Looking into the The Water Services Act

Many in the community will be aware of the present Government's water regime policy widely known as the Three Waters Scheme ('the Scheme'). What is less widely known by the general public, is that the first phase of the Scheme has already been passed into law.

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The Water Services Act 2021 ('the Act') was given Royal Assent on 4 October 2021, and largely went into effect on November 15 2021.

This new Act of Parliament deals essentially with the sourcing and provision of drinking water, and will have some effect on almost everyone in the country, in one way or another.

While on the surface, the Act appears to apply largely to local councils and other public bodies, this is simply not true.

In fact, the Act defines a 'Drinking Water Supplier' as basically anyone who allows someone to take water from a body of water on their land, or convey it over their land, that ends up being used as drinking water, whether it was intended to be used for that purpose or not.

The recently created water regulatory body, Taumata Arowai, ('TA'), while not established purely under the Act, will be the regulating body under the Act.

TA will have wide and far reaching powers to enforce the Act. A Drinking Water Supplier who breached, or fails to comply with the Act can be required to pay hefty fines (technically up to $3 million) or possibly face a prison sentence of up to 5 years.

By way of example, if a person, or entity allow their neighbour to draw drinking water from their stream, as a neighbourly courtesy, without charging their neighbour anything, then that person or entity is a Drinking Water Supplier.

This means that they are bound by the same strict regulations as the local Council who manages the reticulated water supply. This includes registering a formal safety plan with the TA, and making sure regular lab tests of the water supply are undertaken. As alluded to above, there can be harsh penalties for not complying.

Additional requirements include ensuring that the party being supplied is getting a sufficient amount of water, of a sufficient quality, with no interruption lasting more than 8 hours (with a few exceptions however).

A deemed Drinking Water Supplier must also; maintain end-point treatment, comply with drinking water standards, supply "aesthetically acceptable" drinking water, notify TA of any risk or hazards (including non-compliance by your neighbour), keep records of supply, and pay any TA Fees.

Employees also have a duty to take care to ensure that their employer complies with the Act, particularly in terms of preventing risks and hazards to a water supply.

The Act is wide ranging in its scope, and some of the duties it imposes are strict liability, meaning you are in breach of the law whether you were aware of those duties or not.

Even if the "supplying" party is unaware that their neighbour takes water from a stream on their land, or runs pipes across it to supply themselves with drinking water, they are still captured by the regime. This will be particularly common in rural communities.

Also, the Act does not make provision for contracting out of it with the person who is being "supplied".

The unfortunate reality which appears to arise out of this new law, is the fact that if you do not wish to be subject to these new regulations, and administer compliance with them, then you will need to ensure that the only person's drinking water that you "supply" is your own.

If you suspect that the Act may impose duties and obligations on you or an entity which you are part of, you should seek legal advice as soon as possible to see if you can limit any risk going forward.