New Zealand Law Society
Te Kāhui Ture o Aotearoa

Local Government (Water Services) Bill

Submission of the New Zealand Law Society Te Kāhui Ture o Aotearoa

20 February 2025

1 Introduction

1.1 The New Zealand Law Society Te Kāhui Ture o Aotearoa (**Law Society**) welcomes the opportunity to comment on the Local Government (Water Services) Bill (**Bill**), which seeks to set up a new regulatory framework for water services delivery.

1.2 This submission, prepared with input from the Law Society's Public Law Committee,[1] makes a number of recommendations to improve the drafting and clarity of the Bill.

1.3 The Law Society does not wish to be heard in relation to this submission.

2 Meaning of "significant"

2.1 The Bill includes numerous references to "significant" matters – for example:

(a) clause 197(2) requires territorial authorities to consult on "significant" amendments to water services strategies; and

(b) clause 201(1)(b) similarly refers to "significant" variations between information in an annual budget and a water services strategy.

2.2 However, the Bill does not clarify the meaning of "significant" in these contexts. We note section 5 of the Local Government Act 2002 (**LGA**) defines "significant", in relation to any issue, proposal, decision, or other matter, as having "a high degree of significance". It could be helpful to clarify whether the meaning in the LGA applies where "significant" is used in the Bill (for example, by amending clause 4 of the Bill to clarify that terms which are undefined in the Bill have the meaning given to those terms in the LGA).

3 Decision making by territorial authorities (clause 28)

3.1 Clause 27 requires territorial authorities to undertake consultation on proposals to make specific changes to the provision of water services in their districts (**change proposals**). Clause 28 addresses "how consultation is to be carried out", and requires certain information to be made publicly available.

3.2 Beyond mandating the provision of information, these clauses do not clarify what the territorial authority's responsibilities are in carrying out consultation – this is in contrast to clause 144 (for example), which sets out detailed consultation requirements relating to proposed drinking water catchment plans, and, at subclauses (1)(d) and (e), obligations around providing opportunities for individuals to present their views.

3.3 The mere provision of information is not usually sufficient for meaningful consultation. In addition to informing stakeholders about the change proposals, consultation should enable territorial authorities to obtain information from interested and affected parties which would assist with making decisions about the change proposals.[2]

3.4 We therefore recommend amending clause 28 to also require territorial authorities to:

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[1] See the Law Society's website for more information about this committee: https://www.lawsociety.org.nz/branches-sections-and-groups/law-reform-committees/public-law-committee/.

[2] See The Treasury New Zealand *Guidance Note: Effective Consultation for Impact Analysis* (December 2019) at page 2.

(a) Make publicly available a summary of the information contained in the change proposal;

(b) Provide for persons to have the opportunity to give feedback (within a reasonable timeframe) to territorial authorities during the consultation process.

4 Meaning of trade waste services (clause 60)

4.1 Clause 60 of the Bill requires water organisations to set and collect charges for wastewater services, including "trade waste services".

4.2 While the Bill defines "trade waste" in clause 4, it does not provide a definition of "trade waste services" (in the same way that it, for example, defines water supply services, stormwater services and wastewater services). We suggest including a definition of this term in clause 4 to improve clarity and certainty.

5 Reliance on property valuations (clause 60)

5.1 Clause 60(6) states that charges under proposed section 60 must not be based on or take into consideration any property valuations, including the property's annual value, land value or capital value.

5.2 Clause 63 deals with charges set by new water organisations. This clause provides that, during its first five years after establishment, a new water services organisation must not rely entirely on property valuations but may use property valuation and one or more other methods for portions of the charge, and annually adjust its methods of setting charges to decrease its reliance on property valuation.

5.3 On its face, the blanket prohibition on the use of property valuation in clause 60(6) conflicts with clause 63. We assume clause 63 is intended to create a transitional position for some water organisations to allow the use of property valuation as an input into charge setting, provided they transition away from this by no later than the start of the sixth year of its operation.

5.4 If that is the intention, then for clarity, we suggest amending either clause 60(6) or clause 63 to state that the transition position provided for in clause 63 can occur despite the blanket prohibition in clause 60(6).

6 Imposition of penalties (clause 72)

6.1 This clause refers to "a water organisation that resolves under section 104 to add penalties to unpaid water services charges". However clause 104 of the Bill does not relate to penalties; it sets out the effect of development agreements with developers.

6.2 This reference to section 104 may be a typographical error. We recommend amending clause 72 so it refers to the correct provision.

7 Requirement to provide information under the Local Government Official Information and Meetings Act 1987

7.1 Sections 44A(2)(b) and (bb) of the Local Government Official Information and Meetings Act 1987 (**LGOIMA**) require territorial authorities to issue land information memoranda

(**LIMs**) upon request. LIMs must include, among other things, information about stormwater and sewerage drains, and water supply.

7.2 This provision appears to rely on territorial authorities being the repository of information on water services for land titles in its locality. However, clause 36 of this Bill enables territorial authorities to transfer its responsibility for providing water services to a water organisation. Upon the transfer of responsibilities, the water organisation is likely to collect and hold information required under sections 44A(2)(b) and (bb) of the LGOIMA.

7.3 While territorial authorities may continue to hold some of this information, given the importance of LIMs and the reliance placed on them, it is important to ensure there are no gaps in the information which must be provided under sections 44A(2)(b) and (bb) of the LGOIMA.[3] Therefore, we recommend amending the Bill by inserting a new clause (for example, as new clause 75A) which allows territorial authorities to continue to access relevant information held by a water organisation for the purpose of discharging their obligations under section 44A of the LGOIMA.

8 Appeals relating to consent disputes (clause 120)

8.1 Clause 120 deals with appeals by land owners against water service providers' decisions to proceed with works on their land. The Law Society makes the following recommendations in relation to this clause:

(a) Clause 120(1) states that an owner of land who is "aggrieved" by a water service provider's determination may appeal that determination. Being "aggrieved" is an unusual basis to appeal a decision, and is presumably not intended to be a threshold for appeal. It may be simpler to give a landowner an appeal right without this language – for example: "An owner of land may appeal to the District Court against a water service provider's determination to proceed with proposed works."

(b) Clause 120(2) requires an appeal to be lodged within 28 days of being notified of the water service provider's determination. Appeal periods are usually formulated with reference to working days – see, for example, the appeal provisions in some of the Acts which are to be amended by this Bill.[4] We recommend amending this clause so it specifies the appeal period in working days in order to improve the clarity of the Bill, and its consistency with other relevant Acts, as well as the language used elsewhere in the Bill.[5]

(c) The District Court Rules 2014 provide that an appeal is brought when filed in court, filed in the administrative office and served on every party affected by the

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3 We acknowledge the amendments in Schedule 12 of the Bill will mean water organisations are also subject to the LGOIMA. However, the obligation to issue LIMs which include the information specified in section 44A of the LGOIMA remains with territorial authorities.

4 Section 96 of the Local Government (Water Services Preliminary Arrangements) Act 2024, section 93 of the Water Services Act 2021, and section 121 of the Resource Management Act 1991.

5 For example, clauses 128 (appeals about conditions relating to work on roads and level crossings), 129 (appeals to the Māori Land Court), 130 (appeals to the Māori Appellate Court), 161 (appeals to the High Court), which specify appeal timeframes with reference to working days.

appeal.[6] It is not clear how these requirements interact with clause 120(2) of the Bill, which simply states "the landowner must lodge the appeal with the court within 28 days after being notified of the determination". We recommend amending the Bill to clarify how the District Court Rules apply to appeals under this clause.

9 Consultation on draft water services strategy (clause 196)

9.1 Clause 196(6) provides a water organisation must use the special consultative procedure specified in section 83 of the LGA to consult on proposals in its draft water services strategy. However, we note section 83 of the LGA sets out the process which applies specifically to local authorities, rather than water organisations. We recommend amending clause 196(6) by inserting "with necessary modifications" to indicate the process in the LGA could be modified and applied to consultations undertaken under clause 196(6) of the Bill.

10 Water services annual budget (clause 200)

10.1 This clause requires the water service provider to prepare a water services annual budget for each financial year that is not the first financial year to which the provider's water services strategy relates. The select committee could consider whether it would be desirable to insert a provision which states that for the first financial year, the water services strategy is the water services annual budget for that year. The drafting of such a provision could be modelled on section 95(4) of the LGA.

11 Annual report for new water organisation (clause 204)

11.1 If the water organisation's statement of expectations and water services strategy are not in place at the time of preparing its first annual report, its shareholders must agree with the Auditor-General the arrangements for the organisation's first annual report. It could be useful to specify a timeframe for reaching an agreement under this clause in order to provide more certainty for the parties involved, and to ensure the annual report is produced in a timely manner.

12 Meaning of shared domestic drinking water supplier (clause 302(1))

12.1 Clause 302(1) of the Bill defines "shared domestic drinking water supplier" as a person (**person A**) who supplies drinking water to no more than 25 consumers who reside in domestic dwellings and "are aware" person A supplies their drinking water. As a result, the drafting of this definition excludes any situation where the consumer is unaware person A supplies their drinking water (for example, in a situation where a holiday home is temporarily rented out to tourists who are visiting the area). Person A's status as a shared domestic drinking water supplier is also likely to change with time if there is a turnover of consumers who receive their drinking water from person A, and only some of them are aware person A supplies their drinking water.

12.2 It is unclear why this definition requires subjective knowledge of person A, and whether the resulting limited scope of the definition is intentional. We invite the select committee

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6 Rule 18.6.

to seek advice from officials on these points, and to consider whether the knowledge element should be removed from the definition of "shared domestic drinking water supplier".

13 Definition of household unit (clause 302(2))

13.1 Clause 302(2) of the Bill states that a "domestic dwelling" is a single household unit which is occupied either permanently or temporarily (for example, a holiday home), and includes short- and long-term tenancies. The clause also clarifies that "household unit" has the meaning in section 7(1) of the Building Act 2004.

13.2 However, section 7(1) of the Building Act states:

> **household unit—**
>
> (a) means a building or group of buildings, or part of a building or group of buildings, that is—
>
> > (i) used, or intended to be used, only or mainly for residential purposes; and
> >
> > (ii) occupied, or intended to be occupied, exclusively as the home or residence of not more than 1 household; but
>
> (b) does not include a hostel, boardinghouse, or other specialised accommodation

13.3 This definition of "household unit" conflicts with the definition of "domestic dwelling" in the Bill, and it is unclear whether temporary accommodation such as holiday homes (included in the definition of "domestic dwelling" in the Bill) come within the definition of "household unit".

13.4 The select committee should seek advice from officials on whether the intention of clause 302(2) is to include or exclude temporary accommodation which is not occupied as a home or used for residential purposes from the definition of "domestic dwelling", and to make necessary amendments to clause 302(2) to reflect that choice. If temporary accommodation is to be excluded from the definition, it would be helpful to explain the rationale for this exclusion.

14 Consultation on water services bylaws (clause 352)

14.1 Clause 352 requires territorial authorities to review any water services bylaws they have made at least every 10 years, and to undertake consultation if a review suggests a bylaw needs to be amended, revoked, or revoked and replaced. Such consultation must be undertaken according to the special consultative procedures in the LGA, including those set out in section 156(1) (with necessary modifications).

14.2 While the procedures in section 156(1) of the LGA only apply to bylaws which are to be amended, revoked, or revoked and replaced under that Act, section 160(3) of the LGA also sets out separate consultation requirements which apply where a review has determined a bylaw should continue without amendment:

> (3) If, after the review, the local authority considers that the bylaw—

(a) should be amended, revoked, or revoked and replaced, it must act under section 156:

(b) should continue without amendment, it must—

(i) consult on the proposal using the special consultative procedure if—

(A) the bylaw concerns a matter identified in the local authority's policy under section 76AA as being of significant interest to the public; or

(B) the local authority considers that there is, or is likely to be, a significant impact on the public due to the proposed continuation of the bylaw; and

(ii) in any other case, consult on the proposed continuation of the bylaw in a manner that gives effect to the requirements of section 82.

14.3 This Bill does not contain an equivalent provision which requires consultation on a proposal to continue a water services bylaw without amendment. It is unclear why this is the case, and why the consultation obligations under clause 352 are limited to only some possible outcomes of a substantive review decision. This is particularly concerning given:

(a) the continuation of water services bylaws can be of significant interest to, or have a significant impact on, the public, and

(b) the Bill does not allow for public input into the review process itself except for consultation.[7]

14.4 We also note that, while clause 352(4) of the Bill requires territorial authorities to use the consultation process set out in section 156(1) of the LGA (with any necessary modifications), it does not reflect the fact that section 156(1) contains two distinct consultation processes:

(a) the special consultative procedure, as modified by section 86 of the LGA, for bylaw changes which are of significant interest to the public, or are likely to have a significant impact on the public (subsection (a)); and

(b) consultation in a manner which gives effect to the requirements in section 82 of the LGA for all other bylaw changes (subsection (b)).

14.5 The Bill should clarify whether the reference to section 156(1) of the LGA is to section 156(1)(a), section 156(1)(b), or both.

14.6 We therefore recommend:

(a) Amending clause 352 to include a consultation requirement similar to that set out in section 160(3)(b) of the LGA in relation to a proposal to continue a water services bylaw without amendment.

(b) Clarifying which process in section 156(1) of the LGA applies to consultations under clause 352(4).

[7] Clause 353 of the Bill only requires territorial authorities to seek input from water service providers.

15 Consequences of failing to review a bylaw

15.1 The Bill does not clarify whether a bylaw which is not reviewed within the timeframe specified in clause 352(1) is revoked. We appreciate the drafters may have intended for this to be specified in regulations made under clause 345 of the Bill. However, it would be preferable to specify this in the Bill itself for better clarity and certainty as to the status of bylaws. Such a provision could be modelled on section 160A of the LGA.

16 Carrying out building work over or near water services infrastructure without approval (clause 393)

16.1 Clause 393(1) states it is an offence to carry out building work over or near water services infrastructure without approval. We note this offence provision is inconsistent with:

(a) section 401 of the now-repealed Water Services Entities Act 2022, which previously provided for this offence, and

(b) other offences in Subpart 3 of Part 6 of the Bill,

which are qualified with a requirement for the action to "cause a specified serious risk". Despite this omission, the penalties for this proposed offence have been set at the same level as the penalties for the offence in section 401 of the Water Services Entities Act.

16.2 It is unclear if the omission of the requirement to cause a specified serious risk is intentional, or simply an oversight. Without a qualifying threshold (such as the requirement for the building work to cause a specified serious risk), the scope of this proposed offence becomes broad and vague. We note the term "building work" in the Building Act includes, for example, design work, sitework to prepare the building site, as well as alterations to buildings[8] – while such works may not always cause a specified serious risk, they will nevertheless come within the scope of the proposed offence as it is currently drafted.

16.3 We therefore recommend amending this clause to include the additional qualification that the work must cause a specified serious risk.

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Vice-President

[8] Building Act, s 7(1).