



# **PSA submission on the Water Services Entities Amendment Bill**

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# Submission on the Water Services Entities Amendment Bill

## About the PSA

The New Zealand Public Service Association Te Pūkenga Here Tikanga Mahi (the PSA) is the largest trade union in New Zealand with over 89,000 members. We are a democratic and bicultural organisation representing people working in the Public Service including for departments, crown agents and other crown entities, and state owned enterprises; local government; tertiary education institutions; and non-governmental organisations working in the health, social services and community sectors. Te Rūnanga o Ngā Toa Āwhina is the Māori arm of the PSA membership.

The PSA is affiliated to Te Kauae Kaimahi the New Zealand Council of Trade Unions, Public Services International and UniGlobal.

## Why water services reform matters to our members

We represent an estimated 800 workers whose jobs would be directly affected by water services reform and the creation of new Water Services Entities (WSEs). These members care about being able to do their best work in delivering water services, and about having a positive working life working for employers that respect and value them.

As the union for local public and community services it is also important to us that we advocate for strong, effective, well-resourced and high-quality water services that are accessible to all communities. As such, we have an interest in ensuring the proposed model for water services delivery results in a well-designed and well-functioning Three Waters management system, operating for the public good.

## Summary of recommendations

Our main recommendations are that the bill is amended to:

- Enable national level bargaining to happen for both WSEs and national collaborative services (and any other subsidiaries) before the establishment date of WSEs.
- Enable the Minister for Local Government to nominate the party that bargains on behalf of the WSEs and national collaborative functions (and any other subsidiaries) prior to establishment.

- Enable an entity (most likely the national collaborative function for workforce development) to take on the mandate to bargain on behalf of WSEs and national collaborative functions. (and any other subsidiaries) at a national level on an ongoing basis once they are established.
- Enable the Minister for Local Government to direct shared services to be set up during the establishment phase of the reform programme, but not on an ongoing basis once WSEs are established.
- Include operating principles of ‘partnering and engaging early and meaningfully with duly registered trade unions acting on behalf of employees, including support for collective bargaining, including multi-employer and multi-union collective bargaining, where it is practical and reasonable to do so’.
- Ensure national collaborative functions will be publicly owned by the WSEs and cannot be privatised or outsourced in the future.
- Ensure national collaborative functions are in a form that, and/or have a constitution that, focuses on public good and doesn’t require them to return a profit.
- Ensure the entities delivering national collaborative functions are required to meet good employer practices and the same terms and conditions offered by their parent WSEs.
- Provide clarification about how stakeholders are involved in determining the go-live dates of WSEs.
- Provide retention payments to workers that stay within the industry until the transition to new WSEs (or until a certain point after the transition).
- Guarantee workers on migrant visas connected to their current employers that their visas automatically transferred to their new employer.

These recommendations are discussed in more detail later in this submission.

## General comments

We acknowledge the need for change in the water services sector, and we support the Government’s reforms to bring about much-needed change. We were supportive of the model contained in the Water Services Entities Act 2022, and saw benefits in the economies of scale created by four Water Services Entities (WSEs). We acknowledge that the move from four WSEs to ten aims to strike a balance between economies of scale and local voice. The shift to ten WSEs with staggered starting dates does, however, create some challenges for the transition process for workers. Our submission contains some recommendations to address these challenges.

The move to ten WSEs from the four originally proposed mean that it’s even more important than before to put mechanisms in place to support consistent approaches on matters like workforce development and health and safety. We believe the proposed national collaborative functions are a good way of supporting this consistency, provided the setting up of national collaborative functions cannot be used as a mechanism to outsource and privatise work. We want to see a national level approach to employment relations, including workforce development, training, health and safety; but we also want to see safeguards in the legislation against national collaborative functions being privatised in the future.

Another way of achieving consistent approach to workforce matters is to enable a national level approach to good faith collective bargaining, including bargaining for a multi-employer collective agreement. This would help to ensure consistent, high-quality terms and conditions across the sector (both the WSEs, national collaborative functions, and any other subsidiaries established by the WSEs) to support a cohesive workforce, and reduce competition for labour between organisations.

We want to see the legislation enable this national level good faith collective bargaining to occur, and submit such an approach will help facilitate the statutory purpose of the Water Services Entities Act 2022 as provided at section 3 (f) and (g) ('ensuring water services infrastructure is retained in public ownership'; 'ensuring water services infrastructure is not operated for the purpose of generating profit for shareholders').

We want to see retention of workers in the industry, and this requires work that's secure, attractive, and allows for movement between WSEs, or between WSEs and national collaborative functions.

## Feedback on specific sections

The following sections of our submission focus on specific parts of the bill, or specific issues covered in the bill, that are of particular relevance to the PSA and its members.

### Enabling national level collective bargaining

#### *Provisions in the bill to enable national level bargaining to occur*

With four WSEs going live on the same date, bargaining at a national level and seeking consistency across the four WSEs would have been feasible even if the bargaining process ran separately for each WSE. But with ten WSEs going live on different dates over a two year period, a consistent approach is all but impossible without additional coordination at the national level – bargaining would need to happen on an individual basis ten times over different timeframes, and decisions to ratify some collective agreements would likely need to take place before other WSEs are established or have even entered their establishment period.

The added complexity of national collaborative functions also adds to the need for a cohesive national approach.

Collective bargaining at the national level is preferable to each WSE bargaining separately with unions, because:

- It prevents perverse outcomes where WSE's outbid each other for workers, leading to inconsistency in service delivery and understaffed regions.
- Portability of conditions across the industry, enabled by a national approach to bargaining, would help keep skilled jobs in regions and the industry by enabling people to move without losing terms and conditions. This may be of particular benefit to mana whenua, allowing people to return to their rohe with skills developed elsewhere
- The sector needs terms and conditions that will attract more workers to the sector, and to retain workers to see the industry as one where they can have careers for life. Having employment terms negotiated by a central body, looking at the benefits of the industry as a whole rather than the financial bottom-line of a single WSE, is likely to provide better conditions for workers and be more sustainable for the industry as a whole.
- We consider it would better support statutory objectives such as section 3(f) and (g) of the Water Services Entities Act 2022

**This legislation needs to enable national level bargaining to happen for both WSEs and national collaborative functions (and any other subsidiaries) before and during the establishment period of WSEs.**

This would require the addition of provisions to the bill that:

- Allow for national level bargaining to take place during or before the establishment period

- Set out who has the mandate to bargain on behalf of the entities prior to their establishment
- Ensure that a settled agreement/agreements are in place prior to workers' transitioning to new WSEs.

The provisions enabling national level bargaining should also:

- Enable workers (both union and non union members) to take time to engage with the process, including through paid stopwork meetings, such as those available in the Employment Relations Act 2000
- Enable impacted workers who are not union members time to seek information from unions (ie, puts obligation on current employers to provide paid time etc for non-union members to seek info on the bargaining etc)
- Ensure dispute resolution is available in the same manner as provided for in the Employment Relations Act 2000 if bargaining is not successful
- Ensure information needed to effectively participate in the bargaining process is provided to unions (including names and contact information of people under coverage, and salary information)
- Enable continuity of bargaining by ensuring union membership transfers from the existing employer to the new WSE unchanged, without any requirement for union members to reapply for union membership when they transition to new WSEs.
- Ensure that all WSE's conduct collective bargaining in accordance with recognised good faith obligations. We recommend that this be addressed by including within the current Schedule 1 provisions addressing collective bargaining/collective agreements (Schedule 1 clauses 28-29) a new provisions essentially mirroring clauses 9 and 10 of Employment Relations Act 2000 (Schedule 1B). Refer to Appendix 1 for more details.

### *Delegating the mandate for collective bargaining*

We acknowledge the constructive progress that has been made to date on preparing for collective bargaining. We want to see this work progress.

As mentioned above, national level collective bargaining would require a party to be delegated the mandate for negotiating on behalf of the WSEs during the period before those WSEs are established.

**The legislation should enable the Minister for Local Government to nominate the party that bargains on behalf of the WSEs prior to establishment.**

We recommend this bargaining party be nominated as soon as possible so the constructive work to date on employment relations can progress.

**Favourable consideration should also be given to giving an entity the mandate to bargain on behalf of WSEs at a national level on an ongoing basis once they are established,** to enable an all-of-sector approach to employment relations. This should most likely sit with the national collaborative function for workforce development.

### *Operating principles for WSEs*

To further reinforce the desire to see national level employment conditions in the context of the increased complexity of the new model, we suggest making this clear in the operating principles for WSEs as provided at clause 14 of existing Water Services Entities Act 2022.

**We recommend amending the operating principles to also provide for 'partnering and engaging early and meaningfully with duly registered trade unions acting on behalf of employees, including support for collective bargaining, including multi-employer collective bargaining, where it is practical and reasonable to do so'.**

This wording draws from existing terminology in the current clause 14 as it relates to councils and communities, and also draws from wording used in clause 6(1) of Employment Relations Act 2000 Schedule 1B (Code of good faith for public health sector).

## National collaborative functions

### *National collaborative workforce function*

The move to ten WSEs from the four originally proposed mean that it's even more important than before to put mechanisms in place to support consistent approaches on matters like workforce development, health and safety, and the promotion of good faith in collective bargaining. We believe the proposed national collaborative functions are a good way of supporting this consistency.

We support workforce development being a national collaborative function. This should include consistent recruitment, training and upskilling, including health and safety training and worker participation agreements, skills-based training, and other matters that support the workforce to deliver consistently and safely across the public and private sectors, as well as the retention of workers.

Once this collaborative function is established we would want to see ongoing formalised relationships with unions a core part of this entity's role. It's also important that the workforce functions currently held by the National Transition Unit transition to this new entity in a seamless way, which may necessitate the National Transition Unit handing over work gradually rather than abruptly on the go-live date of the last of the WSEs.

### *Ministerial direction*

The system, once established, should be protected from central government continuing to chip away at the roles of WSEs by continuing to add new national collaborative functions. **The legislation should enable the Minister for Local Government to direct shared services to be set up during the establishment phase of the reform programme, but not on an ongoing basis once WSEs are established.** This ability should be exercised as early as possible to provide sufficient time for the transition to take place, rather than coming in late in the transition process with additional changes to the roles of WSEs and national collaborative functions.

### *Protection from privatisation and outsourcing*

We are concerned about the potential for national collaborative functions to be privatised or outsourced (either wholly or partially, and both at establishment and in the future). We are also concerned about the prospect that they can be used as a way of skirting WSEs' responsibilities to be good employers.

We're opposed to private delivery of national collaborative functions because:

- Private delivery would create a disparate industry where the issues that gave rise to these reforms could become even more problematic.
- The reforms' aims of safe and affordable water for people in Aotearoa will not be able to be assured by future governments if in fact the duties are placed with a range of private providers.
- Allowing outsourcing or privatisation of national collaborative functions would be contrary to the intent of Section 3(2) of the Water Services Entities Act 2022, which sets out that the purpose of ensuring water services infrastructure is not operated for the purpose of generating profit for shareholders.

Throughout the reform process the people of New Zealand have made it very clear that protecting water services from privatisation is important to them.

Although the original Water Services Entities Act 2022 provides strong protections against divestment, it is not clear whether the legislation would protect national collaborative functions from such divestment. We presume that national collaborative functions would be established as subsidiaries under the provisions of the Water Services Legislation Bill, however the definition of subsidiaries in the Water Services Legislation Bill only requires them to be majority publicly owned, not fully publicly owned.

Along with other national unions representing water services workers, we recommended in our submission on the Water Services Legislation Bill that subsidiaries should be required to be wholly owned by WSEs (either by an individual WSE or a group of WSEs). We are still of this opinion, and believe that if the Water Services Legislation Bill doesn't guarantee public ownership of subsidiaries generally, the Water Services Entities Amendment Bill should specifically require public ownership of national collaborative functions.

In addition, none of the reform legislation introduced to date provides protection against the outsourcing of any functions by WSEs to the private sector. The kinds of functions being set aside for national collaborative functions are often the kinds of functions that are first to be outsourced by public agencies as part of attempts to bring down operating costs; this often leads to poor conditions for workers and poor delivery to communities, as profit is extracted by private sector owners and competitive prices are maintained by keeping labour costs low. We want to see the legislation protect these functions from being outsourced.

**We want to see provisions in the legislation that will ensure national collaborative functions will be publicly owned by the WSEs and cannot be privatised or outsourced in the future.**

**The national collaborative functions should be in a form and/or have a constitution that focuses on public good and doesn't require them to return a profit.**

**We also want to see provisions in the legislation that ensure the entities delivering national collaborative functions are required to meet good employer practices and the same terms and conditions offered by their parent WSEs.**

## Establishment dates

Certainty about establishment dates for WSEs will reduce uncertainty for workers and councils, who have already been through a long period of uncertainty as the reforms are refined to reflect public and stakeholder feedback.

We would like to see establishment dates of the WSEs set as soon as possible.

Input from stakeholders, including unions as representatives of workers, should be sought and should inform decisions about the establishment dates of WSEs.

**We'd like to see clarification about how stakeholders are involved in determining the go-live dates of WSEs, preferably either in the bill itself, or if not, by the Minister of Local Government.**

## Workforce retention

The water services sector workforce needs to expand by many thousands of workers in future years. Retaining workers in this transition period is important so that ground is not lost in building the required workforce, and that valuable institutional knowledge and experience isn't lost to the industry.

The additional two years of transition time for some WSEs envisaged in this bill has the potential to make retention more of an issue, due to uncertainty within the transition period, and because it creates a longer period in which current employers have little incentive to invest in training, upskilling and resourcing.

We will continue to engage with the Government about ways in which it can support training and development during the transition period. However one tangible means of retaining staff that could be enabled through legislation is **the provision of retention payments to workers that stay within the industry until the transition to new WSEs (or until a certain point after the transition).**

**We also recommend workers on migrant visas connected to their current employers are guaranteed that their visas automatically transferred to the new employer,** to provide certainty for those workers who have travelled to New Zealand to join the industry and now face uncertainty about whether they will have continued employment post-transition.

## Conclusion

We appreciate the opportunity to submit on this legislation. We look forward to having legislation passed to provide certainty to workers in the sector, and we look forward to working constructively with central government and WSEs to ensure the best possible outcomes for communities and workers in the water services sector.

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## Appendix One:

# Suggested provisions to be added to the bill

As discussed in our submission, we recommend including within the current Schedule 1 provisions addressing collective bargaining/collective agreements (Schedule 1 clauses 28-29) a new provisions essentially mirroring clauses 9 and 10 of Employment Relations Act 2000 (Schedule 1B), as follows:

### **Specific things WSE's must not do during collective bargaining**

- (1) *During collective bargaining WSE's must not—*
- (a) *communicate directly with union members in relation to the collective bargaining; or*
  - (b) *negotiate with employees who are not union members with a view to undermining or influencing the collective bargaining; or*
  - (c) *attempt to discourage employees from joining or remaining with the union; or*
  - (d) *contract out services with a view to undermining or influencing the collective bargaining;*

### **Mutual obligations**

- (1) *During collective bargaining each party must—*
- (a) *give thorough and reasonable consideration to the other's proposals; and*
  - (b) *not act in a manner that undermines the other or the authority of the other; and*
  - (c) *not deliberately attempt to provoke a breakdown in the bargaining; and*
  - (d) *where appropriate, consider ways in which they may take into account tikanga Maori (Maori customary values and practices) in the bargaining.*
- (2) *If agreement cannot be reached or the collective bargaining is in difficulty, the parties must give favourable consideration to attending mediation without delay, and must consider third party decision-making.*
- (3) *The parties must recognise that collective bargaining and collective agreements need to—*
- (a) *provide for the opportunity for participation of union officials, delegates, and members in decision-making where those decisions may have an impact on the work or working environment of those members; and*
  - (b) *provide for the release of employees to participate in decision-making where appropriate, acknowledging the key role of union delegates in the collective representation of union members; and*
  - (c) *provide for union delegates to carry out their roles, including the time needed for communication and consultation with members, and for union delegate education.*