Submission to the Finance and Expenditure Committee

Water Services (Legislation) Bill

Oral Submission of Aotearoa Water Action

Given at 10am 3 March 2023

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1. AWA strongly opposes these reforms. Water is a necessity of life; these reforms corporatize the provision of that basic need. It's almost inevitable that the Entities will become caught between the requirements of the water regulator and the economic regulator and will have to raise capital via share sales at some point in the future. Of course, if we'd followed the Scottish model the Entities would be borrowing from the government but that's not the case. To make matters worse, under current legislation the owners of the assets can't rescue the assets. Think ahead - consider the consequences and a different funding model.

2. We have two requests of the Committee. Firstly, that you prevent the transfer of the Entities' water permits; and secondly, that you constrain the ability to form subsidiaries.

Protecting water permits

3. Each entity will hold many water permits vested in them by Councils and private suppliers. Unlike, 'significant assets' these have not been protected from transfer to other entities or subsidiaries and we say they should be.
4. Under the RMA, water permits are transferable within the same catchment (under s136). Approval is required from the Council for a transfer and, depending on the way a Council's Plan is written, they can be transferred between sites and potentially between different uses.
5. In Canterbury this has led to an unregulated market for water. Water is effectively bought and sold via inflated land prices and through the likes of Hydrotrader (which is a company that brokers water transfers). The point is that water, even via consents that are not 'real property', have significant value and can be 'sold'. And if an entity or subsidiary wanted to raise capital this would be one way to do that.
6. We know that this Government is not looking at market allocation for freshwater (in the Natural and Built Environment Bill), but the ability to transfer rights have not been diminished as far as we can tell (see s255 and s287 of the Bill). There is no certainty around what a future Government might do in that space, so we're asking that provisions be inserted into the Act to prevent the Water Entities transferring their consents under RM legislation. In short, we think the water permits should

have the same protection as the Entities' significant assets. It may be as simple as inserting water permits into the definition of 'significant assets'.

Limitations on the ability to form subsidiaries.

7. Subsidiaries under the draft legislation appear to be companies that can be jointly owned by an entity and other shareholders – private shareholders – and that can perform any of the functions under s13. These s13 functions have been expanded significantly to include amongst other things: building, maintaining and supporting the capability of the water services sector; and facilitating, promoting, and supporting research education and training related to water services.
8. Some of these should be Government functions or at least Government funded, but there is no provision for Government funding. There is the risk that water consumers will end up funding industry training (as an example). What's relevant is not what seems sensible but what is possible given the drafting – remembering that the Entities will likely be run by industry professionals and will not be accountable to communities. Therefore, the extent to which these functions might be met under the Act needs to be carefully considered and constrained.
9. Also, there is no limit on the number of subsidiaries or type of subsidiaries. There should be a limit in place to support the aims of reducing costs and to support transparency and accountability.
10. There doesn't appear to be a requirement to retain a majority shareholding in the subsidiaries. Despite that the entity may give a guarantee, indemnity, or security in respect of the performance of the subsidiaries (albeit in limited circumstances). If the creation of subsidiaries remains in the Act, there should be a requirement to retain 100% of the shareholding or at a minimum a majority shareholding, to ensure the Entities retain control of the Statements of Intent.
11. In our opinion, the Government is creating an additional cost burden for the consumers of water through these additional functions and layers of bureaucracy. We may also be losing the protections and accountabilities that have been written into the Act, and that bind the entity but not subsidiaries.
12. Arguably the contracting provisions and joint arrangement provisions (already in place) have a similar effect. But at least there are specific provisions providing greater accountability e.g. s120 ensures the Entities must consult the territorial authorities before entering a joint arrangement.
13. I haven't managed to get my head around the impacts of these clauses as a whole. That's partly because I've not found a regulatory impact statement that considers them. There should be a thorough regulatory analysis of the Bill including cost and accountability implications of the subsidiary provisions in the context of the Bill, the Water Services Entities Bill and the objectives of the Reform. It feels like things have gone way off track.