



**Submission to the Auckland Governance Legislation Committee**

**on the**

**Local Government (Auckland Law Reform) Bill**

February 2010

## Introduction

A not for profit incorporated society, Water New Zealand promotes and enables the sustainable management and development of the water environment. With 1500 members Water New Zealand's membership is large and diverse, including Territorial Local Authorities, Council Controlled Organisations, water and wastes services providers, the major consultancies involved in providing engineering, planning and research services to the industry, Crown and other research institutes involved in the water and wastes environment, academia, members of the legal fraternity and training providers.

Water New Zealand supports in general the reorganisation of Auckland governance and has previously submitted to this Committee on the earlier Auckland bills, particularly in relation to the management and regulation of the proposed monopoly water supplier. We note the new structures proposed for Auckland could well be emulated elsewhere and it is therefore critical the Auckland model be as effective and robust one as possible.

We would now offer to the Committee comment on specific matters in relation to that supplier contained in this Bill, draw your attention to an apparent drafting error in the Bill, and address matters around stormwater management.

## Stand-alone Water or Wastewater Schemes

Part 1, clause 24 [new section 35J(5) of Local Government (Tamaki Makaurau Reorganisation) Act 2009] and Part 2, clause 30, specifically exclude vesting of stand-alone water and wastewater systems currently owned by local councils as part of the assets and management responsibility of Watercare Services Ltd. Without debating the appropriateness or otherwise of this exclusion it is of concern that the Bill does not identify any other entity as having management responsibility for such assets.

Schemes such as these, many in rural settings, are often under resourced and lacking in capacity. The sanitary water and drinking water subsidy programmes, currently under review, highlighted issues with many of these schemes and it is essential those in the Auckland region are not “orphaned” under the new regime. We would urge the Committee to enquire of the Bill drafters the reason for this exclusion and recommend a clause defining how they are to be managed under the Bill.

## Part 5 – Water supply and wastewater services for Auckland

Clause 53 discusses the Auckland water organisation constructing, placing and maintaining water and wastewater infrastructure in the roads. We would draw the Committee's attention to an apparent error in clause 53 (2) (b) and (c) - ....*open or break up any road, and alter the position of any pipe (not being a main) for the supply of water or gas*; (emphasis added). The water organisation has no responsibility for or jurisdiction over gas lines so this would suggest the inclusion of the gas reference is a drafting error that requires correction.

We would also draw to the Committee's attention that the Transport and Industrial Relations Committee is currently considering the Infrastructure Bill. This Bill is by nature an omnibus bill and Part 1 is intended to become the stand alone Utilities Access Bill, incorporating a national code of practice for utilities working in the roads (“the Code”).

Utilities operating across the country, including Auckland, have been party to and supportive of the development of this proposed Code. It would, therefore, be appropriate for clause 53(3) to be amended to require the water organisation to operate under the provisions of this Code. We would note that much of what is required by clauses 53-59 is embodied in the Code.

## **Part 6 – Spatial Planning for Auckland**

In previous comment on the new institutions for Auckland we have noted the absence of reference to stormwater management. Watercare Services Ltd is specifically not charged with responsibilities in this area and we reiterate our concern that there is to date no clear direction to the Auckland Council on stormwater management.

We have perused the Cabinet Paper, *Spatial Planning Options for the Auckland Council*, underpinning this part of the Bill and aside from a reference to water and wastewater services as critical infrastructure, the plan is silent on stormwater matters.

Stormwater management is an area of increasing prominence. Inadequate management can result in significant economic and environmental costs. Concerns over coastal water contamination around the Auckland isthmus are well known as is the potential negative impact of stormwater road runoff. There are still over 200 kilometres of combined stormwater and wastewater sewers in Auckland. Failure to charge a specific agency with responsibility for its management risks exacerbating an already less than satisfactory situation.

If stormwater management is not to be added to Watercare Services Ltd. responsibilities we strongly recommend clause 66 (3) (g) is amended to read, *to identify the existing, and guide the future, location of critical infrastructure services and any associated investment in Auckland (for example, open space, transport, and water supply and wastewater services, **including stormwater management**); and....*

## **Service Levels**

In commenting on this area we are mindful that further reform of water utility service provision is likely in New Zealand. From 1 November 2010 Watercare Services Ltd. will be the monopoly supplier servicing 1.4 million New Zealanders, leaving another 66 utilities servicing populations averaging 44,000 individuals. These fragmented arrangements are unlikely to last. Several councils elsewhere in the country are currently investigating amalgamation and/or shared service agreements.

In providing a template for further reform it is therefore important that arrangements are put in place to ensure that customers receive quality service at the lowest possible price. A lot rides on a successful Watercare Services Ltd. model, which must be 'got right.'

We are not aware of situations elsewhere where such a monopoly is not subject to a rigorous performance review regime, including oversight of pricing mechanisms. There are a number of international best practice models for regulation of monopoly water utilities to achieve this end.

Clause 45 [New Clause 75 of Local Government (Auckland Council) Act 2009] and Schedule 1 [New Schedule 2 of Local Government (Tamaki Makaurau Reorganisation) Act 2009] of the Bill make a number of references to levels of service and performance reviews for the new Auckland entities.

Clause 45 [New Clause 84(1) of Local Government (Auckland Council) Act 2009] requires the Auditor-General to, *“from time to time, review the service performance of the Council and each of its council-controlled organisations”*.

Clause 68 requires Watercare Services Ltd. to deliver a statement of corporate intent to the Auckland Council setting out performance targets.

Clause 71 requires Watercare Services Ltd. to comply with any direction given by the Auckland Council when setting prices.

The Schedule 1 measures include, in clause (6), specific reference to key performance targets and other measures that must be identified for the Auckland Council's CCOs in the Council's annual plan.

We note also that amendments are proposed for the Local Government Act 2002 that will include, *“mandatory development of accredited performance measurement systems for water supply, sewage treatment and disposal, stormwater drainage, flood protection and roading”*.<sup>1</sup>

By international best practice standards this is still a fairly light handed regulatory regime for a monopoly service provider. The Auckland Council as owner cannot at the same time perform the function of being an independent watchdog on its 100% owned subsidiary.

We would recommend that the Auditor-General be required to identify specific levels of service provision and performance targets for, in the case of water, a monopoly entity, in accordance with international best practice<sup>2</sup>. The Auditor - General should also be required to review and publish the entity's performance on an annual basis.

These mechanisms are critical components in establishing public confidence in the proposed institutional arrangements.

## **Recommendations**

- Identify the agency responsible for the performance of stand-alone water or wastewater schemes.
- Correct the apparent error in clause 53 (2) (b) and (c) regarding the Auckland water organisation and gas.
- Include a requirement for compliance with the national code of practice for utilities working in the roads.
- Determine how stormwater be managed and potentially amend clause 66 (3) (g).

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<sup>1</sup> CAB Min (09) 38/16

<sup>2</sup> See Appendix 1

- Require the Auditor-General to develop and annually review specific levels of service and performance targets for the water organisation, having regard to international best practice. This review would also be published.

Water New Zealand wishes to appear before the Committee in support of this submission.

## **Appendix 1**

### **Examples of Best Practice Regulation of Monopoly Water Service Providers**

#### **Scotland**

In Scotland an independent regulatory framework is in operation administered by the *Water Industry Commission for Scotland* (WICS). This is a non-departmental public body with statutory responsibilities to promote the interests of water customers.

It is the one on one regulator of Scottish Water, a publicly owned company, which operates and maintains the water and wastewater assets on behalf of the Scottish Parliament for the whole of the country. This monopoly was formed from the progressive amalgamation of over 200 water businesses over a 15 year period between 1986 and 2001.

The WICS primary role is to determine the level of resources that Scottish Water require to deliver Ministerial objectives at the lowest reasonable overall cost, and translate this resourcing requirement into caps on the prices paid by customers.

To ensure that customers pay no more than necessary, the WICS liaises with the environmental and water quality regulators to assess whether Scottish Water business plans are appropriate to deliver the Ministerial objectives. The WICS also analyses the business plans to establish the scope for efficiency and benchmarking with other water companies to gauge the potential for improvement.

It then sets price limits for water and sewerage services.

The Scottish model has delivered significant benefits to customers since it was implemented. The WICS Annual Report for the period 2007/08 instances:

- Savings of £1b stg. since 2001 helping to keep prices stable;
- Levels of service as defined by the WICS, improved by 40%.

Scotland also has a national complaints authority, *Waterwatch Scotland*, which has similar functions to New Zealand's Electricity and Gas Complaints Commission.

Waterwatch Scotland can also make statutory recommendations on water matters to the Government and its Ministers, WICS, and a range of Government agencies.

## **England and Wales**

Ofwat, the Water Services Regulation Authority, is the statutory economic regulator of the 21 privatised water and sewerage companies in England and Wales.

Companies are licensed, and subject to conditions enforced by Ofwat. Tariff ranges are set five years in advance for individual companies. Comparative competition is used to challenge companies to deliver improved service.

Ofwat compares the prices, service levels, quality compliance, leakage, environmental performance, operational costs, capital expenditure, relative efficiency, network activity and financial performance of all regulated companies annually. Comparisons are then used to challenge all companies to deliver improved service through the establishment of predetermined performance targets.

Companies are incentivised to exceed targets. Those that fail to meet targets are punished financially by being prohibited from raising prices.

Ofwat also uses international benchmarking to support regulatory decisions and expose differences, allowing it to challenge the performance levels of the companies it regulates.

The Consumer Council for Water is a statutory watchdog agency charged with solely representing the interests of water consumers across England and Wales. In effect it performs the function of a water ombudsman.

## **Victoria Australia**

The 19 water businesses providing bulk and retail water and waste water services to all of Victoria's urban and rural irrigation customers are regulated by the *Essential Services Commission*. This statutory entity also regulates the electricity, gas, ports and rail businesses in the State.

It regulates prices as well as monitoring of service standards and market conduct.

The water businesses operate under statement of obligations contained in water plans submitted to and approved by the Commission. The plans include outcomes, actions and expenditures to be undertaken, and the prices the entities propose to charge over the next three year period.

In addition they include discussion on performance over the preceding three year period.

The Commission then sets and publishes tariffs. As part of its role it also publishes codes and guidelines, decisions and determinations and performance reports. These publications impose obligations on the water businesses and provide information to customers and other stakeholders.

An independent ombudsman, the Energy and Water Ombudsman of Victoria, also operates within this framework.

### **New South Wales**

In New South Wales the statutory *Independent Pricing and Regulatory Tribunal* is the independent pricing and economic regulator for the electricity, gas, water and transport industries.

Established in 1992, the Tribunals' primary purpose is to regulate the maximum prices charged for monopoly services by government utilities and other monopoly businesses. This includes the maximum prices that can be charged for metropolitan water supplies, wastewater and stormwater services supplied by public water authorities.

The Tribunal uses a building block methodology to calculate regulated business' revenue requirements. Revenue requirements are converted into prices.

The Energy and Water Ombudsman for New South Wales operating in a similar way to New Zealand's Electricity and Gas Complaints Commission, provides customers with independent purview of the services provided by electricity, gas and participating water businesses.