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2 March 2021

Committee Secretariat  
Health Committee  
Parliament Buildings  
Wellington  
[he@parliament.govt.nz](mailto:he@parliament.govt.nz)

Dear Sir/Madam

### **Submission on the Water Services Bill**

Thank you for the opportunity to make a submission on the Water Services Bill. Please find the West Coast Regional Council's submission attached.

This Council supports, in principle, the purpose of the Water Services Bill, which is to ensure that drinking water suppliers provide safe drinking water to consumers. We do, however, have several concerns about the Bill, including its purpose, provision for Te Mana o te Wai, support for self-suppliers, costs to regional councils, clarity of roles, and clearer links to other related legislation.

### **Key Concerns**

Our key concerns are as follows:

1. There may be a repeat of the Havelock North crisis if people do not have access to safe, affordable, universal and equitable wholesome drinking water;
2. By reversing Te Mana o te Wai's hierarchy of obligations in the National Policy Statement for Freshwater, the Water Services Bill has the potential to undermine Te Mana o te Wai;
3. There is a lack of support for domestic self-suppliers and small community suppliers;
4. Extra burdens are placed on regional councils but there is no indication of central government funding for regional councils to undertake additional monitoring and reporting of water supply sources;
5. Role confusion - roles and responsibilities are unclear;
6. The Bill omits to respond to climate change risk to potable and wholesome water supplies; and
7. There are too many offence provisions.

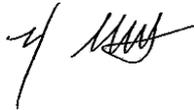
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Please contact me if you have any questions regarding the content of our submission or require additional information.

Yours faithfully

A handwritten signature in black ink, appearing to read 'H. Mills', written over a horizontal line.

Hadley Mills  
Manager Planning, Science and Innovation

### Introduction

The West Coast Regional Council (WCRC or the Council) supports, in principle, the purpose of the Water Services Bill, which is to ensure that drinking water suppliers provide safe drinking water to consumers. We do, however, have concerns about several aspects of the Bill. Some of these concerns relate to the pressures that the Bill will put on small vulnerable communities and small private suppliers. Other concerns include inconsistent provision for Te Mana o te Wai, costs to regional councils, role confusion, and the potential for inconsistency with other related legislation. To address these concerns, we suggest, amongst other recommendations, that the Bill's kaupapa centre on New Zealand's commitments to safe, affordable, universal and equitable access to drinking water for all.

### About the West Coast

The West Coast region is vast: it extends from Kahurangi Point in the north and as far south as Awarua Point, a distance of 600 kilometres. Our region is the wettest region in New Zealand with average yearly rainfall totals of between 1,746mm to 11,228mm.<sup>1</sup> The West Coast routinely has very high water quality when compared to other regions in New Zealand given nationally accepted testing parameters and protocols. And across the region, there is generally very little pressure on water resources with only small percentages of flows allocated in the majority of our catchments.

### About the Submitter

The Council has specific roles and functions in managing freshwater bodies under the Resource Management Act 1991 (RMA) and the Essential Freshwater Package 2020. It also works closely with the regions' three territorial authorities (these being Buller District Council, Grey District Council and Westland District Council). Outside of the main towns of Westport, Greymouth and Hokitika, the region's population is spread across smaller settlements and rural communities. It is important that water regulation also considers their interests.

Poutini Ngāi Tahu are the tangata whenua of Te Tai o Poutini (the West Coast). And our Mana Whakahono ā Rohe (Resource Management Act - Iwi Participation Arrangement) captures the intent of the Council and Poutini Ngāi Tahu to progress their relationship in accordance with the Treaty of Waitangi partnership between iwi and the Crown.

Poutini Ngāi Tahu are defined by their relationship with the mountains, the lands, the waters, the lakes (moana), awa (rivers) and mahinga kai. Poutini Ngāi Tahu values fresh water for drinking supply. And in terms of water regulation, duties and obligations exist to present and future generations in our care for Papatūānuku (Mother Earth).

In giving effect to Te Mana o te Wai in the Essential Freshwater Package, WCRC and Poutini Ngāi Tahu are working together to undertake long term planning related to drinking water, wastewater, stormwater, flood management and erosion protection infrastructure in the region. This submission reflects our common understanding on services regulation for potable and wholesome drinking water.

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<sup>1</sup> West Coast State of Environment Report 2018; <https://www.wcrc.govt.nz/environment/state-of-environment>; last viewed 15 February 2021.

## **The WCRC generally supports the Bill but changes are required**

This Council supports, in principle, the purpose of the Water Services Bill, which is to ensure that drinking water suppliers provide safe drinking water to consumers. We do, however, have several concerns and changes are required if the purpose and objective of the Bill is to be achieved.

## **Key Issues Raised by this Submission**

### **1. There may be a repeat of the Havelock North crisis if people do not have access to safe, affordable, universal and equitable wholesome drinking water**

**Meeting our commitments.** Consistent with New Zealand's commitments to the Sustainable Development Goals, the target should be to achieve universal and equitable access to safe and affordable drinking water for all [underlining for emphasis].

WCRC is concerned about the repeal of Part 2A of the Health Act 1956, and replacing it with a purpose in the Water Services Bill that is less robust. Section 69A (under Part 2A) of the Health Act 1956 states that the purpose of this part of the Act is to protect the health and safety of people and communities by promoting adequate supplies of potable and wholesome drinking water from all drinking water supplies, and requires drinking water suppliers to take all practicable steps to comply with the drinking water standards. Whereas the current Bill not only doesn't adequately provide for the health and safety of people and communities, it also limits the quality of water by deleting the reference to "wholesome" water.

Of note is that "potable water is drinking water that does not contain any determinand that exceeds the maximum acceptable values (MAVs) specified in the Drinking-water Standards for New Zealand (DWSNZ). Wholesome water is water that satisfies the aesthetic guideline values (GVs) in the DWSNZ" (Drinking-water Standards for New Zealand 2005 (Revised 2018).

The Water Services Bill is also heavily concentrated on regulating supply. Alternatively, many other regulators, such as the Water Industry Commission for Scotland, make customers the focus of the market. For consumers, a fundamental question is how much is water going to go up by? And what implications will levies have for current rate structures?

So while Clause 3 of the Water Services Bill provides that "the main purpose of this Act is to ensure that drinking water suppliers provide safe drinking water to consumers, by providing a drinking water regulatory framework that is consistent with internationally accepted best practice", the Bill omits international best practice: it fails to respect the human right to water, it is not universal (domestic self-suppliers are excluded), it is not equitable (there are no domestic supports for domestic self-supply and small vulnerable communities), and it increases disparities between urban and rural supply.

### **Recommendation 1**

**Leave no one behind. Develop the Bill's Kaupapa (First Principles) as Safe and Affordable Wholesome Drinking Water and Universal & Equitable Access to Wholesome Drinking Water**

We recommend that the Bill adopt a first principles (kaupapa) approach centred on safe and affordable wholesome drinking water, and universal and equitable access to wholesome drinking water.

## **2. By reversing Te Mana o te Wai's hierarchy of obligations, the Water Services Bill has the potential to undermine provisions for Te Mana o te Wai**

As rules derive from legislative Acts, which derive from Kaupapa (principles), WCRC submit that the same definitions and obligations that are provided for in the National Policy Statement for Freshwater Management (NPS-FM), including Te Mana o te Wai's hierarchy of obligations, be defined in, and apply to, the Water Services Bill.

The regulatory framework would then reform from the Water Services Bill's current focus on the economics of supplier regulation, to putting (a) the health and well-being of water bodies and freshwater ecosystems first; (b) the health needs of people (such as drinking water) second; and the ability of people and communities to provide for their social, economic, and cultural well-being, now and in the future, third. Conversely, as it stands the Water Services Bill puts the economics of supplier regulation first. By undermining Te Mana o te Wai's hierarchy of obligations, the Bill has the potential to undermine Te Mana o te Wai.

Respecting Te Mana o te Wai also has significant implications when balancing the mauri of the wai with the human right to water and water trading.

While the Water Services Bill refers to giving effect to Te Mana o te Wai, the interpretation of Te Mana o te Wai within the Water Services Bill reflects a contextual interpretation situated within the context of the NPS-FM. The Water Services Bill reads, "*Te Mana o te Wai has the meaning set out in the National Policy Statement for Freshwater Management*". We believe that reliance on referral to the NPS-FM is a weak provision and reflects a poor drafting standard that is open to confusion and mis-interpretation. A textual definition identical to the definition in the NPS-FM is therefore required in the Water Services Bill.

### **Recommendation 2**

Rather than refer to the NPS-FM, that the Water Services Bill define and give effect to Te Mana o te Wai. Recommended wording to add to the Bill:

"Te Mana o te Wai is a concept that refers to the fundamental importance of water and recognises that protecting the health of freshwater protects the health and well-being of the wider environment. It protects the mauri of the wai. Te Mana o te Wai is about restoring and preserving the balance between the water, the wider environment, and the community. It is relevant to all freshwater management. The hierarchy of obligations in Te Mana o te Wai prioritises: (a) first, the health and well-being of water bodies and freshwater ecosystems; (b) second, the health needs of people (such as drinking water); and (c) third, the ability of people and communities to provide for their social, economic, and cultural well-being, now and in the future."

## **3. Lack of support for domestic self-suppliers and small community suppliers**

In our view, the purpose of the Water Services Bill is far too narrow. It appears to favour urban consumers, who have access to reticulated systems, and may benefit from economies of scale, above rural and remote communities that have a higher marginal cost. The purpose reads, "...to ensure that drinking water suppliers provide safe drinking water to consumers"; but then the Bill goes on to exclude domestic self-suppliers.

A single holiday house that is supplied by a rainwater tank and is rented to tourists on a short-term basis is a domestic self-supply; but a marae wharekai (dining hall) or community hall that has its own river water supply is not a domestic self-supply. As seen by the Havelock North water contamination crisis, our concern is that system wide improvement is required, and well overdue.

As the West Coast region is predominantly rural with generally plentiful freshwater resources, there is a relatively high proportion of self-suppliers. As an example, according to Buller District Council, more than 50% of suppliers in the District are domestic self-suppliers. It is also important for them to have a potable and wholesome water supply. Those living in rural areas, or on lifestyle blocks, should also be able to enjoy clean, bacteria free water with a rural water filtration system.

The WCRC is concerned about the costs for self-suppliers of meeting potable and wholesome water quality supply standards. Costs of providing potable and wholesome drinking water will be higher for areas where there is a lower population base to pay (such as in the case of the West Coast). There remains a risk for self-servicing or smaller suppliers in terms of health and safety. In our experience, off grid domestic water suppliers are often more rural based and their costs may be higher than those that have direct access to district water reticulation systems.

Domestic self-suppliers do not have the same scale or resources as, for instance, those municipal reticulated suppliers operating under resource consents to supply safe drinking water.

There would appear to be a lack of inclusion and support from Taumata Arowai for self-suppliers. Further burdens are placed on small private community suppliers and new responsibilities will be costly and likely to take them by surprise if not managed appropriately by Central government and the water regulator.

Affordability is strongly related to scale and population, which in turn often correlates with the degree of investment in infrastructure. It would, in our view, be equitable for Taumata Arowai to provide domestic self-suppliers with practical support and guidance so they too have safe and affordable drinking water. As it stands though, the Bill marginalises those on the margins by excluding them.

By excluding domestic self-supply from regulation for safe water supply there is a risk that the health risks, such as unexpected arsenic or nitrates in these supplies are not managed. As a result, households and communities, typically those in isolated or sparsely populated rural areas and on low incomes, or those on lifestyle blocks who provide their own water take and sanitation, may end up with drinking water that does not meet health standards.

Conversely, in our view, the important target is for all people to have access (universal access), that core principles (kaupapa) are adhered to and that there is no difference in quality and access no matter which supply approach is used.

Our proposed approach would of course mean a policy turn around, whereby government, possibly through the water regulator (Taumata Arowai) would provide technical and financial support and establish an enabling environment that recognises domestic self-supply as one viable option to achieving the Human Right to safe and affordable drinking water. Subject to appropriate funding, these subsidies could run through local government. The key, however, would be that no discriminatory or unfair rate burden be imposed on those who may not be able to access reticulated network water supply.

The WCRC supports the Local Government New Zealand (LGNZ's) submission, insofar as local councils would work on reticulated public networks and the regulator would work on non-council networks. The regulator would be responsible for supporting domestic self-suppliers in terms of publication and distribution of safe water drinking guidelines, advice on checking bacterial levels in the water, support for UV filters, and so on.

### **Recommendation 3**

The health needs of people (such as drinking water) and costs for self-suppliers of meeting potable and wholesome water quality supply standards need to be provided for by Taumata Arowai, including funding monitoring and reporting of self-supplied sources.

#### **4. Extra burdens on regional councils; but no indication of central government funding for regional councils to undertake additional monitoring and reporting of water supply sources**

As illustrated below, the burden placed on regional councils in terms of water sources and increased assessments is significant and yet there is no indication as to how this will be funded.

The Water Services Bill establishes a number of new and enhanced interacting roles and responsibilities for regional councils:

- In terms of source water risk management plans, water quality monitoring of the source of a drinking water supply is to be conducted by a regional council (Water Services Bill, Clause 42 (4) (a) ii.);
- Regional councils must publish and provide Taumata Arowai with information on source water quality and quantity in their region annually, including any changes to source water quality and quantity (Water Services Bill, Clause 45 (1));
- Regional councils must assess the effectiveness of regulatory and non-regulatory interventions to manage risks or hazards to source water in their region at least once every 3 years and make this information available to the public on Internet sites maintained by or on behalf of the councils (Water Services Bill, Clause 45 (2)); and
- Taumata Arowai must provide regional councils with monitoring results annually (Water Services Bill, Clause 43 (3)), which places an obligation on regional councils to store results.

Additionally, Taumata Arowai must consult regional councils when amending an environmental performance measure, and this will also require council engagement (Water Services Bill, Clause 140 (2)).

These new arrangements are based on a risk management approach, alongside open flows of information between local authorities (regional councils and territorial authorities), drinking water suppliers, and Taumata Arowai. However, the cost of local authority monitoring of every single source of water take for drinking water is clearly prohibitive and common sense needs to prevail.

The effect of the Bill's definition of a drinking water supplier means that a person who provides drinking water to at least one other person is classed as a supplier (Water Services Bill, Clause 8). Obligations are then imposed, which will be potentially expensive and time-consuming to deliver in the West Coast region, as there are likely to be numerous small clusters of rural houses or other facilities (for example, 3-10 houses) sharing a drinking water supply. For example, a motor camp operator using a ground bore, as an example, would be a drinking water supplier, or a rural café. A farmer supplying two farmhouses from a ground water bore would also fall under this law.

These arrangements put more resourcing and work on to the WCRC. If monitoring and reporting were previously the responsibility of the Ministry of Health, the Ministry would have been centrally funded for this. If this role is going to be passed to regional councils under the Water Services Bill, then central funding for the work must surely be transferred from the Ministry to regional councils. However, we are not aware of any commitment from the Government for this.

Without additional resource, the workload would be enormous and compliance monitoring unachievable. Compliance officers are hard to come by and if a regional hub with skilled and qualified compliance officers is to be established for the purposes of water monitoring, it will still be a challenge to fill those positions.

The WCRC's current role is focused on environmental regulation of water quality, with a limited role once water is taken. The question therefore arises as to how would the WCRC recover costs for additional monitoring, reporting and support services? The WCRC does not have the resources to bear this cost. And it would, in our view, be inequitable to on-charge these costs to an already stretched rating base. The additional requirements placed on the WCRC from implementing national policy and regulation for freshwater and indigenous biodiversity protection will likely mean a substantial rate increase to cover these extra costs. And the community has no appetite for further rate increases to implement potable water supply monitoring and reporting. The West Coast community struggles financially and rates are a very blunt tool.

More robust monitoring, evaluation, reporting, and risk management comes at a cost and we ask whether funds could be better spent on treatment of potable water.

The WCRC holds the view that even changing obligations to monitor those suppliers supplying a population of 25 or more would significantly reduce the paperwork, bureaucracy, workload, cost, and resourcing; and thereby reduce onerous obligations and monitoring of small supplies, which would be impossible for the Council to meet without some form of additional central funding. We support LGNZ's submission, which recommends changing the definition of a water supplier from supplying 1 other household to supplying at least 25 other households.

#### **Recommendation 4**

That the Government establish realistic monitoring, evaluation and reporting targets; and makes a commitment to fund the monitoring and reporting of water quality at the source of drinking water supplies, to be undertaken by regional councils; and that the Government changes the definition of a water supplier from supplying 1 other user to supplying 25 other users.

### **5. Role confusion - unclear roles and responsibilities**

Roles and responsibilities of regional councils, and the Regulator, need to be clearly delineated and defined. As drafted, the Bill refers at times to specific responsibilities for regional councils and at other times to "*local authorities*", and "*local government organisations*", and yet by virtue of the Local Government Act, regional councils are also local authorities. As drafted, we agree with Local Government New Zealand's (LGNZ) submission that the Bill is open to role confusion, which will lead to the possibility of maladaptive actions.

For reference, New Zealand's National Climate Change Risk Assessment report emphasizes that "the management of water resources could be further challenged by uncoordinated and inconsistent governance between and within levels and agencies of government and private property owners, and the possibility of maladaptive actions".<sup>2</sup> The WCRC has the same concerns and requests the Health Committee clearly delineate systemic roles and responsibilities, including the roles and responsibilities of regional councils. While interactions and good working relations are desirable, clearly delineated roles and responsibilities between regional councils and territorial authorities are essential to good governance.

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<sup>2</sup> Ministry for the Environment. 2020. National Climate Change Risk Assessment for Aotearoa New Zealand: Main report – Arotakenga Tūraru mō te Huringa Āhuarangi o Āotearoa: Pūrongo whakatōpū. Wellington: Ministry for the Environment; Published in August 2020 by the Ministry for the Environment.

Role confusion is particularly concerning given the broad number of offences, which are discussed under Issue 7.

WCRC support's LGNZ's submission insofar that an implementation strategy is needed to give effect to the three waters reform and to make clear the respective roles of all the parties involved.

### **Recommendation 5**

The Bill's drafting needs tightening so that there is clear delineation between local authority roles and responsibilities; and an implementation strategy is needed to give effect to the three waters reform and make clear the respective roles of all the parties involved.

## **6. Omission to respond to climate change risk to potable and wholesome water supplies**

Disaster preparedness is an important consideration in water supply services. Other considerations for the Health Committee include how to make supply in general, and self-supply in particular, resilient to the harmful effects of climate change. At present there is a lack of reference and a lack of links to climate change legislation that applies to protecting both potable and wholesome water supplies.

While the Water Services Bill empowers Taumata Arowai to declare and manage drinking water emergencies, such as those stemming from major infrastructure damage, contamination events, or droughts, there also needs to be links to disaster risk management, especially in terms of climate change. Current and future challenges call for scaled-up resilience building, risk reduction, disaster preparedness and disaster response measures. There may be some overlap for disaster risk management between Civil Defence and Emergency Management legislation and climate change legislation

For reference, the National Climate Change Risk Assessment of 2020 identified 43 priority risks to New Zealand. The risk to potable [drinking] water supplies (availability and quality) due to changes in rainfall, temperature, drought, extreme weather events and ongoing sea-level rise is rated amongst the top 10 of priority risks, and in terms of urgency (at 93/94) is rated an "extreme risk". This finding is consistent with forecasts concerning the global scarcity of potable water.

New Zealand's National Climate Change Risk Assessment report recognises that mitigating impacts on rivers, lakes and streams could also help to reduce the risks to potable water in some areas.<sup>3</sup> The report also suggests that urgent action is required to best manage urban and rural drinking water supply security now; and that urgent research is required to fill the considerable knowledge gap on the impacts of drought on water supply, availability, quality and demand.

### **Recommendation 6**

That the Water Services Bill makes a link to climate change legislation, and is consistent with it; and, consistent with the functions of He Pou a Rangi (the Climate Change Commission), that Taumata Arowai take urgent action to contribute to the best management of urban and rural water security now.

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<sup>3</sup> Ministry for the Environment. 2020. National Climate Change Risk Assessment for Aotearoa New Zealand: Main report – Arotakenga Tūraru mō te Huringa Āhuarangi o Āotearoa: Pūrongo whakatōpū. Wellington: Ministry for the Environment; Published in August 2020 by the Ministry for the Environment.

## 7. Excessive Number of Offences

The WCRC supports Local Government New Zealand's (LGNZ) submission point about the excessive number of offences, nine pages in total in the Bill. The Council considers that the approach of Taumata Arowai is penalty driven rather than outcomes focused.

### **Recommendation 7**

That there be a careful reflection on the complexity of liability and offences.

### **Summary List of Recommendations**

1. Leave no one behind. We recommend that the Bill adopt a first principles (kaupapa) approach centred on safe and affordable drinking water and universal and equitable access to drinking water.
2. Rather than refer to the NPS-FM, that the Water Services Bill define and give effect to Te Mana o te Wai. Recommended wording to add to the Bill:  
"Te Mana o te Wai is a concept that refers to the fundamental importance of water and recognises that protecting the health of freshwater protects the health and well-being of the wider environment. It protects the mauri of the wai. Te Mana o te Wai is about restoring and preserving the balance between the water, the wider environment, and the community. It is relevant to all freshwater management. The hierarchy of obligations in Te Mana o te Wai prioritises: (a) first, the health and well-being of water bodies and freshwater ecosystems; (b) second, the health needs of people (such as drinking water); and (c) third, the ability of people and communities to provide for their social, economic, and cultural well-being, now and in the future."
3. The health needs of people (such as drinking water) and costs for self-suppliers of meeting potable water quality supply standards need to be provided for by Taumata Arowai, including funding monitoring and reporting of self-supplied sources.
4. That the Government establishes realistic monitoring, evaluation and reporting targets; and makes a commitment to fund the monitoring and reporting of water quality at the source of drinking water supplies, to be undertaken by regional councils; and that the Government changes the definition of a water supplier from supplying 1 other household to 25 other households.
5. The Bill's drafting needs tightening so that there is clear delineation between local authority roles and responsibilities; and an implementation strategy is needed to give effect to the three waters reform and make clear the respective roles of all the parties involved.
6. That the Water Services Bill makes a link to climate change legislation, and is consistent with it; and, consistent with the functions of He Pou a Rangi (the Climate Change Commission), that Taumata Arowai take urgent action to contribute to the best management of urban and rural water security now.
7. That there be a careful reflection on the complexity of liability and offences.

This ends our submission.