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Infrastructure New Zealand's Submission to the Expenditure and Finance Committee – Local Government (Water Services) Bill

1. Introduction

1.1 Infrastructure New Zealand (INZ) welcomes this opportunity to submit to the Finance and Expenditure Committee on the Local Government (Water Services) Bill.

1.2 INZ is New Zealand's membership organisation for the infrastructure sector. We promote best practice in national infrastructure development through research, advocacy and public and private sector collaboration. Our 150 members come from diverse sectors across New Zealand and include infrastructure service providers, investors, and operators.

2. General Remarks

2.1 INZ remains a key proponent for reform to New Zealand's three waters sector. Establishing sustainable funding of water service assets is critical.

2.2 The water sector is facing a significant challenge and the existing regime with the need for high levels of investment in critical infrastructure over the next 50 years. Unfortunately, many council owners have had to trade-off investment in the maintenance and renewal of critical water assets with the many other demands placed on them. This current state is unsustainable, and change is urgently needed. Above all else, the sector needs certainty to make the decisions and investments in their water networks that are urgently needed.

2.3 While this Bill goes some of the way to addressing this issue, we are not convinced that this issue is resolved and anticipate further work will be required beyond the current implementation timeframes. This Bill provides the choice of options for the new water delivery services system. Communities are being provided with an opportunity to decide what is the most appropriate model for their local water services. Public consultation will be difficult as the concepts are hard to convey and there is still a need to cut through previous noise and misinformation on the topic. Unfortunately, the first implementation of the final Act provisions will not provide the sector with the economies of scale and efficiencies that had been originally sought through water reform. The Government should consider whether there should be some 'carrots" for amalgamation initiatives and "sticks' where a less than optimal arrangement is decided upon.

2.4 INZ generally supports the government's proposal, Local Water Done Well, as contained within this Bill. But we view this as the start of a journey to embed real change in the sector and address under-investment.

2.5 We have not provided comments on the entire Bill provisions but have identified some critical aspects that we consider need addressing before this legislation is finalised.

3. Key Points

Timing of transition

3.1 INZ understands that councils and water entities will only have from August 2025 (when the Water Service Delivery Plan) is adopted until December 2025 to undertake the establishment work. While we are keen to see an efficient transition to the new water delivery structure, we also want to ensure that this is robust. A twelve-month period would be more realistic. We understand that there is allowance for an exemption but there is no indication of the criteria or the consideration process.

Consultation on Options

3.2 Public consultation requires the councils to consult on the status quo and at least one other option but the reality is that the status quo is a non-option and not actually viable. This needs to be clear to the public that keeping the existing arrangements is not possible.

Consideration of Growth

3.3 INZ is surprised to see that the consideration of growth does not feature in the Bill. Network capacity and future planning of services has been an ongoing challenge. That it now appears to be ignored is concerning. The legislation should establish a new system which is futureproofed.

Statement of Expectations

3.4 The proposed Statement of expectations, which is issued to a water organisation by its shareholders and sets out the strategic and performance expectations for the organisation. Each water organisation will be required to give effect o the statement of expectations, including in its water services strategy. This is a very high bar and doesn't allow for a reasonableness test.

Stormwater infrastructure

3.5 There is a need to consider stormwater infrastructure as a whole. Stormwater assets located in the transport corridor are integral to the overall stormwater network functions. Clarity around ownership and responsibilities are needed including in relation to green infrastructure and the maintenance of stormwater assets located on private property.

Not for profit organisations

3.6 It needs to be clear that the Water Organisations are not-for-profit entities. This would address concern that they could be privatised and be profit driven. The revenue from water service charges needs to be reinvested in the water services network and facilities. This needs to be clearly spelt out.

General Power of Entry

3.7 INZ is concerned that the Local Government (Water Services) Bill that do not grant water services entities access to carry out work in relation to water service infrastructure on private property. INZ is concerned that the provisions as they stand will lead to delays, additional costs and inefficiencies in the operation of the new water services entities. **The powers provided are more limited** than current access powers provided under the Local Government Act 2002.

3.8 The Bill provisions (Clause 117) requires the WO to notify both the landowner and occupier at least 15 working days prior to any work being carried out on their property and provide at least 15 working days' notice to any change in the date or time. This is not always practical or feasible. The makes it a much more difficult and onerous process to construct or place important water services infrastructure than is currently given to local authorities. This will greatly impede the ability of WOs to achieve their objectives under the bill.

3.9 INZ supports a further amendment to this bill that adopts the status quo for land access in the Local Government Act 2002. This is critical so that water service entities can carry out their functions in a timely and efficient manner.

INZ recommends proposes the insertion of a clause akin to section 171 of the LGA (with changes relevant to the WO):

171 General power of entry

(1) For the purpose of doing anything that the Water Services Entity is empowered to do under this Act or any other Act, a Water Organisation representative may enter any land or building other than a dwellinghouse

OR

(2) For the purposes of carrying out maintenance, emergency repairs and routine inspections of water assets, a Water Organisation representative may enter any land or building other than a dwellinghouse.

(3) If a Water Organisation exercises the power under subsection (1) (or 2) to enter unoccupied land or unoccupied buildings, the local authority must notify the owner—

(a) *not less than 24 hours in advance of the intended entry if it is reasonably practicable to do so; or*
(b) *as early as reasonably practicable, whether before or after entry has been made.*

4. Conclusion

4.1 We thank the Finance and Expenditure Committee for the opportunity to submit on Local Government (Water Services) Bill.

ML McCormick

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Annex 1: Table of Recommendations

Reference	Contents	Comment / Amendment
Factsheet Schedule 1 s8	DIA Factsheet – provisions make this clear but the transition provisions are not totally clear in the Act, especially in regards to all the different Water Organisation (WO) models	Councils would have from August (when WSDP is adopted by councils) to December to do most of the establishment work incorporated in the transfer agreement. This is considered too shorter period. Twelve months might be workable. The target date should be by July 2026 where an new entity is being established. There is allowance for an exemption but no indication of the criteria or consideration process. **Clearly Clarify timeframes and consider extension to July 2026.**
Clause 4	**Interpretation** **overland flow path** definition lacks necessary detail **stormwater service** definition is too narrow	**Amend the** definition of overland flow path to that which is used in the Auckland Council Unitary Plan. It is widely used and accepted by local government organisations, would provide certainty as to what is included in these paths. **Amend** to align with the definition in the Auckland Council Stormwater Bylaws 2015. This would include provision for storage and conveyance, such as "collection, treatment, drainage, **storage**, reuse, **conveyance** or discharge stormwater in an urban area…"
Part 2	**Structural arrangements for providing water services**	
Clause 10	**Exception: Transport corridors** Ownership and responsibility for transport corridor stormwater infrastructure cannot be transferred	This will require further clarity as to what stormwater assets are included and where the separation is. Where is the boundary when the stormwater assets in the road connects to the wider network stormwater infrastructure? This is an inter-connected system with all elements needing to work together. Delineation of roles and ownership could introduce additional risk apply. Road corridor assets need to function well with the downstream stormwater infrastructure, including nature-based stormwater assets. **Amend** to include further clarity here.
Clause 16	**Financial principles for water services providers**	These provisions seem too limited. There is reference only to revenue and expenses. Debt and financing are not mentioned.

		16(1)(a) could potentially be interpreted as saying you can only spend revenue directly on the services and not on interest payments or debt repayments. **Consider amendment** to clearly allow for the use of debt and financing by water service providers.
Part 3	**Provision of water services: operational matters**	
Clauses 60-63	**Charges for water services** *Clause 60 (6)(b) [A charge] must not be based on, or take into consideration, any property valuations, including a property's annual value, land value, or capital value.* Except for a new water org, who can phase out using property valuations as a base over five years (clause 63)	INZ considers that Guidance is needed as to how to move to a new model for setting charges, uncoupled from land value. Guidance should cover pricing principles. Each organisation might have its own challenges, i.e. growth councils vs shrinking, etc. Two waters vs three. Existing customers vs future customers. New service levels (i.e. water quality) vs existing. Te Waihanga have done some work in this area. Guidance on stormwater charges is also required.
Clause 61	Sets additional requirements for stormwater, including on the basis of property location	The proposed stormwater provisions appear quite constraining since a charge cannot take into consideration land or capital value, but Cl.61(2) says that cost is recoverable based on distinct features of the property such as its location and geographic features. This means that the charge needs to be at the property level but cannot be related to property value. The proposed approach is inconsistent with the findings of the Infrastructure Commission Report on stormwater pricing: https://tewaihanga.govt.nz/our-work/research-insights/stormwater-pricing-study ***Amend to reflect that*** Stormwater charges must be variable dependent on land use. The Bill must include a mechanism for varying stormwater charges based on the type of land use. The Bill currently does not have a mechanism for varying this charge, which means a WO could not increase stormwater charges for areas that are scheduled for development, or to certain businesses that have a higher demand for reducing contaminants such as car scrapping yards.
Clause 79	**Development contributions principles**	**1. Increase in commercial demand** Currently these transferred provision from the Local Government Act 2002 (LGA) do not allow water organisations to collect developer contributions (DCs) for increased demand from commercial or business customers. Increases in demand use up the capacity in the network faster than what was initially planned through the resource/building consent, so these businesses should be making contributions towards the cost of growth infrastructure. Otherwise, water organisations will not be able to recover the full cost of growth investment. **Amend provisions to include the** repealed Water Services Legislation Act 2023 allowed for the ability to charge for increased demand and something similar should be considered for the Bill.

Commented [FC1]: Perhaps the guidance might be around pricing principles? Each organisation might have its own challenges, i.e. growth councils vs shrinking, etc. Two waters vs three. Existing customers vs future customers. New service levels (i.e. water quality) vs existing. Te Waihanga have done some work in this area.

Clause 109	**Crown exempt from development contributions**	***Remove*** the Crown exemption from water infrastructure contribution charges should be removed. If we are moving to a direct charging regime for water service then exemptions should not apply. These charges will be broader than a standard capital contribution for incremental connection costs. Instead these charges seek to recover the cost of the infrastructure investment required for the WOs to meet projects required to augment WO networks for expected growth. In addition, as a potentially significant contributor, exempting the Crown means other consumers will need to make up the shortfall.
Clause 116 (5)	**Power to carry out work in relation to water services infrastructure on land** *(1) A water service provider may enter land to carry out any of the following work that it considers necessary or desirable for the provision of water services in its service area:* *(1)(a) does not apply to—* *(a) land owned by the Crown; or* *(b) land held or administered under the Conservation Act 1987 or any of the Acts specified in Schedule 1 of that Act.*	It is unclear what happens when the is a need to carry out work on Crown and Conservation land?
Clause 117	**Notice required before carrying out work on, over, or under land** - In writing, 30 days before work - Owner must reply within 10 days with consent/refusal/conditions – **if they don't, work can proceed.** - If owner is unhappy with hearing determination, they can appeal to District Court - If provider is unhappy with conditions set by owner, they can apply to District Court	30 days written notice is not practicable in many situations. (See submission on this to Water Services Legislation Bill which proposed 15 days notice) Seems to conflict with 119 where if an owner has not consented, there's a hearings process. Wellington Water holds significant concerns concerning the ability of a WO to gain access to land to construct or place water services infrastructure on, under or over the land. The requirement that a WO either obtain consent from the landowner or gain access through a District Court order will prove unworkable due to the often large number of properties such a regime would require a WO to engage with, and the fact that many landowners would likely not engage with the process and the potentially unreasonable conditions landowners might impose.
Clause 142	*Owners of land not responsible for maintenance* *(1) An owner of land on which any existing water services infrastructure is situated is not required by this Act to maintain the infrastructure, or to maintain tracks for the purpose of providing the owner of the water services infrastructure with access to the infrastructure.*	For stormwater services, Cl 142 (a) perpetuates the existing issues with overland flow paths not being adequately maintained which has contributed to serious flooding events. This is a critical issue as severe weather events as a result of climate change before more frequent. **Add** a clause here to ensure owners of land with overland flow paths are responsible for maintaining them.

Clauses 164-176	Subpart 7—Management of stormwater networks	It is not clear what the extent of the responsibilities for these linked systems, lies with the WO. For example, having responsibility for overland flow paths and watercourses that are linked to a stormwater network, may be reaching unreasonable. For the councils, there are way too many overland flow paths including through private properties and the shared responsibilities for the watercourse between councils. **Provide further** clarification on the extent of the link between these systems and the stormwater network will be useful. Or provisions in the bill that specifies that roles and responsibilities for these systems be established to ensure the proper function of the stormwater network. Also provisions that give the WO powers to enforce maintenance and protection of these systems. The current clauses including 174 and 175 are not enough.
Part 4	**Planning, reporting, and financial management**	
Subpart 1 – Planning Clauses 186-187	**Water organisation must give effect to statement of expectations** A water organisation must give effect to a statement of expectations provided by the shareholders of the water organisation. And the mandatory **Content of statement of expectations**, including the shareholders' expectations, strategic priorities, outcomes to be achieved, requirements for resource management planning and land-use planning	This provision for Statement of Expectation (SoE) "must give effect to" sets a very high bar. This is much stronger than the Local Government Act requirement, where shareholders may prepare a statement of expectations, and the statement of intent provides an opportunity for shareholders to influence the direction of the organisation. What if expectations are unreasonable? Related to this, the potential content of the SoE are quite broad, including priorities, how the org should conduct itself, community engagement, and collaboration (that should instead be defined in the transfer agreement?). All of these can create constraints and add costs. The only escape route seems to be s188(2) that says the expectations cannot compromise financial independence. This then relies on the water org pushing back against the expectations. **Amend to "must take account"**
	Schedule 3 – Contents of water services strategy	Is there a whole "affordability" loop missing in this process? -TAs/shareholders set requirements in Statement of Expectations. -WO must "give effect" to SoE (and other expectations from regulators, Comcom). -WO then prepares strategy saying how it will meet expectations but it is not required to consult on it (s196(5)). (Though the shareholders may require consultation on "proposals" contained in the draft). -So there is no formal process for the WO to consult with communities about what they are asking for, what it costs to provide it, and whether they are prepared to pay for it? It all still falls back to the shareholders with our a direct relationship between the WO and its customers. Under the current arrangements this would happen (though to a limited degree) through the LTP but there is no equivalent process here.

		Also, the first 5 years of the strategy will need to allow for the required transition of charging from property valuation to some other regime (s63) but there is no obligation to consult with anyone at all about what that new regime will look like. The Strategy just has to set out the intended approach. The approach to levels of service is also a bit opaque. Sch 3 s3(1)(c) says the strategy must include performance measures (including Comcom and LGA) and performance targets against these measures, but who sets the targets? Sch.3 cl.2(1)(f)(v) says the strategy must explain issues affecting ability to maintain existing levels of service but we know that many of our current targets are unrealistic and we have no level of service for stormwater for existing customers? Where does the conversation about LoS vs investment/affordability happen? Overall, the approach provides for limited independence for the water org compared to equivalent regulated entities in NZ or water utilities overseas. These other entities have more autonomy on strategy setting and prioritisation, and 'own' corporate and wider risk management and its connection to strategy. Where does the organisation get to write its own strategy and be held to account by its customers against that strategy?
Part 5	**Amendments to other legislation**	
319	National Engineering Design Standards (NEDS)	A challenge here is that, by definition, these NEDs include treatment infrastructure (all waters) where our current standards only apply to linear/network assets. The legislation leaves it open for the NEDS to varied in their application. How do the NEDS relate to Infrastructure Design Solutions (new Subpart 7B?) Presumably if an IDS is established then the NEDS would need to specify products, etc. consistent with the IDS? NEDS is not limited to "design" and "Standards" is also commonly understood to be more materials specific (e.g. AS/NZS standards). **Amend** the name be National Code of Practice for Water Infrastructure, or alternatively National Water Infrastructure Specifications.
Part 6	**Miscellaneous provisions**	
346 – 355 (and x reference to s110)	Water services bylaws *Subpart 1* sets out the power for territorial authorities to make water services bylaws (*see clause 347*). Bylaws can be made in relation to topics including drinking water, trade waste, network connections, and the use of equipment and devices. Other matters in *subpart 1*, in relation to water services bylaws, include—	There's a high level of duplication / overlap / cross reference with LGA02 (e.g. very simple case, section 352 for 10-yearly reviews is routine in LGA02). The current powers in LGA02 s 146 have been higher level, they might persist, so could a TA choose? It might be better to just amend the LGA? The provisions seem to give a water service provider scope to do all the development of a bylaw (s348), but the TA make the final decision and not need to do "consultation" that the TA would usually have done s349. Usually, a TA would provide the opportunity for oral hearings in consultation! Unclear how the water services could do that? The first few years could need a lot of checking on processes with lawyers – bylaw already need careful processes. 348 to 351 could go to LGA02.

	the ability of territorial authorities to delegate the administration and enforcement of water services bylaws to water service providers (*see clause 350*); and the ability of water service providers to propose that a territorial authority make a bylaw (*see clause 348*); and mandatory initial and ongoing reviews of water services bylaws (*see clauses 351 and 352*).	Section 110 is very prescriptive and relationship with sections 346 to 355 is unclear. Why is 110 needed? It could be because some TAs don't have water supply bylaws at all? Should specifics about bylaws be in the same section? All of the bylaw processes only provide for the water services org to "recommend" a bylaw. What options are available to the WS org if the TA doesn't follow through on the bylaw or ultimately declines it or restricts it in a manner that prevents the WS org for meeting its obligations. Does the WS org have to appeal to the Courts? Similarly, what happens if the TA doesn't delegate the necessary monitoring and compliance functions? They could fail to meet their performance requirements (such as resource consents) because of the inaction of the TA. • Bylaw reviews and new bylaws need legal, policy, communications, and subject matter resource and expertise, as well as governance resources, regardless of where the work is done. • There will be extra complexity to cross-reference new water services legislation and the existing provisions of the Local Government Act, and the risk of legislation not fully aligning given a level of duplication and overlap between the proposed new legislation and the Local Government Act. • To support success of the new system, Standards New Zealand / Ministry of Business, Innovation and Employment, should supply, within six months of new legislation commencing, new model bylaws that comply with the new legislation. This would help new entities through policy and legislative considerations required and help retain a level of consistency around the country.
Schedule 1	**Transitional, savings, and related provisions**	
Clauses 1-4	Transfer of employees	These provisions should provide employment guarantees for affect employees but there is a missing clause. This is important to provide clarity to affected personnel. The potential loss of skilled water sector workers needs to be addressed. It is critical that we maintain the existing workforce and provide for an easy transition to the new WO. **Amend** to add that chief executive of Organisation B is required to make offer of employment to identified employees.