

Departmental Disclosure Statement

Water Services Acts Repeal Bill

The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by the Department of Internal Affairs.

The Department of Internal Affairs certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

08 February 2024.

Contents

Contents.....	2
Part One: General Policy Statement.....	3
Part Two: Background Material and Policy Information	5
Part Three: Testing of Legislative Content.....	7
Part Four: Significant Legislative Features	10

Part One: General Policy Statement

This Bill is an omnibus Bill that repeals the Water Services Entities Act 2022, the Water Services Entities Amendment Act 2023, the Water Services Legislation Act 2023 and the Water Services Economic Efficiency and Consumer Protection Act 2023. The Bill is introduced in accordance with Standing Order 267(1)(a) as it deals with an interrelated topic that can be regarded as implementing a single broad policy. The single broad policy is to repeal legislation relating to water services entities and their economic regulation, reinstate the previous legislation that was in place, and retain technical amendments relating to regulation of water services by Taumata Arowai-the Water Services Regulator.

Introduction

This Bill proposes repeal of legislation relating to water services entities and their economic regulation and reinstatement of previous legislation that was in place. It will return of responsibility for water services delivery to local authorities.

The Bill is part of the Government's 100-day plan and is the first stage of delivering Local Water Done Well, which will lay a foundation for a new system with stronger central government oversight, economic and quality regulation, and requirements for local authorities to use financially sustainable delivery models.

Key features of legislation

This Bill proposes to repeal the Water Services Entities Act 2022, the Water Services Entities Amendment Act 2023, the Water Services Legislation Act 2023, the Water Services Economic Efficiency and Consumer Protection Act 2023. The Bill will end the 10-entity model that was part of these Acts. The Bill will reinstate previous legislation relating to water services delivery that was in place, including legislation that was amended by the Water Services Entities Amendment Act 2023 and Water Services Legislation Act 2023.

The Bill will disestablish the Northland and Auckland Water Services Entity, its establishment board, and the chief executive of that entity. Employment arrangements with this entity will be terminated, with its employees entitled to any redundancy arrangements they may have. The Bill will transfer any residual assets, liabilities, and information of that entity to the Department of Internal Affairs.

The Bill will retain technical amendments that improve the regulation of water services by Taumata Arowai, including the Taumata Arowai-the Water Services Regulator Act 2020, the Water Services Act 2021, and related Acts. The Bill will repeal out of date Local Acts.

The Bill will retain obligations relating to the regulation of water services in three Treaty settlement Acts. For the the Ngati Tuwharetoa, Raukawa, and Te Arawa River Iwi Act 2010 and the Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010, any person exercising functions or powers under the Taumata Arowai-the Water Services Regulator Act 2020 or the Water Services Act 2021 will need to have particular regard to Te Ture Whaimana (the vision and strategy of the Waikato river). For the Te Awa Tupua (Whanganui River Claims Settlement) Act 2017, any person exercising functions, duties or powers the Taumata Arowai-the Water Services Regulator Act 2020 or the Water Services Act 2021 will need to recognise and provide for Te Awa Tupua status (the legal personality of the Whanganui river) and Tupua Te Kawa (the vision and strategy of the Whanganui river).

Transitional arrangements for local authorities

The Bill will include transitional arrangements for local authorities to include water services provision in their 2024-34 long-term plans, which are designed to provide relief for the completion of their upcoming plans. The modifications set out a range of options that local authorities can use. The options are voluntary and local authorities can continue with their long-term plans as normal, if they wish, and include:

- provisions for local authorities that have started long-term plan consultation under previous policy settings to include water services material in the final plan, without re-consulting;
- permitting local authorities to have unaudited long-term plan consultation documents;
- provisions that, if local authorities have started to prepare or consult on long-term planning material that includes water services information before commencement of this Bill, this consultation is valid;
- extending the statutory deadline by which the 2024 long-term plan must be adopted by 3 months, to 30 September 2024;
- extending the statutory deadline by which local authority annual reports for 2023/24 must be adopted to the end of December 2024.
- provisions allowing local authorities to defer their 2024-2034 long-term plan by a year, replaced by an 'enhanced' annual plan for the 2024/25 financial year. A council must make a decision to do so by 30 April 2024, and if it does not, it may be authorised to defer its plan by Order in Council.

The Bill will allow local authorities to defer a review of a water services bylaw, if that review would ordinarily be required between 15 December 2022 and the end of 2025. If there is a deferral, the review would need to be completed by 1 July 2026 at the latest.

Part Two: Background Material and Policy Information

Published reviews or evaluations

2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?	NO
Repeal of water services entities legislation is part of the Coalition Government's 100-day plan, and was part of the election manifesto commitments made by the Government as part of the 2023 general election.	

Relevant international treaties

2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?	NO
--	-----------

2.2.1. If so, was a National Interest Analysis report prepared to inform a Parliamentary examination of the proposed New Zealand action in relation to the treaty?	NO
---	-----------

Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	NO
Cabinet suspended the requirement for Regulatory Impact Statements for decisions relating to 100-day plan proposals, which solely involve the repeal of legislation.	

2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements?	N/A
---	------------

2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?	N/A
--	------------

Extent of impact analysis available

2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?	NO
---	-----------

2.5. For the policy to be given effect by this Bill, is there analysis available on:	
(a) the size of the potential costs and benefits?	NO
(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?	NO

2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:	
(a) the level of effective compliance or non-compliance with applicable obligations or standards?	NO

(b) the nature and level of regulator effort put into encouraging or securing compliance?	NO
--	-----------

Part Three: Testing of Legislative Content

Consistency with New Zealand's international obligations

3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?
--

No relevant international obligations were identified.
--

Consistency with the government's Treaty of Waitangi obligations

3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?

<p>The Repeal Bill will repeal the water services entities and restore the provision of water services to local government and their obligations to iwi and hapu under the Local Government Act 2002, which are consistent with the principles of the Treaty of Waitangi.</p>

<p>Current water services legislation will make changes to three Treaty settlement Acts relating to the Waikato and Whanganui rivers - Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010, Ngati Tuwharetoa, Raukawa, and Te Arawa River Iwi Waikato River Act 2010, and Te Awa Tupua (Whanganui Claims Settlement) Act 2017.</p>
--

<p>The amendments made a requirement for any persons exercising functions, powers or duties under the water services legislation to:</p>
--

- | |
|---|
| <ul style="list-style-type: none">• for the Whanganui river, have regard to Te Awa Tupua (status of the Whanganui river as a legal person), and to the vision and strategy of the Whanganui (Tupua te Kawa);• for the Waikato river, have regard to the vision and strategy of the Waikato river (Te Ture Whaimana). |
|---|

<p>For the above Treaty settlement Acts, the Repeal Bill will leave the requirements for persons exercising powers, functions and duties under the Water Services Act and Taumata Arowai – the Water Services Regulator Act in place. This will mean that Taumata Arowai must continue to recognise and provide for the Te Awa Tupua status and Tupua te Kawa, and have particular regard to Te Ture Whaimana when performing its duties under the Water Services Act and Taumata Arowai – the Water Services Regulator Act. This is consistent with other parts of the Repeal Bill which provide that the regulatory framework in the Taumata Arowai - the Water Services Regulator Act and the Water Services Act is retained with any improvements made to this regime.</p>
--

Consistency with the New Zealand Bill of Rights Act 1990

3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?	
---	--

	YES
--	------------

The Bill of Rights Act vetting process has confirmed the Water Services Acts Repeal Bill is consistent with the rights and freedoms contained in the Bill of Rights Act 1990.

Offences, penalties and court jurisdictions

3.4. Does this Bill create, amend, or remove:	
(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?	YES
(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?	NO
<p>The Water Services Acts Repeal Bill reinstates the consumer protection provisions introduced in the Water Services Act 2021. This Act conferred on Taumata Arowai the Water Services Regulation responsibility for consumer complaints investigations. As part of its regulatory tools, Taumata Arowai was enabled to issue infringement notices. The level of fines and enforcement provisions were considered by the Ministry of Justice. The water services entities legislation removed the consumer protection provisions from Taumata Arowai and set out a new regime in the Water Services Economic Efficiency and Consumer Protection Act 2023. The economic efficiency and consumer measures made the Commerce Commission responsible for these regulatory measures.</p> <p>There are no changes to the consumer complaints process (section 38), the offence or penalty level (section 188) as set out in the Water Services Act as enacted on 4 October 2021.</p>	

3.4.1. Was the Ministry of Justice consulted about these provisions?	YES
<p>The Ministry of Justice noted the reintroduction of the offences in the Water Services Act 2021 and did not consider there to be any new issues.</p>	

Privacy issues

3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?	YES
<p>All assets, liabilities, leases and information held by the Northland and Auckland Water Services Entity will be transferred to the Department when the Bill comes into force. The information transferred could potentially contain employment agreements or contracts that hold personal information. The Privacy Act 2020 will continue to apply to the Department in relation to this information.</p>	

3.5.1. Was the Privacy Commissioner consulted about these provisions?	NO
--	-----------

External consultation

3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?	YES
<p>Taituarā and the Office of the Auditor General were consulted on the entire draft repeal Bill. Auckland Council were consulted on provisions relating to the amendments to the Local Government Act 2002. Their advice was sought on the workability of the proposed changes to local authority planning and in particular, to the 2024-34 long-term plans.</p>	

Other testing of proposals

3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?	NO
---	-----------

Part Four: Significant Legislative Features

Compulsory acquisition of private property

4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?	NO
---	----

Charges in the nature of a tax

4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?	NO
---	----

Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	NO
--	----

Strict liability or reversal of the usual burden of proof for offences

4.4. Does this Bill:	
(a) create or amend a strict or absolute liability offence?	NO
(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?	NO

Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	NO
--	----

Significant decision-making powers

4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?	NO
---	----

Powers to make delegated legislation

4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?	NO
--	----

4.8. Does this Bill create or amend any other powers to make delegated legislation?	NO
---	----

Any other unusual provisions or features

4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?	NO
---	----