# Submission Report

## *Proposed change to the Non-financial Performance Measure Rule for Water Supply*

## Introduction

1. This report summarises submissions, and where appropriate provides recommendations, on the discussion document: Consultation on Rules Setting Local Government Non-financial Performance Measures for Water Supply.

## Proposed changes

#### Context for proposed changes

1. The Secretary for Local Government is responsible for a suite of Non-financial Performance Measures. The current Non-financial Performance Measure Rules (the Rules) were published in 2013.
2. The Rules set specific performance measures for water supply. Performance measure 1 (safety of drinking water) currently requires councils to report “the extent to which the local authority’s drinking water supplies comply with:

(a) part 4 of the drinking-water standards (bacteria compliance criteria), and

(b) part 5 of the drinking-water standards (protozoal compliance criteria).”

1. The drinking-water standards referred to in this measure are the Drinking-water Standards for New Zealand 2005. These standards were repealed and replaced by a suite of new regulations in 2022, following the transfer of regulatory responsibilities to Taumata Arowai.
2. In accordance with section 38 of the Legislation Act 2019 and section 261F of the Local Government Act 2002, the new drinking water standards and rules can be incorporated by reference into the current rules without amendment.
3. However, to be able to provide as much clarity as possible to councils on their planning and reporting responsibilities, the Secretary of Local Government initiated the process of updating the Rules to clearly replace the reference to 2005 drinking water standards with the new standards and rules.

***Scope of the proposed changes***

1. The scope of these proposed changes was limited to updating the regulatory references in Performance Measure 1 (safety of drinking water). The intention of the changes was to remove references to the revoked standards, and replace them with the equivalent measures in the new regulatory framework.
2. The initial timing proposed for these changes was to have any changes in place around mid-June 2024, prior to the adoption of many councils’ long-term plans. Due to the complexity of the issues raised by submissions, this timing has been delayed, and additional implementation considerations are discussed in this report.

## Consultation

1. A consultation document was prepared, providing the context for the proposed changes and a comparative edit of the rules for water supply with the modern standards.
2. The Department worked with Taituarā, Local Government New Zealand (LGNZ) and the Office of the Auditor General (the OAG) in the development of the consultation document. The consultation document was published on the Department of Internal Affairs’ (the Department) website.
3. In accordance with section 261B(3) of the Local Government Act 2002, the Secretary of Local Government ran a consultation period from 22 April 2024 to 10 May 2024.
4. On 22 April 2024, the Secretary contacted the Chief Executive of every local authority, as well as emailing other interested parties and sector bodies, including Taituarā, LGNZ, the OAG.
5. On 23 April 2024 a public notice of the consultation was published in the New Zealand Gazette and in the New Zealand Herald, the Waikato Times, the Post, the Press and the Otago Daily Times.

## Structure of this report

1. Due to the limited scope and technical nature of the proposed changes, no direct questions were asked in the consultation document; interested parties were invited to submit any feedback on the proposed amendments.
2. This report identifies different issues raised in the submissions. In addition to feedback on the specific technical changes provided several other issues were raised by submitters. While some of these issues are ‘out of scope’ for the narrow changes consulted on, this report still endeavours to note these issues and engage with these issues where appropriate.
3. The Department consulted with Taumata Arowai and the OAG in addressing technical issues raised in the submissions.

## Overall number of submitters

1. Twenty-two submitters provided feedback on the proposed changes. These were:

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| Carterton District Council | Tasman District Council | Waikato District Council |
| Invercargill City Council | Watercare | Hamilton City Council |
| Wellington Water | Dunedin City Council | Ashburton District Council |
| Westland District Council | WaiComply | Thames-Coromandel District Council |
| Marlborough District Council | Hauraki District Council | Queenstown Lakes District Council |
| Taituarā | Upper Hutt City Council | Horowhenua District Council |
| Napier City Council | Hastings District Council | Water New Zealand |
| Matamata-Piako District Council |

# **Key issues raised from submissions**

## **The measures proposed do not align with the current regulatory framework**

1. The majority of submitters supported the general proposal to update the Rules to reference the current standards and regulations.
2. The initial consultation document referred specifically to the change from the Drinking-water Standards for New Zealand 2005 (DWSNZ 2005) to the standards outlined in the Water Services (Drinking Water Standards for New Zealand) Regulations 2022 (the Standards 2022).
3. Thirteen submissions noted that the Standards 2022 are not equivalent to the DWSNZ 2005, and that for the new Rule to provide equivalent measures, references to the Drinking Water Quality Assurance Rules 2022 (DWQAR 2022) should be incorporated.
4. Submitters noted that in practice, the DWSNZ 2005 incorporated both the Maximum Acceptable Values (MAV) for *E. coli.* and Protozoa, along with a range of other health-significant determinands. It also included operational, monitoring and other requirements to demonstrate treatment efficacy and ensure compliance with the MAVs. Together, the Standards 2022 and the DWQAR 2022 comprise what the DWSNZ 2005 contained in a single document.
5. The measures as proposed did not include any of the 24/7 operational safety performance criteria, and if only including reference to the Standards 2022, do not provide a useful measure of water quality. Submitters expressed that including reference to the relevant rules within the DWQAR 2022 will measure operational performance of a supply’s multi barrier protection.
6. Wellington Water’s submission specifically noted that as the proposed measure “only provided a binary view of whether a water supply is contaminated at the time of sampling, it did not allow communities to either understand or compare a level of service on the compliance of the treatment and distribution networks that water suppliers operate and maintain using ratepayers’ money.”
7. “It would be not only possible to achieve the measure as proposed with treatment that is non-compliant with the DWQAR 2022 (or indeed, not treated at all), but it is in fact likely many non-compliant supplies would be free from contamination in any given year. Given the significant investment challenges that face councils across the country, we believe it is important for communities to understand the level of compliance of their water supplies against the requirements set by the regulator. This will be more difficult, or could in fact be undermined, by reporting in a council Annual Report on a binary measure of contamination alone. This could provide false assurance to communities as well as decision-makers, as past contamination is not a predictor of future contamination.”
8. Both Westland District Council’s and WaiComply’s submissions also raised concern that the proposed change does not reflect what councils are required to report to Taumata Arowai for protozoal compliance criteria, as pathogenic protozoa are not typically directly tested by water suppliers in New Zealand.
9. Westland District Council raised that the proposed wording “Determinand – total pathogenic protozoa” implies that the samples must be taken to achieve compliance with measure, while previously Councils were able to prove compliance with the protozoal criteria to Taumata Arowai without proof of sampling. The submission argues that any additional protozoal sampling would be onerous and expensive, and difficult to achieve.
10. Submitters had a range of opinions on the suggested references to the DWQAR 2022 in any proposed Rule change. These ranged from overall recognition that reference to the DWQAR 2022 should be included in the revised Rules, to the inclusions of specific references to sections of the DWQAR 2022.
11. Dunedin City Council questioned the scope of the proposed Rule – noting that the DWQAR 2022 contains different rule modules for different sizes of drinking water supplies, and a mixture of monitoring rules and assurance rules. Their submission stated that this means the measure would need to allow for councils to report against only those rules within the DWQAR 2022 that are relevant to their drinking water supplies.

Analysis and recommendation on wording for measures on safety of drinking water

1. The Department consulted with Taumata Arowai, the Water Services Regulator in the consideration of submissions.
2. The Department agrees with submitters that the initial proposal did not include the equivalent measures to the DWSNZ 2005 references currently in the Rules. The Department recommends that the measures include references to the relevant DWQAR 2022 rules, to provide more meaningful measures of drinking water quality, allowing councils to more effectively communicate performance to their communities.
3. To provide for new measures that are equivalent to the scope of the current Rules, the Department recommends including the relevant Treatment Rules and Distribution System Rules within the DWQAR 2022.
4. The Department recommends including reference to the rules required for water supplies that service 26 people and more. While some councils operate water supplies serving 25 people or fewer, it was advised that the number was not significant enough to warrant additional measures for coverage.
5. The Department recommends that the following rules in the DWQAR 2022 are incorporated into Performance Measure 1 (safety of drinking water):
   1. for water supplies serving between 26 and 100 people – section 4.4 T1 Treatment Rules and 4.5 D1.1 Distribution System Rule;
   2. for water supplies serving between 101 and 500 people – sections 4.7.1 T2 Treatment Monitoring Rules, 4.7.2 T2 Filtration Rules, 4.7.3 T2 UV Rules, 4.7.4 T2 Chlorine Rules and 4.8 D2.1 Distribution System Rule; and
   3. for water supplies serving between more than 500 people – sections 4.10.1 T3 Bacterial Rules, 4.10.2 T3 Protozoal Rules and 4.11.5 D3.29 Microbiological Monitoring Rule.
6. The Department notes that while this recommendation provides additional rules for councils to report on as part of the non-financial performance measures, councils are already required to report on the DWAQAR 2022 to Taumata Arowai, meaning that councils will already have these monitoring and compliance systems in place.
7. The Department also recommends removing the proposed references to the Standards 2022. As noted in the submissions, there was concern that the wording would create additional sampling and compliance requirements, without providing additional benefit. Following consultation with Taumata Arowai, the Department recommends that the relevant sections of the DWQAR 2022 provide appropriate replacement of the references to the revoked standards.

## Audit and implementation considerations

1. Six submissions noted concerns over the cost to councils to independently audit their drinking water compliance under the Taumata Arowai regulatory system.
2. Submissions raised concerns that while councils reported to Taumata Arowai on the DWQAR 2022, these reports are not required to be independently audited. However, the audit of long-term plans and annual reports requires independent verification of the non-financial performance measures reported, and this audit was required last year for the 2022/23 annual reports. This has become a new cost to councils, as under the previous regulatory regime, Drinking Water Assessors through the Ministry of Health acted as compliance assessors and independent auditors.
3. Invercargill City Council’s submission stated that it would cost their council $20,000 this year to necessitate a water compliance audit.
4. Three submitters also raised concerns about how to align the current reporting of drinking water compliance with the reporting cycles of the non-financial performance measures. Tasman and Marlborough District Councils both raised that Taumata Arowai requires suppliers to report against a small number of rules within the DWQAR 2022 on differing regular cycles depending on supply size, and then requires reporting against the remainder of the rules annually in February for the previous calendar year. This contrasts with the requirement to report on the non-financial measures in council’s annual reports, which is based on the previous financial year.
5. However, Wellington Water stated that they would not expect that there would be issues providing independent assurance on measures referencing the new standards, as under the new regulatory regime, they have contracted an independent expert to provide similar assurance to their board under the new regulations and continue to be comfortable with this approach.
6. Submissions expressed strong desire for further guidance on the reporting approach for any new measures, and the need for this to be consistent with auditor’s expectations.
7. Both Hamilton and Invercargill City Councils also raised questions about the implementation approach for the new measures, noting that at the time any new measures are in effect, many councils will have adopted their 2024-2034 long-term plans. Invercargill City Council’s submission requested that any changes be implemented in a way that any councils who adopted their long-term plans prior, are not left in the position of having to report on measures which have been revoked for three years or alternatively to amend their long-term plans.

Analysis and recommendation

1. The Department consulted with the Office of the Auditor General (OAG) in the consideration of submissions.
2. The Department acknowledges the cost of independently auditing drinking water compliance. However, prior to the changes proposed to the non-financial performance measures, councils were already expected to report on similar measures in their 2022/23 Annual Reports. This means that the proposal to officially update the measures to reference the correct standards does not in itself provide any new requirement for councils to commission independent verification of their drinking water compliance.
3. The Department also acknowledges that there is no simple solution to the concerns raised regarding the misalignment of the reporting cycles between council’s annual reports, and Taumata Arowai’s reporting requirements. However, as noted above, councils were already reporting under this new regime in 2023 and managing the differing cycles. There has been some frustration and inefficiencies in moving to the new regime, but the OAG expect things to settle as new systems for monitoring and reporting are established and embedded.
4. The Department will work with the OAG and sector bodies in developing consistent guidance for reporting on the new measures, to provide as much clarity for councils as possible. We recommend that any guidance give specific consideration to the timing of implementation of the new measures, allowing for practical and meaningful reporting requirements for councils, regardless of what measures were used in their 2024 long-term plans.

## **Alignment with other reporting requirements**

1. The issue of potential duplication of reporting was raised in the previous section, with seven submissions commenting that councils producing two sets of similar measures, for different reporting (the network environmental performance measures and the non-financial performance measures) is not particularly efficient.
2. Water New Zealand’s submission compared the non-financial performance measures to the network environmental performance measure rules which are centrally collated by Taumata Arowai, noting that although these reporting initiatives are parallel in some aspects, they do serve different and valuable functions. However, their submission notes that neither framework currently provides sufficiently accessible public reporting to provide consumers with ready access to performance information on water services. The submission recommends that Taumata Arowai and the Department collaborate to improve alignment and uplift the value of existing performance measure reporting.
3. Some submitters argued that by either providing better alignment between the two measures or even aligning reporting into a single process would have potential benefits for resource efficiency, improved decision making and a more consistent approach to performance management within councils.

Analysis and recommendation

1. The Department acknowledges that any proposed changes to the non-financial performance measures will result in some duplication of reporting already required by Taumata Arowai.
2. However, under the existing planning and reporting framework provided for in the Local Government Act 2002, the Department believes that having clear measures for the safety of drinking water included in council’s long-term plans and annual reports is important for communities to understand their expected levels of service and council performance.
3. As this compliance data is already being collected for reporting to Taumata Arowai, the intention is to allow councils to include this reporting in their non-financial performance measures in the most efficient manner possible. The Department recommends that this be a consideration when developing reporting guidance.
4. Aligning the reporting of the various drinking-water related measures is out-of-scope for this consultation, but the issues raised in the submissions have been noted for any future work undertaken in this area.

## The non-financial performance measure framework is not fit for purpose

1. Seven submitters made specific reference to the purpose and continued relevance of the Non-Financial Performance Measure framework as a whole. Several submitters acknowledged the intended purpose of the Rules, and the value of the providing independently audited information for communities, but raised questions around how effective the measures are in practice, and how they align with other reporting requirements for local authorities.
2. Acknowledging that the issue was out of scope for the current consultation, Taituarā submitted that the Non-Financial Performance Measure framework is serving very little purpose, noting that there has not been a substantive review of the Rules during this period. Three additional submitters noted support of Taituarā’s submission within their own feedback.
3. Taituarā note that the setting of levels of service, and the associated performance measures and targets are important to good local governance, but suggests the current Rules be repealed, arguing that the wording in the current rules likely fall below the standards set out in section 216B(1) of the LGA, and that they are not an effective tool for councils to communicate performance with their communities.
4. Invercargill City Council supported Taituarā’s submission on this issue, stating “the detail of many of the measures seems arbitrary and is not supporting effective decision making, which is one of the key benefits of key performance indicators.”

Analysis and recommendation

1. The Department acknowledges the current suite of measures have been in place for at least 10 years, and that in the interests of regulatory stewardship it may be timely to review these. Any future review would need to consider ministerial and departmental priorities and any associated resourcing.
2. It is recommended that the Department note the issues raised by submitters in relation to non-financial performance measures and consider how any work may be progressed in this area subject to other priorities and resource requirements.