

Departmental Disclosure Statement

Local Government (Water Services Preliminary Arrangements) 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.

15 May 2024.

Contents

Part One: General Policy Statement..... 3

Part Two: Background Material and Policy Information 7

Part Three: Testing of Legislative Content..... 10

Part Four: Significant Legislative Features 12

Part One: General Policy Statement

General policy statement

This Bill establishes preliminary arrangements for local government water services delivery. It is an omnibus Bill that amends other Acts 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 lay the foundation for a new framework of water services management and financially sustainable delivery models that meet regulatory standards, including a new water services delivery arrangement for Auckland. Councils will be able to use the provisions to start planning future water services delivery and undertake steps to establish, join, or amend council-controlled organisations from the day after Royal assent.

The Bill contains stand-alone provisions and also amends—

- the Local Government Act 2002; and
- the Local Government (Auckland Council) Act 2009; and
- the Local Government (Rating) Act 2002; and
- the Receiverships Act 1993; and
- the Civil Defence and Emergency Management Act 2002.

Introduction

New Zealand's long-standing water infrastructure challenges require locally led and financially sustainable solutions. The Water Services Acts Repeal Act 2024 (**the Repeal Act**) put an end to the proposed 10 water services entities and confirmed that councils will continue to own and be responsible for water services. This Bill requires councils to provide transparent information about the current state of water services and to set out proposals to achieve financially sustainable water services that meet regulatory standards. With greater oversight and support from the Government, councils will have the flexibility and discretion to determine the optimal structure, delivery method, and funding and financing arrangements for their water services.

A further Bill, to be introduced in December 2024, will set out a comprehensive range of options, tools and models that will enable councils to exercise those choices, contingent on meeting criteria for financial sustainability.

Relationship to other proposed legislation

There are 3 legislative components to achieving the new framework for water services delivery. The Repeal Act reversed the previous approach to reforming water services delivery. This Bill is the second component and sets out the preliminary arrangements to put water services infrastructure on the path to long-term financial sustainability.

Further legislation will provide for the long-term replacement regime, including—

- long-term requirements for financial sustainability:
- establishing new classes of council-controlled water organisations and service delivery models:
- accountability, planning, and reporting regimes for water services:
- providing for comprehensive economic regulation (being developed in conjunction with the Minister of Commerce and Consumer Affairs):

- amendments to the regulatory settings for Taumata Arowai–the Water Services Regulator:
- establishing a regulatory backstop power:
- refinements to water services delivery system settings:
- detailed changes to the Local Government Act 2002 and other legislation to strengthen the delivery of water services.

Water services delivery plans

The Bill requires territorial authorities to submit water services delivery plans (plans) within 12 months of the Bill’s enactment. The plans will provide detailed information on the current state of councils’ water services arrangements for water supply (including drinking water), wastewater, and stormwater and set out a strategy for how they will achieve the delivery of financially sustainable water services and meet regulatory quality standards. The information on the current state of water services will lay the foundation for information disclosure as part of a future comprehensive economic regulation regime.

Territorial authorities may combine to prepare a joint plan to reflect joint arrangements. A joint plan must explain how water supply, wastewater, and stormwater services will be provided throughout the districts included in the joint plan. There is flexibility whether to include some or all stormwater services in a joint arrangement to enable territorial authorities to make the right decisions for their local circumstances.

The plans must be provided to the Secretary for Local Government within 12 months of the Bill’s enactment for consideration as to whether they comply with the requirements set out in the Bill. Extensions will be available based on criteria in the Bill, including extra time to consult on joint arrangements or finalise negotiations, and subject to any reasonable conditions.

Additional information disclosure

Foundational information disclosure will be provided through the plans to lay the groundwork for comprehensive economic regulation. The Bill provides for additional information disclosure for territorial authorities and council-controlled organisations providing water services where such disclosure promotes the long-term benefit of consumers and supports efficiency, innovation, and investment.

The additional information disclosure requirements will be applied to territorial authorities or water services council-controlled organisations by Order in Council made on the recommendation of the Minister of Local Government and the Minister of Commerce and Consumer Affairs. Determinations made by the Commerce Commission will outline the content of the additional information disclosure.

Alternative consultation and decision-making process for water services council-controlled organisations

The Bill sets out optional alternative consultation and decision-making requirements for territorial authorities to use if they wish to when establishing, joining, or amending a water services council-controlled organisation. Territorial authorities have the flexibility to use any or all of the alternative requirements instead of the existing processes in the Local Government Act 2002. If they do not use the alternative requirements in this Bill, the relevant requirements in the Local Government Act 2002 will continue to apply.

Under the alternative arrangements, territorial authorities may—

- identify 2 options for delivering water services (the status quo and the proposed new arrangement) in place of the requirement to identify all reasonably practicable options:
- consult only once and are not required to consult additionally on an amendment to the long-term plan resulting from a decision relating to water services council-controlled organisations:
- conditionally approve a long-term plan amendment subject to corresponding agreement from the other territorial authorities that are parties to a joint water services council-controlled organisation:
- consider in their decision making the impact of a joint water services council - controlled organisation on communities in the area covered, as well as in the territorial authority's district.

A joint committee between territorial authorities wanting to work together can be set up to undertake 1 or more of the process steps.

Councils will be temporarily exempted from the cost-effectiveness review laid out in section 17A of the Local Government Act 2002 that relates to a decision to establish, join, or amend a water services council-controlled organisation.

New financially sustainable model for Watercare

The Bill enables Auckland Council to implement its preferred model for water services delivery. Watercare Services Limited (Watercare) is a registered company and 100% owned by Auckland Council. It provides water supply and wastewater services in Auckland. Auckland Council's preferred model envisages greater financial independence for Watercare by—

- shifting the legislative obligation to provide water supply and wastewater services from Auckland Council to Watercare:
- prohibiting Auckland Council from providing financial support to Watercare in any situation or under any conditions:
- enabling the Minister of Local Government to appoint a Crown review team, Crown monitor, or Crown manager to Watercare if a significant problem exists:
- introducing interim economic regulation under the oversight of a Crown monitor until further legislation establishes a long-term economic regulatory framework:
- enabling the Crown to reimburse Watercare for expenses incurred during an emergency.

The provisions enabling Auckland Council's preferred model for water services delivery will commence on a date set by Order in Council made by the Minister of Local Government or, at latest, 1 July 2025. The provisions relating to interim economic regulation will commence on the day after Royal assent.

Auckland Council's water services delivery plan will only need to cover stormwater services.

Secondary legislation

The Bill contains provision for delegated decision-making powers through secondary legislation that—

- enable the Secretary for Local Government to make rules for additional matters to be included in water services delivery plans:
- subject councils to enhanced information disclosure requirements for their water services in addition to the information provided in water services delivery plans. This will be given effect to by an Order in Council:
- enable the Commerce Commission to make determinations to set out the additional information that a council must disclose:
- enable the Watercare Crown monitor to make a charter that imposes obligations on Watercare as part of interim economic regulation.

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>Reform of the water services sector begun in 2017, triggered by the Government inquiry held for the 2016 water supply contamination incident in Havelock North. A 2017 report of the inquiry findings can be found at: https://www.dia.govt.nz/Government-Inquiry-into-Havelock-North-Drinking-Water#Report-1.</p> <p>Since then, there has been additional research related to the key challenges behind New Zealand water infrastructure and local government funding which has informed the policy to be given effect by this Bill, including the following reports:</p> <p>https://tewaihang.govt.nz/our-work/research-insights/sector-state-of-play-water (February 2021).</p> <p>https://tewaihang.govt.nz/our-work/research-insights/is-local-government-debt-constrained (March 2024).</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>The March 2024 Cabinet policy paper <i>Local Water Done Well stage 2: establishing the framework and transitional arrangements</i> was accompanied by the Regulatory Impact Statement titled "Local Government Water Services (Transitional Provisions) Bill" (note that this was the working title of this Bill). The RIS was prepared by the Department of Internal Affairs. A copy will be available on the Department's website and on the Treasury website on introduction of the Bill</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
<p>The Treasury reviewed the outline of the policy proposals and determined that an internal DIA RIS panel would be sufficient for quality assurance of the regulatory impact statement. An internal quality assurance panel considered the regulatory impact statement and considered that the RIA partially meets the quality assurance criteria.</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?	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>Analysis of the size of the potential costs and benefits of the preliminary arrangements for local government water services is available in the regulatory impact statement. Time constraints and limited information available between the policy development phase and Cabinet decisions meant that the content was limited to qualitative analysis.</p> <p>The key benefits of the transitional arrangements in the Bill are:</p> <ul style="list-style-type: none"> • Requirements for councils to transparently provide information that demonstrates how they will deliver water services in a sustainable way should provide a roadmap for improvements. • The increased expectations of information disclosure and specific planning should flow through to increased accountability. This information will be publicly available to local communities and regulators and will hold councils accountable for performance in their delivery of water services. • Enablement of a smoother transition between the current level of service delivery to the full economic regulation model. • That streamlined process for joint water CCOs should support easy implementation (both for central government to amend the legislation and for councils to engage with and follow). Utilising joint committee mechanisms supports practicable implementation for councils. • The new financially sustainable model for Watercare utilises a delivery model that should lead to lower increases on water charges for consumers. <p>There is no potential for any group of persons to suffer a substantial unavoidable loss of income or wealth.</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?	YES
(b) the nature and level of regulator effort put into encouraging or securing compliance?	YES

The Bill requires territorial authorities to submit water services delivery plans within 12 months of the Bill's enactment date. If authorities struggle or fail to submit acceptable plans, the Minister of Local Government may exercise their powers of assistance or intervention to aid compliance. This will result on increased compliance costs on the territorial authorities to fulfil the requirements and on the government to ensure compliance. As the water services delivery plans depict current water services at a particular moment in time, there is a possibility that the joint arrangements as suggested in the plans may not materialise. The anticipated cost and benefit for joint arrangements will only be realised if they do occur.

The Commerce Commission does not currently have a developed relationship with water services providers. This may inhibit a seamless transition to economic regulation; however the Commission is considered to be the most appropriate agency to be the regulator. This could impact on how efficient the first iteration of the regulatory scheme is. While the Bill contains the preparatory mechanisms for economic regulation, full implementation of economic regulation is likely to take some time, so the benefits will not be seen immediately. .

The benefits mentioned in section 2.5 may only be fully realised once the comprehensive reform legislation is in place, anticipated in mid-2025. This may limit the extent to which those benefits can be realised through the preliminary arrangements in this Bill as territorial authorities' decisions may be dependent on understanding the options available through the comprehensive reform legislation.

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?
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No relevant international obligations were identified during the development of the policy proposals in the Bill.

Consistency with the government's Treaty of Waitangi obligations

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

<p>The Local Government Act 2002 requires local authorities to facilitate Māori participation in decision making processes within local government. The relationships, rights and interests that Māori have with water are often geographically or catchment specific and recognised at a local level, in agreements between mana whenua and councils. This Bill does not amend these requirements in the Local Government Act 2002. Existing requirements in Treaty settlement legislation will still apply to local authorities delivering water services, together with other arrangements that councils and Māori/iwi have entered about delivery of water services.</p>
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<p>The proposals in this Bill put preliminary arrangements in place that help territorial authorities self-determine their future water services delivery models. The next stage of Local Water Done Well will set up the enduring settings for water services delivery, which will be underpinned by financially resilient and sustainable water services. Those proposals will consider the implications for Treaty of Waitangi and Māori/Crown relations, in particular, Treaty settlement obligations and mana whenua participation in decision making. Cabinet policy proposals in June and July 2024 that will make up the proposals for the Local Government (Water Services) Bill, will outline the relevant implications on the obligations of the Crown under the Treaty of Waitangi.</p>

Consistency with the New Zealand Bill of Rights Act 1990

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

YES

<p>The Bill of Rights Act vetting is in progress with the Ministry of Justice. The Local Government (Water Services Preliminary Arrangements) Bill is expected to comply with the rights and freedoms contained in the Bill of Rights Act 1990. Upon introduction of the Bill, the advice provided to the Attorney-General by the Ministry of Justice will be available at: https://www.justice.govt.nz/justice-sector-policy/constitutional-issues-and-human-rights/the-bill-of-rights-act/compliance-reports/</p>

Offences, penalties and court jurisdictions

3.4. Does this Bill create, amend, or remove:	
(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?	YES
(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?	NO
<p>The Bill makes it an offence to intentionally breach a requirement relating to an obligation to disclose information, or to fail to comply with a High Court order in relation to the disclosure of information. Non-compliance will result in a maximum pecuniary penalty of \$200k for an individual or \$1m in all other cases.</p> <p>This offence and penalty are derived from similar information disclosure offences contained in both the Commerce Act 1986 and the Telecommunications Act 2001.</p>	

Privacy issues

3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?	NO
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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>Relevant draft excerpts of the Bill were consulted with the Commerce Commission, Taituara, Office of the Auditor General, Crown Infrastructure Partners and Auckland Council. The Technical Advisory Group¹ received the full draft Bill for consultation. These groups were approved in accordance with the Cabinet Office CO (19) 2: Attorney-General's Protocol for Release of Draft Government Legislation outside the Crown.</p> <p>The Technical Advisory Group was involved in the development of the policy proposals that this Bill will give effect to.</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 proposals were tested with the Technical Advisory Group through workshop sessions and the feedback received was incorporated into policy briefings and relevant Cabinet papers.</p> <p>The Legislation, Design and Advisory Committee advised on the legislative design of the Bill which assisted with the drafting completed by Parliamentary Counsel Office.</p>	

¹ The Technical Advisory Group was established through the *100 Day Plan: Repeal of the Water Services Entities Act* [CAB-23-MIN-0479]. Their purpose is to provide independent expert help on the formation of advice for Local Water Done Well. The members are: Andreas Heuser, Raveen Jaduram, Wendy Walker, Simon Weston and Mark Rees. Combined, they have expertise in finance, governance and local government.

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?	YES
(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?	NO
The Bill creates a strict liability offence relating to the requirement to disclose additional information when ordered by the High Court to do so. This replicates section 86B of the Commerce Act 1986 relating to information disclosure requirements.	

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
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The Bill contains provisions delegated decision-making powers through secondary legislation. The secondary legislation will:

- enable the Secretary for Local Government to make rules for additional matters relating to the water services delivery plans. This rule-making power is available if needed, but we anticipate the required content of the plans will be contained in the primary legislation and additional guidance released by the Department;
- subject councils to enhanced information disclosure requirements for their water services in addition to the information provided in the water services delivery plans, where considered appropriate. This will be given effect to by an Order in Council (similar to current Commerce Act 1986 provisions); and
- enable the Commerce Commission to make determinations, setting out additional enhanced water services information that a council subject to those requirements must disclose.

This secondary legislation is necessary because there is likely to be technical requirements in specific detail that are highly subject to change as information develops. Containing them in the primary legislation may be too prescriptive and rigid.

Any other unusual provisions or features

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