

UNCLASSIFIED

Hon Nanaia Mahuta, Minister of Local Government

Proactive release of Cabinet material related to the Water Services Entities Bill: Approval for Introduction, 30 May 2022

These documents have been proactively released:

2 June 2022, CAB-22-MIN-0195 Minute: Water Services Entities Bill: Approval for Introduction; and

2 June 2022, Cabinet Paper: Water Services Entities Bill: Approval for Introduction.

Some parts of this information would not be appropriate to release and, if requested, would be withheld under the Official Information Act 1982 (the Act). Where this is the case, the relevant sections of the Act that would apply have been identified. Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.

Key to Redaction Codes:

- 9(2)(f)(iv) – to maintain the constitutional conventions for the time being which protect the confidentiality of advice tendered by Ministers of the Crown and officials.
- 9(2)(g)(i) – to maintain the effective conduct of public affairs through the free and frank expression of opinions by or between Ministers.



Cabinet

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

Water Services Entities Bill: Approval for Introduction

Portfolio **Local Government**

On 30 May 2022, following reference from the Cabinet Business Committee, Cabinet:

- 1 **noted** that the Water Services Entities Bill (the Bill) holds a category 2 priority on the 2022 Legislation Programme (must be passed in the year);
- 2 **noted** that the Bill gives effect to a series of decisions made in 2021 to transform the three waters service delivery system, including through provisions for:
 - 2.1 the establishment of four, publicly-owned water services entities to take over responsibilities for three waters service delivery and infrastructure from local authorities from 1 July 2024;
 - 2.2 the ownership, governance, accountability, and associated arrangements relating to the new water services entities, including:
 - 2.2.1 territorial authority ownership of the entities;
 - 2.2.2 a joint oversight framework, involving an equal number of representatives of the territorial authorities and mana whenua from within the service area of each entity;
 - 2.3 protecting the public interest in relation to the new water services entities and three waters system, including safeguards against privatisation;
 - 2.4 transitional arrangements relating to the establishment and governance of the new entities; reporting obligations; employment; and the oversight powers of the Department of Internal Affairs during the establishment period;
- [CAB-21-MIN-0226-0228; CAB-21-MIN-0269; CAB-21-MIN-0419]
- 3 **noted** that the recommendations of the Working Group on Representation, Governance and Accountability (the Working Group), as agreed by Cabinet on 19 April 2022 [CAB-22-MIN-0144], have been incorporated into the Bill;
- 4 **noted** that the changes made as a result of the Working Group's recommendations are designed to:
 - 4.1 address the concerns raised by the local government sector;

- 4.2 provide clarity about some of the core aspects of the new model;
- 4.3 achieve greater community buy-in for the reforms;
- 4.4 provide a more flexible basis for tailoring different governance arrangements for each entity;

5 **noted** that:

- 5.1 the Minister of Finance and the Minister of Local Government have considered options for ensuring the Crown can recover establishment costs it incurs through the transition period on behalf of the water services entities;
- 5.2 this matter has been addressed in clause 26 of Schedule 1 of the Bill, and ensures that costs incurred by the Crown before the entities are established will be subsequently reimbursed to the Crown by the relevant entity;

6 **noted** that:

- 6.1 the Attorney General, the Minister for the Environment, the Minister for Māori Crown Relations: Te Arawhiti, the Associate Minister for the Environment (Hon Kiri Allan), and the Minister of Local Government have considered options for a clause that preserves the status quo iwi and hapū customary rights and interests in water in the Bill;
- 6.2 the Bill includes a preservation clause to this effect, following the consideration of options by delegated Ministers;

7 **noted** that the Prime Minister, the Minister of Finance and the Minister of Local Government have considered the findings of Standard & Poor's, as authorised by Cabinet on 19 April 2022 [CAB-22-MIN-0144], and confirmed the final design of the model for inclusion in the Bill;

8 **noted** that, in response to a recommendation made by the Working Group, Cabinet had agreed to amend the Bill to entrench provisions that protect against privatisation of water services infrastructure, in a similar form to section 268 of the Electoral Act 1993 [CAB-22-MIN-0144];

9 **noted** that, in doing so, Cabinet noted that the Minister of Local Government had written to all political parties seeking their support for this entrenchment proposal, as Standing Order 270 would require entrenchment to be carried by a 75 percent majority when the Bill reaches the Committee of the Whole House;

10 **noted** that cross-party support for entrenchment of these provisions has not emerged;

11 **agreed** that the Bill should not entrench the privatisation provisions in the Bill;

12 **noted** that the Bill will continue to contain very strong safeguards that are significant obstacles to privatisation, including:

- 12.1 provisions based on section 130 of the Local Government Act 2002 preventing a water services entity from divesting ownership in water services, or losing control of the significant infrastructure necessary for providing water services;

12.2 requirements that, for a divestment proposal to proceed, it must have the unanimous support of the entity's territorial authority owners, and at least 75 percent support of its regional representative group and at least 75 percent support in a poll of electors in the entity's service area;

13 **approved** the Water Services Entities Bill for introduction [PCO 23531/16.18];

14 **agreed** that the Bill be introduced on 31 May 2022;

15 **agreed** that the government propose that the Bill be:

15.1 referred to the Finance and Expenditure Committee for consideration;

15.2 enacted by 15 December 2022.

Michael Webster
Secretary of the Cabinet

Office of the Minister of Local Government

Chair
Cabinet

Water Services Entities Bill: Approval for introduction

Proposal

1. This paper seeks approval to introduce the Water Services Entities Bill, to give effect to a series of decisions made in 2021 and 2022 to transform the three waters service delivery system. The Bill holds a category 2 priority on the 2022 Legislation Programme (must be passed in the year).
2. The Bill provides for the establishment of four publicly-owned water services entities, and for the ownership, governance, accountability, and associated arrangements relating to these entities.
3. The Bill also provides for transitional arrangements relating to the establishment and governance of the new entities; reporting obligations; employment; and the oversight powers of the Department of Internal Affairs during the establishment period.
4. This Bill does not transfer assets and liabilities from local authorities to water services entities, or establish powers and functions for the entities in relation to managing the provision of water services. These matters are intended to be addressed in a second bill, the Water Services Entities Amendment Bill, which will also integrate the entities into other regulatory systems such as the resource management regime. It will also contain provisions amending Treaty settlement legislation to ensure settlement obligations are carried forward from territorial authorities to water services entities, and to ensure other arrangements entered into by local authorities and iwi are preserved.

Policy

5. This Government has ambitions to significantly improve the safety, quality, resilience, accessibility, and performance of three waters services, in a manner that is efficient and affordable for New Zealanders. This is critical for public health and wellbeing; environmental outcomes; economic growth and job creation; housing and urban development; adapting to the impacts of climate change; building resilience to natural hazards; and improving outcomes for iwi and Māori.
6. To support the achievement of these ambitions, in June, July and October 2021 we made decisions on a comprehensive, integrated package of proposals to reform the three waters service delivery system [CAB-21-MIN-0226; CAB-21-MIN-0227; CAB-21-MIN-0228; CAB-21-MIN-0269; and CAB-21-MIN-0419 refer]. This involves the creation of four publicly-owned water services entities, to take over responsibilities for three waters service delivery and infrastructure from local authorities from 1 July 2024.

7. I was invited to issue drafting instructions for a Water Services Entities Bill to give effect to most of these decisions. Legislation is needed because the new water services entities will be statutory entities, and a number of key features and protections must be provided for in statute – including essential provisions for ongoing public ownership and engagement, and safeguards against future privatisation. As agreed by Cabinet on 18 October 2021, the Government is also taking a ‘legislated all in’ approach to implementing the reforms, and every territorial authority district will be included in one of the new entities.
8. Our approach reflects the extensive policy, economic and legal analysis that demonstrates there is a compelling case for change, and the range of benefits offered by a reformed three waters system and new service delivery arrangements. The approach is designed to enable all communities to access these benefits, and to safeguard the long-term interests all New Zealanders and every community have to protect their future interests in water infrastructure.
9. In addition, this legislation is needed to put in place transitional arrangements as quickly as possible to enable the entity establishment and implementation work to continue at pace. This includes decisions relating to:
 - 9.1 the key functions, activities, and duties of transition bodies;
 - 9.2 modifications of entity design features and accountability arrangements, so they are applicable during the transitional phase;
 - 9.3 the legislative powers, obligations, and restrictions needed to manage the transition;
 - 9.4 transitional provisions relating to employment of the three waters workforce.
10. In August and September 2021, the local government sector was given the opportunity to engage with, and provide feedback on, the Government’s proposals. While there was general agreement about the need for reform, this engagement highlighted concerns about certain aspects of the proposals, particularly around the representation, governance and accountability arrangements, and ownership of water assets.
11. In response to this feedback, and in recognition improvements could be made to the proposed model, in October 2021 we established a Working Group on Representation, Governance and Accountability to examine the key areas of concern. These decisions were contained in the paper *Further decisions on the three waters reforms* [CAB-21-MIN-0419]. The Working Group was asked to report to me with recommendations for a preferred strengthened approach to the governance framework for the new water services entities.
12. This approach represents a continuation of the partnership-based approach I have taken to the development of policy throughout the three waters reforms, upholding our obligations as a Treaty partner, and the commitments the Crown made to Local Government New Zealand through the Heads of Agreement signed in July 2021.
13. I received the Working Group’s report on 7 March 2022, and Cabinet made decisions on the recommendations on 19 April 2022 [CAB-22-MIN-0144].

14. The changes incorporated into the Bill are designed to address the concerns raised by the local government sector, provide clarity about some of the core aspects of the new model, and achieve greater community buy-in for the reforms. The changes to the governance and accountability arrangements in the Bill provide a more flexible basis for tailoring different governance arrangements for each entity.
15. As signalled in the previous policy papers, the Water Services Entities Bill is just one component of a comprehensive package to reform water services that currently provided by local authorities, and the related system. This Bill will need to be followed by further legislation to provide for:
 - 15.1 the specific powers, functions, and responsibilities the entities will require to operate, and pricing and charging arrangements;
 - 15.2 additional, detailed transitional arrangements, including provisions relating to the transfer of assets, liabilities and employees from local authorities to water services entities;
 - 15.3 integration of the entities into other regulatory systems, such as the resource management regime;
 - 15.4 amendment of Treaty settlement legislation to ensure settlements are enduring, along with legislation to ensure other arrangements entered into by local authorities and iwi are preserved under the new regime; and
 - 15.5 an economic regulation regime and consumer protection mechanisms relating to the reformed system.
16. Policy decisions relating to these additional pieces of legislation are currently being sought, and it is anticipated legislation will be proposed for introduction in late 2022.

Overview of the Bill's contents and key features

17. The Bill provides for the establishment of four water services entities, and for their objectives, functions, and operating principles. Each entity will be responsible for providing safe, reliable, and efficient drinking water, wastewater, and stormwater services in its area.
18. Schedule 2 of the Bill lists the service areas for each entity through reference to territorial authority district boundaries, or parts of districts. The boundary of the Southern Water Services Entity is based on the takiwā of Ngāi Tahu, as described in section 5 of Te Runanga o Ngai Tahu Act 1996.
19. While three waters assets will be transferred from local government to the new entities, there are a number of mechanisms to ensure these assets, the entities themselves, and the services they deliver, remain in public ownership and control. In particular, the Bill provides for:
 - 19.1 collective territorial authority ownership of the entities, through a direct shareholding interest allocated to territorial authorities. Shareholding provides a tangible expression of ownership that is recognisable by communities;
 - 19.2 financial independence of entities from territorial authority owners, including prohibition on equity returns or dividends;

- 19.3 clear legislative protections against privatisation, through requirements that entities must not sell or lose control of water services or significant infrastructure (based on long-standing provisions in the Local Government Act 2002). For a 'divestment proposal' to proceed, it must have unanimous support from an entity's territorial authority owners, and at least 75 per cent support from both the entity's regional representative group and the electors in its service area.
20. Each entity will operate within a two-tier governance structure, comprising a regional representative group and a corporate board. Appointments to this group will be based on a representative model, where half of its members are drawn from territorial authorities, and half are from mana whenua in the service area of the entity. The regional representative group will seek consensus decision making, with a 75 per cent majority vote if consensus cannot be reached. The practical benefit of this approach is that it will enable a strategic focus on service delivery and infrastructure investment decisions across a catchment, with due consideration for the health, environmental and economic benefits for all communities in that area.
21. The board is the governing body of the entity, and fulfils the same role as the board of a company or Crown entity. Similar to the model adopted for Crown- and council-owned companies, the board of the entity remains primarily accountable for developing the strategy and associated accountability documents, including the statement of intent, and for delivering against that strategy once approved. It will have responsibility for the day-to-day operations of the entity and appoint the chief executive. Appointments to the board will be made on the basis of the skills of individual members, or collective competencies across the board as a whole, and not whether a person is from a council or is mana whenua.
22. The Bill also includes detailed oversight and governance arrangements that will apply to the new entities. These include measures to provide transparency and accountability in the new system, enable the separation of the entities from local government, recognise the rights and interests of iwi and Māori, and protect public and community interests. Key provisions relate to:
- 22.1 independent, competency-based, professional boards to govern the entities, and make investment decisions about infrastructure delivery over a long period;
- 22.2 the role, membership, and accountability of board members – including competency requirements that will be considered during board appointment processes in relation to the Treaty of Waitangi, mātauranga Māori, tikanga Māori, and te ao Māori;
- 22.3 the appointment, removal, and conditions of board members, collective duties of the board, and individual duties of members;
- 22.4 planning and reporting requirements, including:
- 22.4.1 a Government policy statement to provide national strategic direction to all water services entities, which may be issued by the responsible Minister;

- 22.4.2 statements of strategic and performance expectations issued by the regional representative group to the entity, to which the board must give effect in its statement of intent;
 - 22.4.3 Te Mana o te Wai statements, issued to the entity by mana whenua in its service area, to which the entity board would be required to respond and be held accountable in planning and reporting documents;
 - 22.4.4 statements of intent, asset management plans, and funding and pricing plans, to be prepared by each entity;
 - 22.4.5 obligations on the entities to prepare and publish an audited annual report;
 - 22.5 mechanisms to provide for community and consumer voice, including requirements to establish a community forum for each entity and engage with communities on core planning documents;
 - 22.6 mechanisms to protect the public interest, including through Ministerial powers to intervene in situations where an entities is, or may be, facing serious difficulty (similar to the approach taken in the Local Government Act 2002).
23. Clause 4 of the Bill requires all persons performing or exercising duties, functions and powers under the Bill to give effect to:
- 23.1 the principles of Te Tiriti o Waitangi. This obligation is consistent with clause 6 of the exposure draft of the Natural and Built Environments Bill; and
 - 23.2 Te Mana o te Wai, to the extent Te Mana o te Wai applies to those duties, functions, or powers. This is consistent with the approach in the Water Services Act 2021.
24. Clause 5 summarises the provisions that recognise and respect the Crown's responsibility to give effect to Te Tiriti o Waitangi. These include requirements that:
- 24.1 if a provision of the Act is inconsistent with a Treaty settlement obligation, the Treaty settlement obligation prevails; and
 - 24.2 an operating principle of entities is to give effect to Treaty settlement obligations, to the extent those obligations apply to the duties and functions of an entity.
25. Schedule 1 contains transitional provisions relating to the establishment and governance of the new entities over an establishment period. Subpart 1 contains transitional provisions relating to:
- 25.1 functions and objectives of establishment entities;
 - 25.2 the board of establishment entities;
 - 25.3 the appointment of establishment chief executives;
 - 25.4 the preparation of an allocation schedule to inform the transfer of assets from territorial authority to the water services entities.
26. Subpart 2 covers reporting obligations relating to the transitional arrangements, including:
- 26.1 establishment water services plans and quarterly reports;

- 26.2 obligations on local authority water service providers to cooperate with the Department of Internal Affairs and establishment entities during the establishment period, and related compliance provisions;
- 26.3 transitional regulation-making powers relating to the provision of information and reporting obligations.
- 27. Subpart 3 contains transitional provisions relating to employment, including:
 - 27.1 a review of existing employment positions by establishment chief executives;
 - 27.2 the transfer of employment positions;
 - 27.3 collective bargaining arrangements.
- 28. Subpart 4 provides the Department of Internal Affairs with oversight powers during the establishment period. These enable the Department to review – and, where applicable, confirm – local government decisions if these will significantly prejudice or constrain the water services reform, or have a significant negative impact on assets or liabilities that will be transferred to the entities. These powers are based on similar arrangements for the reorganisation of Auckland governance.

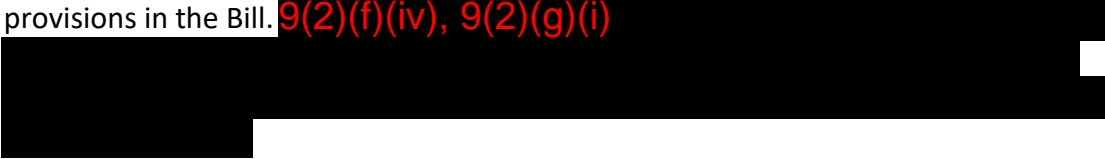
Policy areas subject to delegated authority

- 29. The Minister of Finance and I were delegated authority to consider options for, and to approve the best approach for, ensuring the Crown can recover establishment costs it incurs through the transition period on behalf of the entities [CAB-22-MIN-0144]. This has been addressed in clause 26 of Schedule 1 of the Bill and ensures that costs incurred by the Crown during the establishment period will be subsequently reimbursed to the Crown by the relevant entity.
- 30. The terms and conditions of any reimbursement arrangement will be agreed by the Minister of Finance and I, to ensure they are fair and fiscally neutral. It will be important, in communicating the rationale for this provision, that there is appropriate Cabinet authorisation for any such expenditure (for example, the costs of establishing entities' ICT systems will be subject to Cabinet consideration of a business case), and that only reasonable expenditure that is necessary to enable entities to become operational will be recovered in this way.
- 31. The Attorney General, Minister for the Environment, Minister for Māori – Crown Relations, Associate Minister for the Environment, and I have delegated authority to approve a clause that preserves iwi and hapū customary rights and interests in water [CAB-22-MIN-0144].
- 32. The Bill includes a preservation clause to this effect. It has been important to ensure the clause is compatible with any similar clause that might be incorporated in the Natural and Built Environments Bill, and is consistent with existing Treaty settlements and undertakings the Crown has previously made about customary rights and interests in water. The clause will be tested at select committee and that will give an added level of assurance.

Further engagement with credit rating agencies

33. The final design of the governance and representation arrangements has been formally tested with Standard & Poor's to ensure it achieves balance sheet separation. As agreed by Cabinet, the Prime Minister, Minister of Finance, and I were authorised to consider the findings of Standard & Poor's assessment and confirm the final design of the model for inclusion in the draft Bill [CAB-22-MIN-0144].
34. Standard and Poor's have confirmed that, on the basis of current policy decisions and under their rating methodology, the water services entities would be treated as structurally separate from local authorities, and would achieve operational and financial independence. This means that the reforms can proceed with public ownership of the new water services entities by territorial authorities, and strategic oversight by territorial authorities and mana whenua.
35. As requested by Cabinet, officials have further considered the proposed role of the regional representative group and its relationship to the board of the entities, and whether the proposed structure would be an impediment to independence of the board or the appointment of high-quality candidates. On balance, officials do not consider the recent changes to the ownership, representation, governance and accountability arrangements would interfere with the board's independence or the ability to appoint high-quality candidates.
36. The Department of Internal Affairs will continue to engage with Standard & Poor's and the Treasury on matters relating to credit rating and balance sheet implications for the water services entities, territorial authorities and the Crown as the reforms progress.

Proposal to entrench privatisation protections

37. In response to a proposal made by the Working Group, Cabinet agreed to amend the Bill to entrench provisions that protect against privatisation of water services infrastructure, in a similar form to section 268 of the Electoral Act 1993 [CAB-22-MIN-0144].
38. In doing so, Cabinet noted that I wrote to all political parties seeking their support for this proposal. Standing Order 270 would require entrenchment to be carried by a 75 per cent majority when the Bill reaches the committee of the whole House.
39. Cross-party support for entrenchment of the privatisation provisions has not emerged, and I have not received written responses from other parties to my letter. This is regrettable in that the greatest opportunity we have as a Parliament to ensure that we can safeguard against privatisation is to secure cross-party support. I therefore propose that Cabinet rescind its previous decision to entrench the privatisation provisions in the Bill. 9(2)(f)(iv), 9(2)(g)(i)

40. The Bill will continue to contain very strong safeguards that are significant obstacles to privatisation. Clause 116 prohibits a water services entity from divesting ownership in water services, or losing control of the significant infrastructure necessary for providing water services, unless the entity first complies with Schedule 4. Clause 116 is based on the existing section 130 of the Local Government Act 2002 which has been effective over a significant period of time.

41. Schedule 4 in turn requires that a divestment proposal must have the unanimous support of the entity's territorial authority owners *and* at least 75% support of its regional representative group *and* at least 75% support in a poll of electors in the entity's service area. These protections will in practical terms make it very difficult for any privatisation proposal to proceed.

Aspects of the Bill that are likely to be contentious

42. The Bill gives effect to Cabinet's decision to take a 'legislated all in' approach to implementing the reforms. This means every territorial authority district is included in one of the new entities established through this Bill, and there will not be an opportunity for councils to decide to 'opt out' of the reforms.
43. Some councils, individual elected members, groups, and members of the public have already voiced their disagreement with this general approach. There have also been concerns, misunderstandings, misinformation, and misconceptions about the status of the water services entities – particularly in relation to the ownership nature of the entities and their assets. The Bill includes a number of provisions that ensure the entities, their assets, and the services they deliver remain in public ownership and control in perpetuity.
44. The proposed reforms do not involve the seizure of assets or disenfranchisement of communities in connection to those assets. These assets will remain in community ownership. The proposals to strengthen community ownership of the entities (and their assets) through a public shareholding structure, in which territorial authorities hold shares on behalf of their communities, should help to reinforce this important message, and embed it in the legislation.
45. Water services entities will have a two-tier governance structure, comprising a regional representative group and a corporate board. Appointments to the regional representative group will be based on a representative model, where half of its members are drawn from territorial authorities, and half are from mana whenua in the service area of the entity. The regional representative group will represent the views of territorial authorities and mana whenua in the service area of the entity, and will approve the strategic direction of the entity, but will not be involved in making operational decisions about what an entity does or how it functions.
46. Appointments to the board will be made on the basis of the skills of individual members, or collective competencies across the board as a whole, and not whether a person is from a council or mana whenua. The practical benefits of this approach will enable a strategic focus on the broad benefits of service delivery and infrastructure investment decisions across a catchment, with due consideration for the health, environmental and economic benefits for all communities in that area.
47. Further work is also being undertaken to consider other policy issues raised during the eight-week engagement with local government and iwi/Māori, which do not need to be addressed in relation to this Bill. Where relevant, the results of this work will be included in future Cabinet papers, and – if agreed – subsequent legislation. This may include, for example, consideration of entity-specific schedules to recognise unique characteristics and Treaty settlement legislation.

Impact analysis

48. A regulatory impact analysis was submitted at the time initial Cabinet approval of the policy relating to the Bill was sought, in June and July 2021 [CAB-21-MIN-0226 and CAB-21-MIN-0269].

Compliance

49. The Bill complies with:

- 49.1 the principles of the Treaty of Waitangi;
- 49.2 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993;
- 49.3 the disclosure statement requirements;
- 49.4 the principles and guidelines set out in the Privacy Act 2020;
- 49.5 relevant international standards and obligations;
- 49.6 the Legislation Guidelines (2021 edition), which are maintained by the Legislation Design and Advisory Committee.

Consultation

50. The Ministry for the Environment; Ministry of Health; Ministry of Business, Innovation and Employment; The Treasury; Ministry for Primary Industries; National Emergency Management Agency; Ministry of Housing and Urban Development; Department of the Prime Minister and Cabinet; Ministry of Transport; Taumata Arowai, Te Puni Kōkiri; Te Arawhiti; Infrastructure Commission; New Zealand Transport Agency; Public Services Commission; Inland Revenue Department; Department of Conservation; Ministry of Education; New Zealand Defence Force, and Department of Corrections have been consulted on this paper.
51. Feedback on relevant technical aspects of the Bill was sought from the Office of the Auditor-General and Office of the Privacy Commissioner.
52. There has been an ongoing programme of engagement with local government and iwi/Māori throughout the three waters reforms, including through the Joint Central/Local Government Three Waters Steering Committee and the Working Group on Governance, Representation and Accountability. The Committee was provided with an exposure draft of the Bill, for feedback. Local government technical input was provided by Taituarā – Local Government Professionals Aotearoa.

Binding on the Crown

53. The Bill states that the Act will bind the Crown.

Creating new agencies or amending law relating to existing agencies

54. The Bill will establish four water services entities, which will be owned by territorial authorities and are not Crown entities. The Bill provides for Parts 1 to 6 of the Local Government Official Information and Meetings Act 1987 to apply to a water services entity as if that organisation were a local authority; and Part 7 of that Act to apply to the regional representative group.

55. The Bill provides the Department of Internal Affairs with certain powers during the 'establishment phase' of the new water services entities, based on similar powers that applied during the Auckland governance reforms. These powers are set out in the transitional provisions in Schedule 1.

Allocation of decision-making powers

56. The Bill does not involve the allocation of decision-making powers between the executive, the courts and tribunals.

Associated regulations

57. Most of the provisions in this Bill are intended to come into force through Order in Council. This is anticipated to occur on 1 July 2024, which is the date on which the new water services entities would begin operating. This would be a straightforward drafting task.
58. The Bill enables regulations to be made to:
- 58.1 provide for transitional and savings provisions concerning the coming into force of the Act that may be in addition to, or in place of, the provisions in Schedule 1, including transitional reporting obligations to apply to local government organisations or water services entities during the establishment phase;
 - 58.2 change the name of a water services entity by amending the references to the entity in Schedule 2.
59. Regulations may also be made to provide for a model constitution for each water services entity. Before recommending the making of these regulations, the Minister must engage with the territorial authority owners and mana whenua in the service area of each entity.

Other instruments

60. The Bill does not include provisions relating to other instruments.

Definition of Minister/department

61. The Bill includes a definition of Minister, this being the Minister of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is responsible for the administration of this Act.
62. The Bill also includes a definition of department, this being the department for the time being responsible for the administration of this Act.

Commencement of legislation

63. The Bill is expected to come into force in stages.
64. Some provisions will come into force on the day after the date of Royal assent. These include the purpose and interpretation sections, regulation-making powers, and the transitional arrangements.
65. The remaining provisions would come into force through Order in Council, on a date appointed by the Governor-General and, to the extent not brought into force earlier, on 1 July 2024. This date is the anticipated date on which the new water services entities will begin operating.

Parliamentary stages

66. The Bill should be introduced by 31 May 2022 and passed by 15 December 2022. It is important that this Bill is introduced and passed before the end of this year, to ensure we keep to the intended timetable for reform.
67. This timing is important to enable the transitional arrangements contained in the Bill to come into effect as quickly as possible, to support and facilitate the entity establishment and implementation processes. It will also ensure the Bill is introduced and will be progressing through the select committee process in advance of the local government elections in October 2022.
68. It is proposed that the Bill be referred to the Finance and Expenditure Committee for consideration.

Proactive release

69. I intend to release this paper (subject to any redactions) in accordance with the requirements in Cabinet Office circular CO (18) 4.

Recommendations

70. The Minister of Local Government recommends that the Cabinet Business Committee:
 1. **note** that the Water Services Entities Bill holds a category 2 priority on the 2022 Legislation Programme (must be passed in the year);
 2. **note** the Bill gives effect to a series of decisions made in 2021 to transform the three waters service delivery system [CAB-21-MIN-0226; CAB-21-MIN-0227; CAB-21-MIN-0228; CAB-21-MIN-0269; and CAB-21-MIN-0419], including through provisions for:
 - 2.1 the establishment of four, publicly-owned water services entities to take over responsibilities for three waters service delivery and infrastructure from local authorities from 1 July 2024;
 - 2.2 the ownership, governance, accountability, and associated arrangements relating to the new water services entities, including:
 - 2.2.1 territorial authority ownership of the entities;
 - 2.2.2 a joint oversight framework, involving an equal number of representatives of the territorial authorities and mana whenua from within the service area of each entity;
 - 2.3 protecting the public interest in relation to the new water services entities and three waters system, including safeguards against privatisation;
 - 2.4 transitional arrangements relating to the establishment and governance of the new entities; reporting obligations; employment; and the oversight powers of the Department of Internal Affairs during the establishment period;
 3. **note** that recommendations of the Working Group on Representation, Governance and Accountability (Working Group), as agreed by Cabinet on 19 April 2022 [CAB-22-MIN-0144], have been incorporated into the Bill;

4. **note** the changes made as a result of the Working Group's recommendations are designed to address the concerns raised by the local government sector, provide clarity about some of the core aspects of the new model, achieve greater community buy in for the reforms, and provide a more flexible basis for tailoring different governance arrangements for each entity;
5. **note** that:
 - 5.1 the Minister of Finance and Minister of Local Government have considered options for ensuring the Crown can recover establishment costs it incurs through the transition period on behalf of the water services entities; and
 - 5.2 this matter has been addressed in clause 26 of Schedule 1 of the Bill, and ensures that costs incurred by the Crown before the entities are established will be subsequently reimbursed to the Crown by the relevant entity;
6. **note** that:
 - 6.1 the Attorney General, Minister for the Environment, Minister for Māori – Crown Relations, Associate Minister for the Environment, and I have considered options for a clause that preserves the status quo iwi and hapū customary rights and interests in water in the Bill; and
 - 6.2 the Bill includes a preservation clause to this effect, following the consideration of options by delegated Ministers;
7. **note** that the Prime Minister, Minister of Finance and Minister of Local Government have considered the findings of Standard & Poor's, as authorised by Cabinet on 19 April 2022 [CAB-22-MIN-0144], and confirmed the final design of the model for inclusion in the draft Water Services Entities Bill;
8. **note** that, in response to a recommendation made by the Working Group, Cabinet agreed to amend the Bill to entrench provisions that protect against privatisation of water services infrastructure, in a similar form to section 268 of the Electoral Act 1993[CAB-22-MIN-0144];
9. **note** that, in doing so, Cabinet noted that I wrote to all political parties seeking their support for this entrenchment proposal, as Standing Order 270 would require entrenchment to be carried by a 75 per cent majority when the Bill reaches the committee of the whole House;
10. **note** cross-party support for entrenchment of these provisions has not emerged;
11. **agree** that the Water Services Entities Bill should not entrench the privatisation provisions in the Bill;
12. **note** that the Bill will continue to contain very strong safeguards that are significant obstacles to privatisation, including:
 - 12.1 provisions based on section 130 of the Local Government Act 2002 preventing a water services entity from divesting ownership in water services, or losing control of the significant infrastructure necessary for providing water services;

IN CONFIDENCE

- 12.2 requirements that, for a divestment proposal to proceed, it must have the unanimous support of the entity's territorial authority owners *and* at least 75% support of its regional representative group *and* at least 75% support in a poll of electors in the entity's service area;
- 13. **approve** the Water Services Entities Bill for introduction;
- 14. **agree** that the Bill be introduced on 31 May 2022;
- 15. **agree** that the Government propose the Bill be:
 - 15.1 referred to the Finance and Expenditure Committee for consideration;
 - 15.2 enacted by 15 December 2022.

Authorised for lodgement

Hon Nanaia Mahuta

Minister of Local Government