

# **OPEN**

# **MINUTE ITEM**

# **ATTACHMENTS**

**Ordinary meeting of the**  
**Infrastructure Committee**

**Thursday 8 April 2021**  
**Commencing at 9.00a.m.**  
**Council Chamber**

**Civic House**

**110 Trafalgar Street, Nelson**

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[DATE]

Chair  
Health Committee  
Parliament Buildings  
Wellington

Dear Sir/Madam,

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

### **INTRODUCTION AND OVERVIEW**

1. Water New Zealand ("Water NZ") appreciates the opportunity to provide a submission on the Water Services Bill ("the Bill").
2. This bill sets the framework for the biggest improvement in the provision of safe drinking water safety that we have seen in this country in decades.
3. Water NZ fully supports this very important legislation and the intent of the bill and most of the clauses within the legislation, these represent a sea change in the way drinking water will be regulated and a much-needed improvement the public health of drinking water for all New Zealand communities.
4. This submission was drafted in collaboration with Water NZ members across a wide range of practices working with various water utility sizes.
5. Water NZ was involved in the recovery effort after Havelock North drinking water contamination event and the subsequent public inquiry, which was a driving factor in this reform, the sector is aware of many other such events and near misses. Water NZ is accordingly very supportive of all actions and decisions that will improve the provision of safe drinking water to all New Zealanders and mitigate against further events.
6. There is a need to move forward as quickly as possible. It is concerning that the ongoing "systemic failure" can be borne out through recent findings and reports in years following the Havelock North contamination event.
7. The Ministry of Health 2018-19 Annual Report on Drinking-water Quality which reports on communities of more than 101, found that 23.8 percent of the population were supplied with water that did not meet all of the Drinking Water Standards. The total report population covers 4,077,000 people, Effectively, this means that 970,000 people received publicly supplied water that did not meet all of the standards. This level of non-compliance has not significantly improved in the last 20 years. Also of concern with New Zealand's estimated population being over 5,100,000 means there is a further 1,023,000 New Zealanders with unknown drinking water quality. There are approximately 2,000,000 New Zealanders with drinking water that does not fully comply with the

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drinking water standards or within an unknown level of compliance. (ref <https://www.health.govt.nz/publication/annual-report-drinking-water-quality-2018-2019>)

8. The Ministry of Health 2018-19 Annual Report on Drinking-water Quality also identified that of the supplies being monitored in the report 2.9 percent did not have a water safety plan, this equates 117,000 New Zealanders do not have their risks to their drinking water identified or a management plan should an event occur.
9. Water New Zealand's latest published annual benchmarking tool, the National Performance Review 2018/19, there were 42 of the 64 municipal water utilities that participated covering 4,467,620 New Zealanders, of these utilities they reported 415,409 resident days were affected by boil water notices. For a boil water to notice to be issued, the drinking water supply has failed.
10. 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 country's largest water industry body, providing leadership and support in the water sector through advocacy, collaboration and professional development. Its 2,300 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.
11. Water NZ represents 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.
12. Water NZ generally supports the Bill.

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**ROLE OF TAUMATA AROWAI**

13. As highlighted in various parts of this submission, the form of how Taumata Arowai will conduct some functions and exercises its powers are not known regarding some provisions of the Bill. It is acknowledged that these may not need to be written into the Bill, but Water NZ makes the submission that they should be kept in mind when drafting the Bill, and that Taumata Arowai should be aware of what industry bodies expect regarding their obligations.

**COMMENTS ON SPECIFIC PROVISIONS**

14. Water NZ wishes to make a number of comments on specific provisions in the Bill. In some instances, specific changes are also recommended by Water NZ to address its concerns, outlined at the end of this submission at **Appendix A**.

**Part 1, subpart 2 - Interpretation**

15. This subpart frames the meaning and understanding of the entire Bill and must accurately represent what is intended to be legislated. Therefore, some clarifications or amendments are recommended as below.

**RELIEF SOUGHT**

16. Water NZ particularly supports the following definitions as they are:

- [definitions supported this section to be filled in prior to submission with definitions not requiring clarification or amendment]

17. The following undefined terms require definitions for clarification:

- “Aesthetic values” – for clarity, the definition in clause 47(3) should be copied to the Interpretation subpart.
- “Authorised supplier” – whilst the Bill refers to the requirements that council-controlled organisations will be required to become authorised or have their drinking water services delivered by an authorised supplier, no definition of “authorised supplier” is provided.
- “Inspector” – Clause 97(3) refers to an inspector, however, this is not defined or mentioned anywhere else. It is likely that this is merely an error, where “officer” should have been used instead.
- “Ordinary drinking water needs” – suppliers have a duty to supply a quantity of drinking water that is sufficient to support the ordinary drinking water needs of consumers at the point of supply under Clause 25(2). A definition should be added here for clarity and certainty.
- “Planned events” – examples are given in Clause 33 (“...such as a festival or other organised gathering or camp...”) but it is suggested that a clearer definition be given.
- “Reticulation system” – This is referred to in multiple places with different requirements for reticulated and non-reticulated water supplies. Clarification is therefore required to avoid uncertainty.

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- “Drinking Water Supplier” requires clarification if a drinking water supplier has a population threshold as well, an amendment to include embedded networks as part of a drinking water suppliers.
- “Secondary Drinking Water Supplies” is a term used in the draft drinking water supply operational compliance rules, it is recommended that a definition be created for secondary Drinking Water Supplies in the water services bill as well as including their obligations and enforcement. “Domestic self-supplier” – the examples of what is not a domestic self-supplier requires greater clarity, as currently worded, a café that has its own river water supply is a domestic self-supplier and Water NZ does not believe this is the intent of this definition.

18. The following definitions require amendments:

- “End-point treatment” requires amendments to clarify what is intended to be covered by the associated duty at Clause 28. Water NZ submits that this amendment should separate all water supply operations upstream of this connection.

Water NZ also submits that this clause should be at the approval of Taumata Arowai. If this clause was to be used to change a community from a centralised water supply system managed by competent authorised trained persons to many individual end-point treatment systems operated and maintained by homeowners, this may not be the best solution when looking from a public health perspective.

- “Safe in relation to drinking water” at Clause 7 requires amendment to avoid uncertainty. The definition is concerning subjective and uncertain, relying on a likelihood of causing risk of harm. Water NZ submits that there needs to be a stronger, clearer definition as many duty and enforcement provisions use the term “safe”. Meets the MAV’s.
- “Unplanned events” – The definition provided at Clause 34(2) needs amendment for clarity.

**Part 1, subpart 3 – Key Principles Relating to Functions, Powers, and Duties**

19. Water NZ supports this subpart and the direct reference to the Te Mana o Te Wai and the National Policy Statement for Freshwater Management 2020.

**Part 2, subpart 1 – Duties of Drinking Water Suppliers**

20. For the most part, the duties are clear and appropriate. However, Water NZ does have concerns around the application of these duties and therefore proposes various amendments. There is also a concern that the Bill lacks a clear provision regarding the failure to comply with drinking water standards being an offence. This will be discussed later in the submission under the ‘offences’ subpart.
21. As above, the “ordinary drinking water needs” of consumers needs to be defined for the purposes Clause 25(2).

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22. Water NZ also recommends introducing a mechanism to allow suppliers a viable exit plan from consumers in areas with retreating water supply systems or the abandoning of supplies due to delivery constraints.
23. The exemption for water suppliers restricting or interrupting the provision of drinking water to a point of supply because of environmental factors affecting the source of a drinking water supply should be expanded. Environmental factors can include a range of circumstances, particularly from natural hazards and changing climates, that can have an effect on any part of the supply of drinking water.
24. There are provisions in the Electricity Industry Act 2010, subpart 3, Continuance of Supply, clause 105, whereby an electricity distributor is prohibiting from ceasing to supply line function services to a "place" without the prior consent of the Minister or every consumer who would be affected by the cessation of those services. To be able to stop supplying line function services the electricity distributor must supply electricity from an alternative source – a combination of supply from a solar array, battery or diesel generator would be an example of such services. Water NZ submits that a new clause is included which provides for an equivalent "alternative long term water supply solution", with consent from Taumata Arowai and every affected consumer.
25. Provisions for planned and unforeseen restrictions or interruptions to supplies should also allow for prior approval to be given from Taumata Arowai for multiple related occasions.
26. Water NZ does not see a need for suppliers to notify Fire and Emergency NZ where sufficient quantity of drinking water is at risk. Some utilities supply drinking water but do not have any systems with fire hydrants. Local authorities have protocols in place to notify appropriate authorities of affected services and this responsibility should lie solely with them.
27. Duties relating to backflow and end-point treatment should also include provisions requiring maintenance to be carried out by a suitably qualified professional to avoid equipment failure. These duties should also not require persons installing equipment to take steps to ensure fire sprinkler systems are compliant as this is part of the building regulations.
28. Under section 93 of the Local Government Act 2002, Territorial Local Authorities are required to undertake long term planning – the plan must be for a minimum of ten years. However, for the water sector longer term forecasting is required, particularly in light of climate change, potential changes in population, consumer behaviour and land use.
29. Water NZ submits that a new provision should be included in the Bill in relation to long term planning, forecasting and reporting requirements of Drinking Water Suppliers, Wastewater Network Operators and Stormwater Network Operators. Analysing the impact of potential environmental changes on water networks over a 50-year period, and in some areas 100 years would be appropriate as water assets have expected life span of between 70-300 years.
30. One of the key benefits of requiring Drinking Water Suppliers, Wastewater Network Operators and Stormwater Network Operators to publish future investment scenarios is that it increases community understanding of the implication of near-term decisions, e.g.,



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expenditure on addressing network condition to reduce leakages may over the long-term delay investment in a new water source.

31. Water NZ notes that Transpower, as the electricity national grid owner and system operator regularly publishes a Transmission Planning Report which details the grid asset capability over the next 15 years. Under the Electricity Industry Participation Code requires Transpower to publish the Grid Reliability Report, Grid Economic Investment Report and the ten year forecast fault levels within defined timeframes. See [Transpower's Integrated Transmission Plan suite of documents](#). Transpower has also published a number of documents which have considered various energy futures through to 2050 (see [Te Mauri Hiko - Energy Futures | Transpower](#)).

**RELIEF SOUGHT**

32. Insert a new definition for "ordinary drinking water needs" for the purposes of Clause 25(2) in Clause 5. Insertion of new clause relating to alternative water supply.
33. Amend Clause 21(2) regarding the immediate notification of Taumata Arowai and alternate actions arising from advising consumers of unsafe drinking water.
34. Amend Clause 25(3) to apply to the entire drinking water supply.
35. Insert new Clause 25(8) regarding ability of Taumata Arowai to provide prior approval for the purposes of this subpart.
36. Delete reference to Fire and Emergency New Zealand in Clause 26(1).
37. Amend Clauses 27(3) and 28(2)(3) regarding installation and maintenance of backflow prevention and end-point treatment devices.
38. Insertion of new Clause relating to long term planning.

**Part 2, subpart 2 – Drinking Water Safety Plans**

39. Water NZ supports the use and implementation of Drinking Water Safety Plans and only recommends changes for the purpose of clarification. Water NZ also wishes to submit that there are various processes here that are to be defined and determined by Taumata Arowai and suggests an external policy statement or other such publication clarify the mechanics of the process. In particular, detail should be provided regarding the lodgement of safety plans with Taumata Arowai under this subpart and Taumata Arowai's requirements under Clause 32 to review safety plans and monitor compliance.
40. Water NZ supports Clauses 30 and 31 but proposes legislating more specific requirements regarding the review of safety plans, such as minimum time requirements for reviews. The requirement to provide for the use of residual disinfection of reticulated water supplies unless an exemption is obtained under Clause 51 is supported, though Water NZ submits that the safety plan should then need to describe the processes and measures in place to supply safe drinking water without a disinfection residual.
41. The multi-barrier approach to drinking water safety in Clause 31(2) also needs some clarification. The current wording of subsection (2)(b) does not acknowledge supplies where particles, pathogens, chemical or radiological hazards are not present in the source water (e.g., certain groundwater supplies) or if they may be removed by means other than physical treatment. The requirement should be rephrased to allow acceptable



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treatments for the same outcome. Subsection (2)(c) and (2)(d) also do not clearly recognise instances where those requirements do not apply.

42. Water NZ supports the power of Taumata Arowai to review water safety plans and monitor their compliance based on the scale, complexity, and the risks that relate to, the drinking water supplies. It is understood that this provides sufficient discretion to Taumata Arowai to review and monitor the supplies it deems appropriate, rather than creating an obligation to review and monitor all water safety plans. Water NZ also supports pro-active random reviews and monitoring from Taumata Arowai to ensure a sufficient cross-section of the industry is being compliant, rather than only those that are deemed to require review and monitoring.
43. Clause 33 is supported but Water NZ notes that a policy should be published by Taumata Arowai regarding the process for applications to Taumata Arowai for registration of a temporary drinking water supply, such as the lead time for applications to be approved and registered.
44. As mentioned above in the Interpretation subpart, a definition of "reticulation system" is required. Clearer definitions for "planned events" and "unplanned events" should also be written into the Bill.
45. It is understood that Taumata Arowai will be providing guidance and examples of water safety plans, particularly for smaller suppliers. Water NZ supports this but recommends that further guidance for smaller suppliers may also be required to ensure those plans are implemented and reviewed correctly.

RELIEF SOUGHT

46. Insert a new definition for "Reticulation system" in Clause 5.
47. Amend Clause 31(1)(e) to include requirement for when reviews of water safety plans will occur.
48. Amend Clause 31(1)(j) so that exemptions also include a requirement for water safety plans to describe in detail the measures in place to ensure the supply of safe drinking water without a disinfection residual.
49. Insert new Clause 31(1)(n) providing for a minimum time requirement for reviews of plans.
50. Amend Clause 31(2)(b) to remove the specific reference to "by physical treatment".
51. Amend Clause 32(2)(c) to 'kill or inactivate pathogens in the water by disinfection unless exempt from residual disinfection under section 57'.
52. Amend Clause 32(2)(d) to 'maintain the quality of water in the reticulation system' and state that this does not apply to supplies without a reticulation system.
53. Amend Clause 33(5)(b) to specifically reference subsection (4).

**Part 2, subpart 3 – Requirements relating to notifications and record keeping.**

54. Water NZ generally supports this subpart. It is noted however that a policy document should be published by Taumata Arowai regarding their process for determining what risks or hazards are notifiable.

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**Part 2, subpart 4 – Consumer Complaints**

55. Water NZ supports the creation of a process for consumer complaints but has concerns with elements of the process described in the Bill. Clarity may also be required regarding how a water supplier determines that a complaint is dealt with in an efficient and effective manner.
56. Water NZ recommends that requirements be introduced for complaints to be reviewed by a third party rather than Taumata Arowai. The process of Taumata Arowai reviewing complaints described in Clause 39 is in direct contrast to the process followed in the electricity and gas sector. Neither the Electricity Authority nor the Gas Industry Company review deadlocked complaints; rather, this is undertaken by Utilities Disputes Limited. This occurs through a provision whereby the Governor General may, by Order in Council made on the recommendation of the Minister, make regulations providing for a regulated dispute resolution scheme.
57. Water NZ suggests that there may be economies of scale and scope from adopting a similar process, rather than requiring Taumata Arowai to upskill in the assessment of complaints. If such an approach is adopted, Water NZ then recommends including a requirement, as in the Utilities Disputes electricity and gas scheme rules, that they are not able to make decisions on complaints that relate to price.
58. A mechanism is required allowing enforcement action where there is a risk to public health and safety and some amendments would also aid in clarity and flexibility to allow for a more effective process. This would include specifying who can make a complaint and what prescribed information can be.

**RELIEF SOUGHT**

59. Introduce requirements for complaints to be reviewed by a third party rather than Taumata Arowai.
60. Amend Clause 38 to weigh the complaints process based on the scale and complexity of, and the public health risk to, drinking water supplies.
61. Amend Clause 40 to be in accordance with complaints processes and provide for enforcement action.

**Part 2, subpart 5 – Source Water**

62. Water NZ supports the requirement that risks and hazards to source water are identified, assessed, managed, and monitored by drinking water suppliers and local authorities. It is noted though that this process will be new for a number of utilities- a Water NZ National Performance Review reported that less than half of the water suppliers had identified the zone from which water was sourced for their drinking supplies.<sup>1</sup> Water NZ therefore recommends a guidance document be required to be published by Taumata Arowai to assist in both the process and the publication of information on the process.
63. It is also submitted that local and regional authorities go further than merely contributing to the development and implementation of source water risk management plans. Instead, Water NZ submits that amendments be made requiring the source water plans

<sup>1</sup> *Water New Zealand 2018-19 National Performance Review*, at pg. 5.  
[https://www.waternz.org.nz/Attachment?Action=Download&Attachment\\_id=4271](https://www.waternz.org.nz/Attachment?Action=Download&Attachment_id=4271)

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to be jointly prepared by the water supplier and local and regional authorities. This amendment would have the plan being owned by the water supplier with the authorities actively assisting and signing off on the plans. The intent here is that the plan will require actions and obligations that all parties will need to perform in order to make a source water management plan effective.

64. Amendments are also recommended regarding the requirements of councils to publish information about source water. These amendments include providing for a more collaborative and regular reporting dialogue between councils, Taumata Arowai and drinking water suppliers regarding water contamination risk management.

RELIEF SOUGHT

65. Amend Clause 45 regarding requirements of councils to monitor and publish information about source water, and to jointly contribute to the development of the plans.

**Part 2, subpart 6 – Standards, Rules, Directions and other Instruments**

66. Water NZ generally supports the adoption of Drinking Water Standards.
67. There are however concerns that the Drinking Water Standards are too limited by the wording of the subpart. Specifically, the requirement that they may only specify or provide for minimum or maximum values. To allow greater flexibility and fit-for-purpose standards, amendments to “minimum or maximum” are required to also allow mean, median and percentile ranges to be set.
68. Water NZ supports Clause 46(c). The addition of fluoride to drinking water is different from other water treatment process in that it is not about removing contaminants (biological, chemical or radiological). The decision to fluoridate or not is independent of making water safe to drink. The decision therefore is not one that should be made in the Drinking Water Standards. Water NZ understands and supports that the Standards can still set the acceptable limits for when fluoride is dosed. The Health (Fluoridation of Drinking Water) amendment bill is currently waiting for its second reading and addresses the decision to fluoridate or not.
69. Water NZ supports the requirement for Taumata Arowai to issue or adopt aesthetic values and supports the definition of aesthetic values in clause 47(3). It is submitted that this definition should be copied into the interpretation subpart for clarity. For ease of reference and functionality, the aesthetic values should also ideally form part of or be appended to the Drinking Water Standards. This would ensure water suppliers have clear and easy direction on requirements, leading to better public health outcomes.
70. Water NZ supports the ability of Taumata Arowai to make compliance rules for drinking water suppliers and other duty holders. There are concerns though that the prohibition for rules to apply to an individual water supply or local authority inappropriately removes the flexibility of Taumata Arowai to decide rules on a case-by-case basis. Every water supply is different, and some may be unable for example to meet the aesthetic values for hardness that others can easily meet.
71. Water NZ supports the circulation of template or model drinking water safety plans by Taumata Arowai as members see the value for small water supplies, noting however that it is not envisaged that larger supplies would use a template to develop their water safety plan. It is noted that a water safety plan is still required to be reviewed by Taumata

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Arowai whether or not a template has been issued or followed and Taumata Arowai retain the ability to circulate a template without this provision. Therefore, Water NZ neither supports nor opposes Clause 51.

72. Water NZ supports the consultation requirements for Taumata Arowai and the narrow exemptions to those requirements. However, it is submitted that an additional clause is required to provide for an obligation to consider the importance of relevant existing standards of drinking water supply and construction.

RELIEF SOUGHT

73. Amend Clause 46 regarding acceptable values and amounts of substances.  
74. Amend Clause 52.

**Part 2, subpart 7 – Drinking Water Supply register**

75. Water NZ supports the application process to register a drinking water supply and the keeping of a publicly available register of drinking water supplies. Water NZ particularly supports the ability of Taumata Arowai to withhold information from the publicly available register. This shows a good consideration of the sensitivity of certain details with respect to the privacy and safety of individuals, as well as potential threats to water supplies.
76. Water NZ supports the requirement to renew registrations annually. However, particularly for smaller supplies with overlapping duty holders, there are concerns that offences for a supply with lapsed registration are indistinguishable from offences for a supply that was never registered. This will be covered in the 'offences' subpart of this submission.

**Part 2, subpart 8 – Exemptions**

77. Water NZ supports the intention of this subpart and recommends minor amendments for clarity. However, Water NZ does note that there are various processes here that are to be defined and determined by Taumata Arowai and seeks an external policy statement or other such publication to clarify the mechanics of the process, particularly in regard to framework for the exemption application and review process.
78. Clause 56 is supported but changes are recommended to provide greater flexibility to the Chief Executive.
79. Clause 57 provides broad discretion to Taumata Arowai. Water NZ does acknowledge this is necessary but recommends amendments to clarify the extent of that discretion, particularly in regard to exemption conditions applied by Taumata Arowai.
80. Exemptions will also be relied on by suppliers and therefore some certainty is required in the Bill regarding the replacement and revocation of exemptions. The power to replace and, in some circumstances, revoke exemptions is supported. However, revoking or replacing exemptions with ones materially different to the previous should only be done after consultation with the supplier and appropriate notice periods. Reasons for replacement or revocation of exemptions should also be communicated.

RELIEF SOUGHT

81. Amend Clause 56(2) to allow exemption of any requirements.

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82. Amend Clause 57(5) to require conditions to be proportionate to the scale, complexity, and risk profile of the water supply.
83. Amend Clause 57(7) to clarify "replacement" and introduce controls on any replacement or revocation of exemptions including requirements to consult with the supplier, provide reasonable notice, and communicate the reasons for replacement or revocation.

**Part 2, subpart 9 – Emergency Powers**

84. Water NZ supports the provisions relating to Emergency Powers. The powers granted to Taumata Arowai are extremely broad and extensive but generally appropriate in the circumstances. However, Taumata Arowai must recognise this and ensure that these powers are exercised responsibly and under the direction of suitably authorised persons within Taumata Arowai.
85. Water NZ particularly supports the exemptions provided for in this subpart that protect public health. This allows timely interventions where there is a conflict between public health and environmental protection provisions that can protect life.
86. Water NZ submits that when declaring a drinking water emergency Taumata Arowai should use established civil defence communication paths to avoid delays in action and public notification.

RELIEF SOUGHT

87. Amend Clause 58(6) to include requirement to use established civil defence communication paths.
88. Amend Clause 62(3) to include provision for a do not consume notice.

**Part 2, subpart 10 – Authorisations**

89. Water NZ supports the power of regulations to require the authorisation of those operating a drinking water supply. However, it is submitted that amendments are required for the purposes of clarity.
90. Water NZ looks forward to engaging with Taumata Arowai on possible delivery options for how individual authorisation could be delivered. Water New Zealand has developed a competency framework for the Drinking Water Treatment Operator, Wastewater Treatment Operator, Drinking Water Distribution Operator and Wastewater Network Operator. Due to these pieces of work, other roles have been identified to develop competency frameworks for, which includes the supervisors, team leaders and managers.
91. Water Industry Professionals Association (WIPA) is an incorporated society jointly established by Water Industry Operations Group (WIOG) and Water NZ. WIPA provides an operational Continuing Professional Development registration programme for individuals to be registered as Water Industry Professionals. It is possible that WIPA is part of the solution for authorising individuals under this legislation and we look forward to discussing options with Taumata Arowai.
92. There are also concerns regarding the process and practicability of authorisations that will be addressed below under the 'Regulations' subpart in Part 4.

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93. Water NZ also supports Clause 5 of Schedule 1 regarding authorisation requirements which require local authorities and council-controlled organisations operating drinking water supplies to be authorised or have the supply operated by an authorised supplier. Water NZ understands the mechanisms that will enable this authorisation will be developed through regulations. In the meantime, Water NZ offers that a potential pathway for such authorisations is through self-certification against a series of criteria developed by Taumata Arowai. Such schemes have been used in the electricity sector with the Electricity Authority adopting a stress test process, whereby certain industry participants in the wholesale electricity market are required to apply a set of standard tests to their market position and report the results. The purpose of the annual certificates is to confirm that the Boards of the participants have considered the results of the stress tests.

RELIEF SOUGHT

94. Various amendments are required for clarity.

**Part 2, subpart 11 – Laboratory Accreditation and Testing**

95. Water NZ generally supports this subpart but has some specific concerns regarding process and the strain it puts on drinking water suppliers and Taumata Arowai. In particular, the requirement under Clause 72(2) to notify Taumata Arowai if results indicate that drinking water does not comply with the drinking water safety, and the accreditation of laboratories for discrete services.
96. Water NZ submits that the requirement under Clause 72(2) to notify Taumata Arowai is unnecessary and puts an undue administrative strain on Taumata Arowai where related to general guidance values or aesthetic values. Amendments are suggested requiring laboratories to notify the drinking water supplier as soon as practical instead, with an additional provision inserted to require laboratories to notify Taumata Arowai as soon as practical if the results of an accredited laboratory's analysis indicate that drinking water causes a risk to public health. Suppliers have a duty to comply with drinking water standards under Clause 22 which includes a requirement to notify Taumata Arowai. These amendments will reduce redundant double-notification except in circumstances where public health is at risk.
97. Water NZ also has some concerns regarding the accreditation of laboratories for discrete services. The wording of provisions in this subpart is extremely broad and makes no indication of laboratories being accredited for different services, and no mention of requiring accreditation for the sampling of water. It is expected that Taumata Arowai's register will clearly state what services each laboratory is accredited for, but amendments are suggested to clarify the requirements on laboratories and Taumata Arowai to ensure both the sampling and the analysis of source water, raw water and drinking water is carried out by appropriately accredited laboratories.

RELIEF SOUGHT

98. Amend Clause 72(2) to require laboratories to notify the supplier rather than Taumata Arowai.



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- 99. Insert a new provision in Clause 72 to require laboratories to notify Taumata Arowai as soon as practical if the results of an accredited laboratory's analysis indicate that drinking water causes a risk to public health.
- 100. Amend Clause 76 to include accreditation for sampling.

**Part 2, subpart 12 – Statutory Management and Transfer of Operations**

- 101. The process and circumstances of exercise for this power is supported by Water NZ. However, there are concerns around overburdening a supplier with the costs of additional operations, investment and infrastructure required to competently operate a safe water supply. Amendments are suggested to provide for circumstances where Taumata Arowai covers these costs until a sustainable funding arrangement is in place for all parties.

RELIEF SOUGHT

- 102. Insert a new clause at 85(3) to provide for sustainable funding models.

**Part 2, subpart 13 – Review and Appeals.**

- 103. Water NZ generally supports these provisions and their execution. However, a slight amendment is required for clarity and practicability by merging Clauses 89(1) and 90, requiring Taumata Arowai to make and communicate the decision simultaneously.
- 104. Water NZ also submits that the effects of an appeal under Clause 96 also apply to appeals of reviewable decisions under Clause 88(2).

**Part 3, subpart 1 – Appointment of Compliance Officers**

- 105. Water NZ supports the ability of Taumata Arowai to appoint compliance officers, and to apply conditions or limitations to that appointment. However, due to the complexity of matters that may be dealt with by compliance officers, there are concerns regarding the lack of defined suitability requirements. Water NZ submits that an additional provision is therefore necessary that requires Taumata Arowai to publish a competency framework for compliance officers to meet prior to appointment.

RELIEF SOUGHT

- 106. Insert new Clause 97(4) requiring Taumata Arowai to publish a competency framework.

**Part 3, subpart 2 – Powers of Compliance Officers**

- 107. Water NZ supports empowering Compliance Officers with extended powers beyond those in the Health Act. It is agreed that these powers are necessary to achieve the purpose of the Water Services Bill and ensure a graduated response to non-compliance. However, Water NZ submits that the checks on these powers need some amendment for clarity, effectiveness, and practical workability.
- 108. Compliance Officers are given heightened powers where there is a serious risk to public health, including the power to enter without a search warrant. This circumstance is defined as a serious risk relating to the drinking water supplied to consumers or the ongoing supply of a sufficient quantity of drinking water to consumers. Water NZ supports this definition of what the risk relates to. However, there is a significant concern

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regarding the lack of a definition or context for what amounts to a 'serious risk'. It is submitted that some guidance be inserted to direct the very subjective threshold.

109. Water NZ supports the ability of Compliance Officers to issue Directions to drinking water suppliers.

**Part 3, subpart 3 – Compliance Orders**

110. Water NZ supports the elevated process to issue Compliance Orders on any person compared the issue of Directions on drinking water suppliers. The requirement for a Compliance Order to be issued by the Chief Executive appropriately recognises the gravity of issuing enforceable orders on any person.

**Part 3, subpart 4 – Remedial Action**

111. Water NZ generally supports these provisions. It is important that the regulatory has the power to undertake the action to ensure that the compliance orders are complied with.

RELIEF SOUGHT

112. Retain this subpart.

**Part 3, subpart 5 – Enforceable Undertakings**

113. Water NZ generally supports these provisions as they provide flexibility in the way in which compliance can be achieved.

RELIEF SOUGHT

114. Retain this subpart.

**Part 3, subpart 6 – Planning and Reporting Requirements of Taumata Arowai**

115. Water NZ supports this subpart.

**Part 3, subpart 7 – Monitoring and Reporting on Wastewater and Stormwater Networks**

116. Water NZ supports this subpart but has concerns regarding lack of sufficient detail. Water NZ therefore recommends inserting an additional provision regarding timelines and a requirement for industry consultation to this provision, along with other amendments for clarity and workability.
117. There is currently limited reporting of wastewater and stormwater network environmental performance occurring through the National Performance Review and the Non-Financial Performance Measure Rules. There are shortfalls with both approaches which require a more comprehensive environmental reporting system based on resource consent condition and compliance. Consulting with industry will help avoid similar shortfalls occurring in the future. Providing timelines for implementation will assist industry in complying with the provision.
118. Water NZ also submits that wastewater and stormwater performance should be reported on by publishing a database collating the number and location of wastewater treatment and stormwater discharges and associated consent conditions, rather than publishing a report. Where there are discharge related consent conditions the database should

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include compliance against these consents. It should also be noted where there are discharges but no associated consents (as is often the case with stormwater discharges and wastewater overflows).

119. The content of that database needs to be flexible to enable meaningful environmental reporting. Wastewater and stormwater discharges are not always consented, and those that are consented are inconsistent. The development of this database would provide an information base to develop greater consistency across consent parameters monitored, compliance limits and measurement approaches over time. The drinking water supplies compliance map published by ESR on behalf of Ministry of Health provides an example of how this database could be navigated.<sup>2</sup>
120. Consents and related reporting around wastewater overflows from the wastewater system (often occurring through constructed overflow points) are not widespread. Where consents related to wet weather overflow points from the wastewater system exist, these should be included in addition to wastewater treatment plant discharges. Additional information should also be provided on the number and locations of overflows occurring where consents are not held. Further work defining what constitutes a notifiable event is required.
121. Water NZ submits that the extent to which operators are avoiding, remedying, or mitigating adverse effects on the environment arising from systems operation does not benefit from an annual report. These practices are best disseminated amongst the industry through interactive training and network events. Water NZ therefore recommends removing the provision to report on how adverse environmental effects are being mitigated unless some further specific detail can be provided on how this could be demonstrated.
122. In addition, mandatory reporting of greenhouse gas emissions for wastewater networks (and water supply networks) is needed to balance the nexus between greenhouse gas emissions, energy use and water service outcomes. Wastewater treatment plant effluent quality requirements impact on greenhouse gas emissions and energy use. Alternative water supply options can have vastly different energy and emissions intensity (for example desalination versus demand side management approaches). Emissions reporting in the New Zealand water sector is not currently widespread and needs a regulatory driver. Water regulators in other Australasian jurisdictions such as NSW and VIC require emissions reporting for this reason.
123. Water NZ supports the identification and development of advice and guidance documents 136(d). Water NZ has been providing guidance documents for many years and is greatly supported by expertise within our special interest groups, there are a number of existing documents that provide evidence of this. Water NZ looks forward to working with Taumata Arowai to continue this work.
124. Water NZ submits that Onsite Wastewater Management Systems (OWMS) should also come under the oversight of Taumata Arowai, it is noted that marae wharekai or a café if supplied by a rainwater tank or river supply are not deemed a domestic self-supply. In these situations, it is likely that the wastewater is managed through an OWMS. It is Water NZ understanding that at times a community of 400 persons is served by a single OWMS.

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<sup>2</sup> <https://www.drinkingwater.esr.cri.nz/supplies/Suppliescompliance.asp>.

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As a general rule the majority of OWMS are permitted activities with little or no requirement for desludging or maintenance to be carried out. The risks to public health and the environment also exist with OWMS and as such should come under the oversight of Taumata Arowai.

RELIEF SOUGHT

125. Amend Clause 141 for clarity and insert new subclauses 141(2) and (3).

**Part 3, subpart 8 – Infringement Notices**

126. Water NZ supports this subpart as it provides a quicker enforcement pathway to achieve a particular outcome than a full prosecution.

RELIEF SOUGHT

127. Retain this subpart.

**Part 3, subpart 9 – Criminal Proceedings**

128. Subject to the comments below Water NZ supports this subpart.
129. Clause 156 contains the specific defences. Subclause (2)(1)(ii) refers to “an accident”. It is unclear if this term would include ‘acts of God’. Some clarification would be warranted.
130. Clause 160 refers the liability of volunteers. It is unclear whether this is intended to apply to just natural persons or also applies to body corporates.
131. Water NZ recognises that Clause 161 regarding exemptions of elected officials from being charged with offences is consistent with other legislative arrangements. Nevertheless, on behalf of Water NZ members which includes duty-holding employees under this legislation it is important to acknowledge their position.
132. This position is that these water sector employees are required to exercise due diligence to ensure that a drinking water supplier complies with duties under a legislative requirement that can result in a \$50,000 fine if the supplier commits an offence involving the drinking water safety plan. The safety plan is the mechanism by which the supplier details how their supply will comply with legislative requirements. Financial decisions made by elected officials to approve or decline specific capital or operating expenditure will have an effect on operations that can or cannot be undertaken by a drinking water supplier under their safety plan, and which can have a consequential impact on public health.

RELIEF SOUGHT

133. Retain this subpart but clarify the meaning of ‘accident’ in clause 156 and the intent of clause 160 with regards to the meaning of volunteer.

**Part 3, subpart 10 – Offences**

134. Water NZ supports this subpart and notes the fines and penalties are sufficiently robust to ensure they operate as a significant incentive to ensure offences are rare.

RELIEF SOUGHT

135. Retain this subpart.

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**Part 3, subpart 11 – Sentencing for Offences.**

136. Water NZ supports this subpart. Given the specific nature of the legislation guidance in Sentencing beyond that contained in the Sentencing Act is considered appropriate.

RELIEF SOUGHT

137. Retain this subpart.

**Part 4 – Miscellaneous Provisions**

138. Water NZ supports this subpart.

RELIEF SOUGHT

139. Retain this subpart.

**CHANGES SOUGHT**

140. 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**

141. Water NZ thanks the Committee for the opportunity to provide comments on the Bill and wishes to be heard in support of its submission.
142. 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

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### Appendix A

Provision	Changes sought	
Interpretation		
5 Interpretation	Amend	<b>end-point treatment</b> means treatment of drinking water <del>at the final point beyond the connection/metering point</del> of the supply at which the consumer can consume, use, or collect drinking water
	Insert	<u><b>Aesthetic values</b> may, without limitation, specify or provide for minimum or maximum values for substances and other characteristics that relate to the acceptability of drinking water to consumers (such as appearance, taste, or odour)</u>
	Insert	<u><b>Authorised supplier means</b></u>
	Insert	<u><b>Planned event means</b></u>
	Insert	<u><b>Reticulation system means</b></u>
7 Meaning of safe in relation to drinking water	Amend	<p>(1) In this Act, unless the context otherwise requires, safe, in relation to drinking water, means drinking water that is unlikely to cause a serious risk of death, injury, or illness, —</p> <p>(a) immediately or over time; and</p> <p>(b) whether or not the serious risk is caused by—</p> <p>(i) the consumption or use of drinking water; or</p> <p>(ii) other causes together with the consumption or use of drinking water.</p> <p>(2) For the purposes of subsection (1), the assessment of serious risk must take into account, among other factors, compliance with drinking water standards.</p> <p>(3) Drinking water is not unsafe merely because—</p> <p>(a) a person objects to it, or substances in it, because of personal preference; or</p> <p>(b) it does not comply with aesthetic values; or</p> <p>(c) it contains substances that are within minimum or maximum acceptable values for chemical, radiological, microbiological, or other characteristics of drinking water in the drinking water standards Maximum Allowable Values.</p>
8	Amend	In this Act, unless the context otherwise requires, drinking water supplier—



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		<p>(a) means a person who supplies drinking water through a drinking water supply; and</p> <p>(b) includes a person who ought reasonably to know that the water they are supplying is used as drinking water; and</p> <p>(c) includes the owner and the operator of a drinking water supply; and</p> <p>(d) includes a person described in paragraph (a), (b), or (c) who supplies drinking water to another drinking water supplier; <u>and</u></p> <p><u>(e) includes secondary and embedded networks;</u> but</p> <p><u>(ef)</u> does not include a domestic self-supplier.</p>
21(2)	Amend	<p>(2) If there is a reasonable likelihood that a supplier's drinking water is or may be unsafe, the supplier must –</p> <p>...</p> <p>(b) notify Taumata Arowai <u>immediately</u> that the drinking water is or may be unsafe; and</p> <p>...</p> <p>(f) take all practicable steps, to the satisfaction of Taumata Arowai, to advise affected consumers that drinking water is or may be unsafe and how it should be treated (for example, by boiling) <u>or isolated and not used.</u></p>
25(3)	Amend	<p>...</p> <p>(c) environmental factors affecting <del>a source of</del> a drinking water supply; or</p>
25	Insert	<p><i>After (7)</i></p> <p><u>(8) To avoid doubt, Taumata Arowai –</u></p> <p><u>(a) may provide prior approval for the purposes of this subpart for multiple related occasions at once; and</u></p> <p><u>(b) must respond to requests for prior approval in a reasonable time.</u></p>
26(1)	Amend	<p>...</p> <p>(a) notify Taumata Arowai, <del>Fire and Emergency New Zealand;</del> and the local authorities in the area where the water is supplied of the circumstances giving rise to the risk; and</p>
27(3)	Amend	<p>A person who installs <u>or maintains</u> a backflow prevention device must <u>be suitably qualified</u> <del>take all reasonable steps to ensure that it operates in a way that does not compromise the operation of any automatic fire sprinkler system connected to the drinking water supply.</del></p>
28(2)	Amend	<p>A drinking water supply may <del>with the approval of Taumata Arowai:</del> -</p> <p>(a) Install an end-point treatment device and require the homeowner of the premises to reimburse.....</p>

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		(b) Require the owner of the premises to install, maintain and test an end-point treatment device.....
28(3)	Amend	A person who installs <u>or maintains</u> an end-point treatment device must <u>be suitably qualified</u> <del>take all reasonable steps to ensure that it operates in a way that does not compromise the operation of any automatic fire sprinkler system connected to the drinking water supply.</del>
31(1)	Amend	(1) A drinking water safety plan must ... (e) identify how <u>and when</u> the drinking water safety plan will be reviewed on an ongoing basis, and how its implementation will be amended, if necessary, to ensure that drinking water is safe and complies with legislative requirements; and ... (j) where a drinking water supply includes reticulation, provide for the use of residual disinfection in the supply unless an exemption is obtained under <b>section 57</b> <u>and the plan describes in detail the measures in place to ensure the supply of safe drinking water without a disinfection residual</u> ; and
31(1)	Insert	... <u>(n) be reviewed at least annually.</u>
31(2)	Amend	(2) A <b>multi-barrier approach to drinking water safety</b> is one that Taumata Arowai considers will— (a) prevent hazards from entering the raw water; and (b) remove particles, pathogens, and chemical and radiological hazards <u>from the water by an acceptable treatment process physical treatment</u> ; and (c) kill or inactivate pathogens in the water by disinfection <u>unless an exemption is obtained under Section 57</u> ; and (d) <u>where a supply has a reticulation system</u> , maintain the quality of water in the reticulation system.
33(5)(b)	Amend	(b) any conditions imposed by Taumata Arowai <u>under subsection (4).</u>
38	Amend	(1) A drinking water supplier must, in accordance with regulations that apply to the supplier, —

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		<p>(a) provide any prescribed information to consumers; and</p> <p>(b) establish, maintain, and administer a consumer complaints process <del>based on the scale and complexity of, and the public health risk to, drinking water supplies;</del> and</p> <p>(c) report annually to Taumata Arowai on its consumer complaints process.</p> <p>(2) A drinking water supplier must ensure that complaints are dealt with—</p> <p>(a) in accordance with its consumer complaints process; and</p> <p>(b) in an efficient and effective manner.</p>
40	Amend	<p>Taumata Arowai must monitor compliance with this subpart <del>based on the scale and complexity of, and the risk to, drinking water supplies in accordance with the supplier's complaints process. Enforcement action may be taken if the supplier's complaints process is not followed and there is a risk to public health or safety.</del></p>
42(4)	Amend	<p>(4) Local authorities must contribute to the development and implementation of source water risk management plans prepared by drinking water suppliers, including by—</p> <p>(a) providing information to suppliers in accordance with compliance rules issued by Taumata Arowai under section 48, including information about—</p> <p>(i) land-use activities, potential sources of contamination, and other water users that could directly or indirectly affect the quality or quantity of the source of a drinking water supply; and</p> <p>(ii) water quality monitoring of the source of a drinking water supply conducted by a regional council; and</p> <p>(iii) any known risks or hazards that could affect the source of a drinking water supply; and</p> <p>(b) undertaking any actions to address risks or hazards to the source of a drinking water supply that local authorities have agreed to undertake on behalf of a drinking water supplier, as specified in a schedule attached to a source water risk management plan or otherwise agreed in writing.</p>
45	Amend	<p><b>45 <del>Regional Councils</del> to <u>monitor and</u> publish information about <u>contamination risks in</u> source water <u>catchments</u>.</b></p> <p>(1) Regional councils <del>and Territorial Authorities must monitor the contamination risks within source water catchments of drinking-water supplies.</del></p> <p>(2)</p>

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		<p><u>Regional Councils and Territorial Authorities must jointly report the results of the contamination risk monitoring to the drinking water suppliers within each catchment and to Taumata Arowai, and Taumata Arowai must audit the monitoring results annually. If a new risk is identified, then the parties are to be notified as soon as practicable.</u></p> <p><del>must publish and provide Taumata Arowai with information on source water quality and quantity in their region annually, including any changes to source water quality and quantity.</del></p> <p>(23) Regional councils <u>and Territorial Authorities</u> must assess the effectiveness of regulatory and non-regulatory interventions to manage risks or hazards to source water in their region <u>annually at least once every 3 years</u> and make this information available to the public on Internet sites maintained by or on behalf of the councils.</p> <p>(34) <u>Compliance rules issued under section 48 may specify the monitoring and management requirements for source water catchments that are proportionate to the scale and complexity of each drinking water supply and any known risks or hazards to the source of a drinking water supply.</u></p> <p><del>Taumata Arowai may issue compliance rules under section 48 to regional councils on the format and content of the information they are required to publish under this section.</del></p>
46	Amend	<p>(2) Drinking water standards may, without limitation, specify or provide for—</p> <p>(a) <del>minimum or maximum</del> <u>acceptable</u> amounts of substances that may be present in drinking water; and</p> <p>(b) <del>minimum or maximum</del> acceptable values for chemical, radiological, microbiological, and other characteristics of drinking water.</p> <p><del>(3) Drinking water standards must not include any requirement that fluoride be added to drinking water.</del></p>
51	Delete	<p><del>(1) Taumata Arowai may, by notice in the Gazette, issue a template or model for drinking water safety plans or components of plans.</del></p> <p><del>(2) Templates and models issued under subsection (1) must be published in accordance with section 195.</del></p>
52	Amend	<p><b>52 Taumata Arowai consultation requirements</b></p> <p>(1) Taumata Arowai must ensure that adequate public</p>

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		<p>consultation has been carried out before the following instruments are made:</p> <p>(a) drinking water standards:</p> <p>(b) aesthetic values:</p> <p>(c) compliance rules:</p> <p>(d) acceptable solutions or verification methods.</p> <p>(2) Adequate public consultation must include—</p> <p>(a) adequate and appropriate notice of the content of the proposed instrument; and</p> <p>(b) a reasonable opportunity for interested persons to make submissions; and</p> <p>(c) appropriate consideration of any submissions received-; <u>and</u></p> <p><u>(d) consideration of the importance of the relevant existing standards of drinking water supply and construction.</u></p> <p>(3) Despite <b>subsection (1)</b>, Taumata Arowai need not consult the public if Taumata Arowai is satisfied that—</p> <p>(a) the instrument needs to be made—</p> <p>(i) urgently; or</p> <p>(ii) to deal with transitional issues; or</p> <p>(b) an amendment to an instrument is minor and will not adversely and substantially affect the interest of any person.</p>
56(2)	Amend	(2) An exemption <del>must</del> <u>may</u> exempt a drinking water supplier, or class of supplier, from <del>all</del> <u>any of</u> the requirements in subsection (1).
57(5)	Amend	(5) Taumata Arowai may exempt a drinking water supplier from the requirement to use residual disinfection in the supply on any conditions that Taumata Arowai thinks fit <u>and that are proportionate to the scale, complexity, and risk profile of the water supply.</u>
57(7)	Amend	
58(6)	Amend	As soon as practicable after making or amending a drinking water emergency declaration, Taumata Arowai must—

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		<p>(a) give a copy of the declaration or amended declaration to every affected drinking water supplier and territorial authority; and</p> <p>(b) publish a copy of the declaration or amended declaration in the <i>Gazette</i>; and</p> <p>(c) take all practicable steps, <u>using established civil defence communication paths and</u> working with affected drinking water supplies and territorial authorities, to ensure that consumers are informed about the drinking water emergency.</p>
62(3)	Amend	<p>...</p> <p>(b) that the drinking water supplier take appropriate measures to warn consumers of the need to boil <u>or not consume</u> any drinking water from the water supply; and</p>
72	Amend	<p>(1) A drinking water supplier must use an accredited laboratory to analyse source water, raw water, and drinking water as part of any monitoring requirements in compliance rules or a drinking water safety plan.</p> <p>(2) If the results of an accredited laboratory's analysis indicate that drinking water does not comply with the drinking water standards, the laboratory must notify <u>Taumata-Arowai the drinking water supplier</u> as soon as practicable after the results are known.</p> <p><u>(3) If the results of an accredited laboratory's analysis indicate that drinking water causes a risk to public health, the laboratory must notify Taumata Arowai as soon as practical after the results are known.</u></p> <p><u>(34)</u> In this subpart, <b>accredited laboratory</b> means a person accredited under <b>section 76</b> to perform the functions of a laboratory that analyses source water, raw water, and drinking water.</p>
76	Amend	<p>The laboratory accreditation body may, on the application of a person made in accordance with <b>section 78</b>, accredit that person to perform the functions of a laboratory that analyses <u>or samples</u> source water, raw water, and drinking water.</p>
85(3)	Insert	<p><u>(3) Taumata Arowai will continue to carry the costs associated with the operations and duties of the transferred water supply until a sustainable funding model is in place for the new operator.</u></p>
89(1)	Amend	<p>(1) Taumata Arowai must review the reviewable decision and make <u>and communicate in writing to the applicant</u> a decision—</p> <p>(a) as soon as practicable; and</p> <p>(b) in any case, within 20 working days after the application for internal review is received: <u>and</u></p> <p><u>(c) give the applicant the reasons for that decision.</u></p>



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90	Delete	<p><b>90 Notice of decision on internal review</b>  <del>As soon as practicable after making a decision in accordance with section 89, Taumata Arowai must give the applicant in writing—</del>  <del>(a) the decision on the internal review; and</del>  <del>(b) the reasons for the decision.</del></p>
96	Amend	<p><b>96 Effect of appeal against compliance order or reviewable decision</b>  An appeal under sections <del>92</del>88 to 95 against a compliance order <u>or reviewable decision</u> has the following effects:  (a) the chief executive whose compliance order is appealed against must not revoke or amend the order while the order is the subject of an appeal or while the time for the person's appeal rights is running; and  (b) an appeal against a compliance order does not operate as a stay of that order unless the court orders otherwise; <u>and</u>  <u>(c) the directions, conditions, exemption or authorisation to which the reviewable decision relates must not be revoked or amended while it is under appeal or while the person's appeal rights is running; and</u>  <u>(d) an appeal against a reviewable decision does not operate as a stay of that order unless the court orders otherwise.</u></p>
97	Insert	<p><u>(4) Taumata Arowai must publish a competency framework that all compliance officers must satisfy before appointment.</u></p>
141	Insert and amend	<p><u>(1) Taumata Arowai must, on an annual basis, publish a</u>  <del>report information</del> on—  (a) the environmental performance of wastewater and stormwater networks and network operators, including their performance against environmental performance measures; and  (b) the extent to which wastewater and stormwater networks are complying with applicable standards, conditions, or requirements (whether under legislation or as part of a resource consent); and  <del>(c) the extent to which wastewater and stormwater network operators are avoiding, remedying, or mitigating any adverse effects on the environment arising from the operation of wastewater and stormwater networks; and</del></p>

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		<p>(d) wastewater and stormwater practices, including—</p> <p>(i) examples of good practices; and</p> <p>(ii) specific risks or concerns that relate to individual performance and practices or system-wide performance and practices, or both; and</p> <p>(e) recommendations for any actions that might be taken to address matters raised in the report.</p> <p><u>(2) In the first 12 months Taumata Arowai must review and develop, in partnership with the wide water industry, a reporting approach to the management of Wastewater and Stormwater management, considering the following:</u></p> <p>(a) <u>Existing wastewater and stormwater consents;</u></p> <p>(b) <u>Water New Zealand's National Performance Monitoring Criteria;</u></p> <p>(c) <u>The relevant Non-Financial Performance measures; and</u></p> <p>(d) <u>Any reports generated by DIA to support the wider Three waters review process.</u></p> <p><u>(3) Consultation on these measures must occur with relevant industry bodies prior to implementation.</u></p>

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LGNZ.**  
Te Kāhui Kaunihera o Aotearoa.

## SUBMISSION

< Local councils  
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role in keeping  
our  
communities  
moving >



# Water Services Bill

Local Government New Zealand's **DRAFT** submission on the Water Services Bill

January 2021

A2612113

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LGNZ draft submission Water Services Bill  
Infrastructure Committee - 8 April 2021

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LGNZ.**  
Te Kāhui Kaunihera ō Aotearoa.

## SUBMISSION

## We are. LGNZ.

LGNZ is the national organisation of local authorities in New Zealand and all 78 territorial and regional councils are members. We represent the interests of councils and lead best practice in the local government sector. LGNZ provides advocacy and policy services, business support, advice and training to our members to assist them to build successful communities throughout New Zealand. Our purpose is to deliver our sector's Vision: "Local democracy powering community and national success."

## Introduction

Local Government New Zealand (LGNZ) thanks the Health Committee for the opportunity to provide a submission on the Water Services (the Bill).

LGNZ fully supports the intent of the Bill. LGNZ has been calling for clear drinking-water standards, and strong enforcement of those standards since 2015, when we published the [Three Waters position paper](#), a year before the Havelock North contamination. That position paper highlighted the urgent need for improved regulatory frameworks and enforcement of the standards to remedy the longstanding failure of the Ministry of Health to perform its function as the drinking water regulator. Through that work, LGNZ explicitly extended the opportunity to central government to work together with local government to establish a robust regulatory framework that cost effectively delivers the three waters infrastructure and services for our communities.

In countries around the world, best practice is that a regulator sets clear standards, standards backed-up through strong enforcement, further supported by reporting and data gathering. Then it is up to the asset owners and providers to meet those standards, or face enforcement. New Zealand has been unusual in many of the features of a good governance regime in the drinking water space, and successive governments have failed to address this issue until the Havelock North contamination incident. Notwithstanding councils' responsibility to provide safe water to their communities, we agree with the findings of the Government Inquiry into Havelock North Drinking Water, specifically that this decades-long regulatory stewardship significantly contributed to a system failure.

The Inquiry was damning of the regulatory system, finding that no formal enforcement action was taken by District Health Boards from when the previous drinking water regime was introduced in 2007, up until 2018.

LGNZ supports the ambitions of the Government to ensure safe drinking water, which is why we have actively supported the policy development process, and why we are pleased to see this long needed policy intervention take shape.

In recognising the regulatory standards and other duties that Taumata Arowai will enforce, it is vital that the new regulator ensure that water network owners are only responsible for the performance of their networks. LGNZ is very concerned at the amendments to the Local Government Act that impose a duty on territorial authorities to ensure communities have access to drinking water if private suppliers cannot meet the obligations under the Act, essentially being the "last man standing". This provision is likely to drive suboptimal outcomes among private water scheme owners seeking to avoid making the necessary investments in their assets to meet drinking water standards, which in turn will impose a significant cost on affected councils at a time when communities are experiencing Covid-related financial pressure. It is worth emphasising that between 800,000 and a million New Zealanders currently receive their water from non-council sources.

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The local government sector will continue to work with the Government on the implementation of the Bill, recognising it is part of a significant and fundamental change to the delivery of our three waters services. We particularly want immediate focus given to building capacity across the system to support all the parties to meet their obligations and ensure the safe supply of drinking water – Taumata Arowai, territorial authorities, regional councils, drinking water suppliers. An implementation strategy is required to effect this. We also support the transitional arrangements whereby the Bill proposes a 2-year timeframe until wastewater and stormwater provisions come into force.

LGNZ wishes to appear in support of this submission.

## Key Points

### Te Mana o Te Wai

LGNZ strongly supports the requirement to give effect to Te Mana o Te Wai and a commitment by the Taumata Arowai Māori Advisory Board to develop and maintain a framework that provides advice and guidance on interpretation.

LGNZ notes there is a tension between the 'purpose' of the Bill and the duties it imposes on drinking water suppliers, and the 'hierarchy of obligations' in Te Mana o te Wai which prioritises the health and wellbeing of freshwater and ecosystems above health needs of people, including drinking water.

The purpose of the Act is 'to ensure that drinking water suppliers provide safe drinking water to consumers'. It has the effect of compelling a supplier to supply water.

Similarly, s25 imposes a duty on drinking water suppliers to 'ensure a sufficient quantity of drinking water' is provided to each point of supply. While there is recognition that certain factors may interrupt or restrict the provision of that supply (including environmental factors), there is no explicit recognition that drinking water is a secondary priority under the NPSFM.

This tension will likely become apparent in over-allocated catchments where there will be a need to first provide sufficient water for ecosystems, before considering human needs.

If the intent of the Bill is that where drinking water is supplied it is safe for consumption – then this should be reflected in the purpose. Similarly, s25 should explicitly recognise that priorities in Te Mana o te Wai may be a reason for restricting the quantity of water supplied.

We encourage Taumata Arowai to work with the Regional Sector, which has responsibility for expressing how Te Mana o Te Wai might apply in a particular region. This approach is reflected in clause 1.3 of the NPS for Freshwater Management which is explicit about the regional interpretation 'prevailing' if there is a conflict. We encourage 'joined up' approaches between the agencies that have to give effect to this vision. An explicit recognition of a regional approach to Te Mana o Te Wai will also help regional councils to fulfil their obligations under this legislation.

### Focus attention on areas of highest risk

We support taking a risk-based approach. Until the establishment of the Government's new water entities, territorial authorities should be enabled to dedicate their attention to council-owned and operated supplies. The assessments the Government has undertaken to inform its review of three waters services and work

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LGNZ has lead, shows the quantum of work involved to bring local government drinking water supplies to a level that will meet the drinking water standards. This alone will require investment and focus to achieve. We are concerned that placing additional obligations on councils through changes in the Local Government Act, which will require assessments by Territorial Authorities in respect of all supplies (except domestic self-suppliers), will divert this focus from attention on council-owned and operated supplies.

Our preference is to make the new drinking water regulator responsible for assessing non-council water networks, while councils work to meet the new standards on their networks. This will be challenging enough as it is. The result will be a mismatch, with an unmet need for capacity in territorial authorities to implement this new law.

### Role confusion

There is potential for role confusion between Taumata Arowai and territorial authorities. For as long as territorial authorities are responsible for drinking water, we support them having clear responsibility for council-owned supplies, not the responsibility for supplies they do not own or manage. Taumata Arowai is obliged to build the database, receive notifications of breaches of standards and hold and audit the water safety plans. Taumata Arowai will, therefore, be best-placed to undertake the required assessment across these networks.

A significant amount of capacity and capability building will be required of the small suppliers and we are concerned that a territorial authority's focus should be on its core business of managing and upgrading its own drinking water supplies. For example, capacity building will be required with respect to drinking water safety plans, (noting the plan is to take account of source water and making sense of the information available).

Overall, the drafting needs tightening so there is clear delineation between local authority roles and responsibilities. At times the Bill refers to regional council responsibilities directly and at other times regional councils have to wade through the Bill to seek out their roles. This is particularly concerning given the scope of offences; roles and responsibilities need to be clearly delineated.

### Unfunded mandate

The unfunded mandate the proposals create are of significant concern to LGNZ and to local government. We will continue to voice our concerns about the proposal that councils are the "last man standing" with regard to community drinking water supplies and all supplies except for domestic self-supplies.

Given the Government's plans to transfer water services to new multi-regional entities, which will leave some councils with no responsibilities as water service providers nor the capability and competency to undertake such a role, we find those parts of this Bill that require councils to actively work with, regulate and potentially manage small drinking water supplies to be seriously problematic.

Our position is that territorial authorities should not be responsible for assessing these supplies and should focus on council-owned supplies. Central government should be required to take over a private supply, noting that it is the legislative body that is responsible for private supplies.

Two other concerns need to be flagged, one involves moral hazard risk while the other concerns regressive taxation:



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- The risk of moral hazard occurs as small suppliers will have an incentive to fail to bring their supplies up the required standard in the knowledge that the wider community will eventually be forced to pick up the tab;
- Regressive taxation can occur when low socio economic communities end up subsidising the water and wastewater costs of well-off citizens who have chosen to live in isolated areas for life style reasons. The exacerbator pays principle should apply here also; if individuals choose to live in parts of New Zealand that have limited access to water supplies then it is incumbent on them to meet the costs associated with those choices.

This Bill places obligations on territorial authorities to sort out suppliers with no recourse for funding to support this, realistically a process that might take multiple years. There are also issues related to ownership and the lack of details about the process by which a territorial authority can take management of a water supply scheme away from the legal owners, or the authority to use eminent domain powers to transfer ownership should existing owners be uncooperative.

LGNZ is strongly opposed to these provisions.

### Implications for growth

The proposals that see local government being the "last man standing" with respect to community supplies will mean that some councils will take a highly cautious approach when assessing developments that seek to set up their own water networks.

Not all growth can be serviced through connections to a reticulated network and the Government needs to be clear on whether it wants to enable small schemes, and small communities, going forward - or if it seeks to limit growth to where council-owned networks exist. If schemes are to be consented by councils under the RMA the standards will need to be much higher and the costs will be greater. Limiting growth to where existing council reticulated schemes exist and have spare capacity will be a significant constraint on new development/housing being built in rural and provincial areas in particular. Hence it will have a negative impact on regional development.

The matter of concern to all territorial councils is very simply who will pay for the cost of the required upgrades of drinking water supplies – a concern exacerbated by the fact that many of these supplies will be in small rural communities with small rating bases.

### Compliance and enforcement

The Bill provides the perfect opportunity to provide the powers that territorial authorities need to effectively use bylaws to manage activities affecting three waters infrastructure and the safety and supply of drinking water. With respect to drinking water this includes management of backflow risk, water demand, takes from hydrants other than for firefighting purposes.

Being able to issue infringement fines for these offences will address a longstanding issue that councils have and that also needs to be addressed in relation to the new statutory entities. Infrastructure owners need to be able to protect their infrastructure and currently do not have the tools to do so. In most cases the offence does not warrant a prosecution but compliance with the bylaw is still required.

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### Implementation Strategy

#### Workforce capability and capacity

This significant reform of three waters delivery includes a new regulator, Taumata Arowai, the proposed creation of new multi-regional statutory entities to supply drinking water and new functions and duties for territorial authorities and regional councils and new obligations for drinking water suppliers (including small suppliers). LGNZ notes the intent of the legislation to build and maintain capacity in the water services sector. However, it is not clear how this capacity will be built and monitored. An implementation strategy to effect this reform is needed, focused on the respective roles of all the parties and building capacity and capability across the entire system. Attention needs to be given to ensure all parties have enduring capacity, for example focusing on workforce retention and developing and support small suppliers with compliance with their obligations. The reality is organisations are already competing for a scarce resource – experienced three waters engineers.

The workforce supply capacity and capability issues is perhaps a dimension to be addressed through the economic regulation function.

#### Infrastructure capacity during transition

There is also an issue around ensuring that there is sufficient spare capacity in infrastructure to allow for projected growth, particularly during the transition to the new entities and at a time when New Zealand has a major housing problem. Proactive management of these issues during the transition planning process is required.

Once the new entities are operational the overall supply issue is a matter to be picked up through the Strategic Planning Act and the regional spatial plan monitoring function/process.

#### Financial liability

We are seriously concerned that this Bill, if enacted, exposes many councils to a largely unlimited financial contingency. The reasons small waters schemes fail to meet drinking water quality standards are almost inevitably the cost. The cross references in the Bill to councils “working with suppliers to identify options”, while creating a range of transaction costs, ignores the fact that the critical factor is cost and the ability of that community to meet the cost. Regardless of whether the council ends up managing the scheme, or not, the ability to pay does not go away.

### Detailed points

Below are some detailed comments on the Bill – many we have already provided through the development of the Bill.

#### Part 1 Preliminary provisions

##### Clause 8: Meaning of drinking water supplier

The definition of drinking water supplier is set too low, the threshold being everything above a domestic self-supplier. Research is needed on the impact of defining a network supply as one supplying more than one

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domestic dwelling (ie workload created versus risk reduction). We hold the view that that even changing the definition to supplying a population of 25 would significantly reduce the paperwork/ bureaucracy/workload/ cost/public resistance and allow focus on the bigger (and therefore higher risk) supplies.

### Recommendation:

- Increase the threshold for a drinking-water supplier and amend the definition accordingly

## Part 2 Provisions relating to supply of drinking water

### Clause 22: Duty to comply with the Drinking Water Standards

There do not appear to be any transitional arrangements with regard to achieving full compliance with the current or any future revisions of the drinking water standards, with the assumption being that compliance must be achieved from the first day in which the Bill is enacted.

Given the sheer number of drinking water suppliers who are not currently subject to regulation but will now be subject to the provisions of this new legislation, this will be a huge and significant challenge for the suppliers and the regulator. Transition arrangements need to be provided and focus given to building the capability of the smaller suppliers through an implementation strategy.

### Recommendations:

- Provide transition arrangements and lead-in timeframes for drinking water suppliers, to enable compliance with standards, including those that have not yet been released.

### Clause 30 – Owner must have a water safety plan

Clause 30 (1) requires that all owners of drinking water supplies must prepare drinking water safety plans.

Consideration should be given as to how drinking water safety plan requirements will practically be met by small suppliers, and also their review by Taumata Arowai, given the level of detail and effort required. Consideration could be given to a section under Transitional Arrangements to introduce a requirement for Taumata Arowai to create a fit for purpose drinking water safety plan template for small supplies well in advance of the timeframe by which a drinking water safety plan is required to be submitted. The provision of fit-for-purpose templates should be part of the implementation strategy.

### Recommendations:

- Provide fit-for-purpose templates as part of an implementation strategy

### Clause 31: Drinking water safety plans

Clause 31 (1)(j) requires that drinking water safety plans provide for residual disinfection where the drinking water supply includes reticulation unless an exemption is obtained. As there is no definition of 'residual disinfection' it is assumed to refer to maintaining a chlorine residual in the reticulated water.

LGNZ notes that where councils operate reticulated drinking water supplies without chlorination, they will typically use chlorine as a targeted measure when required to reduce the risk of microbial contamination

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e.g. where there are poor condition reservoirs, inadequate backflow prevention and following pipe repairs. This approach in some cities has been long standing and supported by health evidence.

The Bill is unclear whether very small private supplies will be required to be chlorinated. LGNZ notes there will be risks involved with the application and handling of chlorine and these may outweigh any benefits that chlorine may provide. If it is not intended that very small supplies be chlorinated, this should be clear.

The Bill provides for an exemption to residual disinfection at clause 57(4); Taumata Arowai may grant an exemption from the requirement to use residual disinfection "on any conditions that Taumata Arowai thinks fit".

For many such drinking water suppliers, requiring chlorination at short notice would be expensive and/or impractical or impossible to achieve. As clauses 31 and 57 are currently worded, it is unclear whether a drinking water supplier without residual disinfection would be able to apply for an exemption, or whether the supply would first have to have residual disinfection before an exemption could be sought. Christchurch City Council advises that it would cost around \$25 million to install permanent chlorination equipment, which would then be redundant if an exemption was obtained.

LGNZ supports a provision for exemptions to residual disinfection, but considers that improvements are needed to the Bill to clarify requirements for suppliers whose drinking water supplies do not already include residual disinfection and a particular focus is given to small supplies.

### Recommendations:

- Clarify exemption requirements for suppliers whose drinking water supplies do not already include residual disinfection and clarify requirements for small supplies.

### **Clause 38: Requirement for supplier to provide information to consumers and have complaints process**

This clause requires that a drinking water supplier have a complaints process. A complaint could relate to low pressure, high pressure, toby location, faulty meter, chlorine taste, leaking fitting, standard of meter reader's behaviour etc.

We are concerned that the offence provisions are disproportionate and further, we are concerned again at how smaller suppliers will manage this. LGNZ holds the view that there is not sufficient resource in the system to provide this capacity including to support the complaints process.

### Recommendations:

- Review the offence provisions related to the complaints process.

### **Clause 42: Source water risk management plans**

LGNZ supports this concept but is cautious about the practicality of this requirement for the small drinking water supplies. Taumata Arowai will need to provide a great deal of support to build capacity to support the smaller suppliers and to be clear about requirements, based on scale, complexity and risk.

42(4) requires that local authorities must contribute to the development and implementation of source water risk management plans prepared by drinking water suppliers including undertaking any actions to

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address risks or hazards to the source of a drinking water supply that local authorities have agreed to undertake on behalf of a supplier.

Local government wants to work with the regulator on how this is operationalised, given it is a significant unfunded mandate and that local government's capacity in three waters will be reduced considerably if the creation of new statutory entities is realised. Given the number of drinking water suppliers it is unclear how this requirement will actually be met if there are capacity/capability issues with the supplier and/or the local authority. The offence provisions under clause 171 will bring some of these matters to a head, given the fine which as a maximum of \$50,000 if a plan is not completed by an individual.

### Recommendation:

- Provide for local authorities to be able to levy fees and charges to water suppliers when they are meeting the requirement to provide information as required to by Taumata Arowai.

### Clause 43: Suppliers to monitor source water quality

This clause requires that a drinking water supplier must monitor the quality of the supplier's source water at the abstraction point in accordance with the supplier's drinking water safety plan. Again, this provision points to the need for significant capacity building and it is assumed this support will be provided by Taumata Arowai or the new water entities (not the local authority). Local government's capability to perform this function will be diminished if the Three Waters Reform process proceeds as skills are transferred to the new water entities.

### Recommendation:

- Work with LGNZ and the local government sector on operationalising the requirement that a drinking water supplier must monitor the quality of the supplier's source water at the abstraction point and make it clear that Taumata Arowai will provide this support.

### Clause 55: Duty to renew annual registration and notify changes

This clause requires registered drinking water suppliers to apply for renewal of registration annually. This is not required by the Health Act 1956 and an annual renewal seems to be an unnecessary requirement for both the supplier and the regulator to administer. An alternative is to require registered drinking water supplies to confirm any details regarding any changes to the supply (i.e. changes to size, ownership, etc.) when they occur.

### Recommendation:

- Amend clause 55 (1) to only require registered drinking water suppliers to immediately advise Taumata Arowai any changes to their registration details and remove the requirement for annual renewal.

## Part 3 Enforcement and other matters

### General

The Bill provides the perfect opportunity to provide the powers that Territorial Authorities need to effectively use bylaws to manage activities affecting three waters infrastructure and the safety and supply of drinking water, noting that the Government is also well advanced with plans to take these responsibilities



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away from councils. With respect to drinking water this includes management of backflow risk, water demand, takes from hydrants other than for firefighting purposes. The ability to enforce bylaws in relation to: non-compliance with trade waste bylaw re discharge; discharges to stormwater networks (for example of paint, concrete slurry, oil and chemicals); discharging stormwater to wastewater; taking water without consent; and not complying with summer water restrictions; tampering with restricted water supply.

Being able to issue infringement fines for these offences will address a longstanding issue that councils have had and that will need to be addressed in relation to the new statutory entities. Infrastructure owners need to be able to protect their infrastructure and currently do not have the tools to do so. In most cases the offence does not warrant a prosecution but compliance with the bylaw is still required.

LGNZ also seeks clarity on the powers that water suppliers have if they are not Territorial Authorities. For example, a water supplier may not be able to enforce a bylaw, and the potential for Taumata Arowai to utilise their powers to assist.

### Recommendation:

- Amend the LGA to provide territorial authorities with the ability to infringe bylaws generally and specifically those concerning three waters infrastructure and ensure Taumata Arowai has the same powers.

### **Clause 134: Drinking water compliance, monitoring, and enforcement strategy**

The board of Taumata Arowai is required to prepare a drinking water compliance, monitoring, and enforcement strategy and to review this three yearly. LGNZ considers a Taumata Arowai Compliance, Monitoring and Enforcement Strategy and a graduated approach to regulation is important for water suppliers throughout New Zealand. LGNZ seeks a direct obligation for Taumata Arowai to engage specifically with local government, along with industry. We see this as critical, due to the number of agencies having a role in the direct delivery or oversight of the delivery of three waters services.

### Recommendation:

- Require Taumata Arowai to engage specifically with LGNZ in the development of its Compliance, Monitoring and Enforcement Strategy.

### **Clause 137: Collection of information for monitoring and reporting on environmental performance**

This clause gives Taumata Arowai the ability to effectively direct regional councils to do a level of environmental monitoring which will impose cost on to regional councils. There is also overlap with regional council monitoring of individual consent holders.

There will clearly be a need for territorial authorities and regional councils to work together closely and if a territorial authority is directing a regional council to provide information the regional council should have the ability to recover their costs.

### Recommendation:

- Provide for regional councils to be able to recover the costs of providing information required of them.

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### Clause 139: Network registers

This provision requires Taumata Arowai to establish and maintain a register for wastewater networks and a register for stormwater networks. Clarity is needed regarding the type, size, ownership or other factor for either wastewater or stormwater networks. For example, there are a number of houses that may have a shared driveway, and shared stormwater or sewer laterals. It is assumed that shared driveways, for instance are not intended to be included in the requirements, but there needs to be a scale at which a group of houses connected does become a network. It is also unclear whether a stormwater network is a considered to be a network of stormwater pipes and/or drains or whether retention basins and similar are intended to be included.

There is also an issue in these definitions around 'public drains' and private drains owned by the property owner. Private drains beyond the connection point should be excluded including those private drains which service multiple properties.

#### Recommendations:

- Clarify the definitions of wastewater network and stormwater network to include what constitutes a wastewater and stormwater network in terms of size and scale.
- Exclude private drains beyond their connection point with a public network.

### Subpart 10 Offences

These provisions enable employees to face significant fines. We do not support provisions enabling employees to be prosecuted, and we seek information on whether any other industry has this scale of provision. We understand this is the first legislation that takes this approach. 10 pages of offences appears to be disproportionate to other legislation. We are concerned this approach is not consistent with modern regulatory practice or with the approach and offence provisions in the Health and Safety at Work Act.

Councils may decide to indemnify employees for fines and a significant issue is created regarding staff recruitment and retention.

We support raising accountability but are concerned this will mean drinking water suppliers will not be encouraged to work openly with Taumata Arowai and with suppliers.

#### Recommendation:

- Review the proposed Offence provisions to ensure they are aligned with the Health and Safety at Work Act 2015.

### Part 4 Miscellaneous provisions

Section 190 is a regulation-making power that includes specific powers to regulate:

- the information that suppliers must provide the users
- the requirements for complaints including processes, timeframes and records that must be kept on the complaints

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- the requirements for annual reporting
- various mechanical requirements such as identity cards, setting fees and charges, and (very importantly) infringement fees.

LGNZ supports the regulatory powers being essential to achieve the purpose of the Bill (particularly the infringement offence regime). In developing the regulations, LGNZ considers it should include a specific requirement to engage with affected stakeholders/parties such as suppliers.

Some regulations could have significant cost implications, for example if they set requirements for information disclosure or a time period.

Therefore, we consider there should be some requirement on the Minister to engage as these regulations are made. This will ensure the regulation takes into account the cost and practicability of the requirements and ensure that they are proportionate and practicable.

### Recommendation:

- Include a provision that requires the Minister to engage as regulations are made.

## Additional provisions

### Offence to contaminate raw water or pollute a water supply

The Health Act 1956 makes it an offence if a person knowingly or recklessly does any act that is likely to contaminate any raw water or pollute any drinking water. There is no such offence in the Water Services Bill. It is very important that water sources and water supplies are protected from deliberate or reckless behaviour which could contaminate them.

### Recommendation:

- Add the offence of contaminating raw water or polluting a water supply in section 69ZZO of the Health Act to the Water Services Bill.

### Non-potable reuse

A changing climate is increasing the demand for water at the same time as diminishing the availability of source water. The National Policy Statement (NPS) for Freshwater Management 2020 sets out a hierarchy of obligations in Te Mana o Te Wai that prioritises first the health and well-being of water bodies and freshwater ecosystems over the use of water for drinking water and other uses. We need to look for other sources of water in areas where water sources are vulnerable to climate change and where it may be difficult to obtain sufficient fresh water from local sources.

Both territorial authorities, developers of new subdivisions and private householders have, from time-to-time, sought the ability to enable non-potable reuse of treated wastewater. This would include flushing of toilets and watering gardens, irrigating public land. In the absence of regulations, this has not been supported by District Health Boards and the Ministry of Health. Harvesting of stormwater for reuse is another area that also requires attention.

### Recommendation:

- That Taumata Arowai develop the necessary regulations to enable non-potable reuse of treated wastewater and for harvesting of stormwater, in collaboration with other government agencies,



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water suppliers and tangata whenua.

### Part 5 Amendments to Local Government Act 2002

#### **Clause 126: Requirements following assessment of community drinking water service**

These provisions go well beyond territorial authorities' current responsibilities under LGA 2002, particularly the requirement to take over water supplies that fail to meet their statutory obligations or pose a risk to public health.

The amendments to LGA 2002 would require territorial authorities to:

- Assess all drinking water supplies other than domestic self-supplies within their districts once every three years;
- Work with a drinking water supplier, consumers of the supply and Taumata Arowai to find a solution if a drinking water service fails or appears to be failing; and
- Take over the management and operations of a failing drinking water service, or provide water via alternative arrangements.

Noting that these should not be council responsibilities – given that water services are being removed from council control, we would prefer a risk-based approach. Territorial authorities should be enabled to dedicate their attention to council-owned and operated supplies. We are concerned that placing additional obligations on councils through changes to the Local Government Act, which will require assessments by Territorial Authorities in respect of all supplies (except domestic self-suppliers), will divert this focus from attention on council-owned and operated supplies.

Our preference is that Taumata Arowai is made responsible for assessing non-council water networks, leaving councils to work on meeting the new standards on their networks.

The implementation strategy should give attention to ensuring skills and capacity are where they are needed to fulfil functions and duties and we expect they will increasingly sit in the new water entities and Taumata Arowai, leading to a mismatch with the need for capacity in territorial authorities to implement this new law.

Should councils' water services remain with territorial authorities, LGNZ's view is that three years is an unrealistic time period to carry it out.

#### **Recommendation:**

- That Taumata Arowai is made responsible for assessing non-council water networks, leaving councils to work on meeting the new standards on their networks

#### **Clause 127: Duty to ensure communities have access to safe drinking water if existing suppliers facing significant problems**

LGNZ is strongly opposed to these provisions. It is not, and should not be, the responsibility of territorial authorities to be responsible for failing private drinking water suppliers. If this is a matter of concern for central government then it must be addressed as a social policy issue using the full weight of the Crown's taxing powers and balance sheet, not through a regressive charge on other water users.

Complying with the drinking water standards and the requirements of the Bill will be onerous for some very small private supplies, and it is likely that many of them will be found to face significant problems. This

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clause requires local authorities to take responsibility for private water supply networks that don't/can't meet the standards. This will be a serious challenge; councils may be expected to buy the assets and they will need easements to protect the assets and to provide for regular access. They will also need to do a full condition assessment of the assets before taking them over.

This will be slow, time consuming and expensive. Councils will be unlikely to recover these up-front costs from the previous operator. Some of these operators may prefer to change their supply arrangements to achieve classification as domestic self-suppliers.

LGNZ expects territorial authorities will face significant capacity issues to carry out this function. Experienced staff will be required, however many will be transferring to the Government's new water suppliers with those remaining in councils focused on council-owned supplies meeting their legislative obligations, for as long as councils operate them.

In LGNZ's view the Bill imposes tough obligations on councils, fails to provide the necessary powers such as a power of "eminent domain" (which puts them in a weak negotiating position) and implies that costs should be met from general rates - another cost imposition by central government on local government. LGNZ's view is that the work required to gain legal ownership of assets (and access them) should be the responsibility of the regulator.

Once assets are transferred, should this be possible, councils will then have to carry out necessary upgrades. Many of these supplies will be in remote locations and therefore will be very expensive to provide compliant water. Subsidising water supply costs from elsewhere in the city/district would send the wrong pricing signals with regard to sustainability and intensification.

Transition arrangements are needed so that as each supply is transferred to a council there is at least a three year window before new standards are expected to be met.

The net result of these requirements is that councils are unlikely to ever approve a water supply for a development in outlying areas that is more than a domestic self-supplier (and perhaps require caveats to prevent any change).

### Recommendations:

- Amend the clause 127 provisions that require a territorial authority to take over the management and operations of the drinking water service, on a temporary or permanent basis OR
- Provide funding to territorial authorities to enable them to bring private supplies up to the standard required to achieve statutory compliance;
- Provide transition arrangements so that as each supply is transferred to a council at least a 3 year window is included before it is expected to meet the new standards;
- Amend clause 127 to require Taumata Arowai to undertake the work required to gain legal ownership of private supplies (and access them).

### Schedule 1: Transitional, savings and related provisions

A drinking water supplier is required to submit a new water safety plan within one year if it serves more than 500 people, regardless of whether an approved water safety plan exists. Councils around the country have put in a large amount of effort preparing water safety plans to meet the much higher expectations of the

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**We are.  
LGNZ.**  
Te Kāhui Kaunihera o Aotearoa.

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New Zealand Drinking-water Safety Plan Framework (Ministry of Health, 2018), which are largely similar to the requirements of section 31 of the Bill.

It is onerous to require water suppliers to submit a new water safety plan so soon if one has already been approved under the revised framework.

### Recommendation:

- Amend clause 4(3) to allow those large water supplies that have an approved water safety plan under the New Zealand Drinking-water Safety Plan Framework (Ministry of Health, 2018) to have five years from the date of approval of that water safety plan to submit a new water safety plan

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