



**Submission to the Local Government and Environment
Committee**

on the

Local Government Act 2002 Amendment Bill

June 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 the proposed measures in the Bill aimed at improving transparency and financial accountability in local government operations and welcomes a re-focussing on core activities.

We would now offer to the Committee comment on specific matters in relation to Clauses 31 and 32, concerning contracting the provision of water services, and Clause 41 in reference to performance measures.

Contracting out the provision of water services

Before discussing the proposed amendments in this area it is worth reflecting on the current situation regarding the delivery of water services in New Zealand.

Water supply, wastewater treatment and disposal, stormwater management and flood protection are almost exclusively controlled by 73 local utility providers and 12 regional regulators. This is an extremely fragmented regime for a country of only 4.3 million.

There are over 2000 separate water supplies and around 350 wastewater treatment facilities. On a per capita basis New Zealand has a very high number of such facilities. Local government reforms in 1989 exacerbated this fragmentation by abolishing Metropolitan Water and Drainage Boards covering multiple jurisdictions, and vesting their assets into a multiplicity of local authorities.

The system suffers from inefficiencies of scope and scale.

There is no legal obligation on local authorities to provide water and sewerage services, although there is an implied obligation for them to do so.

The Local Government Act empowers local authorities to purchase or construct water works and drainage schemes.

The Building Act imposes obligations on local authorities to ensure that buildings are sanitary (i.e. have adequate water and sanitation) but does not require the local authority to provide these services.

Through the Health (Drinking Water) Amendment Act any water supply which provides water to 25 people or more for at least 60 days of the year is deemed to be a 'public' water supply, regardless of its ownership status.

"Public' water supplies can thus cover:

- urban supplies;
- industrial supplies – whether privately or publicly owned;
- rural supplies designed predominantly to provide stock and farm water;
- recreational supplies (e.g. golf courses and camping grounds);
- Marae;
- rural school supplies;
- correctional facilities.

There is no equivalent definition for a public sewerage network although the Local Government Act distinguishes between public and private drains, and assumes that all public sewerage systems are owned and operated by local authorities.

In general the legislative framework is based on 19th century concepts of public health.

There are numerous Acts and Regulations of national and local application which relate to public drinking water and sewerage networks. Most are outdated, conflicting and have different application whether the service is provided by a local authority or other entity.

This legislative framework has significance when considering alternative service provision options, as some powers are specific to local authorities and would not necessarily be available to a contracted corporate entity. In particular these include the powers of entry, backflow regulation, the ability to make rates or bylaws, public works provisions, and disaster financing.

Unlike all other utility industries which have single purpose legislation; (the Gas, Electricity and Telecommunication Acts); there is no equivalent Water Act.

Despite urban centres occupying only 1% of national land space they do house 86% of the population. Statistics New Zealand has recently released population projection figures showing that the Auckland region will be home to 38% of the population in 2031 (i.e. 60% of New Zealand's population growth between 2006-2031). Slightly less dramatic growth rates are predicted in the Queenstown-Lakes, Selwyn and Waimakariri districts, and in the Tauranga area.

The following examples illustrate the financing challenges faced in supplying and maintaining water services. The issue of deferred investment is a significant factor in a number of cases, both in larger and smaller centres:

- The Auckland Regional Council recently released their final State of the Region report before the new Auckland Council takes over much of their function. 2,500 stormwater overflows were reported for the 2008 year (*“Most problems arise when rain overloads the combined stormwater and wastewater pipes, sometimes flushing sewage into the sea.”*) and it is estimated in excess of \$1 billion will be required to address the region's stormwater. In releasing the report the authors

noted that in 2008 Auckland city councillors voted with Mayor John Banks to cut \$86 million from a budget that had been ear-marked to upgrade Victorian-era combined sewer and stormwater systems.

- Waitakere City Council released the results of a NIWA study into the quality of the creeks and streams within the Council's jurisdiction that shows high levels of heavy metals including copper, zinc and lead draining into the harbour. Described as "filthy" it has been estimated \$300 million will be required to clean the waterways over the next three decades. In a classic case of reactive management the Council has announced that in the short-term \$850,000 has been approved to develop a catchment management plan to address years of inappropriate land development practices that have seen flooding, sewer overflows and pollutant run-offs into the regions creeks and streams.
- The water infrastructure in the Banks Peninsula District Council prior to the amalgamation with Christchurch City Council in 2005 was in poor shape. Since being taken over by the Council the cost of upgrading it has been assessed at \$90 million. Other smaller district councils face similar challenges, one of the factors behind delayed implementation of the Health (Drinking Water) Amendment Act 2007.
- Punakaiki, with a population of less than 200, has 500,000 tourist visitors annually. Its water infrastructure is not designed to deal with this kind of capacity requirement. The supply is graded "Ee" i.e. an unacceptable level of risk. Despite being offered four separate subsidies to upgrade its water infrastructure the Buller District Council decided not to accept since the ongoing operational costs were deemed to be excessively burdensome.
- Water New Zealand analysed all council LTCCPs for the period 2006 -15 to assess capex and opex on three waters infrastructure. The total spend was assessed at \$22 billion, made up of \$8.1 billion of capex and \$13.9 billion of opex.

The Department of Internal Affairs figures from the 2009 – 18 LTCCPs put these figures at \$11.46 of capex and \$17 billion of opex.

The capex figure has increased by 41% in three years. Assuming the figures are correct, the infrastructure deficit is increasing at an unsustainable rate.

In light of the situation described above Water New Zealand welcomes the general intent of the Clause 31 and 32 amendments as a potential way of improving the provision of water services. There are three areas, however, that we believe require further consideration. These involve the duration of contract term, pricing of water services and the development of policy related to the delivery of water services.

The Amendment Bill proposes raising the current 15 year contract term to 35 years. Given the intent of the amendment is to give greater flexibility in service provision we question the need to specify a term. Should this not be open ended and result from agreement between the contracting parties? While a lesser contract term may be considered appropriate in some circumstances, in others, given the cost and long life of many water assets, a term of 40, 45 or 50 years would be more appropriate.

Recommendation: *There be no specified term for contract or joint arrangements for the provision of water services.*

Concerning the pricing of water services and the requirement that the local government organisation partner in the contract or joint arrangement apparently retains sole control, we would note this may inhibit the development of longer term contract provision. It can be argued that the reticence of local authorities in discussing the true value of and cost of provision of water services has resulted in the scenarios described above. If the provision of those services is contracted to another party it would seem logical and commercially appropriate that party participates in the discussion on the pricing of those services.

It would be similarly logical and appropriate that both parties participate in the development of policy related to service delivery.

Recommendation: Under Clauses 31 and 32, new section 136(2)(b) and new section 137(4)(b) be amended to read:

(b) at 12 monthly intervals negotiate and determine with the contract (or joint arrangement) partner matters relating to:

(i) the pricing of water services; and

(ii) the development of policy relating to water services.

Performance measures

Water New Zealand welcomes the intent of Clause 41 to introduce rules specifying performance measures. We would draw to the Committee's attention the fact that Water New Zealand conducts an annual performance review involving water utilities furnishing performance data on some 130 measures. Currently 11 of the larger utilities participate and we are investigating involving a number of the smaller utilities in the exercise.

The data is collated into a report that is made publicly available (see <http://www.waternz.org.nz/nationalperformancereview.html>). We suggest this initiative from Water New Zealand provides a good basis to enter into discussion with the Secretary of Local Government of how it might be applied to all water utilities (we note additional measures relating to flood management would need to be added). Participants in the review pay a fee covering data collection and collation, auditing and report preparation. Extending this existing framework could obviate the need for the regulated levy discussed in Clause 39.

Recommendation: The existing Water New Zealand National Performance Review be investigated as a potential mechanism to fulfil the intent of Clause 41.

Summary of Recommendations

- There be no specified term for contract or joint arrangements for the provision of water services.
- Under Clauses 31 and 32 new section 136(2)(b) and new section 137(4)(b) be amended to read:

(b) at 12 monthly intervals negotiate and determine with the contract (or joint arrangement) partner matters relating to:

(i) the pricing of water services; and

(ii) the development of policy relating to water services.

- The existing Water New Zealand National Performance Review be investigated as a potential mechanism to fulfil the intent of Clause 41.

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