

30 July 2023

Governance and Administration Committee
Parliament Buildings
Wellington
Via portal

Tēnā koutou katoa

Water Services Entities Amendment Bill

Water New Zealand (Water NZ) welcomes the opportunity to provide comment on the Water Services Entities Amendment Bill (Bill). Water NZ generally support the Bill.

Water NZ is a national not-for-profit organisation which promotes the sustainable management and development of New Zealand's three waters (drinking water, wastewater and stormwater). Water NZ is the country's largest water industry body, providing leadership and support in the water sector through advocacy, collaboration and professional development. Its ~3,000 members are drawn from all areas of the water management industry including regional councils and territorial authorities, consultants, suppliers, government agencies, academia and scientists.

Water NZ acknowledges that our members hold a variety of views in relation to water reform, including this Bill. We note that many of our members will be making their own submissions on issues specific to their areas of concern and interest, particularly those from local authorities.

Water NZ focuses on technical excellence in the delivery of safe and environmentally appropriate water infrastructure and services. Accordingly, our submission will focus on ensuring that this Bill and the Water Service Reform Programme framework and transition is workable to this end.

As this Bill is part of a suite of legislation our members and advisors have spent the last few years responding to, and the short consultation period, our submission focuses solely on the purpose of the Bill.

Overview

NZ has a significant water infrastructure deficit.

The consequence of which is evident in:

- high level of water loss across the country,
- the extensive wet weather wastewater overflows,

- non-compliant treatment plants, unswimmable rivers and beaches, declining freshwater and ecological health, and
- increasing frequency of flood inundation of homes and businesses.

Retaining the status quo with water services provided by 67 councils or CCOs is not sustainable. Without significant funding support from central government water services delivery and environmental outcomes will continue to decline, and nationally the cost-of-services paid by ratepayers will increase further.

Transitioning to water services entities, whose sole focus will be water with professional boards, the ability to attract the diverse skills needed and the balance sheet required to raise finance is essential to efficiently address the infrastructure deficit that has been decades in the making.

Water NZ acknowledges the Government's decision to create 10 entities rather than 4 entities reflects a number of factors including a desire for a greater local voice.

The key points of our submission on the Bill are:

Ten entities: Ten entities will be better placed to address the country's infrastructure needs than the current arrangements.

Shared services: Smaller WSEs will be less able to achieve the economies of scale on offer to the larger entities. The proposed shared service model is a pragmatic way of addressing this issue. Shared services will also allow for cross-entity oversight, coordination and including knowledge sharing research, development and innovation.

To ensure the policy intent is achieved, we recommend drafting changes (see Appendix 1) to ensure the merging of entities and shared services clauses are not inconsistent with the Water Services Economic Efficiency and Consumer Protection Bill and the future input methodologies, determinations and functions of the Commission.

Water NZ understands provision has been made for Commerce Act 1986 exemptions in the event of a Ministerial direction on shared services. This is a pragmatic way of ensuring the economies of scale sought from the reforms are accessible. It will be important for the committee to consider the drafting of the Commerce Act exemption achieves the intent of shared services, and recognising that shared services may vary over time. Water NZ queries whether this exemption should be in this legislation or the Commerce Act itself.

Community priority statements: The proposed community statements are a pragmatic way of enabling the Regional Representation Group to hear from local stakeholders who have an interest in a water body, or water services provided, an opportunity to make statements to their entity about their priorities for that body, the services or activity provided.

We recommend the following definitions be provided-

- 'water body' to account for the various forms that a community might wish to make a statement on, including water bodies that may be diminished and/or in a pipe.
- a 'person' who can make statements to clarify if organisations, and local government bodies can lodge statements on behalf of their communities.

Staggered timeframe: The proposed staggered timeframe will allow the 9 WSEs outside of Northland and Auckland more time to prepare for their establishment. Water NZ recommends the transition timeframe is announced sooner rather than later to provide certainty to staff, contractors and consultants working across the proposed entities. We request a clear and considered transition across all government reforms, regulatory frameworks and other programmes to ensure efficiency and minimal confusion.

Water NZ notes that a WSE is established on the date on which the appointment of its establishment board takes effect. When it comes to the Northland and Auckland WSE, we suggest that the Bill should allow more flexibility as to when the Minister appoints its board. As drafted, its establishment board could only be appointed before the Bill comes into force, or on 1 July 2024. That could leave the Northland and Auckland WSE technically not established, and without an establishment board, until the day it needs to start providing water services (1 July 2024).

Voluntary amalgamation: Water NZ supports the inclusion of provisions whereby further amalgamation is possible with support from the relevant WSEs. Water NZ suggests the Committee should consider whether provision for mergers of non-contiguous service area boundaries. We note that Watercare currently provides services to Waikato District Council.

Water Services Entities Funding Agency: Water NZ support balance sheet separation. With the policy intent and drafting issues clarified (Appendix 1), Water NZ in principle, support the creation of a Water Services Entities Funding Agency.

Cohesion with other reforms: Under the RMA reforms various "statements" are also produced. For example, regional statements under the NPS on Freshwater Management, regional statements of community outcomes and statements of regional environmental outcomes under the Spatial Planning regime. There is a risk of confusion or lack of consistency across these statements and the Te Mana o te Wai and Community Priority Statements. Water NZ submits that opportunities to consolidate or rationalise these statements so that they can apply across legislative regimes should be considered.

Te Mana o te Wai definition: Water NZ are seeking a change to the definition of Te Mana o te Wai in the Water Services Entities Act 2022 (Appendix 1).

Water NZ recommended replacing (b) of the Te Mana o te Wai definition with a modified version of the definition of water from the RMA.

Te Mana o te Wai—

- (a) has the meaning set out in the National Policy Statement for Freshwater Management issued in 2020 under section 52 of the Resource Management Act 1991 and any statement issued under that section that amends or replaces the 2020 statement (and *see also* sections 4, 5, and 14 of this Act); and
- (b) applies, for the purposes of this Act, ~~to: water (as that term is defined in section 2(1) of the Resource Management Act 1991)~~
 - (i) water in all its physical forms whether flowing or not and whether over or under the ground;
 - and
 - (ii) fresh water, coastal water, and geothermal water.

This approach is critical for timely and strategic delivery of three waters infrastructure, as sought by both reforms.

Council-controlled organisations: In Schedule 1 clause 40A of Schedule 1, the interpretation of a council-controlled organisation's predominant purpose to provide services "to a territorial authority" might not describe the situation because it does not provide services *to* territorial authorities. We suggest that an amendment is made to clause 40A(2) as follows:

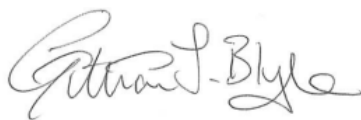
On and after the commence of this clause, the provisions specified in sub-clause (1)(a)(ii)(e) apply to a council-controlled organisation (other than Citycare) or a subsidiary of that council-controlled organisation (other than a subsidiary of Citycare) only if its predominant purpose is providing services to or on behalf of a territorial authority that support the delivery of water services by or on behalf of the territorial authority.

Conclusion

Water NZ welcomes the opportunity to provide comments on the Bill. We look forward to continuing to work with the Government Department to refine and contribute to water services policy and delivery.

If you have any queries in relation to this submission please contact Nicci.Wood@waternz.org.nz

Ngā mihi nui



Gillian Blythe
Chief Executive

Appendix 1.

Recommendations regards specific clauses

Clause	Concern	Action recommended
Section 5		
new s6A(2) and (3) Also New s28(4) and s38(4)	Introduction of requires local government organisations to provide water services before the establishment date, however the Water Services Legislation Bill is repealing (s 203 (p and q) the powers of GWRC to operate the collection, treatment and bulk delivery of water to the metro Wellington Councils. In addition, with the passing of the WSL Bill the GWRC contract with Wellington Water will be invalid, and GWRC will have no power to collect bulk water charges from the metro Wellington Councils.	The repeal of legislation enabling GWRC provide water services is not given force until the new entity takes over operation of water services
Section 7		
New s13(a)	The direction to enter into a shared service arrangement may not be permitted under the Commission rules or determinations (or the Commerce Act).	Confirm consistency with the Water Services Economic Efficiency and Consumer Protection Bill provisions.
Section 15		
New s137A (1)	WSEs will be regulated by the Commission and may not be funded to carry out the Ministers direction for shared services, or such an activity may not be permitted by the Commission's input methodologies or determinations.	The Minister's direction to merge or share services is subject to the determinations and methodologies of the Commission and the IMs, determinations
New s137B	If a merger was permitted, the newly created merged entity will have to meet the price-quality settings and information disclosure requirements of all of the merging entities, as it is the successor to those entities. The Commission IMs and determinations have no requirements to address merged entities.	Confirm consistency with the Water Services Economic Efficiency and Consumer Protection Bill provisions.
New s137C	The entity may not be able to give effect to the direction if its regulation under the Water Services Economic Efficiency and Consumer Protection Bill prevents it from doing so.	Confirm consistency with the Water Services Economic Efficiency and Consumer Protection Bill provisions.
Section 17		
New s173C	Query if a Funding Agency is a subsidiary of a WSE then is it subject to Water Services Economic Efficiency and Consumer Protection Bill and economic regulation by the Commission?	Confirm consistency with the Water Services Economic Efficiency and Consumer Protection Bill provisions.

New s173J (1)	States 'No debt of the Funding Agency is guaranteed by the Crown.' This is contradicted by the Explanatory text – pg 3 “The Crown may also guarantee debts of the Funding Agency.”	Clarify the intent regards debt guarantee by the Crown.
Section 35 (1A)	Water services reform also includes Water Services Economic Efficiency and Consumer Protection Bill in the legislative package, should not limit the definition to only the transfer of assets as this limits the areas for giving effect to reform.	
New s28(6)	There can be material differences between the level of service used in a planning document, and the actual level of serviced delivered to customers.	Clarify if this is the levels of service specified in the planning documents, or the actual level of service delivered to ratepayers.
New Schedule 2A		
S10	The Commission cannot engage with a regulated entity outside of the IMs and Determinations or any powers given under the Water Services Economic Efficiency and Consumer Protection Bill. Note that these also may prevent any merger from occurring i.e. the implementation under s15 cannot be carried out. Mergers and shared services may also fall under the Commerce Act.	
S18	Should include the requirements of the Commission in regulating the current and merged entities.	The merging of WSEs be specifically included in the requirements for IMs, determinations and functions of the Commission under the WSEEC, where this does not conflict with the purpose statements or the provisions of the Commerce Act

Appendix 2.

Letter from Water New Zealand regarding definition of Te Mana o te Wai in Water Services Entities Act 2022.

9 June 2023

Hon Kieran McAnulty
Minister for Local Government

By email: kieran.McAnulty@parliament.govt.nz

I would like to acknowledge the work you are doing to improve the provision and delivery of water services across the Aotearoa New Zealand, and to thank you for recently speaking at the Water New Zealand Stormwater Conference in Tāmaki Makaurau Auckland in May 2023.

Today, I am writing to highlight an issue that was raised by delegates attending the Stormwater Conference, which relates to the definition of Te Mana o te Wai in the Water Services Entities Act 2022 (Act).

Te Mana o te Wai—

- (a) has the meaning set out in the National Policy Statement for Freshwater Management issued in 2020 under [section 52](#) of the Resource Management Act 1991 and any statement issued under that section that amends or replaces the 2020 statement (and *see also* [sections 4, 5, and 14](#) of this Act); ~~and~~
- (b) applies, for the purposes of this Act, to water (as that term is defined in [section 2\(1\)](#) of the Resource Management Act 1991)

Section 6 of the Act adopts the definition of “water” in the Resource Management Act 1991, which excludes water in pipes, tanks or cisterns. This is likely to have unintended consequences. On the one hand, the proposed Water Services Entities under the Act, and Taumata Arowai and other parties (including the water service entities) with powers, functions and duties under the Water Services Act 2021 are required to give effect to Te Mana o te Wai and on the other hand, the delivery of water services involves pipes, tanks and cisterns.

To improve the provision of water services, and to enable an enhancement of the water environment the regulatory system needs to be clear and unambiguous with its intent.

We need consistent Te Mana o te Wai requirements across stormwater service provision

In towns and cities across Aotearoa many hundreds of kilometres of freshwater streams have been forced into pipes during the early development of urban areas. For the most part such practice is no longer permitted with recognition of the ecological and cultural value of streams. However, the currently piped urban streams have historically received very little protection due to the definition of water in [section 2\(1\)](#) of the Resource Management Act 1991 (“RMA”).

As such many of our underground streams have been managed as ‘drainage assets’ which convey contaminants to downstream receiving environments. As an example, in Wellington City, it is estimated

that approximately 95% of urban freshwater streams are now in pipes despite the significant cultural and ecological value they once held.

The maps below illustrate:

- Streams in the Pōneke Wellington City area; and
- Green marked pipes that were open waterways and have been piped over the years.

For a stream particularly in an urban context, it may transition from an open waterway to a culvert to a pipe and back to an open waterway. For an entity that is required to give effect to Te Mana o te Wai this creates a challenging situation of the water being “in” for open waterways and culverts and “out” for pipes.

It is important to remember these piped streams can flow with permanent freshwater and support resilient communities of indigenous fish and invertebrates. They also provide critical (albeit highly compromised) links between the coastal waters and forested headwaters.

Water New Zealand and its members are aware through engagements and consultations across Aotearoa, mana whenua groups and communities have expressed strong desires to see these ‘lost’ waterways respected and protected with long term aspirations to see them returned to the surface where practical.



Figure 1: Piped streams in the Wellington CBD



Figure 2: Streams in the Wellington City Area

Having just hosted the Stormwater Conference 2023 in Tāmaki Makaurau (within catchment of the piped [Waihorotiu](#) Stream) there was a desire from delegates to better embed the principles of Te Mana o te Wai into the urban context and to ensure regulation provides a driver to seek improved outcomes for freshwater whether in open or piped streams.

We need consistent Te Mana o te Wai requirements across drinking water supply and wastewater systems

Drinking water supply and wastewater service provision unambiguously involves pipes, tanks and cisterns.

Te Mana o te Wai's role within integrated water management will evolve. It will impact decisions the Water Services Entities and their communities, both Mana Whenua and Tangata Tiriti, around for example, what the next water source should be, whether smart meters should play a role in encouraging economically efficient demand management, and the location and nature of treated wastewater discharge.

For entities required to give effect to Te Mana o te Wai this, again, creates a potentially challenging situation of the water being "in" for parts of drinking water supply and wastewater yet "out" when drinking water and wastewater are in pipes. The fact that drinking water networks in Aotearoa experience ~20% leakage rates, and wastewater networks experience infiltration and both wet and dry weather overflows highlights how the definition of Te Mana o te Wai excluding water in pipes, tanks and cisterns is likely to be problematic.

Worsening mauri and mana of waterways during a period of uncertainty

The intent of developing iwi/hapu specific Te Mana o te Wai statements and adopting whole of catchment planning, informed by meaningful mana whenua engagement, should support the future protection of rural and urban waterways (including those in pipes). However, there is a risk of worsening mauri and mana of waterways in the short to medium term.

The uncertainty created by the definition of Te Mana o te Wai as it applies to water and given the nature of water services provision will create ambiguity and could lead to delays in investment. This ambiguity also places unclear boundaries between Water Service Entities and councils in the funding and delivery of Te Mana o te Wai outcomes.

Proposed change

Water New Zealand seeks a change to the definition of Te Mana o te Wai in the Water Services Entities Act 2022, through the Water Services Legislation Bill legislative process.

Water New Zealand **recommends** replacing (b) of the Te Mana o te Wai definition with a modified version of the definition of water from the Resource Management Act.

Te Mana o te Wai—

(a) has the meaning set out in the National Policy Statement for Freshwater Management issued in 2020 under section 52 of the Resource Management Act 1991 and any statement issued under that section that amends or replaces the 2020 statement (and *see also* sections 4, 5, and 14 of this Act); ~~and~~

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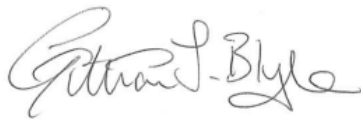
(ii) fresh water, coastal water, and geothermal water.

Water New Zealand considers these changes are necessary to protect and enhance the water environment of Aotearoa as expressed in the National Policy Statement on Freshwater Management 2020 (NPS-FM).

In summary, drinking water, wastewater and stormwater are all forms of water, whether enclosed in pipes or daylighted. Ka ora te wai, ka ora te whenua, ka ora ngā tangata. If the water is healthy, the land is healthy, the people are healthy.

I look forward to the opportunity to engage with you further on improving water service provision in Aotearoa in general, or on this matter specifically.

Nga mihi nui | Kind regards



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