Version
as at 30 November 2022

Resource Management Amendment Act 2020

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Commencement	see section 2

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Note

The Parliamentary Counsel Office has made editorial and format changes to this version using the powers under subpart 2 of Part 3 of the Legislation Act 2019.

Note 4 at the end of this version provides a list of the amendments included in it.

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Schedule 61
Consequential amendments

The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Resource Management Amendment Act 2020.

2 Commencement

(1) This Act, except as provided in this section, comes into force on the day after the date on which it receives the Royal assent.

(2) Sections 26 to 33, 37(1), 99, and 100 come into force on the day that is 3 months after the date on which this Act receives the Royal assent.

(3) Sections 17 to 21, 35, and 36 come into force on 31 December 2021 or a later date specified by Order in Council made under subsection (4).

(4) The Governor-General may, by Order in Council made before 31 December 2021, specify that sections 17 to 21, 35, and 36 come into force on a date no later than 30 November 2022.

Section 2(4): sections 17 to 21, 35, and 36 brought into force, on 30 November 2022, by clause 2 of the Resource Management Amendment Act 2020 Commencement Order 2021 (SL 2021/433).

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)

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

Chief Freshwater Commissioner means the Chief Freshwater Commissioner appointed under clause 65(3) of Schedule 1

freshwater commissioner means a person appointed by the Minister under clause 65 of Schedule 1

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 (8)

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

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

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

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

enforcement officer,—

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

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

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

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

5 Section 2AC amended (Availability of documents during COVID-19 response)

(1) In the heading to section 2AC, delete "**during COVID-19 response**".

(2) Repeal the heading above section 2AC(6).

(3) Repeal section 2AC(6).

6 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,".

7 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:

(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

(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).

8 Section 29 amended (Delegation of functions by Ministers)

In section 29(1)(l), replace "Principal Environment Judge" with "Chief Environment Court Judge".

9 Section 36 amended (Administrative charges)

After section 36(1)(cc), insert:

(cd) charges payable by the farm operator of a farm that is required to have a certified freshwater farm plan, for the carrying out by the local authority of its functions under section 217J:

10 Section 38 amended (Authorisation and responsibilities of enforcement officers)

(1) In section 38(5), after "officer", insert "authorised under this section".

(2) In section 38(6), after "officer", insert "authorised under this section".

11 Section 39AA amended (Hearing using remote access facilities during COVID-19 response)

(1) In the heading to section 39AA, delete "**during COVID-19 response**".

(2) In the heading above section 39AA(8), replace "*Period for which*" with "*When*".

(3) Repeal section 39AA(9).

12 Section 42C amended (Functions of EPA)

Replace section 42C(f) with:

(f) to perform the enforcement functions conferred by section 343F; and

(g) if requested by the Minister, to provide secretarial and support services to assist the Chief Freshwater Commissioner in the exercise of his or her functions and powers in respect of the freshwater planning process; and

(h) to exercise any other functions specified in this Act.

13 Section 44 amended (Restriction on power to make national environmental standards)

After section 44(1), insert:

(2) For the purposes of subsection (1)(a), the Minister—

(a) must consider a report and any recommendations made to the Minister under section 46A(4)(c) or 51, as the case requires; and

(b) may make any changes, or no changes, to the proposed national environmental standard as the Minister thinks fit.

14 Section 46A amended (Single process for preparing national directions)

In section 46A(7), replace "360H" with "360C".

15 Section 51 amended (Matters to be considered and board of inquiry's report)

In section 51(1)(ca), before "any", insert "if applicable,".

16 Section 58R amended (Contents of Mana Whakahono a Rohe)

In section 58R(1)(c)(i), delete ", collaborative,".

17 Section 61 amended (Matters to be considered by regional council (policy statements))

After section 61(2)(c), insert:

(d) any emissions reduction 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.

18 Section 66 amended (Matters to be considered by regional council (plans))

After section 66(2)(e), insert:

(f) any emissions reduction 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.

19 Section 70A repealed (Application to climate change of rules relating to discharge of greenhouse gases)

Repeal section 70A.

20 Section 70B repealed (Implementation of national environmental standards)

Repeal section 70B.

21 Section 74 amended (Matters to be considered by territorial authority)

After section 74(2)(c), insert:

(d) any emissions reduction 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.

22 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 prepared by a regional council to undergo the freshwater planning process.

(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:

(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—

(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—

(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 or, if applicable, subpart 5 of this Part.

(4) A regional council must—

(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 2024; and

(c) no later than 6 months after it has publicly notified the freshwater planning instrument, submit the documents required by clause 37(1) of Schedule 1 (the **required documents**) to the Chief Freshwater Commissioner; and

(d) at least 20 working days before submitting the required documents, provide to the Chief Freshwater Commissioner in writing—

(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 59(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:

(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:

(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,—

(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.

(6) For the purpose of this subpart the following provisions of Schedule 1 apply:

(a) clauses 1(3), 1A, 1B, 2(1), 3 to 3C, 4A, 5, 6, 7(1) and (2), 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.

(7) 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.

(8) In subsection (2), a proposed regional plan does not include a proposed regional coastal plan or a change or variation to that plan.

(9) Section 37(1)(a) does not apply to any time period specified in this subpart or Part 4 of Schedule 1.

(10) 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.

(11) Subsection (5) is by way of explanation only and does not limit or affect the other provisions of this Act.

23 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".

(2) Repeal section 80C(4)(b).

24 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

(b) includes an address for service that is an electronic address.

25 Section 88 amended (Making an application)

(1) Replace section 88(2)(b) and (c) with:

(b) include the information relating to the activity, including an assessment of the activity's effects on the environment, that is required by Schedule 4.

(2) In section 88(3)(b), delete "or (c) (as applicable)".

26 Section 88B amended (Time limits from which time periods are excluded in relation to applications)

(1) In section 88B(3), table, item relating to section 95, second column, below the item relating to section 88F(2), insert "Section 88G".

(2) In section 88B(3), table, item relating to section 95, second column, below the item relating to section 88G (as inserted by subsection (1)), insert "Section 88H".

(3) In section 88B(3), table, item relating to section 101(2), second column, below the item relating to section 88F(2), insert "Section 88G".

(4) In section 88B(3), table, item relating to section 115(3), second column, below the item relating to section 88F(2), insert "Section 88G".

27 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*".

28 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.

(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

(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

(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

(b) ending on the date on which payment is made.

29 Section 91A amended (Applicant may have processing of application suspended)

In the heading to section 91A, after "**of**", insert "**notified**".

30 Section 91B amended (When suspension of processing ceases)

(1) In the heading to section 91B, after "**processing**", insert "**of notified application**".

(2) In section 91B(1) and (2), replace "an" with "a notified".

31 Section 91C amended (Application may be returned if suspended after certain period)

(1) In the heading to section 91C, replace "**Application**" with "**Notified application**".

(2) In section 91C(1)(a), replace "an" with "a notified".

32 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.

(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 on which the application is first lodged with the authority; and
- (b) ending when—
  - (i) the hearing is completed, if a hearing is held for the application; or
  - (ii) the consent authority gives notice to the applicant of its decision on the application, if a hearing is not held for the application; or
  - (iii) the application is notified.

(3) However, a request must not be made if—

- (a) the applicant has lodged a notice of motion with the Environment Court under section 87G(2)(a); or
- (b) the Minister has made a direction under section 142(2) in relation to the application; or
- (c) a total of 20 working days have been excluded from time limits under section 88B as a result of any previous request under this section in relation to the application.

(4) The request must be made by written or electronic notice.

(5) If processing is suspended under this section, the consent authority must give written or electronic notice to the applicant specifying the date on which the suspension started.

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—

(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

(d) the consent authority decides under section 91F to continue to process the application.

(2) The applicant may request the consent authority to cease to suspend the processing of a non-notified application if it is currently suspended.

(3) The request must be made by written or electronic notice.

(4) If a suspension is ceased under this section, the consent authority must give written or electronic notice to the applicant specifying the date on which the suspension ceased.

91F Non-notified application may be returned after certain period

(1) Subsection (2) applies if the processing of the non-notified application has been suspended for a total of 20 working days in response to 1 or more requests under section 91D.

(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.

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

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

(2) Repeal section 95A(6).

34 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).

(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.

35 Section 104E repealed (Applications relating to discharge of greenhouse gases)

Repeal section 104E.

36 Section 104F repealed (Implementation of national environmental standards)

Repeal section 104F.

37 Section 120 amended (Right to appeal)

(1) Replace section 120(1A) 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.

(2) Replace section 120(1B) with:

(1B) A person exercising a right of appeal under subsection (1)(b) may appeal—

(a) 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) any matter that was not raised in the person's submission.

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

(1) Replace section 128(1)(b) with:

(b) in the case of a coastal, water, or discharge permit, or a land use consent granted by a regional council, if—

(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

(ii) the rule has been made operative; and

(iii) the regional council considers that it is appropriate to review the conditions of the permit or consent in order to enable the levels, flows, rates, or standards set by the rule to be met; or

(2) After section 128(1)(c), insert:

(d) if the review is part of a review carried out under subsection (2A).

(3) After section 128(2), insert:

(2A) If more than 1 resource consent is affected by the rule referred to in 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.

39 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).

40 Section 140 amended (Outline of this Part)

In section 140(2), after "regional plans,", insert "matters relating to regional policy statements,".

41 Section 141 amended (Interpretation)

(1) In section 141, definition of **applicant**, after paragraph (f), insert:

(g) the Minister of the Crown or the territorial authority making the request, for a matter that is a request for a change 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 **applicant**, paragraph (f)(i), after "plan", insert "or policy statement".

(3) In section 141, definition of **applicant**, paragraph (f)(iii), after "plan", insert "or policy statement; or".

(4) In section 141, definition of **local authority**, after paragraph (c), insert:

(ca) the regional council responsible for the regional policy statement or proposed policy statement, for a matter relating to a regional policy statement:

(5) 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)

(6) 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

42 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 (j) to (m)".

(2) In section 142(8), after "to a plan", insert "or regional policy statement".

43 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.

44 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,".

45 Section 149E amended (EPA to receive submissions on matter if public notice of direction has been given)

(1) Replace section 149E(6) with:

(6) However, subsection (5) does not apply if the matter is a notice of requirement for a heritage order (or to alter a heritage order), a request for the preparation of a regional plan, a request for a change to a plan, a change to a plan, a variation to a proposed plan, a request for a change to a regional policy statement, a change to a regional policy statement, or a variation to a proposed regional policy statement.

(2) 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 variation to a proposed regional policy statement,".

(3) 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 regional policy statement,".

46 Section 149F amended (EPA to receive further submissions if matter is request, change, or variation)

(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".

47 Section 149H amended (Local authority may not notify further change or variation in certain circumstances)

After section 149H(c), insert:

(d) a matter relating to a regional policy statement.

48 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".

(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".

49 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".

50 Section 149N amended (Process if section 149M applies or proposed plan or change not yet prepared)

(1) 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.

(2) In section 149N(5), after "to a plan,", insert "or a request for a change to a regional policy statement,".

51 Section 149O amended (Public notice and submissions where EPA receives proposed plan or change from local authority under section 149N)

In section 149O(1), after "change", insert "to a plan or regional policy statement".

52 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,".

(2) In section 149P(3), replace "sections 104 to 112" with "sections 104 to 104D and 105 to 112".

(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".

(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.

53 Section 149R amended (Board to produce report)

In section 149R(2)(b), after "change", insert "to a plan or regional policy statement".

54 Section 149RA amended (Minor corrections to board decisions, etc)

After section 149RA(3), insert:

(3A) The board may amend a proposed regional policy statement as if the board were a local authority acting under clause 16(2) of Schedule 1 before the earlier of the following:

(a) the day on which the local authority approves the proposed regional policy statement under clause 17 of Schedule 1:

(b) the day that is 40 working days after the day on which any appeals relating to the matter have been determined and all rights of appeal have expired.

55 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".

(2) In section 149U(3), replace "sections 104 to 112" with "sections 104 to 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)).

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

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

(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; and

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

56 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—

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

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

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

(3) In section 149W(2)(b), after "(other than a regional coastal plan)", insert ", or a regional policy statement".

57 Section 170 amended (Discretion to include requirement in proposed plan)

(1) In section 170(2), delete ", (4),".

(2) Replace section (2)(b) and (c) with:

(b) seek the consent of the requiring authority to use that planning process for considering the requirement.

(3) Repeal section 170(3) to (6) and the heading above section 170(3).

58 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)).

59 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)).

60 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".

61 Section 198E amended (Environment Court decides)

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)).

62 Section 198K amended (Environment Court decides)

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)).

63 Section 202 amended (Minister's obligations upon receipt of application)

In section 202(2), replace "of Maori Affairs" with "for Māori Development".

64 New Parts 9A and 9B inserted

After Part 9, insert:

Part 9A
Freshwater farm plans

217A Purpose

The purpose of this Part is to better control the adverse effects of farming on freshwater and freshwater ecosystems within specified districts, regions, or parts of New Zealand through the use of certified freshwater farm plans.

217B Interpretation

In this Part, unless the context otherwise requires,—

arable land use means the use of land to grow any of the following crops for harvest:

(a) grain cereal, legumes, or pulse grain:

(b) herbage seed:

(c) oilseed:

(d) maize grain, maize silage, cereal silage, or mangels:

(e) crops grown for seed multiplication:

(f) a crop prescribed in regulations made under section 217M(1)(a)

auditor means a person who—

(a) is appointed under section 217K; and

(b) meets the criteria prescribed in regulations made under section 217M(1)(h)

certified freshwater farm plan means a freshwater farm plan certified under section 217G, as amended from time to time in accordance with section 217E(2) or (3)

certifier means a person who—

(a) is appointed under section 217K; and

(b) meets the criteria prescribed in regulations made under section 217M(1)(h)

farm means a farm where all or part of the farm is—

(a) arable land use; or

(b) horticultural land use; or

(c) pastoral land use; or

(d) other agricultural land use prescribed in regulations made under section 217M(1)(b); or

(e) any combination of the above

farm operator means the person with ultimate responsibility for the operation of a farm

horticultural land use means the use of land to grow food or beverage crops for human consumption (other than arable crops), or flowers for commercial supply

pastoral land use means the use of land for the grazing of livestock

regulations means regulations made under section 217M

relevant regional council means the regional council (as defined in section 2) in whose jurisdiction the farm is located

specified instrument means any designation, national environmental standard, national planning standard, regulations made under Part 14, resource consent, rule in a plan, or water conservation order.

217C Application of this Part

(1) This Part applies only—

(a) to a region, district, or part of New Zealand specified in an Order in Council under this section; and

(b) on and from the date specified in the Order in Council.

(2) The Governor-General may, by Order in Council, on the recommendation of the Minister, determine—

(a) that this Part applies to a specified district, region, or part of New Zealand; and

(b) the date on which this Part applies to that district, region, or part of New Zealand.

(3) Before making a recommendation under subsection (2), the Minister must—

(a) be satisfied that regulations are necessary to achieve the purpose of this Part in the specified district, region, or part of New Zealand; and

(b) consult the Minister of Agriculture.

217D Farm must have certified freshwater farm plan if it meets land use threshold

(1) A farm must have a certified freshwater farm plan if—

(a) 20 or more hectares of the farm is arable land use; or

(b) 5 or more hectares of the farm is horticultural land use; or

(c) 20 or more hectares of the farm is pastoral land use; or

(d) a prescribed area of the farm is other agricultural land use prescribed in regulations made under section 217M(1)(b); or

(e) 20 or more hectares of the farm is a combination of any 2 or more of the land uses described above.

(2) A certified freshwater farm plan applies to the entire farm.

217E Main duties of farm operators

(1) A farm operator of a farm that is required to have a certified freshwater farm plan must—

(a) prepare a freshwater farm plan in accordance with this Part and regulations; and

(b) submit the plan to a certifier for certification; and

(c) ensure that the farm operates in compliance with the certified freshwater farm plan; and

(d) arrange for the farm to be audited in accordance with this Part and regulations for compliance with the certified freshwater farm plan.

(2) A farm operator must keep the certified freshwater farm plan fit for purpose by—

(a) amending the plan as necessary to reflect any changes in the farm; and

(b) amending the plan as necessary to comply with this Part and regulations.

(3) A farm operator must amend and recertify a certified freshwater farm plan if any circumstances prescribed by regulations apply.

217F Contents of freshwater farm plan

A freshwater farm plan must—

(a) identify any adverse effects of activities carried out on the farm on freshwater and freshwater ecosystems; and

(b) specify requirements that—

(i) are appropriate for the purpose of avoiding, remedying, or mitigating the adverse effects of those activities on freshwater and freshwater ecosystems; and

(ii) are clear and measurable; and

(c) demonstrate how any outcomes prescribed in regulations are to be achieved; and

(d) comply with any other requirements in regulations; and

(e) comply with section 217L.

217G Certification of freshwater farm plan

(1) The farm operator must, within the prescribed time frame, submit a freshwater farm plan to a certifier.

(2) The certifier must certify a freshwater farm plan if the certifier is satisfied that the plan complies with the requirements in section 217F.

(3) The certifier must, as soon as practicable, notify the relevant regional council—

(a) that the freshwater farm plan has been certified; and

(b) the date on which it was certified.

(4) This section applies, with any necessary modifications, to a certified freshwater farm plan that is required by regulations to be amended and recertified.

217H Audit of farm for compliance with certified freshwater farm plan

(1) A farm operator must—

(a) arrange, within the prescribed time frame, for an auditor to audit the farm for compliance with the certified freshwater farm plan; and

(b) arrange for further audits to be carried out at the frequency required by regulations.

(2) The audit must be completed in the manner prescribed in regulations.

(3) The farm operator must provide the auditor with—

(a) an up-to-date copy of the certified freshwater farm plan and any relevant information; and

(b) any further information that the auditor reasonably requests for the purpose of the audit; and

(c) reasonable access to the farm (or any part of it) for the purpose of any audit inspection.

(4) After completing the audit, the auditor must—

(a) provide the farm operator with a report of the auditor's findings on whether the farm achieves compliance with the certified freshwater farm plan; and

(b) if the auditor finds that the farm achieves compliance, provide that report to the relevant regional council.

(5) If the auditor finds that the farm fails to achieve compliance with the certified freshwater farm plan,—

(a) the auditor's report—

(i) must include reasons why the farm failed to achieve compliance; and

(ii) specify reasonable time frames by which compliance must be achieved; and

(iii) may include recommendations on how compliance may be achieved; and

(b) the auditor must give the farm operator a reasonable opportunity to respond to the report; and

(c) the auditor must, after the prescribed period has expired, provide the farm operator and the relevant regional council with a final report—

(i) setting out the auditor's findings (including the findings of the first report); and

(ii) stating whether compliance was achieved; and

(iii) including any recommendations from the auditor.

217I Functions of regional councils

(1) For the purposes of this Part, a regional council has the following functions:

(a) to enforce the observance of the requirements of this Part and regulations to the extent that their powers under this Act enable them to do so; and

(b) to monitor compliance by farm operators with their duties under this Part and with any requirements in regulations; and

(c) to receive notifications of freshwater farm plans that have been certified; and

(d) to receive audit reports and related notifications from auditors.

(2) A regional council may require a farm operator to produce a certified freshwater farm plan for inspection.

217J Records that must be kept by regional council

A regional council must keep and maintain, in relation to each farm in its jurisdiction, a record of—

(a) whether the farm has a certified freshwater farm plan; and

(b) the date the plan was last certified; and

(c) the date the farm was last audited for compliance with the plan; and

(d) any other information required by regulations.

217K Regional council must appoint certifiers and auditors

(1) A regional council must—

(a) appoint 1 or more certifiers; and

(b) appoint 1 or more auditors.

(2) A regional council may make an appointment under this section only if satisfied that criteria prescribed in regulations have been met.

217L Relationship between certified freshwater farm plan and specified instruments

(1) A certified freshwater farm plan may contain a requirement that—

(a) relates to an activity carried out on the farm (an **activity**) even if there is no similar requirement relating to that activity in a provision of a specified instrument:

(b) restricts an activity more than a provision of a specified instrument.

(2) However, if a provision of a specified instrument restricts an activity more than a requirement of a freshwater farm plan, the provision of the specified instrument prevails.

(3) To avoid doubt, compliance with a requirement of a certified freshwater farm plan—

(a) does not of itself authorise a person to undertake an activity:

(b) may be specified or included as a requirement or condition in any specified instrument relating to an activity.

217M Regulations relating to freshwater farm plans

(1) The Governor-General may, by Order in Council made on the recommendation of the Minister after consulting the Minister of Agriculture, make regulations that—

(a) prescribe crops for the purpose of the definition of arable land use in section 217B:

(b) prescribe agricultural land uses for the purpose of the definition of farm in section 217B:

(c) prescribe the area of land described in section 217D(1)(d) (in relation to agricultural land use prescribed under paragraph (b)):

(d) provide for the content of a freshwater farm plan, including (without limitation) specifying—

(i) any requirements, including any actions, criteria, methods, or thresholds for the purpose of identifying, measuring, avoiding, remedying, or mitigating any adverse effects of activities carried out on the farm on freshwater and freshwater ecosystems; and

(ii) outcomes that must be achieved for the purpose of avoiding, remedying, or mitigating those adverse effects on freshwater and freshwater ecosystems; and

(iii) any other information that must be included in the plan for the purpose of this Part:

(e) provide for the form and manner in which a freshwater farm plan must be certified, including (without limitation) prescribing—

(i) time frames that must be complied with by the farm operator and certifier; and

(ii) any fees payable by the farm operator or the manner of calculating those fees:

(f) prescribe the circumstances in which a certified freshwater farm plan must be amended and recertified:

(g) for the purpose of audits of farms for compliance with certified freshwater farm plans, prescribe—

(i) the time frame by which a farm must be audited; and

(ii) the frequency at which those audits must be carried out; and

(iii) the manner in which an audit must be completed; and

(iv) the period after which the auditor must provide their final report under section 217H(5)(c); and

(v) any matters that an auditor must take into account when considering whether the farm achieves compliance with the certified freshwater farm plan; and

(vi) any fees payable by the farm operator or the manner of calculating those fees:

(h) prescribe criteria that apply to the appointment of a person as an auditor or certifier and their continuation in that role:

(i) require auditors, certifiers, and farm operators to supply prescribed information to regional councils for the purpose of section 217I:

(j) prescribe information that a regional council must keep in relation to farms in its jurisdiction:

(k) prescribe infringement offences for the contravention of, or non-compliance with, a provision of this Part or of any regulations made under this section:

(l) provide for any other matters that are contemplated by, or necessary for giving full effect to, this Part and for its due administration.

(2) Regulations under this section may apply generally or to specified districts, regions, or parts of New Zealand.

(3) Regulations under this section may incorporate material by reference under Schedule 1AA (which applies as if references in that schedule to a national environmental standard, national policy statement, or New Zealand coastal policy statement were references to regulations under this section).

Part 9B
Effect of nitrogenous fertiliser on freshwater quality and freshwater ecosystems

217N Purpose of this Part

The purpose of this Part is to enable better monitoring of the actions being taken to improve freshwater quality and freshwater ecosystems, through the collection of sales information on nitrogenous fertiliser to inform freshwater management and planning under this Act.

217O Nitrogenous fertiliser defined

In this Part, **nitrogenous fertiliser** means fertiliser containing any nitrogenous substance (whether solid or fluid in form) applied to plants or soil as a source of nitrogen nutrition for plants, and with more than 5% of nitrogen weight for weight.

217P Obligation to comply with regulations

If regulations made under section 217Q are in force, a person of a class specified in regulations must comply with any requirements in regulations relating to—

(a) the collection of information relating to or arising from the sale and purchase of nitrogenous fertiliser; and

(b) the provision of that information to the EPA, a regional council, a specified agency, or a specified person or class of persons.

217Q Regulations relating to sales information on nitrogenous fertiliser

The Governor-General may, by Order in Council made on the recommendation of the Minister after consulting the Minister of Agriculture, make regulations that—

(a) require persons of a specified class to collect any of the following information relating to or arising from the sale and purchase of nitrogenous fertiliser:

(i) the date of purchase:

(ii) where the purchase took place:

(iii) the name of the seller:

(iv) the name of the purchaser:

(v) the type of fertiliser purchased:

(vi) the volume of fertiliser purchased:

(vii) where the fertiliser is intended to be applied; and

(b) prescribe how the information is to be collected; and

(c) require persons who are required under paragraph (a) to collect the information to provide it to any 1 or more of the following:

(i) the EPA:

(ii) a regional council:

(iii) a specified person or class of persons:

(iv) a specified agency; and

(d) specify the manner in which, and the frequency at which, that information is to be provided; and

(e) allow the collection of personal information of a purchaser only if their purchase exceeds a prescribed volume of nitrogenous fertiliser.

65 Section 248 amended (Membership of Environment Court)

In section 248(a), replace "section 250" with "sections 249 and 250".

66 Section 249 amended (Eligibility for appointment as an Environment Judge or alternate Environment Judge)

Replace section 249(2) with:

(2) A person may not be appointed or hold office as an alternate Environment Judge unless—

(a) the person is a District Court Judge, an acting District Court Judge, a Maori Land Court Judge, or an acting Maori Land Court Judge; or

(b) the person is a retired Environment Judge under the age of 75 years and the Chief Environment Court Judge certifies to the Attorney-General that the appointment is necessary for the proper conduct of the Environment Court.

67 Section 250 amended (Appointment of Environment Judges and alternate Environment Judges)

Replace section 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 Development,—

(a) appoint a person as an Environment Judge in accordance with section 249(1); or

(b) appoint a person as an alternate Environment Judge—

(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.

(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.

(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.

68 Section 250A amended (Judge not to undertake other employment or hold other office)

In section 250A(1) and (2), replace "Principal Environment Judge" with "Chief Environment Court Judge".

69 Section 250B amended (Protocol relating to activities of Judges)

In section 250B(2), replace "Principal Environment Judge" with "Chief Environment Court Judge".

70 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".

71 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.

72 Section 252 amended (When an alternate Environment Judge may act)

In section 252(1), replace "Principal Environment Judge" with "Chief Environment Court Judge".

73 Section 254 amended (Appointment of Environment Commissioner or Deputy Environment Commissioner)

In section 254(1), replace "of Maori Affairs" with "for Māori Development".

74 Section 255 amended (When a Deputy Environment Commissioner may act)

In section 255(1)(b), replace "Principal Environment Judge" with "Chief Environment Court Judge".

75 Section 259 amended (Special advisors)

In section 259(1), replace "Principal Environment Judge" with "Chief Environment Court Judge".

76 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.

77 Section 265 amended (Environment Court sittings)

In section 265(1)(c), replace "Principal Environment Judge" with "Chief Environment Court Judge".

78 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".

79 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.

80 Section 281 amended (Waivers and directions)

In section 281(5), replace "Principal Environment Judge" with "Chief Environment Court Judge" in each place.

81 Section 288A amended (Information regarding reserved judgments)

In section 288A, replace "Principal Environment Judge" with "Chief Environment Court Judge".

82 Section 288B amended (Recusal guidelines)

In section 288B, replace "Principal Environment Judge" with "Chief Environment Court Judge".

83 Section 311 amended (Application for declaration)

In section 311(2), after "consent authority", insert ", the EPA,".

84 Section 316 amended (Application for enforcement order)

(1) Replace section 316(2) with:

(2) An application may at any time be made in the prescribed form to the Environment Court by—

(a) a local authority, a consent authority, or the EPA for an enforcement order of the kind specified in section 314(1)(da); and

(b) a local authority or consent authority for an enforcement order of the kind specified in section 314(1)(e).

(2) In section 316(5), after "consent authority", insert ", the EPA,".

85 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".

86 Section 325 amended (Appeals)

(1) In section 325(2)(c), replace "local authority or consent authority whose decision is appealed" with "relevant authority (whose abatement notice is appealed against)".

(2) In section 325(3B)(c), replace "local authority or consent authority" with "relevant authority".

(3) In section 325(3D)(c)(ii), replace "local authority or consent authority" with "relevant authority".

(4) In section 325(3F), replace "local authority or consent authority" with "relevant authority".

(5) After section 325(6), insert:

(7) In this section, **relevant authority** means the local authority, the consent authority, or the EPA.

87 Section 325A amended (Cancellation of abatement notice)

Replace section 325A(1) with:

(1) In this section, **relevant authority** means any of the following which or who authorised the enforcement officer who issued the abatement notice:

(a) the local authority:

(b) the Minister of Conservation:

(c) the EPA.

88 Section 325B amended (Restrictions on certain applications for enforcement orders and abatement notices)

In section 325B(2), replace "or a consent authority" with "a consent authority, or the EPA".

89 Section 330B amended (Emergency works under Civil Defence Emergency Management Act 2002)

In section 330B(3), replace "20 working days" with "60 working days".

90 Section 332 amended (Power of entry for inspection)

In section 332(1), replace "or consent authority" with ", consent authority, or by the EPA".

91 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".

(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".

(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.

92 Section 338 amended (Offences against this Act)

In section 338(4), replace "6 months" with "12 months".

93 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:

(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)).

94 Section 342 amended (Fines to be paid to local authority instituting prosecution)

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.

95 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.

96 New Part 12A inserted

After section 343D, insert:

Part 12A
Enforcement functions of EPA

343E Terms used in this Part

(1) In this Part,—

enforcement action means—

(a) an inspection, investigation, or other activity carried out in accordance with this Act for the purpose of determining whether there is or has been—

(i) a contravention of a provision of this Act, any regulations, a rule in a plan, a rule in a proposed plan that has legal effect, a national environmental standard, or a resource consent; or

(ii) a failure to comply with a requirement of an enforcement order or abatement notice; or

(b) an application for an enforcement order under section 316; or

(c) an application for an interim enforcement order under section 320; or

(d) the service of an abatement notice under section 322; or

(e) the filing of a charging document relating to an offence described in section 338; or

(f) the issuing of an infringement notice under section 343C; or

(g) an inspection, investigation, or other activity carried out in accordance with this Act for the purpose of an enforcement action described in paragraphs (b) to (f)

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

incident means an occurrence that may, directly or indirectly, be linked to—

(a) a contravention or possible contravention of a provision of this Act, any regulations, a rule in a plan, a national environmental standard, or a resource consent; or

(b) a failure or possible failure to comply with a requirement of an enforcement order or an abatement notice

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

(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.

(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

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:

(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.

343G Intervention by EPA

(1) If the EPA intervenes in an enforcement action of a local authority in relation to an incident,—

(a) the EPA must notify the chief executive of the local authority in writing of the incident to which the intervention relates and the date on which the intervention takes effect; and

(b) the local authority must,—

(i) on receipt of the notice, cease any enforcement action in relation to the incident, except for an enforcement action described in paragraph (a) or (g) of the definition of enforcement action in section 343E(1); and

(ii) from the date specified in the notice, cease all enforcement action in relation to the incident; and

(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, 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.

(6) An enforcement officer who holds a warrant issued under this section must, on the termination of the officer's appointment, surrender the warrant to the EPA.

Compare: 2012 No 72 ss 138, 139

343J EPA may require information from local authority

(1) The EPA may require a local authority to provide information that the EPA requires for taking an enforcement action in relation to an incident.

(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.

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.

(2) The EPA is not required to provide information under subsection (1) that would prejudice the maintenance of law, including the prevention, investigation, or detection of offences, or the right to a fair trial.

343L Order for payment of EPA's costs in bringing a prosecution

(1) On the application of the EPA, the court may order a person convicted of an offence under this Act to pay to the EPA a sum that the court thinks just and reasonable towards the costs of the prosecution (including the costs of investigating the offence and any associated costs).

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

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

Compare: 2015 No 70 s 152

97 Section 353 amended (Notices and consents in relation to Maori land)

In section 353, after "local authority", insert "or the EPA".

98 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".

99 Section 357 amended (Right of objection against certain decisions)

In section 357(3A), after "section 91C(2)", insert "or 91F(2)".

100 Section 358 amended (Appeals against certain decisions or objections)

In section 358(1A)(a), replace "to (5)" with "to (4)".

101 Section 360 amended (Regulations)

(1) In section 360(1)(ba), after "paragraph (ho)", insert "or section 217M(1)(k)".

(2) 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:

(3) 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".

(4) In section 360(1)(hn)(ii) and (iii), replace "and coastal lakes and lagoons" with "coastal lakes and lagoons, and their margins" in each place.

102 Sections 360D, 360E, 360G, and 360H repealed

Repeal sections 360D, 360E, 360G, and 360H.

103 Schedule 1 amended

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

(2) 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.

(3) 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:

(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:

(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 in writing with—

(a) a 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 59(1)(b) and (c).

38 Chief Freshwater Commissioner must convene freshwater hearings panel

As soon as practicable after receiving the documents described in clause 37(1), the Chief Freshwater Commissioner must, in accordance with clause 59, convene a freshwater hearings panel for the freshwater planning instrument to which those documents relate.

Hearing of submissions on freshwater planning instrument

39 Functions of freshwater hearings panel

The functions of every freshwater hearings panel are—

(a) to conduct a hearing of submissions on a freshwater planning instrument referred to it by the Chief Freshwater Commissioner; and

(b) to make recommendations, after the hearing of submissions is concluded, to the relevant regional council; and

(c) to hear any objections made in accordance with clause 40(2).

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:

(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):

(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):

(h) section 41D (which provides for submissions to be struck out before or at a hearing):

(i) section 42 (which provides for the protection of sensitive information):

(j) section 42A (which provides for the ability to commission hearing reports).

(2) 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

(b) sections 357C, 357D, and 358 apply to the freshwater hearings panel as the body to which an objection is made under section 357.

(3) A freshwater hearings panel may decide to accept or reject any late submission.

(4) A freshwater hearings panel may recommend to a relevant regional council that a variation be made to a freshwater planning instrument.

41 Pre-hearing meetings

(1) The chairperson of a freshwater hearings panel may convene a pre-hearing meeting for the purpose of—

(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:

(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

(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.

42 Council's role during hearings

(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:

(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.

(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.

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

(b) facilitating resolution of a matter or an issue relating to the freshwater planning instrument.

(2) 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.

(3) The persons attending the conference must provide the freshwater hearings panel with a report of the outcomes of the conference.

(4) If a conference requires a facilitator, the panel must appoint an independent facilitator.

(5) 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.

(6) A facilitator must act under subclause (5) only if the freshwater hearings panel requires him or her to do so.

(7) A report prepared under subclause (5) 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.

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—

(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).

(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**).

(4) The mediator must report the outcome to the freshwater hearings panel.

(5) The outcome reported under subclause (4) 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.

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—

(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.

(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.

(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 49.

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.

(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 before making an appointment.

Extensions of time

47 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, 51, and 52 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.

Other procedural matters

48 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) At a hearing, a freshwater hearings panel may—

(a) permit a party to question another party or witness:

(b) prohibit cross-examination:

(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

49 Freshwater hearings panel must make recommendations to regional council on freshwater planning instrument

(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

(b) may make recommendations on any other matters relating to the freshwater planning instrument identified by the panel or any other person during the hearing.

Recommendations must be provided in reports

(3) The freshwater hearings panel must provide its recommendations to the relevant regional council in 1 or more written reports.

(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 of those provisions; and

(b) the panel's recommendations on the provisions and matters raised in submissions made in respect of the provisions covered by the report; and

(c) the panel's reasons for accepting or rejecting submissions and, for this purpose, may address the submissions by grouping them according to—

(i) the provisions of the freshwater planning instrument to which they relate; or

(ii) the matters to which they relate.

(5) Each report may also include—

(a) matters relating to any consequential alterations necessary to the freshwater planning instrument arising from submissions; and

(b) any other matter that the panel considers relevant to the freshwater planning instrument that arises from submissions or otherwise.

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

50 Matters that affect recommendations

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

(a) have regard to—

(i) any reports prepared under section 42A and clauses 41, 43, 45, and 46; and

(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

(iv) any advice or other assistance provided by a special advisor appointed under clause 46; and

(b) take account of any alternative dispute resolution outcomes reported under clause 44; and

(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:

(i) sections 43B, 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.

51 Deadline for recommendations

A freshwater hearings panel must provide its report under clause 49 to the relevant regional council no later than the date that is 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.

Regional council's response to recommendations

52 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

(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

(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

(d) include an assessment of each alternative solution to a rejected recommendation in the further evaluation report required under section 32AA.

(2) The regional council must make decisions under subclause (1) in a manner that is consistent with any relevant iwi participation legislation, Mana Whakahono a Rohe, or joint management agreement.

(3) When making decisions under subclause (1), the relevant regional council—

(a) is not, subject to subclause (2), 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.

(4) 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.

(5) The relevant regional council must, no later than 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:

(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.

(6) After the regional council publicly notifies its decisions, it must comply with clause 11 as if the decisions were notified under clause 10(4)(b).

(7) On and from the date the decisions are publicly notified, the freshwater planning instrument is amended in accordance with the decisions.

(8) 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.

53 Variations to freshwater planning instrument

(1) If at any time after complying with clause 37(1), a relevant regional council 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

(b) provide any additional information requested by the Chief Freshwater Commissioner for the purpose of subclause (3).

(2) A regional council must also comply with subclause (1)(a) and (b) if it considers that a variation to a freshwater instrument recommended by the freshwater hearings panel is needed (*see* clause 40(4)).

(3) The Chief Freshwater Commissioner must, after consulting the relevant freshwater hearings panel, determine whether to accept or reject the variation.

(4) 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

(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.

(5) The Chief Freshwater Commissioner must advise the relevant regional council in writing of the outcome of the determination.

(6) 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.

Subpart 2—Appeals

54 Appeal rights

(1) The appeal rights available in respect of a freshwater planning instrument are as provided in clauses 55 and 56.

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

55 Right of appeal 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.

(2) 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.

(3) The Environment Court must treat an appeal under this clause as if it were a hearing under clause 15(1) or (2).

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

(a) Parts 11 and 11A but not section 308; and

(b) clauses 14(4) and (5) and 15(1) and (2) of this schedule.

56 Right of appeal in relation to accepted recommendation

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

(a) that the person addressed in the submission; and

(b) in relation to which the relevant regional council accepted a recommendation of the freshwater hearings panel which resulted in—

(i) a provision or matter being included in a freshwater planning instrument; or

(ii) a provision or matter being excluded from a freshwater planning instrument.

(2) 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.

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

(4) Except as otherwise provided in this clause, sections 299(2), 300 to 308, and Part 11A apply with all necessary modifications.

57 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 except as provided in clause 55(4) (which applies section 296, that section being in Part 11).

(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 56 in respect of the decision unless the person lodges the applications for judicial review and appeal together.

(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.

Subpart 3—Freshwater hearings panels

58 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:

(b) to determine, after considering the documents submitted by a regional council under clause 37(1) in relation to a freshwater planning instrument, the appropriate size and composition of a freshwater hearings panel in accordance with clause 59:

(c) to consider nominations for appointment to a freshwater hearings panel made under clause 59(1)(b) and (c):

(d) to appoint members of a freshwater hearings panel in accordance with clause 59:

(e) to appoint the chairperson of 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.

59 Composition of freshwater hearings panel

(1) Each freshwater hearings panel must comprise 5 members as follows:

(a) 2 freshwater commissioners; and

(b) 2 persons who—

(i) are nominated by the relevant regional council; and

(ii) may or may not be elected regional council members; and

(c) 1 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 members on a freshwater hearings panel—

(a) may exceed 5 if the Chief Freshwater Commissioner considers there are special circumstances in the region to which the freshwater planning instrument applies; or

(b) may be fewer than 5 (but no 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 members.

(3) When appointing fewer than 5 members to a freshwater hearings panel, the Chief Freshwater Commissioner must ensure that the panel includes—

(a) 1 person described in subclause (1)(b); and

(b) 1 person described in subclause (1)(c); and

(c) 1 freshwater commissioner.

(4) When appointing more than 5 members to a freshwater hearings panel, the Chief Freshwater Commissioner must ensure that the panel includes the 5 members referred to in subclause (1)(a) to (c).

(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—

(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

(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.

(7) A freshwater hearings panel member must be accredited under section 39A unless the Chief Freshwater Commissioner is satisfied there are special circumstances in relation to the freshwater hearings panel to which the commissioner is appointed.

60 Appointment of chairperson of freshwater hearings panel

(1) The Chief Freshwater Commissioner must appoint the chairperson of a freshwater hearings panel.

(2) 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.

(3) The chairperson must be a freshwater commissioner and may be the Chief Freshwater Commissioner.

(4) In the event of an equality of votes, the chairperson has a casting vote.

61 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.

62 Other duties of Chief Freshwater Commissioner in relation to panel members

(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 59.

(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 Freshwater Commissioner must tell the member in writing of the date on which the removal takes effect and the reasons for the removal.

(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.

63 Funding of freshwater hearings panel and related activities

(1) The relevant regional council is responsible for all costs incurred by a freshwater hearings panel and for the activities related to the performance or exercise of the panel's functions and powers under this Part.

(2) Subclause (1) applies from the date that members are appointed to the freshwater hearings panel.

(3) 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

(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

(d) the allowances payable to any witness called by the panel; and

(e) the costs of any special advisor or friend of submitter appointed by the panel; and

(f) providing administrative and secretarial support services to the panel as required.

(4) For the purposes of subclause (1), each member of the freshwater hearings panel, other than members of a regional council, must be paid—

(a) remuneration by way of salary, fees, or allowances at a rate determined by the Minister; and

(b) actual and reasonable travelling and other expenses incurred in carrying out his or her office in accordance with the Fees and Travelling Allowances Act 1951, and that Act applies as if the members were members of a statutory Board within the meaning of that Act.

(5) Members of a regional council who are appointed to a freshwater hearings panel must be paid at a rate determined by the relevant council.

64 Continued existence of freshwater hearings panel

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.

Subpart 4—Freshwater commissioners

65 Minister may appoint freshwater commissioners

(1) The Minister may appoint freshwater commissioners.

(2) The Minister must appoint freshwater commissioners who—

(a) are accredited under section 39A; and

(b) collectively have knowledge of and expertise in relation to—

(i) judicial processes and cross-examination; and

(ii) freshwater quality, quantity, and ecology; and

(iii) this Act; and

(iv) tikanga Māori and mātauranga Māori.

(3) The Minister must appoint as Chief Freshwater Commissioner a freshwater commissioner who is an Environment Court Judge or retired Environment Court Judge.

66 How freshwater commissioners appointed

(1) The Minister must give a person appointed as a freshwater commissioner a written notice of appointment.

(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 that the costs of the freshwater 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.

67 When freshwater commissioner's appointment ceases

(1) A person appointed as a freshwater 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 commissioner.

(3) The Minister may, at any time for just cause, remove a freshwater 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 commissioner; and

(b) the reasons for the removal.

(5) A freshwater commissioner is not entitled to any compensation or other payment or benefit relating to the person ceasing, for any reason, to hold office as a freshwater 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.

104 Schedule 12 amended

In Schedule 12, after clause 16, insert:

Part 3
Provisions relating to Resource Management Amendment Act 2020

17 Interpretation

In this Part,—

amendment Act means the Resource Management Amendment Act 2020

commencement date means the day after 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:

(a) a proposed regional plan or regional policy statement for the purpose of giving effect to any national policy statement for freshwater management:

(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:

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

(i) is for the purpose of giving effect to any national policy statement for freshwater management; 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.

19 Planning instruments relating to freshwater notified before commencement

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

(a) is for the purpose of giving effect to any national policy statement for freshwater management or otherwise relates to freshwater; and

(b) was publicly notified before the commencement date.

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

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

(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.

20 Application of sections 120(1A) and (1B) to appeal rights

(1) Section 120(1A) applies only in relation to resource consents lodged on or after the date on which section 37(1) of the amendment Act comes into force.

(2) Section 120(1B) applies only in relation to resource consents lodged on or after the commencement date.

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 or 181 or lodged under section 145 on or after the commencement date.

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)

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 to an incident (within the meaning of section 343E) that occurred or started to occur before, on, or after the commencement date.

25 National environmental standards and boards of inquiry

Sections 44, 46A, and 48, as amended by the amendment Act, apply only in respect of—

(a) a board of inquiry appointed under section 47 on or after the commencement date; or

(b) a process established under section 46A(4) on or after the commencement date.

26 Transitional effect of climate change amendments

(1) This clause applies to a proposed policy statement or plan, change, or variation that, immediately before the effective date,—

(a) has been publicly notified under clause 5 or 26(1)(b) of Schedule 1; but

(b) has not proceeded to the stage at which no further appeal is possible.

(2) This clause also applies to applications for resource consents that were lodged with a local authority immediately before the effective date.

(3) The proposed policy statement, plan, change, or variation, or resource consent must be determined as if the climate change amendments had not been enacted.

(4) In this clause,—

climate change amendments means the amendments made by sections 17 to 21, 35, and 36 of the amendment Act

effective date means the date on which the climate change amendments come into force by virtue of section 2(3) and (4) of the amendment Act.

27 Transitional effect of amendments to sections 149P and 149U

(1) This clause applies to a matter described in paragraph (a), (b), (c), (d), (e), or (f) of the definition of matter in section 141.

(2) If the matter has been called in under section 142 before the amendments made by sections 52 and 55 of the amendment Act take effect, the matter must be determined as if those amendments had not been made.

28 References to clause 10 of Schedule 1 in specified Treaty Settlement legislation

A reference, immediately before the commencement date, to clause 10 of Schedule 1 in the following provisions must, on and from the commencement date, be read as a reference to clauses 10 and 51 of Schedule 1:

(a) sections 13(6)(d) and 46(2)(d) of the Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010:

(b) sections 14(6)(d) and 48(2)(d) of the Ngati Tuwharetoa, Raukawa, and Te Arawa River Iwi Waikato River Act 2010:

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

29 Effect of amendments on resource consent applications lodged with local authority or EPA

An amendment made by section 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 99, or 100 of the amendment Act does not affect a resource consent application if, before the date that section came into force (*see* section 2 of the amendment Act), the application was lodged with a local authority or the EPA.

30 Effect of amendments on notice of intention to review resource consent conditions

(1) An amendment made by section 38 or 39 of the amendment Act does not affect a notice of intention to review resource consent conditions if, before the date that section came into force (*see* section 2 of the amendment Act), the notice was served on a consent holder.

(2) In this clause, a **notice of intention to review resource consent conditions** means a notice under section 128.

Part 2
Amendments to other enactments

Subpart 1—Amendments to Resource Legislation Amendment Act 2017

105 Amendments to Resource Legislation Amendment Act 2017

This subpart amends the Resource Legislation Amendment Act 2017.

106 Section 2 amended (Commencement)

Repeal section 2(2).

107 Subpart 3 of Part 1 repealed

Repeal subpart 3 of Part 1.

108 Schedules 4 and 5 repealed

Repeal Schedules 4 and 5.

Subpart 2—Consequential amendments to other enactments

109 Consequential amendments to other enactments

Amend the enactments specified in the Schedule as set out in that schedule.

Schedule
Consequential amendments

s 109

Part 1
Amendments to Acts

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)

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 58 of Schedule 1 of the Resource Management Act 1991.

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 58 of Schedule 1 of the Resource Management Act 1991 is limited to any hearing that—

(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.

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 58 of Schedule 1 of the Resource Management Act 1991

Remuneration Authority Act 1977 (1977 No 110)

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

Part 2
Amendment to legislative instrument

Judicial Officers Salaries and Allowances (2019/20) Determination 2019 (LI 2019/319)

In the Schedule, Part 1, replace "Principal Environment Judge" with "Chief Environment Court Judge".

Notes

1 General

This is a consolidation of the Resource Management Amendment Act 2020 that incorporates the amendments made to the legislation so that it shows the law as at its stated date.

2 Legal status

A consolidation is taken to correctly state, as at its stated date, the law enacted or made by the legislation consolidated and by the amendments. This presumption applies unless the contrary is shown.

Section 78 of the Legislation Act 2019 provides that this consolidation, published as an electronic version, is an official version. A printed version of legislation that is produced directly from this official electronic version is also an official version.

3 Editorial and format changes

The Parliamentary Counsel Office makes editorial and format changes to consolidations using the powers under subpart 2 of Part 3 of the Legislation Act 2019. See also PCO editorial conventions for consolidations.

4 Amendments incorporated in this consolidation

Resource Management Amendment Act 2020 Commencement Order 2021 (SL 2021/433)

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