

22 July 2022

Chair  
Finance and Expenditure Committee  
Parliament Buildings  
**Wellington**

Dear Sir/Madam,

## **SUBMISSION FOR WATER NEW ZEALAND ON THE WATER SERVICES ENTITIES BILL**

### **INTRODUCTION AND OVERVIEW**

1. Water New Zealand (“**Water NZ**”) appreciates the opportunity to provide a submission on the Water Services Entities Bill (“**the Bill**”).
2. Water NZ is a national not-for-profit organisation which promotes the sustainable management and development of New Zealand’s three waters (drinking water, wastewater and stormwater). Water NZ is the New Zealand’s peak water industry body, providing leadership and support in the water sector through advocacy, collaboration and professional development. Its 2,700 members are drawn from all areas of the water management industry including regional councils and territorial authorities, consultants, suppliers, government agencies, academia and scientists. Water NZ is the leading voice for the three waters sector in New Zealand.
3. Water NZ membership is drawn from across the entire water sector and is therefore interested in the entire Bill. Whilst this submission makes comments supporting or opposing particular provisions, this does not limit the generality of the overall interest in the Bill. Generally, Water NZ supports the intent of the Bill to “*ensure effective management of water services delivery and infrastructure so communities have access to safe, reliable and affordable drinking water and wastewater and stormwater services that meet their environmental and cultural expectations*” and these submissions focus on areas that Water NZ consider could be improved or adapted to better meet the Bill’s intent.
4. The Bill follows on from the Water Services Act 2021 and sets the framework for the establishment of the four water service entities. This is largest reform that the water sector has seen in decades. It has been Water NZ’s position throughout the reform programme to support initiatives that improve the delivery of water services to New Zealand communities.
5. Water NZ acknowledges that our members hold a variety of views in relation to water reform, including this Bill. These include members who think this Bill should be

expedited, delayed, or not introduced at all. Some of our membership hold strong and varied views in regard to governance and representation. For this reason, Water NZ does not comment on the representative framework set in out in Part 2, subpart 4 of the Bill. Water NZ focuses on technical excellence in the delivery of safe and environmentally appropriate water infrastructure and services. Accordingly, our submission has focused on ensuring the Water Service Entity framework and transition is workable to this end.

6. Finally, it is important to note that this submission was drafted in collaboration with a dedicated group of Water NZ members across a wide range of practices working with and for various water utilities from our largest to our smallest.

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## COMMENTS ON SPECIFIC PROVISIONS

7. Water NZ wishes to make a number of comments on specific provisions in the Bill. In some instances, specific changes are also recommended to address its concerns, and these are specifically included in the Relief Sought sections throughout this submission. Not every section has a Relief Sought section to avoid repetition as the submission is clear as to what is being sought.

### Part 1 – Preliminary provisions

8. Part 1 establishes the purposes of the Bill, outlines the interplay between the Bill and other principles and pieces of legislation, and states that the Bill binds the Crown.
9. While this part is generally clear and effective, Water NZ is concerned that the main focus of the reforms is not expressly captured in the relevant purpose and objectives provisions.
10. In addition, there are a few definitions that need to be incorporated into the Bill from Water Services Act 2021 (“**WSA**”), namely, drinking water supply, wastewater network, and stormwater network.
11. The Bill needs to be amended throughout so that ‘water supply’ is amended to read ‘drinking water supply’, ‘wastewater’ and ‘stormwater’ should also be amended to read ‘stormwater network’ and ‘wastewater network’ to be consistent with the way in which those terms are used in the WSA. Note this submission has not identified all the parts of the Bill that would need to be amended as there are numerous.
12. Further, definitions relating to consumers and community should be inserted to allow the Bill to appropriately define levels of service. It is also important to note that the consumers who receive drinking water services in a region may be different to the set of consumers that receive wastewater services, and the community that receives stormwater services, or would be impacted by drinking water network incident, or a dry weather or wet weather wastewater overflow.

### RELIEF SOUGHT

13. Insert two new subclauses into the purpose as follows (or words to like effect) (note numbering will alter existing subclauses):  
  
*(a) ensure effective management of water services delivery and infrastructure so communities have access to safe, reliable and affordable drinking water and wastewater and stormwater services that meet their environmental and cultural expectations.*  
  
*(e) ensure that water services delivery is retained in public ownership and is not operated for the sole benefit of generating profit.*
14. Insert the following definitions in clause 6:
  - i. Include reference to the definitions of: ‘drinking water supply’; ‘stormwater network’ and ‘wastewater network’ in the WSA.
  - ii. Include definitions of consumers and community as follows or words to like effect:

***Customer**, a person who receives a drinking water supply or is connected to a wastewater network.*

***Community**, persons within the area of a drinking water supply and/or wastewater network and/or stormwater network.*

15. Amend all references (as appropriate) in the Bill from:
  - (a) 'water supply' to 'drinking water supply'
  - (b) 'wastewater' to 'wastewater network';
  - (c) 'stormwater' to 'stormwater network.'

## **Part 2, subpart 1 – Establishment of water services entities**

16. This subpart establishes the water services entities (WSEs) and sets out, amongst other things, the objectives, functions and operating principles of the entities. Water NZ notes that it is fundamental that the drafted objectives and operating principles recognise and be aligned with the intended economic regulatory arrangements.
17. WSE boards are required to ensure that the WSEs act in a manner consistent with its objectives, functions, operating principles and current statement of intent (see clause 73). WSEs are also required to give effect to the Regional Representative Group's statement of strategic and performance expectations (**SSPE**) (clause 137) and any relevant Government Policy Statement (clause 132) in their decision-making.
18. It is possible that WSEs and their boards are faced with competing considerations if, for example, the GPS is not consistent with the SSPE (e.g. as there is no obligation for the GPS to be consistent with the SSPE). However, the Bill does not provide the Boards with guidance on how to reconcile conflicting considerations, or which of the objectives it should prioritise in its decision-making.

## **Objectives**

19. The Bill should clarify that, in the event of a conflict between statutory objectives, operating principles, the SSPE and/or a GPS, the WSE must always act consistently with its statutory objectives. If there are conflicts between the statutory objectives and/or operating principles themselves, the Bill should clarify that the board may exercise its discretion to determine what weight to give to certain objectives / operating principles.
20. There will also need to be strong cooperation and consultation provisions in the second Bill, that is still to come, in the context of setting up and negotiating relationship agreements between the local authorities and WSEs.
21. As previously mentioned, the concept from the explanatory note needs to be expressly incorporated into the objectives. The Bill is designed to establish WSEs which will result in improved and more effective management of water services delivery and infrastructure so New Zealanders will have access to safe, reliable and affordable drinking water and wastewater and stormwater services that meet their environmental and cultural expectations.
22. Objective (f) is supported but in addition to delivering water services that mitigate the effects of climate change it is also important that such services are able delivered to ensure that infrastructure adapts (in the sense of ensuring the resilience of) to meet the

- demands that climate change and natural hazards (which will be exacerbated by climate change) will have in the coming years. Water NZ notes that the Government Policy Statement content requirements at s130(3)(a)(iv) refer to both climate change mitigation and adaption. Innovation and adaption are therefore key in the delivery of water services and this should be incorporated into the objective.
23. Another key factor for water services entities is the capacity and capability of the water services workforce. Ensuring that New Zealand has the workforce capacity, capability and skills needed to deliver water services is fundamental and requires greater prominence in the Bill. The Local Establishment Units and the WSEs will need support to build capacity and capability, understand their roles and responsibilities and ensure they have the tools and resources needed.
  24. Water NZ encourages the Government and the future WSEs to work closely with it, the tertiary sector, and other adjacent member bodies (such as the Engineering NZ, Association of Consulting and Engineering (“**ACE New Zealand**”) and the Institute of Public Works Engineering Australasia (“**IPWEA**”)) to put in place the workforce initiatives required to support the expansion of the sector to ensure the infrastructure deficit can be addressed (6000-9000 new roles over the next 30 years). While there is reference to this in the principles - developing capability - it is considered that an additional objective to this effect should be included.
  25. Collaboration between the four WSEs is fundamental to ensure the water services sector operates as a cohesive whole across all of New Zealand. Whether a consumer is in a large metro or a small rural township should not make a difference to the quality of the service and its cost. While this is referenced in the principles the objectives should include an additional one that requires WSE’s to collaborate proactively with each other.
  26. Affordability is an important concept and should be captured in the objectives. As previously mentioned, the concept from the explanatory note needs to be expressly incorporated into the objectives.
  27. Section 130 (purpose and contents of the Government Policy Statement) require the GPS to have a multi decadal outlook for the overall direction of water services. This concept should be reflected in the WSEs objectives. Investments proposed to support and enable housing and urban development in the next 5 years, versus the next 30 years particularly in a growth region are likely to be significantly different.
  28. Water NZ notes that the requirement to give effect to Te Mana o te Wai is fully embedded in the WSA and the operational aspects of it are covered in the Bill. This is fully supported.

#### **Functions of water services entities**

29. We recommend that clause 12 be amended to extend the scope of WSEs' functions to do anything that is reasonably required for the purpose of achieving its objectives (rather than performing its functions). This drafting is less constraining and would provide WSEs with the flexibility to achieve their statutory objectives.
30. The functions stormwater and wastewater networks are not currently defined in the Bill and there needs to be link to the definitions in the WSA as noted above. It is particularly

important that WSEs have the powers and duties required to develop and manage stormwater catchment areas in legislation.

31. Provision of water services in the area of a WSE should relate to the assets transferred or subsequently built. As drafted, clause 12 could imply that a WSE is responsible for services provided by owners not connected to its network or by consumers who are not currently supplied by Council assets.
32. Clause 12 provides that a function of a WSE includes any functions that are "incidental and related to, or consequential on, its core functions (i.e. providing safe, reliable and efficient water services in its area). In our view, this is sufficiently broad to extend to activities such as water testing, air quality testing and other relevant environmental monitoring, testing and reporting; and water related infrastructure operation, maintenance, consultancy and construction. We also consider that this is sufficiently broad to capture related revenue opportunities for WSEs. For example, Watercare generates rental income from odour buffer land surrounding its Mangere facility. It is important that these non-core (but ancillary activities and services) do not get included within the scope of the economic regulation which is to come.

### **Operating principles**

33. The operating principles of an entity set out in clause 13 require WSEs to cooperate with and support other WSEs, infrastructure providers, local authorities and the transport sector. However, this does not go far enough to foster cooperation between local authorities and WSEs. We suggest that the clause be strengthened to provide for coordination of water service and infrastructure delivery by WSEs and WSE's territorial authority owners to facilitate planned and coordinated strategic urban development and growth.
34. The operating principles are generally supported and the following submissions are made in relation to them:
  - (a) Clause (a) - as noted above there needs to be an objective that requires WSEs to collaborate and share.
  - (b) Clause (b) - change 'being innovative' to "provide supported process for innovation in service and capital delivery". This is so innovation has a structured, supported pathway within the WSE with the appropriate governance and specialised support that is provided by scale.
  - (c) Clause (c) – needs enhancing to make it clear that WSEs are obliged to share 'publicly' procured data for the benefit of others - with appropriate caveats for commercial sensitivity, security and privacy. This is important to achieve the efficiencies sought from reform.
  - (d) Clause (g) - add "and professional and industry groups ... in the water services and water infrastructure sector".
  - (e) Additional principles are required as follows:
    - i. The links and relationship with the 2 regulators (Taumata Arowai and the Economic Regulator should be included.
    - ii. Including co-operation with developers and industrial customers.

- iii. As noted above in the objectives section there is a need to clarify what happens when a conflict arises between objectives, operating principles, the government policy statement, Te Mana O Te Wai statements and the statement of strategic and performance expectations. A hierarchy is required and needs to be reflected throughout the Bill.
  - iv. The WSEs should have a continuous improvement approach to delivering water services.
35. Water NZ suggest that across this Bill, and upcoming economic regulation legislation, that a framework is enabled to provide a structured, supported pathway for innovation with the appropriate governance and specialised support.
36. Finally, Water NZ seeks to ensure that agility of decision making is maintained for smaller projects in smaller regions.

### **Things a WSE can do**

37. Clauses 17-19 set out the core things that WSEs may do namely, anything that is authorised by the Bill, anything that a natural person of full age and capacity may do, and that an entity can only do an act for the purpose of performing its functions.
38. It is important that WSEs can own and operate businesses that deliver related functions, such as water testing, air quality testing and other relevant environmental monitoring, testing and reporting services; as well as water and related infrastructure operation, maintenance, consultancy, technology and construction, as this supports WSEs to successfully deliver its core functions. Further, WSEs must be able to pursue related revenue opportunities that may reduce overall bills paid by its' customers.
39. Clause 19 provides that a WSE may do an act only for the purpose of performing its functions. The reference to clause 12, which sets out WSEs' functions, is potentially restrictive and may not facilitate WSEs achieving their objectives under clause 11 (as well as the objectives of the wider three waters reform programme).

### RELIEF SOUGHT

#### General

40. Include an additional clause to clarify the hierarchy between objectives, operating principles, the government policy statement, Te Mana O Te Wai statements and the statement of strategic and performance expectations.

#### Objectives

41. Change objective (f) as follows:  
*(f) deliver water services in a sustainable and resilient manner that seeks to ensure that such services are able to mitigate and adapt to the effects of climate change and natural hazards;*
42. Include the following additional objectives as follows (or words to like effect):  
*(g) ensure effective management of water services delivery and infrastructure so communities have access to safe, reliable and affordable drinking water and wastewater and stormwater services that meet their environmental and cultural expectations.*



- (h) to promote and assist the growth in the water services sector national workforce.*
- (i) collaborate with other water services entities in the delivery of these objectives;*
- (j) ensure that water services are not undertaken for the purposes of making a profit that is not reinvested back into the water service entity or to the communities that entity serves.*

#### Functions

43. Clarify that WSEs will have ability to develop and manage stormwater catchment areas.

#### Principles

44. The following changes to the principles are sought:
- (a) Change clause (b) to read as follows:  
*Provide supported processes for innovation in service and capital delivery*
  - (b) Change clause (c) to include the following at the end of the clause:  
*For the avoidance of doubt being open and transparent includes an obligation to share 'publicly' procured data subject to any commercial sensitivity, security and privacy matters.*
  - (c) Add the following to clause (g) - add "and professional and industry groups ... in the water services and water infrastructure sector".  
*co-operating with, and supporting, other water services entities, professional and industry groups, infrastructure providers, local authorities, and the transport sector.*
  - (d) Additional principles are required as follows:
    - (h) partnering and engaging early and meaningfully with Taumata Arowai and the Economic Regulator;*
    - (i) Co-operating with developers and industrial customers.*

#### **Part 2, subpart 2 – Validity of acts**

45. Water NZ proposes that clause 20(b) should be expanded to include the WSE's objectives and principles.

#### **Part 2, subpart 3 – Minister's role**

46. It is assumed that the reference in clause 26(e) to 'under legislation' is generic and not limited to the Bill. This is important as there are numerous pieces of legislation which will have a bearing on water service entities.

#### **Part 2, subpart 6 – Boards of water services entities**

##### Board role

47. The Board's role as stated in clause 56 should include achieving the objectives and applying the principles rather than simply just relating to the performance of the functions.

## Membership

48. Water NZ is concerned that Board members are not required to have any particular knowledge base or experience relating to the work undertaken in the WSEs. In addition, it is important to consider whether the Board should collectively have the skills required of the CEO such as legal, commercial and operational context of the WSE and experience in prudent stewardship of public resources in the public interest.
49. The approach undertaken in the Electricity Authority Boards is preferable, where at least the majority of members are required to have knowledge relating to the industry.
50. Of note is that the Board will have specific sign off obligations under the Act such as the 3-year, 10-year and 30-year plans as well as economic regulatory requirements. It is therefore fundamental that the majority of Board members are familiar with the water services industry.

## Te Tiriti o Waitangi/the Treaty of Waitangi

51. Water NZ supports the collective duty in clause 74 to uphold and act in accordance with the principles of Te Tiriti/the Treaty, and considers that these duties should be expanded to require the Board to specifically consider the interrelationship between the Treaty issues and water issues.

## Liability

52. In relation to the liability of Board members a general is that this may need to be reviewed as part of the economic regulatory regime legislative process.
53. Following a discussion with the Institute of Directors, Water NZ understands that the collective and individual director duties in the Bill (clauses 74 – 84) are almost word-for-word sections 49 – 60 of the Crown Entities Act 2004.
54. Similarly, the protection from liability provisions (clauses 121 – 126) are largely identical to sections 120 – 126 of the Crown Entities Act 2004.
55. On that basis, the duties and liability appear to be fit-for-purpose. While they differ from similar duties and liabilities under the Companies Act 1993, water services entities are more akin to Crown entities in that they operate in a different context to companies and, for the most part, are not companies.
56. There is issue in relation to proceedings that can be brought by territorial authorities and regional councils under the Resource Management Act 1991 (“**RMA**”), importantly related to pollution such as wastewater and stormwater discharges.
57. Currently there has not been a large number of cases taken by councils in relation to water services which, anecdotally at least, maybe because councils would be prosecuting themselves or their fellow councils. This may change once water services are separated out from councils. To the extent that there are ongoing issues with freshwater and wastewater systems that the water services entities will own (and we know that there is likely to be), there is a duty on the new entities to address those matters.
58. Section 340 of the RMA refers to the liability of principals for acts of agents and includes directors. The defences for directors against liabilities even if they are the result of

management action or inaction are that, neither the directors nor any person involved in the management of the entity knew, or could reasonably be expected to have known, that the offence was to be or was being committed; or that the directors prove that they took all reasonable steps to prevent the commission of the offence.

59. Taking reasonable steps to stop the action/omission or to remedy it, is potentially difficult unless the context for the water services entities and their Boards is fully taken into account. For example, if there are asset deficiencies that need to be addressed and are causing sewage or other discharges, is it reasonable to for the Board (and management) to have a plan to address these, including seeking funding from various sources (even if this is not approved)? On balance, it seems likely that the reasonableness test applied by the Courts would extend to the circumstances for the new entities, at least initially, but this is not assured.
60. Water NZ note that this issue arises because of the structural change, not as a result of the Bill itself. It may need to be addressed in the transitional arrangements.

#### RELIEF SOUGHT

61. To replace the skill set in clause 57(2) with the following:  
*The board appointment committee must appoint board members such that the board, must, amongst its members, have knowledge of the water industry, including consumer issues, legal, commercial and operational and experience in the prudent stewardship of public resources in the public interest.*
62. To add in clause 74(b) the following:  
*Including the interrelationship between Te Tiriti o Waitangi/the Treaty of Waitangi and freshwater issues.*
63. Note that clause 81 may need reviewing to ensure that Board members' liabilities are reviewed when the economic regulatory regime is drafted.
64. Note the liability of directors under the RMA may need considering at least during the transitional period.

#### **Part 2, subpart 7 – constitutions of water services entities**

65. Additionally, Water NZ considers that the status of interested persons should be reviewed when the economic regulation regime is drafted.

#### **Part 4, subpart 1 – Government Policy Statement on water services**

66. Water NZ notes that clause requires the Minister to review Government Policy Statement (“GPS - WSEs”) every three years. Water infrastructure assets are long life assets, a longer period between reviews would be preferred to support planning and certainty.
67. In relation to clause 130 Water NZ considers that it is appropriate and vital for the GPS-WSEs to have a multi-decadal approach. Ensuring the sector is able to have a longer-term perspective is necessary for:
  - (a) Investments which address climate change mitigation and adaptation.

- (b) Investments in pilot projects and innovation to understand the potential for new technologies to play an important role in ensuring the delivering of water services over time is economic and efficient.
  - (c) To enable a more enduring bipartisan commitment to give WSEs and their communities and non-WSE provided infrastructure (developers) certainty for planning and funding new investments.
68. The purpose and content of the GPS-WSEs needs further clarity, specifically on how agencies are to be guided would be useful Whether they must, 'give effect to' or 'have regard to' the GPS-WSEs. Further, Water NZ suggests greater clarity is required on which agencies are captured, e.g. Taumata Arowai, economic regulator, regional councils and territorial authorities. Water NZ also suggests that the GPS-WSEs should align to the objectives and functions of the WSEs.
69. When preparing or reviewing the GPS-WSEs, the Minister should also:
- (a) be required to consult with the economic regulator; and
  - (b) have regard to whether the GPS-WSEs is consistent (or should be consistent) with other Government Policy Statements such as those on Land Transport (GPS), and Housing and Urban Development (GPS-UD) and National Policy Statements such as the following: Freshwater Management (NPS-FM 2020), Indigenous Biodiversity (NPS-IB) – still to be enacted, Urban Development (NPS-UD 2020) and Coastal (NZCPS).
70. Should conflicts arise, there should be a hierarchy for the WSEs to adopt set out in the GPS-WSE.
71. We support the requirement in clause 131(b)(i) for the Minister to consult with WSEs when preparing or reviewing a GPS-WSEs.
72. Clause 131 provides that when preparing or reviewing a GPS-WSEs, the Minister must be satisfied that it promotes a water services system that contributes to the current and future well-being of New Zealanders, and the Minister must consult the WSEs, the regional representative group of each WSE, Taumata Arowai and other persons who have an interest in water services in New Zealand. This clause should be amended to include an obligation on the Minister to also consult with the economic regulator.
73. Clause 130(2)(c) provides that a GPS-WSEs must include how the Government expects other agencies to support that direction and those priorities (as set out in the GPS-WSEs). Examples of agencies are not included in the Bill. Including specific agencies that are expected to give effect to the GPS-WSEs is desirable, as certain agencies play a key role in ensuring that the intended purpose of the GPS-WSEs is realised. In particular, we recommend that clause 130(2)(c) be amended to state that agencies include (but are not limited to) the economic regulator, Waka Kotahi, Kainga Ora, local authorities and territorial authorities.
74. The Bill does not require the economic regulator to have regard to a GPS-WSEs on water services when considering appropriate forms of economic regulation and / or the exercise of its economic regulatory functions. This does not need to feature in this Bill but must be included in the second Bill. This is similar to section 26 of the Commerce Act).

75. Water NZ queries whether s130(2)(e) which relates to WSEs taking into account the well-being of communities is how the Government will provide expectations in relation to pricing of water services, including the question of cross subsidisation, social tariffs.

RELIEF SOUGHT

76. Amend clause to specify reviews are every 5 years.
77. To insert specific agencies that are to be included into section 130(b) including but not limited to: the economic regulator, Waka Kotahi, Kainga Ora, local authorities and territorial authorities.
78. To include a sub-clause in section 131 detailing how conflicts arising between other Government and National Policy Statements are to be dealt with. This could be as simple as requiring that the GPS-WSEs is not to be inconsistent with these other Statements or more complicated where it sets out when inconsistencies are appropriate and which Statement prevails.

**Part 4, Subpart 2 – Regional representative group’s statement of strategic and performance expectations**

79. The Bill should include a requirement for the regional representative group to take into account the views of the WSE Board views when developing a statement of strategic and performance expectations (“**SSPE**”). This would better reflect the fact that the WSE Board is responsible for executing strategic decisions related to the business.
80. The various regulatory requirements of Taumata Arowai and the economic regulator need to be considered in the context of the development of SSPEs. For example, a WSE may apply for exemptions under WSA, but Taumata Arowai may determine that the exemption should not be granted, this would then have the result of placing the WSE in conflict with an SSPE where the expectation that the exemption is obtained is included. Similar issues may arise due economic regulatory or consumer protection requirements. It is recommended that this is acknowledged in this part of the Bill.
81. It is good to note that clause 137 provides that the Board of a WSE must give effect to a SSPE when performing its functions. There is a mechanism for the regional representative group to enforce the SSPE through court proceedings (clause 84) and to annually review the performance of the Board in giving effect to the SSPE (clause 139). The regional representative group sub-committee also has the power to appoint and remove the Board of the WSE. It is considered that this suite of mechanisms will operate as a sufficient check on the WSEs' conduct.

RELIEF SOUGHT

82. To add the following to clause 136:
- (4) A matter under subsection (2)(a) must not be inconsistent with any direction or regulatory requirement imposed on a water services entity by Taumata Arowai, the economic regulator or consumer protection agency.*

#### **Part 4, Subpart 3 – Te Mana o Te Wai statements for water services**

83. To truly realise Te Mana o Te Wai (“**TMOTW**”), WSEs will need to partner closely with mana whenua starting even before they are fully established. This will ensure that TMOTW statements are being woven into the work programmes in the transition to and from day one of the WSE start up.
84. Strong partnerships with mana whenua is crucial for the future management of the environment and supporting communities’ cultural wellbeing. There are ever-increasing pressures being placed on mana whenua, and their participation in the design and development of, transition to and implementation of these first generation TMOTW statements will exacerbate this demand.
85. How Government will hold entities to account when there is non-compliance with or conflict between having to give effect to Te Tiriti o Waitangi/the Treaty of Waitangi and TMOTW, and having to meet commercial goals and objectives. This begs the question as to who ultimately regulates and upholds TMOTW? It is the Government, Taumata Arowai or the Economic Regulator or someone else?
86. Water NZ supports the Government’s commitment to giving mana whenua a greater and more strategic role in the new system. In particular, we support the inclusion of TMOTW in the Bill, and the proposed requirement to ‘give effect to’ the principles of Te Tiriti/the Treaty.
87. However, there is significant needs for adequate resources. Government funding is needed, and this is broader than that required to implement the three waters reform programme. It is urgently needed to resource mana whenua to be active partners in the new systems that are being created. This will enable mana whenua to increase their capacity and capability to resource increasing co-governance, co-management, co-design and co-delivery expectations.
88. Tina Porou (Poipoia) has advised<sup>1</sup> that 6,740 Mātauranga Māori / iwi practitioners are needed within 10 years to respond to three waters and resource management reforms. This figure doesn’t account for the Mātauranga Māori consultancy services skills that will be required.
89. Under the WSA WSEs are required to give effect to TMoTW. It is unclear how the process in clauses 140 - 142 relates to the process in the WSA and in the Resource Management Act 1991 (“**RMA**”). It appears that the purpose of TMOTW statements in the Bill is more about governance whereas in the regulatory regimes under the RMA and WSA TMOTW is about operational matters. Clarity on this would be recommended noting that the regulatory requirements must prevail over the governance ones.
90. In addition, there is differences in wording throughout the different legislative regimes:
  - (a) The RMA generally refers to the term tangata whenua.
  - (b) The Local Government Act 2002 generally uses the term Māori.
  - (c) In the Auckland Council legislation the terms mana whenua and matawaaka are used.

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<sup>1</sup> Presentation to the joint Water New Zealand and IPWEA Water Asset Management Forum, November 2021.

91. It is important that it is clear that in the context of TMOTW we are using the descriptor mana whenua on purpose. If so, then a description or cross reference to a description would be desirable.

#### RELIEF SOUGHT

92. To include an additional clause 142A as follows:

*For the avoidance of doubt any Te Mana o te Wai statements adopted by a water services entity do not obviate the need for the entity to comply with requirement to give effect to Te Mana o te Wai as set out in section 14 of the Water Services Act 2022.*

93. To note that consideration needs to be given as to whether the term 'mana whenua' is correct and if it is to include a definition or cross reference to a definition of this term.

#### **Part 4, Subpart 4 – Reporting obligations**

##### General comment for transition

94. Water NZ suggests a streamlined approach to several of the required processes would be appropriate during the transition period. This would be applicable to requirements under clauses 144 (statements of intent), 147 (asset management plans), 150 (funding and pricing plans), 153 (infrastructure strategy) 157 (annual report), and 158 statement of service delivery performance).
95. WSE boards have material reporting requirements during the establishment period, and as such, consideration should be given to how the reporting requirements can be streamlined during this period. Furthermore, there should also be a statutory endorsement of a streamlined consultation process for the establishment period i.e. it should be sufficient to just consult with the regional representative group, on the basis that that group ought to be consulting with their communities when preparing SSPEs and WSEs will already have the incentive to engage with their communities given statutory requirements and economic regulation.
96. The development of statements of intent and the economic regulation regime need to work together in practice. Consider whether the economic regulator needs to consider the statements of intent when making decisions. Although, this may be dealt with better in the economic regulation legislation.
97. The accounting standards would require WSEs to identify and measure all assets acquired and liabilities assumed from the previous entities. Therefore, WSEs may be required to identify internally generated assets such as customer lists and recognise all assets at fair value. This will be complex and time consuming for little long-term benefit.
98. We recommend that WSEs receive an exemption to Accounting Standard (PBE IFRS 3) Such an exemption was given to Auckland Council upon merger of the Auckland region councils.
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### Statements of intent

99. In clause 143 (statement of intent) the forecast expenditure should include operations and maintenance costs as a separate line item.
100. The Bill assumes that current local government structures, roles and responsibilities, beyond the delivery of water and drainage services, will not change – it does not recognise the significant shift to regional land-use planning by joint committees, and that there may be significant changes to the shape and structure of local government following the review of local government, the changes brought about by water services reform and the significant resource management reform agenda.

### Asset management plans

101. In relation to clauses 147 and 148 (asset management plans) Water NZ considers that a key outcome of the reforms is a strengthened approach to asset management lifecycle and service planning. Asset management is an internationally recognised approach to the sustainable management of built infrastructure and services. It is concerned with the financial, social and environmental sustainability of delivering services that the community values today – whilst delivering certainty for the generations of tomorrow by optimising programmes of work to achieve this.
102. We recommend the Bill, or subsequent economic regulatory regime, includes clauses around sound infrastructure investment management, including:
  - (a) Asset data quality and confidence rating.
  - (b) Asset management maturity ranking.
  - (c) Funding of asset management life cycle.
  - (d) Network operating efficiency.
  - (e) Reference to the Office of the Auditor General and economic regulator in relation to asset management rating.
103. The Bill should include provisions for the WSEs to share and receive data from other government agencies to reduce whole of system effort. For example, the holistic water system is impacted by private assets like septic tanks, bores, water recycling devices, water tanks, etc. It is essential that local authorities share property/building information with the WSEs to enable more accurate planning.
104. Water NZ encourages the WSEs to forecast, at least maintenance expectations, for more than a single decade. Clause 147 requires the WSE to have an asset management plan that covers no less than 10 consecutive years. To not do this results in maintenance becoming the buffer for other trade-offs. For example, renewals should be forecast in their entirety in the lifecycle of all buried assets - so when changes are made in the future it can be demonstrated what has moved.
105. We recommend the Bill or the forthcoming economic regulation legislation includes a provision that requires the WSE to adopt and follow industry best practice approach when preparing the asset management plan.



106. We request that the Economic Regulator is involved to further develop measures that relate to asset management and network infrastructure delivery that are consistent and fit for water industry purpose.

#### Funding and pricing plan

107. In relation to Clauses 150-152, Water NZ notes:

- (a) The funding and pricing should address how the water services entities will take into account the well-being of communities. including but not limited to any social tariffs, equity arrangements, billing periods and which party invoices the customer.
- (b) That while the plan must cover a period of not less than 10 consecutive years, the funding required to finance long life water infrastructure assets will likely be longer.
- (c) This section will need to be reviewed when the forthcoming economic regulation legislation is drafted.
- (d) The funding and pricing plan appears to be limited to 'network infrastructure assets'. Operational and capital expenditure by the WSEs will cover a wider scope of matters than simply 'network infrastructure'.
- (e) The plan should be aligned with the Asset Management Plan and the Infrastructure Strategy.

#### Infrastructure strategy

108. In relation to clauses 153 and 154, which relate to the need for WSEs to provide the Regional Representative Group with an Infrastructure Strategy, Water NZ notes:

- (a) The life span of water infrastructure assets can be multi-decadal, certainly more than 30 years, and in some cases more than 100 years.
- (b) The Infrastructure Strategy should address a range of climate adaptation and mitigation, innovation and technology scenarios over the period. While, the Bill does not need to specify the approach, Water NZ suggests dynamic adaptive planning would be appropriate.
- (c) The Infrastructure Strategy should be aligned to the Asset Management Plan and the Funding & Pricing Plan.
- (d) Councils can prioritise nature-based solutions in the provision of infrastructure and influence the restoration and protection of indigenous vegetation and wetlands for multiple benefits - resilience, climate adaptation, biodiversity, recreation, cultural and water quality/quantity.
- (e) WSEs' infrastructure developments and investments, and therefore the Infrastructure Strategy, should be consistent with the future development and infrastructure needs that will have been identified by the joint committees tasked with preparing Regional Spatial Strategies ("**RSSs**") under the proposed Spatial Planning Act ("**SPA**").
- (f) There is currently a degree of assumption, or expectation, that funding will simply follow the development of RSSs. However, there is a risk that if there are not specific mechanisms to guarantee funding from infrastructure partners (including the WSEs,

and housing and transport partners) that RSSs will not be implemented or deliver the long-term outcomes that they are intended to achieve for regions and communities. These matters need to be clarified through both the Bill, and through the SPA.

- (g) Each entity should be required to produce Climate Change Management Plan that includes:
- i. Emissions and the effect of a transition to a low carbon economy – Upgrading, maintenance and new development for water services and infrastructure may involve high embodied and operational emissions. These should be carefully considered and planned for in advance. With an increasing cost of carbon likely to be built into total investment costs, some options may become prohibitive over time.
  - ii. Impacts / Risk & resilience – Exposure of three waters assets to the impacts of climate change must be well understood, both for existing and proposed new infrastructure – with major investments in high risk locations (either now or in the future) avoided, protected or relocated (this may require disinvestment, with reduced levels of service as networks are replaced in some situations). Water network resilience should also be aligned with other infrastructure plans (e.g., roading, electricity and telecommunications), and with the proposed regional spatial plans (under the RMA reform).
  - iii. Climate related financial disclosures – The reporting of climate risks (both direct impacts and transitional risk) and their likely financial implications is to become mandatory for large organisations (which is likely to include the new water entities). Thus, an in-depth understanding of the two climate change elements (above) will be required.

#### Annual report

109. Water NZ suggests that the WSEs under Clause 156 should be required to undertake specific climate related financial disclosures, in addition to producing a Climate Change Management Plan. For example:
- (a) Annual Greenhouse Gas Emission reporting by source.
  - (b) Reporting using the Task Force on Climate Related Financial Disclosures framework.
  - (c) Other climate related reporting required under other mechanisms relating to boards.

#### RELIEF SOUGHT

110. To add specific climate related reporting within the Annual Report prepared by the WSEs as noted above.

#### **Part 4, subpart 5 – Other provisions for financial management and independence**

111. Clause 166 prevents territorial authority owners or regional representative group members representatives lending money or providing credit to a WSE. Of note in the case of Watercare, loans are centralised with the Auckland Council's – there is no

separate treasury. During the transitional period for Watercare there is going to need to be a mechanism to manage this, for example the existing arrangements could be grandfathered with the loan being paid off five years and not allowing any more debt to be taken from Council.

#### **Part 5, Subpart 1 – Monitoring**

112. Water NZ notes the inclusion of provisions around a Crown review, monitor and observer. It is important that this does not 'chill investment' both during the transition period, and post establishment.
113. Water NZ notes that the reference is to the Official Information Act. There is a need to ensure consistency as elsewhere there are references to Local Government Official Information and Meetings Act. The correct reference should be updated or clarified if it is to differ from other sections.

#### **Part 6, Subpart 3 – Engagement**

114. Clauses 203 and 204 relate to the Consumer Forum. Water NZ notes it is not clear how the forum will be funded. Also, depending on the approach taken by the forthcoming economic regulation legislation it may be appropriate for the WSEs to develop a Customer Engagement Plan.

#### **Part 6, Subpart 5 – Amendment to other Acts**

- (a) Water NZ notes that there are a range of by-laws across NZ which address three waters service delivery. Water NZ suggests that it would be appropriate to transfer such by-laws to the WSEs, in the interim, until they can be reviewed and moderated across the country and replaced by specific WSE customer contracts.

#### **Schedule 2 – Water service entities and their service areas**

115. Clarify that the Greater Wellington Regional Council assets are included in the Schedule 2.

#### **Schedule 3 – Preparation of planning documents**

116. Clauses 1-6 of Schedule 3 provide for the preparation of a statement of intent by the board, including delivering a draft, with the strategic elements being approved by the regional representative group. The Board must consider the group's comments on operational and financial elements and any modifications to a SOI.
117. The Bill should make express provision for WSEs to be funded by the Government during the transition period to undertake such work, given that the WSEs will not be fully operational or earning revenue during this period.
118. Parts 2 - 4 of Schedule 3 provide for the preparation of asset management plans, funding and pricing plans and infrastructure strategy. As above, there should be a concept of streamlined consultation in relation to those plans required to be prepared in the

establishment. Finally, as noted, WSEs should be funded by the Government for this work during the establishment period.

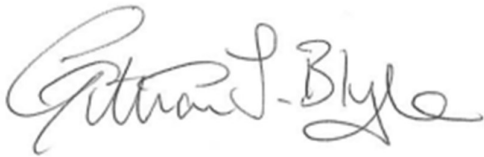
119. Subject to decisions in relation to economic regulation, there may be tensions between the asset management plans prepared by the board and determinations by the economic regulator. To avoid duplication of key strategic documents, consider whether asset management plans prepared under the Bill are also used for economic regulation purposes.

### **CHANGES SOUGHT**

120. Given the issues noted above, Water NZ requests amendments to the Bill which appropriately address the concerns expressed above, including the changes laid out in **Appendix A** or changes to similar effect or.

### **CONCLUSION**

121. Water NZ thanks the Committee for the opportunity to provide comments on the Bill and **wishes to be heard in support of its submission.**
122. Water NZ welcomes any opportunity to answer questions arising from this submission or to otherwise engage in the development of the Bill.



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Gillian Blythe  
Chief Executive