

Three Waters: New body corporate model reduces government accountability

Think Piece 39: September 2022

This is the first in a series of think pieces on water reform. This think piece focuses on the institutions, instruments and information.

15 Status of water services entities

Body corporate and separate legal entity

- (1) A water services entity—
 - (a) is a body corporate; and
 - (b) is accordingly a legal entity separate from the entity's board members, the entity's employees, the Crown, the entity's regional representative group, and the entity's territorial authority owners; and
 - (c) continues in existence until it is dissolved by an Act.

Section 15 of the Water Services Entities Bill.

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References are provided [here](#).

The Three Waters Reform proposes to introduce a completely new institution to deliver public services. The Explanatory Note to the Water Services Entities Bill before the Finance and Expenditure Select Committee makes clear that the body corporate model is a 'new public service delivery model'. Importantly, this institution will not be owned by the Crown or directly owned by local government. It is a new and surprisingly experimental option to manage an asset of such importance to the long-term future of the country.

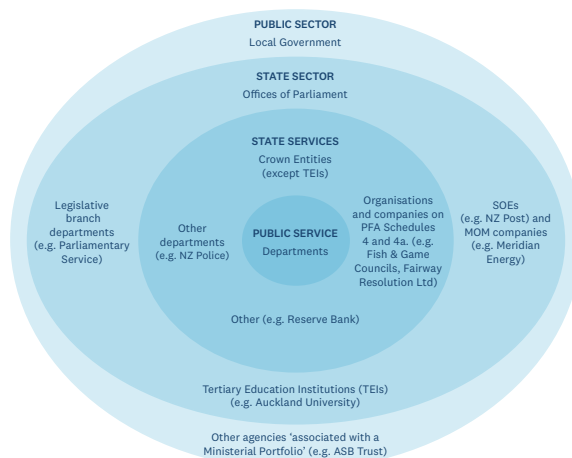
The Bill proposes a body corporate model, which is commonly used to manage apartment buildings. Interestingly, the Unit Titles (Strengthening Body Corporate Governance and Other Matters) Amendment Act 2022 was recently strengthened to improve governance – illustrating the governance challenges that exist under this model. Importantly, it is not a corporate governance model where shareholders vote for the Board, the Board selects the Chief Executive and an AGM ensures a free flow of information.¹

If the Water Services Entities Bill is passed as written, the Government will establish four of these new types of entities. None of the four will be owned or controlled by the Crown at all, nor directly by the wider public sector. The water entities have no place on the Public Service Commission's (PSC's) public sector map (see Figure 1). This means:

- The Government is moving public sector assets to four independent entities to manage because they do not believe our current system of government is capable of the task. The four entities are responsible for writing their own constitution and their own strategy without the normal checks and balances (such as a responsible minister signing off goals and objectives) or public accountability (such as an AGM). It illustrates that this Government has little faith in our existing systems and/or officials.
- This is a clear signal that the current Government has little trust in the Ministry of Health and Ministry for the Environment to regulate water quality. They have instead established a Crown entity to regulate drinking water, Taumata Arowai, under the Water Services Regulator Act 2020 (see Figure 2: Timeline of water reform).
- This is not a co-governance model, as the Crown is not involved as either an owner or manager (unless there is a state of emergency etc.). Hence, it is unclear how the proposed structure recognises both parties of Te Tiriti.

All of this indicates a serious shift away from Government trusting the public sector to deliver services. Consolidating assets is not the same as centralising assets. The Bill, in effect, further extends the Crown's arm rather than making the Crown accountable. It means that the Crown's responsibility (if the new public service delivery model goes pear-shaped) is very distant at the very time when climate change will further stress the system. If it was me, I would be keeping water very close, ideally through the establishment of a ministerial portfolio in the form of a Minister of Water.² This way, a member of Cabinet will be responsible for the delivery of water services, and deliver durable public policy in a non-partisan way.

Figure 1: Types of institutions in the public sector (PSC)³



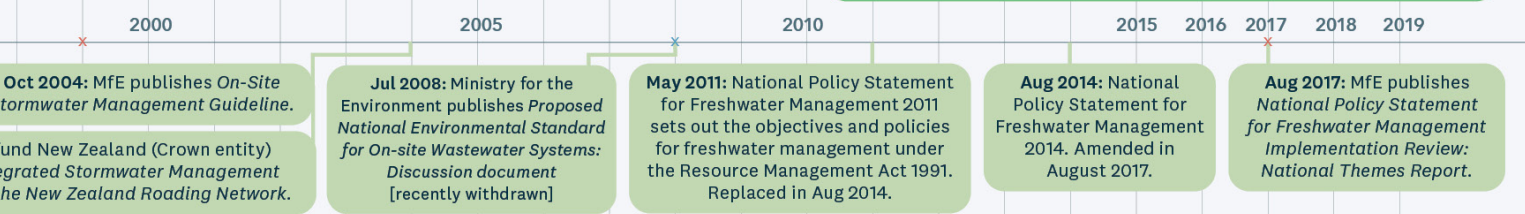
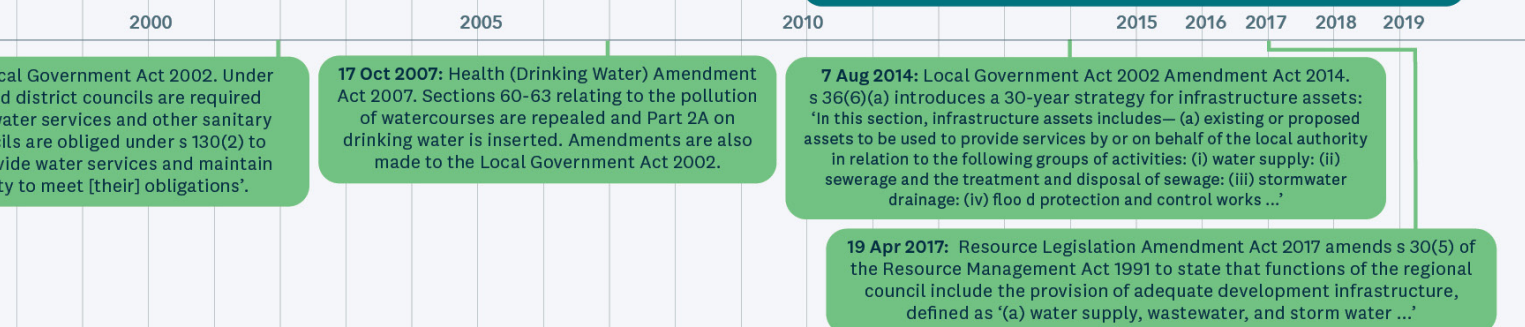
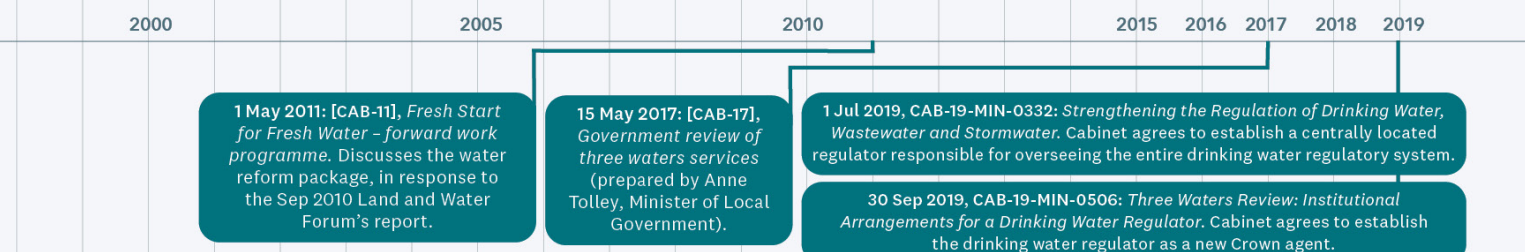
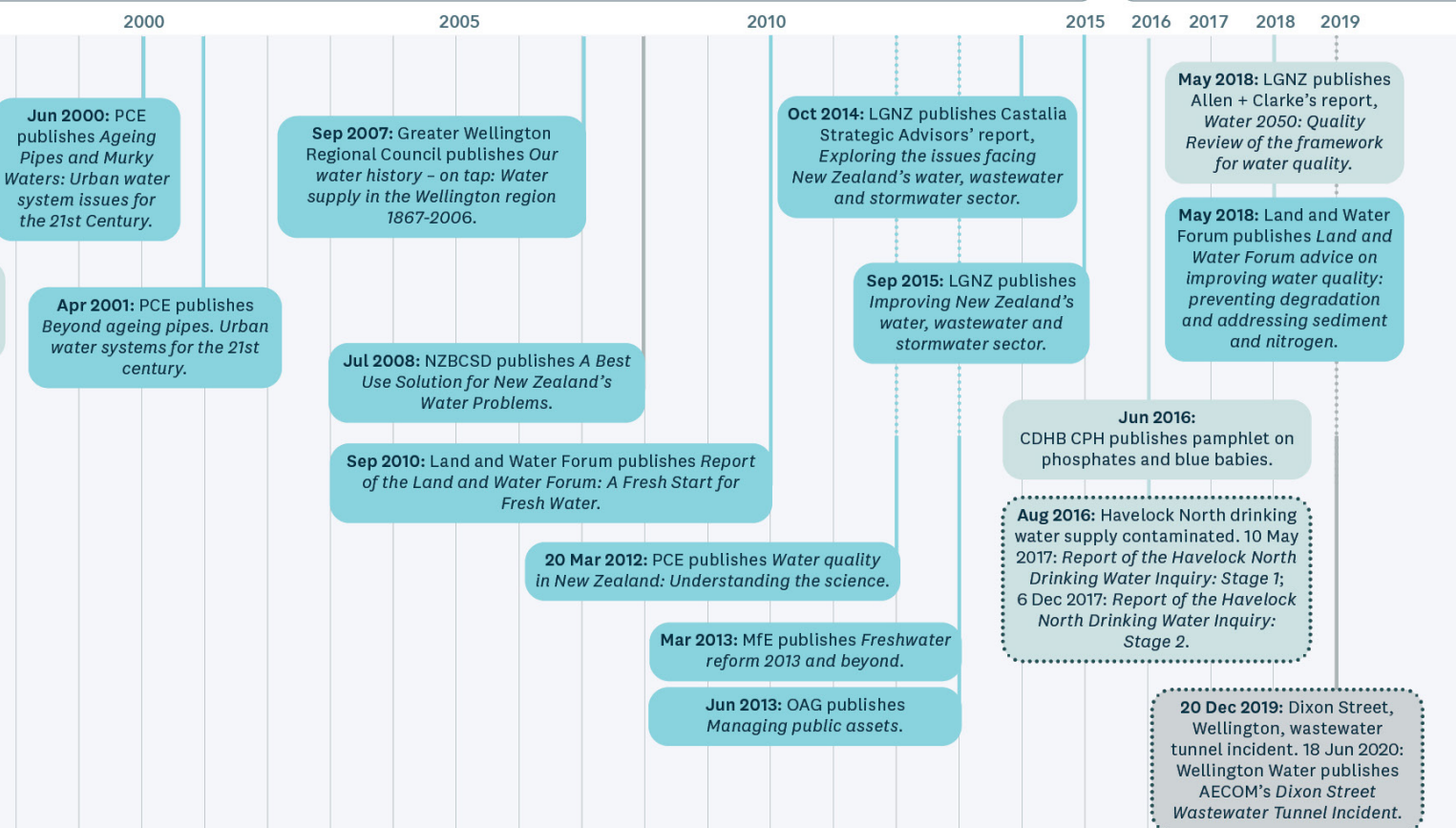
Outstanding questions

1. How will each body corporate water entity gain revenue, borrow funds and insure assets? Will government provide funds?
2. What will the balance sheet for each body corporate water entity and each council look like? How will the asset value be determined for transferring to the body corporate water entity? Will debt related to those assets be transferred as well?
3. How will funding priorities be determined between pipes, between locations, and between different groups in the community?
4. How will linkages between body corporate water entities be managed e.g. sharing technologies, expertise and resources?
5. How will potential conflicts of interest (e.g. access, fees, quality, flow and property development) between governance entities and external parties be identified, recorded and managed?
6. If this new public service delivery model fails, can we go back to the status quo? How would failure be defined, and by whom?

Figure 2: Timeline of water reform

Timeline of water reform





Three waters reform

