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Via email: fe@parliament.govt.nz

Committee Secretariat
Finance and Expenditure Committee

To whom it may concern

SUBMISSION of AOTEAROA WATER ACTION INC.

TO THE DEPARTMENT OF INTERNAL AFFAIRS ON THE WATER SERVICES ENTITIES BILL 13-1

Thank you for the opportunity to present our submission. We would like to request the opportunity to speak to the Committee at a Hearing.

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Introduction

1) Aotearoa Water Action (AWA) was incorporated in 2018 to challenge water bottling permits granted by Environment Canterbury.
2) AWA's Charter:
   a) recognises the vulnerable state of the World's freshwater quality and quantity – particularly in this time of climate crisis and uncertainty. Noting the real risk of unprecedented and increasing water insecurity, it highlights an obligation to exercise the precautionary principle with respect to matters relating to the human right to water.
   b) recognises the human right to safe, clean, accessible and affordable drinking water and sanitation is indispensable for the happy, free and dignified social, cultural, spiritual, economic and political life of all people

c) demands that water sovereignty of, by and for the people must be recognized and upheld
d) recognises the importance of democratic processes in protecting our wai and states that the views and wishes of affected local communities must be given priority consideration when making decisions that relate to the use control and management of water.
e) supports constitutional transformation in Aotearoa that entrenches te Tiriti o Waitangi, and the protection of environmental values and human rights
f) expresses concern about the harmful effects of systemic, neo liberal, capitalistic economic violence on our natural world and society, including the relentless, delusional drive for infinite economic growth on a finite planet.

3) It should be evident from the above that Aotearoa Water Action supports the Government's objective to provide clean, safe drinking water, as well as effective wastewater and stormwater infrastructure to protect water and our environment and ultimately, to give effect to Te Mana o te Wai.
4) AWA also supports the concept of co-governance of water services and infrastructure by councils and mana whenua. However, we want to emphasise that co-governance can occur under any governance model, and that for there to be a meaningful governance role for mana whenua there must first be a meaningful governance role to share - under the proposed model and this Bill, there is not.

5) Our concerns with this Bill are many but our overriding concern is that over time, despite the stated intentions of this Government, community stewardship/kaitiakitanga, public ownership and sovereign rights over our wai, will be lost. We are obviously concerned about the flow on effects of that.

6) We ask that this Committee consider the Bill as a whole and in its geopolitical, environmental, human, and legal context.

General comments on the s3(a) purpose of the Bill – the establishment of 4 entities.

7) Firstly, the Government has no mandate for the s3(a) purpose of this Bill and arguably would not have the power to pass it if it had sought a mandate at the last election.

8) AWA strongly opposes the 4-Entity governance model which prioritises balance sheet separation above all else. The result is corporatisation of water assets and services

which puts them at significant risk of privatisation. Without meaningful public ownership (requiring reasonable public rights and responsibilities, and resulting in balance sheet connection), we believe the outcomes of this reform will look and feel like privatisation, even if the entities are not technically 'privatised'.

9) We support reform, but reform should (and still can) look like vastly improved regulation, improved regional collaboration (e.g. sharing knowledge and enabling bulk purchasing), and additional funding for some councils, as recommended by the Productivity Commission.

10) The purpose of this Bill places three waters delivery into a silo. That structural silo will be reinforced by placing infrastructure industry 'experts' in control of decision-making. Given the social, environmental, and geo-political complexity we are facing (and will continue to face) we must be putting in place governance structures that enable us to think about the whole system and that require us to make decisions for the benefit of the whole system. That is what local government does well, if imperfectly at times.

11) Leaving the governance of 3 waters assets and services with local councils would have many advantages that have not been accounted for by the DIA. Local government works as an integrated system and is required (once again) to consider all the 'well beings' when making its decisions. It can achieve significant economies of scope (and reduced emissions) by combining its water and transport projects. The loss of those financial and carbon reduction efficiencies have not been calculated and accounted for by the DIA or WICS. As a result, it's not clear whether the total cost to households (of all existing services), will increase or decrease under the proposed model.

12) Water is a limited resource; we are already seeing conflict over access to it – locally and globally. Value judgements will need to be made about who should have access to how much of a reticulated supply. Those kinds of decisions should made by people who are representative and democratically accountable.

13) The preference for the proposed model is based on poor process including pre-determination, flawed financial assumptions, inadequate public consultation, inadequate consideration of alternatives, and years of significant advocacy from the infrastructure industry, beginning with their delegation to Scotland in March 2017 (which included staff from the DIA and Treasury). This unbalanced influence of the infrastructure industry on government policy is, we think, cause for concern.

14) Finally, the way this reform has been managed has caused a breakdown in the relationship between central and local government that can not be ignored. It has also given traction to destabilising forces. These issues should not be disregarded by the Committee. Stability and trust in Government must always be a priority.

Recommendation

15) That the Select Committee pause the Three Waters Reform Programme to ensure there is time to:

- undertake an holistic economic assessment of the effects of the proposed model including (but not limited to):

a) the effects of reduced economies of scope at the local government level:
b) the effects of reduced competition (if any); and
c) the effects of increased expenditure on inflation (taking into account the limited capacity of the industry)

- Properly consider all the advantages and disadvantages of alternative governance models and legislative reform *with* local government and communities
- Ensure all pieces of legislation related to 3 Waters Reform can be considered as a whole
- Ensure support from across the House (it was considered important for Climate Change which is no less urgent an issue)
- Restore relationships with local government and communities
- Deliver the best outcomes for our water, our environment, and future generations

Concerns about process – staging and consultation

16) We have concerns about the lack of good process around the progression of this Bill, including:

a) Lack of consultation with communities on the specifics of the Bill
b) Failure to release all relevant draft legislation as a package for holistic consideration
c) Failure to explain how 3 Waters Reform will work alongside and integrate with Local Government Reform and Resource Management Reform
d) Lack of analysis of how this Bill works in the context of relevant existing legislation e.g. New Zealand's trade agreements and the Resource Management Act.

At best, this points to the Government rushing reforms through before an election; at worst it might amount to the deliberate undermining of our democracy. That this might be for the right reasons and with the best of intentions would not excuse it.

17) On community consultation: It is not an easy task to submit on draft legislation. The DIA has provided 'factsheets' to assist but they speak to selected positive 'facts', ignoring key

matters that would raise concern for many New Zealanders, including the overriding of s130(3) of the Local Government Act 2002 (which was not supposed to occur until 1 July 2024). More should have been and should be done to assist communities to submit.

18) Secondly, it has been difficult to make an informed submission without understanding how this Bill works alongside:
    a) the first constitutions of the entities;
    b) the second Water Entities Bill; and
    c) the draft legislation setting up the Economic Regulator.

19) Below are some of the key areas that remain a mystery but should be clear before this Bill is passed:
    a) We can't understand how the inherent tensions between Taumata Arawai (and the Water Services Act), the future Economic Regulator, and the Entities' debt ceilings will be managed. This has implications for public 'ownership because the Bill in front of us prevents the 'owners' bailing out their entities and the 'owners' will find it difficult to prevent an entity's Board putting itself into a risky financial position.
    b) We can't understand how and whether competition will be maintained in the industry, noting that the 4 entities are able to enter into 35-year contracts and joint arrangements with large foreign corporates.
    c) We can't understand whether or how climate adaptation and mitigation will be required to be addressed
    d) We can't understand whether or how the implementation of spatial plans, Future Development Strategies and District Plans, will be required to be addressed.
    e) We can't understand whether there will be any mechanism for smoothing prices nor what that might look like. Given that affordability is the reason for the reforms, the absence of any detail in this Bill is concerning.
    f) We can't understand how development contributions and connection fees will be established.
    g) We don't understand whether the Government can legally mandate the transfer of water permits from Councils to the Entities and what restrictions might be placed on the use and transfer of those permits.

20) There has been no analysis of the effect of our Free Trade Agreements in the context of the 35-year contracts and joint arrangements that can be entered into by the entities (with foreign corporations). We need to be certain that these laws can be amended as

required to protect our water and our communities, even if that would hurt the bottom line of a foreign corporate (and without the risk of a legal challenge on that basis).

21) To establish these Entities, and to enable the secondment of Council staff and the transfer Council assets, without understanding and ensuring transparency around the above issues (and others), would be irresponsible and undemocratic. The legislation must be considered holistically and in its wider context.

22) The Committee should not be pressured into poor decisions by political timelines – this reform is too transformative to rush.

Recommendations

23) If reform is not paused, we recommend the Select Committee delay the progression of this Bill to ensure that all legislation required to implement and regulate the 4-Entity Model can be considered as a whole. It is extremely important that the economic regulator can be operative from the outset.

24) We recommend the Committee undertake an analysis of the impact of Trade Agreements on the operation of the entities and the potential outcomes of the Bill as drafted, noting the ability to enter into 35-year contracts and joint arrangements and noting the potential for asset sales.

25) We also recommend that the Committee take the time to consider the potential outcomes of the Bill's provisions as a whole, rather than considering the reasonableness of each section standing alone. For example:

a) Consider the potential implications of the ss117 and 118 (35-year contracts and joint arrangements) provisions *in the context of* the s12 'functions', the s115 and s166 'independence' provisions, and the s127 'method of contracting' provisions.
b) Consider what acts might lawfully be done by the entity, given the powers of the Board alongside the strong limits on the powers/rights of the RRG and TA 'owners'.
c) Consider whether (and in what ways) the outcomes of the provisions mentioned above might look and feel and have the effects of privatisation of water assets.

The table following this section attempts to help with this.

Concerns about wellbeing and stewardship

26) When it comes to *ensuring* community wellbeing and stewardship of water by communities, we think this Bill scores poorly. That's not to say it can't 'deliver' in a best-case scenario, but we know that industry capacity is stretched, that funding is tight, and (crucially) accountability is lacking.

27) We know that this model has been driven by industry (by Infrastructure New Zealand and Water New Zealand) and that industry's drivers are growth and profit, not the 'well beings' that (via legislation) drive local government.
28) AWA is concerned about the lack of reference to community wellbeing in the Bill. The objectives speak to enabling housing, but there is no mention of providing for activities that promote wellbeing, such as the irrigation of sports fields or trees or enabling the provision of swimming pools. These are things territorial authorities have always provided for and for which supply should be provided except in specific circumstances.
29) There is also no obligation under the Water Services Bill (or this Bill) for the entities to provide more than a sufficient quantity for drinking, cooking, oral hygiene and washing utensils. This provision needs to be rethought if our water services are to be corporatised via an Act of Parliament. The Water Services Act (via a consequential amendment) should at least require sufficient water for daily showering, household cleaning and toilet flushing.
30) This Bill does not cement Council ownership or (indirectly) governance - the imperative to achieve balance sheet separation has given us a Bill which strips away all democratic control and accountability and leaves us in the hands of industry 'experts'.
31) The Regional Representative Group representing the TA 'owners' and iwi can not direct the Entity – most importantly, there is no mechanism by which the RRG can amend an entity's Statement of Intent. Finally, an entity's Board can only be removed for a narrowly defined 'just cause' (essentially limited to misconduct).
32) It is not yet known how the TA's will appoint or elect their representatives, nor is it clear how, and under what circumstances, they might remove them.
33) There is no mechanism requiring the RRG to membership to seek feedback from those they represent nor is there any requirement for TAs to consult with communities and pass that information up the bureaucracy. And even if a massive effort was made to understand what communities wanted to invest in, there is no way to ensure the Entity would meet the desires of individual communities.
34) We believe the scenario this Bill creates, in which the community has no power, will stifle environmental advocacy and we have concerns about the effects on our Lakes and rivers.

Recommendations

35) The issues above can only be solved in a meaningful way by letting go of balance sheet separation which means looking to other governance models (including an enhanced status quo) or bespoke regional solutions. That is our preference, and we ask the Committee to seriously consider that option.

36) However, improvements could be made to this Bill as follows:

a) The Act could legislate for a chain of democratic accountability from communities to TAs to the RRG.
b) A mandatory process could be put in place to resolve disputes between the Entity board and the RRG on the content of the Statement of Intent.
c) Transparency could be improved, for example by making every Board meeting public and making agendas and minutes available on an entity's website.
d) The scope of the 'just cause' situations for removing an entity's board members could be increased.
e) A requirement to consider and provide for community wellbeing and community services should be included
f) The Committee should ensure sufficient water must be provided to meet the needs of households – not just 'drinking water' as narrowly defined in the Water Services Bill

Concerns about privatisation

37) AWA's primary concern is public ownership and the on-going sovereignty of (and control over) of our water and the infrastructure that delivers it to communities. Without that, we lose control of how we grow, the wellbeing of our communities, and our ability to mitigate and adapt to climate change. The bottom line is that we must be able to change laws to protect our environment and communities even if those changes impact corporate profits.

38) It's important to understand that Councils' shareholdings do not amount to ownership when considered alongside:

a) the legislated independence of the Board,
b) the 75% for agreement provisions for the 50/50 iwi/'owners' RRG,
c) the limited scope of the constitution (most direction is via legislation)
d) Ministerial control of the constitution and any changes to it
e) The absence of any legislated mechanism for the TA owners to direct or remove their RRG representatives
f) The limited scope of 'just cause' for removal of entity board members

39) Also, no matter what protections are put in place to prevent privatisation they can all be removed via a Select Committee process. We see this Bill doing just that by overriding the s130(3) provisions in the LGA (see Schedule 1, clause 14). The best protection against privatisation is not to package up the assets into large entities and remove them

from council control. If the Committee suspects a Party, whether now or in the future, might want to privatise these assets, then do not pass this Bill.

40) Our concern is that this reform has been driven by industry and that under the provisions of this Bill, industry experts and the companies contracting to the entities or in joint arrangements with the entities will have control of water assets and services.

41) There are even ambiguous provisions that allow for the sale of assets (see s116(2)(c)(ii) and s118(2)(d)(i) and (ii)). These asset sales don't have to be described in the Statement of Intent and don't require agreement of the TA 'owners' or the RRG.

42) The 35-year contracts and joint agreements enabled by the Bill are long and feel to us like effective privatisation ahead of a future law change that will make it official.

Recommendations

43) The retention of public ownership (of water assets and the entities themselves) should be included in s11 as an over-riding objective of the Entities.

44) The committee should consider whether there should be additional limits to the functions of the entities and the acts that can be done relying on s12(b). Having the right limits in place is important given the inability of the TA 'owners' and communities to direct the entities. Certain acts may need to be prevented by law, for example: breaching or even getting within a certain proximity of debt limits; or providing water infrastructure to rural land. There will be other examples.

45) Council ownership, which is ensured under s130(3) LGA 2002, must remain secure until 1 July 2024 and until the Entity has a constitution and the TA 'owners' and the RRG are in place. Clause 14 of Schedule 1, which overrides that section of the LGA should have a delayed date of enactment to ensure the above.

46) The Committee should also include stricter provisions around conflicts of interest (to prevent capture by the industry) by:

a) Requiring the disclosure of recent 'past' interests as well as current and known future interests (s64(1)(c))
b) Removing the rights of the Chairs to unilaterally grant 'permissions to act' (despite having an interest in a matter) (see s 107)
c) Improving the timeframes for reporting conflicts of interests and permissions to act (with an interest) to the Appointment Board and RRG. As drafted the RRG only has retrospective oversight.
d) Opposing s109(b).

Other Recommendations

47) It's extremely concerning that there appear to be no provisions, outside of the objectives that address climate adaptation or mitigation or spatial planning in a meaningful way. This is the defining issue of our time. The investments made by these entities must seek to limit growth and minimise GHG emissions and so the legislation must require that.

48) The legislation does not prevent the transfer of water permits from entities to other parties. In fact, there is no mention of water permits at all. This needs to be rectified. The Bill needs to address the transfer of permits from councils to the entities and protect them from full or partial transfer to private companies.

49) The s11 objectives and s6 Definitions may need some work (see table below for suggestions). For example, if we are directing the entities to be 'efficient' we need to define efficiency and not in a narrow financial sense but in the widest economic sense (considering cultural, social and environmental costs and benefits). Failing to define 'efficiency' to achieve reduced emissions, and social and cultural value, would be a mistake.

Additional comments and recommendatios on specific provisions are provided in the table below. Legislation is in blue text, with key provisions highlighted. The provisions have been grouped together where possible in themes to assist with understanding our concerns.

Provision	**Comments**
S3 Purpose The purpose of this Act is to— (a) establish 4 water services entities to provide water services in New Zealand; and (b) provide for their objectives, functions, service delivery areas, and governance arrangements.	**Oppose**
S6 Interpretation	**Amend** Failure to define key terms is inefficient and makes it difficult for communities to hold power to account. **<u>Add definitions for</u>:** **'safe'** for the purposes of s12(a) refer to the definition in the Water Services Bill

	'efficient' for the purposes of s12(a) N.B. The definition of 'efficient' should be broad and speak to minimising the use of resources including lifecycle carbon (in terms of both plant and operations). **'reliable'**, for the purposes of s12(a) **'best commercial and business practices'** for the purposes of s11(d) **Define** (in either in s6 or s118) these phrases for the purposes of s118(3)(d): (i) incidental to the joint arrangement; and (ii) desirable for the success of the joint arrangement.
OBJECTIVES AND IMPLEMENTATION **(ss 11, 73, 57)** **11 Objectives of water services entities** The objectives of each water services entity are to— (a) deliver water services and related infrastructure in an efficient and financially sustainable manner: (b) protect and promote public health and the environment: (c) support and enable housing and urban development: (d) operate in accordance with best commercial and business practices: (e) act in the best interests of present and future consumers and communities: (f) deliver water services in a sustainable and resilient manner that seeks to mitigate the effects of climate change and natural hazards. **73 Board must act consistently with objectives, functions, operating principles, and statement of intent** The board of a water services entity **must** ensure that the entity acts in a manner consistent with its objectives, functions, operating principles, and current statement of intent.	**Amendments** Include "*ensure the retention of 3 waters assets and three waters entities in public ownership"* as an over-riding objective in s11 s11(b): Split public health and environmental protection into 2 objectives (N.B.the environment shouldn't read as an afterthought). OR reword as: *"protect and promote public health and the health of the environment"* S11(c) amend to: *(c) support and enable housing and urban development in line with councils' District Plans* The legislation must provide at least some direction to the value judgements that will be required when these objectives (a)-(f) are in conflict. It may be useful to include primary and secondary objectives. To ensure s73 is met, the Act **must** legislate for expertise in all relevant areas (including urban planning, freshwater, and natural hazards), rather than the very limited areas covered as requirements in s57 i.e:

S57	Amend s57 to require board member expertise in urban planning, freshwater planning, climate mitigation and adaptation.
POWERS TO ACT (ss12, 17, 18, 25) **12 Functions of water services entities** The functions of each water services entity are— (a) **to provide safe, reliable, and efficient water services in its area; and** (b) **any functions that are incidental and related to, or consequential on, its functions set out in** paragraph (a)**.** **Other provisions relevant to the enabling function of 12(b):** **17 Core things water services entities can do** A water services entity may do anything that is authorised by this Act. **18 Other things water services entities can do** (1) A water services entity may do anything that a natural person of full age and capacity may do. (2) **Subsection (1)** applies except as provided in this Act or another Act or rule of law. **19 Acts must be for purpose of functions** A water services entity may do an act under **section 17 or 18** only for the purpose of performing its functions. **25 Interpretation for sections 15 to 24** In sections 15 to 24, unless the context otherwise requires,—	**Amendments** **In relation to 12(a)** Define **'reliable'**, and **'efficient'** in s6 (or elsewhere in the Act). Definitions should describe clear, tangible outcomes, and preferably KPIs to ensure performance. **N.B. 'Safe'** is defined in the Water Services Act in relation to drinking water, and as a water supplier the entity must supply 'safe' water (also see s75 obligation). Therefore, word 'safe' is unnecessary. However, if 'safe' is included in s12(a), that provision should also reference environmental protection to ensure effect is given to Te Mana o te Wai through the Boards' investment decisions (procurement and contracts). **In relation to s12(b):** S12(b) and specifically use of the word "Any" is potentially too enabling… • given that specific direction can not be given by the Government nor the TA 'owners'/RRG and • given ss17,18, and 25. **Consider adding exceptions to s12(b) functions**

act includes a transfer of property, rights, or interests to or by a water services entity do includes— (a) to do an act; and (b) to have a capacity; and (c) to have or exercise a power, right, or privilege **natural person act—** (a) means an act that a natural person of full age and capacity can do (whether or not the act is something that is also authorised by an Act); and (b) includes entry into a contract for, or relating to,— (i) acquisition of financial products or borrowing: (ii) the purchase, leasing, or sale of, or other dealings with, property: (iii) the employment, or engagement of the services, of a person **person dealing**— (a) means the other party to the transaction, if the act of the water services entity is a transaction; and (b) includes a person who has acquired property, rights, or interests from a water services entity.	
APPOINTMENT OF REPRESENTATIVES ss32 and 30 **32 Method of appointing territorial authority representatives to regional representative group** (1) The territorial authority owners of a water services entity must appoint territorial authority representatives to the regional representative group of the water services entity in accordance with section 27(2) and (3) and the constitution. (2) The territorial authority owners must appoint only persons who are— (a) elected members or chief executives of a territorial authority owner of the water services entity; or (b) senior managers of a territorial authority owner that, in the collective opinion of the territorial authority owners, have the appropriate knowledge, skills, and experience to assist the	**Amend** **Amend s30 to** ensure changes to the constitution to change the method of appointing representatives to the RRG, does not require 75% consensus of the whole RRG as in s30(b) The method of appointing territorial authority reps (via a change to the constitution) should not require the agreement of iwi members of the RRG. Likewise, a change to the method of appointing iwi reps should not require input from the TA reps. The Bill should be amended to ensure iwi and TA owners retain independence on these changes to the constitution. **Amend s30 to** ensure the method for appointing the TA reps must be democratic and must therefore involve all elected members. **Amend the Bill to provide clarity on how, and the circumstances in which**

regional representative group in performing its role (*see* section 28). **30 Decision making by regional representative group** Decisions made by a regional representative group of a water services entity must be made— (a) by consensus if consensus can be reached by regional representatives taking all reasonably practicable steps to reach consensus in accordance with a procedure, and within a time frame, specified in the constitution; and (b) in any other case, by 75% of the regional representatives present and voting.	**iwi, and TA owners can remove their representatives from the RRG**
NOTICE OF PUBLIC MEETING 60(3) The board must— (a) **give public notice of the details of the public meeting at least 1 month before the meeting; and**	**Amend** S60(3) should require that the constitution will set out how public notice will be given. This is to ensure the RRG can ensure sufficient notice is given to the public. Methods may be change over time as technology changes.
s65 Term of office of board members	**Amend to l**egislate for sufficient overlap so all Board members do not leave at the same time
CONSTITUTION ss94, 95 **94 First constitution of water services entity** (1) The first constitution of a water services entity is the model constitution for the entity set out in regulations. (2) But, when that model constitution is first amended or replaced under section 95 or 96,— (a) that model constitution as so amended or replaced must set out all provisions of the entity's constitution (including any unchanged from that model constitution); and (b) the regulations setting out the model constitution for the entity are revoked. **95 Process for amending or replacing constitution** (1) A regional representative group may propose to amend the water services entity's constitution or adopt a new constitution for the entity in the manner provided in this section.	**Amendments** The RRG and ultimately the Government (Minister) control the constitution. That does not reflect TA ownership. **The first constitution should be considered alongside this legislation. The progress of the Bill should be delayed until that can occur** **The RRG should be required to consult (in a prescribed manner) with the TA owners (i.e. all elected members) before a vote on changing the constitution.** A change to the method of appointing territorial authority reps (via a change to the constitution) should not require the agreement of iwi members of the RRG. Likewise, a change to the method of

(2) A proposed amendment to the entity's constitution or a proposed new constitution for the entity must be approved by the Minister before it is effective. (3) A draft constitution, or a proposed amendment to the entity's constitution, must be— (a) in writing; and (b) approved at a general meeting of the group by a resolution passed by a 75% majority of all of the group's regional representatives ; and (c) otherwise proposed in accordance with the constitution. (4) The regional representative group must ensure that written notice of the draft constitution or proposed amendment is provided to the Minister. (5) If the Minister approves the amendment or proposed new constitution, the amendment or replacement constitution is effective— (a) on the day immediately after the date of that approval; or (b) on a later date that is specified in the amendment or replacement, and that is in accordance with the terms of the resolution of the group under subsection (3)(b). (6) A proposed amendment to the entity's constitution or a proposed new constitution for the entity has no effect if rejected by the Minister. (7) The constitution as amended or replaced under this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements). (8) For that Act, the regional representative group is, despite the Minister's approval, taken to be the maker of the constitution. (9) This section does not apply to an amendment of a type described in section 96(1).	appointing iwi reps should not require input from the TA reps. The Bill should be amended to ensure iwi and owners retain independence with respect to such changes. Amend voting rights to 75% of TA reps or 75% of iwi reps
CONFLICTS OF INTEREST ss 64, 105, 107, 108, 109 **64(1)(c)** disclose to the chairperson of the entity's regional representative group the nature and extent (including monetary value, if quantifiable) of all interests that the person has at that time, or is likely to have, in matters relating to the entity.	**Amendments** **Amend s64(1)(c) to ensure recent interests are also covered (to prevent capture of the Board by 'industry' interests).** Suggestion:

105 Consequences of being interested in matter

Board member

(1) A board member who is interested in a matter relating to a water services entity—

(a) must not vote or take part in any discussion or decision of the board or otherwise participate in any activity of the entity that relates to the matter; and

(b) must not sign any document relating to the entry into a transaction or the initiation of the matter; and

(c) is to be disregarded for the purpose of forming a quorum for that part of a meeting of the board during which a discussion or decision relating to the matter occurs or is made.

107 Permission to act despite being interested in matter

Board

(1) The chairperson of the board may, by prior written notice to the board, permit 1 or more board members, or board members with a specified class of interest, to do anything otherwise prohibited by **section 105** if the chairperson is satisfied that it is in the public interest to do so.

(2) The deputy chairperson (if any) of the board may give a permission if there is no chairperson, or if the chairperson is unavailable or interested.

Permission

(9) A permission may state conditions that the board member, regional representative, or regional advisory panel member must comply with.

108 Permission must be disclosed in annual report

The water services entity must disclose an interest to which a permission under **section 107** relates in its annual report, together with a statement of who gave the permission and any conditions or amendments to, or revocation of, the permission.

Compare: 2004 No 115 s 68(6)

"…of all interests that the person has, has had in the last 2 years~~at that time~~, or is likely to have, in matters relating to the entity.

Amend s107 (1) and (2) to ensure:

- the Chair (or deputy) can not act alone to grant a permission (to act despite having a conflict). Permission, if granted, must be by a unanimous vote of the Board at a meeting.
- If such a permission is to be considered, the Board Appointment Group and the RRG must be notified via the agenda of that meeting. If permission is granted, the RRG must be notified via email within 2 days.
- permission does not come into force until a week after it is granted.
- the Board Appointment Group has the power to remove any such permission granted for Entity Board Members.

N.B. Similar provisions (to those above) should apply to the RRG and Board Appointment Group

- A register/record of such 'permissions to act', to be current at all times, and to be 'held' by the Entity and published on its website. This should include all conditions of the permissions. N.B. Retrospective reporting via the Annual report is inadequate to ensure s109 has value
- A maximum time limit on such a permission (legislated for).

109 Entity may avoid certain acts done in breach of conflict of interest rules (1) A water services entity may avoid a natural person act done by the entity in respect of which a board member was in breach of section 105. (2) However, the act of a board member— (a) may be avoided only within 3 months of the affected act being notified— (i) to the chairperson of the regional representative group, under section 101)(a); or (ii) under section 106(1)(b), and in accordance with the procedure specified, for the purposes of section 106(1)(b), in the constitution; and (b) cannot be avoided if the entity receives fair value in respect of the act. (3) An act in which a board member is interested can be avoided on the ground of the board member's interest only in accordance with this section.	
INDEPENDENCE OF THE ENTITIES ss115, 166, 179 **115 Safeguarding independence of water services entities** (1) The Minister, a territorial authority owner, a regional representative, or a regional representative group cannot direct a water services entity or a board member or an employee of a water services entity— (a) in relation to the performance or exercise of a duty, function, or power under this Act; or (b) to require the performance or non-performance of a particular act, or the bringing about of a particular result, in respect of a particular person or persons. (2) This section applies to all Government policy statements and statements of strategic and performance expectations issued under this Act. (3) This section also prevents a constitution of a water services entity from conferring a power of direction that would contravene this section.	**Oppose** **Comments:** These provisions cement the fact that there is no TA ownership The 'owners' can prevent a sale but can't actually 'rescue' their own assets from an entity that might be surpassing its debt limits. This independence to act (or not act) is the reason the Committee must take the time to anticipate or foresee the issues that might arise from powers like joint arrangements and the unilateral granting of permission to act despite a member having a conflict of interest. The Act must include some well-considered exemptions to the functions and powers of the entity boards because of this independence

166 Financial independence (1) A territorial authority owner (in its capacity as a holder of shares in a water services entity, or any other capacity), a regional representative group, or a regional representative— (a) has no right, title, or interest (legal or equitable) in the assets, security, debts, or liabilities of a water services entity (and the constitution cannot confer any such right, title, or interest — *see also* sections 15(3) and 93(2)(c)); and (b) must not receive any equity return, directly or indirectly, from a water services entity; and (c) must not give a water services entity any financial support or capital; and (d) must not lend money or provide credit to a water services entity; and (e) must not give any person any guarantee, indemnity, or security in relation to the performance of any obligation by a water services entity. **179 Minister may appoint Crown Manager** 4) A Crown manager must, to the extent authorised by their terms of reference,— (a) direct the water services entity, or the board of the water services entity, to act to address the problem; and (b) make recommendations to the Minister on whether the Minister should take further action in relation to the water services entity, including whether the Minister should appoint any other ministerial body in relation to the entity; and (c) ensure, as far as practicable, that the existing organisational capability of the water services entity is not diminished; and (d) direct the water services entity on any related matter as recommended by a ministerial body currently or previously appointed in relation to the entity.	Significant power to act should not ever sit with one person – either via the legislation or a delegation. Timely and sufficient monitoring and oversight by the Board appointment Committee and RRG must be legislated for. The Committee should consider whether intervention by the Minister (see s179) would compromise the credit rating of the Entity. It it might then are there any useful powers to intervene?
CORPORATISING PUBLIC ASSETS – Ss 116, 117, 118, 12, 17, 18, 25	**Oppose s 116(2)(c)(ii) because:** • AWA opposes any asset sales without the agreement of the territorial owners, through a process that includes public

116 Obligation to maintain water services (1) A water services entity must continue to provide water services and maintain its capacity to perform or exercise its duties, functions, or powers under this Act. (2) In order to perform or exercise its duties, functions, or powers under this Act, a water services entity must not do any of the following: (a) use water services assets as security for any purpose: (b) divest its ownership or other interest in a water service except in accordance with Schedule 4: (c) lose control of, sell, or otherwise dispose of, the significant infrastructure necessary for providing water services in its service area except— (i) in accordance with Schedule 4; or (ii) if, in doing so, the entity retains its capacity to perform or exercise its duties, functions, or powers. (1) In this section,— **significant infrastructure means** any of the following: (a) water services assets that— (i) are owned and operated by a water services entity for the purpose of delivering water services to consumers or communities in any part of the entity's service area; and (ii) a water services entity needs to retain to— (A) maintain its capacity to achieve its objectives; or (B) perform or exercise its duties, functions, or powers; or (C) promote an outcome that the entity has identified as important to the current or future well-being of consumers or communities in the entity's service area; and (b) infrastructure that is identified by the water services entity as being material to its operations and that is included in the entity's current statement of intent water services assets includes existing or proposed assets used or proposed to be used by the water services entity to provide water services.	consultation in line with s82 LGA 2002. • This clause appears to enable the sale of infrastructure that does not meet the definition of **'significant infrastructure'.** • The outcomes anticipated by the words: *"if, in doing so, the entity retains its capacity to perform or exercise its duties, functions, or powers",* is not clear The Committee must understand and explain for the public and the TA 'owners' what level of asset sales is possible under this clause. Ambiguous law is inefficient and will cause issues for all parties and the Courts. The Act must clarify what is anticipated under the clause.

117 Contracts relating to provision of water services

(1) Despite **section 116**, a water services entity may enter into a contract for any aspect of the operation of all or part of water services for a term not longer than 35 years.

(2) If a water services entity enters into a contract under subsection (1), it must—

(a) continue to be legally responsible for providing the water services; and

(b) maintain ownership of the infrastructure and assets relating to the water services; and

(c) retain control over—

(i) the pricing of water services; and

(ii) developing policy related to the delivery of water services.

(3) This section does not prevent a water services entity from entering into a contract with 1 or more other water services entities if the purpose of the contract relates solely to water services.

118 Joint arrangements for purpose of providing water services

(1) **Section 116** does not prevent a water services entity from entering into, for the purpose of providing water services, a joint arrangement or joint water services entity arrangement for a term not longer than 35 years (except a concession or other franchise agreement relating to the provision of the water services or any aspect of the water services).

(2) Before a water services entity enters into a joint arrangement or joint water services entity arrangement, it must have consulted in accordance with the procedures set out in Part 6 of the Local Government Act 2002 as if it were a local authority.

(3) If a water services entity enters into a joint arrangement under subsection (1), it must—

(a) continue to be legally responsible for providing the water services; and

(b) retain control over—

(i) the pricing of water services; and

(ii) developing policy related to water services; and

(c) after the end of the joint arrangement, retain ownership of all the infrastructure associated with

Oppose s117(1) and 118(1) because:

- The 35-year term is too long for these arrangements, especially at the scale possible…
- These provisions could reduce the ability of this country to be agile in the face of climate change and other issues
  N.B. Trade agreements may cause issues if the companies involved are foreign
- These provisions may reduce competition in the market, eventually driving up (rather than reducing) costs to consumers
- 35-year terms may deliver outcomes that look and feel like privatisation.
- The entities *could* become nothing more than large-contract managers (part of a large bureaucracy)

Amend s118(2) to require consultation that details how it will meet the requirements in s118(3). Part 6 of the LGA alone allows too much discretion

Oppose s118(2)(d)(i) and (ii) because: There should be no loopholes allowing for assets without visibility and appropriate process.

Amend: If s118(2)(d) is not removed, then

i) incidental to the joint arrangement; and

ii) desirable for the success of the joint arrangement.

must be clearly defined to ensure it is clear what is anticipated and intended by lawmakers

Amend The legislation should require that any potential sale under these clauses <u>must</u> be highlighted in the SOI and be publicly notified with a feedback process

the water services, whether or not the infrastructure was— (i) provided by the water services entity at the beginning of the joint arrangement; or (ii) developed or purchased during the joint arrangement; and (d) not sell or transfer ownership of any existing infrastructure associated with the water services, unless the water services entity reasonably believes that the sale is— (i) incidental to the joint arrangement; and (ii) desirable for the success of the joint arrangement. (4) In this section,— **concession or other franchise agreement** means an agreement under which a person other than a water services entity is entitled to receive a payment from any person other than the water services entity for the supply of the water services **joint arrangement means** an arrangement entered into by 1 or more water services entities with 1 or more bodies that are not water services entities for the purpose of providing water services or any aspect of a water service **joint water services entity arrangement means** an arrangement entered into by 2 or more water services entities for the purpose of providing water services or any aspect of a water service.	
131 Preparation or review of Government policy statement When preparing or reviewing a Government policy statement, the Minister must— (a) be satisfied that it promotes a water services system that contributes to the current and future well-being of New Zealanders; and (b) consult— (i) the water services entities; and (ii) the regional representative group of each water services entity; and (iii) Taumata Arowai–the Water Services Regulator; and	**Amend s131(b):** to list TA owners as a party that must be consulted, and to require consultation with individual councils i.e. with all elected members N.B. Throughout the legislation there appears to be an assumption that the TA 'owners' will be consulted via the RRG, or not at all. That interface between the RRG and TA's and between Tas and the

(iv) other persons, and representative groups of persons, who have an interest in water services in New Zealand.	community needs to be defined in the legislation.
153 Board must prepare and adopt infrastructure strategy (1) The board of a water services entity must provide an infrastructure strategy to the entity's regional representative group at least once in every 3-year period. (2) The strategy must— (a) cover a period of at least 30 consecutive financial years; and (b) comply with section 154; and (c) be prepared in accordance with Part 4 of Schedule 3. **154 Content of infrastructure strategy** (1) An infrastructure strategy must identify— (a) significant infrastructure issues for the water services entity over the period covered by the strategy; and (b) the main options for managing those issues and the implications of those options. (2) An infrastructure strategy must also, for the period to which it relates, outline how the water services entity intends to operate, maintain, and renew its existing infrastructure assets and provide for new infrastructure over the period covered by the strategy. (3) An infrastructure strategy must also, for the period to which it relates, outline how the water services entity intends (consistent with, and without limiting, section 4(1)(b)) to give effect to Te Mana o te Wai, to the extent that Te Mana o te Wai applies to the entity's duties, functions, and powers.	**Amend s154:** To include requirements to: • consider or give effect to councils' FDS's (or Spatial Plans) • to set and meet emissions targets in line with the Government's targets (or better)
171 Good reason for refusing to supply requested information (1) A request for information made under section 170 may be refused if— (a) the withholding of the information is necessary to protect the privacy of a person (whether or not a natural person or a deceased person); or (b) the supply of the information would limit the ability of the water services entity, or of any of its	**Oppose s171:** The monitor should have legislated unrestricted access to information. There should be no loopholes. Loopholes that prevent transparency enable corruption

employees or board members, to perform or exercise duties, functions, or powers under this Act in relation to a particular matter. (2) A reason in subsection (1)(a) applies only if it is not outweighed by the monitor's need to have the information in order to perform its duties and functions under this Act. (3) The information cannot be withheld other than for the reasons in subsection (1), and cannot be withheld at all if it could not properly be withheld under the Official Information Act 1982.	
205 Principles of engagement In performing its functions under sections 147 to 155 and 204, a water services entity must by guided and informed by the following principles: (a) the entity's communication to consumers should be **clear and appropriate** and recognise the different communication needs of consumers: (b) the entity should be openly available for consumer feedback and seek a diversity of consumer voices: (c) the entity should clearly identify and explain the role of consumers in the engagement process: (d) the entity should consider the changing needs of consumers over time, and ensure that engagement will be effective in the future: (e) the entity should prioritise the importance of consumer issues to ensure that the entity is engaging with issues that are important to its consumers.	**Amend s205:** These principles should be amended to ensure they are no less rigorous than the principles under s82 LGA 2002 There should be much stronger consultation principles in place (in line with s82 LGA) to guide communication when the entity is considering the construction of new, or removal/sale of 3 Waters Infrastructure.
Schedule 1 **6 Role of Minister during establishment period** (1) During the establishment period, in addition to the Minister's role under section 26, the Minister has the additional role of overseeing the establishment of the water services entities. (2) The Minister's additional role includes functions and powers to appoint and remove members of the board of each water services entity under this schedule.	**Amend Schedule 1, clause 6 (2):** To make it clear that if the Minister appoints the first Entity Board Members, their term will end at the end of the establishment period. **Oppose Schedule 1, clause 14:** These provisions, and especially s130(3) of the LGA 2002, must not be overridden until 1 July 2024 and the Entity has a constitution, and the RRG is established and empowered to act.

11 Duty of local government organisations to co-operate with department and water services entities

(1) During the establishment period, a local government organisation must co-operate with the department and any relevant water services entity to facilitate the water services reform.

14 Relationship of this Part with Local Government Act 2002

The following provisions of the Local Government Act 2002 do not apply to any actions taken by a local government organisation in order to comply with this schedule or facilitate the water services reform:

(a)section 95(2) (relating to the requirement for a local authority to consult on significant or material variations from its annual plan):

(b)section 97 (which requires certain decisions to be taken only if provided for in a long-term plan):

(c) section 130(3) (relating to certain obligations to maintain water services).

LGA s130(3):

130 Obligation to maintain water services

(3) In order to fulfil the obligations under this subpart, a local government organisation must—

(a) not use assets of its water services as security for any purpose:

(b) not divest its ownership or other interest in a water service except to another local government organisation:

(c) not lose control of, sell, or otherwise dispose of, the significant infrastructure necessary for providing water services in its region or district, unless, in doing so, it retains its capacity to meet its obligations:

(d) not, in relation to a property to which it supplies water,—

(i)restrict the water supply unless section 193 applies; or

(ii)stop the water supply unless section 25 of the Water Services Act 2021 applies.

Schedule 3 **Part 1** 2 **Strategic elements must be approved by regional representative group** (1) The strategic elements (*see* section 145(1)) must, before being set out in the final statement of intent, be— (a) set out in the draft statement; and (**b) approved by the water services entity's regional representative group**. (2) The group may approve those elements with, or without, changes agreed with the entity's board.	**Amend Schedule 3, clause(2)(b):** The Bill must be amended to include a process for amending the Statement of Intent if it is unacceptable to the RRG.