

# House of Representatives

# Supplementary Order Paper

Thursday, 2 September 2021

## Water Services Bill

### *Proposed amendments*

Hon Nanaia Mahuta, in Committee, to move the following amendments:

#### *Clause 3*

In *clause 3(2)(a)*, replace “the performance of wastewater and stormwater infrastructure” (page 10, lines 28 and 29) with “the performance of drinking water, wastewater, and stormwater networks and network operators”.

#### *Clause 5*

In *clause 5*, replace the definition of **legislative requirement** (page 12, lines 19 to 26) with:

**legislative requirement**—

- (a) means a requirement imposed by—
  - (i) this Act; or
  - (ii) secondary legislation made under this Act; or
  - (iii) a direction issued by a compliance officer under **section 103**; or
  - (iv) a compliance order issued under **section 118**; but
- (b) does not include a requirement in—
  - (i) a wastewater environmental performance standard made under **section 135A**; or
  - (ii) an environmental performance measure or target for networks made under **section 140**

In *clause 5*, replace the definition of **stormwater network** (page 14, lines 8 to 10) with:

**Proposed amendments to  
Water Services Bill**

---

SOP No 62

**stormwater network** means the infrastructure and processes that—

- (a) are used to collect, treat, drain, store, reuse, or discharge stormwater in an urban area; and
- (b) are operated by, for, or on behalf of one of the following:
  - (i) a local authority, council-controlled organisation, or subsidiary of a council-controlled organisation;
  - (ii) a department;
  - (iii) the New Zealand Defence Force

In *clause 5*, replace the definition of **wastewater network** (page 14, lines 35 and 36) with:

**wastewater network** means the infrastructure and processes that—

- (a) are used to collect, store, transmit through reticulation, treat, or discharge wastewater; and
- (b) are operated by, for, or on behalf of one of the following:
  - (i) a local authority, council-controlled organisation, or subsidiary of a council-controlled organisation;
  - (ii) a department;
  - (iii) the New Zealand Defence Force

In *clause 5*, definition of **wastewater network operator**, paragraph (a)(i), delete “that operates a wastewater network” (page 15, lines 2 and 3).

*Clause 31*

In *clause 31(2)(b)*, delete “by physical treatment” (page 28, line 8).

In *clause 31(2)(c)*, delete “by disinfection” (page 28, line 9).

*Clause 32*

Replace *clause 32(1)(e)* (page 28, lines 29 to 33) with:

- (e) establish ongoing monitoring and review arrangements to ensure that drinking water suppliers—
  - (i) appropriately identify and assess risks and hazards that relate to drinking water supplies; and
  - (ii) make changes, if necessary, to drinking water safety plans to reflect changes in the risks and hazards.

*Clause 63*

In *clause 63(5)*, replace “under **section 92**” (page 48, line 13) with “in accordance with **section 92(2) and (4)**”.

*Clause 94*

In *clause 94(1)*, replace “**section 92(1)**” (page 60, line 11) with “**section 63(5) or 92(1)**”.

*Clause 124*

In *clause 124(2)*, replace “risks” (page 72, line 29) with “serious risks”.

*Clause 125*

In *clause 125(2)*, replace “risks” (page 73, line 4) with “serious risks”.

*Clause 128*

In *clause 128(2)*, replace “**section 162**” (page 74, line 3) with “**section 162, 163A,**”.

*Part 3, new subpart 6A*

In *Part 3*, after *subpart 6* (page 77, after line 18), insert:

Subpart 6A—Provisions relating to wastewater networks

**135A Wastewater environmental performance standards**

- (1) Taumata Arowai may, following consultation undertaken in accordance with **section 52** with wastewater network operators, regional councils, and any other person it considers appropriate, make wastewater environmental performance standards, including standards that relate to—
  - (a) discharges to air, water, or land;
  - (b) biosolids and any other byproducts from wastewater;
  - (c) energy use;
  - (d) waste that is introduced by a third party into a wastewater network (for example, trade waste).
- (2) Wastewater environmental performance standards may include (but are not limited to) requirements, limits, conditions, or prohibitions.
- (3) Wastewater environmental performance standards—
  - (a) may apply—
    - (i) to all wastewater networks and their operators; or
    - (ii) to classes of wastewater network and their operators; but
  - (b) must not apply to an individual wastewater network or wastewater network operator.

- (4) Wastewater environmental performance standards made under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

### **135B Wastewater network risk management plans**

- (1) A wastewater network operator must prepare and implement a risk management plan for the operator's wastewater network.
- (2) A wastewater network risk management plan must—
- (a) identify any hazards that relate to the wastewater network; and
  - (b) assess any risks that are associated with those hazards; and
  - (c) identify how those risks will be managed, controlled, monitored, or eliminated; and
  - (d) include any wastewater environmental performance measures, standards, or targets made by Taumata Arowai and how the measures, standards, or targets will be met.
- (3) The wastewater network operator must—
- (a) provide a draft risk management plan to Taumata Arowai within a time frame notified in the *Gazette* by Taumata Arowai; and
  - (b) develop a final risk management plan that gives effect to any comments made by Taumata Arowai on the draft plan; and
  - (c) provide a final risk management plan to Taumata Arowai within a time frame notified in the *Gazette* by Taumata Arowai.
- (4) The wastewater network operator must—
- (a) review its final risk management plan every 5 years; and
  - (b) provide the updated plan to Taumata Arowai as soon as practicable following the review.

#### *Part 3, subpart 7*

In *Part 3*, replace the *subpart 7* heading (page 77, lines 19 and 20) with:

### Subpart 7—Monitoring and reporting on environmental performance of networks

#### *New clause 136AAA*

Before *clause 136* (page 77, before line 21), insert:

### **136AAA Interpretation**

In this subpart and in **section 195**,—

**drinking water network** means a drinking water supply that is operated by, or whose operation or aspects of whose operation is supervised by, one of the following:

- (a) a local authority, council-controlled organisation, or subsidiary of a council-controlled organisation;
- (b) a department;
- (c) the New Zealand Defence Force

**drinking water network operator** means—

- (a) each of the following, to the extent that they operate a drinking water network or supervise its operation or aspects of its operation:
  - (i) a local authority, council-controlled organisation, or subsidiary of a council-controlled organisation;
  - (ii) a department;
  - (iii) the New Zealand Defence Force; and
- (b) any person who operates a drinking water network, or any aspect of a drinking water network, for, or on behalf of, an organisation specified in **paragraph (a)**

**network operators** means drinking water network operators, stormwater network operators, and wastewater network operators

**networks** means drinking water networks, stormwater networks, and wastewater networks.

*Clause 136*

Replace *clause 136* (page 77, line 21 to page 78, line 7) with:

**136 Monitoring and reporting on environmental performance of networks**

Taumata Arowai must monitor and report in accordance with this subpart on the environmental performance of networks and network operators for the purposes of—

- (a) providing transparency about—
  - (i) the environmental performance of networks and network operators; and
  - (ii) the extent to which networks are complying with applicable standards, conditions, or requirements (whether under legislation or as part of a resource consent); and
  - (iii) the extent to which network operators are avoiding, remedying, or mitigating any adverse effects on the

**Proposed amendments to  
Water Services Bill**

---

SOP No 62

- environment arising from the operation of networks;  
and
- (b) enabling comparisons to be made between the performance of different drinking water networks and drinking water network operators; and
  - (c) enabling comparisons to be made between the performance of different wastewater networks and wastewater network operators; and
  - (d) enabling comparisons to be made between the performance of different stormwater networks and stormwater network operators; and
  - (e) enabling the identification of, and development of advice and guidance on,—
    - (i) best practices that relate to the design, management, and operation of networks; and
    - (ii) risks and issues that relate to performance and practice.

*Clause 137*

In the heading to *clause 137*, replace “**infrastructure performance**” (page 78, line 9) with “**environmental performance**”.

*Clause 138*

Replace *clause 138* (page 78, lines 15 to 25) with:

**138 Civil proceedings relating to non-compliance with section 137 or 140A**

- (1) Taumata Arowai may apply to the High Court for an order if a person does not comply with **section 137(2)** or **140A(2)**.
- (2) If the court is satisfied that the person has not complied with **section 137(2)** or **140A(2)**, the court may make either or both of the following:
  - (a) an order directing the person to comply with **section 137(2)** or **140A(2)**;
  - (b) an order imposing a civil pecuniary penalty not exceeding \$50,000.
- (3) In addition to the orders referred to in **subsection (2)**, the court may make any other order that the court considers appropriate in the circumstances, including an order directing the person to pay to Taumata Arowai the reasonable costs of the proceedings.

*Clause 140*

Replace *clause 140* (page 79, lines 1 to 7) with:

**140 Environmental performance measures and targets for networks**

- (1) Taumata Arowai may develop, publish, and maintain—
  - (a) environmental performance measures for networks; and
  - (b) environmental performance targets for networks.
- (2) Environmental performance measures and targets for wastewater networks may include measures and targets that relate to—
  - (a) discharges to air, water, or land;
  - (b) biosolids and any other byproducts from wastewater;
  - (c) energy use;
  - (d) waste that is introduced by a third party into a wastewater network (for example, trade waste).
- (3) Environmental performance measures and targets—
  - (a) may apply—
    - (i) to all networks and their operators; or
    - (ii) to classes of network and their operators; but
  - (b) must not apply to an individual network or network operator.
- (4) When developing or amending an environmental performance measure or target, Taumata Arowai must consult network operators, regional councils, and any other person it considers appropriate in accordance with **section 52(2) and (3)**.

**140A Record-keeping requirements for monitoring and reporting purposes**

- (1) Taumata Arowai may, by notice, require network operators to keep and maintain records relating to compliance with applicable—
  - (a) environmental performance measures; and
  - (b) environmental performance targets; and
  - (c) for wastewater network operators, wastewater environmental performance standards and the requirements of wastewater network risk management plans.
- (2) Network operators must—
  - (a) keep and maintain the records required by the notice; and
  - (b) make the records available to Taumata Arowai in any format specified in the notice.
- (3) A notice made under this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

*Clause 141*

Replace *clause 141* (page 79, lines 8 to 26) with:

**141 Annual reporting on networks**

- (1) Taumata Arowai must, on an annual basis, publish a report on—
  - (a) the environmental performance of networks and network operators, including their performance against environmental performance measures and targets; and
  - (b) the extent to which networks are complying with applicable standards, conditions, or requirements (whether under legislation or as part of a resource consent); and
  - (c) the extent to which network operators are avoiding, remedying, or mitigating any adverse effects on the environment arising from the operation of networks; and
  - (d) best practices for networks, including—
    - (i) examples of best practices; and
    - (ii) specific risks or concerns that relate to individual performance and practices or system-wide performance and practices, or both; and
  - (e) recommendations for any actions that might be taken to address matters raised in the report.
- (2) Taumata Arowai is not required to include in the report required by **subsection (1)** information that is required to be provided in the annual drinking water regulation report under **section 135**.

*Clause 143*

In *clause 143*, definition of **infringement offence**, paragraph (a), replace “**section 162**” (page 80, line 11) with “**section 162, 163A**”.

*Clause 194*

In *clause 194(5)*, definition of **regulatory agency**, paragraph (e), replace “Agency” (page 104, line 19) with “Authority”.

*Clause 195*

Replace *clause 195(1)(g)* (page 105, lines 7 and 8) with:

- (g) environmental performance measures or targets for networks developed under **section 140**.

*New clause 199A*

After *clause 199* (page 111, after line 11), insert:

**199A Section 146 amended (Specific bylaw-making powers of territorial authorities)**

In section 146, insert as subsections (2) and (3):

- (2) If a territorial authority makes bylaws under section 145 or **subsection (1)** regulating a wastewater network, as defined in **section 5** of the **Water Services Act 2020**, the bylaws must give effect to any wastewater environmental performance standards made under **section 135A** of that Act.
- (3) **Subsection (2)** applies to bylaws made on and after the commencement of **section 199A** of the **Water Services Act 2020**.

*Clause 200*

In *clause 200*, replace *new clause 23* (page 111, lines 16 to 29) with:

- 23 Requirements in subpart 1 of Part 7**
- Despite **section 125(3)**, every territorial authority must complete an assessment of drinking water services in accordance with **section 125** by 1 July 2026.

*Schedule 1*

In *Schedule 1, Part 1*, replace *clause 4A* (page 113, lines 8 to 19) with:

- 4A Application of Act to drinking water supplies registered under Health Act 1956**
- (1) This clause applies to a drinking water supplier who, immediately before the commencement date,—
    - (a) is registered under section 69J of the Health Act 1956; and
    - (b) has 1 or more drinking water supplies recorded under that section (the **recorded drinking water supplies**).
  - (2) The recorded drinking water supplies are registered in accordance with **subpart 7 of Part 2** on the commencement date.
  - (3) The drinking water supplier must provide Taumata Arowai with a drinking water safety plan for the recorded drinking water supplies that complies with **section 30(1)** within 1 year after the commencement date.
  - (4) Except as provided in **subclause (3)** or in regulations made under **clause 9**, this Act applies to the drinking water supplier in respect of the recorded drinking water supplies from the commencement date.

In *Schedule 1, Part 1*, replace *clause 4C* (page 114, lines 3 to 5) with:

- 4C Application of Act to other drinking water suppliers not registered under Health Act 1956**
- (1) This clause applies to a drinking water supplier (other than a water carrier) who, immediately before the commencement date,—
    - (a) is not registered under section 69J of the Health Act 1956; or

- (b) is registered under section 69J of the Health Act 1956 and has 1 or more drinking water supplies that are not recorded under that section.
- (2) The drinking water supplier must, in respect of any drinking water supply not recorded under section 69J of the Health Act 1956,—
  - (a) comply, on and from the commencement date, with—
    - (i) **section 21(1)**; and
    - (ii) any directions or compliance orders issued under **section 103, 104, or 118**; and
  - (b) apply to register the supply under **section 53** within 4 years after the commencement date; and
  - (c) provide Taumata Arowai with a drinking water safety plan that complies with **section 30(1)** within 7 years after the commencement date.
- (3) A drinking water supplier is, in respect of any drinking water supply not recorded under section 69J of the Health Act 1956,—
  - (a) not liable for an offence committed against this Act during the period starting with the commencement date and ending on the date that is 7 years after the commencement date, except—
    - (i) for an offence committed against **section 172, 173, 175, 179, 180, or 181**; and
    - (ii) as provided in **paragraph (b)**; and
  - (b) liable for an offence committed against **section 168, 169, or 170** during the period starting with the date that is 4 years after the commencement date and ending on the date that is 7 years after the commencement date.
- (4) Except as provided in **subclauses (2) and (3)** and in regulations made under **clause 9**, this Act applies to a drinking water supplier in respect of any drinking water supply not recorded under section 69J of the Health Act 1956 from the earlier of the following:
  - (a) the date on which the supplier complies with the requirement in **subclause (2)(c)**;
  - (b) the date by which the requirement in **subclause (2)(c)** is required to be complied with.

In *Schedule 1, Part 1*, delete *clause 7* (page 115, lines 6 to 9).

In *Schedule 1, Part 1, clause 9(3) and (4)*, replace “5 years” (page 115, lines 24 and 26) with “7 years”.

In *Schedule 1, Part 2*, replace *clause 13* (page 116, lines 12 to 24) with:

**13 Notices, compliance rules, acceptable solutions or verification methods, and wastewater environmental performance standards**

- (1) This clause applies to—
  - (a) a notice of aesthetic values made under **section 47**; and
  - (b) compliance rules made under **section 48**; and
  - (c) an acceptable solution or verification method issued under **section 49**; and
  - (d) wastewater environmental performance standards made under **section 135A**; and
  - (e) a notice in respect of record-keeping requirements made under **section 140A**.
- (2) An instrument to which this clause applies must be—
  - (a) published and made available in accordance with **section 195** as if that section applied to it; and
  - (b) notified in the *Gazette*.
- (3) An instrument to which this clause applies is a disallowable instrument, but not a legislative instrument, for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act.

*Schedule 2, Part 1, amendments to Resource Management Act 1991*

In *Schedule 2, Part 1*, before the item relating to *new section 104G* of the Resource Management Act 1991 (page 119, before line 13), insert:

After section 104(2C), insert:

- (2D) When considering a resource consent application that relates to a wastewater network, as defined in **section 5** of the **Water Services Act 2020**, a consent authority—
  - (a) must not grant the consent contrary to a wastewater environmental performance standard made under **section 135A** of that Act; and
  - (b) must include, as a condition of granting the consent, requirements that are no less restrictive than is necessary to give effect to the wastewater environmental performance standard.

In *Schedule 2, Part 1*, after the item relating to *new section 104G* of the Resource Management Act 1991 (page 119, after line 23), insert:

Replace section 108AA(1)(b) with:

- (b) the condition is directly connected to 1 or more of the following:
  - (i) an adverse effect of the activity on the environment:

**Proposed amendments to  
Water Services Bill**

SOP No 62

- (ii) an applicable district or regional rule, or a national environmental standard:
- (iii) a wastewater environmental performance standard made under **section 135A** of the **Water Services Act 2020**; or

*Schedule 2, Part 1, amendments to Taumata Arowai—the Water Services Regulator Act 2020*

In *Schedule 2, Part 1*, after the item relating to the definition of **drinking water** in section 4 of the Taumata Arowai—the Water Services Regulator Act 2020 (page 120, after line 10), insert:

In section 4, after the definition of **drinking water**, insert:

**drinking water network** has the meaning given to **drinking water supply** by **section 9** of the **Water Services Act 2020**

In *Schedule 2, Part 1*, replace the item relating to the definition of **stormwater network** in section 4 of the Taumata Arowai—the Water Services Regulator Act 2020 (page 120, lines 14 to 16) with:

In section 4, replace the definition of **stormwater network** with:

**stormwater network** means the infrastructure and processes that—

- (a) are used to collect, treat, drain, store, reuse, or discharge stormwater in an urban area; and
- (b) are operated by, for, or on behalf of one of the following:
  - (i) a local authority, council-controlled organisation, or subsidiary of a council-controlled organisation;
  - (ii) a department;
  - (iii) the New Zealand Defence Force

In *Schedule 2, Part 1*, replace the item relating to the definition of **wastewater network** in section 4 of the Taumata Arowai—the Water Services Regulator Act 2020 (page 121, line 1) with:

In section 4, replace the definition of **wastewater network** with:

**wastewater network** means the infrastructure and processes that—

- (a) are used to collect, store, transmit through reticulation, treat, or discharge wastewater; and
- (b) are operated by, for, or on behalf of one of the following:
  - (i) a local authority, council-controlled organisation, or subsidiary of a council-controlled organisation;
  - (ii) a department;
  - (iii) the New Zealand Defence Force

In *Schedule 2, Part 1*, item relating to the definition of **wastewater network operator** in section 4 of the Taumata Arowai—the Water Services Regulator Act 2020, *new paragraph (a)(i)*, delete “that operates a wastewater network” (page 121, lines 7 and 8).

In *Schedule 2, Part 1*, after the item relating to the definition of **wastewater network operator** in section 4 of the Taumata Arowai—the Water Services Regulator Act 2020, (page 121, after line 18), insert:

In section 10(e) and (f), replace “wastewater and stormwater networks” with “drinking water, wastewater, and stormwater networks”.

In section 11(a)(ii), (b), (f), and (h), replace “wastewater and stormwater networks” with “drinking water, wastewater, and stormwater networks”.

### Explanatory note

This Supplementary Order Paper sets out the following proposed policy changes to the Bill.

It expands the role and powers of Taumata Arowai to include the setting of wastewater environmental performance standards and the review of catchment-based risk management plans that will now be required for every wastewater network.

It also provides Taumata Arowai with the power to set measures and targets to improve the performance of drinking water, stormwater, and wastewater networks in areas that require a longer-term focus. This is supplemented by a provision requiring network operators to maintain records for monitoring and reporting purposes. In addition, Taumata Arowai is empowered to obtain and report on information about the condition and performance of drinking water networks, including the ability to—

- request, from any drinking water supplier, information about the condition and performance of drinking water networks; and
- report on the condition and performance of drinking water networks.

The Supplementary Order Paper amends *clause 31(2)* to provide a solely outcomes-based definition of multi-barrier approach to drinking water safety, a core requirement for drinking water safety plans.

The Supplementary Order Paper extends the transition window for unregistered supplies from 5 years to 7 years, and requires these suppliers to register by the end of year 4 of the new regime, rather than the end of year 3. This means these suppliers would be required to—

- register with Taumata Arowai towards the end of 2025; and
- comply with the Bill as a whole toward the end of 2028.

The Supplementary Order Paper also makes consequential and minor drafting and technical amendments to *clauses 3, 5, 32, 63, 94, 124, 125, 128, 143, 194, and 200*, and *Schedule 2*.

