

## **Water Services Economic Efficiency and Consumer Protection Bill**

**And the**

## **Water Services Legislation Bill**

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### **1. Introduction**

Thank you for the opportunity to submit on these draft Bills. We would like to appear before Select Committee to further discuss the needs of the civil construction industry, and the implications of this legislation.

**Civil Contractors New Zealand (CCNZ)** is an industry association representing the interests and aspirations of more than 700 member organisations, including 470 large, medium-sized, and small businesses in civil engineering, construction, and general contracting. Our 270 associate members provide valuable products, support, and services to contractor members. We live and work in all communities across New Zealand

Our members play a vital role in the development of our country, our economy, and our way of life. They build and maintain the roads connecting our cities and towns; they install and care for the water networks that bring fresh water to houses and wastewater to treatment plants; they install the cables that bring the internet to homes and businesses.

These are services a modern and developed economy must have to compete efficiently in world markets and to deliver high living standards for all New Zealanders.

## 2. Addressing the issue

CCNZ is aware of the need for reform in the Three Waters space, to ensure water asset owners can properly fund and meet the enforceable consent terms set by the new water regulator.

CCNZ has not taken a view on the structure and design of the new entities emerging as part of the Three Waters reform programme; that is a matter for the asset owners. However, we are strongly of the view that the current system of funding the maintenance, replacement, and development of our Three Waters assets is not working.

This impacts our health and the environment and creates significant community and business risks including the quality of drinking water, availability of water in dry years, inadequate wastewater treatment, inability to manage more frequent flood events, and an inability to manage the impacts of sea level change.

We support the need for change, and an outcome that results in more efficiency, more transparency and better management. In designing and implementing the changes, we have urged responsible ministers to remain mindful of two key matters:

- During the change process and transition, we need to ensure that there is continued investment in maintenance and capital works on and underground in order to maintain the specialist capability that currently exists and depends on this market. The volume of work signalled for the next 20 years requires more people and more investment in plant and equipment, so any loss of momentum, during a transition, will create serious resourcing and delivery risks downstream.
- CCNZ and our contractor members want to be involved and engaged in jointly developing procurement processes with the new asset owners and managers to ensure that we have a healthy water construction market that develops our three waters capability and capacity. Through the reforms there is risk of lost knowledge and capability alongside the rewards that may come with better management, and we need to ensure that there is an equitable and consistent distribution of work and opportunity for all contractors, large and small.

## 3. Consultation Period and Process

We cannot express strongly enough our disappointment and dismay at the unreasonable timeframe for consultation. With the Bills being released for consultation shortly before Christmas, the closure or scaling down of New Zealand businesses over the summer break, the lack of provision of any bill digest, and no provision of supporting documentation in any shape or form, this has undermined our ability to consult effectively with members, who in many regions have had to prioritise flood recovery and disaster response.

The lack of supporting information (i.e. Bill Digests, Regulatory Impact Statements – note a Regulatory Impact Statement is mentioned in the legislation, but leads to a broken link!) and inadequate notice given around the Water Services Legislation Bill, in particular, is concerning and undermines the consultation process.

While the argument could be made that changes have been signalled in advance, the true impact of the changes cannot be known until the legislation is available.

Ordinarily, we would consult widely with our membership through workshops and other consultation processes in response to legislation that directly impacts their businesses.

In this situation, due to the restrictive timeframe and lack of engagement, we have not been able to conduct this process for the very contractors who are building and maintaining the water networks. This is a very poor outcome and undermines the value of the submissions and consultation process.

Such an unreasonable process risks rendering the consultation meaningless and bypassing the necessary checks and balances to prevent outcomes that are poorly informed and unfit for purpose. While there has been significant, targeted consultation with local government and the operators of water treatment plants through Water NZ, there has been very little with the contractors who are responsible for the physical construction and maintenance of New Zealand's water assets.

This is disappointing, as these businesses are the ones that best understand the physical work involved in constructing and maintaining NZ's water networks. For this reason, we do not provide feedback on the specific clauses in the draft Bills. We instead provide general feedback on the direction of the legislation, and call on the Committee to review the consultation period and engage with the affected businesses within the infrastructure construction industry on proper terms.

#### **4. Water Services Economic Efficiency and Consumer Protection Bill**

We have few comments to make on this Bill.

In the Regulatory Impact Statement, reference is made to the objective of incentivising entities to invest efficiently in three waters infrastructure. "Efficiency" is not defined, and the risk is that efficiency could be interpreted to mean "lowest cost". The 'water workforce' is poorly defined, and at one point is projected to be 1,900 – either not taking into account the physical construction workforce, or a miscalculation in direct contradiction of the water workforce report commissioned by Deloitte.

Historically there has been huge underinvestment in water assets, renewal or maintenance. What investment there has been has not always been focused on delivering the best design and solution, but on procuring contractor services at the lowest possible cost. Future procurement processes must focus on value and outcomes rather than cost.

The Bill looks to include a disputes resolution process, which could cover complaints such as billing and payment, customer service, water restrictions, access to property, and the actions of staff or contractors. Any process that includes the potential for external contractors to be included must also provide some natural justice protection from such things as frivolous or vindictive claims.

## 5. Water Service Legislation Bill

### 5.1 Legislative design

CCNZ refers to the Legislative Design Advisory Committee guidelines, which state on page 14: “Designing legislation that users can find and **use easily** is critical for both the rule of law and its efficacy” (emphasis added).

The Water Services Legislation Bill is a particularly poor performer by this standard. It contains a vast number of amendments to previous Bills, making it obstructive and difficult to use and navigate, and therefore unlikely to operate as intended.

### 5.2 Asset management plan

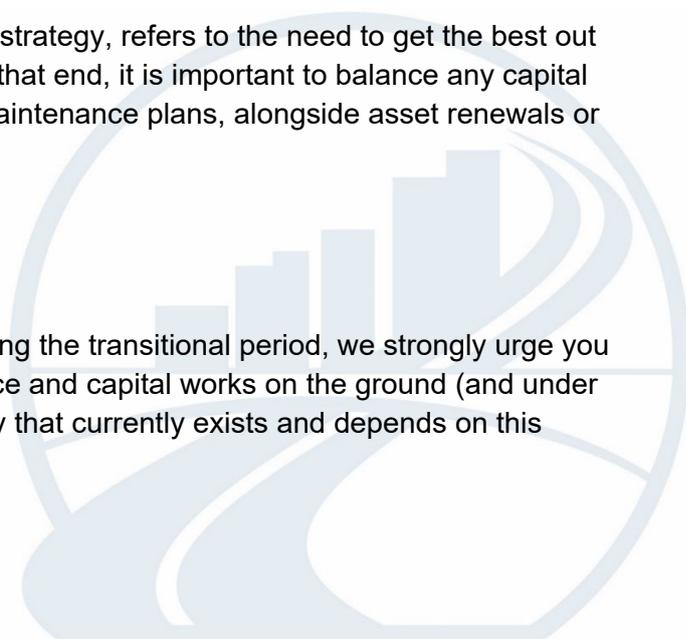
The legislation provides for the creation of an asset management plan for the economic regulators review, and we strongly support that. We submit that this planning requires the cooperation of the contractor partners that will perform the physical construction and maintenance works of the country’s drinking water, stormwater, and wastewater networks. When thinking of solution design and construction options, contractors are often best placed to offer input, but are often overlooked (potentially compromising the quality and efficiency of the solution proposed). Genuine engagement will lead to better outcomes for all.

We cannot stress strongly enough the importance of service providers having confidence in a continuous pipeline of work. Throughout this reform process, we have seen local authorities losing good people who procure, manage, and plan the networks due to the uncertainty of these reforms. New Zealand cannot risk losing water sector experience and expertise, and this is equally so for those organisations who construct, assess, and maintain the physical works. It is critical that we retain and build capability and capacity within our businesses, agencies, and organisations, or the knowledge that we have will be lost overseas or taken up in other trades.

The Infrastructure Commission, in its 30-year strategy, refers to the need to get the best out of the infrastructure that we already have. To that end, it is important to balance any capital investment with long-term assessment and maintenance plans, alongside asset renewals or retrofit programmes, where appropriate.

### 4.2 Transitional arrangements

In implementing these structural changes during the transitional period, we strongly urge you to ensure continued investment in maintenance and capital works on the ground (and under it), in order to maintain the specialist capability that currently exists and depends on this market.



The large volume of work that will be required over the next 20 years will require more people and more investment in technology including plant and equipment. Any loss of momentum, during the transition, will create serious resourcing and delivery risks downstream.

#### **4.3 Procurement**

We are concerned to ensure that future procurement practices do not encourage a “race to the bottom” or low-cost mentality, and do not risk the loss of knowledge and capability alongside the rewards that may come with better management.

With established client/contractor relationships in place, we need to ensure that the procurement model offers an equitable and consistent distribution of work and opportunity for all contractors, large and small. CCNZ and its contractor members have offered to be involved in jointly developing procurement processes with the new asset owners and managers to ensure we have a healthy water construction market that develops our three waters capability and capacity.

A major factor that influences procurement behaviour is funding. We agree with most commentators that the historical system of funding the maintenance, replacement, and development of our Three Waters assets has not worked, and that future funding models need to encourage a more value base approach to investment decisions.

#### **6. Council Controlled Trading Organisations**

We do want to touch on the implications of the reform proposals on Council Controlled Organisations (CCOs) and Council Controlled Trading Organisations (CCTOs). The draft legislation has the potential to entitle central or local government organisations to take from CCOs and CCTOs all staff and assets that are directly related to three waters delivery, a point on which several of our members are very concerned.

The issue with CCOs is that for many of them, they are not solely working on projects relating to the three waters. They often have staff and assets deployed on roading, subdivisions, or other civil projects or operate a mixed-use model. Many also work across the country (not in a single region), and while they may be council-owned, they are private businesses in all other regards.

Those CCOs are significant contributors to the health, wealth, and wellbeing of the regions and communities they work in. They employ local people and return dividends to councils that are reinvested back into the region. If the new legislation enables the new water entities to take possession of the property of private businesses, whether these are council owned or not, this is a serious concern.

Any move to split the people and physical assets from CCOs and CCTOs (i.e. workers who work across transport, water and public spaces, or yards and equipment such as excavators, graders, etc) does not acknowledge the nature of these businesses and has the potential for significant financial and social harm. It will:

- Put at risk the significant investment that the CCOs have made in people and capability which have longer term pay back periods.
- Impact their ability to deliver strong dividends to shareholders, severely impacting Council budgets.
- Prevent further reinvestment into the business.
- Undermine the certainty under which these businesses operate.
- Restrict the ability of CCOs to support their local communities.

Thereby removing the tension that a competitive market for water services and associated projects brings could impact pricing, and the introduction and adoption of new and emerging innovation and technologies.

We believe that this needs to be addressed with urgency.

## Conclusion

- a) Thank you for the opportunity to provide this submission.
- b) We request that these Bills are not progressed at this stage, to enable transparency, proper consultation and ensure the needs of affected parties and stakeholders are met for the successful implementation of workable legislation.



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