

Three Waters Reform

Select Committee suggests changes to Water Services Entities Bill

The Three Waters Reform Programme proposes structural and regulatory reform rarely seen on this scale in Aotearoa New Zealand, to address what the Government views as urgent problems to New Zealand's water infrastructure.

The Reform Programme would transfer control of three waters infrastructure (drinking water, wastewater and urban stormwater), currently held by local authorities, to four newly created "water services entities" (WSEs).

The legislative package of the Reform Programme comprises three pieces of legislation. The first of these, the Water Services Entities Bill, establishes the four WSEs and provides for their ownership, governance and accountability arrangements, including during the "establishment period" (the period before the WSEs become operational on 1 July 2024).

The Bill has recently returned from the Finance and Expenditure Select Committee, who, after receiving over 88,000 submissions, made a number of recommendations which are primarily to improve accountability and transparency mechanisms in the Bill.

We discuss some key recommendations below:

Increased representation on the Regional Representative Group

The WSEs will have a two-tier governance structure comprising of a regional representative group (RRG) and a corporate skills-based board. The Committee recommended, at the suggestion of many submitters, that the RRG's membership cap of 14 be removed, to allow for more local authority representation. It recommended the Bill require the number of members of each RRG be specified in the entity's constitution (with a minimum of 12), which can then be increased as required by 75% majority vote of the group's regional representatives. The requirement for 50% mana whenua representation on the RRG is unaffected by these changes.

The Committee also recommended that the WSE's constitution include procedures for ensuring that local authority membership of the RRG achieves equitable and reasonable representation across metropolitan, provincial, and rural authorities, in response to submitters' concerns that only those local authority representatives from the largest local authorities would be appointed to the RRG.

Improved transparency mechanisms

The Committee recommended a number of changes to the Bill that seek increased transparency of WSE processes and governance. These include requiring:

- that the WSE board, along with the RRG and the regional advisory panel (RAP), would be required to adhere to similar procedural requirements as local government organisations, such as holding public meetings, and providing an agenda and associated reports in advance of such meetings;
- proposed amendments to the constitution to be provided to the Minister and made publicly available before the Minister approves or rejects amendments;
- annual shareholder meetings with local authority owners;
- the WSE to include forecasting assumptions and risks for all reports that include financial information.

Additional auditing and reporting obligations

The Committee also recommended that WSE processes be subject to increased auditing and reporting obligations, including:

- requiring the Auditor-General to prepare reports in relation to a WSE's SOI, infrastructure strategy, and, during the establishment period, annual report;
- requiring the WSE to provide information to territorial authority owners and mana whenua (as well as the RRG and RAP);
- empowering local authorities to request Ministerial intervention in WSE operations;
- providing the CEO of the Department of Internal Affairs with a number of powers during the establishment period, including preparing and approving an establishment water services plan, as well as preparing the initial AMP and the initial funding and pricing plans for each WSE;
- imposing increased and clarified reporting requirements on WSEs during the establishment period; and
- providing additional reporting obligations on WSEs in relation to the preparation of various reports, including obligations to report on how territorial authority owner feedback has been considered and reflected in the AMP, funding and pricing plan and infrastructure strategy.

The Commerce Commission has also been given powers to scrutinise and report on draft initial asset management plans and initial funding and pricing plans prepared by WSEs during the establishment period. A duty to cooperate with the Commission has also been placed on local government organisations and WSEs' CEOs and establishment boards to facilitate the Commission's scrutiny and reporting, as well as an obligation to comply with reasonable requests by the Commission for information that a local government organisation or WSE holds. These amendments are understood to assist the Commission and WSEs' preparation for economic regulation once the WSEs are operational. An upcoming bill (expected to be introduced into Parliament imminently) will cover economic regulation and consumer protection matters.

Extension of Te Mana o te Wai statements to include coastal and geothermal water

A Te Mana o te Wai statement for water services may be provided to a WSE by mana whenua whose rohe or takiwā (tribal territory) includes a water body in the service area or whose interests in the service area are recognised in a Treaty settlement Act. WSEs must respond to a Te Mana o te Wai statement by providing a plan that sets out how the WSE intends to give effect to Te Mana o te Wai. The Committee recommended that Te Mana o te Wai statements should also include coastal and geothermal water (in addition to freshwater).



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