

Departmental Disclosure Statement

Water Services Legislation 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.

5 December 2022

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Part One: General Policy Statement

This Bill is the second Bill in a suite of legislation to reform water services delivery in New Zealand. It is an omnibus Bill that amends more than 1 Act and is 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, including—

- 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:
- changes to Treaty settlement legislation that are required to ensure that settlement obligations are carried forward from territorial authorities to the new water services entities:
- 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.

Introduction

New Zealand faces a significant infrastructure challenge in relation to the drinking water, wastewater, and stormwater services that are currently delivered by territorial authorities. Water services are an essential building block for communities. Public health and well-being, better environmental outcomes, economic growth and job creation, housing and urban development, climate change, resilience to natural hazards, and the rights and interests of iwi and Māori all depend on better outcomes for those services. The investment needed over the next 30 to 40 years to maintain and upgrade New Zealand's water infrastructure to a standard required to address the infrastructure challenge is unaffordable for most communities under the current arrangements. This Bill paves the way for improved, effective, and efficient management of water services delivery and infrastructure, and regulation so that New Zealanders will have access to safe, reliable, and affordable water services.

Relationship to other legislation

This is the second Bill in a suite of legislation that will comprehensively reform delivery of water services in New Zealand.

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, the Water Services Legislation Bill, will amend the Water Services Entities Act 2022 together with other legislation to further implement the Government's decisions to comprehensively reform the service delivery and regulation of water services.

A third Bill, the Water Services Economic Efficiency and Consumer Protection 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:
- 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;
- 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:
- 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 office:
- 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:
- 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; and
- if a provision of the Act is inconsistent with a Treaty settlement obligation, the Treaty settlement obligation prevails.

This Bill provides 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.

Engagement is underway with iwi who have Treaty settlement arrangements that relate to water services. If changes 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 as a 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:
- 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.

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?	YES
<p><i>Economic analysis of water services aggregation – Final Report</i>, Water Industry Commission for Scotland, May 2021 (accessible at https://www.dia.govt.nz/diawebsite.nsf/Files/Three-waters-reform-programme/\$file/wics-final-report-economic-analysis-of-water-services-aggregation.pdf) informed and supported the reform of the delivery of water services in New Zealand.</p> <p>Farrierswier Consulting Ltd reviewed the methodology and underpinning assumptions applied by the Water Industry Commission of Scotland (WICS) and the extent to which this is reasonable to inform policy advice (accessible at https://www.dia.govt.nz/diawebsite.nsf/Files/Three-waters-reform-programme/\$file/farrierswier-three-waters-reform-programme-review-of-wics-methodology-and-assumptions-underpinning-economic-analysis-of-aggregation-released-june-2021.pdf)</p> <p>A number of technical working groups also contributed to the development of the policy and have published reports. Further details on these are set out in 3.6.</p>	

Relevant international treaties

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

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	YES
<p>Some of the policy decisions leading to the Bill were included in Cabinet papers to support the introduction of the <i>Water Services Entities Bill</i>. These Cabinet papers were supported by a substantial Regulatory Impact (RIA). Remaining policy decisions were included in two Cabinet papers in June 2022. The Cabinet papers were accompanied by an additional chapter: <i>Chapter 8 RIA Water Services Entities Implementation Arrangements</i> to the regulatory impact assessment for the first Bill.</p> <p>The full regulatory impact assessment, including chapter 8 – <i>Regulatory Impact Assessment: Decisions on the reform of three waters service delivery arrangements</i>, Department of Internal Affairs, is accessible at: https://www.dia.govt.nz/diawebsite.nsf/Files/three-waters-reform-programme-2021/\$file/regulatory-impact-assessment-decision-on-the-reform-of-three-waters-service-delivery-arrangement.pdf</p>	

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?	YES
<p>A joint Quality Assurance panel with representatives from the Department of Internal Affairs, the Ministry of Business, Innovation and Employment and the Regulatory Analysis Team at the Treasury evaluated the RIA and considered the regulatory impact statement prepared in 2021 and considered that it meets the Quality Assurance criteria. The additional chapter of the RIS prepared in 2022 was reviewed by the Department of Internal Affairs internal quality assurance panel.</p>	

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?	YES
<p>The detailed policy behind Part 10 Water services network connections was developed with the authorisation of relevant Ministers after the Chapter 8 regulatory impact analysis was finalised. It seeks to ensure the water services entities have the appropriate levels of control over connections to and disconnection from their networks and the vesting of infrastructure in their networks, while ensuring appropriate links with local authority processes under the Resource Management Act 1991. This is consistent with the issues, objectives, and options explored in Part D (1) of <i>Chapter 8 RIA</i>, and the recommended option that the water services entities are provided with statutory instruments for managing three waters.</p>	

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
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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?	YES
(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?	NO
<p>Potential costs and benefits of establishing new water services entities are set out in the final report of WICS. This report was peer reviewed by Farrierswier Consulting Ltd in its report <i>Three Waters Reform: Review of methodology and assumptions underpinning economic analysis of aggregation</i> (https://www.dia.govt.nz/diawebsite.nsf/Files/Three-waters-reform-programme/\$file/farrierswier-three-waters-reform-programme-review-of-wics-methodology-and-assumptions-underpinning-economic-analysis-of-aggregation-released-june-2021.pdf)</p> <p>The key findings, as set out in its <i>Executive summary</i>, are:</p> <ul style="list-style-type: none"> • the order of magnitude of benefits estimated by WICS appears feasible; • the economic regulatory framework assumed by WICS appears appropriate; and • it is highly unlikely that amalgamation and associated reforms lead to a reduction in efficiency or otherwise some form of economic loss. <p>Deloitte undertook a comprehensive study of the economic impacts of reform and the potential opportunity and challenges for affected industries (https://www.dia.govt.nz/diawebsite.nsf/Files/Three-waters-reform-programme/\$file/deloitte-report-industry-development-study-&-economic-impact-assessment.pdf)</p>	

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?	YES
<p>These matters were considered in the additional regulatory impact assessment chapter: Chapter 8 RIA Water Services Entities Implementation Arrangements. The Bill enables the water services entities to establish rules for matters including trade waste management, stormwater, water restrictions and consumer behaviour. There are appropriate enforcement mechanisms to accompany these provisions. The Bill requires the water services entities to appoint a Director of Compliance and Enforcement, who must not hold the position as the chief executive of the water services entity. The functions, powers and duties are set out in Part 12 of the Bill.</p> <p>The Bill requires water services entities to issue a compliance and enforcement strategy, which must be reviewed every three years. When issuing or reviewing the strategy, the board must seek to ensure that the strategy is consistent with the compliance and enforcement strategies of other water services entities, and if the strategy is inconsistent in any material respect, indicate the reasons for the inconsistency. The water services entities' boards must engage with territorial authority owners, regional councils, mana whenua in the water services entity's service area, Taumata Arowai, the water services entity's consumer forum, and other water services entities before publishing the final strategy on an internet site maintained by, or on behalf of, the water services entity.</p> <p>The Director of Compliance and Enforcement may service a compliance order on any person to stop or prohibit a person from starting anything done or to be done that contravenes or is likely to contravene a compliance requirement or will or may create a serious risk relating to water services.</p> <p>The Bill references the compliance regime set out in the Water Services Act 2021, which is regulated by Taumata Arowai, the water services regulator. The Bill, alongside the Water Services Act 2021, sets out the respective compliance and enforcement strategies and give transparency to the approach to achieve compliance. Compliance will also be achieved through the Government policy statement on water services, which will provide for national consistency across the four entities set out in the <i>Water Services Entities Act 2022</i>. Part 5, Subpart 2 of the <i>Water Services Entities Act 2022</i> enables the Minister to appoint a Ministerial body (Crown review team, Crown observer or Crown manager) to address identified problems that have an actual or probable adverse consequence for consumers or communities. This is in addition to Part 5, Subpart 1 of the <i>Water Services Entities Act 2022</i> to appoint a department as a Monitor to assist the Minister in carrying out their role.</p> <p>The water services entities will be subject to the Water Services Act 2021, which provides for drinking water standards and other mechanisms to ensure that drinking water suppliers provide safe drinking water to consumers.</p> <p>The <i>Water Services Economic Efficiency and Consumer Protection Bill</i> led by the Minister of Commerce and Consumer Affairs, will provide for a new economic regulation and consumer protection framework for the three waters system, with the Commerce Commission as the regulator. Water services entities will be subject to this economic regulation,</p>	

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?

Whilst no relevant international obligations have been identified, New Zealand has obligations to treat overseas investors in a manner that is fair and equitable. This includes an obligation not to act in a manner that would violate investors' reasonable expectations (including those based on contractual undertakings). If it is found that the Bill creates inconsistencies with our international obligations, the Ministry for Foreign Affairs and Trade would be consulted to identify any possible risks or means of mitigation.

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 Water Services Legislation Bill complies with the principles of Te Tiriti o Waitangi/the Treaty of Waitangi.

The Department used Te Tiriti o Waitangi / Treaty of Waitangi guidance (Cabinet Office Circular (19) 5) to test whether the Water Services Entities complies with te Tiriti o Waitangi/the Treaty of Waitangi and considered that there are no inconsistencies.

The Department engaged with iwi and Māori about the impact of the legislation on iwi and Māori, and how those interests could be reflected in the legislation.

There was also engagement with Te Arawhiti and Te Puni Kōkiri, including consultation on the policy papers that informed the development of the Water Services Legislation 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 Legislation 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/bill-of-rights-compliance-reports/advice/>

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 Bill provides for offences and penalties to support the enforcement requirements. The offences and penalties will enable the water services entities to discharge their duties, and effectively manage

three waters infrastructure and services. The Bill includes criminal liability for strict liability offences, and for providing false or misleading information, punishable with fines or imprisonment or both. The Bill's offence and penalty structures draws from similar legislation in equivalent areas, including the Hazardous Substances and New Organisms Act 1996 and the Building Act 2004 Part 12. Subpart 4 sets out offences considered for inclusion in the infringements' regime under the primary legislation. The Bill also includes enabling provisions to set infringement offences and penalties in regulations (Part 12, subpart 5).

The Bill allows for criminal proceedings and enables private prosecutions under Part 12, subpart 6.

The principles applied in designing enforcement tools are to disincentivise non-compliance with the standards and misleading behaviour by individuals, bodies corporate or unincorporated bodies; provide a proportionate response to the nature of the offending; and encourage effective engagement and participation in three waters.

The Bill provides for a person affected by a decision to apply to the chief executive of the water services entities for an internal review. The Bill also enables a person affected by a decision to appeal to the District Court, High Court and then to the Court of Appeal or Supreme Court. Appeals to the Court of Appeal or Supreme Court may be made only on questions of law arising from appeals.

The appeal to the District Court can be made in whole or part against a compliance order issued under Part 12, subpart 5 or subpart 11 (where the water services entity completed an internal review).

3.4.1. Was the Ministry of Justice consulted about these provisions?

YES

The Ministry of Justice was consulted on the offences and penalties, and their feedback was considered and adopted as considered necessary and appropriate.

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

There are provisions relating to access to, or disclosure of, personal information under Part 11 of the Bill.

In Part 12, subpart 3, there are a number of compliance powers that, subject to specified safeguards, allow the water services entities to collect information from a person. Provisions have been included to clarify the purpose and use of information, and to clarify that the protections provided by the Privacy Act are preserved.

3.5.1. Was the Privacy Commissioner consulted about these provisions?

YES

The Office of the Privacy Commissioner was consulted to ensure the provisions of the Bill are consistent with the Privacy Act.

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>A number of local government specialists and iwi technicians were consulted on the draft Bill including Taituarā, Local Government New Zealand, the chair of the Freshwater Iwi Leaders Technical Group, and Ngāi Tahu.</p> <p>There was targeted sector engagement on the policy to be given effect by this Bill with stakeholders and representatives from local government including Local Government New Zealand and Taituarā. The Department also worked with the joint three waters central-local government steering committee. For issues relating to pricing and charging, there was targeted engagement with high growth territorial authorities and the Property Council.</p> <p>The Bill brings into effect the recommendations from the Stormwater Technical Working Group's report (June 2021): Stormwater Technical Working Group - Transition Plan Report - 25 August 2021 (dia.govt.nz) to move responsibility for stormwater to the water services entities.</p> <p>The Department provided its advice to the Minister in September 2022 on the Rural Supplies Technical Working Group recommendations (May 2022): https://www.dia.govt.nz/diawebsite.nsf/Files/Three-waters-reform-programme-2022/\$file/Rural-Supplies-Technical-Working-Group-Report-May-2022.pdf. Some recommendations are incorporated into the Bill.</p> <p>The Department's overall engagement with iwi / Māori and the three waters reform is set out in https://www.dia.govt.nz/diawebsite.nsf/Files/three-waters-reform-programme-2021/\$file/cabinet-paper-three-and-minute-protecting-and-promoting-iwi-maori-rights-and-interests-30-june-2021-a.pdf</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?	YES
<p>The Legislation Design and Advisory Committee was consulted on aspects of the Bill. The Committee's feedback and recommendations were considered when drafting the Bill.</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 will consequentially amend the Public Works Act 1981 to include water services entities under the definition of local authority. The consequential amendment therefore confers the power for water services entities to acquire private land, obtain an easement over private land, or to lease private land to carry out work to water services for any public purpose.</p> <p>Part 6 of the Bill entitles a person whose property is damaged when water services entities carry out infrastructure work on private land to compensation. If the amount of compensation cannot be agreed, it will be determined in the manner provide for by the Public Works Act.</p> <p>Water services infrastructure is publicly-owned infrastructure that is owned by local authorities who deliver water services to their communities. The Bill will transfer ownership of this infrastructure to water services entities, which are new public bodies.</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 water services entities need legislative authority to charge for their services. The charge is compulsory and enforceable by law. The provisions are set out in Part 9 <i>Charging</i>.</p> <p>Part 9 sets out the framework for setting charges, and include provisions to manage specific issues, such as protecting vulnerable consumers and minimising price shocks to consumers through the initial transition period before the implementation of economic regulation. These options are:</p> <ul style="list-style-type: none">• rates rebate scheme;• sharing rating information;• geographic price averaging;• charging unconnected properties;• stormwater charging; and• growth charges. <p>Property owners will continue to be liable for the payment of water services bills, with owners of residential properties able to continue to pass through any consumption-based charges to tenants. As at 30 June 2022, about 45% of households connected to a territorial authority water service paid a volumetric charge for their drinking water.</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

4.4. Does this Bill:	
(a) create or amend a strict or absolute liability offence?	YES
(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?	YES
<p>The strict liability offences are set out in provisions within Subpart 4 of Part 9, Subpart 8 provides defences for strict liability offences.</p> <p>Offences that are strict liability have fines between \$20,000 and \$500,000 for individuals and between \$100,000 and \$3 million for any other case. Offences where a prison sentence may be imposed will be no longer than two years. The imprisonment terms apply to offences, for example, where the conduct is knowingly or recklessly undertaken relating to a water supply network that causes a serious risk to life, public health, or the natural or a built environment. This will provide the courts with the appropriate scope to consider a wide range of conduct and potential impacts on the three waters networks.</p>	

Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	NO
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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?	YES
<p>Under Part 6, the water services entities can access private land to install new works with consent of the owner, or a District Court decision. Water services entities can also access existing works on land following notification to the owner. Owners are able to set reasonable conditions, and District Court decisions can be appealed. There is also provision for compensation for injurious affection to land.</p> <p>Part 7 provides that water services entities can make controlled catchment management plans, which can require permits for certain activities. Decisions to issue permits are reviewable under Subpart 11 of Part 12.</p> <p>Part 8 provides for a panel to be able to make a determination about whether an alternative operator's business plan is viable for a small mixed-use rural water supply to be able to go to referendum to determine whether it should transfer from the water services entity to the alternative operator. This is a decision about viability and the ultimate transfer decision is made through a referendum of users of the supply. There is no explicit provision for a panel's determination to be appealed, though the determination could be challenged by way of judicial review</p> <p>Water services entities have a power to restrict someone's water supply if that person commits an offence or fails to meet certain obligations. This power is subject to certain constraints, including for example, a requirement for consistency with existing minimum levels of water supply or standards, including those specified in the Water Services Act 2021, under the Water Services Economic Efficiency and Consumer Protection Act 2022; and the Building Act 2004.</p> <p>Under Subpart 3, water services entities can make decisions about the issuing of trade waste permits. These must be subject to the entity's trade waste plan and decisions are reviewable.</p>	

Part 8 provides for water services entities to be able to make decisions about approving connections/ disconnections to/ from the entities' water network infrastructure and making structural changes to the infrastructure. Part 10 sets out a detailed approval process and the criteria for making these decisions. As part of this process water services entities will also have the power to register interests on a land title via a consent notice or a covenant – this can be used in limited circumstances and is based on powers that local authorities have in the Resource Management Act 1991 as part of the resource consent process. These powers are appropriate to be given to the water services entities in relation to connections/ disconnections and changes to their infrastructure. Part 10 also provides for a process where network infrastructure that has been built by other developers can be vested in the entities – this can only be done on the application of the owner.

Part 11 enables an entity to cancel contracts for the supply of water supply, wastewater or stormwater contracts to bodies corporate who pay for these services outside of the current ratings system. The number of bodies corporate affected is small.

Enforcement powers under Part 12 also fall in this category, as significant decisions can be made in relation to whether enforcement action is taken in relation to a person. Examples include decisions to use compliance powers (for example to direct a person to do or stop something in relation to ensure compliance, or where a response to a serious risk relating to water services is required); through decisions to enter land (via a warrant, or pursuant to a warrantless power) and to use coercive powers (such as powers to require information or take and test samples); or to prosecute someone for an offence. There are a number of safeguards in relation to the use of these powers, including the appointment of a Director of Compliance and Enforcement (Director) who is required exercise independent judgement when undertaking their duties under legislation, and a requirement for a board to issue a compliance and enforcement strategy which the Director must have regard to when undertaking those duties. Compliance powers must be used only for purposes set out in the Bill, and there are notification and consent requirements that constrain the use of warrantless powers. In addition, some offences note that written authorisations in relation to an activity may have been provided by the entity – where those authorisations have been granted, the effect is that a person is compliant where otherwise they would be in breach of a compliance requirement.

Internal reviews of certain enforcement decisions within the purview of the Director are reviewable under Subpart 11 of Part 12.

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
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4.8. Does this Bill create or amend any other powers to make delegated legislation?	YES
<p>Orders in Council will be required to transfer assets, liabilities, and other matters from local government organisations to the water services entities. These Orders in Council will need to commence on 1 July 2024 and will accord with the 28-day rule.</p> <p>The Bill also contains regulation-making powers in the following areas:</p> <ul style="list-style-type: none"> • model constitution; • disclosure requirements; • agreements with mana whenua; • transfer of specified agreements; • waivers and refunds; • infringement offences; • transitional and savings provision; • changing the name of a water services entity; • volumetric charging; • transitional arrangements relating to tariff or charging structures; • charging a penalty on unpaid water services debt; • charging principles; • powers to revoke spent water services bylaws; • transitional tariff or charging structures; and • transitional regulations. <p>The Bill also empowers the board of a water services entity to make secondary legislation in the following areas:</p> <ul style="list-style-type: none"> • designate controlled drinking water catchment areas and plans; • stormwater network rules; • trade waste plans; • water usage restrictions; • consumer behaviour rules; • specified classes of work in certain places rules; • water services infrastructure connection and disconnection requirements; and • reporting and record-keeping rules. <p>These instruments will be subject to the standard requirements in the Legislation Act 2019 relating to secondary legislation, including disallowance by the House on the recommendation of the Regulations Review Committee. They will also have a range of other safeguards to ensure water services entities exercise these powers appropriately, including consultation requirements with both territorial authorities and mana whenua who have authority in the area covered by the instruments. Additionally, the responsible Minister may appoint a department to be the monitor, whose responsibilities include acting as a steward to provide oversight of the water services system from a whole of government perspective, and it is possible this role could include system-wide stewardship of entities' use of secondary legislation powers.</p> <p>The Bill also provides for Taumata Arowai to set stormwater environmental performance standards under the Water Services Act 2021.</p>	

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?	YES
<p data-bbox="220 338 532 365"><i>Transitional arrangements</i></p> <p data-bbox="220 380 1417 506">This Bill contains transitional arrangements that will enable water services entities to commence operation on 1 July 2024. Schedule 1 of the Bill includes powers to transfer assets, liabilities, and other interests from 67 territorial authorities to 4 water services entities. The transitional arrangements also enable water services entities to manage charging matters.</p> <p data-bbox="220 520 764 548"><i>Property rights and the Public Works Act 1981</i></p> <p data-bbox="220 562 1417 653">The Bill enables water services entities to enter onto private land to undertake work on water services infrastructure. The provisions in the Bill follow the statutory requirements as set out in the Public Works Act 1981.</p> <p data-bbox="220 667 573 695"><i>Compliance and enforcement</i></p> <p data-bbox="220 709 1385 869">The Bill contains compliance and enforcement powers for water services entities. Compliance and enforcement powers are exercised by compliance officers, headed by an independent statutory officer who has overall responsibility for compliance and enforcement. Water services entities must have a compliance and enforcement strategy to provide transparency about how it exercises these powers.</p> <p data-bbox="220 884 1409 1043">The Bill includes entry, search and seizure powers that are based on comparable existing statutory models (in Part 12, subpart 3). Compliance powers, including powers for compliance officers to issue directions and compliance orders, can only be used for purposes specified in the Bill. Warrantless entry to types of Māori land (such as marae) can only occur by consent. Certain provision from Part 4 of the Search and Surveillance Act 2012 apply to a number of compliance clauses.</p> <p data-bbox="220 1058 1398 1115">The Bill also contains provisions to investigate offences and bring proceedings relating and offences committed under the Bill (Part 12).</p>	