

Water Services Entities Act 2022

The Water Services Entities Act 2022 (Act) is the first instalment of a suite of oncoming three waters legislation.

The Act was recently passed in the house with some controversy. The purpose of this article is to simply summarise what the Act does and its purpose. The Act establishes four new Water Services Entities (**WSE**) to manage, develop and deliver drinking water, wastewater and stormwater services across New Zealand from July 2024.

The Act sets out the ownership, governance and accountability arrangements relating to these WSE and safeguards against future privatisation. The Act also defines the geographical boundaries of the service delivery area for each WSE and provides for transitional arrangements of infrastructure.

Local Councils will be the sole shareholders of these WSE and will have one share per 50,000 people. These shares cannot be sold or transferred as a measure to protect against privatisation. The number of shares held by councils will not correspond to more votes, each council will still only have one vote. Further safeguards against privatisation include requiring a unanimous consensus from all shareholders in the WSE and a 75% public vote within that geographical region for any privatisation proposal.

The Act establishes a two-tier governance structure. At the strategic level, regional representative groups (**Regional Group**) will provide direction and oversight, including monitoring the WSE. Then at the operational level, the WSE will appoint independent professional boards to run the day to day management of the entities and oversee the three waters infrastructure. There will be one Regional Group for each of the four WSE.

Each Regional Group will consist of 12-14 members with half of its members being appointed from Mana

Whenua within the region. It is, therefore, the Regional Groups that contain the co-governance provisions. Each Regional Group will develop their own constitutions setting out how these representatives will be appointed. The WSE board will consist of between 6-10 member who will be appointed by the Regional Group and to whom they shall also be held accountable. Unlike the Regional Group, the WSE Board is not required to have half of its members being from Mana Whenua, however they must collectively have knowledge, experience and expertise in relation to the principles of the Treaty of Waitangi and the perspectives of mana whenua, mātauranga, tikanga, and te ao Māori. In practice given the makeup of the appointing Regional Group, it is likely that the control of the WSE's will be a 50/50 council and Mana Whenua split. The WSE Board is not permitted to have co-chairpersons. It will be up to each WSE as to whether they have an independent chair and whether that chair has a casting vote in a deadlock.

The WSE is defined as a body corporate in the Act, but is not a company for the purposes of the Companies Act 1993, nor is it a council organisation or local government for the purposes of the Local Government Act 2002, meaning WSEs will not be constrained by these pieces of legislation.

The Act allows for the Regional Groups to appoint two co-chairpersons. This is likely to be utilised where a constitution of a Regional Group opts for a chairperson to represent territorial authorities and a chairperson to represent Mana Whenua. The concern from a governance perspective may be that Regional Groups with two co-chairpersons may find that board decisions result in deadlock and that will transfer to the Regional Groups WSE. It will be interesting to see how the boards of the Regional Groups and WSE develop.

The Regional Group must issue a statement of strategic and performance expectations, which set out the objectives and priorities within the individual WSE geographical area. Mana Whenua may also provide the

Water Services Entities Act 2022 (continued)

WSE with a 'Te Mana o te Wai statement' which the WSE board must in response then create a plan on how it will give effect to this statement.

The legislation includes at section 4 that all persons performing or exercising duties, functions or powers under this Act must give effect to the principles of the Treaty of Waitangi and Te Mana o te Wai, which are (in short) rangatiratanga, equity, active protection, options and partnership.

The Water Services Economic Efficiency and Consumer Protection Bill and Water Services Legislation Bill has been introduced to Parliament and will round out the remaining three waters legislation once passed into law. This Bill will contain the mechanics that outline the process of how the WSEs will charge water levies to ratepayers.

The WSEs will take over delivery of three water services in 1 July 2024 when the entirety of the Act will be in force, prior to this date is a transitioning period coordinated by a 'National Transition Unit' within the Department of Internal Affairs.

Want to know more?

If you have any questions about the Water Services Entities Act 2022, please contact our specialist [commercial team](#) ([David Goodman](#)) or our specialist [local government team](#) ([Michael Garbett](#)).