

Departmental Disclosure Statement

Taumata Arowai – the Water Services Regulator Bill
--

The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by the Department of Internal Affairs.

The Department of Internal Affairs certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

5 December 2019

Contents

Contents.....	2
Part One: General Policy Statement.....	3
Part Two: Background Material and Policy Information	5
Part Three: Testing of Legislative Content.....	9
Part Four: Significant Legislative Features	11

Part One: General Policy Statement

This Bill implements the Government's decision to create a new regulatory body to oversee, administer, and enforce the drinking water regulatory system. The Bill establishes Taumata Arowai – the Water Services Regulator (Taumata Arowai) as a new Crown agent, and provides for its objectives, functions, operating principles, and governance arrangements.

The Bill is part of a broader package of reforms to the three waters regulatory system. It will be complemented by a separate Bill that will give effect to decisions to implement system-wide reforms to the regulation of drinking water and source water, and targeted reforms to improve the regulation and performance of wastewater and stormwater networks.

The approaches provided for in the Bill, and in the broader package of regulatory reforms, are intended to address issues and opportunities that were highlighted in the Government Inquiry into Havelock North Drinking Water and in the Government's Three Waters Review. These reforms are designed to:

- provide clear leadership for drinking water regulation, through a new, dedicated, centralised regulator;
- significantly strengthen compliance, monitoring, and enforcement relating to drinking water regulation, and equip the new Regulator with the powers and resources needed to build capability, support suppliers of all kinds to meet their regulatory obligations, and take a tougher, more consistent approach to enforcement where needed;
- manage risks to drinking water safety and ensure that source waters are protected;
- ensure that more people can access water that is safe to drink, by requiring all suppliers (except individual domestic self-suppliers) to be part of the regulatory system, and to provide safe drinking water on a consistent basis;
- improve the environmental performance and transparency of wastewater and stormwater networks; and
- improve national-level leadership, oversight, and support relating to wastewater and stormwater.

These intentions are reflected throughout the Bill, including in Taumata Arowai's objectives, functions, and operating principles.

The objectives and operating principles are designed to guide and inform how Taumata Arowai carries out its functions and duties. Many of the operating principles have an outward focus, relating to engagement and relationship-building with consumers and regulated parties, including Māori. There is also a strong focus on building and maintaining expertise and capability, both within Taumata Arowai itself and across the water services sector. This approach will help to build confidence in the safety of drinking water and in the overarching regulatory system.

Taumata Arowai will be a Crown agent. This is intended to achieve the necessary step-change from the status quo, and provide an appropriate form for a regulator that will deal with highly technical matters and have a significant emphasis on compliance and enforcement. Being a Crown agent will help Taumata Arowai to build credibility, have a dedicated, sustained focus on drinking water, and recruit highly skilled people. Taumata Arowai will have sufficient independence to protect the integrity of its decision making.

As a Crown agent, Taumata Arowai will have a governance board. It will also need to act consistently with the principles of the Treaty of Waitangi. One of the duties of the board is to ensure Taumata Arowai maintains the systems and processes that enable it to act consistently with these principles, and to engage with Māori and understand perspectives of Māori.

The Bill provides for the establishment of a Māori Advisory Group to advise Taumata Arowai on Māori interests and knowledge, as they relate to the objectives, functions, and operating principles of Taumata Arowai, and the duties of the board. The role of the Māori Advisory Group includes providing advice on how to interpret, protect, and promote Te Mana o te Wai, and how to enable mātauranga Māori, tikanga Māori, and kaitiakitanga to be exercised. The

intent is to ensure that Māori interests and knowledge are embedded throughout Taumata Arowai.

Te Mana o te Wai is not defined in the Bill. It is intended that the Māori Advisory Group will develop and maintain a framework that provides advice and guidance for Taumata Arowai on how to interpret Te Mana o te Wai. This approach provides flexibility, and enables interpretations to change over time and adapt to different circumstances.

Part Two: Background Material and Policy Information

Published reviews or evaluations

2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?	YES
<p>'Report of the Havelock North Drinking Water Inquiry – Stage 2 report' – prepared as part of the Government Inquiry into Havelock North Drinking Water; December 2017 (particularly, Part 10 – 'Should there be a dedicated drinking water regulator?'): https://www.dia.govt.nz/Report-of-the-Havelock-North-Drinking-Water-Inquiry---Stage-2</p> <p>'Business case for investment in a new drinking water regulator' – prepared by Martin Jenkins for the Department of Internal Affairs; August 2019: https://www.dia.govt.nz/diawebsite.nsf/Files/Proactive-releases-Three-Waters-October-2019/\$file/Business-case-for-new-drinking-water-regulator.pdf</p>	

Relevant international treaties

2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?	NO

Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	YES
<p>'Regulatory impact assessment: Strengthening the regulation of drinking water, wastewater, and stormwater'; Department of Internal Affairs'; 1 July 2019: https://www.dia.govt.nz/diawebsite.nsf/Files/Three-waters-documents/\$file/Cabinet-Paper-and-minute-Strengthening-regulation.pdf</p> <p>'Regulatory impact assessment: Decision on the organisational form of a new drinking water regulator; Department of Internal Affairs'; 30 September 2019: https://www.dia.govt.nz/diawebsite.nsf/Files/Proactive-releases-Three-Waters-October-2019/\$file/Regulatory-Impact-Assessment-decision-on-the-organisational-form-of-a-new-drinking-water-regulator.pdf</p> <p>These documents can also be accessed on the Treasury website: https://treasury.govt.nz/publications/legislation/regulatory-impact-assessments</p>	

2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements?	YES
---	------------

Opinion on ‘Strengthening the regulation of drinking water, wastewater, and stormwater’:

“A Quality Assurance Panel led by the Regulatory Quality Team at the Treasury, with representatives from the Ministry for the Environment, Ministry of Health and Department of Internal Affairs, has reviewed the Regulatory Impact Assessment (RIA) Strengthening the regulation of drinking water, wastewater and stormwater produced by the Department of Internal Affairs and dated 17 June 2019. The review team considers that it meets the Quality Assurance criteria.

Although the RIA is technical and complex, it is clearly presented and concise. The panel considers the RIA clearly identifies that there is a significant problem on a national scale with the current drinking water system. It is difficult to have precise information on all aspects of the problem because incidents can vary in scale and the magnitude of the impacts can potentially be large. There is also limited information about non-council suppliers, particularly small suppliers. However, the RIA draws on information from the Havelock North Inquiry and open and extensive stakeholder consultation.

A wide range of options have been considered and a sound case is made for the preferred package: system-wide reforms of drinking water; more detailed work on regulating wastewater and stormwater (through the Essential Freshwater Programme) and stronger reporting requirements; and a central regulator to cover all three waters. The RIA outlines the broad scope and functions of the central regulator, but the detail is yet to be provided in the August report back to Cabinet.

The Panel considers it important to ensure that more detailed work is undertaken on implementation and monitoring the preferred package. This detail relates to the central regulator, developing better cost estimates and addressing the risks, including the affordability for small drinking water suppliers (such as marae and papakāinga) and their ability to transition to the new regulatory regime. It is important that the three waters reform builds and maintains connections with the Essential Freshwater programme, review of the RMA, and other related government programmes and initiatives”.

Opinion on ‘Decision on the organisational form of a new drinking water regulator’:

“A joint review panel with representatives from the Regulatory Quality Team at the Treasury, the Department of Internal Affairs, the Ministry for the Environment and the Ministry of Health has reviewed the Regulatory Impact Assessment (RIA) ‘Decision on the organisational form of a new drinking water regulator’ produced by the Department of Internal Affairs and dated 16 September 2019. The review panel considers that it partially meets the Quality Assurance criteria.

The RIA is concise and clear in presenting a complex subject. It summarises the accompanying draft business case and makes good use of complementary material.

The RIA draws on the results of earlier consultation on the role of the regulator, although not on the form of the regulator. The preferred option aligns with stakeholder support for a central regulator with a regional presence.

The problem definition and objectives are clear and have been used to develop criteria to evaluate the preferred form of the regulator, based on the role and functions already agreed to by Cabinet. A case has been made for a standalone Crown Agent, which is convincing on the grounds of independence of decision making, perceived credibility, and ability to focus on drinking water. The RIA also indicates that there are synergies in having stormwater and wastewater regulated by the same Crown Agent.

The cost benefit estimates have been based on the best information available, but at this stage, there is a high level of uncertainty. It is difficult to distinguish the expected benefits of the new regulatory regime from the benefits that are expected from the institutional form of the new regulator. The benefits identified in the RIA, therefore, reflect those expected to be generated from the already agreed improvements to the regulatory regime. Realising these

benefits will largely depend on the resources available to the regulator and suppliers to implement the higher regulatory standards.

The analysis shows that the monetised costs (including the cost to government of the Crown agent and the compliance costs for regulated parties) are substantial and greatly exceed the monetised benefits. The size of the benefits is not clear because there are some benefits that cannot be monetised, including an increased level of confidence in the community that drinking water is safe to drink, and some that it is currently not possible to monetise, such as the avoided cost to consumers from not boiling water.

The panel notes that there will be further work on implementation in the next stage. As the design details are developed, it is important that better costs estimates are developed, along with further analysis of capability, resourcing, and affordability for suppliers.”

2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?	NO

Extent of impact analysis available

2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?	NO

2.5. For the policy to be given effect by this Bill, is there analysis available on:	
(a) the size of the potential costs and benefits?	YES
(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?	NO
<p>‘Regulatory impact assessment: Decision on the organisational form of a new drinking water regulator; Department of Internal Affairs’; 30 September 2019: https://www.dia.govt.nz/diawebsite.nsf/Files/Proactive-releases-Three-Waters-October-2019/\$file/Regulatory-Impact-Assessment-decision-on-the-organisational-form-of-a-new-drinking-water-regulator.pdf</p> <p>‘Business case for investment in a new drinking water regulator’ – prepared by Martin Jenkins for the Department of Internal Affairs; August 2019: https://www.dia.govt.nz/diawebsite.nsf/Files/Proactive-releases-Three-Waters-October-2019/\$file/Business-case-for-new-drinking-water-regulator.pdf</p>	

2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:	
(a) the level of effective compliance or non-compliance with applicable obligations or standards?	YES
(b) the nature and level of regulator effort put into encouraging or securing compliance?	YES

Further information is contained in the regulatory impact assessments and business case referred to above.

Part Three: Testing of Legislative Content

Consistency with New Zealand's international obligations

3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?
--

This Bill focuses on establishing a new Water Services Regulator – 'Taumata Arowai' – as a Crown agent. No international obligations have been identified that relate to the content of the Bill.

Consistency with the government's Treaty of Waitangi obligations

3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?

Officials engaged with iwi and Māori representative entities on an iterative basis throughout the policy development process, firstly to understand the nature of Māori interests, then the impact of the proposals on Māori, and finally how the interests could be reflected. There was also regular engagement with Te Arawhiti and Te Puni Kōkiri, including consultation on the policy papers relating to this Bill.

Taumata Arowai – the Water Services Regulator's objectives and operating principles have been developed to be consistent with the principles of the Treaty of Waitangi. As noted in the General Policy Statement, one of the duties of the board will be to ensure the organisation maintains the systems and processes that enable it to act consistently with the principles of the Treaty of Waitangi, and to engage with and understand perspectives of Māori.
--

Clause 5 of the Bill sets out how the Bill recognises and respects the Crown's responsibility to consider and provide for Māori interests.
--

Consistency with the New Zealand Bill of Rights Act 1990

3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?

NO

Offences, penalties and court jurisdictions

3.4. Does this Bill create, amend, or remove:
--

(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?
--

NO

(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?

NO

Privacy issues

3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?

YES

The Bill includes a provision that enables the Ministry of Health (the current regulator) to share information collected under Part 2A of the Health Act 1956 with the new regulator, Taumata Arowai. The majority of the information being shared/transferred does not include identifiable personal information. However, for legal certainty, the Bill provides that sharing or transferring this information does not constitute a breach of the Privacy Act 1993. Most identifiable information is contained in public registers maintained under the Health Act 1956.

3.5.1. Was the Privacy Commissioner consulted about these provisions?	NO
<p>The information in question is already collected under the Health Act 1956, and much of it is either maintained in public registers, or does not include identifiable personal details. The Bill would simply enable the information to be shared/transferred between the current and new regulators. It is anticipated that there will be a minimal impact on individual privacy.</p>	

External consultation

3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?	YES
<p>There was targeted engagement on a broad package of proposals (including creating a new regulator) with local government, water industry representatives, and the health, environmental, and rural sectors, in early/mid 2019. Specific proposals for the form, location, and scope of a water services regulator were discussed with representatives from the local government sector in August 2019. They expressed a strong preference for a standalone Crown agent, which would be independent from Ministers and focused on improving the drinking water regulatory system.</p> <p>There has also been ongoing targeted engagement on the proposals for a new regulator with iwi and Māori representative entities. Feedback highlighted that Māori interests need to be reflected throughout the new regulator's governance and organisational layers. Regarding the organisational form of the regulator, there was a preference for it to have a degree of independence from Ministers, and have its own decision-making and enforcement powers.</p>	

Other testing of proposals

3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?	YES
<p>There has been ongoing discussion with the other government agencies that have an interest in this Bill, particularly Ministry of Health and Ministry for the Environment.</p>	

Part Four: Significant Legislative Features

Compulsory acquisition of private property

4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?	NO

Charges in the nature of a tax

4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?	NO

Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	NO

Strict liability or reversal of the usual burden of proof for offences

4.4. Does this Bill:	
(a) create or amend a strict or absolute liability offence?	NO
(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?	NO

Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	NO

Significant decision-making powers

4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?	NO

Powers to make delegated legislation

4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?	NO

4.8. Does this Bill create or amend any other powers to make delegated legislation?	NO
While the Bill contains provisions that are to be brought into force by Order in Council, it does not include provisions that facilitate the making of regulations.	

Any other unusual provisions or features

4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?	NO