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## Legislative Statement | Water Services Entities Bill Third Reading

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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) which 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 of legislative reform relating to 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 relating to water services 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 and function

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

- 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 in 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, appoint and remove the board, and review its performance annually. 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.

Half of the representatives on the regional representative group must be appointed by its territorial authority owners, and half must be appointed by 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 first constitution of an entity must provide for between 12 and 18 representatives on a regional representative group. Meetings of the regional representative group will be held in public, with a minimum of two meetings per year.

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 Crown and council-owned companies, the board is responsible for the day-to-day operations of the entity and will 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.

## **Strategy, planning and reporting**

The regional representative group must issue a statement of strategic and performance expectations for an entity, covering a 10-year period. The board 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 Act 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.

Te Mana o te Wai is defined as having the meaning set out in the National Policy Statement for Freshwater Management. For the purposes of water services legislation Te Mana o te Wai applies to water, as defined in the Resource Management Act 1991.

The Bill contains 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;
- an operating principle of an entity is to give effect to Treaty settlement obligations, to the extent those obligations apply to the exercise or performance of any functions, powers, or duties of an entity; and
- during the establishment period, all persons exercising functions, powers and duties must uphold the integrity, intent and effect of Treaty settlement obligations.

The Bill preserves iwi and hapū rights and interests in water.

## **Safeguards against privatisation**

The Bill contains legislative protections against privatisation, through requirements that an entity must not use water services infrastructure as security for any purpose, divest its ownership in any water services, or sell or lose control of significant infrastructure. These provisions are 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.

A contract or joint arrangement relating to water services must be no longer than 15 years and a water services entity must retain control of policy and pricing arrangements.

## **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, board member or employee.

## **Consumer and community engagement**

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

- establishing one or more consumer forums (with representation from rural, provincial and metropolitan communities) to assist with consumer and community engagement, help gather consumer views, and understand consumer needs, expectations and service requirements;
- 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 responsible for the administration of the Act 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 must 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 includes transitional arrangements that will commence on Royal assent. There will be an establishment board and chief executive for each entity, and planning and reporting requirements for the establishment period to 1 July 2024. There are transitional arrangements relating to the employment of the water services workforce, including provisions that guarantee the job security of existing employees. There are oversight powers during the establishment period to ensure a smooth transition to the new service delivery arrangements, exercisable by the chief executive of the Department of Internal Affairs.