



PSA submission on the proposed three waters staff transition guidelines

Prepared for the Three Waters National Transition Unit
August 2022

About this submission

The New Zealand Public Service Association Te Pūkenga Here Tikanga Mahi (the PSA) is the largest trade union in New Zealand with over 80,000 members, including almost six hundred workers whose jobs would be directly affected by the Three Waters reform proposals and the creation of new Water Services Entities (WSEs).

These members care about being able to do their best work in delivering Three Waters services, and about having a positive working life working for employers that respect and value them. It is important to us that the transition process treats our members – and all workers within the sector – fairly and that it supports them to move into good work.

As the union for local public and community services it is also important to us that we advocate for three waters services to be strong, effective and well-resourced, delivering high-quality services that are accessible to all. 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.

This submission draws on:

- feedback from members through a survey and online workshop on the guidelines
- themes from our submission on the Water Services Entities Bill
- feedback we've heard through our ongoing member engagement on three waters over the last year
- the PSA's values, Ngā Kaupapa and our strategic goals¹.

Overview of our feedback and recommendations

The following are areas of focus for our members in three waters:

- **Suitable work, or alternative options:** Workers don't want to feel coerced into taking jobs that aren't suitable. That means there needs to be worker involvement in determining what roles qualify for the legislated job guarantee, ensuring new jobs in the WSEs are like-for-like, and that people who genuinely don't consider a job meets the legislated job guarantee criteria can still access redundancy or other options.
- **No loss of terms and conditions:** Our members are clear that they don't want to see a loss of terms and conditions. That means the NTU and WSEs should commit to ensuring no one is worse off, and should aim for high quality terms and conditions in Collective Employment Agreements that make WSEs exemplary employers.

¹ Available at www.psa.org.nz/about

- **Stability of location:** Members are concerned that the transition to new WSEs will result in them having long commutes or having to move. Some workers in local government are able to live rurally or cycle to work, and want to be able to continue doing so. Decisions about locations should take into account the wide variation in people’s needs and lifestyles.
- **Implementing change:** Members acknowledge how ambitious the proposed transition process is, and they want to see it work well. That means providing clarity as early as possible, helping people understand what it means for their specific circumstances, involving workers throughout, and covering all the technical elements required to make sure the entities function well from day one.
- **Ensuring the preferential consideration process is fair:** Workers have a degree of scepticism about how fair the preferential process will be. They want to ensure the process is objective and transparent, and that it incorporates best practice principles and practices from other Local Government change processes. We support the ringfencing of roles to staff whose current water accountabilities map to the role(s) they are interested in, that recruitment is restricted to all eligible staff in the first instance and within the local entity.

Feedback on specific sections of the guidance

6. Policy intent, legislative requirements and principles

6.1.3 Consideration of independent contractors

We strongly support and advocate for public and community services to be delivered by public service entities, and not to be contracted out.

The guidelines talk about the need to consider the extent to which contractors can transfer under similar principles to those envisaged for employees (noting the mechanism to achieve this, and terms to be offered, will need to recognise the alternative contractual nature of their engagement).

Given that their retention is important to the sector, and that the reforms are intended to build sustainable technical capability in the workforce, we believe these workers should where feasible be directly employed by WSEs. This would give them access to the same terms and conditions negotiated for other workers.

6.3.2 Manage change consistently and transparently

The guidelines state that “the Transition Unit/Entities will work with current employers to minimise the potential for redundancy among staff whose work is affected by the transfer of water services to the Entities but who are not guaranteed a position or an offer of a position in the Entities”.

We recommend the guidelines provide more explanation about how the NTU/WSEs will work with staff to minimise redundancy and what kind of actions this could include.

6.3 Additional staff transition principles

We believe the guidelines should include an explicit principle of ‘no one worse off’. The guidelines already acknowledge Cabinet’s direction that offers of transfer should include core provisions that are no less favourable, and the guidelines include a principle of consistent and transparent management of change. However, the guidelines also state that the offer of ‘core provisions that are no less favourable’ only apply to people offered individual employment agreements (IEAs). We do

not want to see a situation where people on IEAs are no worse off, while people bargaining collectively through their union are forced to trade off conditions to meet a ‘middle of the road’ agreement that is palatable to WSE leadership.

In our view the guidelines should make it very clear that the expectation is for people on both IEAs and CEAs is to not be any worse off, and that the mechanism for achieving this for people on CEAs is to negotiate new CEAs that at least maintain (but preferably improve) the terms and conditions of their employment. It should be very clear in the guidelines that the process of negotiating new CEAs is not intended to be an opportunity to erode any workers’ terms and conditions.

We recommend the guidelines include an explicit principle of ‘no one worse off’, as well as principles guiding the Transition Unit (and WSEs) to aim for a high standard of terms and conditions in collective employment agreements (CEAs), where the best industry conditions are adopted wherever feasible, rather than requiring workers to trade off terms and conditions.

We also believe there should be an explicit principle in the guidelines that WSEs will be exemplary employers. This is an opportunity to build a sector that people aspire to work in, with fair pay and conditions, and positive work culture.

7. The pathways for transfer or recruitment into the Entities

7.1.1 Councils may also make offers to staff

This is an area where more clarity would be welcome. Members raised the question of what happens to a person who takes the opportunity provided by the transition to advance their career by applying for a different job, but is unsuccessful.

The ‘follow your pathway’ diagram indicates that if a person follows the optional process of applying for a different job (the yellow dotted line) and is unsuccessful, they could end up with no job and no redundancy if they declined the job they were offered under the legislated job guarantee.

We assume that the NTU’s intention is that making an application for, or expressing an interest in, a different job within a WSE would not affect a person’s ability to accept an offer under the legislated job guarantee. If this isn’t the case, it should be. And if it is the case, it should be set out clearly so workers know they can safely apply for another job without putting their current one at risk.

We recommend the process be clarified to make it clear that if someone is eligible for the legislated job guarantee, they will still be eligible for it if they also apply for other jobs within the WSE.

7.2 Legislated job guarantee

The two things our members are most worried about in relation to the legislated job guarantee are that they will see an erosion of their terms and conditions of work, and that faced with a worse offer they won’t have any option other to accept it. Some members have expressed scepticism that the “substantially similar” duties and responsibilities will realistically be a close match to the work they do currently, and that the things they value most about their jobs (eg, use of specific skill sets) won’t be available to them in their new roles; but that those roles will still be considered similar enough that workers won’t have the option of turning them down and walking away with redundancy payments.

We recommend that the guidelines set out criteria for how a role would be judged to be “the same or substantially similar”, that they provide clear alternatives for workers whose jobs don’t fit

within those criteria, and that they give the benefit of the doubt to workers where there's disagreement over how similar the duties and responsibilities are.

The guidelines set out that if a person is covered by an IEA they will be offered a new individual employment agreement that contains core terms and conditions that are no less favourable, and that if they are a union member on a collective agreement their terms and conditions will be determined by the agreement. This provides an opportunity for workers on CEAs to achieve better terms and conditions through bargaining. But it also means that if WSEs are only willing to agree to 'middle of the road' terms and conditions in bargaining, instead of aiming for a high bar that applies many of the best terms across the entire workforce, members on Collective Employment Agreements could well be worse off than others.

We recommend the guidelines include an undertaking to offer terms and conditions in Collective Employment Agreements that are no less favourable (other than for extreme outliers, and that those outliers will have their core terms grandparented).

7.2.2 Are staff covered by the legislated job guarantee entitled to redundancy?

The rules around eligibility for redundancy also provide cause for concern. Some of our members have said they believe any offered a role under the legislated job guarantee should be able to receive redundancy if they don't accept the role – for any reason. Others have indicated they think it's reasonable that, as long as the job on offer really is like-for-like and clearly meets all the criteria (around duties, location, and core terms) and is genuinely a like-for-like job, an employee shouldn't be able to claim redundancy just because they don't want to take the job.

But where there is dispute, uncertainty or doubt on the part of the worker that the job on offer really is like-for-like, the removal of redundancy provisions puts them in a situation where they may feel that they have no option but to accept the role.

We recommend that:

- **where it's not clear-cut whether the job meets the legislated offer criteria, the guidelines should favour the worker's judgement on whether the role really is 'the same or substantially similar', and that redundancy should be an option available in these circumstances**
- **offers should provide for a cooling-off period or ability to review their appointment, which would enable them to take redundancy if the job was shown over a period of month to be substantially different from what was offered.**

Some member expressed a view that it's unfair for senior managers to be able to take redundancy when that option is not available for others. We acknowledge that the reason senior managers are available under the offer guarantee is because they're not guaranteed a like-for-like role, while workers on the legislated job guarantee are. However this highlights the importance of ensuring the jobs really are like-for-like, and trusting workers' judgement if they believe they are not like-for-like and express a wish to take redundancy. It also highlights the need to set a high bar for what is considered 'the same or substantially similar' as workers should not be denied the right to turn down roles that would make a material difference to their working lives.

7.2.3 Entities may make additional offers to a staff member with a legislated job guarantee

The situation described in section 7.2.3, where the transition process identifies a redesign of a role, presents a similar dilemma. If the worker doesn't want to accept an alternative offer, they will be left in a position of having no choice but to accept their existing role, knowing there is a high chance

of being restructured out of that role in the near future as it's been identified as one that isn't optimal for the WSE.

We recommend in these situations workers should have the option of not accepting an offer and taking redundancy instead.

7.4 Preferential consideration

Compared to the legislated job guarantee and offer guarantee, our members were less comfortable with the preferential consideration guidelines. Members were unclear about how much preference existing workers would be given, and several said that preferential consideration sounded too vague and subjective.

We recommend that the guidelines:

- **do not open jobs up to external candidates until staff with preferential consideration have been appointed into their roles in the WSE**
- **enable people who are covered by the legislated job guarantee to also have preferential treatment over external candidates**
- **initially ringfence jobs to the type of work the people already do (e.g. planners, engineers, treatment plant operators, contact centre worker having preference for their own type of work/roles) meaning that there is no 'cascading' from higher to lower roles, followed by a preferential 'wash up' round and then, subsequently, opened to external candidates.**

There is general concern amongst members for workers whose roles are less than 50% water related but will still be displaced from their existing roles, to find that through organisational design of the WSEs that they are negatively impacted by centralisation and/or shared services which may require a change of location.

Because of this we recommend that wherever feasible:

- **support roles are offered in locations where they currently exist (ie, in every district/city)**
- **support roles are offered on a geographically distributed flexible basis.**

We think that staff covered by the legislated job guarantee or offer guarantee who want to move to a different entity should be receive preferential consideration in the areas they want to move to, but not above a person with preferential consideration status that is already from that area. **We recommend that staff from within an area who qualify for preferential consideration should have a higher preference than staff who qualify for preferential consideration but are from another area, who in turn should have preferential consideration compared to the general public.**

9. Roles solely and primarily undertaking functions that transfer

This section of the guidelines doesn't address the issue of whether the role will remain in the council (or other local government organisation) where the person currently works. There could conceivably be a scenario where the NTU decides a person isn't primarily undertaking a function because "the effect of transferring the role requires a substantial change in the duties and responsibilities," but their current employer decides that the position is no longer necessary within council because it was largely based around water services.

A situation like this would indicate that the position must have been primarily related to water services if it is no longer required once water services are transferred away from the council.

We recommend that the current employer's view of whether the position is likely to continue to exist should be a factor that influences the consideration of whether a person is primarily undertaking functions that transfer.

We are pleased to see that consideration will be given to the affected staff member's perspective. **We recommend that where any doubt exists, the affected staff member's view should be given a strong weighting compared to other considerations.**

10. Senior managers

Members told us that the guidelines are still very unclear about who would be considered a senior manager. The draft guidelines seek to provide as much clarity as possible, but we think that providing greater clarity should be a priority for the NTU as its analysis of roles continues.

11. Support staff or staff of other non-transferring functions

For workers who carry out a support function that primarily supports the delivery of water services, the guidelines seem to make a distinction between those who do this within a council versus those who do this within an organisation that is exclusively delivering three waters services (eg, Watercare or Wellington Water). We think these two groups should be treated the same. In both cases we can identify that a specific worker is primarily responsible for delivering water services. We can also be fairly certain that, once responsibility for water services transferred out of the council, this person would most likely not be required in their current council role.

We recommend that workers in support function positions who specifically are solely or primarily involved in supporting water services should be eligible for a job guarantee.

14. Independent contractors and contingent workers

The transition process will be an opportunity to identify if there are workers who have been misclassified as independent contractors when they should be classified as employees, and therefore miss out on basic employment rights and protections.

The 2021 Tripartite Working Group on Better Protections for Contractors² set out a draft design principles to inform legislation that could better define how decisionmakers are to approach questions of employment status. Although these principles are yet to be incorporated into any legislation, they could be a useful guide for the NTU in determining what types of roles could be incorporated into the directly employed workforce, and what functions should remain independently contracted.

16. Council change management processes

We acknowledge the NTU does not have the authority to direct council change management processes. **However, we recommend the guidelines (and other ongoing communication with local government organisations) encourages local government organisations to signal early-on their intent to undertake change processes as a result of the three waters reforms.** This would provide as much certainty as possible to workers, and to help them make informed decisions about whether to apply for roles in WSEs.

² [Tripartite Working Group on Better Protections for Contractors - Report to the Minister for Workplace Relations and Safety](#). Ministry of Business, Innovation and Employment. 2021. Pages 15-17

17. Terms and conditions of employment

In our submission on the Water Services Entities Bill we recommended that the definition of ‘core terms’ should be widened to include other terms and conditions workers consider important. Although these guidelines need to be consistent with legislation, there is nothing stopping WSEs from choosing to offer terms and conditions beyond what they’re required to by law.

We recommend the guidelines encourage legislated job guarantee offers to provide as many terms and conditions as practicable on a ‘no less favourable’ basis, not just the core terms provided for in legislation.

We note that staff may also have individually agreed to additional terms and conditions not inconsistent with the CEA under section 61 of the Employment Relations Act 2000³.) **We recommend these should be honoured in workers’ new employment arrangements with WSEs, for workers on both IEAs and CEAs.**

18. Location

Members highlighted that reasonable commuting distance can be very different to different people. Examples include:

- Mode of transport: someone who cycles or walks to work would have a lower tolerance for a change in distance/location, and for someone who relies on public transport proximity to a stop/station may matter more than overall distance.
- Urban/suburban/provincial/rural differences: people who live in rural locations may be more used to driving longer distances to work, people who live in suburban locations may be more used to driving longer distances in heavy traffic, while people who work in smaller towns or inner-city locations may be used to shorter commutes that they are not willing to give up.
- For a person whose routine involves other responsibilities like school drop-offs and pick-ups, a change to distance, time or route could have a significant impact on their ability to meet these other responsibilities.

Some ways of considering commuting distance could be:

- **To consider both time and distance**
- **To work on a percentage basis rather than an absolute (eg, a 10% difference in travel would look very different for someone walking to work than it would for someone who lives rurally and already commutes long distances)**
- **To allow workers to raise reasonable objections to a proposed change in location if it would prevent them from being able to meet outside-of-work commitments they currently undertake.**

Some members in on-the-ground roles have indicated that a change of service area would have a much greater impact than a change in their primary ‘home base’. For example, where a worker currently services one district but they may need to service several under the new model, the new role may require significantly more travel, including possibly overnight travel.

A significant change in service area also raises the question of whether the duties and responsibilities are in fact still the same if the balance of work and travel changes significantly. For

³ [Employment Relations Act 2000, section 61](#)

example, if a workers' split of time currently involves 20% travel and 80% maintenance work, but the new arrangements would make it more like 50% travel and 50% maintenance work.

Any consideration of location, and of the duties and responsibilities included in a role, should also take into account not just the commute but also the role's geographic service area.

For many support roles, flexible working (including working from home, co-locating in other convenient locations) may be feasible. **Wherever it is feasible (based on the type of work and requirements of the job) roles should be offered on a 'flexible by default basis' that enables workers to work from home or in a location that is suitable for them, rather than having to move to a specific office that is unsuitable.**

19. Resolving differences and disputes

The guidelines already state that staff will be encouraged to involve a union representative or other support person in any discussions. However the way it is placed in the document makes it slightly unclear whether this relates to the whole process or only at the lowest level.

We recommend the guidelines explicitly state that affected staff will be encouraged to involve a union representative or other support person in any discussions at all levels/stages of the process.

The guidelines also state that the resolution process does not apply to the outcome of any contestable recruitment process. We agree the process should not apply to the outcome of a fully contestable recruitment process, but we consider it appropriate that the disputes process should cover cases where a worker disputes whether preferential consideration has been applied appropriately within a contestable process.

We recommend the disputes process apply to issues around whether preferential consideration has been applied appropriately.

20. Staff engagement on design of Entity structures and positions

Many of our members will want the opportunity to provide their ideas and expertise in the design of roles and organisations. Many of them will have ideas for how to improve the efficiency and effectiveness of their work, and the relatively clean slate of new WSEs provides a unique opportunity to do this well.

We encourage the NTU both to involve unions as representatives of workers, and to involve workers directly. We also encourage the NTU to not just consult but to co-design with workers every step of the way.

Situations where the guidelines aren't clear

The following are some specific roles and situations where PSA members have indicated there is still very little clarity on how the guidelines and the transition process will affect them:

- Council laboratories that currently work on a basis of invoicing both council and private external clients for testing services
- Roles within council policy units that focus on matters related to three waters infrastructure, as well as environmental matters (such as water quality in rivers, lakes and groundwater as a drinking water source and a receiving environment for wastewater and stormwater).
- Roles in stormwater operational delivery where asset transfer has not been confirmed, or are yet to be determined (eg, operation of roading stormwater assets like catchpits, catchpit

leads, and soakholes). It's not clear whether these assets will be treated as Three Waters assets within the new entities, whether operation of these assets will be treated via service level agreement between Councils and the new entities or some other arrangement.

- Support services (eg, IT, payroll, accounts payable/finance, customer service)
- People on secondment.

Implementation process

When discussing the transition process members continue to highlight the need to pay close attention to practical issues such as having working IT and administrative systems available on day one. This includes things like WSE workers having access to databases, private drainage plans, consent documents and compliance records held by councils that may not be part of the transfer (as they relate to a variety of council-managed functions beyond three waters); and having IT systems set up that brings together data from multiple council record systems coherently.

Some members also highlighted that they have heard very little from their current employers. While this may in part simply reflect the timing of council communications around The Staff Room, it also suggests the NTU cannot assume councils are being as forthcoming with information as they may expect.

Conclusion

We appreciate the opportunity to submit on the proposed guidelines, and we look forward to continuing to work constructively with the National Transition Unit throughout the transition process to ensure the best possible outcomes for workers in the three waters sector.

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