
Water Services Legislation Bill

23/02/2023

Water Services Legislation Bill 2022

1 Introduction

- 1.1 The New Zealand Law Society Te Kāhui Ture o Aotearoa (**Law Society**) welcomes the opportunity to comment on the Water Services Legislation Bill (**Bill**).
- 1.2 The Bill is an omnibus bill amending a number of Acts, and forming part of a suite of legislation relating to water services delivery in New Zealand. Its broad policy is to establish and empower water services entities by setting out their functions, powers, obligations, and oversight arrangements.
- 1.3 The Law Society’s submission, prepared with input from its Criminal Law Committee and Public and Administrative Law Committee,¹ relates to clause 22 of the Bill, which replaces Part 6 of the Water Services Entities Act 2022.
- 1.4 The Law Society wishes to be heard.

2 Application of the Public Works Act (proposed sections 200(1) and 218)

- 2.1 Proposed section 200(1) allows a water services entity to carry out work on land including “constructing or placing water services infrastructure on or under land or under a building on land”. Proposed section 218 states that the exercise of proposed section 200 applies subject to Part 5 of the Public Works Act (**PWA**) as to compensation for the injurious affection to land.
- 2.2 The Law Society suggests amending this section to clarify whether only the injurious affection to land provisions (i.e., sections 63 and 64 of the PWA) apply, or whether the remaining provisions in Part 5 the PWA also apply (including, for example, the provisions relating to compensation for the acquisition of land).

3 Moving water services infrastructure (proposed section 221)

- 3.1 New section 221 requires the owner or occupier of land to give 15 working days’ notice of any intention to move, re-lay, reconstruct, or replace water services infrastructure. However, this section does not impose a requirement on water services entities to respond to such notices.
- 3.2 We suggest amending proposed section 221 to:
 - (a) require a response from the water services entity within 10 working days of receiving a notice from the owner or occupier of land; and
 - (b) provide that, in the absence of a response, a land owner may proceed to do the notified works.

¹ More information about these committees can be found on the Law Society’s website: <https://www.lawsociety.org.nz/branches-sections-and-groups/law-reform-committees/>.

3.3 This amendment would provide clarity and certainty regarding the process for undertaking the work specified in new section 221, and for subsequently appealing a refusal to grant consent.²

4 Consultation on draft rules (proposed sections 274, 275 and 285)

4.1 These new sections allow the board of a water services entity to make rules which restrict water usage and regulate consumer behaviour, and regulate specified works near, under or above a water network. Contravention of these rules is an offence (see proposed section 414).

4.2 In each case, there are engagement and consultation requirements (see, for example, new section 277, 461 and 462). However, there is no express requirement on the board to publish the draft rules for the purposes of that consultation. These rules appear to be equivalent to significant decisions at a local authority level, where thorough public engagement or consultation is often required.

4.3 The select committee may wish to include an express requirement for the publication of draft rules for public comment. This could be modelled on proposed section 282, which provides for the publication of draft service agreements, draft amendments to service agreements, and draft replacement service agreements.

5 Liability for water services charges (Part 11)

5.1 Proposed section 321(2) provides that a property owner or occupier (as more particularly defined in proposed section 321(1)) is liable to pay “water services charges” for the water services provided in respect of the property.

5.2 The Bill does not include a definition of “water services charges”. It may be appropriate to include a definition to properly limit the charges that a water services entity may charge property owners or occupiers, particularly as the charges become a debt enforceable under proposed section 324 and subject to penalties for non-payment (proposed section 325).

5.3 It is possible that water services charges come within the types of charges that may be set by the board of a water services entity under proposed section 330. However, this section does not expressly refer to ‘water services charges’ – it refers to the board setting charges, for example, for water supply services, wastewater services and stormwater services. We therefore suggest including a definition of “water services charges” in the Bill or resolving a potential inconsistency in language between proposed section 321 and proposed section 330.

5.4 Furthermore, there does not appear to be any requirement for water services entities to consult on proposed water services charges or any charges set under proposed section 330. We note that local authorities routinely consult on proposed increases and changes to annual rates, which seem analogous to water services charges, and the charges set under proposed section 330. In our view, it would be appropriate to include a similar requirement

² New section 226(2) gives land owners and occupiers a right of appeal if the water services entity declines to consent to the moved works.

for water services entities to consult on any proposed water services charges and charges set under proposed section 330.

6 Compliance and Enforcement (Part 12)

Compliance powers (proposed section 363)

- 6.1 Proposed section 363 allows a compliance officer to restrict the water supply to a land or building in response to defined circumstances. While this is a significant power with potential health implications, the Bill does not clearly provide for the review or appeal of a decision to restrict the supply of water. In contrast, proposed section 366(1) provides for a right to review and appeal directions issued by compliance officers under proposed section 364. In our view, the powers exercised by compliance officers under proposed section 363 should similarly be subject to an accessible review or appeal process. This could be an internal review undertaken by the water services entity responsible for the decision to restrict the water supply, an alternative dispute resolution mechanism, or an appeal to the District Court.

Offences relating to water supply network, wastewater network, and stormwater network (Part 12, subpart 4)

- 6.2 Proposed sections 391 to 407 set out the offences relating to water supply networks, wastewater networks and stormwater networks (including offences relating to knowing or reckless conduct and negligent conduct). This includes two strict liability offences, neither of which require a specified serious risk (SSR) to have occurred:
- (a) section 394 – disposing of materials or substances into wastewater network, in breach of a rule; and
 - (b) section 404 – discharging into water supply network without authorisation.
- 6.3 It is not clear why there is no equivalent provision in respect of stormwater. Sections 400 and 401 provide only for knowingly or recklessly, or negligently, connecting to or disconnecting from a stormwater network. Section 402 and 403 relate to conduct causing an SSR. While we appreciate there may be a technical reason for this distinction, we invite the committee to consider whether the provisions should be better aligned, and whether a similar provision is appropriate for unauthorised connection and/or discharge (as opposed to only connection or disconnection) into the stormwater network.

Wasting drinking water (proposed section 415)

- 6.4 Proposed section 415 provides that it is an offence if a person “wastes drinking water in a way that causes risk to the water supply of a water services entity.”
- 6.5 The proposed actus reus – “wastes” – is vague, and the Bill is unclear as to what would constitute a “waste” of drinking water for the purpose of this provision. The Law Society suggests amending the Bill to provide guidance as to the meaning of “wastes” to assist both the public and the courts to understand what constitutes culpable behaviour.

Threatening or assaulting an employee or agent of a water services entity (proposed section 418)

- 6.6 Proposed section 418 provides that an individual who intentionally threatens or assaults an employee or agent of a water services entity is liable on conviction to imprisonment for a term not exceeding 3 months and a fine not exceeding \$50,000.
- 6.7 This provision appears to be out of step with similar provisions in other legislation. For example:
- (a) Common assault carries a maximum penalty of one year's imprisonment under section 196 of the Crimes Act 1961;
 - (b) Common assault carries a maximum penalty of six months' imprisonment, or a fine of \$4,000 under section 9 of the Summary Offences Act 1981; and
 - (c) Intimidation carries a maximum penalty of three months' imprisonment, or a fine of \$2,000 under section 21 of the Summary Offences Act.
- 6.8 We wish to draw this provision to the attention of the select committee, and invite the committee to consider whether these maximum penalties should be aligned with the penalties set out in other comparable provisions (including the examples above).



Caroline Silk
Vice-President