commissioner or Deputy Environment Commissioner)</u>	<u>21</u>
44	Section 255 amended (When a Deputy Environment Commissioner may act)	21
45	Section 259 amended (Special advisors)	21
46	Section 261 amended (Protection from legal proceedings)	22
47	Section 265 amended (Environment Court sittings)	22
48	Section 279 amended (Powers of Environment Judge sitting alone)	22
49	Section 280 amended (Powers of Environment Commissioner sitting without Environment Judge)	22
50	Section 281 amended (Waivers and directions)	22
51	Section 288A amended (Information regarding reserved judgments)	22
52	Section 288B amended (Recusal guidelines)	22
53	Section 311 amended (Application for declaration)	22
54	Section 316 amended (Application for enforcement order)	22
55	Section 324 amended (Form and content of abatement notice)	23
56	Section 325 amended (Appeals)	23
57	Section 325A amended (Cancellation of abatement notice)	23
58	Section 325B amended (Restrictions on certain applications for enforcement orders and abatement notices)	23
59	Section 330B amended (Emergency works under Civil Defence Emergency Management Act 2002)	23
60	Section 332 amended (Power of entry for inspection)	23
61	Section 336 amended (Return of property seized under sections 323 and 328)	24
62	Section 338 amended (Offences against this Act)	24
63	Section 339C amended (Amount of fine or other monetary penalty recoverable by distress and sale of ship or from agent)	24
64	Section 342 amended (Fines to be paid to local authority instituting prosecution)	24
65	Section 343D amended (Entitlement to infringement fees)	24
66	New Part 12A inserted	25

**Part 12A
Enforcement functions of EPA**

343E	Terms used in this Part	25
343F	Enforcement functions of EPA	26
343G	Intervention by EPA	26
343H	EPA may change enforcement functions	27

	343I	EPA enforcement officers	27
	343J	EPA may require information from local authority	28
	343K	Additional reporting requirements	28
	343L	Order for payment of EPA's costs in bringing a prosecution	28
67		Section 353 amended (Notices and consents in relation to Maori land)	28
68		Section 355B amended (Enforcement powers against unlawful reclamations)	29
69		Section 357 amended (Right of objection against certain decisions)	29
<u>69A</u>		<u>Section 358 amended (Appeals against certain decisions or objections)</u>	<u>29</u>
70		Section 360 amended (Regulations)	29
71		Sections 360D, 360E, 360G, and 360H repealed	29
72		Schedule 1 amended	30
73		Schedule 12 amended	47

Part 2

Amendments to other enactments

Subpart 1—Amendments to Resource Legislation Amendment Act 2017

74		Amendments to Resource Legislation Amendment Act 2017	51
75		Section 2 amended (Commencement)	51
76		Subpart 3 of Part 1 repealed	51
77		Schedules 4 and 5 repealed	51

Subpart 2—Consequential amendments to other enactments

78		Consequential amendments to other enactments	51
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Schedule

Consequential amendments

52

The Parliament of New Zealand enacts as follows:

1 Title

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

2 Commencement

- (1) This Act, except as provided in ~~subsection (2)~~ this section, comes into force on the day after the date on which it receives the Royal assent. 5
- (2) **Sections 17 to 24, 26, and 69-24 and 26** come into force on the day that is 3 months after the date on which this Act receives the Royal assent.
- (3) **Sections 12C to 12G, 25A, and 25B** come into force on 31 December 2021. 10

Part 1 Amendments to Resource Management Act 1991

3 Amendments to Resource Management Act 1991

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

4 Section 2 amended (Interpretation) 5

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

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

freshwater commissioner means a person appointed by the Minister under **clause 62(2) of Schedule 1** 10

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

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

freshwater planning process means the process set out in **subpart 4 of Part 5 (section 80A) and Part 4 of Schedule 1** 15

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

(2A) In section 2(1), repeal the definition of **collaborative group**.

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

enforcement officer,— 20

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

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

(4) In section 2(1), replace the definition of **fresh water** with: 25

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

5 Section 4 amended (Act to bind the Crown)

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

(2) In section 4(9)(c)(i), after “authority”, insert “, the EPA,”. 30

6 Section 11 amended (Restrictions on subdivision of land)

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

(a) first, expressly allowed by a national environmental standard, a rule in a district plan as well as a rule in a proposed district plan for the same district (if there is one), or a resource consent; and second, is shown on one of the following: 35

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

- 12 Section 48 amended (Public notification of proposal for national direction and inquiry)**
In section 48(1)(a), replace “policy statement” with “direction”.
- 12A Section 51 amended (Matters to be considered and board of inquiry’s report)** 5
In section 51(1)(ca), before “any”, insert “if applicable.”
- 12B Section 58R amended (Contents of Mana Whakahono a Rohe)**
In section 58R(1)(c)(i), delete “, collaborative.”
- 12C Section 61 amended (Matters to be considered by regional council (policy statements))** 10
After section 61(2)(c), insert:
(d) any emissions reductions plan made in accordance with section 5ZI of the Climate Change Response Act 2002; and
(e) any national adaptation plan made in accordance with section 5ZS of the Climate Change Response Act 2002. 15
- 12D Section 66 amended (Matters to be considered by regional council (plans))**
After section 66(2)(e), insert:
(f) any emissions reductions plan made in accordance with section 5ZI of the Climate Change Response Act 2002; and
(g) any national adaptation plan made in accordance with section 5ZS of the Climate Change Response Act 2002. 20
- 12E Section 70A repealed (Application to climate change of rules relating to discharge of greenhouse gases)**
Repeal section 70A.
- 12F Section 70B repealed (Implementation of national environmental standards)** 25
Repeal section 70B.
- 12G Section 74 amended (Matters to be considered by territorial authority)**
After section 74(2)(c), insert:
(d) any emissions reductions plan made in accordance with section 5ZI of the Climate Change Response Act 2002; and 30
(e) any national adaptation plan made in accordance with section 5ZS of the Climate Change Response Act 2002.

13 Subpart 4 of Part 5 replaced

Replace subpart 4 of Part 5 with:

Subpart 4—Freshwater planning process

80A Freshwater planning process

- (1) The purpose of this subpart is to require all freshwater planning instruments to undergo the freshwater planning process. 5
- (2) A **freshwater planning instrument** means—
- (a) a proposed regional plan or regional policy statement for the purpose of giving effect to any national policy statement for freshwater management ~~the National Policy Statement for Freshwater Management 2020~~: 10
- (b) a proposed regional plan or regional policy statement that relates to freshwater (other than for the purpose described in **paragraph (a)**):
- (c) a change or variation to a proposed regional plan or regional policy statement if the change or variation— 15
- (i) is for the purpose described in **paragraph (a)**; or
- (ii) otherwise relates to freshwater.
- (3) A regional council must prepare a freshwater planning instrument in accordance with this subpart and **Part 4 of Schedule 1**. However, if the council is satisfied that only part of the instrument relates to freshwater, the council must— 20
- (a) prepare that part in accordance with this subpart and **Part 4 of Schedule 1**; and
- (b) prepare the parts that do not relate to freshwater in accordance with Part 1 of Schedule 1.
- (4) A regional council must— 25
- (a) publicly notify the freshwater planning instrument; and
- (b) if the purpose of the freshwater planning instrument is to give effect to the National Policy Statement for Freshwater Management 2020, publicly notify the freshwater planning instrument by 31 December 2023; and 30
- (c) no later than 6 months after it has publicly notified the freshwater planning instrument, submit the documents required by **clause 37(1) of Schedule 1** (the **required documents**) to the Chief Freshwater Commissioner; and
- (d) at least 20 working days before submitting the required documents, provide the Chief Freshwater Commissioner with— 35
- (i) its notice of intention to submit those documents; and

- (ii) the regional council and local tangata whenua nominations for appointment to the freshwater hearings panel required by **clause 58(1)(b) and (c) of Schedule 1**.
- (5) The following is an outline of the rest of the freshwater planning process set out in **Part 4 of Schedule 1**: 5
- (a) the Chief Freshwater Commissioner must convene a freshwater hearings panel to conduct the public hearing of submissions on the freshwater planning instrument:
- (b) the freshwater hearings panel must conduct the public hearing of submissions in accordance with its powers and the procedures set out in **Part 4 of Schedule 1**: 10
- (c) after the public hearing of submissions is concluded, the freshwater hearings panel must make recommendations to the regional council on the freshwater planning instrument:
- (d) the regional council may accept or reject any recommendation. However,— 15
- (i) the regional council must provide reasons for rejecting a recommendation; and
- (ii) a person who made a submission on the freshwater planning instrument may make an appeal in accordance with **subpart 2 of Part 4 of Schedule 1** ~~(in accordance with **Part 4 of Schedule 1**) in respect of the regional council's decision to reject or accept a recommendation.~~ 20
- (6) For the purpose of this subpart, the following provisions ~~clauses of Part 1 of Schedule 1~~ apply: 25
- (a) clauses 1(3), 1A, 1B, 2(1), 3 to 3C, 4A, 5, 6, 7(1) and (2), ~~and 8A, 8, 8A, and 8D~~; and
- (b) clauses 16, 16A, 16B, 17, 20, and 20A; and
- (c) if a request is made by a person under clause 21(1) in relation to a freshwater planning instrument, Part 2 of Schedule 1 applies to the request. 30
- (6A) This section does not affect the Minister's ability to call in a matter that the Minister considers is or is part of a proposal of national significance under section 142.
- (7) In **subsection (2)**, a proposed regional plan does not include a proposed regional coastal plan or a change or variation to that plan. 35
- (8) Section 37(1)(a) does not apply to any time period specified in this subpart or **Part 4 of Schedule 1**.
- (9) In **subsection (4)**, **publicly notify**, in relation to a freshwater planning instrument, means to publicly notify the instrument in accordance with clause 5 of Schedule 1. 40

- (10) **Subsection (5)** is by way of explanation only and does not limit or affect the other provisions of this Act.
- 14 Section 80C amended (Application to responsible Minister for direction)**
- (1) In section 80C(2), after “if”, insert “the planning instrument or proposed planning instrument is not a freshwater planning instrument and”. 5
- (2) Repeal section 80C(4)(b).
- 15 Section 87AAC amended (Meaning of fast-track application)**
- Replace section 87AAC(1) with:
- (1) An application is a **fast-track application** if the application—
- (a) is for a resource consent for a controlled activity (but no other activity) that requires consent under a district plan (other than a subdivision of land); and 10
- (b) includes an address for service that is an electronic address.
- 16 Section 88 amended (Making an application)**
- (1) Replace section 88(2)(b) and (c) with: 15
- (b) include the information relating to the activity, including an assessment of the activity’s effects on the environment, that is required by Schedule 4.
- (2) In section 88(3)(b), delete “or (c) (as applicable)”.
- 17 Section 88B amended (Time limits from which time periods are excluded in relation to applications)** 20
- (1) In section 88B(3), table, item relating to section 95, second column, below the item relating to section 88F(2), insert “**Section 88G**”.
- (2) After section 88B(3), insert:
- (4) If a consent authority decides under **section 88H** to exclude a time period because of non-payment of administrative charges, the time period described in **section 88H(2)** must be excluded from the time limit described in section 95. 25
- 18 Section 88E amended (Excluded time periods relating to other matters)**
- In section 88E, heading above subsection (7), replace “*application processing*” with “*processing of notified application*”. 30
- 19 New sections 88G and 88H inserted**
- After section 88F, insert:
- 88G Exclusion of period when processing of non-notified application suspended**
- (1) **Subsection (2)** applies when a non-notified application is suspended under **section 91D**. 35

- (2) The period that must be excluded from every applicable time limit under section 88B is the period—
- (a) starting from the date on which the suspension started; and
 - (b) ending on the date on which the suspension ceased.
- 88H Excluded time periods relating to non-payment of administrative charges** 5
- (1) **Subsection (2)** applies if—
- (a) an application for a resource consent is lodged with a consent authority; and
 - (b) a charge fixed under section 36 is payable when the application is lodged or when the application is notified by the consent authority under section 95; and 10
 - (c) the applicant does not pay the charge when it is payable.
- (2) The consent authority may exclude from every applicable time limit in section 95, the period—
- (a) starting from the date on which payment is due; and 15
 - (b) ending on the date on which payment is made.
- 20 Section 91A amended (Applicant may have processing of application suspended)**
- In the heading to section 91A, after “of”, insert “notified”.
- 21 Section 91B amended (When suspension of processing cease)** 20
- In the heading to section 91B, after “processing”, insert “of notified application”.
- 22 Section 91C amended (Application may be returned if suspended after certain period)**
- In the heading to section 91C, replace “Application” with “Notified application”. 25
- 23 New sections 91D to 91F inserted**
- After section 91C, insert:
- 91D Applicant may have processing of non-notified application suspended**
- (1) A consent authority must suspend the processing of a non-notified application when a request is received in accordance with this section. 30
 - (2) The applicant may request the consent authority to suspend the processing of a non-notified application at any time in the period—
 - (a) starting on the date that the application is first lodged with the authority; and 35

- (b) ending when—
- (i) the hearing is completed, if a hearing is held for the application; or
 - (ii) the consent authority gives notice to the applicant of its decision on the application, if a hearing is not held for the application; or 5
 - (iii) the application is notified.
- (3) However, a request must not be made if—
- (a) the applicant has lodged a notice of motion with the Environment Court under section 87G(2)(a); or
 - (b) the Minister has made a direction under section 142(2) in relation to the application; or 10
 - (c) a total of 20 working days have been excluded from time limits under section 88B as a result of any previous request under this section in relation to the application.
- (4) The request must be made by written or electronic notice. 15
- (5) If processing is suspended under this section, the consent authority must give written or electronic notice to the applicant specifying the date on which the suspension started.
- 91E When suspension of processing of non-notified application ceases**
- (1) A consent authority must cease to suspend the processing of a non-notified application when— 20
- (a) a request is received in accordance with this section; or
 - (b) the applicant lodges a notice of motion with the Environment Court under section 87G(2)(a); or
 - (c) the Minister makes a direction under section 142(2) in relation to the application; or 25
 - (d) the consent authority decides under **section 91F** to continue to process the application.
- (2) The applicant may request the consent authority to cease to suspend the processing of a non-notified application if it is currently suspended. 30
- (3) The request must be made by written or electronic notice.
- (4) If a suspension is ceased under this section, the consent authority must give written or electronic notice to the applicant specifying the date on which the suspension ceased.
- 91F Non-notified application may be returned after certain period** 35
- (1) **Subsection (2)** applies if the processing of the non-notified application has been suspended for a total of 20 working days in response to 1 or more requests under **section 91D**.

- (2) The consent authority must decide to—
- (a) return the application to the applicant; or
 - (b) continue to process the application.
- (3) If the consent authority decides to return the application,—
- (a) it must be returned together with a written explanation as to why it is being returned; but
 - (b) the applicant may object to the consent authority under section 357(3A).
- (4) If, after an application has been returned, the application is lodged again with the consent authority, the application is to be treated as a new application.
- 24 Section 95A amended (Public notification of consent applications) 10**
- (1) Repeal section 95A(5)(b)(ii) and (iv).
 - (2) Repeal section 95A(6).
- 25 Section 95B amended (Limited notification of consent applications)**
- (1) Replace section 95B(6)(b) with:
 - (b) the application is for a controlled activity (but no other activities) that requires a resource consent under a district plan (other than a subdivision of land). 15
 - (2) Replace section 95B(7) with:
 - (7) In the case of a boundary activity, determine in accordance with section 95E whether an owner of an allotment with an infringed boundary is an affected person. 20
- 25A Section 104E repealed (Applications relating to discharge of greenhouse gases)**
Repeal section 104E.
- 25B Section 104F repealed (Implementation of national environmental standards)** 25
Repeal section 104F.
- 26 Section 120 amended (Right to appeal)**
- Replace section 120(1A) and (1B) with:
- (1A) However, there is no right of appeal under this section against the whole or any part of a decision of a consent authority referred to in subsection (1) to the extent that the decision relates to a boundary activity, unless the boundary activity is a non-complying activity. 30
 - ~~(1B) In exercising a right of appeal under subsection (1)(b), a person is not confined to matters raised in the person's submission (excluding any part of the submission that is struck out under section 41D).~~ 35

- (1B)** A person exercising a right of appeal under subsection (1)(b) may—
- (a)** appeal any matter that was raised in the person’s submission except any part of the submission that is struck out under section 41D; and
- (b)** appeal any matter that was not raised in the person’s submission.
- 27 Section 128 amended (Circumstances when consent conditions can be reviewed)** 5
- (1)** Replace section 128(1)(b) with:
- (b)** in the case of a coastal, water, or discharge permit, or a land use consent granted by a regional council, if—
- (i)** a regional plan contains a rule that relates to maximum or minimum levels or flows or rates of use of water, or minimum standards of water quality or air quality, or ranges of temperature or pressure of geothermal water; and 10
- (ii)** the rule, the plan, or the part of the plan that contains the rule has been made operative; and 15
- (iii)** the regional council considers that it is appropriate to review the conditions of the permit or consent in order to enable the levels, flows, rates, or standards set by the rule, the plan, or the part of the plan to be met; or
- (2)** After section 128(1)(c), insert: 20
- (d)** if the review is part of a review carried out under **subsection (2A)**.
- (3)** After section 128(2), insert:
- (2A)** If more than 1 resource consent is affected by the rule referred to in ~~section 428(4)(b)(i)~~ **subsection (1)(b)(i)**, the consent authority may review the conditions of those resource consents together for the purpose of managing the effects of the activities carried out under those resource consents. 25
- 28 Section 129 amended (Notice of review)**
- After section 129(1)(e), insert:
- (f)** must, if **section 128(2A)** applies, advise that the consent authority intends to review the conditions of the resource consent together with its review of the conditions of other resource consents that are also affected by the rule referred to in **section 128(1)(b)(i)**. 30
- 28A Section 140 amended (Outline of this Part)**
- In section 140(2), after “regional plans,”, insert “regional policy statement changes.”. 35
- 28B Section 141 amended (Interpretation)**
- (1)** In section 141, definition of **applicant**, after paragraph (f), insert:

- (g) the person making the request for a matter relating to a regional policy statement,—
- (i) including a request that has been accepted by a board of inquiry under section 149M or a local authority under clause 25(2)(b) of Schedule 1; but
- (ii) excluding a request that has been adopted by the local authority
- (2) In section 141, definition of **matter**, after paragraph (i), insert:
- (j) a request for a change to a regional policy statement (including a request that has been accepted or adopted in whole or in part by a local authority) or part of such a request; or
- (k) a change to a regional policy statement or part of a change; or
- (l) a variation to a proposed regional policy statement or part of a variation; or
- (m) a combination of any 2 or more matters described in paragraphs (c) to (f) and (j) to (l)
- (3) In section 141, insert in its appropriate alphabetical order:
- matter relating to a regional policy statement** means a matter specified in paragraphs (j) to (l) of the definition of matter
- 28C Section 142 amended (Minister may call in matter that is or is part of proposal of national significance)**
- (1) In section 142(3)(a)(iiia), after “(f)”, insert “and (k) to (l)”.
- (2) In section 142(8), after “to a plan”, insert “or regional policy statement”.
- 28D Section 143 amended (Restriction on when local authority may request call in)**
- In section 143(a) and (b), after “plan”, insert “or regional policy statement” in each case.
- 28E Section 149C amended (EPA must give public notice of Minister’s direction)**
- In section 149C(2)(a), replace “or a request for a change to a plan,” with “a request for a change to a plan, or a request for a change to a regional policy statement.”
- 28F Section 149E amended (EPA to receive submissions on matter if public notice of direction has been given)**
- (1) In section 149E(7), replace “or a variation to a proposed plan,” with “a variation to a proposed plan, a change to a regional policy statement, or a request for a change to a regional policy statement.”

- (2) In section 149E(8), replace “or a request for a change to a plan,” with “a request for a change to a plan or a variation to a proposed regional policy statement.”
- 28G Section 149F amended (EPA to receive further submissions if matter is request, change, or variation)** 5
- (1) In section 149F(1), replace “or a variation to a proposed plan” with “a variation to a proposed plan, or a matter relating to a regional policy statement”.
- (2) In section 149F(3)(b), replace “request, change, or variation” with “matter”.
- 28H Section 149H amended (Local authority may not notify further change or variation in certain circumstances)** 10
- After section 149H(c), insert:
- (d) a matter relating to a regional policy statement.
- 28I Section 149I amended (Limitation on withdrawal of change or variation)**
- (1) In section 149I(1), replace “or a variation to a proposed plan” with “a variation to a proposed plan, or matter relating to a regional policy statement”. 15
- (2) In section 149I(2), replace “or request for a change to a plan” with “a request for a change to a plan, or a matter relating to a regional policy statement”.
- 28J Section 149M amended (Process if matter is request for regional plan or change and particular circumstances apply)**
- In section 149M(1), after “change to a plan”, insert “or a regional policy statement”. 20
- 28K Section 149N amended (Process if section 149M applies or proposed plan or change not yet prepared)**
- In section 149N(1)(a) and (b), after “a plan”, insert “or a request for a change to a regional policy statement” in each case. 25
- 29 Section 149P amended (Consideration of matter by board)**
- (1) In section 149P(2), replace “sections 104 to 112” with “sections 104 to 104D, 105 to 112, and 138A”.
- (2) In section 149P(3), replace “sections 104 to 112” with “sections 104, 104D, and 105 to 112”. 30
- (3) After section 149P(4), insert:
- (4A) However, if the requiring authority is the Minister of Education or the Minister of Defence, the board of inquiry may not impose a condition under subsection (4)(b)(iii) requiring a financial contribution (as defined in section 108(9)).
- (4) In section 149P(6)(c), replace “sections 66 to 70B and 77A to 77D” with “sections 66 to 70 and 77A to 77D”. 35

(5) After section 149P(9), insert:

(9A) A board of inquiry considering a matter relating to a regional policy statement—

(a) must apply clause 10(1) to (3) of Schedule 1 as if it were a local authority; and

(b) may exercise the powers under section 293 as if it were the Environment Court; and

(c) must apply sections 61 and 62 as if it were a regional council.

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30 Section 149U amended (Consideration of matter by Environment Court)

(1) In section 149U(2), replace “sections 104 to 112” with “sections 104 to 104D and 105 to 112”.

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(2) In section 149U(3), replace “sections 104 to 112” with “sections 104, 104D, and 105 to 112”.

(3) After section 149U(4), insert:

(4A) However, if the requiring authority is the Minister of Education or the Minister of Defence, the court may not impose a condition under subsection (4)(b)(iii) requiring a financial contribution (as defined in section 108(9)).

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(4) In section 149U(6)(c), replace “sections 66 to 70B and 77A to 77D” with “sections 66 to 70 and 77A and 77D”.

(5) After section 149U(7), insert:

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(7A) If considering a matter relating to a regional policy statement, the court—

(a) must apply clause 10(1) to (3) of Schedule 1 as if it were a local authority; and

(b) may exercise the powers under section 293 as if it were the Environment Court; and

(c) must apply sections 61 and 62 as if it were a regional council.

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30A Section 149W amended (Local authority to implement decision of board or court about proposed regional plan or change or variation)

(1) Replace section 149W(1) with:

(1) Subsections (2) and (3) apply to a local authority if a board of inquiry or the Environment Court—

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(a) considers a matter that is a proposed regional plan, a change to a regional plan, a variation to a proposed regional plan, or a matter relating to a regional policy statement; and

(b) decides that changes must be made to that matter.

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(2) In section 149W(2)(a), replace “proposed plan, change, or variation” with “proposed regional plan, change or variation to the plan, or regional policy statement”.

- (3) In section 149W(2), replace “or variation” with “variation, or regional policy statement” in each place.
- (4) In section 149W(2)(b), after “(other than a regional coastal plan)”, insert “, or a regional policy statement”.
- 31 Section 170 amended (Discretion to include requirement in proposed plan) 5**
- (1) In section 170(2), delete “, (4),”.
- (2) Replace section (2)(b) and (c) with:
- (b) seek the consent of the requiring authority to use that planning process for considering the requirement.
- (3) Repeal section 170(3) to (6) and the heading above section 170(3). 10
- 32 Section 171 amended (Recommendation by territorial authority)**
- After section 171(2), insert:
- (2A) However, if the requiring authority is the Minister of Education or the Minister of Defence, the territorial authority may not recommend imposing a condition requiring a financial contribution (as defined in section 108(9)). 15
- 33 Section 174 amended (Appeals)**
- After section 174(4), insert:
- (5) However, if the requiring authority is the Minister of Education or the Minister of Defence, the court may not impose a condition under subsection (4)(c) requiring a financial contribution (as defined in section 108(9)). 20
- 33A Section 187 amended (Meaning of heritage order and heritage protection authority)**
- In section 187, definition of **heritage protection authority**, paragraph (a)(ii), replace “of Maori Affairs” with “for Māori Development”.
- 34 Section 198E amended (Environment Court decides) 25**
- After section 198E(6), insert:
- (6A) However, if the requiring authority is the Minister of Education or the Minister of Defence, the court may not impose a condition under subsection (6)(b)(iii) requiring a financial contribution (as defined in section 108(9)).
- 35 Section 198K amended (Environment Court decides) 30**
- After section 198K(5), insert:
- (5A) However, if the requiring authority is the Minister of Education or the Minister of Defence, the court may not impose a condition under subsection (5)(b)(iii) requiring a financial contribution (as defined in section 108(9)).

- 35A Section 202 amended (Minister’s obligations upon receipt of application)**
In section 202(2), replace “of Maori Affairs” with “for Māori Development”.
- 36 Section 248 amended (Membership of Environment Court)**
 In section 248(a), replace “section 250” with “sections 249 and 250”.
- 37 Section 249 amended (Eligibility for appointment as an Environment Judge or alternate Environment Judge)** 5
 Replace section 249(2) with:
- (2) A person may not be appointed or hold office as an alternate Environment Judge unless—
- (a) the person is a District Court Judge, an acting District Court Judge, a Maori Land Court Judge, or an acting Maori Land Court Judge; or 10
- (b) the person is a retired Environment Judge under the age of 75 years and the Chief Environment Court Judge certifies to the Attorney-General that the appointment is necessary for the proper conduct of the Environment Court. 15
- 38 Section 250 amended (Appointment of Environment Judges and alternate Environment Judges)**
- Replace sections 250(1) and (2) with:
- (1) The Governor-General may, on the recommendation of the Attorney-General, after consulting the Minister for the Environment and the Minister for Māori ~~Affairs~~ Development,— 20
- (a) appoint a person as an Environment Judge in accordance with section 249(1); or
- (b) appoint a person as an alternate Environment Judge— 25
- (i) in accordance with **section 249(2)(a)**; or
- (ii) in accordance with **section 249(2)(b)**.
- (2) A person appointed under **subsection (1)(a) or (b)(i)** holds office as an Environment Judge or as an alternate Environment Judge for the term that the person holds office as a District Court Judge, an acting District Court Judge, a Maori Land Court Judge, or an acting Maori Land Court Judge, unless the person sooner resigns or is removed from office under this Act. 30
- (2A) When acting as an Environment Judge, an alternate Environment Judge appointed under **subsection (1)(b)(ii)** has the jurisdiction, powers, protections, privileges, and immunities of a District Court Judge under the District Court Act 2016. 35
- (2B) A retired Environment Judge—
- (a) may be appointed as an alternate Environment Judge for a term of not more than 2 years and may be reappointed for 1 or more terms; but

- (b) must not be appointed—
- (i) for a term that extends beyond the date on which the Judge reaches the age of 75 years; or
 - (ii) for multiple terms collectively totalling more than 5 years.
- 39 Section 250A amended (Judge not to undertake other employment or hold other office)** 5
- In section 250A(1) and (2), replace “Principal Environment Judge” with “Chief Environment Court Judge”.
- 40 Section 250B amended (Protocol relating to activities of Judges)**
- In section 250B(2), replace “Principal Environment Judge” with “Chief Environment Court Judge”. 10
- 41 Section 251 amended (Principal Environment Judge)**
- (1) Replace the heading to section 251 with “**Chief Environment Court Judge**”.
 - (2) In section 251(1) and (2), replace “Principal Environment Judge” with “Chief Environment Court Judge”. 15
- 42 Section 251A amended (Appointment of acting Principal Environment Judge)**
- (1) In the heading to section 251A, replace “**Principal Environment Judge**” with “**Chief Environment Court Judge**”.
 - (2) In section 251A(1)(a) and (b), (2), and (3), replace “Principal Environment Judge” with “Chief Environment Court Judge” in each place. 20
- 43 Section 252 amended (When an alternate Environment Judge may act)**
- In section 252(1), replace “Principal Environment Judge” with “Chief Environment Court Judge”.
- 43A Section 254 amended (Appointment of Environment Commissioner or Deputy Environment Commissioner)** 25
- In section 254(1), replace “of Maori Affairs” with “for Māori Development”.
- 44 Section 255 amended (When a Deputy Environment Commissioner may act)**
- In section 255(1)(b), replace “Principal Environment Judge” with “Chief Environment Court Judge”. 30
- 45 Section 259 amended (Special advisors)**
- In section 259(1), replace “Principal Environment Judge” with “Chief Environment Court Judge”.

- 46 Section 261 amended (Protection from legal proceedings)**
After section 261(3), insert:
- (4) No action lies against a special advisor appointed under section 259 for anything the special advisor says or does, or omits to say or do, while acting in good faith in the performance of the special advisor’s duties. 5
- 47 Section 265 amended (Environment Court sittings)**
In section 265(1)(c), replace “Principal Environment Judge” with “Chief Environment Court Judge”.
- 48 Section 279 amended (Powers of Environment Judge sitting alone)**
In section 279(2)(a) and (5)(a) and (b), replace “Principal Environment Judge” with “Chief Environment Court Judge”. 10
- 49 Section 280 amended (Powers of Environment Commissioner sitting without Environment Judge)**
In section 280(1), replace “Principal Environment Judge” with “Chief Environment Court Judge” in each place. 15
- 50 Section 281 amended (Waivers and directions)**
In section 281(5), replace “Principal Environment Judge” with “Chief Environment Court Judge” in each place.
- 51 Section 288A amended (Information regarding reserved judgments)**
In section 288A, replace “Principal Environment Judge” with “Chief Environment Court Judge”. 20
- 52 Section 288B amended (Recusal guidelines)**
In section 288B, replace “Principal Environment Judge” with “Chief Environment Court Judge”.
- 53 Section 311 amended (Application for declaration)** 25
In section 311(2), after “consent authority”, insert “, the EPA,”.
- 54 Section 316 amended (Application for enforcement order)**
- (1) Replace section 316(2) with:
- (2) An application may at any time be made in the prescribed form to the Environment Court by— 30
- (a) a local authority, a consent authority, or the EPA for an enforcement order of the kind specified in section 314(1)(da); and
- (b) a local authority or consent authority for an enforcement order of the kind specified in section 314(1)(e).
- (2) In section 316(5), after “consent authority”, insert “, the EPA,”. 35

- 55 Section 324 amended (Form and content of abatement notice)**
- (1) In section 324(g), replace “the local authority”, with “an enforcement officer”.
 - (2) In section 324(h), after “notice”, insert “or the address of the EPA, if the notice is issued by an enforcement officer appointed by the EPA”.
- 56 Section 325 amended (Appeals)** 5
- (1) In section 325(2)(c), replace “local authority or consent authority whose decision is appealed” with “relevant authority (whose abatement notice is appealed against)”.
 - (2) In section 325(3B)(c), replace “local authority or consent authority” with “relevant authority”. 10
 - (3) In section 325(3D)(ii), replace “local authority or consent authority” with “relevant authority”.
 - (4) In section 325(3F), replace “local authority or consent authority” with “relevant authority”.
 - (5) After section 325(6), insert: 15
 - (7) In this section, **relevant authority** means the local authority, the consent authority, or the EPA.
- 57 Section 325A amended (Cancellation of abatement notice)**
- Replace section 325A(1) with:
- (1) In this section, **relevant authority** means any of the following which or who authorised the enforcement officer who issued the abatement notice: 20
 - (a) the local authority:
 - (b) the Minister of Conservation:
 - (c) the EPA.
- 58 Section 325B amended (Restrictions on certain applications for enforcement orders and abatement notices)** 25
- In section 325B(2), replace “or a consent authority” with “a consent authority, or the EPA”.
- 59 Section 330B amended (Emergency works under Civil Defence Emergency Management Act 2002)** 30
- In section 330B(3), replace “20 working days” with “60 working days”.
- 60 Section 332 amended (Power of entry for inspection)**
- In section 332(1), replace “or consent authority” with “, consent authority, or by the EPA”.

- 61 Section 336 amended (Return of property seized under sections 323 and 328)**
- (1) In section 336(1), replace “local authority, consent authority,” with “relevant authority”.
- (2) In section 336(2), replace “local authority, consent authority,” with “relevant authority” 5
- (3) In section 336(2)(b), replace “local authority, consent authority,” with “relevant authority”.
- (4) In section 336(3), replace “local authority, consent authority,” with “relevant authority” 10
- (5) In section 336(5), replace “local authority, the consent authority,” with “relevant authority”.
- (6) After section 336(6), insert:
- (7) In this section, **relevant authority** means the local authority, the consent authority, or the EPA. 15
- 62 Section 338 amended (Offences against this Act)**
- In section 338(4), replace “6 months” with “12 months”.
- 63 Section 339C amended (Amount of fine or other monetary penalty recoverable by distress and sale of ship or from agent)**
- After section 339C(2), insert: 20
- (2A) For the purpose of subsection (2), any proceedings in relation to the offence that were commenced by or on behalf of a local authority include any proceedings in which the EPA was assisting the local authority (*see section 343F(b)*).
- 64 Section 342 amended (Fines to be paid to local authority instituting prosecution)** 25
- After section 342(5), insert:
- (6) If the court orders the payment of a fine for an offence prosecuted by the EPA acting under **section 343F(b)**,—
- (a) 10% of the fine must be credited to a Crown Bank Account; and
- (b) the balance of the fine must be credited to the local authority that the EPA was assisting. 30
- 65 Section 343D amended (Entitlement to infringement fees)**
- In section 343D, insert as subsection (2):
- (2) However, any infringement fee relating to an infringement notice issued by an enforcement officer appointed by the EPA must be paid into a Crown Bank Account. 35

66 New Part 12A inserted

After section 343D, insert:

Part 12A		
Enforcement functions of EPA		
343E Terms used in this Part		5
(1) In this Part,—		
enforcement action means—		
(a) an inspection, investigation, or other activity carried out in accordance with this Act for the purpose of determining whether there is or has been—		10
(i) a contravention of a provision of this Act, any regulations, a rule in a plan, a national environmental standard, or a resource consent; or		
(ii) a failure to comply with a requirement of an enforcement order or abatement notice; or		15
(b) an application for an enforcement order under section 316; or		
(c) an application for an interim enforcement order under section 320; or		
(d) the service of an abatement notice under section 322; or		
(e) the laying of a charge <u>filing of a charging document</u> relating to an offence described in section 338; or		20
(f) the issuing of an infringement notice under section 343C; or		
(g) an inspection, investigation, or other activity carried out in accordance with this Act for the purpose of an enforcement action described in paragraphs (b) to (f)		
enforcement function means a function of the EPA described in section 343F		25
incident means an occurrence that may, directly or indirectly, be linked to—		
(a) a contravention or possible contravention of a provision of this Act, any regulations, a rule in a plan, a national environmental standard, or a resource consent; or		30
(b) a failure or possible failure to comply with a requirement of an enforcement order or an abatement notice		
subsequent action —		
(a) means a prosecution, proceeding, application, or other activity that the EPA or a local authority may carry out under this Act in relation to an enforcement action that has been executed; and		35

(b)	includes an inspection, investigation, or other activity carried out in accordance with this Act for the purpose of an activity described in paragraph (a) .	
(2)	In paragraph (a) of the definition of enforcement action in subsection (1) , other activity includes, without limitation, an application for a declaration under section 311.	5
(3)	In this Part, an enforcement action is executed when, as the case may be, the application for the enforcement order or interim order is made, the abatement notice is served, the charge is laid, or the infringement notice is issued.	
343F Enforcement functions of EPA		10
The EPA may perform any of the following enforcement functions if satisfied that the performance of the function is necessary or desirable to promote the purpose of this Act:		
(a)	the EPA may take an enforcement action and any subsequent action in relation to an incident if the local authority has not commenced taking any enforcement action in relation to the same incident:	15
(b)	the EPA may, with the agreement of a local authority, assist the local authority with an enforcement action in relation to an incident and any subsequent action:	
(c)	the EPA may intervene in an enforcement action of a local authority in relation to an incident by taking over the enforcement action and taking any subsequent action.	20
343G Intervention by EPA		
(1)	If the EPA intervenes in an enforcement action of a local authority in relation to an incident,—	25
(a)	the EPA must notify the chief executive of the local authority in writing of the incident to which the intervention relates and the date on which the intervention takes effect; and	
(b)	the local authority must,—	
(i)	on receipt of the notice, cease any enforcement action in relation to the incident, except for an enforcement action described in paragraph (a) or (g) of the definition of enforcement action in section 343E(1) ; and	30
(ii)	from the date specified in the notice, cease all enforcement action in relation to the incident; and	35
(c)	the EPA takes over all enforcement action in relation to the incident from the date specified in the notice; and	
(d)	only the EPA may take any enforcement action or subsequent action in relation to the incident unless subsection (3) applies.	

- (2) When intervening in an enforcement action of a local authority, the EPA must not intervene in relation to an enforcement action that the local authority has already executed in respect of a person.
- (3) If the EPA decides to cease its intervention,—
- (a) it must notify the chief executive of the local authority in writing of its decision and the date on which it takes effect; and
 - (b) it must specify in the notice the date on which the intervention will cease; and
 - ~~(c) the local authority may take an enforcement action or subsequent action in relation to the incident from the date referred to in **paragraph (b)**.~~
 - (c) the local authority may, from the date referred to in **paragraph (b)**,—
 - (i) take an enforcement action or subsequent action in relation to the incident; or
 - (ii) resume any enforcement action that it had commenced before the intervention.
- (4) To avoid doubt, **subsection (2)** does not prevent the EPA from taking an enforcement action in relation to another incident in respect of the same person.

343H EPA may change enforcement functions

- (1) The EPA may change its enforcement function in relation to an incident to another function described in **section 343F** if the EPA considers that the circumstances require it.
- (2) If the EPA decides to change to an intervention function described in **section 343F(c)**, it must include its reasons for the change in the notice required under **section 343G(1)**.

343I EPA enforcement officers

- (1) The EPA may authorise a person described in **subsection (2)** to be an enforcement officer for the purpose of carrying out its enforcement functions under this Act.
- (2) A person may be authorised as an enforcement officer if the person—
- (a) has appropriate experience, technical competence, and qualifications relevant to the area of responsibilities proposed to be allocated to the person; or
 - (b) is an employee of the EPA who is suitably qualified and trained.
- (3) The EPA must supply each enforcement officer with a warrant that—
- (a) states the full name of the person; and
 - (b) includes a summary of the powers conferred on the person under this Act.

- (4) An enforcement officer may exercise the powers under this Act, in accordance with his or her warrant, only for the purposes for which he or she was appointed.
- (5) An enforcement officer exercising a power under this Act must have with him or her, and must produce if required to do so, his or her warrant and evidence of his or her identity. 5
- (6) An enforcement officer who holds a warrant issued under this section must, on the termination of the officer's appointment, surrender the warrant to the EPA.
Compare: 2012 No 72 ss 138, 139
- 343J EPA may require information from local authority** 10
- (1) The EPA may require a local authority to provide information that the EPA requires for taking an enforcement action in relation to an incident.
- (2) The EPA must notify the chief executive of the local authority in writing and specify the incident for which information is required.
- (3) A local authority must provide the required information to the EPA as soon as is reasonably practicable, but no later than 10 working days after the chief executive is notified. 15
- 343K Additional reporting requirements**
- (1) The annual report of the EPA under section 150 of the Crown Entities Act 2004 must include information about the performance of the EPA's enforcement functions, including the number and type of enforcement actions executed by the EPA. 20
- (2) The EPA is not required to provide information under **subsection (1)** that would prejudice the maintenance of law, including the prevention, investigation, or detection of offences, or the right to a fair trial. 25
- 343L Order for payment of EPA's costs in bringing a prosecution**
- (1) On the application of the EPA, the court may order a person convicted of an offence under this Act to pay to the EPA a sum that the court thinks just and reasonable towards the costs of the prosecution (including the costs of investigating the offence and any associated costs). 30
- (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. 35
Compare: 2015 No 70 s 152
- 67 Section 353 amended (Notices and consents in relation to Maori land)**
In section 353, after "local authority", insert "or the EPA".

- 68 Section 355B amended (Enforcement powers against unlawful reclamations)**
- (1) In section 355B(1), replace “and a regional council” with “, a regional council, and the EPA”.
- (2) In section 355B(2), replace “or a regional council” with “, a regional council, or the EPA”.
- (3) In section 355B(3), replace “or a regional council” with “, a regional council, and the EPA”.
- 69 Section 357 amended (Right of objection against certain decisions)**
- In section 357(3A), after “section 91C(2)”, insert “or **91F(2)**”.
- 69A Section 358 amended (Appeals against certain decisions or objections)**
- In section 358(1A)(a), replace “to (5)” with “to (4)”.
- 70 Section 360 amended (Regulations)**
- (1) Replace section 360(1)(bb) and (bc) with:
- (bb) prescribing infringement fees (which may be different fees for different offences)—
- (i) not exceeding \$2,000, in the case of a natural person, for an infringement offence prescribed under this subsection:
- (ii) not exceeding \$4,000, in the case of a person other than a natural person, for an infringement offence prescribed under this subsection:
- (iii) not exceeding \$100 per stock unit for each infringement offence prescribed under paragraph (ho) that is differentiated on the basis of the number of stock units, to a maximum fee of—
- (A) \$2,000 for each infringement offence in the case of a natural person; and
- (B) \$4,000 for each infringement offence in the case of a person other than a natural person:
- (bc) prescribing, in relation to infringement offences against this Act, the form and content of infringement notices and reminder notices:
- (2) In section 360(1)(hn), replace “and coastal lakes and lagoons” with “coastal lakes and lagoons, and the margins of those water bodies, estuaries, and coastal lakes and lagoons”.
- 71 Sections 360D, 360E, 360G, and 360H repealed**
- Repeal sections 360D, 360E, 360G, and 360H.

72 Schedule 1 amended

(1) In Schedule 1, repeal clauses 4(1C)(b), (1D)(d), and (2) to (2B), and 21(3A).

(1A) In Schedule 1, after clause 5(2), insert:

(2A) If the proposed policy statement or plan is a freshwater planning instrument, the public notice under subclause (1) must also—

(a) state whether all or part of the instrument is subject to the freshwater planning process; and

(b) if applicable, state—

(i) which part will undergo the freshwater planning process and the reasons why; and

(ii) which part will undergo the processes in Part 1 of this schedule and the reasons why.

(2) Replace Part 4 of Schedule 1 with:

Part 4

Freshwater planning process

36 Interpretation

In this Part,—

hearings means any hearing or part of a hearing of submissions on a freshwater planning instrument conducted by a freshwater hearings panel

relevant regional council means the regional council responsible for a freshwater planning instrument.

Subpart 1—Freshwater planning process

Commencement of freshwater planning process

37 Regional council must submit freshwater planning documents and give nominations to Chief Freshwater Commissioner

(1) A regional council must, no later than 6 months after it has publicly notified a freshwater planning instrument, submit the following documents to the Chief Freshwater Commissioner:

(a) the freshwater planning instrument that was publicly notified:

(b) any variation made to the freshwater planning instrument under clause 16A:

(c) the regional council's evaluation report prepared under section 32:

(d) the submissions on the freshwater planning instrument received by the closing date for submissions:

(e) the regional council's summary of the decisions requested by submitters:

- (f) any further submissions on the freshwater planning instrument received by the closing date for further submissions:
- (g) any submissions received after the closing date for submissions or further submissions:
- (h) any information about when the submissions described in **paragraph (g)** were received: 5
- (i) the planning documents that are recognised by an iwi authority and lodged with the regional council:
- (j) any documentation relevant to any obligations arising under any relevant iwi participation legislation, joint management agreement, or Mana Whakahono a Rohe: 10
- (k) any other relevant information.
- (2) A regional council must, at least 20 working days before it submits the documents under **subclause (1)**, provide the Chief Freshwater Commissioner with— 15
- (a) a written notice of its intention to submit those documents to the Chief Freshwater Commissioner; and
- (b) nominations for appointments to the freshwater hearings panel that are required by **clause 58(1)(b) and (c)**.
- 38 Chief Freshwater Commissioner must convene freshwater hearings panel** 20
- As soon as practicable after receiving the documents described in **clause 37(1)**, the Chief Freshwater Commissioner must, in accordance with **clause 58**, convene a freshwater hearings panel for the freshwater planning instrument to which those documents relate.
- Hearing of submissions on freshwater planning instrument* 25
- 39 Functions of freshwater hearings panel**
- The functions of every freshwater hearings panel are—
- (a) to conduct a ~~public~~ hearing of submissions on a freshwater planning instrument referred to it by the Chief Freshwater Commissioner; and
- (b) to make recommendations, after the hearing of submissions is concluded, to the relevant regional council; and 30
- (c) to hear any objections made in accordance with **clause 40(3)**.
- 40 Powers of freshwater hearings panel**
- (1) A freshwater hearings panel has the same duties and powers as a local authority under the following provisions to the extent applicable: 35
- (a) section 39 (which provides for how hearings are to be conducted), except section 39(2)(c) and (d):

- (b) section 39C (which sets out the effect of a lack of accreditation):
- (c) section 40 (which provides for the persons who may be heard at a hearing):
- (d) section 41 (which provides for the application of certain provisions of the Commissions of Inquiry Act 1908): 5
- (e) section 41A (which relates to the control of hearings):
- (f) section 41B (which provides for the giving of directions as to the time for providing evidence in relation to a hearing):
- (g) section 41C (which sets out the directions and requests that may be given before or at a hearing), except section 41C(4): 10
- (h) section 41D (which provides for submissions to be struck out before or at a hearing):
- (i) section 42 (which provides for the protection of sensitive information):
- (j) section 42A (which provides for the ability to commission hearing reports). 15
- ~~(2) At the hearing of submissions, a freshwater hearings panel may—~~
- ~~(a) permit a party to question any other party or witness; and~~
- ~~(b) permit cross-examination.~~
- (3) If a freshwater hearings panel exercises a power under section 41D,—
- (a) a person whose submission is struck out has a right of objection under section 357 as if the references in that section to an authority were a reference to a freshwater hearings panel; and 20
- (b) sections 357C, 357D, and 358 apply to the freshwater hearings panel as the body to which an objection is made under section 357.
- (4) A freshwater hearings panel may decide to accept or reject any late submission. 25
- (5) A freshwater hearings panel may recommend to a relevant regional council that a variation be made to a freshwater planning instrument.
- 40A Pre-hearing meetings**
- (1) The chairperson of a freshwater hearings panel may convene a pre-hearing meeting for the purpose of— 30
- (a) clarifying a matter or an issue; or
- (b) facilitating resolution of a matter or an issue; or
- (c) dealing with any matter of an administrative or a procedural nature.
- (2) The chairperson may invite to the meeting—
- (a) any person who made a submission on the freshwater planning instrument; 35
- (b) the relevant regional council;

- (c) any person who the chairperson considers has relevant expertise.
- (3) The chairperson must appoint a person to chair the pre-hearing meeting.
- (4) The chairperson of the pre-hearing meeting must provide the freshwater hearings panel with a report that—
- (a) sets out any clarification or resolution of a matter or an issue agreed between the persons who attended the meeting; and 5
- (b) sets out any outstanding matter or issue between them; and
- (c) addresses any matter or issue identified by the chairperson to the freshwater hearings panel.
- 41 ~~Council must attend~~ Council's role during hearings** 10
- (1) The relevant regional council must attend the hearings to assist a freshwater hearings panel in 1 or more of the following ways:
- (a) to clarify or discuss matters in the freshwater planning instrument:
- (b) to give evidence:
- (c) to speak to submissions or address issues raised by them: 15
- (d) to provide any other relevant information as requested by the panel.
- (2) Despite **subclause (1)**, the freshwater hearings panel may excuse the relevant regional council from attending or remaining at any particular hearing.
- (3) A failure by a relevant regional council or a freshwater hearings panel to comply with this clause does not invalidate the hearing or the hearings session. 20
- (4) To avoid doubt, this clause does not limit or prevent the relevant regional council from—
- (a) making a submission on the freshwater planning instrument:
- (b) being heard on that submission.
- (5) A regional council must comply with any requirement by the freshwater hearings panel to provide a hearing report in accordance with section 42A. 25
- 42 ~~Consequences of submitter not attending pre-hearing session meeting~~**
- (1) ~~This clause applies if a submitter who is required by a freshwater hearings panel to attend a meeting before the hearing of the person's submission fails to do so without reasonable excuse.~~ 30
- (2) ~~The freshwater hearings panel may decline to consider the person's submission.~~
- (3) ~~If the freshwater hearings panel declines under **subclause (2)**, the person—~~
- (a) ~~has no rights of appeal under **subpart 2** of this Part; and~~
- (b) ~~may not become a party to proceedings as the result of any appeal right exercised by another person under this Part.~~ 35
- (4) ~~However, the person may object under section 41D.~~

43 Conference of experts

- (1) A freshwater hearings panel may, at any time during a hearing, direct that a conference of experts be held for the purpose of—
- (a) clarifying a matter or an issue relating to the freshwater planning instrument; or 5
 - (b) facilitating resolution of a matter or an issue relating to the freshwater planning instrument.
- (1A) Without limiting the panel’s discretion under **subclause (1)**, the panel may authorise a representative of the relevant regional council with appropriate expertise to attend the conference. 10
- (1B) The persons attending the conference must provide the freshwater hearings panel with a report of the outcomes of the conference.
- (2) If a conference requires a facilitator, the panel must appoint an independent facilitator. A conference may be facilitated by a member of the freshwater hearings panel or a person appointed by the panel. 15
- (3) The facilitator of a conference must, after the conference, prepare a report on the conference and provide it in writing or electronically to—
- (a) the freshwater hearings panel; and
 - (b) the persons who attended the conference.
- (4) A facilitator must act under **subclause (3)** only if the freshwater hearings panel requires him or her to do so. 20
- (5) A report prepared under **subclause (3)** must not, without a person’s consent, include any material that the person communicated or made available at the conference on a without prejudice basis.
- ~~(6) To avoid doubt, the relevant regional council may attend a conference under this clause only if authorised to do so by the freshwater hearings panel.~~ 25

44 Alternative dispute resolution

- (1) A freshwater hearings panel may, at any time during a hearing, refer to mediation or any other alternative dispute resolution process the persons listed in **subclause (2)** if— 30
- (a) the panel considers that it is—
 - (i) appropriate to do so; and
 - (ii) likely to resolve issues between the parties that relate to the freshwater planning instrument; and
 - (b) each person has consented (other than the relevant regional council, which must participate if referred by the panel). 35
- (2) The persons are—
- (a) 1 or more submitters; and

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

- (3) The chairperson of a freshwater hearings panel—
- (a) may appoint a friend of submitter for the purpose of providing support to the submitter in relation to the hearings; but
- (b) must consult the relevant regional council and the submitter before making an appointment.

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Extensions of time

46A Chief Freshwater Commissioner may extend time frame

- (1) A regional council or the chairperson of a freshwater hearings panel may request the Chief Freshwater Commissioner for an extension of a time frame specified in **clauses 37, 40, 50, and 51** in relation to a freshwater planning instrument.
- (2) The person applying must state why the extension is sought, the proposed time frame, and how the person intends to meet the proposed time frame.
- (3) The Chief Freshwater Commissioner may—
- (a) decline the request; or
- (b) fully accept the request (including the proposed time frame); or
- (c) partially accept the request and determine a different time frame.
- (4) The Chief Freshwater Commissioner may grant a regional council or a freshwater hearings panel an extension more than once (in relation to the same or a different provision specified in **subclause (1)**).
- (5) However, the total period of any extension (regardless of who applied for it) must not exceed 12 months in relation to a freshwater planning instrument.

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Other procedural matters

47 Procedures of freshwater hearings panel

- (1) Every freshwater hearings panel must—
- (a) regulate its own proceedings in a manner that is appropriate and fair in the circumstances; and
- (b) keep a full record of proceedings.
- (2) ~~Parts 1 to 6 and sections 48 and 53 of the Local Government Official Information and Meetings Act 1987 apply to a freshwater hearings panel as if that panel were a committee appointed by a local authority under the Local Government Act 2002.~~
- (2) At a hearing, a freshwater hearings panel may,—
- (a) permit a party to question another party or witness;
- (b) prohibit cross-examination;

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(c) permit cross-examination at the request of a party but only if the panel is satisfied that it is in the interests of justice;

(d) regulate the conduct of any cross-examination.

Process for recommendations of freshwater hearings panel

- 48 Freshwater hearings panel must make recommendations to regional council on freshwater planning instrument** 5
- (1) A freshwater hearings panel must make recommendations on the freshwater planning instrument.
- (2) The freshwater hearings panel—
- (a) is not limited in making recommendations only within the scope of submissions made on the freshwater planning instrument; and 10
- (b) may make recommendations on any other matters relating to the freshwater planning instrument identified by the panel or any other person during the hearing.
- Recommendations must be provided in reports* 15
- (3) The freshwater hearings panel must provide its recommendations to the relevant regional council in 1 or more written reports.
- (4) Each report must include—
- (a) the panel's recommendations on the provisions of the freshwater planning instrument covered by the report, and identify any recommendations that are out of scope of the submissions made in respect those provisions; and 20
- (b) the panel's ~~decisions~~ recommendations on the provisions and matters raised in submissions made in respect of the provisions covered by the report; and 25
- (c) the panel's reasons for accepting or rejecting submissions and, for this purpose, may address the submissions by grouping them according to—
- (i) the provisions of the freshwater planning instrument to which they relate; or
- (ii) the matters to which they relate; ~~and~~. 30
- ~~(d) the panel's recommendations and identify any recommendations that are beyond the scope of the submissions received on the freshwater planning instrument.~~
- (5) Each report may also include—
- (a) matters relating to any consequential alterations necessary to the freshwater planning instrument arising from submissions; and 35
- (b) any other matter that the panel considers relevant to the freshwater planning instrument that arises from submissions or otherwise.

- (6) To avoid doubt, a panel is not required to make recommendations in a report that address each submission individually.

49 Matters that affect recommendations

- (1) ~~A freshwater hearings panel, in formulating its recommendations, must have regard to—~~ 5

- ~~(a) any reports prepared under **clause 45**; and~~
- ~~(b) the matters in sections 66 to 70B and 77A to 77D, if the freshwater planning instrument is a regional plan; and~~
- ~~(c) the matters in section 61 and 62, if the freshwater planning instrument is a regional policy statement; and~~ 10
- ~~(d) any reports produced as a result of pre-hearing meetings, a conference of experts, mediation, or other alternative dispute resolution directed by the panel; and~~
- ~~(e) any technical or other reports commissioned by the panel.~~

- (2) ~~The freshwater hearings panel must include in the recommendations a further evaluation of the freshwater planning instrument undertaken in accordance with section 32AA.~~ 15

A freshwater hearings panel, in formulating its recommendations, must—

- (a) have regard to—
 - (i) any reports prepared under section 42A and **clauses 40A, 43, 45, and 46**; and 20
 - (ii) any reports produced as a result of mediation or other alternative dispute resolution directed by the panel; and
 - (iii) any technical or other reports commissioned by the panel; and
- (b) take account of any alternative dispute resolution outcomes reported under **clause 44**; and 25
- (c) include in its recommendations a further evaluation of the freshwater planning instrument undertaken in accordance with section 32AA; and
- (d) be sure that if the relevant regional council were to accept the panel's recommendations, the following would be complied with: 30
 - (i) sections 43B(3), 59 to 68, 69 to 70B, 85A, and 85B(2); and
 - (ii) any other provision of any enactment (including this Act) that applies to the council's preparation of the plan.

50 Deadline for recommendations

A freshwater hearings panel must provide its report under **clause 48** to the relevant regional council no later than the date that is ~~20~~ 40 working days before the expiry of 2 years after the date on which the freshwater planning instrument was publicly notified by the relevant regional council. 35

Regional council's response to recommendations

- 51 Relevant regional council to consider recommendations and notify decisions on them**
- (1) The relevant regional council must—
- (a) decide whether to accept or reject each recommendation of the freshwater hearings panel; and 5
 - (b) for each rejected recommendation that is within the scope of submissions, decide an alternative solution, which—
 - (i) may or may not include elements of both the freshwater planning instrument as notified and the freshwater hearings panel's recommendation in respect of that part of the freshwater planning instrument; but 10
 - (ii) must be within the scope of the submissions; and
 - (c) for each rejected recommendation that is outside the scope of submissions, decide an alternative solution, which may be within or outside the scope of submissions; and 15
 - (d) include an assessment of each alternative solution to a rejected recommendation in the further evaluation report required under section 32AA.
- (1A) The regional council must make decisions under **subclause (1)** in a manner that is consistent with any relevant iwi participation legislation, Mana Whakahoā a Rohe, or joint management agreement. 20
- (2) When making decisions under **subclause (1)**, the relevant regional council—
- (a) is not, subject to **subclause (1A)**, required to consult any person or consider submissions or other evidence from any person; and
 - (b) must not consider any submission or other evidence unless it was made available to the freshwater hearings panel before the panel made the recommendation that is the subject of the relevant regional council's decision. 25
- (3) To avoid doubt, the relevant regional council may accept recommendations of the freshwater hearings panel that are beyond the scope of the submissions made on the freshwater planning instrument. 30
- (4) The relevant regional council must, no later than ~~20~~ 40 working days after it is provided with the report, publicly notify its decisions under **subclause (1)** in a way that sets out the following information:
- (a) each recommendation of the freshwater hearings panel that it accepts: 35
 - (b) each recommendation of the freshwater hearings panel that it rejects and the reasons for doing so:
 - (c) the alternative solution for each rejected recommendation.

- (5) After the regional council publicly notifies its decisions ~~under subclause (1)~~, it must comply with clause 11 as if the decisions were notified under clause 10(4)(b).
- (6) On and from the date the decision is publicly notified, the freshwater planning instrument is amended in accordance with the decision. 5
- (7) A regional council must publicly notify the availability of the report of the freshwater hearings panel, the council's decisions, and where the report and the decisions may be viewed or accessed.
- 52 Variations to freshwater planning instrument**
- (1) If at any time after complying with **clause 37(1)**, a relevant regional council ~~identifies an error or omission in the freshwater planning instrument for which considers that~~ a variation to the freshwater planning instrument is needed, the council must—
- (a) notify the Chief Freshwater Commissioner in writing of the need for the variation; and 15
- (b) provide any additional information requested by the Chief Freshwater Commissioner for the purpose of **subclause (2)**.
- (1A) A regional council must comply with **subclause (1)(a) and (b)** if the freshwater hearings panel recommends that a variation be made to the freshwater planning document (see **clause 40**). 20
- (2) The Chief Freshwater Commissioner must, after consulting the relevant freshwater hearings panel, determine whether to accept or reject the variation.
- (3) In making a determination, the Chief Freshwater Commissioner must consider—
- (a) whether the variation is needed to correct a significant defect in the freshwater planning instrument; and 25
- (b) whether the variation is needed for the effective functioning of the freshwater planning instrument; and
- (c) the impact that accepting the variation would have on the decision date of the freshwater planning instrument. 30
- (4) The Chief Freshwater Commissioner must advise the relevant regional council in writing of the outcome of the determination.
- (5) Clauses 16A and 16B apply, with any necessary modifications, to the variation. However, a variation that is initiated before the regional council complies with **clause 37(1)** must be merged into the freshwater planning instrument in accordance with clause 16B before the council complies with that clause. 35

Subpart 2—Appeals

53 Appeal rights

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

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

(1) The appeal rights available in respect of a freshwater planning instrument are as provided in **clauses 54 and 55**.

(2) To avoid doubt, no further appeal lies to the Supreme Court (by leave or otherwise).

54 ~~Right of appeal to Environment Court~~ Right of appeal to Environment Court in relation to rejected recommendation

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

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

(1A) If a regional council decides to reject a recommendation of the freshwater hearings panel that is outside the scope of submissions, a person who made a submission may appeal to the Environment Court in respect of that decision or the alternative solution proposed by the council.

(2) The Environment Court must treat an appeal under this clause as if it were a hearing under clause 15(1) or (2), ~~and except as otherwise provided in this clause, clauses 14(5) and 15 and Parts 11 and 11A apply to the appeal.~~

(3) Except as provided in this clause, the following provisions apply with all necessary modifications:

- (a) Part 11 but not section 308; and
- (b) clauses 14(4) and (5) and 15(1) and (2) of this schedule.

55	<u>Right of appeal to High Court on question of law in relation to accepted recommendation</u>	
(1)	A person who made a submission on a freshwater planning instrument may appeal to the High Court in respect of a provision or matter relating to the freshwater planning instrument—	5
(a)	that the person addressed in the submission; and	
(b)	in relation to which the relevant regional council accepted a recommendation of the freshwater hearings panel which resulted in—	
(i)	a provision <u>or matter</u> being included in a freshwater planning instrument; or	10
(ii)	a <u>provision or</u> matter being excluded from a freshwater planning instrument.	
(1A)	<u>If a regional council decides to accept a recommendation of the freshwater hearings panel that is outside the scope of submissions, a person who made a submission may appeal to the High Court in respect of that decision.</u>	15
(2)	An appeal under this clause may be on a question of law only.	
(3)	Except as otherwise provided in this clause, sections 299(2) and 300 to 307 <u>308</u> apply.	
56	Judicial review	
(1)	Nothing in this Part limits or affects any right of judicial review a person may have in respect of any matter to which this Part applies <u>except as provided in clause 54(3) (which applies Part 11, including section 296).</u>	20
(2)	However, a person must not both apply for judicial review of a decision made under this Part and appeal to the High Court under clause 55 in respect of the decision unless the person lodges the applications for judicial review and appeal together.	25
(3)	If applications for judicial review and appeal are lodged together, the High Court must try to hear the judicial review and appeal proceedings together, but need not if the court considers it impracticable to do so in the circumstances of the particular case.	30
Subpart 3—Freshwater hearings panels		
57	Chief Freshwater Commissioner's powers and functions in relation to freshwater hearings panels	
(1)	The Chief Freshwater Commissioner has the following powers and functions:	
(a)	to decide when freshwater hearings panels are to be convened:	35
(b)	to determine, after considering the documents submitted by a regional council under clause 37(1) in relation to a freshwater planning instru-	

- ment, the appropriate size and composition of a freshwater hearings panel in accordance with **clause 58**:
- (c) to consider nominations for appointment ~~of~~ to a freshwater hearings ~~commissioners~~ panel made under **clause 58(1)(b) and (c)**:
- (d) to appoint ~~to members of~~ a freshwater hearings panel in accordance with **clause 58**:—
- (i) ~~freshwater hearings commissioners described in clause 58(1)(b) and (c); and~~
- (ii) ~~freshwater hearings commissioners appointed by the Minister under clause 62:~~
- (e) to appoint the chairperson of ~~the~~ a freshwater hearings panel.
- (2) The Chief Freshwater Commissioner may direct that a freshwater hearings panel be split into 2 panels if the Commissioner considers it appropriate in the circumstances.
- 58 Composition of freshwater hearings panel**
- (1) Each freshwater hearings panel must comprise ~~no more than 5 freshwater hearings commissioners~~ 5 members as follows:
- (a) 2 freshwater ~~hearings commissioners appointed by the Minister under clause 62;~~ and
- (b) 2 ~~freshwater hearings commissioners~~ persons who—
- (i) are nominated by the relevant regional council; and
- (ii) may or may not be elected regional council members; and
- (c) 1 ~~freshwater hearings commissioner~~ person with an understanding of tikanga Māori and mātauranga Māori who—
- (i) is nominated by local tangata whenua; or
- (ii) if no nomination is made, is appointed by the Chief Freshwater Commissioner.
- (2) However, the number of ~~freshwater hearings commissioners~~ members on a freshwater hearings panel—
- (a) may exceed 5 if the Chief Freshwater Commissioner considers there are ~~unique~~ special circumstances in the region to which the freshwater planning instrument applies; or
- (b) may be fewer than 5 (but no ~~less~~ fewer than 3) if the Chief Freshwater Commissioner considers that the scale and complexity of the freshwater planning instrument does not warrant the appointment of ~~5 freshwater hearings commissioners~~ members.
- (3) When appointing fewer than 5 ~~freshwater hearings commissioners~~ members to a freshwater hearings panel, the Chief Freshwater Commissioner must ensure that the panel includes—

- (a) 1 ~~freshwater hearings commissioner~~ person described in **subclause (1)(b)**; and
- (b) 1 ~~freshwater hearings commissioner~~ person described in **subclause (1)(c)**; and
- (c) 1 ~~freshwater hearings commissioner appointed by the Minister under clause 62.~~ 5
- (4) When appointing more than 5 ~~freshwater hearings commissioners~~ members to a freshwater hearings panel, the Chief Freshwater Commissioner must ensure that the panel includes the 5 ~~freshwater hearings commissioners~~ members referred to in **subclause (1)(a) to (c)**. 10
- (5) The Chief Freshwater Commissioner must convene each freshwater hearings panel in a manner that is consistent with any relevant iwi participation legislation, Mana Whakahono a Rohe, or joint management agreement.
- (6) When convening a freshwater hearings panel, the Chief Freshwater Commissioner must consider the need for the panel to collectively have knowledge of and expertise in relation to— 15
- (a) judicial processes and cross-examination; and
- (b) freshwater quality, quantity, and ecology; and
- (c) this Act; and
- (d) tikanga Māori and mātauranga Māori; and 20
- (e) Te Mana o te Wai; and
- (f) water use in the local community; and
- (g) subject areas likely to be relevant to the work of the panel.
- (67) A ~~freshwater hearings commissioner~~ panel member must be accredited under section 39A unless the Chief Freshwater Commissioner is satisfied there are ~~exceptional~~ special circumstances in relation to the freshwater hearings panel to which the commissioner is appointed. 25
- 59 Appointment of chairperson of freshwater hearings panel**
- (1) The Chief Freshwater Commissioner must appoint the chairperson of a freshwater hearings panel. 30
- (1A) Before appointing a chairperson, the Chief Freshwater Commissioner must consider the desirability of the chairperson having knowledge and expertise in relation to judicial processes and cross-examination.
- (2) The chairperson must be a ~~freshwater hearings commissioner appointed by the Minister under clause 62~~ and may be the Chief Freshwater Commissioner. 35
- (3) In the event of an equality of votes, the chairperson has a casting vote.

- 60 Liability of members of freshwater hearings panel**
- A member of a freshwater hearings panel is not liable for anything the member does, or omits to do, in good faith in performing the functions and duties or exercising the powers of a panel.
- 60A Other duties of Chief Freshwater Commissioner in relation to panel members** 5
- (1) The Chief Freshwater Commissioner may,—
- (a) at any time, for just cause, remove a member from a freshwater hearings panel; and
- (b) appoint new members to the freshwater hearings panel in accordance with **clause 58**. 10
- (2) The Chief Freshwater Commissioner must notify members of their appointment to a freshwater hearings panel and when their appointment commences.
- (3) When removing a member from a freshwater hearings panel, the Chief Commissioner must tell the member in writing of the date on which the removal takes effect and the reasons for the removal. 15
- (4) A member is not entitled to any compensation or other payment or benefit relating to the person ceasing, for any reason, to be a member of the panel.
- (5) In **subclause (1)**, **just cause** includes misconduct, inability to perform the functions of office, neglect of duty, and breach of the collective duties of the freshwater hearings panel or the individual duties of members of the panel. 20
- 61 Funding of freshwater hearings panel and related activities**
- (1) The relevant regional council is responsible for all costs incurred by ~~the~~ a freshwater hearings panel and for the activities related to the performance or exercise of the panel's functions and powers under this Part. 25
- (1A) **Subclause (1)** applies from the date that members are appointed to the freshwater hearings panel.
- (2) Without limiting **subclause (1)**, the relevant regional council is responsible for—
- (a) the remuneration and expenses of the members of the freshwater hearings panel; and 30
- (b) the administrative costs of each hearing session, including venue hire and public notices; and
- (c) the remuneration of any expert, mediator or other dispute resolution facilitator, or other person whose services are engaged by the panel under this Part; and 35
- (d) the allowances payable to any witness called by the panel; and

<p>(e) <u>the costs of any special advisor or friend of submitter appointed by the panel; and</u></p> <p>(f) <u>providing administrative and secretarial support services to the panel as required.</u></p> <p>(3) For the purposes of subclause (1), each member of the freshwater hearings panel, <u>other than local council members</u>, must be paid—</p> <p>(a) remuneration by way of salary, fees, or allowances at a rate determined by the Chief Freshwater Commissioner in consultation with the Minister; and</p> <p>(b) actual and reasonable travelling and other expenses incurred in carrying out his or her office in accordance with the Fees and Travelling Allowances Act 1951, and that Act applies as if the members were members of a statutory Board within the meaning of that Act.</p> <p>(4) <u>Local council members who are appointed to a freshwater hearings panel must be paid at a rate determined by the relevant council.</u></p> <p>61A Continued existence of freshwater hearings panel</p> <p><u>A freshwater hearings panel exists until it has completed the performance and exercise of its functions and powers under this Part in relation to the hearing of submissions, including any related appeals that are filed in any court.</u></p> <p>Subpart 4—Freshwater hearings commissioners appointed by Minister</p> <p>62 Minister may appoint freshwater hearings commissioners</p> <p>(1) The Minister may appoint freshwater hearings commissioners under this subpart.</p> <p>(2) The Minister must appoint freshwater hearings commissioners who—</p> <p>(a) are accredited under section 39A; and</p> <p>(b) collectively have knowledge of and expertise in relation to—</p> <p>(i) judicial processes and cross-examination; and</p> <p>(ii) freshwater quality and freshwater <u>quantity, and</u> ecology; and</p> <p>(iii) this Act; and</p> <p>(iv) tikanga Māori and mātauranga Māori.</p> <p>(3) The Minister must appoint as Chief Freshwater Commissioner a person <u>freshwater commissioner</u> who is an Environment Court Judge or retired Environment Court Judge.</p> <p>63 How freshwater hearings commissioners appointed</p> <p>(1) The Minister must give a person appointed as a freshwater hearings commissioner under this subpart a written notice of appointment.</p>	<p>5</p> <p>10</p> <p>15</p> <p>20</p> <p>25</p> <p>30</p> <p>35</p>
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- (2) The notice of appointment must—
- (a) state the date on which the appointment takes effect; and
 - (b) state the term of the appointment; and
 - (c) ~~specify the terms of reference for~~ that the costs of the freshwater hear-
~~ings commissioner—~~
 - (i) that are for purposes specific to a freshwater hearings panel will be met by the relevant regional council; and
 - (ii) that are for other purposes directed by the Chief Freshwater Commissioner will be met by the Crown.
- 64 When freshwater ~~hearings~~ commissioner's appointment ceases**
- (1) A person appointed as a freshwater ~~hearings~~ commissioner will remain in that office until the earliest of the following:
- (a) the person's term of appointment ends;
 - (b) the person dies;
 - (c) the person resigns by giving 20 working days' written notice to the Minister.
- (2) The Minister may, at any time for just cause, by written notice, terminate the appointment of a freshwater ~~hearings~~ commissioner.
- (3) The Minister may, at any time for just cause, remove a freshwater ~~hearings~~ commissioner by written notice to that person (with a copy to the Chief Freshwater Commissioner).
- (4) The notice must state—
- (a) the date on which the removal takes effect, which must not be earlier than the date on which the notice is received by the freshwater ~~hearings~~ commissioner; and
 - (b) the reasons for the removal.
- (5) A freshwater ~~hearings~~ commissioner is not entitled to any compensation or other payment or benefit relating to the person ceasing, for any reason, ~~to be~~ hold office as a freshwater ~~hearings~~ commissioner or the Chief Freshwater Commissioner.
- (6) In **subclause (2), just cause** includes misconduct, inability to perform the functions of office, neglect of duty, and breach of the collective duties of the freshwater hearings panel or the individual duties of members of the panel.
- ~~(7) To avoid doubt, this clause applies only to freshwater hearings commissioners appointed under this subpart.~~
- 73 Schedule 12 amended**
- In Schedule 12, after clause 16, insert:

Part 3

Provisions relating to Resource Management Amendment Act 2019

17 Interpretation

In this Part,—

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

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

18 Planning instruments relating to freshwater notified after commencement date

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

(a) a proposed regional plan or regional policy statement for the purpose of giving effect to any national policy statement for freshwater management ~~the National Policy Statement for Freshwater Management 2020~~;

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

(c) a change or variation to a proposed regional plan or regional policy statement if the change or variation— 20

(i) is for the purpose of giving effect to any national policy statement for freshwater management ~~the National Policy Statement for Freshwater Management 2020~~; or

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

(2) A planning instrument to which this clause applies must, if it was publicly notified after the commencement date, undergo the freshwater planning process. 25

19 Planning instruments relating to freshwater notified before commencement

(1) In this clause, ~~a~~ **planning instrument** means a proposed regional plan or regional policy statement that— 30

(a) is for the purpose of giving effect to any national policy statement for freshwater management ~~the National Policy Statement for Freshwater Management 2014 (amended 2017)~~ or otherwise relates to freshwater; and

(b) was publicly notified before the commencement date. 35

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

- (3) A variation to a planning instrument must be dealt with as if the amendment Act had not been enacted, regardless of whether—
- (a) the variation was publicly notified before or after the commencement date; or
 - (b) the variation in any way gives effect to any national policy statement for freshwater management ~~the National Policy Statement for Freshwater Management 2020~~. 5
- 20 Matters affecting resource consent applications lodged before specified date**
- (1) An amendment made by the amendment Act does not, except as permitted by ~~subclause (3)~~ **(2)**, apply in respect of a specified matter if, immediately before the specified date, the matter has been lodged with a local authority or the EPA. 10
 - (2) A person exercising their right of appeal in relation to a specified matter that was lodged with a local authority before the specified date is entitled to appeal in accordance with **section 120(1B)** only if, and to the extent that, the person has time to appeal in accordance with section 121. 15
 - (3) In this clause,—

section 120(1B) means **section 120(1B)** as inserted by the amendment Act

specified date means the date of commencement of **section 26** of the amendment Act 20

specified matter means—

 - (a) a decision of a consent authority in respect of an application for a resource consent; or
 - (b) an application for a resource consent in respect of a subdivision or a residential activity. 25
- 21 Conditions that may be imposed on notices of requirement**
- Sections 149P, 149U, 171, 174, 198E, and 198K, as amended by the amendment Act, apply to notices of requirement given under section 168 after the commencement date. 30
- 22 New time frames for resource consents relating to emergency work**
- Section 330B(3), as amended by the amendment Act, applies to an activity if the appropriate consent authority was advised of the activity on or after the commencement date.
- 23 Application of limitation period in section 338(4)** 35
- Section 338(4), as amended by the amendment Act, applies to an offence committed on or after the commencement date.

24	Performance of EPA enforcement functions	
	The EPA may, in the performance of its enforcement functions specified in section 343F , take an enforcement action in relation an incident (within the meaning of section 343E) that occurred or started to occur before or after the commencement date.	5
25	National environmental standards and boards of inquiry	
	Sections 44, 46A, and 48 as amended by the amendment Act, apply only in respect of—	
	(a) a board of inquiry appointed under section 47 after the commencement date; or	10
	(b) a process established under section 46A(4) after the commencement date.	
26	<u>Transitional effect of repeal of sections 70A, 70B, 104E, and 104F</u>	
(1)	<u>This clause applies to a proposed policy statement or plan, change, or variation that, immediately before 31 December 2021 (the date on which sections 12C to 12G, 25A, and 25B of the amendment Act come into force),—</u>	15
	(a) <u>has been publicly notified under clause 5 or 26(1)(b) of Schedule 1; but</u>	
	(b) <u>has not proceeded to the stage at which no further appeal is possible.</u>	
(2)	<u>This clause also applies to applications for resource consents that were lodged with a local authority immediately before 31 December 2021.</u>	20
(3)	<u>The proposed policy statement, plan, change, or variation, or resource consent must be determined as if the amendments made by sections 12C to 12G, 25A, and 25B of the amendment Act had not been enacted.</u>	
27	<u>Transitional effect of amendments to sections 149P and 149U</u>	
(1)	<u>This clause applies to a matter described in paragraph (a), (c), (d), (e), or (f) of the definition of matter in section 141.</u>	25
(2)	<u>If the matter has been called in under section 142 before the amendments made by sections 28 and 29 of the Amendment Act take effect, the matter must be determined as if those amendments had not been made.</u>	
28	<u>References to clause 10 of Schedule 1 in specified Treaty Settlement legislation</u>	30
	<u>A reference, immediately before the commencement date, to clause 10 of Schedule 1 in the following provisions must, after the commencement date, be read as a reference to clauses 10 and 51 of Schedule 1:</u>	
	(a) <u>sections 13(6)(d) and 46(2)(d) of the Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010:</u>	35
	(b) <u>sections 14(6)(d) and 48(2)(d) of the Ngati Tuwharetoa, Raukawa, and Te Arawa River Iwi Waikato River Act 2010:</u>	

(c) section 22(2)(d) of the Nga Wai o Maniapoto (Waipa River) Act 2012.

Part 2

Amendments to other enactments

Subpart 1—Amendments to Resource Legislation Amendment Act 2017

- | | | |
|-----------|---|-----------|
| 74 | Amendments to Resource Legislation Amendment Act 2017 | 5 |
| | This subpart amends the Resource Legislation Amendment Act 2017. | |
| 75 | Section 2 amended (Commencement) | |
| | Repeal section 2(2). | |
| 76 | Subpart 3 of Part 1 repealed | |
| | Repeal subpart 3 of Part 1. | 10 |
| 77 | Schedules 4 and 5 repealed | |
| | Repeal Schedules 4 and 5. | |

Subpart 2—Consequential amendments to other enactments

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|-----------|--|-----------|
| 78 | Consequential amendments to other enactments | |
| | Amend the enactments specified in the Schedule as set out in that schedule. | 15 |

Schedule Consequential amendments

s 78

Part 1 Amendments to Acts

5

District Court Act 2016 (2016 No 49)

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

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

10

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

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

After section 45A(b), insert:

- (c) a freshwater hearings panel given authority to conduct hearings under **clause 57** of Schedule 1 of the Resource Management Act 1991. 15

Replace section 45(1A) with:

- (1A) Despite subsection (1), **meeting**, in relation to a local authority that is a board of inquiry, special tribunal, or freshwater hearings panel given authority to conduct hearings under section 149J or 202 or **clause 57** of Schedule 1 of the Resource Management Act 1991 is limited to any hearing that— 20
- (a) the board or tribunal holds under section 149L or 206 of the Resource Management Act 1991; and
- (b) the freshwater hearings panel holds under **clause 39** of Schedule 1 of that Act. 25

In Schedule 1, Part 1, replace the fourth item with:

Community boards, boards of inquiry, freshwater hearings panels, public bodies, special tribunals, or any person given authority to conduct hearings under section 33, 34, 34A, 117, 149J, or 202 or **clause 57** of Schedule 1 of the Resource Management Act 1991 30

Remuneration Authority Act 1977 (1977 No 110)

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

Part 2
Amendments to legislative instruments

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

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

5

Legislative history

23 September 2019
26 September 2019

Introduction (Bill 180–1)
First reading and referral to Environment Committee