



Te Wai Māori

TE WAI MĀORI TRUST’S RESPONSE TO THE LOCAL GOVERNMENT
(WATER SERVICES) BILL



Te Wai Māori Trust Response to the Local Government (Water Services) Bill

Introduction

1. This document provides Te Wai Māori Trust's response to the Local Government (Water Services) Bill (the Water Services Bill).
2. Te Wai Māori Trust (Te Wai Māori/the Trust) was established under the Māori Fisheries Act 2004 to advance Māori interests in freshwater fisheries. Protecting Māori interests in freshwater fisheries ultimately means protecting habitat to ensure quality water and abundant species. We are a product of the Deed of Settlement (Māori Fisheries Settlement) 1992 and an entity of Te Kāhui Te Ohu Kai Moana (Te Ohu Kai Moana Group).
3. Te Wai Māori works on behalf of 58 mandated iwi organisations (MIOs), who represent all iwi throughout Aotearoa. Te Wai Māori Trust's submission does not usurp or detract from any responses made independently by iwi or hapū, or any other pathway iwi and hapū may pursue to affirm their rights that may be affected by the Water Services Bill. In that regard, Te Wai Māori Trust's response is targeted to the Trust's key areas of concern.
4. Our response addresses:
 - (a) the background to Te Wai Māori Trust;
 - (b) our position in opposition to the Water Services Bill in its current form;
 - (c) a statement of key matters of concern; and
 - (d) recommendations to retain existing water service protections.
5. In providing this feedback we are not expressing support for the Water Services Bill or the policy intent behind it.
6. We do not wish to be heard on this response (we would prefer time is afforded to iwi and hapū groups who wish to be heard orally).

Te Wai Māori Trust

7. Te Wai Māori is an independent Māori Trust established under the Māori Fisheries Act 2004 (the Māori Fisheries Act). The purpose of Te Wai Māori is to advance Māori interests in freshwater fisheries. Protecting Māori interests in freshwater fisheries ultimately means protecting habitat to ensure quality water and abundant species and empowering our people to uphold their responsibilities regarding freshwater fisheries. The long-term outcomes the Trust works toward include:
 - enhancing the health and wellbeing of indigenous fisheries and their environment;
 - increasing iwi and hapū capacity and capability in freshwater fisheries and their ability to take responsibility for the health and wellbeing of freshwater fisheries;

- promoting and sharing indigenous fisheries expertise, knowledge and understanding; and;
 - increasing the quality and range of information to iwi and hapū on freshwater fisheries and their interests thereof.
8. Our core values are te mana o te wai, whakapapa, and kaitiakitanga. These values stem from the natural order of the Te Wai Māori worldview and they guide our mahi. First and foremost, we value freshwater and all that is encompassed in its ecosystems. The inherent right for water in its own state must be respected. Each water body has its own mauri. Whakapapa recognises our interdependence which binds us as tangata of the environment; and kaitiakitanga, our obligation and responsibility to care for Papatūānuku and ngā atua.
9. Te Wai Māori engages with a range of sectors and government agencies seeking to ensure that Māori rights and interests are upheld and iwi and hapū are recognised in government processes and resource management decision-making.

Our Position

10. Te Wai Māori is **opposed** to aspects of the Bill that relate to Te Tiriti o Waitangi, the Māori Advisory Group of Taumata Arowai, and Te Mana o te Wai.

Background

11. The Water Services Bill is part of the Local Water Done Well reforms. The Bill includes arrangements for the new water services delivery system, a new economic regulation and consumer protection regime for water services, and changes to the water quality regulatory framework and the water services regulator – Taumata Arowai.
12. This is the third bill that the Government has produced as part of this reform programme.
13. The first bill repealed the previous Government's water services legislation (Three Waters). The former Water Services Entities Act 2022 contained an overall duty and obligation to give effect to the principles of Te Tiriti o Waitangi and numerous provisions to protect Māori rights and interests in water.
14. The second bill was enacted in September 2024 and is called the Local Government (Water Services Preliminary Arrangements) Act. It established the Local Water Done Well framework and the preliminary arrangements for the new water services system. It also included interim changes to the Water Services Act that meant the Te Mana o te Wai hierarchy of obligations in the National Policy Statement for Freshwater Management (NPS-FM) would not apply when the Authority sets wastewater standards.
15. This third bill establishes the enduring settings for the water services system.

Key concerns

16. Key aspects of the Water Services Bill that Te Wai Māori are concerned about are amendments that

repeal the requirements in water services legislation to give effect to the principles of Te Tiriti o Waitangi and Te Mana o te Wai. They include:

- (a) Removing the obligation to give effect to the principles of Te Tiriti o Waitangi.
- (b) Limiting the role of the Māori Advisory Group.
- (c) Removing the requirement that an objective of the Water Services Authority - Taumata Arowai - is to "give effect" to Te Mana o te Wai (under section 10 of the Act previously known as Taumata Arowai-the Water Services Regulator Act 2020), and
- (d) Repealing section 14 of the Water Services Act 2021 which relates to the meaning, application and effect of Te Mana o te Wai.

Te Tiriti o Waitangi

- 17. The Water Services Bill undermines Te Tiriti o Waitangi. There is no requirement to adhere to Te Tiriti o Waitangi and no relevant Treaty or Māori interests' objectives for water service providers.
- 18. The Bill also removes the requirement to appoint Water Services Authority Board – Taumata Arowai Board (the Board) members who have the knowledge, capability and capacity to uphold Te Tiriti o Waitangi and engage with Māori to understand Māori perspectives.

Amendment sought

- 19. Retain the existing provisions relating to Te Tiriti o Waitangi outlined in sections 5 and 12 of the Taumata Arowai – Water Services Regulator Act 2020.

Māori Advisory Group - Taumata Arowai

- 20. The role of the Māori Advisory Group helps support the fundamental principles of Te Tiriti o Waitangi and Te Mana o te Wai, and enables the exercise of mātauranga Māori, tikanga Māori, and kaitiakitanga.
- 21. The Water Services Bill limits the role of the Māori Advisory Group by rescoping the role of the group in removing the requirement for the Board to have regard to advice of the Māori Advisory Group, removing the requirement for the Board to demonstrate how it has regard to the advice of the roopu, and reducing the size of the Māori Advisory Group from seven to five members.

Amendment sought

- 22. Retain the existing role and responsibilities of the Māori Advisory Group and its ability to provide advice on enabling mātauranga Māori, tikanga Māori and kaitiakitanga.

Proposed amendment to exclude the requirement to "give effect" to Te Mana o te Wai from the list of objectives of the Water Services Authority – Taumata Arowai

- 23. Drinking water, wastewater and stormwater infrastructure is critical to human wellbeing. Their provision and physical condition are also important to environmental quality and community

resilience, which is of increasing importance due to climate change. Around 85 percent of New Zealanders receive their drinking water and other water services from councils, with the remainder provided by smaller private and community-based schemes.

24. The Mana o te Wai is embedded as a fundamental concept in the management of water under the NPS-FM, and giving effect to Te Mana o te Wai is currently a requirement of water services providers under the Water Services Act 2021, overseen by Taumata Arowai.
25. Giving effect to Te Mana o te Wai ensures that the reasonable expectation of safe and clean freshwater is prioritised over other interests and enables sustainable economic development. This Bill directly undermines this.
26. Water quality is in a very poor state in New Zealand and many regions are overallocated and are experiencing low to no flow in key rivers and streams. There are significant existing pressures on freshwater and freshwater fisheries and some indigenous fish species and populations are verging on total collapse. The increased degradation of freshwater bodies also puts at risk already threatened ecosystems and the public health of communities.
27. Te Mana o te Wai is about the hierarchy of obligations that prioritises:
 - (a) First, the health and wellbeing of waterbodies and freshwater ecosystems.
 - (b) Second, the health needs of people (such as drinking water).
 - (c) Third, the ability of people and communities to provide for their social, economic, and cultural wellbeing, now and into the future.
28. It is worth noting that the genesis of the Te Mana o te Wai hierarchy of obligations followed the world's largest recorded campylobacter outbreak in Havelock North in 2016, where the National-led Government established a formal inquiry into its cause.¹ The NPS-FM was then rewritten to strengthen the protection of source water and prioritise the health and wellbeing of waterbodies (and freshwater ecosystems) and human health needs over commercial interests. These changes included introducing Te Mana o te Wai, the central decision-making framework in the country's national freshwater policy.
29. The hierarchy of obligations was introduced to stop further degradation of Aotearoa New Zealand's freshwater resources, to start making immediate improvements so that water quality was improving within five years, and to reverse past degradation to bring freshwater resources, waterways and ecosystems to a healthy state within a generation.
30. The Local Government (Water Services Preliminary Arrangements) Act removed the obligation for councils to apply the hierarchy of obligations when setting wastewater standards. The Water Services Bill will now remove Te Mana o te Wai in its entirety. This means that councils will be prevented from having regard to the hierarchy of obligations and removes the need to prioritise ecosystem health or

¹ Public Health Communication Centre Aotearoa, M Prickett, S Hales, T Chambers, M Baker and N Wilson, "Another Havelock North? Govt undoing protections for drinking water safety" 7 May 2024, page 2.

public health when making decisions on resource use.

31. The Water Services Bill will sweep away these hugely important gains in the NPS-FM which were built by multiple players over many decades. It is a fundamental step backwards at a time when freshwater is in dire need of protection. The access to safe drinking water should always be a priority over other water use and especially given that many rural Māori draw water directly from bores or surface water that is not treated.
32. Te Wai Māori also has fundamental concerns about the way in which the Water Services Bill has been developed at speed, without appropriate consultation and engagement with iwi and hapū, and with inadequate opportunity for public scrutiny.

Amendment sought

33. Retain the requirement to “give effect” to Te Mana o te Wai in the list of objectives of the Water Services Authority – Taumata Arowai.

Amendment to repeal section 14 of the Water Services Act 2021 which relates to the meaning, application and effect of Te Mana o te Wai

34. Te Mana o te Wai in the NPS-FM carefully considers and weighs environmental, social and cultural effects of resource use and prioritises the protection of human health needs, including the provision of clean and safe drinking water. This is meaningless without the active involvement of hapū and iwi in freshwater management (including decision-making processes).
35. The implementation of new drinking water regulatory requirements under the provisions of the Water Services Act by Taumata Arowai (and the previous Government) included a significant amount of consultation – both at the exploratory problem definition phase during the Three Waters Review and during the design of reform. The Taumata Arowai-the Water Services Regulator Act 2020 and the Water Services Act 2021 provide for drinking water quality standards and their enforcement by Taumata Arowai, as well as wastewater and stormwater environmental network performance standards.
36. It has been widely recognised that since the establishment of Taumata Arowai, the regulation of drinking water has improved significantly. Giving effect to Te Mana o te Wai provided assurance to communities that these services would meet minimum regulatory requirements for water safety and would reduce harmful environmental impacts associated with the delivery of water services.
37. This Bill provides an easy pathway for all of this work to be undone or ignored. The safeguards are critically important in protecting and restoring freshwater and are relied upon by iwi and hapū to preserve their rights, interests and aspirations as kaitiaki of freshwater and to protect the health of their communities.

Amendment sought

38. Retain section 14 of the Water Services Act 2021 in its entirety.

Timeframes and process

39. The local government water services reform was a key manifesto commitment of the National Party, and the repeal of the previous government's Water Services Entities Act 2022 featured in the Coalition Government's 100-point Economic Plan. The Quality Assurance Panel's appraisal of the Regulatory Impact Statement (RIS) for the Local Government Water Services noted multiple concerns, including finding that:
 - (a) the scope of policy options explored in the RIS were limited by the Coalition Government's position on the previous reform, their manifesto commitments and coalition agreements,
 - (b) constrained timeframes, data limitations and uncertainty as to how the proposals would be implemented and responded to by councils meant there was no quantitative financial information in the RIS on the effects of the changes,
 - (c) there was limited cost benefit analysis of how the proposals would achieve the overall objective of local councils delivering water services that are financially sustainable and met minimum regulated quality standards, and
 - (d) timeframe constraints had resulted in insufficient consultation with stakeholders during the overall policy design process, including sector organisations, councils, iwi and hapū, and other interest groups.
40. The lack of full cost benefit analysis beyond mainly qualitative estimates means that the true costs and benefits, including those to be faced by councils, are not fully known.
41. Given the failure of the Crown to meaningfully engage with iwi and hapū, impacts on Māori rights and interests, Te Tiriti obligations and on Treaty settlements have not been given appropriate consideration.
42. In addition, the Local Government Act requires that local authorities facilitate Māori participation in decision-making processes with local government. The relationships, rights and interests that Māori have with local authority-provided drinking water, wastewater and stormwater services are often geographically or catchment specific and recognised at a local level, in agreements between tangata whenua and councils.
43. The Water Services Bill will likely cut across the commitments councils have made to iwi and hapū relating to freshwater and resource management through removal of the obligation to give effect to the principles of Te Tiriti o Waitangi, and to Te Mana o te Wai and its requirement to actively involve tangata whenua in freshwater decision making.

Recommendation

44. Te Wai Māori seek that the amendments proposed in this response are accepted and the Bill is consequently amended through the Select Committee process.



Nāku noa, nā
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