

Departmental Disclosure Statement

Water Services Entities Amendment 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.

7 June 2023

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Part One: General Policy Statement

This Bill is part of a suite of legislation to reform water services regulation and service delivery in New Zealand.

This Bill is an omnibus Bill that amends more than one 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 is to provide for, and adjust, the establishment, governance, functions, and accountability arrangements for 10 publicly-owned water services entities that will deliver water services in New Zealand in place of local authorities, including transitional arrangements (such as local authority responsibilities for planning, reporting and rating) during an establishment period.

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 is part of a suite of legislation that paves the way for improved, effective, and efficient water services delivery, infrastructure, and regulation so that New Zealanders will have access to safe, reliable and affordable water services.

Key features of legislation

This Bill amends the Water Services Entities Act 2022 to reflect the Government's decisions to refocus water services reforms. The key features of the new approach are:

- representation of all territorial authority owners on the regional representative group of the entity they own;
- a model that involves 10 water services entities, which are more closely based around existing regions;
- a longer window for establishment of water services entities, between 1 July 2024 and 1 July 2026;
- a new mechanism called community priority statements, that give community groups who have an interest in a water body an opportunity to make statements to their entity about their priorities for that body.

As part of the decision to establish 10 water services entities and amend the establishment timeframes, the Bill proposes:

- a locally-led merger process set out in a new Schedule 2A of the Water Services Entities Act 2022, to enable water services entities to merge if their regional representative groups decide to;

- a Water Services Entities Funding Agency, together with arrangements for Crown financial support;
- shared services arrangements, which entities may enter into voluntarily, or by Ministerial direction in defined areas;
- transitional arrangements for local government and water service entities.

Representation of all territorial authority owners on regional representative group

A water services entity's regional representative group comprises the territorial authority owners and mana whenua representatives for the entity. The regional representative group appoints and removes the board of the entity, and sets its strategic direction and priorities, which the board must give effect to.

The Bill proposes that all territorial authority owners must be represented on the regional representative group of the entity they own.

Establishment of 10 water services entities

The Bill proposes establishment of 10 water services entities, and disestablishment of the 4 water services entities which were established on enactment of the Water Services Entities Act 2022.

The water services entities will commence delivery of water services in place of local authorities on a date set in an Order in Council between 1 July 2024 and 1 July 2026. The exception is the Northland and Auckland Water Services Entity, which the Bill proposes be fully established on 1 July 2024.

Each water services entity will be established for transitional purposes on the date on which the appointment of the entity's establishment board takes effect.

Under the Bill, the Chatham Islands Council will not form part of any water services entity. Unlike any other region, the Chatham Islands depends significantly on central government for infrastructure funding, and its residents face substantially higher utility and other household costs than other New Zealanders.

Community priority statements

The Bill proposes a new mechanism - community priority statements - that give community groups who have an interest in a water body an opportunity to make statements to their entity about their priorities for that body.

A community priority statement is made directly to a water services entity's regional representative group. The regional representative group may use the statement to set the strategic direction or objectives of the entity, or in its role in relation to planning and reporting arrangements.

A community priority statement must articulate a person's views about, or priorities for, how a water body in the entity's service area. A person making the statement must have:

- their ordinary place of residence, or registered office or main place of business, in the service area of a water services entity;

- an interest in how water services are provided in the service area, or how activities of the entity relate to the water body.

The chief executive of a water services entity must, as part of the entity's annual consumer stocktake, report on how the entity will respond to views and priorities articulated in community priority statements received by the entity.

Water Services Entities Funding Agency

The Bill proposes a Water Services Entities Funding Agency, which will operate on a similar basis to the Local Government Funding Agency by pooling risk and achieving scale and market access benefits relating to entity financing. This option is enabled through legislation, and is implemented when a Funding Agency is established as a subsidiary of one or more water services entities.

The Bill proposes that the Crown may lend money to the Funding Agency if the Minister of Finance considers it necessary or expedient to do so in the public interest. The Crown may also guarantee debts of the Funding Agency.

Shared services arrangements

The Bill enables shared services arrangements between water services entities, to provide a means to retain scale and efficiency gains under a 10-entity model. Shared services may be entered into voluntarily or by Ministerial direction in defined areas, which are:

- debt funding and management (for example, through the Water Services Entities Funding Agency);
- information and communication technology, and digital infrastructure procurement and management;
- other procurement, and supply chain management;
- risk management and insurance;
- workforce development and management.

A Ministerial direction may only be given for one or more of the following purposes:

- to improve (directly or indirectly) the provision of water services;
- to require entities to share services provided to those entities;
- to develop expertise and capability;
- to ensure business continuity;
- to manage risks to the water services entities' financial position, the Government's financial position, or both.

The Bill includes engagement requirements before a Ministerial direction is made.

Mergers

The Bill proposes a locally-led process to enable water services entities to merge if their regional representative groups decide to.

Key features of the merger process are:

- on receiving a merger request, a regional representative group engage with the boards and regional representative groups of every entity, and make a decision on whether its board should prepare a merger proposal;
- a merger proposal is prepared by the board of the entity, working collaboratively with the board and chief executive of any other entity identified in the merger. The proposal must also be provided to the Minister, monitor, Taumata Arowai, and the Commerce Commission;
- before making a decision on the merger proposal, a regional representative group must engage with interested persons in its service area;
- if all regional representative groups identified in a merger proposal decide to proceed with a merger, a merger implementation board is appointed to implement the merger. The boards of the entities must give effect to a merger implementation plan;
- an Order in Council must give effect to the merger, unless the Minister is satisfied on reasonable grounds that the process followed was not in accordance with the Act and the merger implementation plan.

Transitional arrangements

The Bill proposes to amend local government legislation to reflect that changes to the entity establishment date mean most local authorities will continue to have responsibilities for water service delivery beyond 1 July 2024, and into the first two years of their 2024-34 long-term planning and reporting cycle.

The Bill also proposes to amend the transitional arrangements in the Water Services Entities Act 2022 to ensure these arrangements align with the establishment of 10 water services entities between 1 July 2024 and 1 July 2026.

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>A large body of research, modelling and analysis has been published that supports the policies given effect to in this Bill.</p> <p>To support recent decisions on a number of issues provided for within the Water Services Amendment Bill, including changes to the number and boundaries of entities, provision for the establishment of a Water Services Funding Agency, and provisions relating to shared services, further modelling and analysis was undertaken by the Water Infrastructure Commission of Scotland, Aon New Zealand, and Mafic Partners.</p> <p>These reports are also available on the National Evidence Base webpage on the Department's website (accessible at https://www.dia.govt.nz/three-waters-reform-programme-national-evidence-base).</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 decisions included in the Water Services Entities Amendment Bill were made in a series of Cabinet papers (dated April and May).</p> <p>The policy decision to move to a 10-entity model from the previous four-entity model was supported by the regulatory impact statement: <i>Addendum to Decision on the reform of water services delivery arrangements</i>. This is publicly available on Parliamentary Counsel's website.</p> <p>The regulatory impact statement built on the previous comprehensive regulatory impact assessment: <i>Decisions on the reform of three waters service delivery arrangements (2021)</i>. https://www.dia.govt.nz/diawebsite.nsf/Files/three-waters-reform-programme2021/\$file/regulatory-impact-asseessment-decision-on-the-reform-of-three-waters-service-delivery-arrangement.pdf</p> <p>The RIA Panel considered "that the information and analysis summarised in the RIA partially meets the quality assurance criteria. The RIA clearly explains the problem and need for action. The analysis around the benefits of the 10-entity model compared to the status quo is compelling, with a substantial amount of supporting evidence."</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?	NO
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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?	NO
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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 water services entities are set out in a report of WICS, which was used as a basis of analysis for the proposals in the Water Services Entities Amendment Bill.</p> <p>This report was peer reviewed by Farrier Swier 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. 	

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?

The Water Services Entities Amendment Bill complies with the principles of Te Tiriti o Waitangi/the Treaty of Waitangi. There has been extensive engagement with iwi and Māori on the suite of water services legislation, including in policy development and through Parliamentary processes.

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 Entities Amendment Bill is consistent with the New Zealand Bill of Rights Act 1990. The Ministry of Justice has not raised any issues during its vetting of the Bill.

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)?

NO

(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?

NO

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?

NO

3.5.1. Was the Privacy Commissioner consulted about these provisions?

N/A

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
Taituarā, the Office of the Auditor-General, and Local Government New Zealand were consulted on the draft Amendment Bill. They provided technical feedback on the Bill, specifically the workability of the amendments to the Local Government Act 2022.	

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
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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
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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
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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?	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
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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?	NO
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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>The Bill contains the following powers to make secondary legislation.</p> <p>An Order in Council will be required to establish the 'go live' dates for each of the water services entities, other than the Northland – Auckland Water Services Entity which will be established on 1 July 2024 on enactment of the Bill.</p> <p>An Order in Council will be required to bring a merged water services entity into effect.</p> <p>There are Ministerial powers to direct water services entities to share services.</p> <p>These instruments will be subject to the standard requirements in the Legislation Act 2019 relating to secondary legislation, including disallowance by the House of Representatives on the recommendation of the Regulations Review Committee.</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>The Bill enables shared services arrangements between water services entities, to provide a means to retain scale and efficiency gains under a 10-entity model. Shared services may be entered into voluntarily or by Ministerial direction in defined areas, which are:</p> <ul style="list-style-type: none"> • debt funding and management; • information and communication technology, and digital infrastructure procurement and management; • other procurement, and supply chain management; • risk management and insurance; • workforce development and management. <p>A Ministerial direction may only be given for one or more of the following purposes:</p> <ul style="list-style-type: none"> • to improve (directly or indirectly) the provision of water services; • to require entities to share services provided to those entities; • to develop expertise and capability; • to ensure business continuity; • to manage risks to the water services entities' financial position, the Government's financial position, or both. <p>The Bill includes engagement requirements before a Ministerial direction is made.</p>	