

Submission of Taituarā – Local Government Professionals Aotearoa in respect of the Local Government (Water Services) Bill

February 2025



List of Recommendations

Relationships with Māori

That:

1. the Committee seeks advice from officials in regards the intent of clause 41 and the relationships between water providers and Māori
2. clause 41 be relocated to a place in the Bill that is more in keeping with its applicability to all water providers
3. clause 15 be enhanced by adding an objective relating to engaging and partnering with Māori
4. clause 40(2) be amended to require that the collective mix of skills of a board of directors must include knowledge of tikanga Māori, te Ao Māori, and te Tiriti
5. any new provision regarding capability development for directors include a specific requirement to develop the skills and knowledge of the directors with respect to tikanga Māori, te Ao Māori, and te Tiriti
6. clause 187(2) be amended to require shareholders of water organisations to include provisions setting out expectations for how water organisations conduct their relationships with Māori

Residual responsibilities

7. the Bill be amended to provide an unequivocal statement of a territorial authority's responsibilities once it has entered into a transfer agreement
8. the Bill expressly state that the obligations in clause 9(4) do not apply where there is a transfer agreement under clause 9(1)(b), rather than leaving that to implication

Objectives of water service providers

9. the objective that water service providers operate safely be extended to all water services
10. the objective that water service providers operate in a way that does not have an adverse effect on the environment be amended to require that any such environmental effect be minimised
11. a requirement to support the housing and urban development objectives of their shareholding local authorities and of the Government be added to subclause 15(1)
12. a requirement to support the economic development objectives of their shareholding territorial authorities and of the Government be added to subclause 15(1)

13. the objective relating to service quality be amended to read “are of a quality that meets consumer expectations, subject to regulatory requirements and the other requirements of this Act”
14. clause 15(1) be amended to fully define the objectives of a good employer. This might be based on the obligations placed on local authorities under clause 36, schedule seven of the Local Government Act
15. water service providers be placed under an obligation to have regard to the interests of the community in which they operate. This might be based on the equivalent obligation that section 59 of the Local Government Act places on CCOs

Financial ring-fencing

16. the Select Committee seeks further advice as to whether payment of a dividend or distribution of a surplus is consistent with the financial ringfencing set out in clause 16(1)(a), and how any conflict might be resolved
17. clause 16(1)(a) be amended by deleting all the words after the word ‘services’

Significance

18. clause 22 be amended to require water organisations to gain shareholder approval before entering into any significant contract to transfer a responsibility to another body
19. clause 23 be amended to require water organisations to prepare a policy that governs assessment of significance in any of the contexts specified in the Act.

Transitional arrangements and service delivery plans

20. the Select Committee notes the potential overlap in processes for establishing joint arrangements under this Bill and the Water Services (Preliminary Arrangements) Act and seeks further advice on options to resolve this

Linkage with the Companies Act

21. clause 40(5) be amended with cross-references to the provisions of the Companies Act 1993 and the Local Government Act 2002. Similar provisions elsewhere in the Bill require a similar amendment.

Directors

- 22. clause 40(2) be amended to specifically mention commercial acumen and knowledge of tikanga Māori, te Ao Māori and te Tiriti without limiting other skill and knowledge sets
- 23. shareholders of water organisations be required to develop a policy for the capability of the directors of water organisations.

Terminology

- 24. that the Committee invites officials to review the use of the terms 'water provider', 'water organisation' and 'local authority' for consistency in their use.

Consultation on network plans

- 25. the consultation requirements for the Drinking Water Catchment Plan, Trade Waste Plan, and Stormwater Network Risk Management Plan be unified into a single provision
- 26. the unified consultation process provided under clause 144 include a requirement for the water provider to offer the public at least one opportunity to present their views using a spoken or New Zealand sign language format
- 27. that any unified consultation process be open to the general public as well as the Waters Services Regulator – Taumata Arowai, transport corridor operators and shareholders (if a water services organisation).

Challenge to a trade waste permit decisions

- 28. applicants requesting review of a decision on granting a trade waste permit be required to meet actual and reasonable costs of a review
- 29. any appeal of a District Court decision requires the High Court to grant leave.

Stormwater network risk management plans

- 30. subclause 166(3) be deleted, thereby clarifying that multiple water providers managing different aspects of the same stormwater network must collaborate to prepare a joint stormwater network risk management plan

31. the words “without limitation” be added before the list of contents of a stormwater network risk management plan in clause 167
32. the review period for stormwater network risk management plans be aligned with the other network plans at ten years
33. clause 169 be amended to delete the unnecessary term ‘stormwater network manager’ and replace with water services provider

Bylaws

34. that the Bill be amended to unify and standardise the bylaw-making provisions of part 3m subparts 3,5,6 and 7
35. clause 170 be amended to bring the list of agencies with power to make stormwater bylaws into line with those for water and trade wastes.
36. clause 348 be amended to clarify that water organisations can propose different bylaws to different local authorities where the organisation considers different circumstances warrant it
37. clause 349 be deleted by removing redundant requirements to consult
38. clause 353 be amended to require local authorities to consult all affected parties during a review of water services bylaws
39. clause 355 be amended to refer local authorities consulting on the review of water bylaw back to the bylaw requirements of the Local Government Act 2002
40. clause 356 be amended to allow for the charging of an infringement fee daily, where an infringement offence is ongoing
41. either clause 368(2) be amended to clarify the circumstances in which a compliance officer becomes ineligible for appointment or that clause 368(2) be deleted
42. the Select Committee seeks clarification as to whether the Government intends that a bylaw made under this Act can specify any of the offences in the Act as infringement offences and within that, a bylaw made under this Act is able to specify any offence in the bylaw as an infringement offence.
43. the Select Committee clarifies the reference to specified serious risks in clause 413

Accountability

44. that Schedule 3, subclauses 5(2)(a)(i) and (ii) be deleted as unnecessarily vague
45. that a disclosure be added to Schedule 3, clause 5 regarding a schedule of prices and charges

46. that Schedule 3, subclause 5(2)(a)(iii) be amended to read “the water service providers intended approach to funding the water services it provides, including the sources of revenue, and indication of the amount or level, and an explanation of the reasons for the selection of those sources”
47. that water organisations be required to consider the matters in section 101(3)(a) of the Local Government Act in their explanation of their revenue systems.
48. that water organisations should produce summaries that meet the same content requirements as for local authorities when their shareholders ask them to consult on water services strategies.
49. clause 199(1) be amended to enable shareholders of water organisations to request an audit of that organisation’s water services strategy
50. clause 199(2) be amended to require that any request for an audit of a water services strategy be made at least twelve months before the strategy must be adopted, regardless of the agency making the request.
51. clause 209(1)(b) be deleted
52. a direct requirement be placed on all water providers to prepare an asset management plan for each of the water services they provide. This might be modelled on sections 151 to 153 of the now repealed Water Services Entities Act.

Funding powers

53. clause 60(4) be amended to allow water organisations to charge for wastewater services based on the volume of water used or to charge for wastewater by measuring the volume of wastewater leaving a property
54. the Local Government Rating Act be amended to allow local authorities to charge for wastewater services based on the volume of water used or to charge for wastewater by measuring the volume of wastewater leaving a property
55. clause 60(5) and clause 63 be amended to allow water organisations that provide stormwater services to collect all or part of the charge for these services by a charge based on property value
56. the Bill provide local authorities that transfer water services to a water organisation either until 1 July 2030 or three years after the transfer of services to transition their rating systems to operating under the section 21 cap that the Local Government Rating Act places on fixed rates,
57. clause 74 be amended by adding that requires the water organisations to contribute to the cost of preparing the rating information database, and provides a formula for apportioning costs where parties cannot agree based on section 43 of the Rating Valuations Act 1998.

- 58. water organisations be permitted to waive charges for water services provided that these waivers are consistent with a waivers policy adopted by the water organisation**
- 59. any waiver policy must be adopted only after engagement with the public**
- 60. water organisations must publish any waiver policy on an internet site maintained by the water organisation**

Penalties

- 61. clause 60 be amended to require the boards of water organisations to authorise the levying of charges for water services.**
- 62. the proposed amendment to the Rates Rebate Act be amended to read "charges set under the authority of sections 60, 61 and 62 of the Local Government (Water Services) Act 2025"**

Development contributions

- 63. the Bill include provisions that will allow local authorities to assess development contributions in respect of capital works to support water services in the transition to any water organisation. This could be modelled on provisions in the repealed Water Services Entities Act 2022**
- 64. the Bill allow for recovery capital works undertaken to support provision of water services while the water services are delivered by the local authority, and any capital work scheduled to be built in the 2024/34 and 2017/27long-term plans that is expected to be constructed by the water entity. This could be modelled on provisions in the repealed Water Services Entities Amendment Act 2023**
- 65. any provisions as per recommendations 59 and 60 be extended to include financial contributions assessed to fund capital works to support the delivery of water services**
- 66. the Bill provide for the transfer to water organisation of any development agreements in existence on the date of transfer of water services, and on the terms agreed by the local authority and the developer**
- 67. clause 109 be deleted making the Crown liable for development contributions for water services set by water organisations**
- 68. the Select Committee makes a similar amendment extending liability for development contributions for water services to the Crown.**

Taxation

- 69. the transitional tax arrangements on the transfer of water undertakings to and from water organisations be extended to include transfers between two or more water organisations**

- 70. the transition arrangements created in clause 214 be made permanent by deleting references to five years**
- 71. the proposed section CW55BC of the Income Tax Act be amended to explicitly state that qualifying water organisations are tax exempt. This drafting would be consistent with the approach taken in sections CW38, CW38B and CW55BA of that same Act**
- 72. section 32E of the Tax Administration Act be amended to exempt water organisations from Resident Withholding Tax**
- 73. water organisations be permitted to claim back GST on all their expenditures**
- 74. penalties on water charges set by water organisations be treated as an exempt supply for GST purposes**
- 75. sections 5(7B), section 5(7C) and section 11B be amended to extend the same supply rules for development contributions set by water organisations as apply to local authorities**
- 76. the Select Committee considers whether a specific time of supply rule is required for charges set by water organisations.**

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The Local Government (Water Services) Bill – Some General Points

Taituarā-Local Government Professionals Aotearoa ('Taituarā') thanks the Finance and Expenditure Select Committee ('the Committee') for the opportunity to submit in respect of the Local Government (Water Services) Bill ('the Bill').

Taituarā is New Zealand's leading network for local government professionals.

A few words about us. Taituarā is Aotearoa New Zealand's leading membership network for professionals working in, and for, local government. We have a membership base of 1,019 members drawn from local authority Chief Executives, managers, and staff across all 78 local authorities.

What unites Taituarā members is our commitment to be our own professional best, supporting local government excellence through connection, collaboration and care for the wellbeing of our communities.

Taituarā strengthens the local government sector as a whole by using our members' insight and experience to influence the public policy debate. We submit on legislation such as this to provide perspectives on what works and how to make policy works from those will need to make the legislation work.

In preparing this submission we were able to review a draft of the Local Government New Zealand submission and generally agree with what they have said.

Water services, like other network infrastructure, are the servant of the community. These services are provided to generate and support a wide variety of wellbeing objectives and outcomes. While most will generally associate drinking water, wastewater and stormwater with public health and environmental outcomes, water services also support:

- housing and urban development outcomes e.g. access to a water supply is a condition of a consent and building around trunk infrastructure assets
- climate change mitigation and adaptation outcomes
- economic growth and transformation – some businesses and industries are dependent on access to a water supply. Primary industry and related manufacturing (such as food processing) are reliant on access to potable water

Local authorities have long been charged with the responsibility of delivering water services. Local government in this country essentially started life as a series of entities delivering roads and footpaths with an associated stormwater disposal component. Around the turn of the 20th century public health interests came to the fore and the role expanded into the delivery of water and wastewater services. The Health Act

1956 further strengthened legal requirements. Today's waters services represent more than a century's worth of investment by and on behalf of local authorities.

We offer the perspectives of a critical adviser.

Taituarā is a managerial organisation as opposed to a political one. Our role therefore is to advise on consequences, and to assist policymakers to design a policy that can be implemented effectively. We participated (and continue to participate) in the reform process to provide these perspectives.

As with our earlier work in this area, our submission takes the perspective of a 'critical adviser' in the reform process – supportive of the need for affordable, sustainable three waters services, while aiming to ensure the legislative end result works.

Our submission draws on expertise from across the Taituarā network both within the membership, and from amongst our stakeholders and sponsors. We particularly acknowledge the contributions of: the Taituarā Regulations and Bylaws Reference Group; Simpson Grierson, and PwC.

In addition to the substantive matters raised in the body of this submission, our members have identified several matters of a technical or drafting nature. These are listed in Appendix One to this submission for the Committee's consideration.

The legislation provides flexibility but at the expense of a higher level of complexity and cost.

The legislation 'does what it says on the tin' in that provides several alternative service delivery options beyond the in-house delivery. At least one of these appears, in theory, to have access to the greater level of financial leverage many are seeking from reforms.¹

However, this flexibility comes with a need to provide a set of powers that are appropriate for entities with different types of governance and different levels of public accountability. That is to say that some of the complexity present in the Bill is the direct result of the greater flexibility that has been (and still is) one of the underpinnings of sector representations throughout both this reform process and the previous Government's reform process.

¹ We are less certain that either 'community trust' option achieves this aim mostly because directors are appointed through an election in the organisation's service area. On the face of it, that leaves it open to potential periodic swings in organisational direction that may not sit well with the expectations of capital markets.

For all that, we are concerned that some aspects of the Bill impose unwarranted or unnecessary additional costs:

- the requirement for local authorities to have to prepare a separate water services strategy and separate financial statements from the remainder of the long-term plan, annual report etc. Financial separation is important for water organisations – without it they will not satisfy capital markets that they have established balance sheet separation. But for a local authority it seems a nonsense that will not add much for agencies such as the regulators and capital markets, and will only serve to double up the effort the general public have to expend extracting meaning from these documents. The primary concern with financial management of water services is (or should be) that they are meeting the sufficiency principle i.e. gathering enough revenue to meet long-term costs. Activity level statements within a single report and the backstop of economic regulation meet that requirement
- bylaw and regulatory powers – we are unclear why there are three different bylaw making provisions in the Bill, with different notification and engagement requirements
- additional planning requirements for individual services that might be better captured in a clear requirement to undertake asset management planning.

The Bill provides wider powers for local authorities to intervene in the operational aspects of water organisations than existing models. This could work against the Bill's financing objectives.

Water organisations will be subject to a great deal of external influence which will constrain the decisions that boards of directors are able to make.² In short:

- Taumata Arowai regulates drinking water quality and wastewater standards (although we acknowledge that this Bill does inject more explicit references to cost/benefit considerations)
- the Bill will bring water services within the ambit of economic regulation for the first time
- the Bill also provides a purpose-built regime for consumer protection regulation of water services as opposed to water services being part of the general consumer law (such as the Sale of Goods Act).

Further to a constrained regulatory environment, we note that the Bill appears to provide local authorities with greater means of exercising oversight and control than exists in the existing council-controlled organisation models available in the Local

² We note that the degree of central control will probably be lower than is the case under the previous attempt at reform. Previous reforms overlaid the regulation of water services with the requirement to abide by the provisions a Government Policy Statement for Water Services. This, thankfully, has not been replicated in the Bill.

Government Act 2002. We refer the Committee to the table attached to the LGNZ submission that compares the requirements of water organisation statements of intent, water services strategies with their Local Government Act equivalents (where they exist). The comparison is striking.

Governance is about making choices, and to that extent we are left wondering how much governing the boards of water organisations will do in practice when so many important decisions will be made by others. This may impede the ability to attract appropriately skilled directors and potentially to attract staff. (As an aside we also noted that the Bill does not explicitly state anywhere that the Chief Executive of a water organisation is the employer of staff).

The greater degree of operational control is also likely to attract the interest of the capital markets. It seems to us that the greater degree of financial leverage that water organisations are empowered to carry is reliant on the assessment that capital markets made of the boards of directors. The lower the assessed degree of skill, the lower the leveraging.

Taken to a logical conclusion, too great a degree of perceived operational control may even impact on capital markets' assessment as to whether balance sheet separation has been achieved. Why would a lender regard a water organisation as separate from a local authority if the local authority has reserved substantial control over budgets, pricing and charging policy and the like?

Ultimately the views of capital markets will provide some constraint on excessively controlling statements of expectation, but there will be some trial and error in the development of the statements.

Water Provider/Māori Relationships

The Bill is weak on the relationships between water providers and Māori.

Article te Toru (Article Two) guarantees Māori the right to make decisions over the resources and taonga they wish to retain. Water providers are public entities that will make decisions that impact on our waters and taonga such as the placement of infrastructure and levels of service. This point is one about the actual provisions of te Tiriti and risks to its observance as opposed to other recent debates (such as those in the Principles of the Treaty of Waitangi Bill).

It is therefore concerning that the Bill is weak in its content on the relationships between Māori and water providers, especially with regard to water organisations. (We say this because those local authorities that elect to retain water services in-house will remain subject to the provisions of the Local Government Act 2002 in regards to their relationships with Māori).³

We agree with the LGNZ submission that there would be clear benefit in providing some uniform guidance within the Bill, and we submit that the Bill should include provisions relating to Māori interests and relationships that apply to all water service providers. These requirements should mirror the requirements already placed on territorial authorities under the Local Government Act 2002 – having differences between different types of water provider would be highly undesirable. At a minimum, the Bill should be amended to require water organisations to have a process for involving or consulting with Māori in relation to relevant decisions of water organisations.

The requirements to observe Treaty settlements is not unhelpful, but vague in its intended coverage and effect.

The only requirement on water providers in the legislation is that they must act consistently with any Treaty settlements in the area when performing and exercising functions, powers and duties under this act (clause 41).

We note that clause 41 is actually in the part of the Bill that only specifically applies to water organisations (and indeed refers specifically to the governance of these bodies). As of this moment, no water organisation has any responsibilities under Treaty settlements (even those water organisations that currently exist).

³ These include an obligation to have specific processes to consult with Māori, foster the development of Māori capacity to contribute to decision-making processes and a involves a significant decision in relation to land or a body of water, take into account the relationship of Māori and their culture and traditions with their ancestral land, water, sites, waahi tapu, valued flora and fauna, and other taonga.

There are instances of local authorities currently having specific obligations under Treaty settlements. One possible rationale for this clause is that the water organisations would be required to act consistently with the obligations that their shareholders have under Treaty settlements. If that is the case then this should be clearly stated.

The other and perhaps one more in keeping with other developments in the policy environment is that this is the equivalent to the second of the principles contained in the Principles of the Treaty of Waitangi Bill. The wording of the two is certainly very similar!⁴ We observe that replicating the wording of a current Bill that does not appear likely to be enacted is unhelpful in that it will date, and date quickly.

The current wording which focuses on “treaty settlement obligations” also excludes iwi and hapū who have not yet entered into Treaty settlements.

The Select Committee needs to clarify what the Government’s policy intent is. As things stand clause 42 reads very much like a compromise solution. It seems to us that this clause needs a rewrite from ‘first principles’. Our legal advisers Simpson Grierson have put forward three options:

- there should be no Treaty clause at all, with any Treaty obligations left to existing mechanisms and the general law or
- the clause should be reframed as a general requirement for WOs (or WSPs) to act in a manner which is consistent with Treaty principles, or consistent with specifically identified Treaty-based principles or
- the approach in s 4 of the LGA should be used, with the Bill specifying how it is manifesting the Crown’s Treaty obligations. In the current political climate, this option seems very unlikely and would in any event require the Bill to include relevant Treaty-based provisions which are currently lacking.

There are other opportunities to clarify the relationships between providers and Māori.

We submit that establishing and maintaining an effective relationship with Māori should be something ingrained into the organisational DNA of all water service providers. Clause 15 is the most fundamental of all of the provisions relating to the water providers as it sets the statutory objectives for the providers. This is an appropriate place to add a further objective such as “... *to provide water services in a way that affords opportunities for meaningful input from, and partnership with, Māori*”.

⁴ The Committee can find our submission on the Principles of the Treaty of Waitangi Bill [here](#)

The second obvious provision relating to Māori is that shareholding councils may set expectations for how water organisations conduct their relations with Māori in the Statement of Expectations (clause 187(2)). The delivery of water services will have direct and significant Tiriti obligations, we submit that this provision should be 'upgraded' from a 'may' to a 'must'. (We note that most local authorities would be likely to include expectations around how water organisations interact with Māori)

The other area where the Bill is particularly lacking is in the skill sets of directors of water organisations. The directors provide strategic direction to the water organisations and as a collective must have skills and knowledge to run a business providing water services. As we've seen, Te Tiriti and its implications will be a major determinant or factor in the expectations of regulators and consumers and in the organisation's development of its work programmes. Legislation should explicitly require that a Board have collective knowledge of tikanga Māori, te Ao Māori and te Tiriti.

Later in this submission we discuss the need for a provision that requires water organisations to have a policy on the development of the capability of the directors. If the Select Committee agrees with that, then these policies would need specific reference to tikanga Māori, te Ao Māori and te Tiriti.

Recommendations: Relationships with Māori

That:

- 1. the Committee seeks advice from officials in regards the intent of clause 41 and the relationships between water providers and Māori**
- 2. clause 41 be relocated to a place in the Bill that is more in keeping with its applicability to all water providers**
- 3. clause 15 be enhanced by adding an objective relating to engaging and partnering with Māori**
- 4. clause 40(2) be amended to require that the collective mix of skills of a board of directors must include knowledge of tikanga Māori, te Ao Māori, and te Tiriti**
- 5. any new provision regarding capability development for directors include a specific requirement to develop the skills and knowledge of the directors with respect to tikanga Māori, te Ao Māori, and te Tiriti**
- 6. clause 187(2) be amended to require shareholders of water organisations to include provisions setting out expectations for how water organisations conduct their relationships with Māori.**

Structural/Service Delivery Arrangements

Part Two sets out the future set of options for the delivery of water services and associated matters relating to governance.

There is a lack of clarity around territorial authority responsibilities post any transfer of water services.

Our legal advisors, Simpson Grierson have suggested that
"The Bill needs greater clarity about what a territorial authority's residual responsibilities, if any, are once it enters into a transfer agreement."

Clause 8(1) says the territorial authority is responsible for "ensuring" that water services are provided in its district. Clause 8(2) says it may transfer responsibility for "providing" water services to a water organisation. In combination this suggests the territorial authority may retain some responsibility for ensuring the services are (properly) provided by the transferee. Clause 9(1) is to similar effect because it says the territorial authority must ensure that water services are provided in its district in one of the listed ways, including through a transfer agreement. Arguably, the requirement to ensure the water services are provided (which may mean properly provided) remains with the territorial even if there is a transfer agreement.

The purpose in cl 3(a)(i) refers to the territorial authority's responsibility for the provision of water services, and the "different methods by which they can structure service provision arrangements", implicitly to satisfy that responsibility i.e. not necessarily to remove the responsibility entirely.

The fact the water organisation becomes the WSP (cl 12(2)) is not necessarily inconsistent with this.

However, cl 9(3) and (4) imply, without stating directly, that where there has been a transfer agreement the territorial authority is no longer responsible for "ensuring the provision" of water services.

The precise effect of a transfer of responsibility may influence the relationship between a territorial authority and a water organisation transferee and the territorial authority's ongoing obligations following transfer.

The position should be clarified by stating that once a territorial authority has entered into a transfer agreement it no longer has responsibility for providing water services itself, or ensuring the water organisation transferee provides those water services. The obligations on the water organisation to do so could however (and probably would) be a term in the transfer agreement. There is a concerning lack of clarity about what a

territorial authority's residual responsibilities will be, if any, after a transfer agreement is entered into. The key issue here is with clause 8 of the Bill, which states that a territorial authority is responsible for "ensuring" that water services are provided for in its district, while also allowing the transfer of responsibility.

While it is implicit in clauses 8 and 9, and Schedule 2, that a transfer of responsibility can be a complete transfer of responsibilities, it would be helpful if this was expressly stated, to avoid any lingering doubt about whether a territorial authority will retain residual statutory (rather than contractual) responsibilities to ensure provision of services by the water organisation."

We agree.

On a related matter, some local authorities have expressed a concern that clause 8(1) could be read as assigning local authorities responsibility for providing water services to every person/property in their district. Obviously this isn't what happens now or what could be expected to happen in many districts.

Recommendations: Residual responsibilities

That

- 7. the Bill be amended to provide an unequivocal statement of a TA's responsibilities once it has entered into a transfer agreement**
- 8. the Bill expressly state that the obligations in clause 9(4) do not apply where there is a transfer agreement under clause 9(1)(b), rather than leaving that to implication.**

The objectives of water services providers are drawn too narrowly.

Clause 15 is a critical one. In the event that there is any question about the legality of a WSP actions, this is one of the provisions that the Courts will look to for guidance.

Water services are not provided for their own sake, but for the bundle of economic, environmental and social outcomes that these services generate – for the most part the objectives that are stated in clause 15 are more levels of service than operating objectives. That is to say, the legislation focuses on the 'what' rather than the 'why'.

We set out specific refinements below.

Subclause 15(1)(a) refers to the provision of “safe drinking water to consumers”. Operating water services safely is important, but this expectation should apply to all of the ‘three waters.’ For example, discharges of wastewater to the environment should meet safety standards, larger stormwater drains should be inaccessible to the public. It is anomalous that other objectives - for example the provision of a service which is reliable and of a quality that meets consumer expectations - apply to all water services, yet only the provision of *drinking water* needs to be “safe”.

Clause 15(1)(a)(ii) is the ‘environmental’ objective requiring the provision of water services that “do not have adverse effects on the environment”. The provision of water services will always have *some* adverse environmental effects such as the abstraction of water from lakes and rivers. A more realistic objective would be to provide water services in a way that “minimises (so far as practicable)” or “aims to minimise” adverse effects on the environment.

There is no reference in cl 15 to providing water services in a way that supports housing growth and urban development, contrary to the Government’s August 2024 policy announcements. The water services delivery plan prepared under s8 of the Local Government (Water Services Preliminary Arrangements) Act 2024 (PAA) must demonstrate a commitment to deliver water services in a way that supports housing growth and urban development, and not carrying that aim through into the WSP’s objectives in the Bill is a significant omission (the delivery plan will have no ongoing life once the delivery arrangements are established).

Similarly, water services support economic growth and transformation objectives. Primary industry and related manufacturing (such as food processing or brewing) are reliant on access to potable water. Water services can provide a conduit for the disposal of trade wastes, and no business can operate if its flooded (as a result of stormwater that has been improperly disposed of).

Subclause 15(1)(a)(v) refers to the provision of services that “are of a quality that meets consumer expectations”. This needs qualification as consumer expectations are not the only relevant factor in determining levels of service. Regulatory standards have a significant role to play in determining levels of service. For example, opponents of fluoridation of the water supply might well argue that their expectation is that their drinking water would not contain fluoride. Financial sustainability also plays a key role – for example the community might expect a gold-plated level of service but be unwilling to pay for it.

Water service providers are required to be good employers. But, unhelpfully, the Bill doesn’t go on to spell these out. By comparison local authorities and any council-controlled organisation (CCO) that operates under the Local Government Act are

given the legislative expectation that a “**good employer** means an employer who operates a personnel policy containing provisions generally accepted as necessary for the fair and proper treatment of employees in all aspects of their employment”.

And last, but by no means least, subclause 15(1)(d) requires water providers to act in the best interests of current and future consumers. WSPs don’t operate in a vacuum, but as part of a community and should be taking the wider interests of the community into account in providing service. For example, the reason the Bill contains a specific (though unrealistically phrased) environmental objective is as much about the community as a whole, both consumers and non-consumers.

The CCO provisions of the Local Government Act require CCOs to demonstrate a “sense of social and environmental responsibility by having regard to the interests of the community in which it operates” (section 59, Local Government). An equivalent obligation is needed for water organisations.

Recommendations: Objectives of water service providers

That:

- 9. the objective that water service providers operate safely be extended to all water services**
- 10. the objective that water service providers operate in a way that does not have an adverse effect on the environment be amended to require that any such environmental effect be minimised**
- 11. a requirement to support the housing and urban development objectives of their shareholding local authorities and of the Government be added to subclause 15(1)**
- 12. a requirement to support the economic development objectives of their shareholding territorial authorities and of the Government be added to subclause 15(1)**
- 13. the objective relating to service be quality be amended to read “are of a quality that meets consumer expectations, subject to regulatory requirements and the other requirements of this Act**
- 14. clause 15(1) be amended to fully define the objectives of a good employer. This might be based on the obligations placed on local authorities under clause 36, schedule seven of the Local Government Act 2002**
- 15. water service providers be placed under an obligation to have regard to the interests of the community in which they operate. This might be based on the equivalent obligation that section 59 of the Local Government Act 2002 places on CCOs.**

There is an apparent conflict between the Government's policy intentions and the Bill as worded.

Clause 16(1)(a) gives effect to the so-called financial ringfencing that the Government committed to. It provides that revenue received from water services can only be spent on water services. A plain text reading of that clause would therefore suggest that, among other things, a water service organisation cannot distribute a surplus or pay a dividend to its shareholding local authorities.

Yet we read in the Cabinet paper Local Government (Water Services) Bill: Approval for Introduction that

*"the prohibition on Watercare paying dividends or any surplus to Auckland Council should continue. The prohibition is a key feature of the financial separation of Watercare from the Council, and is already provided for in legislation. This prohibition is unique to Watercare. Other water organisations will be able to make distributions if agreed by their shareholders and provided for in the organisation's constitution, or the equivalent document(s)"*⁵

The two policy positions appear almost diametrically opposed. In fairness to the drafters, it may be that there is an internal inconsistency in the headline policy itself.

This is not an academic point. Much of the responsibility that has been placed on the Commerce Commission lies in monitoring and enforcing the ring-fencing established in this Bill. We also observe that the Bill provides for rate of return regulation, which would only be necessary if water organisations were able to pay a dividend etc.

Later in this submission we comment that transparency in the use of funds is fundamental to the success of the reforms, especially given the scale of funding involved. The principles set out in clause 16 all support that stance. On the other hand, having to meet a rate of return would provide an incentive toward efficiency and is in keeping with the overall design of the water organisations (particularly the requirement that they be established as companies). This is a matter for political decision.

On a more mundane matter, clause 16(1)(a) contains a list of types of spending ("spending on maintenance, improvements and providing for growth"). By being this specific the Bill needs to ensure the list is exhaustive, it has excluded spending on renewals. We don't consider that the words in the brackets add anything to the clause and recommend that the phrase after the word 'services' can be deleted.

⁵ Minister of Local Government (2024), *Local Government (Water Services) Bill: Approval for Introduction*, paper to the Cabinet Legislation Committee, page 5.

Alternatively, the Committee might add the word 'renewals' after the word 'maintenance'.

Recommendations: Financial ringfencing

That:

- 16. the Select Committee seeks further advice as to whether payment of a dividend or distribution of a surplus is consistent with the financial ringfencing set out in clause 16(1)(a), and how any conflict might be resolved**
- 17. clause 16(1)(a) be amended by deleting all the words after the word 'services'.**

The Bill gives water organisations powers to contract out against the express wishes of their shareholders.

Clauses 21 to 23 authorise a WSP to contract out the performance of any of its services, on behalf of the WSP, to another person for up to 50 years – though this does not apply where the contract is to go to another water organisation.

Where the proposed contract is significant, a water organisation must consult its shareholders. Water organisations "must consult its shareholders and incorporate their directions and expectations" in the significance policy.

As worded, the clause gives a water organisation significant power to contract out against the wishes of its shareholders, so long as they are consulted.

It is unclear whether water organisations can use the clause 186 statement of expectations to specify an expectation that water organisations will perform their functions without contracting them out, at least without shareholder consent. The statement of expectations should prevail given that contracting out may result in a model of service delivery which is substantially different from that anticipated when the water organisation was established.

If that is the case, it would be consistent and more straightforward for clause 22 to state directly that significant contracts (as determined under the significance policy) are subject to the approval of the shareholders.

Recommendations: Significant contracts

- 18. That clause 22 be amended to require water organisations to gain shareholder approval before entering into any significant contract to transfer a responsibility to another body.**

The significance policy may be relevant to around a dozen other matters in this Bill.

Our understanding is that the clause 23 significance policy applies only to the assessment of whether a contract is a significant contract. But the term significant is actually used in (by our count) 12 other contexts.

Parties with obligations under the Act are required to consider whether the following are significant: assets; amendments to plans or policies; forecasting assumptions; levels of uncertainty; variations; issues; works; decisions; differences; problems or potential problems; and failures. The last two of these definitions (problems and failures) are assessments for the responsible Minister to make.

Each of these are significant (pun not intended) matters in themselves that the shareholders and the general public would need transparency over. The significance policy should therefore apply in each context.

Clause 23(3) recognises that territorial authorities are already under an obligation to prepare a significance and engagement policy, and this applies in the assessment of the significance of contracts. We suspect that in the absence of anything to the contrary, they will apply their policies to any of the matters named in this Bill.

Recommendations: Significance policies for water organisations

- 19. That clause 23 be amended to require water organisations to prepare a policy that governs assessment of significance in any of the contexts specified in the Act.**

The Bill creates a potential procedural uncertainty for some service delivery planning processes.

Clauses 25 to 30 prescribe processes that will apply when local authorities are considering whether or not to form or enter a joint water services arrangement

change shareholding in such an arrangement or contracting for the provision of water services as per clause 21.

This set of provisions gives rise to the most significant concern Taituarā has with the Bill. In short, the Bill overrides and substitutes a more onerous analytical and consultation requirements on local authorities establishing joint arrangements just as local authorities are undertaking their service delivery plans. To pick up the story we draw on an excerpt from a recent newsletter from our legal counsel Simpson Grierson⁶

"The Preliminary Arrangements Act (PAA) already provides a process for identifying and deciding on a council's proposed water services delivery model, and if necessary establishing a CCO, as part of the adoption of a Water Services Delivery Plan (WSDP). Consultation is mandatory on that particular part of a WSDP. The process under the PAA for establishing a CCO differs from that under the Bill: for example, the Act permits the identification of only two options (rather than the three anticipated under the Bill), when the council is considering and then consulting on its proposed option.

Many councils are well advanced in their planning for the upcoming decision-making required under the Preliminary Arrangements Act. However, because there are now two potentially overlapping decision-making processes, if a council's preferred delivery model has not been implemented (eg the CCO established) by the time the Bill becomes law, the more onerous requirements in the Bill will then apply (the Bill says it prevails over the PAA if there is an inconsistency). This may involve further consultation at that stage, after a council has already consulted under the PAA.

This could become a timing lottery (sic) given that WSDPs must be approved by the Secretary, and there will only be absolute certainty about the future delivery approach at that point

This is an example of a more general procedural tension between the two Acts. For example, the PAA says that consultation on the establishment of a CCO is not required if there was already adequate consultation through the WSDP process. It also says that a council must give effect to its WSDP once adopted. However, the Bill requires consultation on the establishment of a CCO even if, apparently, it is part of an approved WSDP which was subject to consultation and the council is required to implement.

⁶ Simpson Grierson (2024), The Local Government (Water Services) Bill – A comprehensive overhaul of water services delivery, downloaded from <https://www.simpsongrierson.com/insights-news/legal-updates/the-local-government-water-services-bill-a-comprehensive-overhaul-of-water-services-delivery> on 17 January 2024.

These duplicate requirements seem illogical and hard to reconcile, and will create procedural risk and additional expense for councils. Unfortunately, any clarification is not likely to come until well after the WSDP decision-making processes are in train."

Here's the point. The PAA gave local authorities until 3 September 2025 to prepare a service delivery plan and send to the Secretary for approval. The PAA also set out some streamlined obligations with regard to analysis and for those investigating an option such as a CCO, an obligation to consult only once. We anticipate the Bill will be enacted at some time in July, and while we are aware of many who are looking to complete and forward the plan before the 2025 elections are called (in mid-July) others have not, and in any case no CCO could be said to be established until approval of the Secretary has been granted.

We accept that officials have designed a set of requirements that must endure for as long as this legislation does. The legislation needs to allow for the joint services arrangements that are formed in the future (for example, should a group of local authorities that decide in 2025 to each stick with in-house delivery revisit that in 2030) and it certainly does this.

We can see several options for resolving this

1. provide for clauses 25 to 30 to come into effect at a later date (thus allowing local authorities to complete plans and establish joint arrangements out of the service delivery plans)
2. amend clause 25(7) to establish that in the event of conflict between these provisions and the PAA, the PAA prevails (as opposed to the provisions of this Bill prevailing)
3. provide an exception for any joint water services arrangement proposed in a service delivery plan forwarded to Secretary for approval on or before 3 September 2025. In these cases, the PAA prevails.

We have no preference amongst these options and would be happy to further discuss with officials as part of the Committee's deliberations process.

And while not a legislative matter, we observe that as the Bill is currently worded and the current timetable for enactment, much will depend on how expeditiously the process for Secretarial approval of service is undertaken. A WSDP cannot be regarded as 'final' until such approval has been given – even those local authorities that adopt a plan in June might be 'caught' if DIA processes take longer than a month. The Select Committee may wish to ask officials about matters such as the process and timeframes for approval of the WSDP.

Recommendation: Transitional arrangements and service delivery plans

- 20. That the Select Committee note the potential overlap in processes for establishing joint arrangements under this Bill and the Water Services (Preliminary Arrangements) Act and seek further advice on options to resolve this.**

The phrase “relevant provisions” of other legislation leaves an important matter open to interpretation.

This clause states that clause 40 applies “in addition to the relevant provisions in Part 8 of the Companies Act 1993 and Part 5 of the Local Government Act 2002”. This wording does not identify what those “relevant provisions” are, thereby creating uncertainty. As an aside this form of drafting shortcut is used elsewhere in the Bill and should be avoided.

Recommendations: Links with the Companies Act and Local Government Act

- 21. That clause 40(5) be amended with cross-references to the provisions of the Companies Act 1993 and the Local Government Act 2002. Similar provisions elsewhere in the Bill require a similar amendment.**

The provisions regarding the appointment of directors could be strengthened.

Taituarā is on record as saying that effective governance is fundamental to the success of reforms to the water sector, especially where corporate alternatives are pursued. This becomes even more important with the intent that water organisations operate as financially separate entities and with a level of financial gearing that could approach levels similar to many large corporates.

Clause 40 requires shareholders to appoint directors on a skills-basis and explicitly prohibits current local authority elected members and employees from serving as directors of water organisations. We agree that both of these aspects support the intent that water organisations operate with financial independence.

However, we would recommend that there should be some greater specification of the skill sets of directors. Earlier in this submission we observed that the board as a collective should have knowledge of tikanga Māori, te Ao Māori and te Tiriti. We would add that a commercially geared entity must have commercial acumen. As an

aside this is a potential weakness of the two community trust options in that the directors of those bodies must be appointed through an electoral process.

As currently worded, the Bill has no requirement to ensure that there is any ongoing training or other professional development for the Board. This becomes critical for those boards of directors of community trusts where the electoral process does not guarantee a mix of skills and knowledge, and gaps are likely.

Good governance practice, outside of the fundamentals, is a constantly evolving thing. Board members should be receiving regular refreshers/update training. We'd also expect a Board would regularly update its skills in financial management, law, asset management etc.

We therefore recommend that water organisations be required to have a policy on the development of Board skills and capability. This might sit either with the Board itself or with the shareholders – in other CCO this forms part of a local authority policy on appointment of a CCO. Given the range of models and appointment processes we lean towards this as an obligation on shareholders. Such a requirement might sit within clause 40 or as a separate clause alongside clause 40.

Recommendations: Appointment of Directors

That:

- 22. clause 40(2) be amended to specifically mention commercial acumen and knowledge of tikanga Māori, te Ao Māori and te Tiriti without limiting other skill and knowledge sets**
- 23. shareholders of water organisations be required to develop a policy for the capability of the directors of water organisations.**

Regulatory Powers and Obligations

This section covers much of Part Three that sets out the regulatory powers and obligations that water providers have regarding each of the individual water services.

The Bill must be consistent in its references to the different types of water provider.

The Bill creates several new service delivery models which are intended to operate in quite different ways. As a result there are differences in the expectations of the different models. Many appear backed by a policy rationale.

There are others where a clear rationale is less obvious and is not consistently followed through across similar provisions. To take an example, clause 165 differs from the equivalent for drinking water catchment plans and trade waste plans (clauses 143 and 150), in that the stormwater network risk management plan is developed and adopted by the water service provider rather than a territorial authority or water organisation. This one seems a case where each of the obligations would apply to all providers regardless of delivery model.

This isn't an academic or technical point. As we have seen, the accountability requirements and financing tools for a water organisation differ significantly from those for local authorities. For example, water organisations will be empowered to borrow in foreign currency, local authorities (other than Auckland Council) are not. The Bill gives water providers their framework of powers to operate – the legislation will receive a higher level of scrutiny from the 'armchair expert' so any errors could have a major impact.

To give a more practical example of the confusion that can be created, consider the obligation to prepare a Drinking Water Catchment Plan (DCWP) as set out in clause 143. This requires territorial authorities to prepare a DCWP or delegate this to a water organisation. However, section 148 requires territorial authorities to review the DCWP within 10 years, which cannot be delegated.

Recommendations: Terminology

- 24. That the Committee invites officials to review the use of the terms 'water provider', 'water organisation' and 'local authority' for consistency in their use.**

Consultation requirements appear to differ between the different planning requirements, with no apparent reason.

The Bill requires water providers to prepare a DWCP, a Trade Waste Plan (TWP - clause 150) and a Stormwater Network Risk Management Plan (SRMP - clause 165). While at least one of these is a new requirement (the DCWP) they codify good practice and to that extent we support them.

We observe that the consultation requirements differ between the different planning requirements. The DWCP and TWP require consultation with the public, using a process that is similar to the consultation requirements of sections 82 and 83 of the Local Government Act. By contrast the SRMP doesn't require consultation with the public at all - a provider needs only to supply the water services regulator (aka Taumata Arowai) with a draft.

It is unclear to us why the SRMP is under such different consultation requirements. The public has an interest in all three water services – not least because they are paying for them. There is a considerable public interest in the existence of risks to the stormwater network and how these will be managed. Having different requirements is likely to create confusion for the public – especially when they find out changes have been made to the SRMP without the opportunity to have a say.

We observe that the process itself is also modelled on the special consultative procedure of section 83 of the Local Government Act. However, there is one important difference. Section 83 specifically requires that local authorities provide the community with at least one opportunity to present their views to the local authority in a *spoken or sign language format* (emphasis supplied). This is often read, mistakenly, as requiring a 'hearing'. The obligation to provide for spoken or sign language interaction has not carried through into the Bill – it is not clear to us why. Again, the fewer differences with consultation obligations between local authorities and the water providers (of whatever form) the better.

Clause 168 sets out the process for preparing stormwater risk management plans. The process includes an obligation to consult with the Water Services Authority (aka Taumata Arowai) and to give effect to any comments the Authority makes. It is appropriate that the environmental/health regulator would be consulted in the risk management planning process.

It is unclear to us why a stormwater provider that is a water services organisation would not also be required to consult their shareholder. Local authorities retain overall legal responsibility for these services (as per clause 8), and also have civil defence and emergency management responsibilities in the event of a failure of stormwater services (i.e. if a risk materialises).

In a similar vein, substantial aspects of the stormwater service are provided in the roading corridors (kerbing and channelling in urban areas, drains and ditches in the road corridor etc). The stormwater risk management plan is dependent on these assets to mitigate any risk materializing, both water providers and the transport corridor operators need to work together. While there is a very substantial overlap between those who would be shareholders and those who are transport corridor operators (i.e. territorial authorities) there are important exceptions (the New Zealand Transport Agency and Kiwirail are two examples).

Recommendations: Consultation on network plans

That:

- 25. the consultation requirements for the Drinking Water Catchment Plan, Trade Waste Plan, and Stormwater Network Risk Management Plan be unified into a single provision**
- 26. the unified consultation process provided under clause 144 include a requirement for the water provider to offer the public at least one opportunity to present their views using a spoken or New Zealand sign language format**
- 27. that any unified consultation process be open to the general public as well as the Waters Services Regulator – Taumata Arowai, transport corridor operators and shareholders (if a water services organisation).**

Sections 110-113: water service connections

Clauses 110-113 appear very prescriptive and likely to be unhelpful for the range of agencies that will have to comply with it, as it may be burdensome for smaller authorities. Though it allows for the approval of multiple steps at the same time, it is creating unnecessary bureaucracy without demonstrating the necessity.

It doesn't state it specifically, but it is assumed that these sections apply to all water services (not just drinking water). It would be useful if this was stated explicitly.

Many of the same concerns exist with the trade waste provisions as were raised in our discussion of drinking water.

We understand that the Bill's definition of trade wastes (surprisingly) represents the first statutory definition of trade wastes. The Bill also establishes a standard terminology (permit as opposed to a consent or a licence) that we are advised is likely to prove helpful.

Some of the same issues exist in these provisions as were identified in the drinking water provisions and our discussion of consultation requirements and processes, specifically:

- territorial authorities can delegate the preparation of a trade waste plan, but not the review of a plan
- territorial authorities must make a trade wastes bylaw if the water organisation recommends it do so (as long as the water organisation provides the relevant service).

The process for challenging decisions to decline a trade waste permit appears over-specified.

Clauses 156-163 prescribe a system for reviewing (and ultimately appealing) a decision to not grant a trade waste permit. We understand the intent of what is meant to be a process of reconsideration similar to that which applies to the reconsideration process in the development contributions provisions. And as a low cost graduated step before judicial involvement.

In some smaller councils it may not be practicable to find an appropriately qualified person to review the decision, which then means the retention of external advice. And even in larger councils is a review by another person from within council likely to satisfy the applicant if the answer is negative. In both cases the application of either a staff resource or an external resource comes with a time and cost to council. As the legislation stands there is no cost to the applicant and every incentive therefore for applicants to ask for reconsideration of the original decision. A requirement that an applicant meet the actual and reasonable cost involved in the reconsideration will temper this.

The overall risk for this process is that it would be used to litigiously review any unfavourable decision, and could affect the decision-making independence of the territorial authority or water services provider if they are faced with stayed decisions that are continuously challenged. We note that appeals to the Court of Appeal (and higher) are limited to points of law, could there be a further requirement that the Court be required to provide leave.

Recommendations: Challenge to a trade waste permit decisions

That:

- 28. applicants requesting a review a decision on granting a trade waste permit be required to meet actual and reasonable costs of a review**

29. any appeal of a District Court decision require the High Court to grant leave.

The stormwater plan provisions need clarification.

We clauses 165-169 that require providers to prepare an SRMP.

Clause 166 covers situations where multiple providers manage aspects of the same stormwater network. There is a contradiction between different aspects of this clause. Subclause 166(2) creates an obligation for multiple water service providers responsible for a stormwater network to work *collaboratively* i.e. it uses the word 'must' on a joint risk management plan. Subclause 166(3) then muddles 166(2) by saying states that a joint plan can only be made if all water service providers agree to collaborate. The two are contradictory – we would resolve this by deleting 166(3).

Clause 167 sets out what the stormwater network risk management plan must contain. It is not prefaced as "without limitation", which strongly suggests this is an exhaustive list of what the plan will contain.

Clause 169 requires that each SRMP stormwater network risk management plan must be reviewed every five years by the stormwater network manager. This is a different time period than the drinking water catchment plan and trade waste plan (both 10 years) without an obvious reason for difference. Clause 169 also introduces a new agency – the stormwater network manager. This term appears nowhere else in the Bill. For consistency, presumably this should be the water services provider.

Recommendations: Stormwater network risk management plans

That

- 30. subclause 166(3) be deleted, thereby clarifying that multiple water providers managing different aspects of the same stormwater network must collaboration to prepare a joint stormwater network risk management plan**
- 31. the words "without limitation" be added before the list of contents of a stormwater network risk management plan in clause 167**
- 32. the review period for stormwater network risk management plans be aligned with the other network plans at ten years**
- 33. clause 169 be amended to delete the unnecessary term ' stormwater network manager' and replace with water services provider**

Unifying and standardising the bylaw making powers would aid those needing to interact with water service providers.

The Bill has separate bylaw powers for each of drinking water, trade wastes and stormwater. Each have different consultation requirements, different content requirements (and different degrees of 'flex' in the content requirements) and (even) differences who can make bylaws.

The general public (and business especially) could be interacting with water providers across all three water services and different types of bylaws. Differences in these provisions are a recipe for confusion and compliance cost.

Recommendation : A single bylaw-making power

34. That the Bill be amended to unify and standardise the bylaw-making provisions of part 3m subparts 3,5,6 and 7

It appears that water organisations have been given powers to make stormwater bylaws on their own initiative.

Clause 170 allows a water services provider to make bylaws to support their SRMP. The power is necessary – for example to prohibit land owners from causing obstructions to overland flow paths etc. As it stands though this clause allows a wider range of agencies to make such a bylaw in that clause 170 applies to both territorial authorities and water organisations. That is a power not extended in regards drinking water and trade waste bylaws – where the water organisation has to recommend that the territorial authority make the bylaw. It is a potentially significant (and precedent-setting) change, as it transfers substantial lawmaking power to an entity which is at some arm's length from public accountability. We suspect that this is probably a drafting error.

Recommendations: Competency to make stormwater bylaws

35. That clause 170 be amended to bring the list of agencies with power to make stormwater bylaws into line with those for water and trade wastes.

There are other stormwater matters where the policy intent needs clarification.

Clause 171 seems to be intended to ensure a separation between powers over stormwater networks and those which involve a transport corridor (in line with the intent to have road controlling authorities retain the power to regulate stormwater networks that involve the transport corridor). However, it seems to limit the ability of a water service provider that is also a territorial authority to make bylaws governing stormwater networks in the transport corridor, which they should be able to do as they are also the road controlling authority.

Clause 172 adds a requirement for stormwater network bylaws that is not present for drinking water bylaws or trade waste bylaws – the requirement to send the proposed bylaw to the Water Services Authority for comment. It isn't clear why this should only apply for stormwater network bylaws.

Section 176 refers to service agreements between the water service provider and other entities that have a statutory role or interest in the stormwater network. This section is vague and unclear as to its purpose or intent. It's hard to ascertain what value this section provides.

Water services bylaw powers are loosely drafted and would create fertile grounds for dispute.

We concur with comments in the suite of Cabinet papers that it would be inappropriate to provide water organisations with bylaw powers, as they are not democratically accountable. Clauses 347-350 set out the process for making water bylaws where water is provided outside local authorities. There are several matters in this group of provisions that require clarification.

Clause 348(4) covers circumstances where a water organisation in multiple ownership is proposing a bylaw to several local authorities. The water organisation must provide the same proposal to each local authority unless there is a good reason not to. The term 'good reason' is not defined anywhere, nor is it even clear who makes the judgement call as to what is a good reason. This might be better clarified "as unless the water organisation is satisfied, on reasonable grounds, that differing circumstances warrant making a different proposal to different local authorities".

Clause 349 appears to create a system where both the water service provider and the local authority are required to consult on the bylaw, with local authorities not having to consult if the water services provider has already consulted. However clause 348 already requires the water services provider to consult – if the water services provider has already met its obligations it is not clear what this provision is attempting to

achieve. We see no practical advantage for a local authority reconsulting – it would provide the disaffected with an avenue to relitigate decisions and be difficult to avoid claims of predetermination.

The territorial authority is also obliged to meet all other requirements involved when making a bylaw (section 349(3)(b)). This would include the requirements of section 155 of the Local Government Act 2002, to determine that a bylaw is the most appropriate way of addressing the perceived problem. It seems to us that the water organisations should be undertaking this analysis and also meeting the Local Government Act requirements to establish why the proposed bylaw is the best form of bylaw. The water organisation would then submit this analysis alongside its proposal.

Clauses 351-354 require territorial authorities to review their existing related bylaws for consistency with this Act, and where amendments are necessary then prepare a plan for making changes (which includes an option to invite water organisations to submit a proposal where these organisations exist). Where local authorities retain services in-house they are subject to an obligation to undertake ongoing reviews at intervals of not less than ten years.

Clause 352 sets out a general process for the initial review. It adopts some elements from section 155 of the Local Government Act 2002, but not all. For instance, it does not require the territorial authority to consider the New Zealand Bill of Rights Act 1990 when making a determination under section 352. Similarly, section 160 of the Local Government Act 2002 requires consultation when a decision is made to continue a bylaw without amendment; this is not included in clause 352. This and clause 353 apply exclusively to local authorities. We submit that the Bill could refer back to the relevant clauses of the Local Government Act 2002.

Clause 353 duplicates requirements from earlier sections that require the territorial authority to seek input from water service providers when reviewing (making) bylaws). A better approach would be to require the territorial authority to consult with affected parties, including the water service provider.

Recommendations: Water services bylaws

That:

- 36. clause 348 be amended to clarify that water organisations can propose different bylaws to different local authorities where the organisation consider different circumstances warrant it**

- 37. clause 349 be deleted by removing redundant requirements to consult**
- 38. clause 353 be amended to require local authorities to consult all affected parties during a review of water services bylaws**
- 39. clause 355 be amended to refer local authorities consulting on the review of water bylaw back to the bylaw requirements of the Local Government Act 2002.**

Compliance and enforcement provisions need further clarity around the infringement fees and appointment of compliance officers.

Clause 356 introduces the ability for a bylaw to specify infringement offences and fees, we'll return to this point in the next section. This will make it easier for territorial authorities (or water service providers if delegated by the local authority) to achieve compliance and enforcement for smaller scale offending. This clause could also usefully clarify that the bylaw may provide for the charging of an infringement fee for each day for an ongoing or continuing offence.

Clause 361 sets out the information that must be contained in the infringement notice, but it is unclear what value is achieved by allowing the bylaw to prescribe the form of the notice, when this is already practically achieved in the Bill.

Clauses 366-390 contain further references to 'water service provider' that we suspect should in fact be references to a 'water organisation'.

Clause 366 is vague. It suggests that either the territorial authority or the water service provider (water organisation?) can appoint a compliance officer. How would this work if the water provider has been delegated authority – could the territorial authority still appoint compliance officers even if they are not providing the service?

Clause 368 states that a territorial authority or water service provider can suspend or end the appointment of a compliance officer at any time, but also that a compliance officer's appointment ends when they are no longer eligible for appointment. The second part suggests that there is some criteria or requirement that compliance officers need to meet that has gone unspecified in the Bill as it stands.

Recommendations: Compliance and enforcement

That:

- 40. clause 356 be amended to allow for the charging of an infringement fee daily, where an infringement offence is ongoing**

41. either clause 368(2) be amended to clarify the circumstances in which a compliance officer becomes ineligible for appointment or that clause 368(2) be deleted.

Are legislators intending to make offences against water bylaws, infringement offences?

Clauses 393 – 422 set out specific offences. The list of offences seems comprehensive. There are specific activities which are covered, but others are broader such as clause 411 which covers a person breaching a prohibition, restriction or requirement set out in a drinking water catchment plan or in a permit issued under a water services bylaw. There are similar provisions in clauses 412 and 413.

A subset of these offences are identified as also being infringement offences in the definition of infringement offence under clause 344. However, clause 356 states that “a bylaw made under the Act may...specify the offences under this Act that are infringement offences.” It is unclear whether the definition of infringement offences limits clause 356, so that a bylaw may only specify as infringement offences those offences which are specifically listed in the definition in clause 344, or if any of the offences in subpart 3 can be listed as infringement offences. If it is the latter, why is it necessary to specify in clause 344 which offences are infringement offences?

Further, the definition of “infringement offence” clause 344 states that it is “an offence identified in a bylaw made under this Act as being an infringement offence.” This is separate to the list of offences in the second part of the definition, and also does not specify that the offences are those listed as offences in the Act. This stands apart from clause 356 which states that “a bylaw made under this Act may...specify the offences under this Act that are infringement offences.” This is a slight contradiction but it could have a significant impact. Based on the definition, a bylaw could specify its own offences and classify them as infringement offences. This is a power which local government has long sought but has not been granted under the Local Government Act 2002. It would be a remarkable change in regulatory practice if this was the case.

Many of the offences refer to the impact of the offence on a “specified serious risk” – this is defined as a serious risk of, or to, illness, injury or death, public health, the natural or built environment, water services infrastructure, or sites of cultural significance. For those offences where this is specified, it will create a reasonably high threshold to prove the offence. Most of those offences are not specified as

infringement offences (meaning they can only be proceeded against as a prosecution via the courts. However, some offences (clauses 412-415 inclusive) refer to a "specified serious risk" yet these are also able to be specified as infringement offences. It would be useful to clarify if this is correct or an oversight. There is also a presumed mistake in clause 413 which refers instead to a "serious specified risk" (wrong word order).

Recommendations: Bylaws and infringement offences

That:

- 42. the Select Committee seek clarification as to whether the Government intends that a bylaw made under this Act can specify any of the offences in the Act as infringement offences and within that, A bylaw made under this Act is able to specify any offence in the bylaw as an infringement offence.**
- 43. the Select Committee clarify the reference to specified serious risks in clause 413.**

The interface with the Reserves Act is oriented in a way that may compromise open spaces.

And to finish this section, an observation about the interface of the Bill and the Reserves Act.

Section 116 gives considerable power to a water service provider to undertake activities on or under land including land held under the Reserves Act. While there is a disputes process, there isn't much recourse to say no with provision for the water services provider to make a final determination.

To give a practical example, a metropolitan council cites the case of their (currently in-house) water services wanting to use a reserve for infrastructure. The reserve in question was a recreation reserve earmarked for a future sports centre, that had been seen as a desirable "empty space" for a water reservoir and to put a pipe through a large wetland area managed as a recreation and historic reserve. In local authorities such conflicts are managed in house. In this case the proposal was inconsistent with the reserve classification and the council's management plan for the space. However, the provisions in the water services bill suggest that a water service provider could override the council's objections (and essentially the Reserves Act).

We have been asked, and were unable to answer:

- how does the Water Services Bill consider the Reserves Act requirement to consider the classification of the reserve when deciding an appropriate activity? Does the Reserves Act need to be reviewed to address the role of reserves in providing infrastructure? How is a water services provider required to adhere to the reserve management plan (a statutory document)?
- should this power be restricted to those reserves classified as local purpose (drainage)?
- does this apply to reserve land but not Crown land, roads, or land held under the Conservation Act?

Accountability and Financial Management

The accountability regime for water providers requires:

- a statement of expectations (if a water organisation, the Bill's provisions are based on the equivalent provisions covering statements of expectations for the garden variety CCOs under the Local Government Act 2002)
- a water services strategy (loosely based on long-term plans under the Local Government Act 2002) and
- an annual report.

The only comment we have about the statement of expectations is that the statement must include a provision or provisions around relationships between water organisations and Māori. Likewise, we have no comments regarding the annual reporting requirements.

The required disclosures around revenue sources are too vaguely worded to provide much transparency for consumers and the community.

Public acceptance of the reforms is critically dependent on its perception that charges are fair, transparent, and justified. Economic regulation is one of the tools for providing this. A clear, transparent charging system is the other. Disclosures around the funding of water services are therefore not a matter of academic interest. Schedule three requires water providers to set out their intended approach to "pricing the water services it provides" and "charging consumers" together with the "intended sources of funding and revenue".

It is not clear what policy-makers had intended that providers would supply against the first two required disclosures. We suspect it's likely to revolve around the methodology for each of pricing and charging (e.g. connection charges, volumetric charges, peak tiers etc) in which case the legislation should specify this. In that case the requirement looks more like the system disclosures of whole-of-council funding impact statements required in clauses 15(3) and (4) of Schedule 10 of the Local Government Act. If it's not this, then further clarification is needed.

The third disclosure requires only that providers list the 'sources of funding and revenue'. The terms 'funding and revenue' are generally regarded as synonymous – if the disclosure had asked for revenue and financing it might be less confusing. We also observe that providers could comply with this requirement simply by listing a source.

That doesn't seem to provide for much transparency for the user or community, what may do is knowing what amounts of revenue etc are expected from each source e.g.

water is 60 per cent funded by a volumetric charge, 20 per cent from development contributions.

There are no requirements on water organisations to explain the rationale for the design of their funding systems. Local authorities that provide services in-house will continue to do so through the funding policy process of section 101(3) of the Local Government Act 2002 that among other things requires local authorities to consider principles of user pays, exacerbator pays, intergenerational equity and the costs and benefits of funding activities separately. Prima facie water organisations would benefit from applying these kinds of discipline to the design of their funding systems.

Recommendations: Funding disclosures

That:

- 44. that Schedule 3, subclauses 5(2)(a)(i) and (ii) be deleted as unnecessarily vague**
- 45. that a disclosure be added to Schedule 3, clause 5 regarding a schedule of prices and charges**
- 46. that Schedule 3, subclause 5(2)(a)(iii) be amended to read “the water service providers intended approach to funding the water services it provides, including the sources of revenue, and indication of the amount or level, and an explanation of the reasons for the selection of those sources”**
- 47. that water organisations be required to consider the matters in section 101(3)(a) of the Local Government Act in their explanation of their revenue systems.**

Information requirements for consulting on a water services strategy differ between provider types, without apparent reason.

Water organisations are only required to consult their consumers and communities if their shareholders require them to – we suspect shareholders are likely to expect them to. They are required to consult using section 83 of the Local Government Act as their basis – but unlike local authorities there is no required content as per clause 195(2).

We are uncertain as to why this would be the case. The Committee should explore this with officials, our own view is that if required to consult, the processes for water organisations should be the same as for local authorities

Recommendation: Consultation summaries

- 48. That water organisations should produce summaries that meet the same content requirements as for local authorities when their shareholders ask them to consult on water services strategies.**

The audit arrangements for water service strategies need clarification.

The audit requirement for water strategies is, theoretically, quite unusual. A water provider's strategy will be audited if and only if one of the Secretary, the Commerce Commission, or the provider itself ask that an audit occur. In practice, we suspect the former two parties are likely to ask that all providers undergo an audit of at least the first few strategies.

We note that the other agency that may request an audit is the provider itself. In the case of a local authority that would be the local authority. But in the case of a water organisation, only the water organisation can ask for an audit, the local authorities themselves cannot (though arguably they could prevail upon directors of the water organisation to do so).

Local authorities retain some degree of accountability for the provision of water services, even where responsibility has been transferred to a water organisation. Among other things, an audit will test the underpinning information and assumptions used to prepare the strategy and the overall prudence of the financial planning. It seems strange to us that local authorities would not have the right to ask for an audit as a statutory right.

We also observe that requests originating from the Secretary, or the Commission require twelve months notice, but no such requirement applies to a provider-generated request. Our experience with LTP audits tells us that a prospective audit is a significant piece of work, and has to be meticulously planned both by the auditor and the provider so that the process of preparing and auditing the strategy dovetail. It seems strange that the provider can ask for an audit at more or less any point prior to adoption (there is no preclusion from asking after adoption but this would be pointless). We submit that any request should be made in writing and with at least a year's notice.

Recommendations: Audit of water services strategies

That:

- 49. clause 199(1) be amended to enable shareholders of water organisations to request an audit of that organisation's water services strategy**
- 50. clause 199(2) be amended to require that any request for an audit of a water services strategy be made at least twelve months before the strategy must be adopted, regardless of the agency making the request.**

Asset management planning should be a direct statutory requirement, not a matter for local authority direction.

Clause 209 is largely a cut and paste from the Local Government Act that gives local authorities the option of directing their CCOs to report quarterly or prepare a thematic plan (such as a climate adaptation plan).

We were surprised to see that asset management plans have been treated in a similar way i.e. something of an 'optional extra' that local authorities can ask for.

A water organisation is an infrastructure business. Asset plans are a core piece of underpinning information in that they describe what levels of service the asset owner expects from the assets over their useful life and what new asset capacity, asset maintenance and renewal works are required and an indicative cost. The plans also bring in current information on asset condition and performance. Our experience with the audit of local authority long-term plans tells us that missing, incomplete or poor-quality asset plans for network assets tended to be regarded as a matter that would result in an audit qualification.

Previous legislation did contain direct requirements on the boards of water entities to prepare asset plans, and some prescribed content.⁷ In fairness, some of these provisions have been partially carried into the water services strategy requirements. We observe that the strategy is an accountability document, asset plans are more an internal management document and a support to the strategy.

The Select Committee may wish to seek advice from the Office of the Auditor-General in regards their view on whether the other provisions in the Bill provide for sufficiently rigorous planning. It may also wish to ask officials to explain their rationale for not requiring an asset plan.

⁷ See sections 151-153 of the (repealed) Water Services Entities Bill 2023.

Recommendations : Asset management plans

That:

- 51. clause 209(1)(b) be deleted**
- 52. a direct requirement be placed on all water providers to prepare an asset management plan for each of the water services they provide. This might be modelled on sections 151 to 153 of the now repealed Water Services Entities Act.**

Funding

The funding powers provided to water organisations are, for the most part, largely based on those available to local authorities. There are some additional flexibilities for water organisations. For example, the option of volumetric charging for wastewater appears clearly empowered in the Bill but is not available to local authorities. We discuss development contributions in more detail in a separate section.

Water organisations should be able to charge for wastewater disposal by the volume of water used.

Clause 60 replicates the power that exists in the Rating Act in that it allows charging for water supply that is based on a measurement of water used by or supplied to each rateable property.

However, neither the Bill nor the Rating Act contains a similar provision allowing charging for wastewater disposal on the same basis. A volumetric charge may be a more equitable mechanism than other alternatives such as a pan charge or a value-based rate in that it is tailored to actual use. Volumetric charging for both water and wastewater can also provide local authorities with incentives to manage the entire water cycle in an integrated fashion.

It is common in overseas jurisdictions to charge for wastewater disposal on the basis of water consumption (a usual proxy is that wastewater costs are recovered on the assumption that a volume of 80 per cent of water consumed on the property eventually leaves the property via the sewage systems). However, technology is becoming available to meter wastewater disposal directly – thus the legislation should be future-proofed to allow for recovery on either basis.

Recommendations: Volumetric charging for Wastewater

- 53. That clause 60(4) be amended to allow water organisations to charge for wastewater services based on the volume of water used or to charge for wastewater by measuring the volume of wastewater leaving a property**
- 54. That the Local Government Rating Act be amended to allow local authorities to charge for wastewater services based on the volume of water used or to charge for wastewater by measuring the volume of wastewater leaving a property**

Is the prohibition on using property value to charge too hard and fast?

One of the key policy settings that underpins the Bill is that water organisations would not have access to the rating system. This is justified on two grounds – first that taxation powers should be accessed only by agencies that are publicly accountable. And second, that the financial separation fundamental to access of wider borrowing powers requires a water organisation to have control over its revenue sources.

We generally agree, and we'd also concur that property values are not an economically efficient way of charging for drinking water and wastewater services.

But things are never this simple. Stormwater is something of the odd one out of water services. User charges aren't practicable (we don't generally want to exclude people from an urban stormwater system, and its non-rival in consumption). The beneficiaries from stormwater services have no influence over the weather, and only limited ability to influence how stormwater behaves on or leaving their property (for example by reducing sealed or paved areas on the property).

In those circumstances then, property value may be useful proxy of the degree of 'benefit' that an individual property owner receives from a stormwater system. That is to say the higher the property value, the higher the degree of benefit (and by the way the higher the likelihood that more of the property cannot absorb water). This is particularly true of capital values.

We therefore submit that property values should be a permitted means of charging for stormwater services. We don't see this as inconsistent with the independence of water organisation revenues provided that the water organisation sets and collects the charge itself.

Allowing charging in this way would require an amendment to the blanket prohibition on charging on property value in clause 60(5) to provide an exception for stormwater services. The transitional arrangements of clause 63 would also require an amendment.

Recommendation: Charging for stormwater services

555. That clause 60(5) and clause 63 be amended to allow water organisations that provide stormwater services to collect all or part of the charge for these services by a charge based on property value.

The Bill requires a transitional provision for local authority rates in those local authorities establishing water organisations.

The Local Government Rating Act 2002 provides local authorities with powers to set two types of rates as a fixed dollar amount per rating unit or per separately user part of a property. The use of these fixed rates is limited to no more than 30 percent of a local authority's total rates revenue, fixed rates set for water supply and sewage disposal are excluded from this '30 percent cap'.

Local authorities that transfer water services into a water services organisation would no longer set rates for water services, which could put them at risk of breach of breaching that cap, thereby breaching the law. The underlying policy behind rating decisions is arrived at through the revenue and financing policy process – a change of the above nature would mean significant changes to the rating system within the cap and could create major shifts in incidence (who bears the burden of rates).

As we understand it Government policy is to support local authorities to amalgamate water services. The above situation would be an important practical and political barrier.

We submit that the Bill should provide a transitional mechanism for those local authorities that would otherwise find themselves in breach of the legal limits on the use of fixed rates to phase in the change to their rating system.

The Water Services Entities Amendment Act 2024 allowed councils to the adoption 2027 LTP and the associated revenue and financing policies to start operating within the cap. That legislation was developed on all local authorities on dates determined by the legislation and with all participating in amalgamation. With the current proposals, local authorities will be amalgamating services at different times (more than a few are aiming for 1 July 2027). In that instance then the 2027 LTP would allow for no transition, we recommend that a transition to moving back to operating within the cap by 1 July 2030 or within three years of the move of services would be appropriate.

This allows local authorities who are prudent to phase in the necessary change in the incidence of rates – and we would be strongly advising local authorities to make use of this.

Note that we are not arguing for any amendment to the cap – we are asking Parliament to support local authorities to transition to continued compliance with that cap in a way that minimises the sudden shift in rating incidence.

Recommendation : Transitional arrangements and fixed rates

56. That the Bill provide local authorities that transfer water services to a water organisation either until 1 July 2030 or three years after the transfer of services to transition their rating systems to operating under the section 21 cap that the Local Government Rating Act places on fixed rates,

Water organisations will need access to rating information both in the short and long-term. The cost of preparing rating information should be shared.

One of the underpinning policy settings for this Bill was that water organisations would not have access to the rating system. And as a general proposition we agree that what are powers to tax should not be extended to bodies that are not democratically accountable.

Clause 63 sets up a process for water organisations to transition away from property value as a primary funding source, to full recovery via charges based on matters other than property rates. In that transition process water organisations will therefore be funded at least in part by rates, and whether they collect their own charges or agree with local authorities to collect charges, they will benefit from the production of the rating information database (RID)

But the Bill would require water organisations to have some degree of access to the rating system regardless. Clause 67 creates a presumption that the owner is the person liable for water charges (except in certain circumstances where an occupier is liable) and further exceptions for Māori land in clause 68. While it is theoretically possible that a water organisation would access owner information from the land registration system, this all exists on the RID. The information identifying those non-owners that would be liable only exists on the RID.

A water organisation that wishes to set a serviceability charge as per clause 62 can set such a charge only on land that is either fully rateable or 50 per cent non-rateable. That information only exists on the RID. And don't forget that properties can, and do, move in and out of rateable status all the time – it is most definitely not static!

So water organisations will require (or at least benefit from) the RID. As it stands, the Bill requires local authorities to subsidise the operating costs of water organisations by providing tax information *free of charge*.

In clause 73 the Bill requires the provision of the RID to water organisations on a reasonable cost basis if the water organisation requests the information. As we've seen water organisations will have no choice. We submit that reasonable cost is vague and can easily be interpreted as for the provision of the data set e.g. the cost of a memory stick.

There is a statutory formula for sharing the cost of preparing the RID where the different parties are unable to agree on an alternative. Section 43 of the Rating Valuations Act 1998 provides for the division of the costs of preparing the DVR based on the proportion of revenue collected using the information.

Recommendation: Access to rating information

57. That clause 74 be amended by adding that requires the water organisations to contribute to the cost of preparing the rating information database, and provides a formula for apportioning costs where parties cannot agree based on section 43 of the Rating Valuations Act 1998.

The Bill should be explicit about powers to waive charges for water services.

The Local Government (Rating) Act 2002 provides local authorities with powers to waive rates (that is to say remit and postpone rates), including those set for water services. Local authorities are able to waive any amount of rates, on any rating unit, for any reason provided that the waiver is in accordance with the conditions and criteria in a policy that the local authority must prepare and adopt following public consultation.

The Bill is silent on powers to waive charges for water services. These are sensible operational powers. To take an example, a water user paying a volumetric charge on a property where a leak has occurred might have some of that charge waived if they can demonstrate that there was a leak, and they have taken steps to fix it. Waivers might be considered in cases of hardship.

In the absence of any provision in the Bill it is not clear to us whether policy-makers intended that waivers not be permitted, or that policy-makers intended powers be open and unfettered.

We do not consider a completely unfettered power is desirable. Water organisations are publicly accountable for very large sums of money, and are using powers that in some instances are close to a coercive tax. An unfettered power leaves water organisations open to 'special pleading' (e.g. I/we are a special case because).

We submit that the water organisations should be required to prepare a formal policy on the waiver of charges and publish this in a similar manner to the water strategy. The waivers policy should stand alone to allow for amendment without unpicking the water strategy. These powers might be modelled on the revision and postponement policy provisions that apply to rates and are set out in sections 109 and 110 of the Local Government Act 2002.

Recommendations: Waivers of charges

That:

- 58. water organisations be permitted to waive charges for water services provided that these waivers are consistent with a waivers policy adopted by the water organisation**
- 59. any waiver policy must be adopted only after engagement with the public**
- 60. water organisations must publish any waiver policy on an internet site maintained by the water organisation.**

There is a procedural step for setting penalties that does not apply to setting charges.

Clause 71 provides water organisations with an explicit authority to levy penalties on unpaid charges. This is important as penalties are the primary enforcement tool – the Bill does not empower removal or restriction of water service.

The clause requires the penalty regime to be authorised by the water organisation's board. But the charges themselves do not specifically require board authorisation which seems to be inconsistent. In our view both the charges themselves and the decision to levy penalties on unpaid charges should be authorised by the Board.

Recommendations: Penalties

- 61. That clause 60 be amended to require the boards of water organisations to authorise the levying of charges for water services.**

The addition of water services to those charges eligible for a rates rebate scheme may have missed one type of charge.

Schedule 12 (page 324) clarifies that charges for water services set under the authority of clauses 60 and 61 fall within the scope of those charges potentially eligible for a rates rebate under the Rates Rebate Act 1973.

This is something we have raised as a necessary amendment since water reforms were first proposed in 2012. It would be inequitable for those who pay water charges to a local authority through the rating system to be eligible for a rebate, while those who pay charges to a water organisation are not. Indeed, this very question has been a 'political' sticking point in local authority led reform processes.

But the proposed amendment to the Rates Rebate Act covers only those charges set under clauses 60 and 61, charges for serviceability under clause 62 are excluded. We observe that setting rates for water services based on serviceability is common practice, especially in provincial and rural New Zealand, the definition of serviceability used in the Bill has been 'cribbed' from the common definition in use in local government.

Recommendation: Water charges and rates rebates

62. The proposed amendment to the Rates Rebate Act be amended to read "charges set under the authority of sections 60, 61 and 62 of the Local Government (Water Services) Act 2025".

Development Contributions

The Bill largely replicates the development contributions regime from the Local Government Act. One of the challenges that the entities will face is meeting the needs of urban development and housing. Developers should meet an equitable and transparent share of the capital costs of getting water services in place in order to service development.

Modelling these powers on section 198 of the Local Government Act is important as developers could be dealing with two different infrastructure providers (water organisations and the territorial authorities). Differences between the two create compliance costs for developers and should only exist where there is a clear rationale.

The Committee should note that the Treasury is currently reviewing the development contribution powers that local authorities have. We observe that powers provided to water organisations should mirror those provided to local authorities.

The development contributions provisions may contain an inadvertent 'gap' where local authorities are intending to establish water organisations.

Local authorities are currently working through the service delivery plan processes and assessing what they would need to do to implement any changes to service delivery, such as establishing a water organisation.

There is a lead time between the conclusion of service delivery plans, the transfer of services and the water organisation operating. Many of the local authorities' first transition planning are based on a 'go-live' date of 1 July 2027. Even the most optimistic of the initial transition plans does not envisage establishment before 1 July 2026.

Local authorities retain responsibility for providing the services in the meantime, including managing and delivering the capital works programme. Local authorities need access to development contributions powers to provide the infrastructure necessary to support urban growth and development (in the parlance of this Bill).

The development contributions powers in the Local Government Act relate to expenditures that are incurred by the *local authority or expected to be incurred by the local authority*. The choice of wording is deliberate and is a product of a time when only a local authority could access these powers, and with limited exceptions, only a local authority was providing the infrastructure these powers were made available for.

What is needed is a power for local authorities to continue to levy development contributions on all capital works for three water services included in their development contributions policy, and for any unused money to transfer to the water organisation on establishment. That power also needs to extend to the transfer of financial contributions assessed to fund capital projects to support delivery of water services.⁸ We could not find any such authority in the Bill as it stands.

But the transitional power also needs to allow for recovery of a contribution in respect of capital works undertaken to support provision of water services while the water services are delivered by the local authority, and any capital work scheduled to be built in the 2024/34 and 2027/37 long-term plans that is expected to be constructed by the water entity.

We understand that for a Council that is developing a Long Term Plan in the current year for whom the preferred water services delivery model is a new water organisation the base case for its LTP consultation would need to be a set of financials (including a revenue and financing policy) that exclude water-related capital expenditure and development contributions from the date of the transfer of assets to the CCO. These financials will need to be audited. We understand that this means that once the Council adopts its LTP it will be unable to charge development contributions for waters capital expenditure that occurs after the transfer of assets and responsibilities to the CCO. A new development contributions policy would need to be developed, consulted on, and adopted before waters-related development contributions could be charged. This may result in significant financial hardship for the Council and considerable uncertainty for developers.

The Water Services Entities Act passed by the previous Parliament contains provisions that allow local authorities to continue to assess contributions in the lead-up to transfer of services, and allow recovery on the above basis. While the policy context is slightly different in this Bill, we consider the underlying policy rationale for the above is substantially the same. Development contributions is an area more prone to litigation – clarity at an early point will head this off.

Recommendations: Development contributions in the transition

That:

63. the Bill include provisions that will allow local authorities to assess development contributions in respect of capital work to support water services in the transition to any water organisation. This could be modelled on provisions in the repealed Water Services Entities Act 2022

⁸ A financial contribution is a tool made available by the Resource Management Act 1991. We are aware this tool is still in use in a small number of territorial authorities.

- 64. the Bill allow for recovery capital works undertaken to support provision of water services while the water services are delivered by the local authority, and any capital work scheduled to be built in the 2024/34 and 2017/27 long-term plans that is expected to be constructed by the water entity. This could be modelled on provisions in the repealed Water Services Entities Amendment Act 2023**
- 65. any provisions as per recommendations 61 and 62 be extended to include financial contributions assessed to fund capital works to support the delivery of water services.**

The Bill has not provided for the transfer of development agreements from local authorities to water organisations

A developer agreement is an agreement through which the developer agrees to construct the infrastructure to service an identified development in return for not being charged a development contribution for that infrastructure. Local authorities have had the power to enter into a developer agreement since mid-2014, and these powers have been taken up.

The Bill has provided water organisations with the powers to enter into these agreements with developers. However, the Bill has no provision governing what happens on transfer of water services where the local authority and developer had a development agreement in place. Some of the so-called growth councils have agreements in place and have expressed concerns that the lack of a seamless transfer of agreements may place delivery of these projects at risk.

Recommendation: Developer agreements

- 66. That the Bill provide for the transfer to water organisation of any development agreements in existence on the date of transfer of water services, and on the terms agreed by the local authority and the developer.**

The Crown's exempting itself from development contributions is an unwelcome subsidy from the water user.

Clause 109 exempts the Crown (other than Kāinga Ora) from paying development contributions. This is a concern, as Crown agencies are often major developers and can exacerbate issues that are the responsibility of water providers. Such an exemption should be something that the Crown applies for and needs to justify. This application should reference the benefits derived for a particular community from

such a Crown project – and those benefits need to be sufficient to justify the associated water services-related costs that will be borne by all water consumers.

And, by the way, the same applies to those charges that local authorities levy for water services.

Recommendation: Crown liability for development contributions

That:

- 67. clause 109 be deleted making the Crown liable for development contributions for water services set by water organisations**
- 68. the Select Committee makes a similar amendment extending liability for development contributions for water services to the Crown.**

Economic Regulation⁹

Taituarā agrees that there is a need for economic regulation of water services.

Economic regulation will play an important role in securing overall consumer confidence in any change proposals. Reforms are likely to founder if there is any suggestion that water users are being 'overcharged' for this service, or that the funds raised are not being spent 'appropriately' (for example spending on 'gold-plated' or 'green-plated water services).

Overseas jurisdictions rely on a framework of economic regulation to exercise some control over price, quality, and investment. Typically, this regulation is based on requirements to disclose key information about charges, costs, and investments (a good example are the disclosure regulations that apply to various parts of the energy sector in this country).

There are particular features of the reform proposals that bear on the design (rather than the existence) of economic regulation. All delivery models are based on public ownership (whether it be by local authorities, community trusts or some combination). The ringfencing provisions make it very clear that water revenues **must** be spent on water services – which on a plain text reading prohibits distribution of any surplus (see our earlier comment on this matter). The incentives to 'over-charge' consumers are minimal.

The benefits that economic regulation bring to this reform process come from transparency that requiring disclosure of information brings. The associated 'benchmarking' is a commonly-used tool to introduce some degree of competitive tension into monopoly services. This enables consumers to detect differences in performance between providers and hold them accountable for these (for example, enabling customers to ask questions such as "why is the price I'm paying for this service different from that elsewhere?")

We submit that the policy settings that underpin these reforms are quite different from telecommunications, energy and groceries. They point to a regime that is more light-handed and based on disclosure, at least initially,

Economic regulation of water services must apply to all water service providers.

While the exact size and nature of the required future investment varies from community to community, no community has claimed that the future scale of and

⁹ Our 2024 'conversation starter' [A Practical Approach to the Economic Regulation of Water Services](#) provides more information on the approach regulators should take, and some first thoughts on the basket of measures that the regulators should employ.

investment in their community isn't major. Economic regulation should therefore apply to all providers of the regulated services regardless of organisational form that the provider takes i.e. regulation should apply to council delivered water services, and CCOs alike.¹⁰

We add that excluding some types of organisations from economic regulation may provide incentives at the margin to select one option over another. As we have already observed, one of the key benefits of economic regulation is the ability to compare performance across entities through information – a benefit that would be partially compromised were coverage of the regime not universal.

The initial exclusion of stormwater is a sensible transitional arrangement.

The Bill would make drinking water and wastewater services subject to economic regulation while providing flexibility to extend the regime to stormwater services at a later date.

We agree that stormwater services share many of the same natural monopoly characteristics as other water services, additionally stormwater services do not generally lend themselves well to user charging.

The size and scale of the likely future investment in stormwater services is less well quantified which may lend itself to a greater user demand for transparency, pointing to a preference for the economic regulation of stormwater management.

But stormwater networks tend to be more complex than other water systems. Most consist of a piped stormwater network as well as above-ground, watercourses, secondary, and overland flow paths. Currently there are significant gaps in stormwater flood risk information and how it is developed, variations between councils' levels of service, design standards and policies related to flooding and protection.

Stormwater disposal is often provided alongside other non-water services. For example, the curbing and channelling that runs alongside streets in many urban areas. The regulator must take care that any regulation of stormwater disposal does not impose reporting (or other) obligations in respect of non-water services.

We therefore support the provisions that allow for stormwater to be brought under economic regulation at a later date. However, it is not clear to us what engagement processes the Commission is under when making the necessary judgement (if any).

¹⁰ We would also extend economic regulation to government agencies that deliver water services such as the Ministry of Education, the Ministry of Defence, and the New Zealand Transport Agency.

Taxation Matters

Taituarā gratefully acknowledges the assistance of PwC in preparing this part of the submission. If the Committee or officials wish to discuss these matters further please contact Taituarā and we will arrange a discussion.

The Bill includes two specific proposals in relation to:

- the Income Tax and Goods & Services Tax (GST) consequences of any transfer of water services; and
- the ongoing income tax treatment of Water Organisations.

The 'transitional' tax provision on transfers of undertakings should be made permanent.

Clause 214 provides that the following entities are treated as the same person (for tax purposes) in specified circumstances:

- a) when a local authority transfers the role of providing water services to a water organisation, the local authority and the water organisation
- b) when a water organisation (as established pursuant to Clause 36 of the LGWS Bill) transfers the role of providing water services to another water organisation, the two water organisations and
- c) when a water organisation transfers the role of providing water services to a territorial authority, the water organisation and the territorial authority.

We support the intent of this proposed section but recommend an amendment. The clause will expire in five years from the date of coming into force. We submit that this limitation should be removed.

Realistically, the likelihood of decisions and execution of strategies on the future of the delivery of water services for the entire local government sector will extend beyond five years. The Bill is intended to set an ongoing framework for the delivery of water services in some areas. Service delivery proposals evolve over time. We are concerned that by limiting Clause 214 to the five-years, in the future it could potentially result in the tax considerations of a transfer (or consolidation / amalgamation of water organisations etc.) re-emerging as an unnecessary and avoidable issue when considering the effective delivery of water services.

We acknowledge the footnoted reference that after the five-years the general tax rules and application of Schedule 9 of the Local Government Act would apply. We submit that this is not a comparable substitute for the clearer, simpler and more comprehensive legislation that clause 214 (1) provides.

In particular, the Local Government Act provision covers only specific aspects of the Income Tax Act 2007 and is limited only to transactions between a local authority and a new undertaking. The latter means only transactions that are covered by the first limb of clause 214 would be covered, those described in the second and third limb would be excluded.

For completeness, Clause 214 (1) is extended to include reference to an amalgamation of two or more water organisations. Currently, it is possible that a number of local authorities may establish wholly-owned water organisations in the first instance, but these then amalgamate over time. Whilst the proposed income tax exemption (discussed below) should remove income tax issues on amalgamation, as this section applies to all Inland Revenue Acts in Schedule 1 of the TAA, it would make the position for any future amalgamations cleaner and simpler.

Recommendations: Taxation consequences of transfers of undertakings

That

- 69. the transitional tax arrangements on the transfer of water undertakings to and from water organisations be extended to include transfers between two or more water organisations**
- 70. the transition arrangements created in clause 214 be made permanent by deleting references to five years.**

Amendments to the Income Tax Act need a minor clarification.

The Bill would amend the Income Tax Act 2007 (ITA) to treat income derived from a water organisation as exempt income, subject to certain qualifying criteria (clause CW55BC).

We support this proposal as it ensures that the proposed 'use' of a water organisation for the delivery of water services does not result in the compliance burden of filing income tax returns, undertaking deferred tax calculations, potential income tax liabilities etc. which did not exist when responsibility for water delivery was within Council.

However, the drafting of proposed Section CW55BC does not explicitly state that the new water organisation that meets the criteria is tax exempt, only that an amount of income derived by a water organisation meeting the criteria is exempt income; a subtle but potentially important distinction. We submit that the section should be

drafted in a manner that is consistent with the manner that Section CW38, CW38B and CW55BA of the ITA have been drafted.

We also submit that Section 32E of the Tax Administration Act 1994 be amended to enable water organisations to be exempt from Resident Withholding Tax. Again, this would be consistent with the provisions of Section 32E(2)(k) and/or (kd).

Recommendations: Amendments to the Income Tax Act 2007

That:

- 71. the proposed section CW55BC of the Income Tax Act be amended to explicitly state that qualifying water organisations are tax exempt. This drafting would be consistent with the approach taken in sections CW38, CW38B and CW55BA of that same Act**
- 72. section 32E of the Tax Administration Act be amended to exempt water organisations from Resident Withholding Tax.**

The Bill is silent on the application of the Goods and Services Tax Act 1985.

There are no explicit amendments proposed to the Goods & Services Tax Act 1985 (GST Act). Therefore, the inference is that ordinary GST principles will apply to the income and expenditure of water organisations.

Currently, the GST Act contains certain provisions that specifically apply to local authorities, which have helped clarify, or alter, the GST treatment of transactions specific to local authorities. It would be helpful if the sections listed below of the GST Act were amended to include consideration of water organisations.

Section 6(1)(b) of the GST Act states *"without limiting the generality of paragraph (a), the activities of any public authority or any local authority or public purpose Crown-controlled company."*

This provision should be extended to include water organisations. While it is inevitable that they will have a taxable activity, inclusion of water organisations in this section will enable them to claim GST on all expenditures. This would put the water organisations in the same position as a local authority, optimising their ability to claim GST on expenditure and ensure GST compliance is simplified.

Clauses 71 and 72 of the Bill empower water organisations to impose penalties on any unpaid water services charges. These are similar to the powers available to local authorities in setting and enforcing rates under the Local Government (Rating) Act

2002, including for water services. Section 14(3) of the GST Act holds that a penalty imposed on unpaid rates is an exempt supply for GST purposes. Equality of treatment between the provider types requires that penalties imposed by water organisations under clauses the Bill should be treated as an exempt supply, and be explicitly included within section 14(3) of the GST Act. That would remove any ambiguity over the appropriate GST treatment.

Subpart 2 of Part 3 of the Bill empowers water organisations to collect development contributions. In the GST Act, there are specific provisions that apply to local authorities and development contributions. These provide that:

- a local authority is treated as supplying goods and services to a person if the local authority requires a contribution from the person as a financial or development contribution. Contributions of land must be zero-rated for GST purposes
- a GST registered person who makes a financial or development contribution to a local authority is treated as supplying goods and services to the local authority to the extent that the contribution consists of land.

The relevant provisions of the GST Act sections 5(7B), section 5(7C) and section 11B. These should be extended to water organisations that charge development contributions. There is no justification for having differing GST treatments for local authorities and water organisations, and if differing treatments applied this would increase the risk of non-compliance for both the water organisations and those GST registered persons making a payment of a development contribution that consists of land.

Section 9(8) of the GST Act provides specific time of supply rules for local authorities in respect of rates that are imposed. These confirm that the time of supply is deemed to take place at the earlier of:

- the date on which an instalment notice is issued if the instalment notice requires payment of an instalment by a particular date:
- the date on which payment is required by the instalment notice:
- the date on which payment is received.

The Bill is clear that water organisations will be setting charges for the supply of water, stormwater, wastewater and trade waste services. Although we do not see a need to clarify that the charges are subject to GST, we recommend that the Committee considers whether a specific time of supply rule should be included in the GST Act.

The requirements for assessing and levying rates are clear – local authorities are required to issue and assessment and then an invoice for each instalment of rates. The practicalities of how water organisations will be issuing notification of water

charges are currently unknown. Clause 60 of the Bill provides water organisations with considerable flexibility in setting their charges and how those charges are collected and paid.

We consider there is a real risk of GST compliance becoming burdensome, creating adverse cashflow consequences, and exposing the water organisations to non-compliance risks unless specific legislation in relation to the time of supply rules for water charges is drafted. This risk is heightened in the short- to medium-term given the real possibility that new water organisations will likely be leveraging existing rating and other connected systems used by local authority finance teams.

The Committee should consider consistency with the current approach to rates (assessment, then periodic invoices with clear due dates) and a specific time of supply rule consistent with Section 9(8) of the GST Act would support GST compliance through removing time of supply risks.

Recommendations: GST and water organisations

That, for equivalence with water services supplied by local authorities:

- 73. water organisations be permitted to claim back GST on all their expenditures**
- 74. penalties on water charges set by water organisations be treated as an exempt supply for GST purposes**
- 75. sections 5(7B), section 5(7C) and section 11B be amended to extend the same supply rules for development contributions set by water organisations as apply to local authorities**
- 76. the Select Committee considers whether a specific time of supply rule is required for charges set by water organisations.**

Appendix One: Technical and Drafting Matters

Note: We are indebted to the members of Taituarā Regulations and Bylaws Reference Group for providing the following list of matters of a technical or drafting nature.

Clause 4

The Bill has two different definitions of the term 'trade waste', in clause 4 and in clause 149. The Council considers the definition in clause 149 is better because it refers to waste that is 'discharged' instead of 'produced' and therefore suggest it should replace the definition in clause 4.

The term 'urban area' is defined in clause 4 only so the term can be used in the stormwater service definition. In the rest of the Bill the term 'urban development' is used, which is defined in clause 15(2), but only for the purpose of clause 15(1) and the term is not used in clause 15(1). The term, and the definition, are also inconsistent with corresponding terms and words used in the Resource Management Act 1991.

The definition of 'stormwater service' in clause 4 is limited to services in "an urban area" which is defined to exclude semi-rural settlements. Stormwater services are currently provided in such settlements. It is unclear why 'transport corridor' is excluded from the definition of stormwater service. Roding infrastructure and stormwater infrastructure are connected and operate together. If they are to be separately managed, then the Bill needs to state where the boundary is, e.g. who is responsible for runoff from a road? Note also the definition of stormwater service proposed to be inserted into the Commerce Act 1986 (new section 57AA, inserted by clause 225 of the Bill) is different for no apparent reason.

Clause 17

Clause 17(2)(c), refers to a non-existent subsection (3).

Clause 18

It is unclear what 'new provisions of this Act' refers to in clause 18(1)(d)(i).

Clause 21

Clause 21(4) refers to 'eligible infrastructure' as defined in section 8 of the Infrastructure Funding and Financing Act 2020, but that definition refers to the term

'water services infrastructure' that has a different meaning in that Act to the one in clause 4 of the Bill.

Clause 56

Clause 56 uses an inconsistent verb in subclause (2)(a) and subclause (3) – are exemption orders 'made' or 'granted'?

Clause 62

This does not align well with the powers afforded local authorities under the Rating Act. Local authorities are able to use the provision or availability of service to differentiate a charge, and to develop their own definitions. The definition of serviceable in clause 62 is based on a common definition to be sure, but may be unduly constraining.

Clause 86

Clause 86(1) uses the term 'public inspection', but the section heading says 'publicly available' and that term is defined in clause 76(1), but public inspection is not. Also in clause 86, it is unclear what the requirement in subclause (2), to have the policy at an office of the water organisation, means. Does it have to be a physical (hard/paper) copy, or will it be sufficient to provide digital access via a public laptop/tablet?

Clause 91

Section 91(6) refer to a territorial authority rather than a water organisation.

Clause 114

Clause 114(1)(a) needs some form of disclaimer about maps only being indicative and the water service provider is not liable for any decisions that are made solely on the basis of a map.

Clause 120

Clause 120(1) uses the word 'aggrieved' in a context that could lead to frivolous matters being appealed. Instead the subclause should be specific about the types of negative impacts that can be the basis of an appeal, e.g. financial or property damage, consistent with the right to compensation in clause 140.

Clause 137

The term 'serious risk' is undefined and therefore is open to the 'eye of the beholder' test. A definition should be added.

Clause 172

Clause 172(1)(b) refers to section 148 of the Local Government Act 2002 which will be repealed by the new Act (see Schedule 12 of the Bill).

Clause 190

The time period for the water service strategy document to be in force is unclear. In subclause (3)(b) it says 3 years, but subclause 190(3)(c) says 10 years. This appears to be modelled on the long-term plan provisions in the Local Government Act 2002, which have, in practice, never resulted in content being relevant for 10 years. Nearly all content gets changed every 3 years. A 10-year term would be appropriate with a power to review at anytime, no mandatory review time period is needed.



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