

# Departmental Disclosure Statement

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Water Services Bill
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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.

15 July 2020

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## Part One: General Policy Statement

This Bill is an omnibus Bill that will repeal Part 2A of the Health Act 1956 and replace it with a stand-alone Act to regulate drinking water. There are also amendments to the Local Government Act 2002 and amendments to other Acts, including a discrete amendment to the Resource Management Act 1991. The Bill is introduced under Standing Order 263(a) because the amendments deal with an interrelated topic that can be regarded as implementing a single broad policy. That single broad policy is to implement the Government's decision to comprehensively reform the drinking water regulatory system, with targeted reforms to improve the regulation and performance of wastewater and stormwater networks.

### Introduction

New Zealand's drinking water regulatory system presents a number of challenges. There is a lack of compliance and enforcement activity, and significant variability in the size and capability of suppliers, with little support to assist them to comply with regulatory requirements. There has been a lack of Māori input within decision-making frameworks. As a result, the current drinking water regulatory system is failing to provide necessary assurances that drinking water supplies across New Zealand are safe and reliable.

To address these regulatory issues, the Bill is part of a broader package of reforms that includes—

- establishment of a Crown agent, Taumata Arowai—the Water Services Regulator (Taumata Arowai), which will be responsible for administering the regulatory regime in the Bill; and
- reform of the National Environmental Standard for Sources of Human Drinking Water (which is a regulation made under the Resource Management Act 1991).

These measures comprise a significant part of the Government's response to the report of the Havelock North Drinking Water Inquiry. They provide the regulatory framework to implement the 6 fundamental principles of drinking water safety articulated by the Inquiry. These principles are—

- a high standard of care must be embraced in relation to drinking water:
- protection of source water is of paramount importance:
- multiple barriers against contamination of drinking water must be maintained:
- change precedes contamination of drinking water, and must never be ignored:
- suppliers must own the safety of drinking water:

- a preventive risk management approach must be applied in relation to drinking water.

## **Duties, obligations and functions under the Bill**

### *Drinking water suppliers*

The Bill imposes duties on drinking water suppliers. Those duties will apply to all drinking water suppliers, other than domestic self-suppliers, and include duties to—

- provide safe drinking water and meet drinking water standards, along with clear obligations to act when drinking water is not safe or fails to meet standards:
- ensure that there is a sufficient quantity of drinking water to support the ordinary needs of consumers, with clear obligations to act where supply is interrupted or restricted for any reason:
- register drinking water supplies with Taumata Arowai, and keep essential details relating to supplies updated each year:
- have a drinking water safety plan that contains a multi-barrier approach to drinking water safety:
- notify Taumata Arowai and take action where there are risks to public health arising from drinking water, breaches of drinking water standards, or other significant risk events.

The Bill also imposes a duty on officers, employees, and agents of drinking water suppliers to exercise professional due diligence. This duty is based on similar requirements in the Health and Safety at Work Act 2015.

### *Source water risk management*

The Bill proposes new arrangements relating to sources of drinking water—that is, the freshwater bodies from which water is abstracted before treatment. These new arrangements are based on a preventive risk management approach, alongside open flows of information between local authorities, drinking water suppliers, and Taumata Arowai. Key measures for this approach include—

- drinking water suppliers must have a source water risk management plan, which identifies the risks to a source of drinking water and manages, controls, or eliminates those risks as part of a drinking water safety plan:
- local authorities must contribute to source water risk management plans by sharing information about risks and undertaking actions to address them on behalf of a drinking water supplier:

- drinking water suppliers must monitor source water quality, and regional councils must assess the effectiveness of regulatory and non-regulatory interventions relating to source water every 3 years:
- a new provision in the Resource Management Act 1991 to require consent authorities to have regard to risks, or potential risks, to source water when considering applications for resource consents.

#### *Approach based on scale, complexity, and risk profile*

The Bill provides mechanisms that enable many aspects of drinking water regulation to be proportionate to the scale, complexity, and risk profile of a supply, from large, capable suppliers through to small suppliers such as marae or rural suppliers.

Drinking water safety plans, source water risk management plans, and consumer complaints processes must be proportionate to the scale, risk, and complexity of a supply.

The Bill also provides a toolkit to Taumata Arowai to enable it to support suppliers in fulfilling their obligations, including templates, models, and acceptable solutions and verification methods for drinking water that are based on, and designed to be a good regulatory fit with, Building Act 2004 requirements.

#### *Exemptions*

The Bill contains 2 significant exemption powers. Both powers are vested with the chief executive of Taumata Arowai to ensure that they are exercised independently as follows:

- a general exemption power allows the chief executive of Taumata Arowai to exempt a supply or class of supply from many of the key regulatory requirements in the Bill; and
- a residual disinfection exemption power allows the chief executive of Taumata Arowai to exempt a supply from the requirement to treat a reticulated supply with residual disinfection (such as chlorination). This will allow a supplier to adopt arrangements or use treatment methods other than chlorination to make drinking water safe.

There are safeguards built into the exemption powers, including—

- for a residual disinfection exemption, if the chief executive requires it, the supplier must first demonstrate to the satisfaction of the chief executive that the drinking water will comply with legislative requirements and the drinking water safety plan on an ongoing basis. This is in line with recommendations made by the Havelock North Drinking Water Inquiry; and

- provision for both exemptions to be subject to terms and conditions and a maximum 5-year limit after which renewal is required.

### *Drinking water emergencies*

The Bill contains powers enabling Taumata Arowai to declare and manage drinking water emergencies such as major infrastructure damage, contamination events, or droughts. Taumata Arowai must consult its responsible Minister before declaring a drinking water emergency.

### **Te Mana o te Wai**

The Bill requires all persons who perform or exercise functions, powers, and duties under the legislation to give effect to Te Mana o te Wai. This parallels requirements imposed on local authorities under the National Policy Statement for Freshwater Management, and on Taumata Arowai under the Taumata Arowai—the Water Services Regulator Bill.

As part of its governance arrangements, Taumata Arowai will have a Māori Advisory Group that is charged with advising on Māori interests and knowledge as they relate to the objectives, functions, and principles of Taumata Arowai. This includes—

- developing and maintaining a framework that provides advice and guidance on how to interpret and give effect to Te Mana o te Wai:
- providing advice on how to enable mātauranga Māori, tikanga Māori, and kai-tiakitanga to be exercised.

### **Authorisations, occupational regulation, and laboratory accreditation**

The Bill contains a framework to enable authorisations and occupational regulation of drinking water suppliers. This area is new in legislation and is designed to improve the professional capability of drinking water suppliers. The Water Services Bill contains detailed regulation-making powers supporting the authorisations framework so that—

- some organisations will need to be authorised to operate a drinking water supply under competency requirements, such as having systems and processes or employees that meet professional skill or qualification requirements. All territorial authorities and council-controlled organisations will be required to become authorised, or have their drinking water services delivered by an authorised supplier, within 5 years of the commencement of the Bill:
- some individuals who operate drinking water supplies, who test, assess, or certify supplies, or who sample drinking water will be required to meet minimum skills, qualification, or experience requirements.

The Bill also includes an accreditation regime for laboratories that test source water, raw water, and drinking water.

## **Reporting, compliance and enforcement**

The Bill contains a broad toolkit for compliance and enforcement. Along with powers adopted from the existing regime in Part 2A of the Health Act 1956, additional powers have been developed to ensure that there can be a graduated response to non-compliance. These powers are vested in the chief executive of Taumata Arowai and its compliance officers to ensure that they are exercised independently, and include:

- powers for compliance officers to direct suppliers, with the chief executive able to issue compliance orders where non-compliance is persistent or serious:
- search and information-gathering powers for compliance officers to obtain documents, test water samples, deal with serious risks to public health, enter premises without a search warrant to inspect drinking water infrastructure if an officer reasonably believes there is a serious risk to public health, and obtain a search warrant to investigate non-compliance:
- new powers that enable the chief executive to enter into an enforceable undertaking with a drinking water supplier as an alternative to issuing a compliance order or seeking prosecution:
- new statutory intervention powers that enable the chief executive to appoint an operator of a drinking water supply in cases of serious or persistent non-compliance:
- new infringement offences that are available for minor non-compliance:
- reformed offences to better direct the provisions at behaviours that need to be regulated. These include significant new offences where a supplier exposes consumers to a serious risk of death, illness, or injury through negligent or reckless conduct. Alongside this, the penalty levels have been increased so they are commensurate with comparable regimes:
- additional sentencing options for the court, including tailored sentencing criteria and supervision and training orders.

The Bill requires Taumata Arowai to publish a compliance, monitoring, and enforcement strategy so it can take a graduated approach to regulation, reflecting the time it will take for suppliers to reach full compliance. The strategy will provide transparency about how Taumata Arowai intends to target its compliance, monitoring, and enforcement activities and support drinking water suppliers of different types, sizes, and abilities. The strategy must be reviewed at least every 3 years.

### *Consumer complaints*

The Bill contains a consumer complaints framework. This is designed to ensure that consumer concerns about drinking water are properly investigated by suppliers, with action taken where necessary.

If a consumer is not satisfied that their complaint has been properly dealt with, they will be able to seek review of a decision by Taumata Arowai. The detail of the consumer complaints framework will be set out in regulations.

#### *Defence and liability arrangements*

The Bill contains strict liability offences (criminal offences where there is no requirement to prove that a person intended to commit the offence). For these offences, there is a defence available where a defendant proves that the commission of the offence was due to the act or omission of another person, an accident, or some other cause outside the defendant's control, and the defendant took all reasonable precautions and exercised due diligence to avoid the commission of the offence.

Provisions clarify that body corporates or unincorporated bodies are liable for actions of officers, employees, or agents. There are also the following exemptions from criminal liability:

- officers, employees, and agents of drinking water suppliers are liable for failing to meet the duty of due diligence imposed on them, but are otherwise not liable for offences relating to drinking water suppliers:
- volunteers are not liable for negligence in the supply of unsafe drinking water or negligence in failure to take immediate action when drinking water is unsafe, for failure to provide a sufficient quantity of drinking water, for failure to advise consumers about, provide and report on complaint processes, or for failure to comply with the duty of due diligence:
- elected local body office holders and boards of trustees are not liable for offences under the Bill.

#### **Wastewater and stormwater**

The Bill contains new national-level reporting, monitoring, and advisory functions for wastewater and stormwater, empowering Taumata Arowai to—

- compile information about wastewater and stormwater networks in a national public database:
- set environmental performance measures, which wastewater and stormwater operators will have to report against annually:
- publish an annual report on the environmental performance of wastewater and stormwater networks and their compliance with applicable regulatory requirements (such as resource consents):
- identify and promote national good practice for the design and management of wastewater and stormwater networks.

## **Relationship to the Local Government Act 2002**

The Bill contains new responsibilities for territorial authorities to ensure that their communities continue to have access to drinking water, understand the risks to ongoing access, and plan to ensure that services continue to be available. The Bill also places new responsibilities on territorial authorities when supplies fail or are at risk of failing. These provisions recognise the role that territorial authorities play in providing drinking water to their communities, and are contained in an amendment to the Local Government Act 2002 that will—

- require territorial authorities to assess the access every 3 years that communities in their district have to drinking water services, and consider its implications for local government planning requirements:
- require territorial authorities to work with a supplier, consumers of a supply, and Taumata Arowai to find a solution if drinking water services fail, or are at risk of failing, and ensure that consumers continue to have access to drinking water services—whether provided by the territorial authority itself, or by another supplier.

## **Transitional arrangements**

Transitional arrangements in the Bill are that—

- all supplies registered under the existing drinking water register will be transferred to the new drinking water register. Suppliers will have 12 months following commencement to register if they own an unregistered supply, or to supply details to comply with new registration requirements:
- drinking water safety plans approved under the Health Act 1956 will continue in force. Drinking water supplies serving 500 or more consumers for at least 60 days per year will have 12 months following commencement to have a drinking water safety plan that complies with new requirements, and all other supplies will have 5 years following commencement:
- all territorial authorities will be required to become authorised, or have their drinking water services delivered by an authorised supplier, within 5 years of commencement:
- the first compliance monitoring and enforcement strategy must be made within 12 months of commencement.

The Government does not intend provisions relating to wastewater and stormwater to commence until 2 years following Royal assent, to allow Taumata Arowai to prioritise drinking water regulation. This Bill is an omnibus bill that will revoke Part 2A of the Health Act 1956 and replace it with a stand-alone Act to regulate drinking water. There are also amendments to the Local Government Act 2002 and amendments to other Acts, including a discrete amendment to the Resource Management Act 1991.

The Bill is introduced under Standing Order 263(a) because the amendments deal with an interrelated topic that can be regarded as implementing a single broad policy. That single broad policy is to implement the Government's decision to comprehensively reform the drinking water regulatory system, with targeted reforms to improve the regulation and performance of wastewater and stormwater networks.

## Part Two: Background Material and Policy Information

### Published reviews or evaluations

<b>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?</b>	<b>YES</b>
The Government's inquiry into Havelock North Drinking Water Inquiry (Stage 1 <sup>1</sup> and Stage 2 <sup>2</sup> ) reports informed and supported the reform of the delivery of water services in New Zealand.	

### Relevant international treaties

<b>2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?</b>	<b>NO</b>
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### Regulatory impact analysis

<b>2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?</b>	<b>YES</b>
"Regulatory Impact Assessment: Strengthening the regulation of drinking water, wastewater, and stormwater", Department of Internal Affairs, 1 July 2019. <sup>3</sup>	
"Regulatory Impact Assessment: Decision on the organisational form of a new drinking water regulator", Department of Internal Affairs, 30 September 2019. <sup>4</sup>	

<b>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?</b>	<b>YES</b>
The Treasury RIA Panel, along with representatives from the Department of Internal Affairs, Ministry of Health and Ministry for the Environment reviewed the RIA. They considered it in accordance with the quality assurance criteria.	

<b>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?</b>	<b>NO</b>
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### Extent of impact analysis available

<b>2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?</b>	<b>YES</b>
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<sup>1</sup> Report of the Havelock North Drinking Water Inquiry: Stage 1, 10 May 2017 - <https://www.dia.govt.nz/Stage-1-of-the-Water-Inquiry>

<sup>2</sup> Report of the Havelock North Drinking Water Inquiry: Stage 2, 6 December 2017 – <https://www.dia.govt.nz/Government-Inquiry-into-Havelock-North-Drinking-Water>

<sup>3</sup> [https://www.dia.govt.nz/diawebsite.nsf/Files/Three-waters-documents/\\$file/Cabinet-Paper-and-minute-Strengthening-regulation.pdf](https://www.dia.govt.nz/diawebsite.nsf/Files/Three-waters-documents/$file/Cabinet-Paper-and-minute-Strengthening-regulation.pdf)

<sup>4</sup> [https://www.dia.govt.nz/diawebsite.nsf/Files/Proactive-releases-Three-Waters-October-2019/\\$file/Regulatory-Impact-Assessment-decision-on-the-organisational-form-of-a-new-drinking-water-regulator.pdf](https://www.dia.govt.nz/diawebsite.nsf/Files/Proactive-releases-Three-Waters-October-2019/$file/Regulatory-Impact-Assessment-decision-on-the-organisational-form-of-a-new-drinking-water-regulator.pdf)

“Cost Estimates for Upgrading Water Treatment Plants to Meet Potential Changes to the New Zealand Drinking Water Standards”, Beca, 15 March 2018.<sup>5</sup>

“Additional Analysis on Drinking Water Costs for Compliance”, Beca, 11 November 2019.<sup>6</sup>

<b>2.5. For the policy to be given effect by this Bill, is there analysis available on:</b>	
<b>(a) the size of the potential costs and benefits?</b>	<b>YES</b>
<b>(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?</b>	<b>NO</b>
<p>In addition to the regulatory impact statements and reports referenced in 2.3 and 2.4, the following provided further analysis to inform the Bill:</p> <p>“A New Drinking Water regulator: A business case for investment in a new drinking water regulator”, MartinJenkins, August 2019.<sup>7</sup></p>	

<b>2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:</b>	
<b>(a) the level of effective compliance or non-compliance with applicable obligations or standards?</b>	<b>YES</b>
<b>(b) the nature and level of regulator effort put into encouraging or securing compliance?</b>	<b>YES</b>
<p>Analysis on the impacts of the costs and benefits is contained in the regulatory impact assessments and business case referred to in 2.3 and 2.4.</p>	

<sup>5</sup> [https://www.dia.govt.nz/diawebsite.nsf/Files/Three-Waters-Review-Cabinet-papers-April-2018/\\$file/Beca-report-Cost-Estimates-for-Upgrading-Water-Treatment-Plants.pdf](https://www.dia.govt.nz/diawebsite.nsf/Files/Three-Waters-Review-Cabinet-papers-April-2018/$file/Beca-report-Cost-Estimates-for-Upgrading-Water-Treatment-Plants.pdf)

<sup>6</sup> [https://www.dia.govt.nz/diawebsite.nsf/Files/Three-waters-documents/\\$file/Additional-Analysis-on-Three-Waters-Drinking-Water-Work.pdf](https://www.dia.govt.nz/diawebsite.nsf/Files/Three-waters-documents/$file/Additional-Analysis-on-Three-Waters-Drinking-Water-Work.pdf)

<sup>7</sup> [https://www.dia.govt.nz/diawebsite.nsf/Files/Proactive-releases-Three-Waters-October-2019/\\$file/Business-case-for-new-drinking-water-regulator.pdf](https://www.dia.govt.nz/diawebsite.nsf/Files/Proactive-releases-Three-Waters-October-2019/$file/Business-case-for-new-drinking-water-regulator.pdf)

## 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?**

The Bill complies with the principles of the Treaty of Waitangi. The Department has used the Te Tiriti o Waitangi guidance (Cabinet Office Circular (19)5) to test whether the Bill complies with Te Tiriti o Waitangi and considers that there are no inconsistencies.

Provisions have been included in the Bill to ensure that persons who perform a function, duty or power under the Bill must give effect to Te Mana o te Wai, to the extent that it applies.

As part of its governance arrangements, Taumata Arowai will have a Māori Advisory Group that is charged with advising on Māori interests and knowledge as they relate to the objectives, functions and principles of Taumata Arowai. This will include providing advice on how to enable mātauranga Māori, tikanga Māori, and kaitiakitanga to be exercised in the context of the regulatory arrangements in the Water Services Bill.

The Department engaged with iwi and Māori representative entities on an iterative basis throughout the policy development process to understand the nature of Māori interests, the impact of the proposed Bill on Māori, and how those interests could be reflected in the legislation. There was engagement on the Bill with Kāhui Wai Māori (an advisory group established to give advice on Action for Healthy Waterways and reform of the National Policy Statement for Freshwater Management).

There was also regular engagement with Te Arawhiti and Te Puni Kōkiri, including consultation on the policy papers that informed the development of the Bill.

### 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 Water Services Bill is consistent with the New Zealand Bill of Rights Act 1990. Advice provided to the Attorney-General by the Ministry of Justice is generally expected to be available on the Ministry of Justice’s website at introduction of a bill, and can be accessed at <https://www.justice.govt.nz/justice-sector-policy/constitutional-issues-and-human-rights/>

### 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)?**

**YES**

The Water Services Bill contains a broad toolkit for compliance and enforcement. Along with

powers carried over from the existing regime, new powers have been developed to ensure that a graduated response can be taken to non-compliance. The following powers are vested in the chief executive of Taumata Arowai and its compliance officers to ensure they are exercised independently:

- a) compliance officers have powers to direct suppliers, with the chief executive able to issue compliance orders where non-compliance is persistent or serious;
- b) powers enable the chief executive to enter into an enforceable undertaking with a drinking water supplier as an alternative to issuing a compliance order or seeking prosecution;
- c) infringement offences are available for minor non-compliance;
- d) offences have been reformed to better direct the provisions at behaviours that need to be regulated. This includes significant offences where a supplier exposes consumers to a serious risk of death, illness, or injury through negligent or reckless conduct. Offence provisions are set out at clauses 162 – 182 of the Bill. The levels of offences are commensurate with comparable regimes – the Health and Safety at Work Act 2015 and the Food Act 2014;
- e) there are sentencing options for the court, including tailored sentencing criteria and supervision and training orders.

The Bill requires Taumata Arowai to publish a compliance monitoring and enforcement strategy so it can take a graduated approach to regulation, reflecting the time it will take for suppliers to reach full compliance. The strategy will provide transparency about how Taumata Arowai intends to both target its activities and support drinking water suppliers of different types, sizes and abilities.

The Bill enables a right of internal review for decisions by Taumata Arowai or a compliance officer. Appeals to the District Court may be made from internal review decisions. Because of their significance, compliance orders and cost recovery decisions in a drinking water emergency are directly appealable to the District Court without internal review. District Court decisions are appealable to the High Court on a question of law only, with appeals to the Court of Appeal or Supreme Court by leave of the court appealed to.

Clause 138 empowers Taumata Arowai to seek an order from the High Court to enforce compliance with information required by Taumata Arowai for the purposes of monitoring and reporting on the environment performance of wastewater and stormwater networks and network operators. The High Court also has power to impose a civil pecuniary penalty.

<b>3.4.1. Was the Ministry of Justice consulted about these provisions?</b>	<b>YES</b>
<p>The Ministry of Justice supported the development of the relevant offence, penalty, and court jurisdiction provisions.</p> <p>The provisions are consistent with legal principles relating to offences, penalties, the jurisdiction of courts and tribunals, and rights to judicial review and appeal.</p>	

## Privacy issues

<b>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?</b>	<b>YES</b>
<p>The Bill creates the following provisions in relation to the collection and storage of personal information:</p> <ul style="list-style-type: none"> <li>• clause 5 enables a register of drinking water supplies to be kept. Each registration</li> </ul>	

<p>application must include a range of information including the name, location and contact details of the drinking water supplier. Each owner of a drinking water supply will be obliged to update their details annually, when renewing their registration.</p> <ul style="list-style-type: none"> <li>• clauses 67 – 71 contain an authorisations regime and, amongst other things, allow regulations to be made for the occupational regulation of drinking water and wastewater operators. This is likely to include the collection and storage of personal information.</li> <li>• clause 194 enables Taumata Arowai and regulatory agencies to share information together. The clause states that nothing in the provision limits the Privacy Act 1993.</li> </ul>
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<b>3.5.1. Was the Privacy Commissioner consulted about these provisions?</b>	<b>YES</b>
<p>The Office of the Privacy Commissioner was consulted to ensure the provisions of the Bill are consistent with the Privacy Act.</p> <p>Regulations made under clause 72 (occupational regulation) would be subject to further consultation with the Privacy Commission.</p>	

### External consultation

<b>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?</b>	<b>YES</b>
<p>Targeted engagement on the policy to be given effect by this Bill was undertaken with stakeholders and representatives from local government, the water industry and the health, environmental, and rural sectors. There has also been ongoing targeted engagement on the policy proposals informed by the Bill with iwi, Māori, and national groups that represent Māori interests.</p> <p>Draft versions of the Bill were consulted on with the following groups:</p> <ul style="list-style-type: none"> <li>• a technical advisory panel comprising a cross-section of leading industry professionals and drinking water suppliers;</li> <li>• Local Government New Zealand reference groups comprising regional council and territorial authority representatives; and</li> <li>• Kāhui Wai Māori – an advisory group established by the Ministry for the Environment to give advice on Action for Healthy Waterways and reform of the National Policy Statement for Freshwater Management.</li> </ul>	

### Other testing of proposals

<b>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?</b>	<b>YES</b>
<p>In preparation for administration of drinking water legislation, an establishment unit has been created for Taumata Arowai with specialised technical experience. The department has had significant engagement with the establishment unit (including its chief executive) to ensure the Bill is workable and fit for purpose.</p>	

## 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?	YES
<p>The Bill allows Taumata Arowai to declare a drinking water emergency if it believes, on reasonable grounds, there is a serious risk to public health. Drinking water emergencies are subject to safeguards, including requirements that Taumata Arowai must consult its responsible Minister before declaring a drinking water emergency, and notify the public the nature and extent of the emergency.</p> <p>During a drinking water emergency Taumata Arowai may (amongst other things):</p> <ul style="list-style-type: none"><li>• take immediate action, or direct any person to take immediate action, that Taumata Arowai believes, on reasonable grounds, will prevent, reduce or eliminate the serious risk to public health;</li><li>• do emergency work or direct a territorial authority to do emergency work;</li><li>• requisition any property in order to prevent, reduce or eliminate the serious risk to public health;</li><li>• destroy any property or any other thing in order to prevent, reduce or eliminate the serious risk to public health.</li></ul> <p>The Bill provides that reasonable compensation is payable for any loss or destruction of property if Taumata Arowai (or any person acting on its direction) requisitions property for use in a drinking water emergency, or destroys any property to prevent, remedy or eliminate the serious risk to public health. The award and quantum of such compensation is appealable to the District Court.</p> <p>These arrangements carry over equivalent provisions in Part 2A of the Health Act 1956.</p>	

### 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?	YES
<p>The Bill allows Taumata Arowai to charge levies for the purpose of recovering any or all of its costs. It also provides for Taumata Arowai to charge registration fees, exemption fees, reviewable decision fees, and compliance order fees in addition to general fees charged per class of supplier. Taumata Arowai can recover any fee or levy as a debt due to it.</p> <p>Clause 190-91 provides for the details of fees and levies prescribed throughout the Bill, including the amount, to be set through regulations.</p>	

### Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	NO
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## Strict liability or reversal of the usual burden of proof for offences

<b>4.4. Does this Bill:</b>	
<b>(a) create or amend a strict or absolute liability offence?</b>	<b>YES</b>
<b>(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?</b>	<b>YES</b>
<p>The Bill creates a range of strict liability offences (as detailed in clauses 162 to 182). For these offences there is a defence (clause 156) enabling a defendant to prove the offence was due to the act or omission of another person, an accident or some other cause outside the defendant's control, and the supplier took all reasonable precautions and exercised due diligence to avoid the commission of the offence.</p>	

## Civil or criminal immunity

<b>4.5. Does this Bill create or amend a civil or criminal immunity for any person?</b>	<b>YES</b>
<p>Clause 117 provides protections for compliance officers (and those who assist a compliance officer), the chief executive, and Taumata Arowai for any act that is done, or they omit to do, in good faith and with reasonable cause. This is necessary to protect those with core roles and functions within the Bill from civil and criminal liability.</p> <p>Body corporates or unincorporated bodies are liable for actions of officers, employees or agents, to ensure that an organisation cannot avoid blame by pointing to the actions of a person in the organisation (clauses 157 and 158). These provisions carry over arrangements in the Health Act 1956 with improvements.</p> <p>There are a number of exemptions from criminal liability</p> <ul style="list-style-type: none"> <li>a) officers, employees, and agents of drinking water suppliers are liable for failing to meet the duty of due diligence imposed on them, but are otherwise not liable for offences relating to drinking water suppliers (clause 159);</li> <li>b) volunteers are not liable for negligence in supply of unsafe drinking water (163) or negligence in failure to take immediate action when drinking water is unsafe (165), failure to provide sufficient quantity of drinking water (167), failure to advise consumers about, provide and report on complaint process (178), and failing to comply with duty of due diligence(182) ;</li> <li>c) elected local body office holders and boards of trustees are not liable for offences under the Bill (clause 161).</li> </ul>	

## Significant decision-making powers

<b>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?</b>	<b>NO</b>
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## Powers to make delegated legislation

<b>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?</b>	<b>NO</b>
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<b>4.8. Does this Bill create or amend any other powers to make delegated legislation?</b>	<b>YES</b>
<p>The Bill contains powers to make regulations relating to the following matters:</p> <ul style="list-style-type: none"> <li>a) to extend a drinking water emergency, or exemptions from Part 3 of the Resource Management Act 1991 made as part of a drinking water emergency (clause 65);</li> <li>b) for authorisations and occupational regulation of drinking water suppliers (clause 72);</li> <li>c) for consumer complaints about drinking water (clause 190);</li> <li>d) prescribing the detail of identity cards for compliance officers (clause 190);</li> <li>e) prescribing fees, charges, and levies for the purposes of the Bill or regulations (clauses 190 and 191);</li> <li>f) for infringement offences (clause 190); and</li> <li>g) for any other matters necessary for the purposes of the Act (clause 190).</li> </ul> <p>The timing of regulations will need to be staged over the first five years following commencement of the Bill.</p> <p>The Bill also contains the following disallowable instruments:</p> <ul style="list-style-type: none"> <li>a) drinking water standards that relate to drinking water composition and treatment outcomes, and will be made by the Governor-General by Order in Council (clause 47);</li> <li>b) compliance rules will be made by Taumata Arowai, setting the detail about how suppliers and local authorities should comply with duties in Part 2 of the Bill relating to drinking water supplies (clause 49);</li> <li>c) Taumata Arowai will have power to make “safe harbour” acceptable solutions and verification methods for drinking water (clauses 5051);</li> <li>d) Taumata Arowai will also make aesthetic values for drinking water (clause 48) and suppliers will need to take reasonably practicable steps to meet these values.</li> </ul>	

**Any other unusual provisions or features**

<b>4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?</b>	<b>YES</b>
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The Bill contains two exemption powers. Both powers are vested with the chief executive of Taumata Arowai to ensure they are exercised independently.

Clause 57 contains a general exemption allowing the chief executive of Taumata Arowai to exempt a supply or class of supply from many of the key regulatory requirements in the Bill.

There are safeguards built into the general exemption power:

- a) exempted supplies must still be registered, to ensure that a public record of all drinking water supplies is maintained by Taumata Arowai;
- b) a general exemption can be issued for a maximum 5 year limit, after which renewal is required;
- c) a general exemption may only be granted if it is consistent with the main purpose of the Bill (which is to ensure that drinking water suppliers provide safe drinking water to consumers), and may be subject to conditions;
- d) if a general exemption is granted to a class or group of supplies, it must be presented to the House of Representatives and is subject to disallowance.

Clause 58 contains a residual disinfection exemption, allowing the chief executive of Taumata Arowai to exempt a supply from the requirement to treat a reticulated supply with residual disinfection (such as chlorination). This will allow a supplier to adopt arrangements or use treatment methods other than chlorination to make drinking water safe. There are safeguards built into this exemption power:

- a) to obtain an exemption, a supplier must, if required by the Chief Executive, demonstrate to the satisfaction of the chief executive that the drinking water supply will comply with all legislative requirements (including that drinking water is safe and complies with drinking water standards) and the relevant drinking water safety plan. This is in line with recommendations made by the Havelock North Inquiry;
- b) an exemption can be subject to terms and conditions, and can be issued for a maximum 5 year limit after which renewal is required;
- c) an exemption may only relate to a particular supply – class or group exemptions are not available.