



Dr Liz Craig
Chair, Health Select Committee
Parliament

6 July 2021

Dear Dr Craig

As Parliamentary Commissioner for the Environment my role is to identify and comment to Parliament, including its Select Committees, on issues that affect New Zealand's environment and environmental management system.

I apologise for sending this letter well after submissions on the Water Services Bill have closed, but it has taken a while to unravel and understand how the proposed changes might impact on the way our environment is managed. I am conscious that your deadline for reporting back to the House is 11 August, so time is short.

I am concerned about the current wording around wastewater and stormwater (subpart 7) in the Water Services Bill. My concerns are:

- the use of the phrase “environmental performance measures”, particularly in part of section 136 and in section 140; and
- the power proposed to be invested in Taumata Arowai to “develop, publish, and maintain environmental performance measures for wastewater and stormwater networks” (s140 of the Bill).

My concern is that this could be interpreted as Taumata Arowai being an environmental regulator when that role currently rests with regional councils under the Resource Management Act. There is also a risk that the Bill, if passed as is, will in effect set up two national level environmental regulators (ie Taumata Arowai and the EPA). Such a division of regulatory authority risks a fragmented, and potentially contradictory, approach to environmental management.

Any such step should also be considered in the light of the proposed successor legislation to the Resource Management Act. The sheer scale and comprehensiveness of the Government's reforms and its signalled intention of pursuing environmental limits much more vigorously, inevitably raises a question over who should oversee the monitoring and enforcement of nationally designated standards. Many countries hand this task to an agency like the EPA, at arm's length from policy and implementation alike.

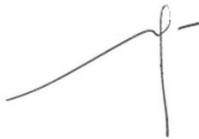
I understand the need for a regulator to supervise the performance of the new water entities. There are both technical and economic matters that require oversight. But it is another matter again to extend that oversight to their environmental performance. We wouldn't suggest this for hydroelectric operators or network operators – why would we for these service providers.

I am still working through my thinking about the best way to address the issue. If you agree with my distinction, one solution might be to use the phrase 'operational performance' instead of 'environmental performance', but I have not yet fully tested that idea.

Given that your time left on the Bill is short and a three-week Parliamentary recess is nearly upon you, one way forward would be to ask officials from the Department of Internal Affairs and the Ministry for the Environment to work with my office and the Clerk of the Committee on the issue. The aim would be to have more fulsome considered advice, and any recommended solution, ready for the Committee's consideration when the House resumes on 3 August.

Thank you again for the courtesy of receiving this letter and I regret that I am sending it so late in the day.

Yours sincerely

A handwritten signature in black ink, consisting of a long horizontal stroke that curves upwards at the end, followed by a vertical line that extends downwards.

Rt Hon Simon Upton
Parliamentary Commissioner for the Environment

CC: Environment Select Committee, Chair: Hon Eugenie Sage