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# Water Services Bill

Local Government New Zealand's submission on the Water Services Bill

March 2021

# We are. LGNZ.

LGNZ is the national organisation of local authorities in New Zealand and all 78 territorial and regional councils are members. We represent the interests of councils and lead best practice in the local government sector. LGNZ provides advocacy and policy services, business support, advice and training to our members to assist them to build successful communities throughout New Zealand. Our purpose is to deliver our sector's Vision: "Local democracy powering community and national success."

# Introduction

Local Government New Zealand (LGNZ) thanks the Health Committee for the opportunity to provide a submission on the Water Services (the Bill).

LGNZ fully supports the intent of the Bill. LGNZ has been calling for clear drinking-water standards, and strong enforcement of those standards since 2015, when we published the Three Waters position paper, a year before the Havelock North contamination. That position paper highlighted the urgent need for improved regulatory frameworks and enforcement of the standards to remedy the longstanding failure of the Ministry of Health to perform its function as the drinking water regulator. Through that work, LGNZ explicitly extended the opportunity to central government to work together with local government to establish a robust regulatory framework that cost effectively delivers the three waters infrastructure and services for our communities.

In countries around the world, best practice is that a regulator sets clear standards, standards backed-up through strong enforcement, further supported by reporting and data gathering. Then it is up to the asset owners and providers to meet those standards, or face enforcement. New Zealand has been unusual in many of the features of a good governance regime in the drinking water space, and successive governments have failed to address this issue until the Havelock North contamination incident. Notwithstanding councils' responsibility to provide safe water to their communities, we agree with the findings of the Government Inquiry into Havelock North Drinking Water, specifically that this decades-long regulatory stewardship significantly contributed to a system failure.

The Inquiry was damning of the regulatory system, finding that no formal enforcement action was taken by District Health Boards from when the previous drinking water regime was introduced in 2007, up until 2018.

LGNZ supports the ambitions of the Government to ensure safe drinking water, which is why we have actively supported the policy development process, and why we are pleased to see this long needed policy intervention take shape.

In recognising the regulatory standards and other duties that Taumata Arowai will enforce, it is vital that the new regulator ensures that water network owners are only responsible for the performance of their networks. LGNZ is very concerned at the amendments to the Local Government Act that impose a duty on territorial authorities to ensure communities have access to drinking water if private suppliers cannot meet the obligations under the Act, essentially being the "last man standing". This provision is likely to drive suboptimal outcomes among private water scheme owners seeking to avoid making the necessary investments in their assets to meet drinking water standards, which in turn will impose a significant cost on affected councils at a time when communities are experiencing Covid-related financial pressure. It is worth emphasising that between 800,000 and a million New Zealanders currently receive their water from non-council sources.

The local government sector will continue to work with the Government on the implementation of the Bill, recognising it is part of a significant and fundamental change to the delivery of our three waters services. We particularly want immediate focus given to building capacity across the system to support all parties to meet their obligations and ensure the safe supply of drinking water – Taumata Arowai; territorial authorities; regional councils; and drinking water suppliers. An implementation strategy is required to effect this. We also support the transitional arrangements whereby the Bill proposes a two-year timeframe until wastewater and stormwater provisions come into force.

LGNZ wishes to appear in support of this submission.

# Key Points

## Te Mana o Te Wai

LGNZ strongly supports the requirement to give effect to Te Mana o Te Wai and a commitment by the Taumata Arowai Māori Advisory Board to develop and maintain a framework that provides advice and guidance on interpretation.

LGNZ notes there is a tension between the 'purpose' of the Bill and the duties it imposes on drinking water suppliers, and the 'hierarchy of obligations' in Te Mana o te Wai which prioritises the health and wellbeing of freshwater and ecosystems above health needs of people, including drinking water.

The purpose of the Act is 'to ensure that drinking water suppliers provide safe drinking water to consumers'. It has the effect of compelling a supplier to supply water.

Similarly, s25 imposes a duty on drinking water suppliers to 'ensure a sufficient quantity of drinking water' is provided to each point of supply. While there is recognition that certain factors may interrupt or restrict the provision of that supply (including environmental factors), there is no explicit recognition that drinking water is a secondary priority under the NPSFM.

This tension will likely become apparent in over-allocated catchments where there will be a need to first provide sufficient water for ecosystems, before considering human needs.

If the intent of the Bill is that where drinking water is supplied it is safe for consumption – then this should be reflected in the purpose. Similarly, s25 should explicitly recognise that priorities in Te Mana o te Wai may be a reason for restricting the quantity of water supplied.

We encourage Taumata Arowai to work with the Regional Sector, which has responsibility for expressing how Te Mana o Te Wai might apply in a particular region. This approach is reflected in clause 1.3 of the NPS for Freshwater Management which is explicit about the regional interpretation 'prevailing' if there is a conflict. We encourage 'joined up' approaches between the agencies that have to give effect to this vision. An explicit recognition of a regional approach to Te Mana o Te Wai will also help regional councils to fulfil their obligations under this legislation.

## Focus attention on areas of highest risk

We support taking a risk-based approach. Until the establishment of the Government's new water entities, territorial authorities should be enabled to dedicate their attention to council-owned and operated supplies. The assessments the Government has undertaken to inform its review of three waters services and work LGNZ has lead, shows the quantum of work involved to bring local government drinking water supplies to a level that will meet the drinking water standards. This alone will require investment and focus to achieve.

We are concerned that placing additional obligations on councils through changes in the Local Government Act, which will require assessments by Territorial Authorities in respect of all supplies (except domestic self-suppliers), will divert this focus from attention on council-owned and operated supplies.

Our preference is to make the new drinking water regulator responsible for assessing non-council water networks, while councils work to meet the new standards on their networks. This will be challenging enough as it is. The result will be a mismatch, with an unmet need for capacity in territorial authorities to implement this new law.

## Role confusion

There is potential for role confusion between Taumata Arowai and territorial authorities. For as long as territorial authorities are responsible for drinking water, we support them having clear responsibility for council-owned supplies, not the responsibility for supplies they do not own or manage. Taumata Arowai is obliged to build the database, receive notifications of breaches of standards and hold and audit the water safety plans. Taumata Arowai will, therefore, be best-placed to undertake the required assessment across these networks.

A significant amount of capacity and capability building will be required of the small suppliers and we are concerned that a territorial authority's focus should be on its core business of managing and upgrading its own drinking water supplies. For example, capacity building will be required with respect to drinking water safety plans, (noting the plan is to take account of source water and making sense of the information available).

Overall, the drafting needs tightening so there is clear delineation between local authority roles and responsibilities. At times the Bill refers to regional council responsibilities directly and at other times regional councils have to wade through the Bill to seek out their roles. This is particularly concerning given the scope of offences; roles and responsibilities need to be clearly delineated.

## Unfunded mandate

The unfunded mandate the proposals create are of significant concern to LGNZ and to local government. We will continue to voice our concerns about the proposal that councils are the "last man standing" with regard to community drinking water supplies and all supplies except for domestic self-supplies.

Given the Government's plans to transfer water services to new multi-regional entities, which will leave some councils with no responsibilities as water service providers nor the capability and competency to undertake such a role. We find those parts of this Bill that require councils to actively work with, regulate and potentially manage small drinking water supplies to be seriously problematic.

Our position is that territorial authorities should not be responsible for assessing these supplies and should focus on council-owned supplies. Central government should be required to take over a private supply, noting that it is the legislative body that is responsible for private supplies.

Two other concerns need to be flagged, one involves moral hazard risk while the other concerns regressive taxation:

- The risk of moral hazard occurs as small suppliers will have an incentive to fail to bring their supplies up the required standard in the knowledge that the wider community will eventually be forced to pick up the tab; and
- Regressive taxation can occur when low socio economic communities end up subsidising the water and wastewater costs of well-off citizens who have chosen to live in isolated areas for lifestyle reasons. The exacerbator pays principle should apply here also; if individuals choose to live in parts of New Zealand that have limited access to water supplies then it is incumbent on them to meet the costs associated with those choices.

This Bill places obligations on territorial authorities to sort out suppliers with no recourse for funding to support this, realistically a process that might take multiple years. There are also issues related to ownership and the lack of details about the process by which a territorial authority can take management of a water supply scheme away from the legal owners, or the authority to use eminent domain powers to transfer ownership should existing owners be uncooperative.

LGNZ is strongly opposed to these provisions.

## Implications for growth

The proposals that see local government being the "last man standing" with respect to community supplies will mean that some councils will take a highly cautious approach when assessing developments that seek to set up their own water networks.

Not all growth can be serviced through connections to a reticulated network and the Government needs to be clear on whether it wants to enable small schemes, and small communities, going forward - or if it seeks to limit growth to where council-owned networks exist. If schemes are to be consented by councils under the RMA the standards will need to be much higher and the costs will be greater. Limiting growth to where existing council reticulated schemes exist and have spare capacity will be a significant constraint on new development/housing being built in rural and provincial areas in particular. Hence it will have a negative impact on regional development.

The matter of concern to all territorial councils is very simply who will pay for the cost of the required upgrades of drinking water supplies – a concern exacerbated by the fact that many of these supplies will be in small rural communities with small rating bases.

## Compliance and enforcement

The Bill provides the perfect opportunity to provide the powers that territorial authorities need to effectively use bylaws to manage activities affecting three waters infrastructure and the safety and supply of drinking water. With respect to drinking water this includes management of backflow risk, water demand and takes from hydrants other than for firefighting purposes.

Being able to issue infringement fines for these offences will address a longstanding issue that councils have and that also needs to be addressed in relation to the new statutory entities.

Infrastructure owners need to be able to protect their infrastructure and currently do not have the tools to do so. In most cases the offence does not warrant a prosecution but compliance with the bylaw is still required.

## Implementation Strategy

### Workforce capability and capacity

This significant reform of three waters delivery includes a new regulator, Taumata Arowai, the proposed creation of new multi-regional statutory entities to supply drinking water and new functions and duties for territorial authorities and regional councils, and new obligations for drinking water suppliers (including small suppliers). LGNZ notes the intent of the legislation to build and maintain capacity in the water services sector. However, it is not clear how this capacity will be built and monitored. An implementation strategy to effect this reform is needed, focused on the respective roles of all the parties and building capacity and capability across the entire system. Attention needs to be given to ensure all parties have enduring capacity, for example focusing on workforce retention and developing and supporting small suppliers with compliance with their obligations. The reality is organisations are already competing for a scarce resource – experienced three waters engineers.

The workforce supply capacity and capability issues are perhaps a dimension to be addressed through the economic regulation function.

### Infrastructure capacity during transition

There is also an issue around ensuring that that there is sufficient spare capacity in infrastructure to allow for projected growth, particularly during the transition to the new entities and at a time when New Zealand has a major housing problem. Proactive management of these issues during the transition planning process is required.

Once the new entities are operational the overall supply issue is a matter to be picked up through the Strategic Planning Act and the regional spatial plan monitoring function/process.

### Financial liability

We are seriously concerned that this Bill, if enacted, exposes many councils to a largely unlimited financial contingency. The reasons small waters schemes fail to meet drinking water quality standards are almost inevitably the cost. The cross references in the Bill to councils "working with suppliers to identify options", while creating a range of transaction costs, ignores the fact that the critical factor is cost and the ability of that community to meet the cost. Regardless of whether the council ends up managing the scheme, or not, the ability to pay does not go away.

# Detailed points

Below are some detailed comments on the Bill – many we have already provided through the development of the Bill.

## Part 1 Preliminary provisions

### Clause 8: Meaning of drinking water supplier

The definition of drinking water supplier is set too low, the threshold being everything above a domestic self-supplier. Research is needed on the impact of defining a network supply as one supplying more than one domestic dwelling (ie workload created versus risk reduction). We hold the view that even changing the definition to supplying a population of 25 would significantly reduce the paperwork/ bureaucracy/workload/ cost/public resistance and allow focus on the bigger (and therefore higher risk) supplies.

#### Recommendation:

- Increase the threshold for a drinking-water supplier and amend the definition accordingly.

## Part 2 Provisions relating to supply of drinking water

### Clause 22: Duty to comply with the Drinking Water Standards

There does not appear to be any transitionary arrangements with regard to achieving full compliance with the current or any future revisions of the drinking water standards, with the assumption being that compliance must be achieved from the first day in which the Bill is enacted.

Given the sheer number of drinking water suppliers who are not currently subject to regulation but will now be subject to the provisions of this new legislation, this will be a huge and significant challenge for the suppliers and the regulator. Transition arrangements need to be provided and focus given to building the capability of the smaller suppliers through an implementation strategy.

#### Recommendations:

- Provide transition arrangements and lead-in timeframes for drinking water suppliers, to enable compliance with standards, including those that have not yet been released.

### Clause 30 – Owner must have a water safety plan

Clause 30 (1) requires that all owners of drinking water supplies must prepare drinking water safety plans.

Consideration should be given as to how drinking water safety plan requirements will practically be met by small suppliers, and also their review by Taumata Arowai, given the level of detail and effort required. Consideration could be given to a section under Transitionary Arrangements to introduce a requirement for Taumata Arowai to create a fit for purpose drinking water safety plan template for small supplies well in advance of the timeframe by which a drinking water safety plan is required to be submitted. The provision of fit for purpose templates should be part of the implementation strategy.

#### Recommendations:

- Provide fit for purpose templates as part of an implementation strategy.

### Clause 31: Drinking water safety plans

Clause 31 (1)(j) requires that drinking water safety plans provide for residual disinfection where the drinking water supply includes reticulation unless an exemption is obtained. As there is no definition of 'residual disinfection' it is assumed to refer to maintaining a chlorine residual in the reticulated water.

LGNZ notes that where councils operate reticulated drinking water supplies without chlorination, they will typically use chlorine as a targeted measure when required to reduce the risk of microbial contamination, eg where there are poor condition reservoirs, inadequate backflow prevention and following pipe repairs. This approach in some cities has been long standing and supported by health evidence.

The Bill is unclear whether very small private supplies will be required to be chlorinated. LGNZ notes there will be risks involved with the application and handling of chlorine and these may outweigh any benefits that chlorine may provide. If it is not intended that very small supplies be chlorinated, this should be clear.

The Bill provides for an exemption to residual disinfection at clause 57(4); Taumata Arowai may grant an exemption from the requirement to use residual disinfection "on any conditions that Taumata Arowai thinks fit".

For many such drinking water suppliers, requiring chlorination at short notice would be expensive and/or impractical or impossible to achieve. As clauses 31 and 57 are currently worded, it is unclear whether a drinking water supplier without residual disinfection would be able to apply for an exemption, or whether the supply would first have to have residual disinfection before an exemption could be sought. Christchurch City Council advises that it would cost around $25 million to install permanent chlorination equipment, which would then be redundant if an exemption was obtained.

LGNZ supports a provision for exemptions to residual disinfection, but considers that improvements are needed to the Bill to clarify requirements for suppliers whose drinking water supplies do not already include residual disinfection and a particular focus is given to small supplies.

#### Recommendations:

- Clarify exemption requirements for suppliers whose drinking water supplies do not already include residual disinfection and clarify requirements for small supplies.

### Clause 38: Requirement for supplier to provide information to consumers and have complaints process

This clause requires that a drinking water supplier have a complaints process. A complaint could relate to low pressure, high pressure, toby location, faulty meter, chlorine taste, leaking fitting, standard of meter reader's behaviour etc.

We are concerned that the offence provisions are disproportionate and further, we are concerned again at how smaller suppliers will manage this. LGNZ holds the view that there is not sufficient resource in the system to provide this capacity including to support the complaints process.

#### Recommendations:

- Review the offence provisions related to the complaints process.

### Clause 42: Source water risk management plans

LGNZ supports this concept but is cautions about the practicality of this requirement for the small drinking water supplies. Taumata Arowai will need to provide a great deal of support to build capacity to support the smaller suppliers and to be clear about requirements, based on scale, complexity and risk.

42(4) requires that local authorities must contribute to the development and implementation of source water risk management plans prepared by drinking water suppliers including undertaking any actions to address risks or hazards to the source of a drinking water supply that local authorities have agreed to undertake on behalf of a supplier.

Local government wants to work with the regulator on how this is operationalised, given it is a significant unfunded mandate and that local government's capacity in three waters will be reduced considerably if the creation of new statutory entities is realised. Given the number of drinking water suppliers, it is unclear how this requirement will actually be met if there are capacity/capability issues with the supplier and/or the local authority. The offence provisions under clause 171 will bring some of these matters to a head, given the fine which as a maximum of $50,000 if a plan is not completed by an individual.

Recommendation:

- Provide for local authorities to be able to levy fees and charges to water suppliers when they are meeting the requirement to provide information as required to by Taumata Arowai.

### Clause 43: Suppliers to monitor source water quality

This clause requires that a drinking water supplier must monitor the quality of the supplier's source water at the abstraction point in accordance with the supplier's drinking water safety plan. Again, this provision points to the need for significant capacity building and it is assumed this support will be provided by Taumata Arowai or the new water entities (not the local authority). Local government's capability to perform this function will be diminished if the Three Waters Reform process proceeds as skills are transferred to the new water entities.

Recommendation:

- Work with LGNZ and the local government sector on operationalising the requirement that a drinking water supplier must monitor the quality of the supplier's source water at the abstraction point and make it clear that Taumata Arowai will provide this support.

### Clause 55: Duty to renew annual registration and notify changes

This clause requires registered drinking water suppliers to apply for renewal of registration annually. This is not required by the Health Act 1956 and an annual renewal seems to be an unnecessary requirement for both the supplier and the regulator to administer. An alternative is to require registered drinking water supplies to confirm any details regarding any changes to the supply (ie changes to size, ownership, etc) when they occur.

Recommendation:

- Amend clause 55 (1) to only require registered drinking water suppliers to immediately advise Taumata Arowai any changes to their registration details and remove the requirement for annual renewal.

## Part 3 Enforcement and other matters

### General

The Bill provides the perfect opportunity to provide the powers that Territorial Authorities need to effectively use bylaws to manage activities affecting three waters infrastructure and the safety and supply of drinking water, noting that the Government is also well advanced with plans to take these responsibilities away from councils. With respect to drinking water the ability to infringe noncompliance with bylaws should include management of backflow risk, water demand and takes from hydrants other than for firefighting purposes. And in respect of waste and stormwater, territorial authorities need to be able to enforce non-compliance with trade waste bylaws; discharges to stormwater networks (for example paint, concrete slurry, oil and chemicals); discharging stormwater to wastewater; taking water without consent; not complying with summer water restrictions; and tampering with restricted water supply.

Being able to issue infringement fines for these offences will address a longstanding issue that councils have had and that will need to be addressed in relation to the new statutory entities. Infrastructure owners need to be able to protect their infrastructure and currently do not have the tools to do so. In most cases the offence does not warrant a prosecution but compliance with the bylaw is still required.

LGNZ also seeks clarity on the powers that water suppliers have if they are not Territorial Authorities. For example, a water supplier may not be able to enforce a bylaw, and the potential for Taumata Arowai to utilise their powers to assist.

Recommendation:

- Amend the LGA to provide territorial authorities with the ability to infringe bylaws generally and specifically those concerning three waters infrastructure and ensure Taumata Arowai has the same powers.

### Clause 134: Drinking water compliance, monitoring, and enforcement strategy

The board of Taumata Arowai is required to prepare a drinking water compliance, monitoring, and enforcement strategy and to review this three yearly. LGNZ considers a Taumata Arowai Compliance, Monitoring and Enforcement Strategy and a graduated approach to regulation important for water suppliers throughout New Zealand. LGNZ seeks a direct obligation for Taumata Arowai to engage specifically with local government, along with industry. We see this as critical, due to the number of agencies having a role in the direct delivery or oversight of the delivery of three waters services.

Recommendation:

- Require Taumata Arowai to engage specifically with LGNZ in the development of its Compliance, Monitoring and Enforcement Strategy.

### Clause 137: Collection of information for monitoring and reporting on environmental performance

This clause gives Taumata Arowai the ability to effectively direct regional councils to do a level of environmental monitoring which will impose cost on to regional councils. There is also overlap with regional council monitoring of individual consent holders.

There will clearly be a need for territorial authorities and regional councils to work together closely, and if a territorial authority is directing a regional council to provide information, the regional council should have the ability to recover their costs.

Recommendation:

- Provide for regional councils to be able to recover the costs of providing information required of them.

### Clause 139: Network registers

This provision requires Taumata Arowai to establish and maintain a register for wastewater networks and a register for stormwater networks. Clarity is needed regarding the type, size, ownership or other factors for either wastewater or stormwater networks. For example, there are a number of houses that may have a shared driveway, and shared stormwater or sewer laterals. It is assumed that shared driveways, for instance are not intended to be included in the requirements, but there needs to be a scale at which a group of houses connected does become a network. It is also unclear whether a stormwater network is a considered to be a network of stormwater pipes and/or drains or whether retention basins and similar are intended to be included.

There is also an issue in these definitions around 'public drains' and private drains owned by the property owner. Private drains beyond the connection point should be excluded including those private drains which service multiple properties.

Recommendations:

- Clarify the definitions of wastewater network and stormwater network to include what constitutes a wastewater and stormwater network in terms of size and scale; and
- Exclude private drains beyond their connection point with a public network.

## Subpart 10 Offences

These provisions enable employees to face significant fines. We do not support provisions enabling employees to be prosecuted, and we seek information on whether any other industry has this scale of provision. We understand this is the first legislation that takes this approach. Ten pages of offences appears to be disproportionate to other legislation. We are concerned this approach is not consistent with modern regulatory practice or with the approach and offence provisions in the Health and Safety at Work Act.

Councils may decide to indemnify employees for fines and a significant issue is created regarding staff recruitment and retention.

We support raising accountability but are concerned this will mean drinking water suppliers will not be encouraged to work openly with Taumata Arowai and with suppliers.

Recommendation:

- Review the proposed Offence provisions to ensure they are aligned with the Health and Safety at Work Act 2015.

## Part 4 Miscellaneous provisions

Section 190 is a regulation-making power that includes specific powers to regulate:

- The information that suppliers must provide the users;
- The requirements for complaints including processes, timeframes and records that must be kept on the complaints;
- The requirements for annual reporting; and
- Various mechanical requirements such as identity cards, setting fees and charges, and (very importantly) infringement fees.

LGNZ supports the regulatory powers being essential to achieve the purpose of the Bill (particularly the infringement offence regime). In developing the regulations, LGNZ considers it should include a specific requirement to engage with affected stakeholders/parties such as suppliers.

Some regulations could have significant cost implications, for example if they set requirements for information disclosure or a time period.

Therefore, we consider there should be some requirement on the Minister to engage as these regulations are made. This will ensure the regulation takes into account the cost and practicability of the requirements and ensure that they are proportionate and practicable.

### Recommendation:

- Include a provision that requires the Minister to engage as regulations are made.

## Additional provisions

### Offence to contaminate raw water or pollute a water supply

The Health Act 1956 makes it an offence if a person knowingly or recklessly does any act that is likely to contaminate any raw water or pollute any drinking water. There is no such offence in the Water Services Bill. It is very important that water sources and water supplies are protected from deliberate or reckless behaviour which could contaminate them.

### Recommendation:

- Add the offence of contaminating raw water or polluting a water supply in section 69ZZO of the Health Act to the Water Services Bill.

### Non-potable reuse

A changing climate is increasing the demand for water at the same time as diminishing the availability of source water. The National Policy Statement (NPS) for Freshwater Management 2020 sets out a hierarchy of obligations in Te Mana o Te Wai that prioritises first the health and well-being of water bodies and freshwater ecosystems over the use of water for drinking water and other uses. We need to look for other sources of water in areas where water sources are vulnerable to climate change and where it may be difficult to obtain sufficient fresh water from local sources.

Both territorial authorities, developers of new subdivisions and private householders have, from time-to-time, sought the ability to enable non-potable reuse of treated wastewater. This would include flushing of toilets, watering gardens and irrigating public land. In the absence of regulations, this has not been supported by District Health Boards and the Ministry of Health. Harvesting of stormwater for reuse is another area that also requires attention.

Recommendation:

- That Taumata Arowai develop the necessary regulations to enable non-potable reuse of treated wastewater and for harvesting of stormwater, in collaboration with other government agencies, water suppliers and tangata whenua.

## Part 5 Amendments to Local Government Act 2002

### Clause 126: Requirements following assessment of community drinking water service

These provisions go well beyond territorial authorities' current responsibilities under LGA 2002, particularly the requirement to take over water supplies that fail to meet their statutory obligations or pose a risk to public health.

The amendments to LGA 2002 would require territorial authorities to:

- Assess all drinking water supplies other than domestic self-supplies within their districts once every three years;
- Work with a drinking water supplier, consumers of the supply and Taumata Arowai to find a solution if a drinking water service fails or appears to be failing; and
- Take over the management and operations of a failing drinking water service, or provide water via alternative arrangements.

Noting that these should not be council responsibilities – given that water services are being removed from council control, we would prefer a risk-based approach. Territorial authorities should be enabled to dedicate their attention to council-owned and operated supplies. We are concerned that placing additional obligations on councils through changes to the Local Government Act, which will require assessments by Territorial Authorities in respect of all supplies (except domestic self-suppliers), will divert this focus from attention on council-owned and operated supplies.

Our preference is that Taumata Arowai is made responsible for assessing non-council water networks, leaving councils to work on meeting the new standards on their networks.

The implementation strategy should give attention to ensuring skills and capacity are where they are needed to fulfil functions and duties and we expect they will increasingly sit in the new water entities and Taumata Arowai, leading to a mismatch with the need for capacity in territorial authorities to implement this new law.

Should councils' water services remain with territorial authorities, LGNZ's view is that three years is an unrealistic time period to carry it out.

Recommendation:

- That Taumata Arowai is made responsible for assessing non-council water networks, leaving councils to work on meeting the new standards on their networks

**Clause 127: Duty to ensure communities have access to safe drinking water if existing suppliers facing significant problems**

LGNZ is strongly opposed to these provisions. It is not, and should not be, the responsibility of territorial authorities to be responsible for failing private drinking water suppliers. If this is a matter of concern for central government then it must be addressed as a social policy issue using the full weight of the Crown's taxing powers and balance sheet, not through a regressive charge on other water users.

Complying with the drinking water standards and the requirements of the Bill will be onerous for some very small private supplies, and it is likely that many of them will be found to face significant problems. This clause requires local authorities to take responsibility for private water supply networks that don't/can't meet the standards. This will be a serious challenge; councils may be expected to buy the assets and they will need easements to protect the assets and to provide for regular access. They will also need to do a full condition assessment of the assets before taking them over.

This will be slow, time consuming and expensive. Councils will be unlikely to recover these up-front costs from the previous operator. Some of these operators may prefer to change their supply arrangements to achieve classification as domestic self-suppliers.

LGNZ expects territorial authorities will face significant capacity issues to carry out this function. Experienced staff will be required, however many will be transferring to the Government's new water suppliers with those remaining in councils focused on council-owned supplies meeting their legislative obligations, for as long as councils operate them.

In LGNZ's view the Bill imposes tough obligations on councils, fails to provide the necessary powers such as a power of "eminent domain" (which puts them in a weak negotiating position) and implies that costs should be met from general rates - another cost imposition by central government on local government. LGNZ's view is that the work required to gain legal ownership of assets (and access them) should be the responsibility of the regulator.

Once assets are transferred, should this be possible, councils will then have to carry out necessary upgrades. Many of these supplies will be in remote locations and therefore will be very expensive to provide compliant water. Subsidising water supply costs from elsewhere in the city/district would send the wrong pricing signals with regard to sustainability and intensification.

Transition arrangements are needed so that as each supply is transferred to a council there is at least a three year window before new standards are expected be met.

The net result of these requirements is that councils are unlikely to ever approve a water supply for a development in outlying areas that is more than a domestic self-supplier (and perhaps require caveats to prevent any change).

Recommendations:

- Amend the clause 127 provisions that require a territorial authority to take over the management and operations of the drinking water service, on a temporary or permanent basis;
- Provide funding to territorial authorities to enable them to bring private supplies up to the standard required to achieve statutory compliance;
- Provide transition arrangements so that as each supply is transferred to a council at least a 3 year window is included before it is expected to meet the new standards; and
- Amend clause 127 to require Taumata Arowai to undertake the work required to gain legal ownership of private supplies (and access them).

## Schedule 1: Transitional, savings and related provisions

A drinking water supplier is required to submit a new water safety plan within one year if it serves more than 500 people, regardless of whether an approved water safety plan exists. Councils around the country have put in a large amount of effort preparing water safety plans to meet the much higher expectations of the New Zealand Drinking-water Safety Plan Framework (Ministry of Health, 2018), which are largely similar to the requirements of section 31 of the Bill.

It is onerous to require water suppliers to submit a new water safety plan so soon if one has already been approved under the revised framework.

Recommendation:

- Amend clause4(3) to allow those large water supplies that have an approved water safety plan under the New Zealand Drinking-water Safety Plan Framework (Ministry of Health, 2018) to have five years from the date of approval of that water safety plan to submit a new water safety plan.