In reply please quote Water Services Bill Joint Submission
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Committee Secretariat
Health Committee
Parliament Buildings
Wellington

Joint Submission to the Water Services Bill by Whangarei District Council, Far North District Council, Kaipara District Council and Northland Regional Council

Introduction and Background

This submission is undertaken on behalf of the three territorial authorities within Northland – Whangarei District, Kaipara District and Far North District and the Northland Regional Council (the Councils).

The Councils welcomes the opportunity to submit on the Water Services Bill. It is our understanding that this legislation will implement the Government's decision to comprehensively reform the drinking water regulatory system, with targeted reforms to improve the regulation and performance of wastewater and stormwater networks.

The submission is ordered to follow the structure of the Bill addressing points as they are identified in the document.

Part 1 Preliminary Provisions

Sub part 2 – Interpretation

Clause 5 Interpretation

1. There is no definition of "reticulation".
It is important to clarify what a reticulated supply is as this term is used in several places throughout the Bill including the requirement for reticulated supplies to provide for residual disinfection.

Relief sought – Provide a definition of reticulation.

2. The definition of source water only relates to freshwater.
This does not allow for salt water or recycled water to be a source which potentially limits future technologies and pathways to provide water.

Relief sought – Remove the word freshwater from the definition of source water.

3. Stormwater Network – It is unclear what the extent of a stormwater network is.
This is important in determining the extent of upstream catchments and the responsibilities for managing upstream effects. There is no definition of the built area that can be used to determine this.

Relief sought – Clarify meaning of stormwater network and define built area.

4. Clause 7 – Meaning of safe in relation to drinking water.
We support this clause in that it acknowledges a potential difference between safe drinking water and water that complies with the drinking water standards and therefore enables clauses 21 and 22.

Relief sought – Retain the clause and definition of safe water.

Part 2 - Provisions relating to supply of drinking water

Part 2 Subpart 1 - Duties of drinking water suppliers

5. Clause 22 - Duty to comply with drinking water standards.
We support clause 22 in principle, however, we believe there needs to be the ability for the water supplier and Taumata Arowai to take a pragmatic approach to minor non-compliance with standards, where the drinking water is not unsafe and where the requirements of 22 (2) (e) and (f) are not commensurate with the level of risk. We also understand that in some circumstances testing results may not always be accurate and have a margin of error.

Relief sought – amend clauses 22(2)(e) and (f) to require the water supplier to obtain agreement with Taumata Arowai as to the measures required and the degree of public notification.

6. Clause 22 and 48 -Duty to comply with standards and rules.
We support the duty to comply with the Drinking Water Standards and Compliance Rules. However, we note that from time to time minor non-compliances or technical infringements occur that have no impact on the safety of the water supply and if reported would give the audience a falsely negative indication of the reliability of the water supply. It is recommended that Taumata Arowai be given the power to grant leniency to water suppliers, where in the opinion of Taumata Arowai, the non-compliance was minor, or there was a degree of doubt, or did not impact on the safety of the water, or was a one off occurrence and would not be a fair reflection on the reliability of the water supply if reported as a non-compliance. Examples could be where an MAV for a parameter is slightly exceeded when tested by one laboratory but is below the MAV when the same sample is tested by a different laboratory. Or data missing for a supply exceeds the rules by only a few seconds and the data either side is fully compliant.

Relief sought – Provide Taumata Arowai with the discretion to grant leniency for minor or technical non compliances with standards and rules where these occurrences are not reflective of the overall performance of the water supply.

7. Clause 25 – Duty to supply sufficient quantity of drinking water.
The meaning of drinking water under clause 6 effectively limits the duty of the supplier in clause 25 to providing a small proportion of water normally needed by a community. Consideration should be given to whether a supplier should be required to, under normal circumstances, provide water for a wider range of uses such as industry and business, cleaning, watering and firefighting.
It should also be clarified if a drinking water supplier has an obligation to provide water to a water carrier for the purpose of providing water to self-suppliers. Clarification should include the quantity of water that needs to be supplied and the use to which that water may be put, given the majority is unlikely to be used for drinking water. It should also be clarified if a drinking water supplier is required to provide water to water carriers who are delivering water to users outside of their area, district or region. Do registered water carriers, as drinking water suppliers, have any duties under clause 25?
An option would be to require TLAs to have agreements with drinking water suppliers within the areas to provide water to water carriers.

Relief sought – Consider whether duty to supply needs to be expanded beyond just drinking water and clarify obligations of water suppliers to provide water to water carriers. Where suppliers are unable, for legitimate reasons, to continue to supply water a suitable mechanism should be available for pragmatic options to be easily implemented without the supplier committing an offence.

8. Clause 25 – Duty to supply sufficient quantity of drinking water.
From time to time we come across connections that had been made illegally to the water supply network. This could be in an attempt to avoid payment of connection fees, to avoid installing required infrastructure (meter and/or backflow preventer), to avoid ongoing fees or because that property is not entitled to a connection. A water supplier should not have a duty to provide water to a consumer who does not have permission to connect to the network. Unauthorised persons should be strongly discouraged from connecting to a network. It is important that a water supplier can immediately disconnect such connections as they would potentially pose a risk to the network from poor installation as well as an increased risk from backflow. A supplier should not be required to provide a connection to a property that does not meet the conditions of supply or has not paid the required fees.

Relief sought – Provide for the water supplier to be able to disconnect a connection that has been made to a network without written permission from the network operator. The water supplier should be able to recover the costs of disconnection from the owner.

9. Clause 26 – Duties where sufficient quantities of drinking water at imminent risk.
It is rare that the quantities of water required solely for drinking are at risk. However, the need to impose restrictions for non-drinking usage on an increasing scale is common, particularly during droughts. Many businesses would have legitimate claims that water they used for other than drinking is still essential. There needs to be clarification of what "essential purposes" are and the duty of the supplier to meet these needs under clause 25.

We consider that water supplies not owned by local authorities should not have to apply to the local authority to impose restrictions. Consequently, provision should be made in this Bill to enable any water supplier to impose restrictions under this clause. This could be done in accordance with an approved drought management plan or in accordance with the water supplier's Water Safety Plan.

Consideration would have to be given as to how enforcement of the restrictions would be applied and whether penalties could be imposed and by whom.

Relief sought – Provide all water suppliers with powers to impose restrictions directly.

10. Clause 27 – Duty to provide against risk of backflow.
We support the intent of this clause. However, there is always a risk of backflow and the Water Safety Plan Guides for Drinking Water Supplies D2.4 Backflow Prevention, issued by the Ministry of Health, identifies these. This guide requires the backflow device to be installed at the boundary and this is not clear in clause 27. This clause is not in line with clause 69ZZZ in the Health (Drinking Water) Amendment Act. The clause needs to be clear that a backflow preventer needs to be installed at the point of supply and is independent of any internal backflow prevention the owner may have.

Relief sought – Remove the discretion of the supplier to consider whether backflow prevention is required. The level of risk should be assessed against the Ministry of Health document, *Water Safety Plan Guides for Drinking Water Supplies Clause D2.4 Backflow Prevention,* or other document that may be issued by Taumata Arowai.

Part 2 Subpart 2 – Drinking water safety plans

11. Clause 30 – Owner must have drinking water safety plan.

The Councils supports the requirement for drinking water safety plans. However, the requirement in 30 (2) to lodge the plans and any changes, is not allowing for improvements in planning and use of current planning and data/document management software. In the future these plans are unlikely to be single documents that can be easily lodged with Taumata Arowai. It is probable that to be effective, the plans will be living documents with links to numerous other working documents, spreadsheets and databases. In addition, large suppliers will have multiple plans with generic information that is applicable to all drinking water sources and plans. This information is best held centrally and not repeated in all documents. The Bill needs to allow for improvements in water safety planning and use new technologies for both the documentation and implementation of the plan. It is considered that lodging the plan with Taumata Arowai and providing updated physical or even electronic copies when changes are made is not practical or desirable. A more pragmatic approach may be to require suppliers to notify Taumata Arowai when a plan has been completed or reviewed and provide access to it on request or through an audit process. Thereafter the supplier shall record all changes made to the plan or key documents associated with the plan.

Relief sought – Change clause 30 (2) to require a water supplier to inform Taumata Arowai when a Water Safety Plan has been completed or reviewed and to record all changes to Water Safety Plans made between reviews by Taumata Arowai.

Part 2 Subpart 3 - Requirements relating to notifications and record keeping

12. Clause 35 – Duty to notify Taumata Arowai of notifiable risk or hazard.

Declaring risks and hazards by way of Gazette that are then required to be notifiable, implies that some of these risks and hazards are already known. It would be helpful if examples of notifiable risks and hazards were included in the Bill.

Relief sought – Provide examples of already identified risks and hazards that are likely to be classified as notifiable within the Water Services Bill.

Part 2 Subpart 5 - Source Water

13. As discussed in definitions, this part should cover non-freshwater sources such as water re-use and saline sources.

There is nothing in the subpart that requires any party to act urgently to stop or prevent contamination of a water source. There is a requirement to publish and share information about risks and hazards under Clause 44, but no immediate actions. Notwithstanding that there may be requirements under other legislation. It is recommended that Regional Councils be required to take appropriate follow-up action if informed by a water supplier or other party of an increase in risk to a drinking water source. This could be by way of physical intervention or abatement notice, even if testing or monitoring results have yet to be confirmed.

Relief sought – Require a Regional Council to take appropriate follow-up action if an increased risk to a water source is identified.

Part 2 Subpart 6 – Standards, rules, directions and other instruments

14. Clause 51 – Templates and models.

In general, the Councils support the requirements of this subpart. However, its addition to the provision in Clause 51 for Templates and Models, it is considered vital that these instruments are supported by guidance documents such as the Ministry of Health's "Guidelines for Drinking Water Quality in New Zealand" and "Water Safety Plan Guides for Drinking Water Supplies". These documents provide not only how-to information, but useful background and historic information that enables water suppliers to understand how and why standards, rules and treatment processes are as they are.

Taumata Arowai should be responsible for taking over and updating these documents as they are a valuable resource for water suppliers.

Relief sought – Tuamata Arowai to take responsibility and issue guidance documents for drinking water quality management and water safety planning.

Part 2 Subpart 9 – Emergency Powers

15. Clause 58 – Taumata Arowai may declare drinking water emergency.
If Taumata Arowai declares a drinking water emergency, then Tuamata Arowai should be the lead agency for the emergency. Taumata Arowai should use Civil Defence protocols including nominating a Controller for the emergency event. These protocols, including the CIMS (co-ordinate incident management system) structure are well understood by territorial authorities and most drinking water suppliers.

Relief sought – A clause should be added to require Tuamata Arowai to use Civil Defence protocols when declaring and managing a drinking water emergency.

Part 2 Subpart 11 – Laboratory accreditation and testing

16. Clause 72 - Duty to use accredited laboratory to analyse water.
The Council's do not agree that an accredited laboratory should notify Taumata Arowai when MAVs are exceeded as proposed under 72 (2). It is considered that this would cause confusion, double reporting and an excessive workload for Taumata Arowai. It would also require the laboratory to know the source and origin of all water samples so it could determine if the sample was taken for the purpose of compliance or other reasons such as plumbosolvency monitoring or source water monitoring. Also, many smaller laboratories forward more complicated testing to larger laboratories. Which would raise the question of which laboratory is required to report? It is suggested that the duty to report remains with the drinking water supplier on receipt of notification of an exceedance being identified.

Relief sought – Require laboratories to notify the drinking water supplier as soon as possible if analysis indicates drinking water standards have been exceeded. Modify 72 (2) for the drinking water supplier to notify Taumata Arowai.

17. Clause 74 – Requirements for laboratory accreditation body.
An accreditation body must be impartial and not be part of, or owned by a drinking water supplier or a business that owns or operates laboratories. An accreditation body should be able to investigate complaints about the performance of laboratories they have accredited. Reports of these investigations should be made available to the complainant and to Taumata Arowai.

Relief sought – The criteria and standards for accreditation bodies prescribed by Taumata Arowai to be strengthened to ensure they are impartial and can undertake investigations effectively.

18. Clause 76 – Accreditation.
The accreditation body should accredit laboratories only for specific tests that they are able to demonstrate competency in.

Relief sought – Modify 76(1) to ensure it is clear laboratories can be accredited for specific tests they are competent in.

19. Clause 79 – Suspension or revocation of accreditation.
Clause 79 outlines the process if a laboratory does not meet the prescribed criteria. However, there is no discussion or requirements on how the laboratories will be monitored. Either the accreditation body or Taumata Arowai should be required to undertake an inter-laboratory comparison programme for all tests required by the Drinking Water Standards to ensure results across laboratories are consistent. The results and reports from these programmes should be made available to Taumata Arowai and water suppliers on request.

Relief sought – Add a clause outlining the responsibilities of the accreditation body to monitor and ensure compliance with the prescribed criteria and standards. This should include an inter-laboratory comparison programme to ensure consistency of testing across laboratories.

Part 3 Enforcement and Other Matters

Part 3 Subpart 6 – Planning and Reporting Requirements to Taumata Arowai

20. Clause 135 – Taumata Arowai to publish annual drinking water regulation report.
In clause 135 to deliver a report by July will require information to be sought from the drinking water suppliers. It is unclear as to what the reporting period is that Taumata Arowai will be reporting on and what the compliance year will be.

Relief sought – Amend Clause 135 to include the reporting period for the annual drinking water regulation report.

Part 3 Subpart 10 – Offences

21. Clause 168 – Offence involving supply of drinking water from unregistered supply.
It is unclear under clause 168 if it is an offence to deliver water to customers in containers as would happen from time to time? This is something our contractors do when there is a temporary outage and it is not practical to get a water carrier. The contractors would not be registered water suppliers.

Relief sought – Clarify that when a water supplier organises the delivery of water in containers, provided that the containers are filled from a registered drinking water supply, the supplier or their contractors do not commit an offence.

22. General – The list of offences and the penalties for the offences is excessive. It is acknowledged that some offences are required but there needs to be a reasonable balance. Staff need to be able to do their jobs without fear of severe penalties or sanctions. The impact of a large number of minor offences and excessive fines could be poor decision making by operators under unnecessary pressure and consequently more staff leaving the industry. Taumata Arowai has sufficient powers in relation to authorisations and registrations to monitor and sanction minor offences. The offences clauses should be limited to major offences of recklessness or gross negligence.

Relief sought – Reduce number of offences and only have those caused by recklessness and gross negligence.

Part 5 Local Government Act Amendments

23. Sub part 7 - Clause 127 - Duty to ensure communities have access to drinking water if existing suppliers facing significant problems.
The Three Waters Reform programme has strongly indicated that the provision of drinking water will be removed from local government organisations and given to multi-regional, publicly owned water entities. If this occurs the expertise to assess and manage water supplies will then not sit with territorial authorities, as they will no longer be water suppliers. To require a territorial authority to take over a water supply and again become a water supplier is contradictory to the intent of the Reform. In addition, the work required as outlined within the Water Services Bill will require considerable resources and funding to achieve. This aspect is not easily resolvable without additional funding. It is recommended that Taumata Arowai be required to work with an existing registered water supplier (this may or may not be a territorial authority) to assist failing private water supplies. Consideration should be given to giving water suppliers a duty to assist neighbouring water suppliers if, in the opinion of Taumata Arowai, they are best placed to do so.

Relief sought – Amend Clause 127 of the LGA to remove the requirement for a territorial authority to take over a failing private water supply and require Taumata Arowai to work with another water supplier to resolve the problem or potential problem.

Bill exempts the most risky water supplies

The Three Water Reform programme so far has focused almost exclusively on the risks from community water supplies. We are unaware of any significant analysis of broader public health risks from drinking water.

The 2016/17 Ministry of Health Annual Report on Drinking Water Quality deals only with community supplies. The report states that the "report population" is 3,815,000 people. Statistics New Zealand's website shows the population of New Zealand in June 2017 as 4,790,000. That means that there are almost 1 million New Zealanders (25% of the population) who are not covered by the MoH Annual Drinking Water Quality Report and thus get their water from non-community supplies.

Most of those people are receiving water from roof supply and a lesser number from bores or streams. Certainly, roof supply is by far the most common means for obtaining drinking water in Northland, where approximately 20% of Whangarei District, 70% of Kaipara District and 50% of Far North Districts populations are not on reticulated water supply and in most cases, it is untreated or largely untreated.

Abbot, Caughley and Douwes 2007 studied roof water quality. They estimated that more than 10% of the New Zealand population gets its water from roof supply. Their study showed that 70% of samples from roof collected water systems failed to meet the 2005 New Zealand Drinking Water standards because of bacterial contamination. They determined that over half the samples (53%) were heavily contaminated (greater than 60 FC per 100mls). Another study in the Wairarapa (Dennis 2002) found that all roof supplies have at least one transgression of the drinking water quality standards over a three-month period.

If one uses the lowest estimates (10% of population and 30% compliance) then there are 335,300 people drinking potentially unsafe water from non-reticulated supplies. If one uses the highest estimates, (number of NZ population not included in MoH Report and 0% compliance) then the figure is 975,000 people drinking potentially unsafe water. It seems a reasonable conclusion that between 500,000 and 700,000 people on non-reticulated supplies are drinking potentially unsafe water.

In the case of reticulated water covered by the Ministry of Health Annual Report on Drinking Water Quality (above) the comparable result is 1.4% (or 52,000 people) potentially drinking water that is non-compliant because of high bacterial counts[1].

It's reasonable to conclude that approximately 90% of those people having drinking water with bacterial contamination are on non-reticulated supplies and only 10% will be affected by improvements to reticulated systems. The most optimistic figure would suggest that 15% would be affected by improvements leaving 85% on non-reticulated supplies still exposed.

Correlation between unsafe drinking water and disease

The Environmental Health Indicators of New Zealand (EIHNZ) website reports that in 2016 there were 7173 notifications of Campylobacter. In 1466 of those cases (20%) the patients had drunk untreated water during the incubation period. For Giardiasis, there were 1379 cases of which 222 (16%) reported drinking untreated water and for Cryptosporidium there were 962 cases notified of which 242 (25%) reported drinking untreated water[2]. The EHINZ website also suggests that these figures may be an underestimate. In the first week of 2019, 15 cases of Campylobacter were

[1] Page 20 Annual Report on Drinking-water Quality 2016/17 Ministry of Health

[2] Environmental Health Indicators of NZ Website (EHINZ)

reported in Northland[3] of which 5 were possibly infected from drinking untreated water at home according to a DHB spokesperson[4]. This data suggests that perhaps 1 in 5 cases come from drinking untreated water.

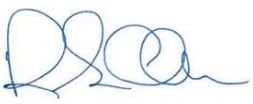
The Ministry of Health report entitled "Estimation of the Burden of Water Borne Diseases in New Zealand; Preliminary Report" (Ball 2006) estimates between 18,000 to 34,000 cases of gastro intestinal disease per annum (3 to 6 times greater than the Havelock North outbreak[5]) from drinking contaminated water and warns this is probably an underestimate. If 20% of those come from drinking untreated water (i.e. non-reticulated supplies) then 3600 to 6800 New Zealanders get sick from drinking untreated water every year.

By excluding domestic self-suppliers from the three waters reform, a large portion of the most vulnerable people are left at risk from inadequate water supplies. The reform programme and the new legislation may help reduce the risk of another Havelock North, but it will do little to address the number of people getting sick each year from drinking untreated water.

Relief sought –

1. Include water quality standards domestic for self-supplies; and
2. Include domestic self-suppliers in the regulatory regime overseen by Taumata Arowai.

Yours faithfully,




Shaun Clarke **Chief Executive** **Far North District Council**	**Louise Miller** **Chief Executive** **Kaipara District Council**	**Rob Forlong** **Chief Executive** **Whangarei District Council**	**Malcolm Nicolson** **Chief Executive** **Northland Regional Council**

[3] Northland had 244 cases in 2018 which if extrapolated would suggest that Northland has between 40 and 50 cases from drinking water at home

[4] Northern Advocate 8 January 2019

[5] P 21 Annual Report Drinking Water Quality