



7 December 2022

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Legislative Statement | Water Services Legislation Bill First Reading

This legislative statement is presented to the House in accordance with Standing Order 272. The second water services entities bill is one component in a suite of legislation to reform water services delivery in New Zealand. The Bill is an omnibus Bill introduced in accordance with Standing Order 267(1)(a) as the amendments deal with an interrelated topic that can be regarded as implementing a single broad policy. The single broad policy for this Bill is to establish and empower water services entities by setting out their functions, powers, obligations, and oversight arrangements.

Overview

The Water Services Legislation Bill is just one component of a comprehensive package to reform water services.

The first Act, the Water Services Entities Act 2022, contains the ownership, governance, and accountability arrangements relating to water services entities, and provides for transitional arrangements during an establishment period to enable preparation for establishment of water services entities to commence.

This Bill provides the new water services entities with the necessary legislative functions, responsibilities, and powers to be fully operational from their 'go live' date on 1 July 2024.

Part 1 of the Bill will amend the Water Services Entities Act 2022. Part 2 of the Bill amends other legislation relating to water services, including the detailed changes to local government legislation that are required to shift regulation and service delivery responsibilities away from local authorities.

In summary the Bill provides for:

- additional, detailed implementation arrangements for the new water services entities, including provisions relating to the transfer of assets, liabilities, and other matters from local authorities to new water services entities;
- service delivery functions and powers, to enable water services entities to deliver water services in place of local authorities;
- regulatory functions and powers, to enable water services entities to make rules, plans, and other instruments relating to water services, and engage in compliance and enforcement activities;
- pricing and charging arrangements for water services; and
- detailed changes to local government legislation, the Resource Management Act 1991, the Water Services Act 2021, and other legislation relating to regulation and service delivery of water services.

A third Bill will provide the economic regulation and consumer protection framework for water services.

Service delivery functions and powers

This Bill establishes the detailed functions and powers necessary to deliver water services to communities in place of territorial authorities.

This Bill provides water services entities with powers to carry out work in relation to water services infrastructure on or under land. These are a combination of existing powers available to local authorities under local government legislation, together with similar powers available to other utilities in the gas, electricity, and telecommunications sectors. The Bill includes safeguards in relation to exercising those powers on Māori land.

Regulatory functions and powers

This Bill establishes regulatory functions and powers to enable water services entities to regulate water services in place of current arrangements administered by territorial authorities.

Those functions and powers will replace and modernise the existing bylaws framework and other powers conferred under legislation on territorial authorities, and include—

- designating controlled drinking water catchment areas and governing these areas through controlled drinking water catchment management plans;
- making stormwater management plans to guide the management and future planning of stormwater systems under their control;
- making stormwater network rules to control discharges into stormwater networks in urban areas. The rules may apply to other stormwater networks by agreement with the network operator;
- entering into service agreements that will set out the rights and obligations of water services entities and billpayers;
- setting enforceable restrictions on drinking water use for water conservation and creating consumer behaviour rules to protect supplies and networks;
- providing for a trade waste plan, permit, and certification regime;
- setting network connection requirements to ensure that connections to networks meet engineering design standards; and
- making network protection rules such as notification requirements for works being carried out near their networks.

Pricing and charging

This Bill empowers water services entities to charge for their services according to a set of pricing principles. Entities will be required to publish charges annually. Residential property owners will be responsible for paying charges imposed by their water services entity in full. Non-residential property owners will be responsible for paying the water services entity in full for charges unless—

- the charge is for trade waste; or
- there is a lease on the property meeting the conditions of section 11(1)(b) of the Local Government (Rating) Act 2002, in which case the liability attaches to the lessee; or
- the land is Māori freehold land.

Properties that are not connected but may potentially receive services from a network owned by a water services entity may be charged to contribute to network costs (with exemptions, for example for Māori freehold land).

Property owners will be responsible for paying stormwater charges. Water services entities will be able to set growth charges for water supply, wastewater and stormwater services through a statutory instrument called a water infrastructure contribution.

This Bill contains transitional arrangements for pricing and charging, which include:

- the cancellation of pricing and charging provisions in any contract with a commercial entity for the supply of water services (including trade waste services) by a water services entity. This would take effect 5 years after the establishment of the water services entity; and
- pass-through billing arrangements, with territorial authorities collecting charges on behalf of the water services entities, in exchange for the reasonable cost of providing the service, up until 1 July 2029.

Vulnerable consumers

This Bill contains the following provisions to protect vulnerable consumers:

- Ministers will be able to temporarily regulate prices for residential customers until economic regulation comes into force on 1 July 2027;
- water services entities will be able to use geographic average pricing to smooth and share costs across communities;
- the rates rebate scheme will be extended to include water bills from the water services entities; and
- the Minister may prohibit or limit the use of variable volumetric charges for residential consumers.

Compliance and enforcement regime

This Bill contains a compliance and enforcement regime. The arrangements include:

- a Director of Compliance and Enforcement for each water services entity, which is an independent statutory officer;
- a compliance and enforcement strategy issued by the board of each water services entity to provide transparency in relation to compliance and enforcement practices;
- compliance officers, with the authority to monitor and investigate compliance and take appropriate steps to enforce legislation, including powers of entry, search, and seizure (subject to detailed safeguards). There are special arrangements for homes, marae, and other types of Māori land, where warrantless entry can only be with consent;
- a comprehensive offence and infringement regime; and
- powers to issue directions, compliance orders, take remedial action, and recover costs.

Te Tiriti o Waitangi/the Treaty of Waitangi

The Water Services Entities Act 2022 contains provisions that recognise and respect the Crown's responsibility to give effect to the principles of te Tiriti o Waitangi/the Treaty of Waitangi. This Bill adds to those provisions by:

- providing that a function of a water services entity is to partner and engage with mana whenua in its service area;

- requiring engagement with mana whenua in relation to the exercise of particular functions and powers of a water services entity;
- requiring the chief executive of a water services entity to report on how an entity is giving effect to the principles of te Tiriti o Waitangi/the Treaty of Waitangi and Te Mana o te Wai;
- providing that, during the establishment period for water services entities, all persons exercising duties, functions, or powers must uphold the integrity, intent, and effect of Treaty settlement obligations;
- providing that a subsidiary of a water services entity must give effect to Treaty settlement obligations that apply to the parent entity;
- providing that contracts, arrangements or understandings which local authorities have entered with mana whenua relating to water services will transfer to water services entities.

Relationship to Treaty settlements

To ensure that Treaty settlements are enduring, the Water Services Entities Act 2022 provides that:

- an operating principle of water services entities is to give effect to Treaty settlement obligations, to the extent those obligations apply to functions, duties, and powers of the entity;
- all persons who perform or exercise a duty during the establishment period must uphold the integrity, intent and effect of Treaty settlement obligations; and
- if a provision of the Act is inconsistent with a Treaty settlement obligation, the Treaty settlement obligation prevails.

Engagement is underway with iwi who have Treaty settlement arrangements that relate to water services. If amendments to Treaty settlement legislation are required to ensure that settlement obligations are carried forward from territorial authorities to the new water services entities, these will be introduced through supplementary order paper to this Bill or subsequent legislation.

Assessment obligations

The Bill transfers existing obligations imposed on territorial authorities to assess water services to water services entities. These include:

- obligations to assess the drinking water and wastewater and stormwater services that are provided to communities and further strengthens those obligations; and
- a duty to ensure that communities have access to drinking water if existing suppliers are facing significant problems.

Transfer of assets, liabilities, and interests

This Bill includes mechanisms to transfer assets, liabilities, and interests relating to water services from local authorities to water services entities, which are:

- an allocation schedule, prepared as part of transitional arrangements with territorial authorities;
- a general transfer provision giving effect to the legal transfer of any assets, liabilities, and interests that meet the criteria for transfer but are not included in an allocation schedule.

Rural water supplies

This Bill provides that local government-owned mixed-use rural water supplies that provide drinking water in addition to water for farming-related purposes will transfer to water services entities. The Bill also contains provisions that enable those supplies to be subsequently transferred to an alternative operator (for example, the farming community served by the supply). The alternative operator must prepare a business plan for the proposal that is independently assessed for its viability. Transfer may occur if it is supported by a referendum.

Resource management reforms

The resource management reforms will repeal the Resource Management Act 1991 and enact new legislation to transform the way we manage the environment. The Spatial Planning Bill and the Natural and Built Environment Bill will proceed first, followed by a third bill to address complex issues associated with managed retreat, and funding and financing climate adaptation.

The Natural and Built Environment Bill will substantially replace the Resource Management Act 1991. The Water Services Legislation Bill makes amendments to the Resource Management Act 1991 to provide linkages between the water services entities' infrastructure connection processes and subdivision and infrastructure vesting processes under the Resource Management Act 1991. These linkages will need to be carried over into the reformed resource management system.

The Minister for the Environment and I will work together as both sets of the Bills proceed through the Parliamentary process to ensure there are cross-references between the relevant legislation to provide certainty about how the two regimes interact.

Commencement

The Act will commence in stages. There is a transitional period that will commence on the day following Royal assent, during which preparatory arrangements can be made. These arrangements will enable water services entities to deliver services and to make the new rules that will replace council bylaws for water services.

The rest of the Bill will commence on 1 July 2024 (which is the entities 'go-live' date). Specific elements of the charging Part of the Bill will come into effect on 1 July 2027. Stormwater management plans will come into effect four years after Royal assent.