

# Submission

**Water Services Entities Amendment Bill**

**July 2023**



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## NAME OF SUBMISSION

**By:** Waipā District Council

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<https://legislation.govt.nz/bill/government/2023/0262/latest/096be8ed81d66d21.pdf>

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# Water Services Entities Amendment Bill

By: Waipā District Council

## *Introduction*

Waipā District Council (the Council) welcomes the opportunity to provide comment on the Water Services Entities Amendment Bill (the Bill).

## *General Comments*

If the Government's intention is to enable local voice in the context of the water services reform, then Bill 4 (as presented to the House on 16 June 2023) must be amended to enable the merger of two or more proposed entities before establishment (operationally) where this is favoured by the territorial authorities within the relevant regions (and supported by mana whenua within those regions). This will enable a regionally led approach to deciding the best size and shape of an entity to meet local community needs, rather than being locked into the 10-entity model until all entities are operational.

## *Key Points*

### **1. Intention of the Water Services Entities Amendment Bill**

- 1.1. The intent of the "reset" announced by the Government in April and May 2023 is to give effect to local voice. To do this, it is proposed that there will be 10 water services entities, instead of the four water services entities that were established in December 2022. The desire is to enable every district council in the country to have a say and representation over their local water services entity through regional representative groups.
- 1.2. The Water Services Amendment Bill (**Bill 4**) proposes amendments to the Water Services Entities Act 2022 (**WSEA 2022**) to implement this reset policy.

### **2. Scale versus local voice – ongoing work on behalf of Communities**

- 2.1. Since the Government reset, it has become apparent that while smaller entities may enable stronger representation at the regional representative level, there is a significant risk that the ability to deliver on this voice and give effect to what communities are asking for will be greatly reduced. A smaller entity will impact:
  - a) the financial scale of the entity and borrowing capacity
  - b) the means to deliver efficiently on large capital programmes as an economic regulated entity
  - c) the attractiveness of the entity to work for, and hence the ability to retain and attract the staff needed to bring about transformation.

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- 2.2. In certain regions across the motu, Mayoral forums, together with their Iwi partners, are alive to the need to truly understand the impact of what is being proposed on the communities they serve in the short, mid and long term. This requires careful consideration of the problems their communities face and the ability of a smaller entity to meet those needs.
  - 2.3. Steps are being taken to assess what the proposed entity for their region will look like when compared to an entity that services not just their region but that of another region as well.
  - 2.4. This exercise will require an overall assessment of scale, size, efficiencies and require consideration of the entity as a standalone entity and a combined entity operating as a regulated entity. It also requires consideration of:
    - a) governance structures that will provide for local voice/engagement whilst at the same time retaining the benefit of an entity of scale
    - b) the opportunities and challenges in relation to staff in a single entity versus a combined entity scenario.

### **3. Proposed Voluntary Merger Process**

- 3.1. To address the future difficulties of smaller entities, Bill 4 introduces the concept of a locally led, voluntary merger process. The policy intent for the merger process is that *“it is desirable to provide for a legislative process that allows water services entities to merge, to recognise that, in time, councils and communities in higher cost regions may wish to see the benefits of further amalgamation.”*<sup>1</sup>
- 3.2. While the desire to strike a balance between local voice and scale is commendable, this submission relates to the fact that Bill 4, in its current form, imposes a 10-entity model on communities before they have had the opportunity to fully assess whether this is the correct option for the communities that they serve.
- 3.3. If the intent of the legislation is to enable local voice, then there is a gap in the provisions that introduce the voluntary merger process. This is because the merger process, as currently drafted, requires a request for a merger proposal to be made to a water service entity’s regional representative group. The process therefore assumes two things:
  - a) That the two water services entities that wish to merge have already been established; and
  - b) A regional representative group is in place for each entity.

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<sup>1</sup> **Cabinet Paper and minute** – Related to progressing the water services reforms, 15 May 2023- Cab-23-Min-0177, paragraph 15 and 16

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#### **4. Problem definition**

##### **4.1. Bill 4 does not:**

- a) give councils and communities the ability to identify and attempt to realise the benefits of further amalgamation between now and the two entities that wish to merge being established
- b) allow for local voice to be heard in the period between the legislation being passed (August 2023 presumably) and an entity's operational establishment date (no later than 1 July 2026); this is a period of nearly three years where communities will have no opportunity to consider and advise on what they consider to be appropriate for the communities they represent.

4.2. The problem stems from the way the voluntary merger process is set out. As noted above, it is premised on (a) the entities that wish to merge both being established and (b) a regional representative group having been appointed to each entity.

4.3. Under Bill 4 an entity is only established (transitionally) when its establishment board is appointed, and it is only operationally established by reference to a date set by Order in Council (being no earlier than October 2024 (other than Entity A) and no later than 1 July 2026).

4.4. The timing for appointing an establishment board appears to be a matter determined by the Department of Internal Affairs. Furthermore, we understand that it is anticipated that the Regional Representative Groups will not be appointed until six months before an operational establishment date (again, as set by Order in Council). With this timeframe, it is a reasonable to assume that the possibility of being able to invoke the voluntary merger process will only practically present itself after the operational establishment date of the two entities that wish to merge.

##### ***Implications of the process***

4.5. The implications of the merger process being structured in its current form is that regardless of the outcome of the assessment exercises being carried out by Mayoral forums and Iwi, the 10-entity model will be set in stone until all entities are established (operationally).

4.6. This means that even if an assessment points to a combined regional entity being in the best interests of communities and Iwi, the legislation will be indifferent to this and will lock all parties into a process of establishing two entities (operationally) only to then undertake the process of merging them in a matter of years.

4.7. Establishing two entities will require the investment of significant time, effort, and public funds (which will need eventually to be repaid by the ratepayers within the relevant regions). The work will include designing and implementing a detailed entity establishment plan (including designing an organisational structure, agreeing on staff pathways into that structure, recruiting staff into that structure, adopting all the systems, policies and processes required to set up an entity). If the preference from the outset is to combine the two entities, it will be necessary to cause further disruption to staff and business as usual by then engaging in the merger process.

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4.8. All of the funds consumed in this structuring and restructuring exercise will come from funds that would otherwise be available for improving water services delivery in the relevant regions.

## **5. Proposed Solution**

5.1. As the entities will inherit the cost of the reform, it is imperative that funds are applied sensibly and that communities can put a request for their proposed entity to be combined with another entity before the operational establishment date of both entities if there is community consensus for this. It is nonsensical for this not to be an option when there is strong community consensus.

5.2. The questions that arise are:

- a) how can a community demonstrate consensus before the regional representative group is established?
- b) what timeframes need to be put around this option to ensure that the ability to stand up the entities by 1 July 2026 at the latest (whether as standalone entities or a combined entity is not compromised through the passage of time and ongoing uncertainty).

5.3. These are addressed in reverse order below.

### ***Timeframe***

5.4. It is submitted that any preoperational establishment request for a merger must be submitted to the Minister by 1 July 2024 (refer to proposed process for demonstrating consensus below), with any decision in relation to the request to be made by 31 December 2024.

5.5. This ensures ample time for communities to engage with stakeholders and Iwi in relation to the request in advance of it being submitted. Furthermore, it allows for a period of 18 months (from 31 December 2024 to 1 July 2025) for the entities to then be established (whether as merged entities or standalone entities, depending on the decision of the Minister).

5.6. As the timeframe for establishing an entity is currently stated to be around 15 months by the National Transition Unit, this does not undermine the ability to safely stand the entities up but gives space to consider whether the entities proposed in Schedule 1 of Bill 4 (being a proposed new Schedule 2 to the WSEA 2022) are correct from a community perspective.

### ***Demonstrating Consensus***

5.7. Bill 4 puts forward the regional representative group as the appropriate forum to consider a merger. However, as noted above, the WSEA 2022 does not provide for this forum to be in place until the end of the establishment period (the operational establishment date).

5.8. It is submitted that a new Schedule 2A should be introduced into Bill 4 (with the current proposed Schedule 2A becoming Schedule 2B). The new Schedule 2A should provide that:

- a) A request can be made for two proposed entities (as identified in Parts 2 to 10 of Schedule 1 of Bill 4 (being proposed Schedule 2 to the WSEA 2022) to be merged where that request is made before 1 July 2024.

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- b) The request should be made to the Minister.
  - c) The request must be made in writing and submitted jointly by the territorial authorities for each region that requests the merger.
  - d) The request must evidence that:
    - i. 75% of the territorial authorities within each region wish for their proposed entity to be merged with another proposed entity and set out the reasons for this. This will keep community input at the heart of the process
    - ii. support of mana whenua whose rohe or takiwā fall within each region.
  - e) If either or both of the regions seeking to merge have had an establishment board appointed by the date of the request for a merger, then:
    - i. the position of the establishment board in relation to the merger should be included in the request
    - ii. the establishment board should be directed not to appoint any staff into the water services entity until the request for a merger has been considered by the Minister and a decision issued.
  - f) The decision to approve the request is a matter for the Minister's discretion.
  - g) Once approved, the Minister can then recommend an Order in Council to the Governor-General to amend the relevant schedule of the Act giving effect to the merger and amending the proposed Schedule 1 (introducing Schedule 2 to the WSEA 2022) to reflect the water services entities and their service areas.
  - h) All provisions in relation to the establishment of a water services entity will apply to the merged entity. If an establishment board has been appointed to one or both transitional entities, the Minister will direct the position in relation to the establishment board of the merged entity.
  - i) The new Schedule 2A would expire on 1 July 2024 in relation to requests for mergers and 31 December 2024 in relation to decisions of the Minister.

## **6. Further Amendments**

- 6.1. There will be a number of consequential amendments required to Bill 4 if this submission is accepted. The below is not an exhaustive list but amendments will include:
  - a) Amend proposed new section 6A(3) to include item (ba) which will include reference to "Schedule 2B of this Act"
  - b) Amend proposed new section 19A to WSEA 2022 to read that "Water services entities may merge in accordance with Schedule 2A or 2B"

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- c) Allow for Parts 2 to 10 of proposed new Schedule 2 to be amended where a merger of entities takes place in accordance with Schedule 2A or 2B
  - d) Amend the proposed Schedule 2A to be Schedule 2B and title it “merger of water services entities after operational establishment date”
  - e) Insert new Schedule 2A and title it “merger of water services entities before 31 December 2024”

## **7. Submission re post-merger world**

- 7.1. It is also submitted that the balance between scale and local voice can be struck within a larger entity through amendments to the governance structure of that entity.
- 7.2. It is submitted that all references to regional advisory panels in the WSEA 2022 should be amended to refer to local advisory panels. It is submitted that section 47 WSEA 2022 (and related provisions) be amended to provide that:
  - i. the constitution of a water services entity must establish local advisory panels for specific geographical areas within the region
  - ii. the number of local advisory panels will vary from entity to entity but there must be a sufficient number of panels so as to enable a district council representative to sit on one local advisory panel
  - iii. all local advisory panels will have a maximum number of members on the panel as determined by the Entity Constitution (with equal representation from local authority members and mana whenua for the geographical area covered by the local advisory panel)
- 7.3. The role of the local advisory panels will be the same as that set out in section 48 of the WSEA Act 2022, but with a focus on the performance of the Regional Representative Group and how is it exercising its duties, function and powers in respect of, or otherwise affecting, the particular geographical area represented by the local advisory panel.
- 7.4. There should be the ability to review the number of local advisory panels every five years and whether there is a need for change.





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