

2 March 2021

Tēnā koe,

Re: Consultation on the Water Services Bill

The Healthy Families East Cape team appreciates the opportunity to provide written feedback on the Water Services Bill.

Healthy Families NZ is a large-scale prevention initiative that brings community leadership together in a united effort for better health. It aims to improve people's health where they live, learn, work, and play by taking a dynamic system approach to the reduction of risk factors for major health loss and to increasing equity in health outcomes.

Healthy Families East Cape is one of the Healthy Families NZ locations, each chosen for having some of the worse health statistics in the country. Healthy Families East Cape covers from Ōpōtiki, around the East Cape, to Te Tairāwhiti and is funded by the Ministry of Health and is being led by Te Ao Hou Trust.

The Healthy Families East Cape strategic leadership group is responsible for providing strategic direction and leadership using and championing a systems-based approach to achieve healthier environments in the places where we spend our time.

The Healthy Families East Cape strategic leadership group is made up of representatives from across sectors and communities and includes the following members and organisations:

- Linda Steel, Te Ao Hou Trust Chief Executive (Co-Chair)
- Reweti Ropiha, Turanga Health Chief Executive (Co-Chair)
- Josh Wharehinga, Gisborne District Council Deputy Mayor
- Lyn Riesterer, Ōpōtiki District Council Mayor
- Stefan Pishief, Sport Gisborne Tairāwhiti Chief Executive
- Mel Turner, Ministry of Health Senior Portfolio Manager and Lead Healthy Families NZ
- Dorothy Taare-Smith, CCS Disability Action Senior Service Coordinator
- Amohaere Houkamau, Rongowhakaata Iwi Trust General Manager
- Nicholette Pomana, Hauora Tairāwhiti District Health Board Senior Portfolio Manager

This submission is written on behalf of the Healthy Families East Cape team in partnership with the strategic leadership group members, as listed below, and provides evidence and support to ensure we continue to strengthen the health, social, economic, cultural, and environmental wellbeing, and aspirations of our communities.

- Linda Steel, Te Ao Hou Trust Chief Executive (Co-Chair)
- Reweti Ropiha, Turanga Health Chief Executive (Co-Chair)

We are happy to provide further advice and clarification on any of the points raised in this submission. The contact for this submission is Cherish Wilkinson Healthy Families East Cape Strategic Communications Manager.

Email: cherish@healthyfamilieseastcape.co.nz

Kind Regards,

Healthy Families East Cape team and strategic leadership group

Te Mana o te Wai

The Water Services Bill requires all persons who perform or exercise functions, powers, and duties under the legislation to give effect to Te Mana o te Wai. These parallels requirements imposed on local authorities under the National Policy Statement for Freshwater Management, and on Taumata Arowai under the Taumata Arowai—the Water Services Regulator Bill.

As part of its governance arrangements, Taumata Arowai will have a Māori Advisory Group that is charged with advising on Māori interests and knowledge as they relate to the objectives, functions, and principles of Taumata Arowai. This includes—

- developing and maintaining a framework that provides advice and guidance on how to interpret and give effect to Te Mana o te Wai:
- providing advice on how to enable mātauranga Māori, tikanga Māori, and kaitiakitanga to be exercised.

National significance of fresh water and Te Mana o te Wai

Te Mana o te Wai has the meaning set out in the National Policy Statement of Freshwater Management issued in 2014 (the 2014 statement)¹ under section 52 of the Resource Management Act 1991 and any statement issued under that section that amends or replaces the 2014 statement.

As it is set out in the National Policy Statement of Freshwater Management issued in 2014, the health and wellbeing of our freshwater bodies is vital for the health and wellbeing of our land, our resources (including fisheries, flora, and fauna) and our communities.

Te Mana o te Wai is the integrated and holistic wellbeing of a freshwater body.

Upholding Te Mana o te Wai acknowledges and protects the mauri of the water. This requires that in using water you must also provide for Te Hauora o e Taiao (the health of the environment), Te Hauora o te Wai (the health of the waterbody) and Te Hauora o te Tangata (the health of the people).

By recognising Te Mana o te Wai as an integral part of the freshwater management framework it is intended that the health and wellbeing of freshwater bodies is at the forefront of all discussions and decisions about fresh water, including the identification of freshwater values and objectives, setting limits and the development of policies and rules. This is intended to ensure that water is available for the use and enjoyment of all New Zealanders, including tangata whenua, now and for future generations.

Recommendation – Taumata Arowai should list its objectives based on priority of importance, placing Taumata Arowai’s objective to give effect to Te Mana o te Wai at very top of its priorities. This would further support its commitment to ensure the mauri of the water comes first in all discussions and decisions around water, setting limits and the development of policies and rules. It is paramount that Te Mana o te Wai is prioritised.

A commitment to Te Tiriti o Waitangi

In the ‘Introduction’ section of the Water Services Bill it identifies that ‘there has been a lack of Māori input within decision-making frameworks. As a result, the current drinking water regulatory system is

¹ Te Mana o te Wai, National Policy Statement for Freshwater Management 2014 (updated 2017).

failing to provide necessary assurances that drinking water supplies across New Zealand are safe and reliable.’

Recommendation - The Water Services Bill needs to reflect that the New Zealand drinking water regulatory system has a commitment to fulfilling the special relationship between Māori and the Crown under Te Tiriti o Waitangi (Te Tiriti). Regarding the text of Te Tiriti and declarations made during its signing – Taumata Arowai, as the responsible regulator of the three waters (drinking water, storm water and wastewater) (under article 1 of Te Tiriti), has the responsibility to enable Māori to exercise authority over their health and wellbeing (under article 2) and achieve equitable health outcomes for Māori (under article 3) in ways that enable Māori to live, thrive and flourish as Māori (Retina Māori declaration²).

Whakamaua Māori Health Action Plan 2020 - 2025

The Whakamaua Māori Health Action Plan³ recommends eight priority areas for action for the next five years to enable change and set a strong foundation for the future.

Achieving desired outcomes will be contingent on synergies across all priority areas and taking a whole-of-system approach.

Recommendation - The two priority areas for action that are most applicable to the Water Services Bill and the work of Taumata Arowai are priority area 1 Māori-Crown partnerships and priority area 5 Cross-sector action.

Priority Area 1 Māori-Crown partnerships

Overview

- Meaningful Māori-Crown relationships reflect true partnership at all levels of the health and disability system.
- Māori health development is increasingly led by iwi and hapū.
- Māori-Crown relationships are built on mutual trust and confidence in the health and disability system.

Why is this important?

Recommendation - The Māori-Crown relationship is based on the fundamental exchange of kāwanatanga (Te Taumata Arowai to independently regulate the three waters) and the right of Māori to exercise tino rangatiratanga over their lives in a way that aligns with Māori customs and values⁴.

There is a need to build a meaningful Māori-Crown partnership in the water regulatory system to reflect more future-orientated relationships. The practical arrangements to implement a meaningful partnership requires constant evaluation to ensure that the partnership fulfils its purpose in meeting Tiriti commitments.

² Ritenga Māori declaration (often commonly referred to as the ‘fourth article’) was drafted in te reo Māori and read out during discussions with rangatira about Te Tiriti. The Ritenga Māori declaration provides for the protection of both religious freedom and traditional spirituality and knowledge (Te Puni Kōkiri 2001).

³ Whakamaua Māori Health Action Plan (Ministry of Health 2020).

⁴ Waitangi Tribunal 2019.

What does it look like in practice?

Recommendation - The Ministry, DHBs, local government and other Crown entities (Taumata Arowai) need to have strong active relationships with Māori in designing, developing, implementing, and monitoring the health and water regulatory systems. The quality of Māori-Crown relationships at all levels of the health and water regulatory systems needs to be measured over time by both parties to drive outcomes and improve accountability.

Iwi, hapū, marae and Māori communities must have the resources and support to enable them to use matauranga Māori, tikanga Māori and practice being vigilant kaitiaki.

The Ministry, DHBs, local government and Crown entities (Taumata Arowai) must lift health and water regulatory system performance to better respond to Māori health, cultural and environmental issues and ensures that Te Tiriti commitments are upheld.

Priority Area 5 Cross-sector action

Overview

- Addressing the broader determinants of health is key to achieving pae ora.
- Planning, investment, and accountability for Māori wellbeing is shared across sectors.
- Cross-sector action is locally driven to support integrated, timely, holistic whānau-centred services.

To foster collaboration and coordination across government agencies to maximise Māori health and wellbeing.

The Gisborne District Council Spatial Plan⁵ finds that 31,700 residents are connected to the city water supply, and there is augmented water supply to Te Karaka and Whatatutu. There are inadequate drinking water supplies for most of the region (resilience) and resilience issues in town supply. A break in the supply pipe in February 2019 left the city with only a 24-hour supply. Reliability of water supply for our important food production and economic uses – and for the Tairāwhiti water supply could be impacted if we do not use our water more efficiently.

For rural Tairāwhiti townships there are challenges around having safe, affordable, and reliable supply of drinking water.

Recommendation - All contributors to our health and water regulatory systems need to understand and acknowledge health inequities exists for Māori and understand they are preventable. We want to see a range of resources are prioritised and approaches are targeted and tailored to meet Māori aspirations for the health and wellbeing and existing unmet needs in areas like Te Tairāwhiti and the Eastern Bay of Plenty with high population of Māori and high deprivation.

Why is this important?

Recommendation - Wai ora (healthy environments) acknowledges the importance of creating built and natural environments that supports Māori wellbeing⁶. A whole-of-government approach is critical to addressing the broader determinants of health to ensure individuals, whānau and communities are better able to access and enjoy healthy environments and get the help they need to take control of the circumstances affecting their health and wellbeing⁷. Coordinated and effective planning,

⁵ Tairāwhiti 2050 Gisborne's Spatial Plan Fact Sheet (Gisborne District Council 2019).

⁶ Ministry of Health 2002.

⁷ Pescud M et al. 2019.

investment, resources, and accountability across all sectors must be in place to ensure Māori receive timely, equitable access, resources, and services.

What does it look like in practice?

Recommendation - The different levels of the health and water regulatory systems, from providers to DHBs to the Ministry, local government, water service suppliers and Taumata Arowai need to have established partnerships across a range of sectors to allow for better service integration, planning and support for iwi, hapū, marae, papakāinga, Māori communities and their whānau. Māori play a central role in developing and delivering cross-sector initiatives. Services need to place individuals and whānau at the centre – adapting to get efficiencies of scale and closer alignment between health, social and water regulatory services. Integrated services should be delivered more effectively and culturally safe, and we see improved environments and outcomes for Māori across a range of areas.

Objection to the following sections in the Water Services Bill

Section 56, Exemptions

(1) The chief executive may, by notice in the Gazette, exempt any drinking water 25 supplier or class of drinking water supplier from compliance with the following requirements in this Act:

Examples

A marae on a rainwater tank supply could be exempted while Taumata Arowai works with its owners on how to meet regulatory requirements.

Why?

Recommendation - All contributors to our health and water regulatory systems need to understand and acknowledge health inequities exists for iwi, hapū, marae, papakāinga and Māori communities and understand they are preventable. This is particularly the case for the Māori population in Tairāwhiti and Eastern Bay of Plenty, and even more so, the rural Māori population.

We want to see a range of resources prioritised and approaches are targeted and tailored to meet Māori aspirations for health and wellbeing and existing unmet needs. This means an intensive effort from DHBs, the Ministry of Health, local government, and other Crown entities (Taumata Arowai) redirect resources and prioritise high deprivation areas like Tairāwhiti and the Eastern Bay of Plenty for this kind of support and resource to design, develop, implement, and monitor ways to meet our specific health and wellbeing aspirations and to help meet regulatory requirements.

Section 110, Power to enter without search warrant

(1) A compliance officer may enter a place described in subsection (3) without a search warrant only if the officer believes, on reasonable grounds, that entry is required in relation to a serious risk to public health.

(5) Any exercise of the power of entry at a marae or a building associated with a 15 marae must take account of the kawa of the marae so far as practicable in the circumstances.

Why?

Recommendation – At all levels of the water regulatory system in New Zealand we need a commitment to Te Tiriti of Waitangi. Iwi, hapū, whānau Māori, marae, papakāinga and Māori communities need to

be able to exercise their authority to improve their health and wellbeing. This outcome acknowledges that Māori have the right to manage their own health and wellbeing aspirations.

The health and water regulatory systems need to be fair and sustainable and deliver equitable outcomes for Māori. This aims to ensure that Māori equity is at the heart of the way New Zealand's health and water regulatory systems operate. Achieving equity for Maori will require all contributors to these systems to acknowledge inequitable health outcomes for Maori as not only unfair and unjust but also avoidable. A key part of achieving this outcome will be the extent to which a range of resources are prioritised, and approaches are targeted and tailored to meet Māori aspirations for health and wellbeing and unmet needs.

The burden of health loss falls inequitably on Māori, in terms of poor health, disability and premature death. Differences in the social, economic, and behavioural determinants of health and wellbeing. Different access to safe drinking water and different access to support to meet the regulatory requirements. Overall Māori have a lack of capacity and capability to participate in this important conversation about our three water reforms and to consult on the Water Services Bill, to understand, and more importantly to contribute. This leads to Māori health inequity.

Part 3, Enforcement, and other matters – Appointment of compliance officers

(2) A compliance officer's compliance powers are subject to any conditions or limitations specified in the notice of the officer's appointment

(3) However, by exercise of a compliance power by a compliance officer is not invalid merely because it did not comply with the conditions specified in the notice of the inspector's appointment.

Why?

Recommendation – Asserting that the exercise of a compliance power by a compliance officer is still valid, regardless of whether it is specified in the notice of the officer's appointment, can be misconstrued in a way that allows that compliance officer powers and abilities which are not only not specified, but powers that could be detrimental to the health and wellbeing of Māori. Further, this objection follows on from the previous objection regarding *power to enter without search warrant*.

This objection echoes the necessity for a commitment to Te Tiriti o Waitangi and functioning at all levels of the water regulatory system in New Zealand. Allowing any one compliance officer the authority to exercise compliance powers that are not specified in the notice of the inspector's appointment, and with iwi, hapū, whānau Māori, marae and papakāinga, is in complete violation of enabling the right for Māori to be self-determining to exercise their authority over their lives and to live on Māori terms and according to Māori philosophies, values, and practices, including tikanga Māori.

The health and disability and water regulatory systems must remain fair and just to deliver equitable outcomes for Māori and ensure that Māori equity is at the centre of how New Zealand's health and water regulatory systems operate. All contributors to these systems, including DHBs, the Ministry of Health, local government and Taumata Arowai and its compliance officers, must operate in ways that not only prevent inequitable health outcomes for Māori, but also in ways that prioritize Māori aspirations for health and wellbeing. We recommend that these practices are both written into the notice of the officer's appointment of compliance officers and the exercise of compliance powers adhere to these conditions and limitations.

Section 38 Requirement for supplier to provide information to consumers and have complaints process.

Taumata Arowai need to recognise that Maori consumers have differing interests and their ability to “complain” is sometimes overcrowded with the burden of just trying to survive. *Knowing* they have a right to complain and to whom is also not as straight forward as the Bill suggests especially if many Maori are not receiving Council supplied drinking water through Council infrastructure. This is the same for defence and liability arrangements. Who is at fault for failing to supply Maori communities with safe drinking water?

- a. We would argue that the Crown have failed its obligations under Te Tiriti o Waitangi to protect Maori communities, to partner with iwi Maori and have not provided for iwi Maori participation because they do not provide safe and reliable drinking water to Maori communities in our rohe.

Where is the function before this current Bill that recognises and understands, and seeks to remedy, that for many Maori communities in our country, territorial authorities have not met the Crown’s Tiriti commitment of partnership, nor the basic human right to **supply safe drinking water in the first instance?** It makes this Relationship to Local Government Act 2002 proposed amendment pointless in our view.

- b. We would argue that until clarity for this question is resolved transitional arrangements for suppliers in Maori communities, or suppliers who supply instead of territorial authorities or government owned and operated infrastructure or supply, are directly funded by Taumata Arowai, to ensure that any measures required by this Bill for said suppliers to continue to supply lab-tested drinking water and that those costs be borne by Taumata Arowai or the territorial authority of the area.

Read the Water Services Bill on the NZ Legislation website here at:

<https://legislation.govt.nz/bill/government/2020/0314/latest/LMS374564.html>

Print/Download a PDF version of the Water Services Bill here at:

[file:///C:/Users/64273/Downloads/Water%20Services%20Bill%20\(2\).pdf](file:///C:/Users/64273/Downloads/Water%20Services%20Bill%20(2).pdf)

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