



9 June 2022

Legislative Statement | Water Services Entities Bill

This legislative statement is presented to the House in accordance with Standing Order 272. This Bill is an omnibus Bill introduced in accordance with Standing Order 267(1)(a). That Standing Order provides an omnibus Bill to amend more than 1 Act may be introduced if the amendments deal with an interrelated topic that can be regarded as implementing a single broad policy.

Overview

The Water Services Entities Bill (the Bill) establishes four publicly-owned water services entities. The Bill contains the ownership, governance, and accountability arrangements relating to those entities, and provides for transitional arrangements during an establishment period. The entities will commence delivery of services on 1 July 2024.

This Bill is just one component of a comprehensive package to reform water services. It will be followed by further legislation to provide for:

- detailed implementation arrangements for the entities and service delivery, including provisions relating to the transfer of assets, liabilities, and other matters from local authorities to new water services entities;
- specific powers, functions, and responsibilities of the new water services entities, and pricing and charging arrangements;
- economic regulation and consumer protection regimes relating to the new water services system;
- any changes to Treaty settlement legislation required to ensure settlement obligations are carried forward from territorial authorities to the new water services entities, along with provisions to ensure arrangements entered by local authorities and iwi are preserved; and
- detailed changes to the Local Government Act 2002, the Water Services Act 2021, and other legislation to transfer service delivery arrangements to the new water services entities.

Entity structure, objectives and operating principles

The function of each entity is to provide safe, reliable, and efficient drinking water, wastewater and stormwater services in its area.

Each entity will be a body corporate that is co-owned by the territorial authorities in its service area. This ownership is expressed through shares that provide a tangible expression of ownership that is recognisable by communities and territorial authorities.

Governance arrangements

The entities have a two-tier governance structure including:

- a regional representative group, which provides joint oversight of an entity by an equal number of representatives of the territorial authority owners and mana whenua from within the entity's service area; and
- an independent, competency-based, professional board. The members of the board will be appointed and removed by a board appointment committee which is part of the regional representative group.

The primary roles of the regional representative group are to set the entity's strategic and performance expectations, approve the strategy of the entity, and appoint and remove the board. The regional representative group must exercise its functions, powers and duties with due consideration for the benefits of all communities in the entity's service area.

Appointments to the regional representative group are based on a co-governance model, where half of its members are drawn from territorial authorities, and half are from mana whenua in the service area of the entity. The regional representative group must make decisions by consensus, with a 75 percent majority vote if consensus cannot be reached.

The board is the governing body of the entity and fulfils the same role as the board of a company or Crown entity. Similar to the model adopted for Crown and council-owned companies, the board of the entity remains primarily accountable for developing the strategy and associated accountability documents, including the statement of intent, and for delivering against that strategy once approved by the regional representative group. It will have responsibility for the day-to-day operations of the entity and appoint the chief executive.

Appointments to the board will be made on the basis of the skills of individual members, or collective competencies across the board as a whole, and not whether a person is from a council or is mana whenua.

Accountability

The regional representative group must issue a statement of strategic and performance expectations for an entity, covering a 3-year period. The board of a water services entity must give effect to the statement. The purpose of a statement of strategic and performance expectations is to:

- state the regional representative group's objectives and priorities for the entity;
- inform and guide the decisions of the board.

The board is required to prepare and adopt a statement of intent. The strategic elements of a statement of intent must be approved by the entity's regional representative group. The board must also prepare an asset management plan, a funding and pricing plan, and an infrastructure strategy that covers a 30-year period.

An annual report prepared and published by the board will set out the actual performance and audited financial statements for a water services entity.

Te Tiriti o Waitangi and Te Mana o te Wai

All persons performing or exercising duties, functions and powers under the Bill must give effect to:

- the principles of Te Tiriti o Waitangi; and
- Te Mana o te Wai, to the extent Te Mana o te Wai applies to those duties, functions, or powers.

There are also provisions that recognise and respect the Crown's responsibility to give effect to Te Tiriti o Waitangi/the Treaty of Waitangi. These include requirements that:

- if a provision of the Act is inconsistent with a Treaty settlement obligation, the Treaty settlement obligation prevails; and
- an operating principle of the entities is to give effect to Treaty settlement obligations, to the extent those obligations apply to the duties and functions of an entity.

The Bill preserves iwi and hapū rights and interests in water, while the Crown and its Treaty partners engage on the scope and nature of those rights and interests. Those interested in the clause, such as iwi, individuals or organisations representing Māori interests, or expert advisers, may submit on this clause through the select committee process to give an added level of assurance.

Safeguards against privatisation

The Bill contains clear legislative protections against privatisation, through requirements that an entity must not use its assets as security for any purpose, divest its ownership in a water service, or sell or lose control of significant infrastructure (based on long-standing provisions in the Local Government Act 2002).

For a 'divestment proposal' to proceed, it must have unanimous support from an entity's territorial authority owners, *and* support from at least 75 percent of the entity's regional representative group, *and* support from at least 75 percent of the electors in the entity's service area.

Independence of water services entities

The Bill provides for the financial independence of water services entities. A territorial authority owner, regional representative group, or regional representative:

- has no financial right, title or interest in the assets, security, or liabilities of an entity;
- must not receive a dividend or equity return; and
- must not give an entity financial support, lend it money, or give any guarantee, indemnity or security.

The Bill provides that a Minister, territorial authority owner, regional representative group or regional representative cannot direct a water services entity or board member.

Consumer and community engagement

A water services entity must engage with its consumers and community by:

- establishing one or more consumer forums to assist with consumer and community engagement, helping gather consumer views and understand consumer needs, expectations and service requirements; and
- preparing an annual consumer stocktake;
- engaging with its consumers and communities on its asset management plan, funding and pricing plan, and infrastructure strategy.

The Bill contains engagement principles which guide and inform an entity in its engagement with consumers.

Role of the Crown

The Minister may issue a Government policy statement that states the Government's overall direction and priorities for water services, and informs and guides agencies involved in, and the activities necessary and desirable for, water services.

The Minister can appoint a department as a Crown monitor to act as a steward to provide oversight to the water services system from a whole-of-government perspective, tender advice to Ministers, and assist the Minister to carry out the Minister's role under the legislation.

The Bill also vests the Minister with powers of intervention, which include the appointment of a Crown Review Team, a Crown Observer, and, as a last resort, a Crown Manager.

Transition and establishment arrangements

The Bill provides for establishment entities which make preparatory arrangements for full operation, and transitional provisions relating to employment of the water services workforce, including employment security by transferring existing employment positions to the relevant water services entity. There are oversight powers during this establishment period to ensure a smooth transition, exercisable by the Department of Internal Affairs and its chief executive.