

Water Services Bill 2020

Information for Members

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Summary

The Water Services Bill creates significant requirements around the provision of drinking water for communities across New Zealand.

The Bill establishes Taumata Arowai as the new national water services Regulator.

It has been brought about by the recommendations and findings of the Havelock North Drinking Water Inquiry. The Inquiry found that there are six fundamental principles of drinking water safety:

1. A high standard of care must be embraced in relation to drinking water
2. Protection of source water is of paramount importance
3. Multiple barriers against the contamination of drinking water must be maintained
4. Change precedes contamination of drinking water, and must never be ignored
5. Suppliers must own the safety of drinking water
6. A preventive risk management approach must be applied in relation to drinking water.

The Bill is part of the wider reform programme of Three Waters (wastewater, stormwater, drinking water) that the Government is undertaking. The Bill will also amend the Local Government Act 2002 to align it with the new legislation.

The new requirements under the Bill will apply to irrigation schemes that deliver water for domestic supply purposes.

The main requirements are for:

- The implementation of Te Mana o te Wai.
- Drinking water suppliers to provide safe water through the development and implementation of safety plans.
- The protection of source drinking water by suppliers through the development and implementation of source water protection plans.
- Registration of drinking water suppliers.
- Multiple barriers to contamination being adopted.
- Ongoing monitoring and reporting.

The Bill also sets out the powers and duties of the Regulator, as well as a range of offences, defences, and penalties for non-compliance.

Contents of the Bill

Key definitions

Drinking water

- Water that is used for **human consumption**; **oral hygiene**; preparing **food, drinks**, or other products for human consumption; and **washing food utensils**. It does not include bottled water.

Safe drinking water

- Drinking water that is **unlikely** to cause a **serious risk** of **death, injury**, or **illness** (immediately or over time).

Drinking water supply

- The **infrastructure and processes** used to **abstract, store, treat, transmit**, or **transport** drinking water for supply to consumers.
- This includes: the **point of supply**, any **end-point treatment** device, and any **backflow prevention** device. It doesn't include temporary supplies.

Drinking water supplier

- A person or entity that **supplies drinking water** through a drinking water supply, including the owner and operator of the supply.
- A person or entity that **supplies drinking water to another** drinking water supplier.
- Doesn't include domestic self-suppliers.¹

The point of supply

- The toby, reservoir float valve, or other **final point of supply** to which consumers' own infrastructure connects.
- The water carrier, community water tap or other **final supply point** at which the consumers can **consume, use, or collect** drinking water; or
- The **end-point treatment device**.

¹ Domestic self-supply is a stand-alone or single domestic dwelling that has its own supply (for example, a holiday house with a rainwater tank or home with its own bore.

Te Mana o te Wai

Incorporates six principles:

- **Manawhakahaere** – the power, authority, and obligations of **tangata whenua** to **make decisions** around freshwater.
- **Kaitiakitanga** – the obligation of **tangata whenua** around **guardianship** of freshwater and its use.
- **Manaakitanga** – the process by which **tangata whenua** show **respect, generosity,** and **care** for freshwater and others.
- **Governance** – the **responsibility** of decision-makers to **prioritise** the **health** and **wellbeing** of **freshwater**.
- **Stewardship** – the **obligation** of **all New Zealanders** to manage freshwater so that it **sustains** present and future generations.
- **Care and respect** - the **obligation** of **all New Zealanders** to care for freshwater in **providing** for the **health of the nation**.

It includes a **hierarchy** of obligations that prioritises:

1. The **health** and well-being of **water bodies** and **freshwater ecosystems**
2. The **health** needs of **people**
3. The ability of people and communities to provide for their **social, economic,** and **cultural well-being**, now and in the future.

New functions, powers, and duties of drinking water suppliers

- Every drinking water supply must be **registered** under the Act and apply for re-registration **annually**.
- All people exercising functions, powers or duties under the Act must **give effect to Te Mana o te Wai** (where it is applicable).
- Drinking water suppliers must ensure the **drinking water they supply is safe**. This does not apply beyond the point of supply (see definition above).
- If there is a reasonable likelihood that the drinking water is or may be unsafe, the supplier must take several steps:
 - Take **immediate action** to protect public health
 - **Notify** Taumata Arowai (the Regulator)
 - **Investigate** the source or cause of the problem
 - Take **remedial action** to rectify the problem
 - Ensure the problem **does not reoccur**

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- Take steps to **advise consumers** that the water may be unsafe and provide advice on treatment.
 - Drinking water suppliers must ensure the drinking water they supply **complies with drinking water standards** (which can be made on the recommendation of the Minister). If it does not comply, the supplier must take similar steps to those listed above.
 - Drinking water suppliers must ensure the drinking water they supply **complies with the aesthetic values** for drinking water set by the Regulator.
 - Drinking water suppliers must ensure they **supply a sufficient quantity** of drinking water to consumers (although there are some exceptions, for example temporary restrictions for repairs and maintenance).
 - If the supply includes reticulation, the supplier must **protect against** the risk of **backflow**.
 - If the supply includes end-point treatment, the supplier is responsible for the installation, maintenance, and ongoing **testing** of the treatment device.
 - Drinking water suppliers must **keep and maintain records** around its operations, compliance, monitoring results, etc.
 - Drinking water suppliers must establish and maintain a **consumer complaints process**.
 - Drinking water suppliers must exercise due diligence in complying with the Act, including keeping up-to-date with knowledge and information.

Drinking water safety plans

The owners of drinking water supplies must prepare **drinking water safety plans**, which must be lodged with the Regulator. These plans must then be implemented, and the supply operated in accordance with the plan. The regulator will then review the plans and monitor compliance with them.

Drinking water safety plans must:

- **Identify** any current, emerging, or potential **hazards** to the supply
- **Assess** the **risks** associated with the identified hazards
- **Identify** how the risks will be **managed, controlled, or eliminated**
- Establish a **monitoring programme**
- Identify steps to **verify** that the plan is working

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- Implementation of a **multi-barrier approach** through: **preventing hazards entering** the raw water; **removing particles, pathogens, and chemical and radiological hazards**; killing or inactivating pathogens through **disinfection**; and maintaining the quality of the water **throughout the reticulation system**.
 - Include a **source water risk management plan** (see below).
 - Where the supply is reticulated, include **residual disinfection**.
 - Establish how **sufficient water** will be supplied.
 - Set out **response planning** for events and emergencies.

Source water

Drinking water suppliers must prepare and implement a **source water risk management plan** as part of their safety plan, to:

- **Identify** any current, emerging, or potential **hazards**
- **Assess** the **risks** associated with the identified hazards
- **Identify** how the risks will be **managed, controlled, or eliminated**
- **Have regard** to **values** identified by local authorities for the relevant freshwater body (as required under the National Policy Statement for Freshwater Management).

Suppliers must also undertake **monitoring of source water quality** at the abstraction point. These results must be reported to the Regulator who, in turn, must report them to regional councils. Regional Councils must publish the results (as well as information about source water quantity) annually.

Local authorities (i.e. regional councils, unitary authorities, and district councils) must also be involved in the process of developing the source water risk management plan, by:

- **Providing information** to suppliers about:
 - Land-use activities, potential sources of contamination, and other waters that could affect the quality or quantity of the source water;
 - Water quality monitoring of the source water;
 - Any known risks or hazards that could affect the source water.
- **Undertaking actions** agreed with supplier to address risks or hazards.

Taumata Arowai – the Regulator

The Regulator will have the authority to **issue further compliance rules**; acceptable solutions and **verification methods** for establishing compliance; and **templates** for safety plans. The Regulator has a general **requirement to consult** with the public before issuing these, although there are exceptions.

The Regulator has the **power to exempt** drinking water suppliers from their duties and obligations, under various conditions.

The Regulator may declare a **drinking water emergency** if it has reasonable grounds to believe there is a serious risk to public health and after consulting with the Minister. These emergencies have a maximum limit of 28 days. The declaration of an emergency gives the Regulator a range of powers, such as carrying out emergency works, closing public places, cancelling events, and requisitioning property (with compensation).

The Regulator can specify that persons undertaking specific roles or functions under the Act (such as operators of drinking water supplies, or those undertaking monitoring) hold particular skills, experience or qualifications.

Taumata Arowai will be **governed by a Board** which must develop a drinking water compliance, monitoring, and enforcement **strategy** at least **every three years**. It must also produce an **annual drinking water regulation report**.

Laboratory testing

The laboratories used to test water quality must be **accredited**. The accreditation body for laboratories is yet to be established. If a laboratory finds that a drinking supply does not meet the required standards, it **must notify Taumata Arowai**.

Powers and non-compliance

The Bill provides a range of powers and remedies in relation to non-compliance (or suspected non-compliance), including giving the Regulator the powers to:

- **Remove** an operator and replace them with one appointed by the Regulator.
- **Recover costs**, charges, and expenses incurred by the Regulator.
- Appoint **compliance officers**.
- Issue **directions**.

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- Take **immediate actions** if there is a serious risk to public health.
 - Take and test **samples**.
 - **Inspect** records and documents and require the supply of other information.
 - **Question** drinking water suppliers.
 - **Enter** locations relating to supply and treatment, to **search**, and to **seize** equipment.
 - Make applications for **search warrants**.
 - Issue **compliance orders**.
 - Undertake **remedial actions**.

The **District Court** may then **make orders** compelling compliance or restraining non-compliance.

Reviews and appeals

Decisions made by the Regulator and compliance officers **are reviewable** through an internal review **process undertaken by Taumata Arowai**. **Review decisions** are then **appealable through the Courts** (starting in the District Court).

Wastewater and stormwater

The Regulator must monitor and report on the environmental performance of wastewater² and stormwater networks and their operators.

The Regulator must also maintain a register of wastewater and stormwater networks.

Offences and penalties

The Bill sets out a range of offences, defences, and penalties for non-compliance with the Act. Penalties include fines ranging up to \$250,000 (depending on the offence).

² Note that a wastewater operator is a local authority, council-controlled organisation, or subsidiary; a government department; the New Zealand Defence Force; or any organisation or individual delegated by any of the above. Therefore, an irrigation scheme with by-wash discharges **is not** a wastewater network.

What happens next?

The Bill has had its first reading in Parliament and has been referred to the Health Select Committee.³ The Committee is receiving submissions and will then make any recommendations to Cabinet to amend the Bill, based on the submissions received.

Submissions close on **2 March 2021**. The Committee will invite submitters to present their submissions in a hearing, where they can ask questions of submitters.

The Bill will then be read again in Parliament, before becoming law.

³ The Health Select Committee is comprised of Liz Craig (Chair, Labour); Tracey McLellan (Deputy Chair, Labour); Chris Bishop (National); Matt Doocey (National); Elizabeth Kerekere (Green); Neru Leavasa (Labour); Sarah Pallett (Labour); Toni Severin (ACT); Gaurav Sharma (Labour); Simon Watts (National).

What will IrrigationNZ be doing?

IrrigationNZ will be preparing a submission based on feedback from our members, and after consultation with other primary sector organisations, and government agencies.

The Taumata Arowai Establishment Unit has already released the following drafts:

- Acceptable Solution for Rural Agricultural Water Supply
- Operational Compliance Rules
- Standards and Aesthetic Values
- Methodology to determine water supply population

We will hold a workshop on the issues with our affected members in late January or early February (date to be confirmed in the New Year). Information relating to the draft documents released by the Establishment Unit will be provided to members prior to the workshop.

If you have any specific issues or concerns, please contact our Regional Policy and Planning Manager, Elizabeth Soal, on 021 454 615 or email submission@irrigationnz.co.nz.

Want to know more?

You can read the Bill and find out more about the Select Committee process here: https://www.parliament.nz/en/pb/bills-and-laws/bills-proposed-laws/document/BILL_99655/water-services-bill

You can also find out more about the establishment of the new drinking water regulator, Taumata Arowai, on the Department of Internal Affairs website, and the drafts the Establishment Unit has released here:

<https://www.dia.govt.nz/Taumata-Arowai-Establishment-Unit>

The full Regulatory Impact Assessments, the report of the Havelock North Drinking Water Inquiry, and other background information can be found here:

<http://disclosure.legislation.govt.nz/bill/government/2019/202/>