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Chair
Finance and Expenditure Committee
By email: fe@parliament.govt.nz

Tēnā koutou katoa

SUBMISSION FOR WATER NEW ZEALAND ON THE WATER SERVICES LEGISLATION BILL

INTRODUCTION AND OVERVIEW

1. Water New Zealand (“Water NZ”) appreciates the opportunity to provide a submission on the Water Services Legislation Bill (“the Bill”).
2. Water New Zealand (Water NZ) is a national not-for-profit organisation which promotes the sustainable management and development of New Zealand’s water environment, particularly the three waters (drinking water, wastewater and stormwater). Water NZ provides leadership and support in the water sector through advocacy, collaboration, and professional development. Its ~3,000 members are drawn from all areas of the water management industry including regional councils and territorial authorities, consultants, suppliers, government agencies, academia and scientists.
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.
4. 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.
5. The Bill follows on from the Water Services Entity Act 2022 and 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.
6. Water NZ acknowledges that our members hold a variety of views in relation to water reform, including this Bill. Some of our membership hold strong and varied views regarding reforms, governance and representation. For this reason, Water NZ focuses on technical excellence in the delivery result in the provision safe, reliable, and efficient water services. Accordingly, our submission has focused on ensuring the Water Service Legislation framework and transition is workable to this end.

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

Overview of submission

8. In general, we support the bill.
9. Water NZ submission focusses on several themes:
 - i. Stormwater
 - ii. Consistency
 - iii. Timing
 - iv. Pricing and charging
 - v. Continuous improvement
 - vi. Cohesion with other legislation
 - vii. Provide recognition of relationship with iwi/Māori.
 - viii. Climate action
 - ix. Innovation
10. 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.

The case for better coordination of stormwater systems nationwide is already clear.

11. Water New Zealand support fully Subpart 2—Stormwater provisions.
12. Water NZ welcomes the amendments to the Water Services Entity Act 2022 stormwater (and wastewater) networks powers and duties, functions and definitions following our submission to Select Committee in 2022.
13. Stormwater volumes, both current volumes and scenarios for future climate change impacts, often overwhelm networks, resulting in flooding and presenting risks to property. New Zealand's most common hazard is flooding –estimated to cost the country \$160 million per year. Climate change is increasing frequency and intensity of storm events, along with growth and intensification of our urban environment, all are increasing the risk of flooding. The recent, repeat flooding across the North Island also impacted all three waters simultaneously; drinking water availability, wastewater overflows and stormwater quality and quantity challenges.
14. The case for better coordination of stormwater systems nationwide is already clear. In 2021 the technical working group that advised on the stormwater aspect of the three waters reforms identified a host of complexity that these reforms should seek to untangle. These were identified, as:

- i. A “largely reactive” approach to managing stormwater, with limited understanding of the system or management of cumulative effects across the system.
 - ii. A lack of national consistency around regional/local approaches to the management, regulation, and levels of services for both “hard” and “soft/green” infrastructure.
 - iii. Unclear accountabilities, variable management approaches, and poor incentives for joined up, catchment-based management approaches.
 - iv. A lack of formal legislative and policy links between the management and operation of stormwater systems, land use planning, and development.
 - v. Civil defence emergency management and forward planning is not always well coordinated.
15. Whilst some of these concerns have been addressed through the Government’s stormwater work programme, wider legislative changes and clauses in this Bill, there are further meaningful steps needing to be taken.
 16. The WSL bill objectives and direction for stormwater are constructive and provide strategic direction missing from the stormwater sector.
 17. The longer we continue to warm the climate, the heavier the storm rainfalls will get. The country’s stormwater system is designed for the climate we used to have – 50 or more years ago, in many places what has been built is for a one in five year event. Our systems are under-capacity. What we need is a stormwater system designed for the climate we have now, and the one we’ll have in 50 years from now.
 18. In many places, existing planning rules aimed at avoiding building on flood plains, protecting overland flow paths, requiring future-proofed stormwater management or including water-sensitive design are extremely weak or frequently overruled. Piping streams, channelising rivers and building in floodplains should be avoided or prohibited, and increasing impermeability and land compaction should be minimised.
 19. **Recommendation:** WaterNZ calls for a nationally consistent approach to, and application of, stormwater flood hazard modelling, land use planning controls, design standards and freeboard levels, to be prescribed through the proposed water services government policy statement.
 20. **Recommendation:** Water-sensitive design must be complemented by good land-use planning. Clause 256 be strengthened to prioritise and direct WSE investment and expenditure to focus on planning controls (e.g. setbacks, minimum floor levels, onsite detention, WSUD) and targeted capex investments to address service level shortfalls as part of Stormwater Management Plans. This investment and expenditure must also be included in requirements of the Commission in the Water Services Economic Efficiency & Consumer Protection Bill (the WSEEC Bill).
 21. As well as a lack of any strategic and policy frameworks, the difference in operational and capital expenditure between stormwater and the other waters is significant. The [to be released] Water New Zealand 2022 National Performance Review, reveals stormwater networks receive, on average, a third of the funding of wastewater or drinking water systems.

22. A 2021 government report found dozens of communities at serious risk of flooding and are totally unprepared for it. As many of these at-risk communities are in areas of high deprivation the government and the WSE must work together as to how best protect these communities. Proactive co-investment in resilience now, will reduce longer-term community risk to tolerable levels.
23. There is significant need for new, central funding arrangements to deliver the current and future levels of services for stormwater containment design standards.
24. **Recommendation:** fast track government co-investment in flood protection and mandate funding associated with the flood protection projects identified in catchment management planning and stormwater asset management plans.
25. Investment in nature-based solutions is another way to proactively invest in resilience. Natural solutions protect, sustainably manage, and restore natural and modified ecosystems – and offer multiple benefits, for example restoring coastal wetlands, absorbing impacts of increased storminess, providing biodiversity and act as carbon sink, while also providing cultural and recreational values. Such investments would be consistent with other, broader objectives that the Government has for the environment.
26. Water Sensitive Urban Design (WSUD) is an approach to water management in the built environment that addresses both water quantity and water quality issues. To protect the environment and meet legislative requirements, the principles of ‘water-sensitive urban design’ should be applied in new development, the retrofitting of stormwater systems and assets, land use planning controls and in the assessment of resource consents.
27. **Recommendation:** The water services government policy statement, and appropriate stormwater clauses, should be amended to encourage and support each WSE to invest in WSUD and nature-based solutions. And that these should be considered part of the stormwater infrastructure and so can be included in economic regulation/ permitted funding.
28. Regardless of who manages stormwater networks- WSE, councils or other agencies such as Waka Kotahi- we firmly believe the statutory direction in the Bill should be mandated for all stormwater networks.
29. Similarly, each WSE must have the power to impose stormwater network rules relating to works on any part of the stormwater network, not only the overland flow paths of a network (which represent only a portion of a stormwater network).
30. **Recommendation:** There must be increased consistency of functions regarding stormwater - for example, transport corridor managers should be subject to stormwater network rules in respect of new or upgraded roads, and territorial authorities' bylaws must not be inconsistent with stormwater network rules applying in the same area.
31. Overland flow path has the same meaning as in section 6(1) of the Water Services Entities Act 2022: *any flow path taken by stormwater on the surface of land*. Overland flow paths are included as part of the stormwater network interpretation. It must be ensured the overland flow paths are maintained and kept free from impediments to flow.
32. **Recommendation:** we ask for clarity on the status of overland flow paths on Council, Crown and private property and where responsibility for ensuring they are not impeded or obstructed lies.

33. There are currently institutional barriers (internally within councils departments, and between councils, and other agencies) to land use management and stormwater management. Whilst we support the purpose of stormwater management plans to guide the management and future planning of stormwater systems, we have concerns with a holistic stormwater catchment planning process being implemented- and other stakeholders complying with the plans.
34. **Recommendation:** that the Subpart 2 provisions for a strategic framework for stormwater catchment management planning as a means to engage with others on its stormwater management direction be carried through into the Spatial Planning bill regional spatial strategy provisions and the Natural and Built Environment bill policy and consenting clauses. Specifically, the requirements of 256 *Contents of stormwater management plans* should be required to inform regional spatial strategies.
35. There needs to be greater clarity on the definitions relating to stormwater. The definitions are central to the division of responsibility between WSE, territorial authorities and transport corridor managers, and a WSE duties and powers with regard to stormwater.
36. Our members are concerned that the definition of stormwater network does not include a transport stormwater system. The definition of 'transport stormwater system' in clause 5 creates some ambiguity around those stormwater assets that will transfer to a WSE - notably, that the infrastructure or processes *affecting* a transport corridor will not transfer. This is a wide scope that may lead to necessary assets not transferring to a WSE, as well as creating confusion and uncertainty.
37. The uncertainty of considering them as two discrete systems will be challenging in terms of design standards, operations and managing and consenting under two different policy regimes (this bill and RMA). Specifically, clause 260 (c) managing the volume of stormwater and entry of contaminants into stormwater networks.
38. **Recommendation:** clarifying the intent of this description and amending the definition to replace "affecting" with "directly servicing".
39. **Recommendation:** provide clarity on other assets that may or may not be part of the 'network'.
40. Local and international research has shown that the relationship between road run-off and potential environmental effect is complex and location- specific. Across New Zealand catchments there are diverse issues including volume, velocity, sediment and risk of other contaminants and the sensitivity of receiving environments.
41. Roads are only small part of a catchment when it comes to contributing contaminants, yet roads acting as effective conveyance systems for the cocktail of contaminants from all surrounding land uses. It will be extremely difficult to separate out different contributing contaminant loads being introduced into a 'stormwater system'.
42. **Recommendation:** Water NZ propose the WSE take responsibility control of the water quality in both public stormwater networks and 'transport stormwater systems'. The Road Controlling Authority (RCA) remain owner and responsible for the asset management and funding of the assets. We believe the WSE will have the greater skills and capability to manage the water quality challenge. This could be enabled via the Relationship Agreements (clause 467).

Nationally consistent frameworks between entities and waters would be helpful

43. Our members are concerned around lack of reference in the Bill to the very valuable “soft assets” that all Councils have for 3 Waters. This includes thousands of reports, studies, site data, performance records, 3D and BIM models etc and the associated IP (which is often held in shared ownership with the report authors or consultants) that have been collected over the decades.
44. **Recommendation:** The bill must be amended to allow for the transfer of these soft assets, along with the hard assets, to the WSE.
45. We note the new section 133(3)(a)(vii) provide that the government policy statement “may” also include expectations in relation to geographic averaging. However, there is no direction on how, where or when to apply geographic averaging.
46. **Recommendation:** Government produce national guidance for geographic averaging of residential water supply and wastewater service prices to allow WSE boards and Commerce Commission apply a nationally consistent approach.
47. Clause 133(3)(a) (viii) allows the government policy statement may include information to address historical service inequities. This concept is not defined, or indication of who or how they could be addressed.
48. WSE should take reasonable steps to address historic deficiencies. If, for example, asset deficiencies have been causing sewage discharges, it is expected a WSE will have a plan to address these, including prioritised funding.
49. **Recommendation:** a description of historical service inequities should be included in the government policy statement, including an outline of how and who shall do the work and how it should be funded. Recognising any unintended consequences of addressing such inequalities. Appropriate limitations must also be added to the purpose statement in the WSEEC and how the Commission can act in relation to this is included, as this is an outcome that is inconsistent with a competitive market.
50. Whilst New Zealand has an array of civil defence emergency management resources and relationships which allow quick mobilisation and multi-function support, recent reviews and emergency responses have shown emergency management and multi-agency planning and preparedness are not always well coordinated.
51. The interconnectivity of all lifeline infrastructure means that the potential for cascading effects of the failure of one sector across other infrastructure sectors is high. The New Zealand Lifelines Council recognises that many of the infrastructure sectors risks, vulnerabilities and opportunities can be addressed through increased skilled capacities and capabilities.
52. **Recommendation:** Greater clarity and direction of CDEM Groups, Lifeline Utilities’ and WSE roles and responsibilities in preparation, planning, and response for providing assurance to the public and emergency management sector.
53. **Recommendation:** the clauses in s217 will not be inconsistent with the forthcoming National Emergency Management Agency (NEMA) Bill objective of *an accessible, inclusive, modern, fit-for-purpose, well-coordinated, high-performing emergency management system that communities have trust and confidence in.*

54. Clause 467 requires WSE to enter into relationship agreements with local and regional councils and transport authorities to outline how they will engage, develop, operate, maintain, and enforce stormwater and land drainage. However, this does not go far enough to foster cooperation, information sharing, partnership or planning between local authorities and WSE. It is unclear what status these agreements will have and whether they be legally enforceable.
55. **Recommendation:** Relationship agreements should be prepared in advance of the establishment date to ensure all parties are agreed upon and familiar with terms prior to their entry in force. We also suggest some form of dispute resolution (e.g. Ministerial direction or arbitration) be provided for to resolve issues that arise in the creation of relationship agreements.
56. **Recommendation:** the relationship agreements clauses be strengthened to provide for coordination of water service and infrastructure delivery by WSE, local and regional councils and transport authorities (and all Regional Spatial Strategy stakeholders) to facilitate planned and coordinated strategic urban development and growth.
57. **Recommendation:** provide clarification on the legal status of a relationship agreement
58. Water NZ support the new Part 9 (new sections 245 to 287), which set out the service provider assessment obligations for each community's access to drinking water supplies, wastewater and stormwater. We consider this Part to be the most comprehensive and directive in fulfilling the Bills purpose. Replacing bylaws with plans, creating cross country consistencies for connections, planning and codes of practice modernises, coordinates and creates a much better system.
59. The network connection, design standards, stormwater rules, service agreements, trade waste plans, permits and certification, water conservation rules (clauses 245 to 287) largely reflective of existing territorial authorities provision and policies, where available, with some smart drafting to bring it together and fill gaps. On that basis, the processes appear to be largely fit-for-purpose.
60. However, there are clauses that do not integrate with other legislation, including the WSEEC bill, and we have concerns about the workability of the accessing private property clauses.
61. Technical guides are a pragmatic and enduring way of enabling knowledge transfer across organisations. Water NZ maintains a suite of technical guidelines whose development has been funded through a Water Services Managers Group levy, a collective of territorial authority water managers and their agents. The levy will no longer exist following the establishment of new entities. The guidelines cover issues such as asbestos cement pipe management, fluoride dosing, and inflow and infiltration management.
62. The water sector also uses over 100 joint Australian New Zealand Standards. The development of industry standards is managed by Standards New Zealand. Standards New Zealand does not receive direct government funding and operates on a cost recovery basis. Due to the lack of funding several New Zealand Standards on essential operating protocols for the water sector that are currently out of date. A notable example is:

- *NZS 4404:2010 Land development and subdivision infrastructure* provides criteria for design and construction of land development and subdivision infrastructure, including stormwater, wastewater and water supply. Design criteria for water services are not keeping step with current operational conditions, meaning areas using the standard are delivering sub-optimal environmental outcomes. At current inflow and infiltration levels, 13% of wastewater networks constructed in accordance with New Zealand design standards for new developments, will fail to contain sewage overflows resulting from a storm event with a once annual recurrence interval.
63. Industry sectors are seldom able to fund the administrative costs associated with standards development, meaning many existing industry standards are disjointed, preventing New Zealand from having input to ensure local conditions are met.
 64. The establishment of an industry levy would support the maintenance and development of Standards, national codes of practice and industry guides.
 65. **Recommendation:** the establishment of an industry levy on the WSE to deliver on national collaboration on standards, good practice, customer education and support clause 13(m) to facilitate, promote, and support research, education, and training relating to water services.
 66. Collaboration between the four WSE is fundamental to ensure the water services sector operates as a cohesive whole across all of New Zealand. Our members have concerns for a potential for lack of consistency in performance between WSE. All WSE should have a continuous improvement approach to delivering water services. We have assumed any differences in performance or service will be identified in the reporting and monitoring via the Part 9 obligations, Taumata Arowai's annual Network Environmental Performance reporting and the Commerce Commission's regulations.
 67. **Recommendation:** Clarify how consistent performance and continuous improvement between the entities will be enabled and how the conflicts of different requirements for performance and improvement from the different pieces of reform legislation will be resolved.
 68. Planning obligations on the WSE, which require the entity to provide planning documents to Taumata Arowai under the Water Services Act 2021 should align with other planning requirements imposed on entities under the Bill to streamline planning processes and avoid duplication. For example, clause 245(2)(d) imposes a similar obligation on WSE to the obligation to prepare and implement a drinking water safety plan under section 30 of the Water Services Act 2021.
 69. **Recommendation:** Amend clause 245 to insert a new sub-clause after the existing sub-clause 245(2)(d) as follows: "...take account of a drinking water safety plan lodged with Taumata Arowai under section 30 of the Water Services Act 2021."
 70. The assessment of services does not require a WSE to include safety hazards, for example flood management, firefighting and manhole management. Assessments should extend to matters that give effect to the objectives of the Bill like protecting and promoting public health and the environment. We believe the Bill has drinking water services assessments adequately covered, but believe the wastewater and stormwater assessment requirements could be stronger.

71. **Recommendation:** to clause 245 (2) (e) assess the adequacy of drinking water and wastewater and urban stormwater services' amend and add:
- (i) the health and safety risks to those communities and populations arising from any absence of, or deficiency in, those services; and"
 - (v) Te Mana o Te Wai statements and cultural values
 - (vi) existing and potential urban stormwater flood risk
72. **Recommendation:** to clause 249 (2) 'notifying Taumata Arowai' add:
- (c) any wastewater and stormwater considerations including but not limited to – dry and/ or wet weather overflows, WWTP compliance, discharge consent compliance, climate mitigation and adaptation risks.
73. We ask for clarification that clauses 250 (Duty to ensure drinking water) and 258 (Taumata Arowai) and all actions align with Taumata Arowai's role and responsibilities.
74. The Bill would impose unnecessary compliance costs by requiring all trade waste discharges to be authorised by a permit (clauses 267-268). The Bill should permit low risk trade waste discharges (e.g. from food services premises) without a permit and subject to any conditions (for example, a food service business through using a grease trap or sink strainer) where such activities have been specified and permitted in a trade waste plan.
75. **Recommendation:** Amend clause 268 as follows: "A person may discharge trade waste into a wastewater network only if the person complies with every requirement, condition and limit specified in the trade waste plan and relevant trade waste permit".
76. Clause 270 provides that a trade waste plan must specify which activities will be allowed, subject to restrictions, or prohibited under a "permit". However, a permit should not allow (without restrictions) or prohibit activities, as this should be provided for in a trade waste plan. The sole purpose of a permit should be to allow a discharge of trade waste subject to conditions.
77. **Recommendation:** Amend clause 270 to insert a new sub-clause 270(1)(a) as follows, and re-number subsequent sub-clauses accordingly: "which activities will be allowed under a trade waste plan; and"
78. **Recommendation:** Amend clauses 267 and 270 to clarify that the sole purpose of a permit is to allow a discharge of trade waste subject to conditions.
79. We suggest a review of the *NZS Model general bylaw - Trade waste (NZS 9201.23:2004)* in developing trade waste plans.
80. Clause 275 (4) refers to "ordinary" domestic use of water supply or "ordinary" domestic wastewater discharges.
81. **Recommendation:** a definition of 'ordinary' must be provided to ensure consistency across NZ.
82. **Clause 292** *Obligation to publish a water services infrastructure plan* doesn't say what format, when by or where to be published. Such plans need to be consistent across New Zealand and easily accessed by customers, other utilities and roading authorities.

83. **Recommendation:** amend 292 to include as much appropriate direction around publication as appears in clause 465 *Publication requirements*.
84. Within Subpart 2, there are inconsistencies between the Bill and the Utilities Act and the National Code of Practice for Utility Operators Access to Transport Corridors.
85. **Recommendation:** that a reference to the Utilities Act and the National Code of Practice for Utility Operators Access to Transport Corridors would be more appropriate than duplication of content in this legislation.

More clarity to provide certainty on timeframes.

86. Water NZ encourage the Government to give greater consideration to the timing and interconnections of clauses within this Bill, with transition arrangements to the new entities and with other reform programmes to give certainty to all stakeholders.
87. **Recommendation:** We request the Government provide clarity on how the resource management reform tranches align with the new WSE and makes amendments to the Spatial Planning Bill to clarify which transition tranche each region (and WSE) will be part of.
88. Part 2 clause 203 will remove the power to operate Wellington bulk water supply as clause 203 consequentially repeals the Wellington Regional Council (Water Board Functions) Act 2005 and the Wellington Regional Water Board Act 1972.
89. **Recommendation:** the Wellington Regional Water Board Act 1972 is not repealed until July 2024, or after the WSE establishment date so the bulk supply can keep operating.
90. The recommendation of the Rural Supplies Technical Working Group the dates of possible transfer of small mixed-use rural water services is before 30 June 2024. This Bill reads as transfer to community will be after July 2024.
91. **Recommendation:** Provide clarity of timeframes for small mixed-use rural water services to opt out of transition to the WSE.
92. We question clause 258(a)(ii) which requires that a draft stormwater management plan, must be prepared “*no earlier* than 1 July 2028”. Stormwater management plans are needed as a priority to inform, as examples and not limited to, regional spatial plans, infrastructure strategies and pricing plans and climate adaptation/ managed retreat plans.
93. **Recommendation:** amend clause 258 (a) (ii) to read ***no later*** than 1 July 2028.
94. The timeframe available to collaboratively develop and engage meaningfully on Asset Management Plans, Infrastructure Strategies, Funding & Pricing Plans is constrained (clause 461). The National Transition Unit aims to have first generation asset management plans for each WSE by November 2023 and approved by the WSE boards by February 2024.
95. **Recommendation:** consider streamlined consultation in relation to those plans between WSE, Councils, communities and mana whenua given time period available.
96. We believe it to be a drafting error in clause 340 that charges for stormwater (4) (b) applies ‘*not before 2027*’. This year should be reviewed to be earlier, as opex and renewals costs will start being incurred from 1 July 2024.

97. **Recommendation:** amend the clause 340 4 (b) text to read no later than 1 July 2024.

Pricing and charging clarity

98. Water NZ support the charging principles specified in section 331. The principles align with objectives and functions of the WSE Act, and vision of the reforms.
99. However, we believe there is a lack of consideration for different pricing models in the bill, and a lack of incentives to effectively fund infrastructure provision.
100. WSE must have sufficient flexibility to charge as they see fit in order to meet their statutory objectives, with the Commission's oversight under the economic regulation regime operating as the constraint rather than the charging principles.
101. **Recommendation:** pricing and charging clauses must enable a WSE to meet the principles of the WSL bill. The WSEEC Bill must also allow for WSE statutory outcomes.
102. **Recommendation:** The charging principles at clause 331 should include reference to equitability and/or affordability for consistency with clause 333, and to maintain the flexibility available to the WSE in charging to meet the requirements of its customers and service area.
103. **Recommendation:** Amend clause 333 (c) charges should, where considered appropriate by the WSE to achieve its statutory objectives under the Act, reflect considerations of affordability and efficient use of resources."
104. The charges for stormwater services can be averaged geographically under clause 334, but there is no mechanism for varying stormwater charges based on type of land use, which means a WSE could not increase stormwater charges for areas that are scheduled for development, or to certain businesses which have a higher demand for reducing contaminants such as car scrapping yards. Also, there is no apparent justification for only charging the owner of non-rateable land 50% of charges for stormwater services under clause 341(4) when those properties receive stormwater services.
105. **Recommendation:** Water NZ suggest using stormwater pricing incentives to encourage nature-based solutions and green infrastructure services that deliver stormwater services to help address both stormwater quantity and quality issues.
106. Clause 334 allows for geographically averaged prices at different scales for different service types and different classes of consumers.
107. **Recommendation:** Amend the Bill definitions and interpretation to define "classes" of consumers, to ensure national consistency across WSE.
108. As Water NZ submitted on the WSE Act, we believe the WSE should collect charges, not the councils, to maintain balance sheet separation and to avoid public confusion regarding accountabilities.
109. **Recommendation:** From clause 336 Pass through billing, remove ~~(1) The chief executive of a water services entity may authorise the local authority or authorities in its service area to collect charges on behalf of the water service entity.~~
110. Clause 339 gives an entity the ability to charge for unconnected properties within 100m of water or wastewater network. It is not clear how an entity would charge for "availability" rather than for "availability and usage".

111. **Recommendation:** clarification is sought on how availability and usage charges for unconnected properties be developed and applied. The approach needs to be consistent across the country.
112. Water NZ do not support the Crown being exempt from paying infrastructure contribution charges. Crown agencies are often major developers, requiring and constructing significant public infrastructure, to be vested and managed by councils and/or WSE.
113. **Recommendation:** Remove clause 348 in its entirety. ~~The Crown is exempt from paying any water infrastructure contribution charges.~~ Alternatively;
114. **Recommendation:** Reword clause 348 Crown accountable for water infrastructure contribution charges.
115. We note that clause 462 contains much prescription regarding consultation on WSE plans, strategies, contributions, but makes no requirements for consultation on water services charges.
116. **Recommendation:** add a bullet to 462 (1)
 - (q) Sections 318 to 350 (relating to Charging)
117. **Recommendation:** The Part 11: pricing and charging clauses should include WSE financial reporting obligations equivalent to those in the Local Government (Financial Reporting and Prudence) Regulations 2014. Consideration must also be given to inclusion and alignment to the financial reporting the Commission will require.

WSE should have a continuous improvement approach to delivering water services.

118. Water NZ welcome the addition of objective (I) to build, maintain, and support the capability of the water services sector. A dedicated workforce is essential. Entities will be of such scale that it is fundamental their workforce has the capacity, capability and skills needed to deliver water services.
119. **Recommendation:** Water NZ encourages the Government and the WSE to work closely with ourselves, the tertiary sector, and other adjacent member bodies (such as the Engineering NZ, Association of Consulting Engineering (ACE New Zealand) Civil Contractors 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).
120. Water NZ believe concessions will be required in certain circumstances with regards to engagements with communities, notably that targeted consultation must occur to avoid 'consultation fatigue'.
121. The Bill calls for engagement (versus consultation) on asset management plans, funding and pricing plans and infrastructure strategy. These documents are all technical documents, prepared to industry standards and guidelines. It should be noted, there is little consumers and communities can influence in terms of inputs to these plans- e.g. asset data, unit costs, risk management, engineering solution and project deliverability (materials, funding etc). Inputs such as strategic objectives and levels of service or to provide feedback on a programme or priority of works are parts of plans where communities will be able to have influence.

122. **Recommendation:** Clarification or concessions are likely to be required as to community ability to 'engage' on asset management plans, funding and pricing plans and infrastructure strategy.
123. Regarding the transfer of small mixed-use rural water services, clause 239 requires an alternative operator to provide amongst other things a business plan including an asset management plan, funding and pricing plan and drinking water safety plan relating to the transfer proposal.
124. Water NZ believe it easier to have these supplies transfer from a council to an alternative operator, missing out the step transferring to a WSE would be easier. These small suppliers predominantly supply water for stock and irrigation rather than human drinking water and the risk to safe drinking water is lessened. Under the Water Services Act such owners or operators that provide drinking water to more than one household will need to be registered with Taumata Arowai and provide a drinking water safety plan before the supply begins to operate.
125. Water NZ believe that these small mixed use supplies should be able to opt out of the requirement to transfer to the WSE.
126. **Recommendation:** Reinstate the option for small mixed-use rural water services to opt out before transition to the WSE.
127. **Recommendation:** Rewrite clause 239 to require only drinking water safety plan relating to the transfer proposal. "a drinking water safety plan prepared in accordance with section 30 of the Water Services Act 2021". Remove 239 (1) and (2) business plan, (3) asset management plan and (4) funding and pricing plan requirements.
128. Our members have significant concerns with the future ability of the WSE to access private property to access land on, or beneath which, three water assets are situated or to construct or place water services infrastructure on or under land under the new regime. We believe there could be future complication, restrictions or delay for entities being allowed access to assets on private property.
129. Under the current regime a Council will notify the respective owners of intent to access to execute, provide, and do works to the assets. Currently, where land owners do not give consent to access property or land, a request to put to a committee of council to adjudicate. This request and resolution approach is usually quick and inexpensive for both parties.
130. Clause 203 of the bill proposes this adjudication going to the District Court. The requirement of WSE to either obtain consent from the landowner or otherwise gain a District Court order is unworkable. It would increase the time and cost of a project, especially when factoring in District Court delays. Also, most landowners would likely not engage with the legal process, there could be potentially unreasonable conditions landowners would impose and in some situations impact a large number of properties in a single project.
131. **Recommendation:** We propose two potential solutions:
- Reinstate the status quo (section 181 and Schedule 12 of the LGA 2002) as a new clause of the bill.
 - Alternatively, clauses 203 and 204 should be changed to provide for appeals to the Environment Court instead of the District Court and for

matters to be referred to in the first instance, a review panel or an Environment Court Commissioner.

132. **Recommendation:** Along with the options above we propose amendments to remove the landowner's ability to impose conditions in sections 200(2), 200(3) and 202.
133. **Recommendation:** replace clauses for access to meters (reading, maintenance, installing etc) with corresponding clauses from gas or electricity regulations.
134. The current notification timeframe of 15 working days is too long and does not take into account the variance in the practicalities as to timing between different types of capital works and more operational type maintenance works.
135. **Recommendation:** In clause 201(2) the proposed timeframe of 15 working days should be changed to "a reasonable time", which would reflect the nature of the work.
136. In the event the district court clause is retained then changes need to be made to clause 204(2) to ensure that the matters within the Court's consideration are aligned with similar processes under the Resource Management Act (RMA) and Public Works Act (PWA). For example, it should be the WSE decision whether the project itself is necessary or desirable.
137. **Recommendation:** The reference in 204(c) to determining the route to be preferable should be removed for consistency with the PWA equivalent (in s24(7)(b) of the PWA).
138. The provisions of a Court order granting access also need to be amended in clause 204(3). It is impractical to prescribe in advance the specific times and dates for entry and it may be impractical to detail the methodology depending on how advanced the project is at that time.
139. **Recommendation:** Amend clause 204(3) provisions to allow for more flexibility in terms of conditions and timing of access.
140. We do not believe a Court should be able to impose compensation conditions in the access order.
141. The compensation provisions are inconsistent with clause 218(1) which provides that compensation is to be determined as for injurious affection under the PWA (as currently applies under s181 of the LGA 2002), which is determined in the Land Valuation Tribunal as a separate matter.
142. **Recommendation:** Remove the provisions providing that the Court order may impose conditions around compensation.
143. It is imperative a WSE Infrastructure Strategy 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 Bill (SP Bill).
144. There is currently a degree of assumption, or expectation, that funding will simply follow the development of RSSs. However, if there is no guarantee of, or requirement for, funding from infrastructure partners (including the WSE, housing or transport partners) that infrastructure provision and housing development will be uncoordinated and misaligned. Which would defeat the purpose of the resource management reforms and the outcomes that they are intended to achieve for regions and communities.

145. **Recommendation:** More prescription to commitment to funding to be given through both this Bill, and through the SPA, and supported in the WSEECB bill.
146. Water NZ seeks to ensure that agility of decision making is maintained for small or isolated communities. This includes making sure these communities don't pay disproportionately more, or have a lower priority, than the larger, metropolitan centres.
147. The WSE will need to balance a range of competing priorities and interests when making decisions. Not all of these will be capable of being reconciled with each other. A WSE should be obligated to articulate how it has resolved and weighted competing considerations when making a material decision that will result in a significant stakeholder group being disappointed with the outcome – including making its prioritisation/investment frameworks publicly accessible. This will help give smaller councils in particular assurance about how their communities' needs will be included in work programmes and priorities.
148. **Recommendation:** of the documents to be made publicly available, include a WSE prioritisation/investment framework.
149. Technology, connecting data sources, analytics and intelligence are powerful ways to manage, operate and optimise assets across their lifespan. Digital asset management enables higher performance, optimal maintenance and design and more effective planning.
150. **Recommendation:** the clauses are more prescriptive to digitally enabled asset management, information management and data standards.
151. To conduct a comprehensive assessment of services, a WSE will require access to local authority building and resource consent records. The information required will go further than the invitation to local authorities and regional councils to participate in the assessment under 247.
152. It is essential that local authorities share property/building information with the WSE to enable more accurate planning and asset management. Equally, WSE should be directed to share and receive data from other government agencies to reduce whole of system effort.
153. **Recommendation:** relevant territorial authorities should be required under 245 to provide the records of resource consents and building consents granted and applied for.
154. Water is a finite and non-substitutable resource. Despite this it has proven extremely difficult to recognise the value of water. The lack of 'value' is the main cause of water waste and misuse. This is especially problematic in times of growing scarcity and against the backdrop of population growth and climate change impacts on the water cycle.
155. Prescriptive legislative requirements to share documents with the public are unlikely on their own to sufficiently educate communities to understand the water services and to value water. Real success will need substantive, ongoing behaviour change.
156. **Recommendation:** Subpart 2 and Part 9 to include direction for a national water literacy education campaign supporting community behaviour change, regional collaboration, consistent national messaging and best-practice resources. National delivery of effective and efficient customer education could be supported through an industry levy.

Integration between the reforms is missing.

157. Water NZ acknowledges that these Bills will integrate decision-making across several Acts.
158. We are concerned there is little alignment and integration between this Bill and the WSEEC Bill.
159. **Recommendation:** ensure forthcoming economic regulatory arrangements are 'hand in glove' with WSL Bill and WSE Act.
160. The lack of integration and alignment between this and other concurrent, significant reform programmes is of significant concern. This particularly applies to the Resource Management Reform and the Future for Local Government review. Not addressing the lack of alignment and integration will lead to inefficient and ineffective outcomes, a lack of clarity around roles and responsibilities and the timely and cost-effective delivery of three waters infrastructure will be jeopardised.
161. Given the estimated \$120b-180b+ investment required in three waters over the next 30 years, the WSE are predicted to be one of the biggest users of the Natural and Built Environments Bill (NBE Bill) regime. However, except for the *Amendments to Resource Management Act 1991* provisions, there no references to the NBE Bill or the SP Bill, and the water related polices they contain, in this Bill.
162. **Recommendation:** That all reform legislation is assessed for consistency and integration, including reviewing all terms, definitions and policy outcomes between the reform bills.
163. The long-life nature of water infrastructure, with pipes having design lives of 80-100years, mean WSE need to have an active role in long term and spatial planning conversations. Alas, neither three waters nor the resource management reform process provides clarity about WSE role in the new spatial plan-making processes. Entities having a role will be critical for timely and strategic delivery of three waters infrastructure, as sought by both reforms.
164. 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, that there may be significant changes to the shape and structure of local government following the Future for Local Government review and the changes brought about by water services reform and the significant resource management reform agenda.
165. Councils will lose their three waters capability when the staff (and assets) transition to the WSE. Councils will have no skill or capability to be involved in three waters service delivery.
166. **Recommendation:** The DIA National Transition Unit / WSE should have the primary responsibility for advocating for and participating in policy plan development in the interests of three waters infrastructure rather than councils.
167. **Recommendation:** for better integration of the Water Services Legislation bill with other legislation including NBE and SP Bills, adding a new principle to powers and functions, planning and assessment clauses that requires all WSE decision-makers to have input

into, and regard for statements, plans and strategies prepared under other legislation, or at least the Water Services Entities Act 2022.

168. There are many other key plans to be prepared under the WSE Act including, but not limited to, Te Mana o Te Wai statements, statement of intent, asset management plans and infrastructure strategies. These are all relevant to, and would add value and efficiency to, the RSS and NBE plan process.
169. **Recommendation:** There is no need to duplicate statutory planning processes. Each reform, their Acts and the plans and policies required under it should be used to inform the other reforms statutory planning.
170. A significant concern to Water NZ is how the concept of Te Mana o Te Wai integrate with the NBE Bill outcomes and biophysical limits. Under the bill WSE are required to give effect to Te Mana o Te Wai statements produced by mana whenua. It is unclear how the process prescribed in the WSL Bill relates to the process in the RMA and the proposed NBE Bill given the purpose of Te Mana o Te Wai statements in the Bill are operational, whereas they are regulatory in the RMA regimes. We note that the regulatory requirements must prevail over the operational ones.
171. **Recommendation:** clarity and guidance is needs to describe the interaction of Te Mana o Te Wai between the various pieces of legislation, especially in the WSEEC Bill.
172. **Recommendation:** Clarify what happens when a conflict arises between operating principles, statement of strategic and statement of intent, Te Mana o Te Wai statements and NBE Bill environmental limits and also the WSEEC Bill requirements. A hierarchy is required and needs to be reflected throughout the Bills.
173. The water services industry work has interaction with all NBE bill biophysical limits spheres (air, freshwater, biodiversity, estuary, coastal and soil) generally via consenting and compliance. NBE Bill environmental limits and targets will need to align with the environmental performance measures, targets and standards set by Taumata Arowai in accordance with the Water Services Act 2021.
174. **Recommendation:** Integrated catchment planning is the only way the interrelations of these biophysical limits can truly be achieved and avoid conflict between outcomes.

Recognition of relationship with iwi/Māori.

175. 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 Te Mana o Te Wai in the Bill, and the proposed requirement to 'give effect to' the principles of Te Tiriti/the Treaty.
176. Strong partnerships with mana whenua are crucial for the future management of the environment and supporting communities' cultural wellbeing. WSE will need to partner closely with mana whenua starting even before they are fully established. This will ensure that Te Mana o Te Wai statements are being woven into the work programmes in the transition to and from day one of the WSE start up.
177. 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 Te Mana o te Wai statements will exacerbate this demand.

178. Tina Porou (Poipoia) has advised¹ 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.
179. Water NZ highlight again that iwi/Māori must be resourced to participate in the new system. Government must ensure that iwi/Māori have the capacity to participate in the new system in the manner that is envisaged.
180. **Recommendation:** Government funding is urgently needed to resource mana whenua to be active partners in the new systems that are being created. This is broader than that required to implement the three waters reform programme. This will enable mana whenua to increase their capacity and capability to resource increasing co-governance, co-management, co-design and co-delivery expectations.
181. We question 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 Te Mana o Te Wai statements and having to meet commercial goals and objectives.
182. **Recommendation:** Clarity is needed as to who ultimately regulates and upholds Te Mana o Te Wai, Taumata Arowai or the Economic Regulator.
183. In addition, there are differences in wording throughout the different legislative regimes:
- i. The WSL Bill refers to mana whenua
 - ii. The RMA generally refers to the term tangata whenua.
 - iii. The Local Government Act 2002 generally uses the term Māori.
 - iv. In the Auckland Council legislation the terms mana whenua and matawaaka are used.

Each WSE should be required to produce Climate Change Management Plan

184. Water, wastewater and stormwater infrastructure is already vulnerable to a broad range of climate change impacts. The long life of water infrastructure means it's imperative that operational policy and design responses are informed and adaptive to climate hazards and risk exposure.
185. Analysis provided by the Water Industry Commission for Scotland (WICS) has identified that between \$120-\$180b of investment is required over the next 30 years to improve the New Zealand water system to meet existing standards. This will result in a significant contribution of greenhouse gasses unless direct action is taken to understand and reduce emissions. Transitioning to low carbon approaches requires progressive policy direction and funding models, new investment in processes and infrastructure, the inception and growth of new markets for recycled materials, community behavior change and regional collaboration.
186. 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.

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

187. There is increasing appreciation that including climate change risks and greenhouse gas emissions targets into decision making is more prudent, and less costly than managing the risks through reactionary post-event measures. Similarly, embedding circular standards in asset management will drive innovation and take up by the industry.
188. Water services policy needs to keep pace with the requirement of Aotearoa New Zealand's emissions reduction targets. The Government's second emissions budget (for 2026-2030) has been set, and NTU and WSE need policy and plans to deliver it.
189. **Recommendation:** The statutory obligations of a WSE should be expanded to require a WSE to produce Climate Change Management Plan that includes:
- i. Emissions and the transition to a low carbon circular economy.
 - ii. Impacts, risk & resilience – aligned with the proposed regional spatial plans and proposed Climate Adaptation Act.
 - iii. Climate related financial disclosures –
 - Annual Greenhouse Gas Emission reporting by source.
 - Reporting using the Task Force on Climate Related Financial Disclosures framework.
 - Other climate related reporting required under other mechanisms relating to boards.
190. **Recommendation:** include new clause in Part 9 Service Provider and Assessment Obligations, which would require the implications of climate impacts and carbon emissions to be taken into account on proposed infrastructure lifecycle asset management decisions, and require a long-term approach to service delivery be taken in all WSE Asset Management Plans, Infrastructure Strategies, Funding & Pricing Plans. The WSEEC Bill and the the Commission must also give effect to such a requirement rather than using market rate discount analysis (short term) for investment decisions.

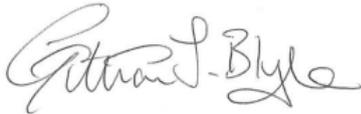
Provide a structured, supported pathway for innovation

191. An enabling environment for education, research and innovation is a key opportunity of the water reforms that is unrealised in legislation as currently proposed.
192. We welcome the expanded WSE functions to include (m) to facilitate, promote, and support research, education, and training relating to water services. Water NZ believe that through this Bill, and WSEEC Bill, there is opportunity to provide a structured, supported pathway within the WSE for innovation with the appropriate governance and specialised support.
193. Existing research funding does not support the needs of the water sector. It is extremely limited, competitive, and concentrated on investigator-led fundamental research, while funding provision for the “last mile” between research innovation and practical application is practically non-existent. Institutional and funding support is needed to support innovations moving from the academic sphere to implementation. This would include innovations that include new treatment methods, non-asset solutions to water delivery, and digital innovation.

194. An WSE levy could be used to trial new technologies, support collaboration between the research community, product developers and the water sector.
195. Part 4 of the Water Services Act enables fees and levies to be regulated and section 201 provides specifically for the levy powers available to Taumata Arowai. These would enable Taumata Arowai to recover costs laid out during the performance of its duties. Fees and Levies can be recovered by Taumata Arowai in court, as a debt due on behalf of the Crown.
196. **Recommendation:** Amend the Bill to include a levy provision Water Services Act Fees and Levies one.

CONCLUSION

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



Gillian Blythe
Chief Executive