Hon Nanaia Mahuta, Minister of Local Government

Proactive release of Cabinet material about the institutional arrangements for a drinking water regulator, 30 September 2019

The following documents have been proactively released:

30 September 2019, CAB-19-MIN-0506 Minute: Three Waters Review: Institutional Arrangements for a Drinking Water Regulator, Cabinet Office; and


Some parts of this information would not be appropriate to release and, if requested, would be withheld under the Official Information Act 1982 (the Act). Where this is the case, the relevant sections of the Act that would apply have been identified. Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.

Key to Redaction Codes:

- 9(2)(f)(iv) – maintain the constitutional conventions for the time being which protect the confidentiality of advice tendered by Ministers of the Crown and officials
Three Waters Review: Institutional Arrangements for a Drinking Water Regulator

On 30 September 2019, following reference from the Cabinet Economic Development Committee (DEV), Cabinet:

Background

1 noted that on 1 July 2019, Cabinet:

1.1 agreed to a suite of system-wide reforms to the regulation of drinking water, including the establishment of a centrally-located regulator to oversee the entire drinking water regulatory system;

1.2 agreed to targeted reforms to improve the regulation and performance of wastewater and stormwater systems, including new regulatory functions that would be undertaken by a central regulatory agency;

1.3 invited the Minister of Local Government to report back, in September 2019, with:

1.3.1 proposals for the form, location, costs and funding of a centralised drinking water regulator;

1.3.2 advice on the costs, benefits and feasibility of the drinking water regulator also delivering the new wastewater and stormwater regulatory functions;

2 noted that the paper under CAB-19-SUB-0506 contains advice and proposals that respond to the reporting request referred to above, and has been informed by a detailed business case for a drinking water regulator and a series of discussions with a group of Three Waters Regulatory Ministers;
Part A: Institutional arrangements for a new drinking water regulator

3 noted that Three Waters Regulatory Ministers have narrowed down the options for the organisational form of the new drinking water regulator to a Crown agent, with a choice between:

3.1 locating the regulator within an existing organisation, with the most logical option being the Environmental Protection Authority (EPA); or

3.2 a new, standalone Crown agent;

4 noted that creating the regulator as a new, standalone Crown agent would:

4.1 deliver a strengthened approach to drinking water regulation, and a clear, enduring focus on drinking water safety;

4.2 provide for a dedicated, independent entity with an organisational structure that relates solely to water, which would ensure drinking water regulation is prioritised and resources are directed accordingly;

4.3 help to build and maintain public and stakeholder confidence, including the confidence of local government and iwi/Māori;

4.4 recognise that water is critically important, and will become more so in future;

4.5 have longer term, strategic benefits relating to water issues;

5 agreed to establish the drinking water regulator as a new Crown agent in legislation;

6 agreed that the regulator’s statutory objectives relate to:

6.1 protecting and promoting public health outcomes and drinking water safety;

6.2 administering the drinking water regulatory system;

6.3 building capability among drinking water suppliers, and across the wider water industry, including by promoting collaboration, education and training;

6.4 recognising and providing for Te Mana o te Wai, with regard to drinking water;

7 agreed that the legislation include operating principles to guide and inform how the regulator delivers its objectives and functions, relating to:

7.1 building and maintaining credibility and integrity;

7.2 ensuring the organisation has suitable expertise to build confidence in its capability as a regulator;

7.3 developing sector capability, by promoting collaboration, education and training;

7.4 partnering and engaging meaningfully with other people and organisations;

7.5 partnering and engaging early and meaningfully with Māori;

7.6 understanding, supporting and enabling mātauranga Māori and tikanga Māori and kaitiakitanga to be exercised;
7.7 supporting local authority and tangata whenua engagement on Te Mana o te Wai with regard to drinking water;

7.8 seeking to protect and enhance environmental outcomes and mitigate the negative effects of climate change;

8 agreed that the legislation include provisions that enable government policy statements to be issued to the regulator, and require the regulator to give effect to these statements, where these do not interfere with the regulator’s statutory independence in carrying out its compliance, monitoring and enforcement activities;

9 agreed that the remit of the new drinking water regulator include the delivery of the following centralised wastewater and stormwater regulatory functions, which would be provided for in legislation and reflected in the regulator’s powers and high-level organisational objectives:

9.1 providing oversight of the operation of national standards for wastewater discharges and overflows;

9.2 setting national performance metrics for wastewater and stormwater;

9.3 collecting, analysing and publishing performance information provided by wastewater and stormwater operators;

9.4 identifying and promoting national guidelines and good practices for wastewater and stormwater network design and management;

9.5 providing input into national expectations for compliance, monitoring and enforcement approaches for wastewater and stormwater network design and management;

9.6 identifying and monitoring emerging contaminants in drinking water, wastewater and stormwater;

The regulator will have a governance board and Māori Advisory Group

10 agreed that that the regulator have a governance board comprising between five and seven members, appointed by Ministers;

11 agreed that members of the governance board would collectively have knowledge and experience that includes:

11.1 the work of the regulator, including public health knowledge, and the broader environment in which the regulator operates;

11.2 the Treaty of Waitangi and its principles, perspectives of Māori, and tikanga Māori;

11.3 performance monitoring and general governance procedures;

12 agreed that a duty of the board be to ensure that the regulator maintains systems and processes to ensure that the organisation has the capacity and capability to uphold the Treaty of Waitangi and its principles, and to be able to engage with Māori and understand Māori perspectives;

13 agreed that a Māori Advisory Group be established in legislation to advise the regulator on how to uphold Te Mana o te Wai, and how to enable mātauranga, tikanga Māori and kaitiakitanga to be exercised;
agreed that the board of the regulator be required to have regard to the advice of the Māori Advisory Group, and demonstrate how it has done this in the entity's annual report;

agreed that the Māori Advisory Group have between five and seven members, appointed by Ministers using a process that includes engagement with Māori;

agreed that it will be important for the regulator to perform certain functions independently of Ministers and regulated parties, so it can make decisions and take enforcement actions without risk of interference;

agreed to create the statutory position of ‘Chief Drinking Water Inspector’ to ensure particular powers and functions can be delegated to an appropriate position within the organisation, subject to further consideration by the State Services Commission about how this approach could work within the framework of the Crown Entities Act 2004;

Resourcing and funding arrangements for the new regulator

noted that the decisions made by Cabinet on 1 July 2019 [CAB-19-MIN-0332] empowered the regulator to carry out a range of new and enhanced functions, increased the scope of the drinking water regulatory system, and put a strong focus on compliance, monitoring and enforcement;

noted that the regulator will require extensive capabilities to undertake its functions and responsibilities, and that it will be important for the regulator to be well-resourced and to have both a central/national and regional presence;

noted that the business case attached to the paper under CAB-19-SUB-0506 provides an overview of the size and types of functions and capabilities the regulator will need, but that these numbers require further analysis and refinement;

agreed that, subject to decisions in Part B below, the financial information in the business case would undergo further development and refinement by the proposed Establishment Unit, to provide greater clarity and certainty about the levels of funding and resourcing required to operate the regulator on an ongoing basis;

noted that there are choices to be made about funding mechanisms for the regulator, including an appropriate mix of Crown and third-party funding in the short and longer term,

agreed to equip the regulator with appropriate funding tools, should these be needed in future, by including provisions in the legislation that enable regulations to be made to recover costs from third parties, through fees, charges, and/or levies;

agreed to include provisions in the legislation that enable current drinking water regulatory staff to be transferred to the new regulator;

Part B: Transition and establishment arrangements for the new regulator

noted that it will take up to 18 months to build the new regulator, and that it is important to start this work immediately to enable a smooth and fast transition from the current regulatory regime to the new regime;
agreed to create an Establishment Unit to design and operationalise the new regulator, and to ensure it is ready to ‘go live’ when the legislation is passed;

agreed that, subject to the funding decisions below, the Establishment Unit be:

28.1 set up in the Department of Internal Affairs, in October 2019;

28.2 governed by a Transition Board, which would be appointed in early 2020, and accountable to the Ministers of Local Government and Health;

noted that the Establishment Unit would not be, or become, the regulator, but would carry out functions relating to:

29.1 transition and implementation planning;

29.2 building new regulatory functions;

29.3 establishing an operating model;

29.4 communications and stakeholder relations;

agreed to establish a tagged contingency of up to the amounts as follows in Vote Internal Affairs, to meet the costs associated with establishing and transitioning the new regulator:

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<tr>
<th>Vote Internal Affairs</th>
<th>Min of Internal Affairs</th>
<th>2019/20</th>
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authorised the Minister of Finance, Minister of Local Government and Minister of Internal Affairs to jointly draw down the tagged operating contingency funding in paragraph 30 above, subject to their satisfaction as to the necessary costs of establishment and transition to the new regulator;

agreed that the tagged operating contingency in paragraph 30 above be charged as a pre-commitment on the Budget 2020 operating allowance;

Further decisions on policy advice and system stewardship arrangements

noted that after Cabinet makes decisions about the organisational form and remit of the new regulator through the paper under CAB-19-SUB-0506, there will be a need to consider what these decisions mean for the location of policy advice, monitoring, and system stewardship functions, as well as Ministerial portfolio responsibilities;

invited the Minister of Local Government to report back to DEV in December 2019, in consultation with the Minister of Health, Minister for the Environment, and Minister of State Services, to confirm the proposed arrangements for the future location of policy advice, monitoring, system stewardship, and portfolio responsibilities relating to the new regulator;
Legislative implications

35 **noted** that the Water Services Bill, which has a category 4 priority on the 2019 Legislation Programme (to be referred to a select committee in 2019), will implement the previously-agreed suite of reforms to the drinking water regulatory system [CAB-19-MIN-0332];

36 **noted** that it is desirable to use a separate Bill to establish the new drinking water regulator and to give effect to the associated proposals in the paper under CAB-19-SUB-0506, to enable this entity to be up and running within the current parliamentary term;

37 **approved** the inclusion of an additional item, a Crown Entity (Water Services) Establishment Bill, on the 2019 Legislation Programme, with a priority category 4 (to be referred to a select committee in 2019);

38 **agreed** that the policy decisions in Part A of the paper under CAB-19-SUB-0506 be implemented through the Crown Entity (Water Services) Establishment Bill (paragraph 37 above);

39 **invited** the Minister of Local Government to issue drafting instructions to the Parliamentary Counsel Office to give effect to the above paragraphs;

40 **authorised** the Minister of Local Government to approve matters of detail that may arise following decisions about the form, location, and/or remit of the new regulator, or during the course of drafting, including technical decisions around its establishment, transitional and operational arrangements.

Michael Webster
Secretary of the Cabinet

**Hard-copy distribution:**
Prime Minister
Deputy Prime Minister
Minister of Local Government
Proposal

1. This is the third in a series of papers on the Three Waters Review to be considered during 2019. This paper seeks:

   1.1 agreement to proposals relating to the institutional, machinery of government, and transition arrangements for a new drinking water regulator;

   1.2 approval to include a new item – a ‘Crown Entity (Water Services) Establishment Bill’ – on the 2019 legislative programme, to establish the new regulator and implement the related proposals in this paper;

   1.3 approval for additional operating funding of $8.6 million over 2019/20 and 2020/21 to cover the costs associated with establishing and transitioning to the new regulator;

   1.4 agreement that the drinking water regulator would carry out the small number of new, centralised wastewater and stormwater regulatory functions that were agreed to by Cabinet in July 2019.

2. Most of the policy proposals in this paper will be implemented through legislation. Proposals for establishing and transitioning to the new regulator would be implemented by an Establishment Unit and Transition Board.

Executive summary

3. On 1 July 2019, Cabinet agreed to a suite of system-wide reforms to the regulation of drinking water, including the establishment of a new, centralised drinking water regulator [CAB-19-MIN-0332 refers]. I was invited to report back, in September 2019, with proposals for the form, location, costs and funding of this new regulator. These proposals are informed by a business case, which is attached to this paper.

4. Cabinet also agreed to targeted reforms to improve the regulation and performance of wastewater and stormwater systems, including a relatively small number of new regulatory functions that would be undertaken by a central regulatory agency. I was asked to consider whether these functions should be undertaken by the new drinking water regulator.

5. My recommended approach is set out in this paper. In summary, I am proposing that:

   5.1 the drinking water regulator is created as a new, standalone Crown agent;

   5.2 some of the new wastewater and stormwater regulatory functions would be co-located within the drinking water regulator;
5.3 an Establishment Unit is set up within the Department of Internal Affairs, in October 2019, to design and build the new regulator, subject to the approval of the additional operating funding being sought in this paper.

5.4 from early 2020, the Establishment Unit would be overseen by a Transition Board, to be appointed by, and accountable to, Ministers.

6. My strong preference is for an independent drinking water regulator, located in a new, standalone Crown agent. I consider this is the best approach if we are to achieve a system-wide 'step-change' in performance, as recommended by the Government Inquiry into Havelock North Drinking Water (Havelock North Inquiry), and a clear, enduring focus on drinking water safety. This approach is also the preference of local government.

7. My approach recognises that water is critically important, and will become more so in future. Having an independent, dedicated entity, with an organisational structure that is focused on water, will ensure drinking water safety is prioritised and resources are directed accordingly. This approach will help to build public and stakeholder confidence, and the confidence of local government and iwi/Māori. It would help to attract high calibre regulatory experts to senior positions in the organisation. There are also long-term strategic opportunities that can be achieved with a specific emphasis on water.

8. It is imperative that work to build the new regulator begins immediately. I am seeking additional operating funding of $8.6 million to operate the proposed Establishment Unit over the next 18 months, and ensure a smooth transition between the current and new regulatory systems.

9. If this work is not undertaken now, there will be a further delay of 12 to 18 months before the new organisation starts to implement the new drinking water regulatory system. This would jeopardise the success of the regulator and our drinking water reform programme, and heighten the risks remaining in the system that were highlighted by the Havelock North Inquiry.

10. A Water Services Bill is included in this year's legislation programme, to implement the new drinking water regulatory system that was agreed to by Cabinet on 1 July 2019. However, I consider that it is desirable to use a separate bill to establish the new drinking water regulator, so we can have confidence that this entity will be up and running within this term of government.

11. I am therefore seeking approval to include a 'Crown Entity (Water Services) Establishment Bill' on the 2019 legislation programme, with priority category 4 (to be referred to select committee in 2019). If agreed, the proposals in Part A of this paper would be included in this Bill, rather than the Water Services Bill.
Background

This is the third in a series of papers on the Three Waters Review in 2019, which follows the regulatory reform decisions we made in July 2019

12. On 1 July 2019, Cabinet considered two related papers:

12.1 A plan for three waters reform, which explained the complex issues facing the three waters system, and set out my strategy for reform [CAB-19-MIN-0331 refers];

12.2 Strengthening the regulation of drinking water, wastewater and stormwater, which sought agreement to a package of regulatory reform proposals, the majority of which will be progressed through a Water Services Bill [CAB-19-MIN-0332 refers].

13. Cabinet agreed to a suite of system-wide reforms to the regulation of drinking water and source water, which are designed to:

13.1 provide clear leadership for drinking water regulation, through a new central regulator;

13.2 significantly strengthen compliance, monitoring and enforcement relating to drinking water regulation, and equip the regulator with the powers and resources needed to build capability and take a tougher, more consistent approach to enforcement;

13.3 manage risks to drinking water safety and ensure source waters are protected;

13.4 ensure 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.

14. Cabinet also agreed to targeted reforms to improve the regulation and performance of wastewater and stormwater systems, by implementing proposals to:

14.1 lift the performance and transparency of wastewater and stormwater systems, including through the introduction of new national environmental standards for wastewater discharges and overflows, and new obligations on network operators to manage risks to people, property and the environment;

14.2 improve national-level leadership, oversight and support relating to wastewater and stormwater, including through the publication of national guidance and good practices.

15. The scope of these reforms, and the respective roles of central and local government, are illustrated in Appendix A. As highlighted in this diagram, the new, centralised wastewater and stormwater regulatory functions are a relatively small part of the overall three waters reform programme, and of the environmental regulatory landscape. The environmental regulatory functions currently undertaken by regional councils are unaffected.
Cabinet invited me to report back on proposals for a centralised drinking water regulator

16. Cabinet noted that there are a number of shortcomings with the current system of drinking water regulation, and agreed to establish a centrally-located regulator. This regulator will be responsible for overseeing the entire drinking water regulatory system, and undertake functions that fall under the following broad headings:

16.1 sector leadership;
16.2 setting/reviewing standards;
16.3 compliance, monitoring and enforcement;
16.4 capability building, accreditation and occupational regulation of the drinking water industry;
16.5 information, advice and education, including being a centre of technical and scientific expertise;
16.6 performance reporting.

17. This decision was subject to further advice on options for machinery of government arrangements, the development of detailed proposals and a business case relating to the institutional form of the regulator, and engagement across central government, with the local government sector, and with iwi/Māori.

18. I was invited to report back in September 2019 with proposals for the institutional form, location, costs, and funding of a centralised drinking water regulator. A draft business case and regulatory impact assessment have been prepared to inform these proposals, and accompany this paper.

I was also asked to provide advice on the delivery of certain wastewater and stormwater regulatory functions

19. Cabinet noted that there are significant synergies between drinking water regulatory functions and some of the new functions relating to the regulation of wastewater and stormwater. Given this, I was asked to consider the relative costs, benefits, and feasibility of the drinking water regulator having a role in implementing proposals relating to:

19.1 national standards for wastewater discharges and overflows;
19.2 risk management practices of wastewater and stormwater network operators;
19.3 nationally-prescribed environmental performance metrics;
19.4 national guidelines and good practices for wastewater and stormwater networks;
19.5 national expectations for compliance, monitoring and enforcement approaches for wastewater and stormwater network design and management;
19.6 emerging contaminants in drinking water, wastewater and stormwater.

20. I was invited to report back with advice on these matters as part of this paper.
Comment

Part A: Institutional arrangements for a new drinking water regulator

My proposal is that the drinking water regulator is a new, standalone Crown agent

21. I have considered options for the regulator’s organisational form, location, governance and funding arrangements, and developed a preferred approach.

22. As described in the attached business case, the State Sector Commission's framework for making machinery of government decisions was used to identify a longlist of possible organisational form options. This longlist was narrowed down to three options:
   22.1 Business unit within a department (reflecting current arrangements);
   22.2 Departmental agency;
   22.3 Crown agent.

23. This shortlist of options was then assessed against a set of critical success factors, and eight criteria that take account of the drinking water context and address the issues that have given rise to the need for a new regulator. The criteria were ranked according to priority. (Sections 3 and 4 of the regulatory impact assessment that accompanies this paper includes further information on the options analysis framework and process.)

24. Discussions with a group of Three Waters Regulatory Ministers\(^1\), informed by the options assessment, indicated a clear preference for a Crown agent over the other options. This was considered the strongest option in terms of achieving the necessary step-change from the status quo, and providing an appropriate form for a regulator that will deal with highly technical matters and have a significant emphasis on compliance and enforcement.

25. A Crown agent scored higher than the other options in relation to the following, highest-ranked criteria:
   25.1 credibility as an independent regulator, and the ability to gain the confidence of regulated parties, government, Māori, and the public;
   25.2 the greatest level of independence to protect the integrity of evidence-based decision making, and enforcement and intervention powers;
   25.3 the ability to have a dedicated, sustained focus on drinking water regulation;
   25.4 transparency of performance;
   25.5 the ability to recruit, develop and retain people with appropriate technical, regulatory, and stakeholder management skills and experience.

26. The local government sector has also indicated a strong preference for a dedicated Crown agent, for similar reasons. The independence and dedicated focus offered by this option, particularly in the delivery of compliance, monitoring and enforcement functions, are also what I have heard to be important considerations for iwi/Māori.

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1 This group comprises Ministers of/for Local Government, Health, Environment, Commerce and Consumer Affairs, Infrastructure, Rural Communities, and Conservation.
27. While the option of a Departmental agency was considered by Three Waters Regulatory Ministers, it was not viewed as desirable. It did not score as strongly as a dedicated, standalone Crown agent in relation to the most important criteria listed above, and is not a common or tested form for a regulator in New Zealand.

28. I have significant reservations about the Departmental agency option, and do not consider this will bring about the step-change in approach, or improvements in stakeholder confidence, that are so clearly needed. It is vital that the new regulator can build and maintain credibility across local government, iwi/Māori, and the general public, and is perceived as being independent from government in its activities and decision making.

29. As described later in this paper, responsibility for policy and system stewardship will remain with Ministers and departments. This includes policy and investment decisions about fundamental matters relating to water service delivery, infrastructure and funding arrangements, which are crucial to considerations about community access to, and the affordability of, safe drinking water. These decisions will not sit with the regulator or its board.

30. There will be opportunities for Ministers to provide strategic direction to the regulator, where it is necessary and appropriate to do. However, the new organisation's primary role will be administering the new drinking water regulatory system and protecting public health. This will involve a strong focus on compliance, monitoring and enforcement activities, and requires the independence and dedicated, long-term resources that can be provided for in a Crown agent model.

31. Regarding the location of the Crown agent, this was narrowed down to a choice between two approaches:

   31.1 locating the regulator within an existing organisation – with the most logical option being the Environmental Protection Authority (EPA); or

   31.2 creating a new, standalone Crown agent.

32. My preference is that the regulator is created as a new, standalone Crown agent. This approach would prioritise a clear, enduring focus on drinking water safety. It recognises that water is critically important, and will become more so in the future. It helps to support Te Mana o te Wai², and would enable water to have its own, distinct role in the regulatory system.

33. Having a dedicated regulator makes sense from a public health perspective, particularly compared with locating it in the EPA, as well as culturally and for our economy. Local government stakeholders have expressed a strong preference for a standalone, independent entity, focused on improving the drinking water regulatory system, rather than the regulator being housed within the EPA or other existing government agencies.

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² Contributing to upholding Te Mana o te Wai is one of the objectives of the Three Waters Review. Te Mana o te Wai is defined in the National Policy Statement for Freshwater Management, and can be summarised as the integrated and holistic wellbeing of a freshwater body. The Essential Freshwater discussion document contains proposals to clarify and strengthen Te Mana o te Wai.
34. A standalone regulator is also desirable from an organisational and resourcing perspective. Under this organisational structure, the chief executive, senior leadership team, and resources throughout the organisation, would relate solely to water. This would ensure drinking water regulation is prioritised, and a focus on drinking water safety is maintained over time. This could help build public and iwi/Māori confidence. It could also help to attract high calibre employees to senior positions.

35. Locating the regulator within the EPA is also a plausible option, particularly in terms of maintaining the coherence of the environmental management system. A number of reforms are underway that affect freshwater, the Resource Management Act 1991, and climate change. All of these reform programmes are considering the architecture of the regulatory system, but within different timeframes.

36. Initial indications are that there may be some financial efficiencies associated with locating the new regulator within the EPA – with estimated savings of approximately 10 per cent per year, compared with the operating costs for a standalone regulator.

37. However, there are drawbacks with this option. The regulation of drinking water is primarily a public health function. The EPA is a multi-purpose organisation, with a range of environmentally-focused functions. Drinking water would not be the EPA’s primary focus, and there is a risk that it becomes ‘lost’ within a bigger organisation, and de prioritised over time. This could perpetuate the shortcomings with current regulatory and organisational arrangements that were highlighted by the Have lock North Inquiry, and which we are seeking to address with our reform programme.

38. The EPA would need to undergo significant restructuring to ensure drinking water regulatory functions become embedded throughout the organisation’s structure and culture. Even if this happened successfully, the chief executive and senior leadership team would have many other responsibilities and priorities. This could mean the ‘voice’ of the regulator has less reach and impact, and affect the ability to recruit regulatory talent to senior levels in the organisation.

39. There are trade-offs to be made between the two options. On balance, I consider that a standalone, dedicated regulator is the best approach, with fewer risks and negative consequences. I am seeking agreement to include provisions in a bill to establish the drinking water regulator as a new Crown agent, subject to the Crown Entities Act 2004.

**The regulator’s priority would be strengthening the drinking water system**

40. I consider the regulator should have a high-level purpose and organisational objectives that reflect that its core responsibility is to strengthen the drinking water system and ensure the safety of drinking water, and that it will need strong technical capabilities to do this effectively. Given that Te Mana o te Wai is key to an integrated, holistic water management system, it is important to recognise that the regulator has a role in the system to contribute to upholding Te Mana o te Wai.

41. I seek agreement to include objectives in a bill that relate to:

   41.1 protecting and promoting public health outcomes and drinking water safety;
   41.2 effectively administering the drinking water regulatory system;
   41.3 building capability among drinking water suppliers and across the wider industry;
   41.4 recognising and providing for Te Mana o te Wai, with regard to drinking water.
42. In giving effect to its objectives, the regulator would need to be cognisant of the broader environment in which it operates, such as national directions under the Resource Management Act 1991, and legislation relating to climate change.

43. I am also seeking agreement to include a set of operating principles in the legislation, to guide and inform how the regulator delivers its objectives and functions. I propose these operating principles relate to:

43.1 building and maintaining credibility and integrity, so the regulator is trusted by consumers, regulated parties, Māori, and government;
43.2 ensuring the organisation has suitable expertise to build confidence in its capability as a regulator;
43.3 developing sector capability, by promoting collaboration, education and training;
43.4 partnering and engaging meaningfully with other people and organisations;
43.5 partnering and engaging early and meaningfully with Māori;
43.6 understanding, supporting, and enabling mātauranga Māori and tikanga Māori and kaitiakitanga to be exercised;
43.7 supporting local authority and tangata whenua engagement on Te Mana o te Wai with regard to drinking water;
43.8 seeking to protect and enhance environmental outcomes and mitigate the negative effects of climate change.

44. It would also be beneficial for the Government to be able to issue policy statements to the regulator. This would enable Ministers with portfolio interests relating to the regulator's work to set out high-level priorities and strategic direction. The regulator would be required to give effect to these statements as a Crown agent, where they do not interfere with its statutory independence in carrying out compliance, monitoring and enforcement activities. I propose this is provided for in the bill.

**It would also be beneficial for the regulator to deliver the new wastewater and stormwater regulatory functions we agreed to in July 2019**

45. Cabinet has also agreed to a small number of new, centralised wastewater and stormwater regulatory functions. These functions will need to be delivered somewhere, and I was asked to consider whether they should be undertaken by the new drinking water regulator.

46. Two approaches have been assessed:

46.1 co-locating the drinking water, wastewater and stormwater regulatory functions within the same organisation (a single regulator); or

46.2 creating a separate drinking water regulator, and tasking a different central regulatory agency to perform the new wastewater and stormwater functions – either the EPA or Ministry for the Environment (MfE) (noting that MfE would need to become a regulator to do so).
47. My preference is for a single regulator. The assessment suggests that co-location would have a number of benefits, and few disadvantages. Co-location provides an opportunity to develop a well-integrated, consistent approach to three waters regulation, and a more capable regulator.

48. The new wastewater and stormwater functions have strong synergies with the drinking water functions, and will utilise many of the same systems, approaches, and scientific and technical expertise. Co-locating these functions would enable skills and knowledge to be pooled, shared and developed further, helping to create the centre of expertise we are seeking. This approach is particularly desirable, given there are relatively few people with the capabilities the regulator will need to operate effectively.

49. Co-location would also be more cost-effective, as fewer staff would be needed to deliver the functions in a single regulator, compared with locating them in MfE or the EPA. The synergies between these functions provide the opportunity to leverage the skills and expertise that will sit within the drinking water regulator.

50. A combined regulator would be well equipped to consider and incorporate mātauranga Māori, and work productively with iwi and hapū at a local level. The general preference of iwi/Māori is that water is managed as a holistic, integrated system. Putting centralised drinking water, wastewater and stormwater functions together makes sense from this perspective. It would also mean a single point of connection with MfE on freshwater policy.

51. I am confident that, under my proposed approach, drinking water safety would be prioritised. As described above, this would be a clear and enduring feature in the regulator’s legislative objectives, which could also be reinforced through government policy statements and letters of expectation. The new centralised wastewater and stormwater functions are discrete and narrowly-focused, and would be a relatively small part of the regulator’s work. Regional councils would continue to deliver their regulatory functions.

52. I am seeking agreement that the remit of the new drinking water regulator would include the delivery of the following new, centralised wastewater and stormwater regulatory functions, as agreed by Cabinet on 1 July 2019 [CAB-19-MIN-0332 refers]:

52.1 providing oversight of the operation of national standards for wastewater discharges and overflows;

52.2 setting national performance metrics for wastewater and stormwater;

52.3 collecting, analysing and publishing performance information provided by wastewater and stormwater operators;

52.4 identifying and promoting national guidelines and good practices for wastewater and stormwater network design and management;

52.5 providing input into national expectations for compliance, monitoring and enforcement approaches for wastewater and stormwater network design and management;

52.6 identifying and monitoring emerging contaminants in drinking water, wastewater and stormwater.
53. These functions, and associated powers to deliver them, would be provided for in the new legislation, and reflected at a high-level in the regulator’s organisational objectives.

The regulator would have a governance board, and be supported by a Māori Advisory Group

54. Establishing the regulator as a new Crown agent would mean it has a board, appointed by Ministers. Given the specialist nature of the regulator’s work, and the strong focus on compliance, monitoring and enforcement activities, I propose this is a governance board, which would monitor the entity.

55. In terms of the qualifications of board members, I consider it beneficial that they have an understanding of the regulator’s work – both in relation to water regulation, and in governing a regulatory body more generally. It is also important that the board, and the organisation more broadly, includes people who understand Te Ao Māori.

56. I am seeking agreement that the legislation includes provisions relating to the board arrangements for the new regulator, so that:

56.1 it has a governance board comprising between five and seven members, appointed by Ministers;

56.2 board members would collectively have knowledge and experience that includes:

56.2.1 the work of the regulator, including public health knowledge, and the broader environment in which the regulator operates;

56.2.2 the Treaty of Waitangi (Te Tiriti o Waitangi) and its principles, perspectives of Māori, and tikanga Māori;

56.2.3 performance monitoring, and general governance procedures.

57. In addition to the requirements for board members, it is advisable that the wider organisation has the capacity and capability to act consistently with the Treaty of Waitangi and its principles, and to be able to engage with Māori and understand Māori perspectives. I seek agreement to include provisions in the legislation that make it a duty of the board to ensure the regulator has the systems and processes necessary to make this happen.

58. I also propose that a Māori Advisory Group is established, to advise the regulator and its board in relation to Te Mana o te Wai, and how to enable mātauranga, tikanga Māori and kaitiakitanga to be exercised.

59. I am seeking agreement that the legislation includes provisions for the establishment of a Māori Advisory Group, and for Ministers to appoint between five and seven members to that Group (using a process that includes engagement with Māori on appointments). The board would be required to have regard to the Group’s advice, and to demonstrate how this has been done in the regulator’s annual report.

60. It may also be desirable for the regulator to be informed and assisted by other advisory bodies. In particular, it will need access to technical and scientific advice from appropriately qualified experts, when drinking water standards are being reviewed and amended, for example (similar to the current Drinking Water Advisory Committee). The mechanisms for obtaining this support and advice would be considered further during the establishment phase of the regulator, or when it has begun operating.
The regulator would have statutory independence when carrying out some functions

61. As happens with other Crown entities, Ministers will be able to set directions for the regulator, issue letters of expectation, and direct the entity to give effect to a government policy that relates to its objectives and functions or support a whole of government approach. However, as noted earlier, the ability of the regulator to act impartially and independently will be an important factor if it is to build credibility and trust among regulated parties, local government, iwi/Māori and the New Zealand public.

62. It is particularly crucial that the regulator is able to perform its compliance, monitoring, and enforcement functions independently of Ministers and regulated parties. This approach is common in regulators, which need to be able to make decisions and take enforcement actions without (real or perceived) risk of interference. I propose that the new legislation includes provisions that ensure this happens.

63. I also consider it would be desirable to ensure certain statutorily independent powers, functions and responsibilities are delegated to a particular ‘statutory officer’ within the organisation, particularly where these relate to decisions about compliance, enforcement, and exemptions. This approach may not fit easily within the framework of the Crown Entities Act, though, and requires further consideration.

64. I seek agreement that the statutory position of ‘Chief Drinking Water Inspector’ is provided for in legislation, to enable particular powers and functions to be specifically delegated to an appropriate position within the regulator, and ensure those delegations are transparent and enduring over time. This would be subject to further advice from the State Services Commission. I propose that matters of detail be developed and refined during the legislative drafting process, for agreement by myself and the Minister of State Services.

The regulator will need the right capability to work effectively, and a strong regional presence

65. The new regulator will need to develop extensive capabilities to undertake its functions effectively, including the skills needed to be the public and frontline face of drinking water safety, and to become a centre of technical and scientific expertise.

66. The regulator will face a significant challenge in bringing all drinking water supply schemes into the new regulatory system, and ensuring each supplier achieves compliance with regulatory requirements over time. The regulator will need to:

66.1 make compliance requirements transparent and easily understood, through clear rules and guidelines;

66.2 work with regulated parties to ensure they are aware of their regulatory responsibilities, and know what to do and how to comply;

66.3 provide support and incentives for suppliers to build or acquire the capabilities needed to achieve compliance – including working with and through sector organisations, and accreditation and training bodies;

66.4 develop administrative systems and processes to enable owners and operators of drinking water supply schemes to register each scheme, and operate them in accordance with regulatory requirements (with a particular focus on drinking water safety plans);
66.5 develop approaches that are proportionate to the size and capabilities of suppliers, and which could include the use of simple, practical, and template-based approaches for small suppliers;

66.6 develop and implement a risk-based approach to monitoring and enforcing compliance with regulatory requirements;

66.7 address issues of persistent non-compliance.

67. Small suppliers being brought into the new regulatory system will include marae, papakāinga and rural Māori communities. The regulator will need to have the capability and relationships to undertake the matters outlined above in culturally appropriate and effective ways, such as through tools and templates for water safety plans for marae that are co-designed with Māori.

68. The business case provides an overview of the types of functions the drinking water regulator will need to deliver its wide-ranging responsibilities, including the types of activities, capabilities required, and indicative roles relating to each functional grouping. Some of these functions would be undertaken by the regulator directly (such as compliance, monitoring and enforcement); others by third parties on the regulator’s behalf.

69. Appendix B provides an illustration of these functional groupings, based on current service delivery arrangements. It notes that the regulator’s resourcing requirements would be lower if there were fewer, bigger drinking water suppliers.

70. It will be important for the regulator to have both a central, national presence, and a strong regional presence. A regional approach is desirable given that a large number of our smaller drinking water suppliers are located in rural and provincial areas. Māori have also emphasised the need for a regional presence, given that relationships with iwi and hapū will need to be at a regional level, and mātauranga differs between iwi and hapū and from rohe to rohe.

71. It is too early to determine precise numbers of employees, and where they would be located. Initial estimations are for 50 to 70 staff in the regulator’s first year of operation, increasing to between 125 and 155 staff by year five, but these numbers require further analysis and refinement. The scale of the tasks the regulator will need to undertake should not be underestimated, though, and it will be challenging to recruit large numbers of staff with the required capabilities.

72. As explained further below, I propose that the financial information in the business case undergoes further development and refinement over the coming months. This will provide greater certainty about the levels of funding and resourcing required to operate the regulator on an ongoing basis. This would be a core role for the Establishment Unit proposed later in this paper, working with policy agencies.

73. Nevertheless, it is clear that the regulator will need significant levels of capability if it is to achieve the desired ‘step-change’ in performance, and deliver the functions Cabinet agreed to in July 2019. The Havelock North Inquiry highlighted significant under-resourcing issues in the drinking water regulatory sector, which will need to be addressed. This view has been reinforced by engagement with existing regulatory staff across the country.

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3 This would be comparable to other regulators in New Zealand, and of a sufficient size to be a standalone organisation. Detailed comparisons are provided in the business case, and include Worksafe and Maritime New Zealand.
74. The new drinking water regulator will require a larger number of staff than there are within the current regulator, particularly in regulatory operations, operational policy, and education and engagement. This is due to a combination of factors, including:

74.1 the increased scope of the regulatory system, which will bring 2,000 to 7,000+ small drinking water suppliers into the regime – a large number of which are likely to need support to understand and comply with their regulatory obligations (in a proportionate and risk-based way);

74.2 the emphasis that will be placed on water safety plans, and the amount of work that is likely to be required to ensure suppliers have plans that meet regulatory requirements and are being implemented accordingly;

74.3 the stronger focus on compliance, monitoring and enforcement;

74.4 the need to build the capability to engage competently in kaupapa Māori across the organisation.

75. Employees of the existing regulator (Ministry of Health and District Health Boards) may wish to work for the new regulator. I am seeking agreement to include provisions in the legislation relating to the transfer of staff, to enable this to happen. Detailed arrangements would be worked out during the legislative drafting process, and establishment and transition phases.

76. There would also be consequences associated with moving public health resource out of the health system, in relation to the availability of staff during 'surge events' and emergencies. These consequences would be identified and managed by the Ministry of Health.

The regulator will need long-term funding to strengthen the regulatory system.

77. The regulator will require ongoing funding to deliver its functions effectively, develop a strengthened approach to drinking water regulation, and ensure drinking water safety is a long-term priority. I am not proposing that we make these funding decisions through this paper.

78. While the business case includes well-developed initial cost estimates associated with operating the regulator over the next five years, further work is needed to develop and refine these costs, and consider appropriate sources of funding.
82. Although I am not proposing to seek long-term funding decisions at this point, I do consider that the legislation should equip the regulator with appropriate funding tools, should these be needed in future. I am seeking agreement to include provisions in the legislation that enable regulations to be made to recover costs from third parties, through fees, charges, and/or levies. If decisions are made to use these tools, they would require Cabinet approval before being implemented.

Part B: Transition and establishment arrangements for the new regulator

I propose setting up an Establishment Unit to build and operationalise the new regulator

83. I anticipate it will take up to 18 months to build the regulator, depending on the timing of the enactment of legislation. It is important to start planning for the new regulator as quickly as possible, to enable a smooth and fast transition from the current regulatory regime to the new regime. Delays are likely to affect the credibility of the new regulator, cause uncertainty among regulated parties, and create risks around the retention of experienced staff.

84. I propose that an Establishment Unit is set up to design and operationalise the regulator, and ensure it is ready to ‘go live’ when legislation is passed. This Unit would not be, nor become, the regulator. Rather, it would carry out functions relating to:

84.1 transition and implementation planning – including detailed organisational design; developing a workforce recruitment strategy; preparing an implementation plan; and supporting the appointment of board members and a chief executive designate;

84.2 building new regulatory functions – including compliance, monitoring and enforcement; sector education and training; and scientific and technical capabilities;

84.3 establishing an operating model – including liaising with policy agencies on initial design work for new regulations (so these can be made as soon as the enabling legislation is enacted), and funding mechanisms; working with International Accreditation New Zealand (IANZ) to develop an accreditation scheme; developing third party arrangements; and building an approach to mātauranga and tikanga Māori and ongoing engagement with iwi/Māori;

84.4 communications and stakeholder relations – including maintaining a close relationship with the existing regulator and other key government agencies.
85. As noted above, a key responsibility of the Establishment Unit would be to further develop and refine the financial information in the business case. This would ensure we have greater clarity and certainty about the funding and resourcing required to operate the regulator on an ongoing basis. 9(2)(f)(iv)

86. I propose that the Establishment Unit is set up in the Department of Internal Affairs, in October 2019. A Transition Board would be appointed by Ministers in early 2020, at which point governance of the Establishment Unit would be provided by that Board, accountable to myself and the Minister of Health.

87. To maintain continuity, I anticipate that some members of the Transition Board would go on to the Board of the new regulator. However, Transition Board members are likely to require specific, specialist skills, including expertise in organisational design, change management, and establishing regulatory bodies. I propose these factors are considered during the appointment process.

88. Officials (outside of the Establishment Unit) will continue to provide policy advice to Ministers relating to the regulator, and support the passage of legislation 9(2)(f)(iv) Officials will also be involved in the detailed development of regulations, funding arrangements, and monitoring arrangements, so these are in place when the regulator goes live.

89. Appendix C illustrates the indicative timetable for establishing and transitioning to the new regulator.

I am seeking funding for the Establishment Unit.

90. The business case estimates that the costs of operating the Establishment Unit and Transition Board for 18 months would be between $7.2 million and $8.6 million. The main cost items relate to:

90.1 personnel of between eight and 14 full-time equivalent staff, plus a director and interim chief executive (including an allocation of departmental overhead costs for accommodation and shared services);

90.2 a Transition Board and two advisory groups (including an interim Māori Advisory Group and a sector group);

90.3 professional services.

91. There are uncertainties around the costs that are likely to be incurred by the Establishment Unit, particularly in relation to the information technology arrangements that the regulator will need. These uncertainties mean it is advisable to secure funding at the high end of the range estimated in the business case.

92. I am seeking additional operating funding of $8.6 million over 2019/20 and 2020/21, to cover the costs associated with operating the Establishment Unit for 18 months and transitioning to the new regulator.

93. Designing and building the new regulator will be a significant task. I consider it is essential that this work begins immediately, to ensure the new regulator is in the best possible position when the legislation for the new regime is enacted. There is also a need for funding certainty over these two years, so the Establishment Unit can complete its tasks and start recruiting into the next financial year.
94. If this work is not undertaken immediately, there would be a delay of 12 to 18 months before the new organisation is ready to begin implementing the new drinking water regulatory system. This jeopardises the success of the regulator and of our drinking water reform programme, and the health of New Zealanders.

**I will report back in December 2019 to confirm policy advice, monitoring, and system stewardship arrangements**

95. The regulator will not be a policy agency. Responsibility for policy functions, including the provision of policy advice to Ministers, will be retained within Ministries and departments.

96. Once Cabinet has made decisions about the organisational form and remit of the new regulator, we will need to consider what these decisions mean for the location of policy advice, monitoring, and system stewardship functions, as well as Ministerial portfolio responsibilities relating to the regulator.

97. If my proposals in this paper are agreed to, I envisage the Ministry of Health would continue to provide policy advice relating to drinking water, and the Ministry for the Environment would cover the new wastewater and stormwater components of the regulator’s remit. However, this would need to be confirmed, along with other matters such as the monitoring agency/agencies for the regulator.

98. I will prepare advice on these matters, in consultation with the Minister of Health, Minister for the Environment, and Minister of State Services, and report back in December 2019 to confirm the arrangements.

**Part C: Further advice on funding implications of regulatory proposals**

99. On 1 July 2019, Cabinet also invited me to report back with advice on the scale and costs of the infrastructure improvements needed to meet the new regulatory proposals that were included in that paper, and possible sources of funding [CAB-19-MIN-0332 refers].

100. The Regulatory Impact Assessment that accompanied the 1 July paper set out the estimated costs for drinking water suppliers to comply with drinking water standards. In general terms, as the size of drinking water supplier increases, so does the reliability of the evidence base and the level of certainty around cost estimates.

101. This is particularly an issue for very small private suppliers, most of which are operating outside of the current regulatory system. While most of these small schemes will face additional capital and operating costs to achieve compliance with the new regulatory requirements, the risk-based approach to the regulator’s compliance, monitoring and enforcement provides flexibility and an opportunity to minimise regulatory compliance costs for smaller suppliers.

102. Provided below are indications of the costs associated with upgrades to drinking water infrastructure. Further work being undertaken in the Three Waters Review is looking at service delivery and funding arrangements in more detail, and I will report back on this work in December 2019.
Larger suppliers – estimate of capital and operating expenditure

103. There is greater certainty in relation to the regulatory requirements and cost implications for large council and non-council suppliers; that is, those that supply drinking water to more than 500 people. Most of these schemes are operated by councils, and they collectively provide drinking water to over 3.7 million people.

104. The estimated total capital costs of meeting the new regulatory requirements for the large council suppliers is $260 million, with operating costs of $7.4 million per annum. The costs for the 14 large non-council suppliers are estimated at $15.3 to $24.1 million for capital upgrades, with an ongoing increase in operating expenditure of $0.4 to $0.6 million per annum.

105. Officials are reasonably confident that councils have included estimated upgrade costs within their long-term plans, although it is possible that some planned expenditure may have to be brought forward to enable them to comply by the third year of the regulatory regime. The drinking water regulator will work closely with suppliers during the transition period of the new regulatory regime.

Smaller suppliers – estimate of capital and operating expenditure

106. Estimating the costs for smaller suppliers is more challenging, particularly for the large number of very small suppliers (those supplying water to under 25 people) that are not included in the current regulatory system. There is a high degree of uncertainty about the number of these schemes and the level of investment required.

107. Officials’ estimations of the total capital expenditure this group will require to meet the drinking water standards ranges from $153.7 to $409.4 million, with annual operating expenditure ranging from $24 to $109.6 million. However, the number of people serviced has a significant impact on the proportionate costs of compliance. In practice, the regulatory requirements for this group will be proportionate to the size and the level of risk, but there is significant uncertainty around the actual impacts for small suppliers.

Crown suppliers – estimate of capital and operating expenditure

108. Central government agencies affected by the reforms include the Ministry of Education, the New Zealand Defence Force (NZDF), the Department of Corrections, and the Department of Conservation. The NZDF and Department of Corrections are currently investing to upgrade aging infrastructure, technology and operating systems.

109. In 2018, the NZDF estimated that it will need to spend up to $180 million to upgrade all of its three waters infrastructure, and management costs of its three waters services could increase by $0.7 million per annum. The Department of Corrections estimates capital costs of upgrades of $4.9 million, and an increase in operating costs from $0.4 to $0.6 million per annum.

110. The Department of Conservation manages a wide range of facilities. It estimates costs of between $2.9 million, based on an assumption that smaller campsites and back country huts will receive an exemption from drinking water regulatory requirements. The Ministry of Education also has a dispersed range of facilities, and while most schools are connected to council supplies, some rural schools self-supply their drinking water. The high-level estimate of total capital costs for these rural schools is $2.9 million with $0.6 million per annum in operating costs.
Marae

111. The Ministry of Health estimates that there may be between 600 and 850 marae that self-supply their drinking water. Most marae have very small resident populations, but cater and prepare food for large numbers of visitors on occasions such as tangi and civil defence events. Similar to small drinking water suppliers, the information base is poor, but an early estimate is that total capital costs to upgrade systems to be compliant with drinking water standards are in the order of $14 million, with additional operating costs of just over $1 million per annum.

112. The Ministry of Health, Te Punī Kōkiri, and Department of Internal Affairs are working together to develop more certainty around the number of marae that will be affected by the regulatory reforms, and the potential costs.

Building the information base

113. When the new drinking water regulatory system is in place, all drinking water suppliers will be required to register with the regulator. This will provide a much clearer picture of how many small suppliers there are, and their supply arrangements.

114. In addition, the Water Services Bill will amend section 125 of the Local Government Act 2002 to require councils to undertake an extended assessment of drinking water services. These assessments will be critical to enabling the regulator to support the transition to new regulatory regime, and will provide an “on the ground” survey of small suppliers.

115. The assessments will also build connections between local authorities and small community suppliers. However, local government may consider this new requirement to be an unfunded mandate, particularly since the regulator will be a key beneficiary of the information.

Wai 2358 Report – findings relevant to the Three Waters Review

The Waitangi Tribunal Report

116. On 28 August 2019, the Waitangi Tribunal (the Tribunal) released its Stage 2 Report on Wai 2358, the National Freshwater and Geothermal Resources Claim (the Report). The Report provides a detailed analysis, and assesses the Treaty compliance (in the Tribunal’s view), of the Crown’s freshwater reforms up to late 2017. It also assesses the Treaty compliance of the Resource Management Act 1991 (RMA). Given the Report’s timeline, it does not comment substantively on the Government’s current work programme, but does make broad recommendations about water management, allocation and ownership, which are relevant to current work programmes.

117. Tribunal recommendations are generally not binding on the government, but they should be considered carefully and taken into account in policy development.

118. Key recommendations from the Report include:

118.1 Māori decision making and the reflection of Māori values should be strengthened by adding Te Mana o te Wai as a matter of national importance in section 6 of the RMA that must be ‘recognised and provided for’. The National Policy Statement for Freshwater Management 2014 should also be amended to state that Te Mana o te Wai must be ‘recognised and provided for’.
118.2 Co-design with national Māori bodies should be standard practice where Māori interests are concerned; substantial resourcing should be provided to enable Māori to participate in all levels of freshwater management; and the Treaty performance of local authorities should be monitored.

118.3 The establishment of a Water Commission. The Tribunal says this should be an independent national co-governance arrangement with Māori, with its scope and functions to be negotiated and agreed by the Treaty partners. At a minimum, the Commission’s role should be to ensure Treaty principles and Māori values, rights and interests are fully incorporated in freshwater policy and management. It should also assess whether a separate Water Act, which would remove water from the RMA, is necessary.

**The Report is of most relevance to the Essential Freshwater programme**

119. The Essential Freshwater work programme includes a number of proposals to improve all aspects of ecosystem health and sets out proposed new processes and standards for reducing pollution.

120. The Three Waters Review is more narrowly focused, given it is a targeted initiative to address immediate concerns about drinking water safety, and the performance of wastewater and stormwater systems. However, any improvements made to the regulation and management of three waters infrastructure will have direct benefits to the water quality improvements sought by the Essential Freshwater programme.

**Māori interests, however, do not delineate between work programmes, and we are taking an integrated, whole-of-system approach**

121. Māori interests are more clearly articulated in a ‘whole-of-system’ view of water, which does not delineate types of water. The two work programmes are closely aligned, and my approach in the Three Waters Review has been, and will continue to be, to uphold Te Mana o te Wai, and to reflect and protect Māori interests. I want to ensure we take a whole of system, holistic approach wherever possible.

122. The design of the drinking water regulator is intended to strengthen and ‘hard wire’ Māori values and interests in the drinking water system.

**The three waters system architecture can be adjusted to fit with Essential Freshwater developments**

123. I have also been mindful that any system architecture developed for the three waters (including the drinking water regulator) will need to fit with, or be able to be adjusted to fit with, the system architecture developed through the Essential Freshwater programme and RMA reforms. For example, consistent with the recommendations in the Report, one of the proposed objectives of the drinking water regulator relates to recognising and providing for Te Mana o te Wai, with regard to drinking water.

124. While the drinking water regulator is not proposed to be a co-governance arrangement, it will not govern drinking water policy – Ministers will. Policy advice, monitoring and system stewardship functions for drinking water services and suppliers will remain with Ministers and their departments.
The two recommendations in the report most relevant to the three waters are being addressed

125. The Tribunal recommended that:

125.1 The Crown, with Māori, develop measures to encourage and assist local authorities to dispose of sewage effluent to land wherever feasible;

125.2 the Crown should provide urgent assistance, including the funding and expertise, for water infrastructure and the provision of clean, safe drinking water to marae and papakāinga.

126. In terms of the first of these recommendations, Cabinet has already agreed to include a proposal for a new National Environmental Standard for wastewater discharges and overflows (wastewater NES) in the Essential Freshwater discussion document, which is currently subject to public consultation. While the details of the proposed wastewater NES are yet to be determined, it is anticipated that this new regulation will drive more culturally appropriate disposal of sewage effluent. I am also working with the Minister for the Environment to consider how best to engage with iwi/Māori on the design of the wastewater NES.

127. The State Services Commission (SSC) requested that the following comments are included in this paper: “The SSC recommends that the option of a Departmental agency is considered more fully. Under a Crown agent, Ministers will be reliant on the board to take critical decisions around access to clean drinking water, which SSC see as a fundamental right and core government responsibility.

128. In terms of the first of these recommendations, Cabinet has already agreed to include a proposal for a new National Environmental Standard for wastewater discharges and overflows (wastewater NES) in the Essential Freshwater discussion document, which is currently subject to public consultation. While the details of the proposed wastewater NES are yet to be determined, it is anticipated that this new regulation will drive more culturally appropriate disposal of sewage effluent. I am also working with the Minister for the Environment to consider how best to engage with iwi/Māori on the design of the wastewater NES.

129. The State Services Commission (SSC) requested that the following comments are included in this paper: “The SSC recommends that the option of a Departmental agency is considered more fully. Under a Crown agent, Ministers will be reliant on the board to take critical decisions around access to clean drinking water, which SSC see as a fundamental right and core government responsibility.

130. Central government uses the departmental form to carry out many of its regulatory functions, including licensing of medicines, building regulations, and managing biosecurity. A Departmental agency would:

130.1 allow the regulator to be part of the same dedicated agency that leads a collaborative approach on policy, strategy, investment and the subsequent trade-offs in the three waters system;

130.2 have a chief executive that would hold a direct relationship with the appropriate Minister and be better positioned to navigate a fluid policy environment;
130.3 provide a dedicated focus on the regulatory regime, and could be hosted by an agency that has established networks with local and regional government, and a regional presence."

131. As I explain earlier in this paper, responsibility for policy and system stewardship will remain with Ministers and their departments. The regulator will not be a policy agency. Ministers will make policy, strategy and investment decisions about matters such as water service delivery, infrastructure and funding arrangements, which underpin issues relating to access to, and the affordability of, safe drinking water.

132. I am confident that the issues raised by SSC are managed by my proposals, and that a Crown agent is the best organisational form for the new regulator. My proposal also has the support of local government, which will be the main regulated party.

133. I also note that there is no existing 'dedicated' three waters government agency in which to locate the regulator as a Departmental agency. Responsibility for policy and strategy relating to the three waters system currently falls within the remit of several Ministerial portfolios and government departments. Accommodating SSC’s recommendation would require a reconsideration of these arrangements.

Engagement with iwi/Māori

134. The regulatory proposals that were considered by Cabinet on 1 July 2019 were informed by engagement with iwi/Māori. There has also been ongoing targeted engagement on the proposals for the new regulator with national representative and advisory groups.

135. Feedback on the drinking water regulator has included that Māori interests need to be reflected throughout its governance and organisational layers. The specific feedback offered on governance has been mixed – from co-governance, to a separate Māori governance entity, to Māori Board representation. However, the vital point is that Māori want to be at the decision-making table.

136. In relation to the organisational form of the regulator, there is a preference among iwi/Māori for it to have a degree of independence from Ministers, and have its own decision-making and enforcement powers. Some people have clarified that this does not mean the regulator would be independent of Māori, and that Māori must be involved in the regulator’s decision-making processes.

137. As noted earlier, the Waitangi Tribunal Stage 2 Report on the National Freshwater and Geothermal Resources Claim (Wa i 2358) recommends that the Crown co-design freshwater policy options with a national Māori body or bodies, and that this be made a regular feature of government where Māori interests are concerned.

138. While the targeted engagement, including with the Kāhui Wai Māori, has influenced the design of the drinking water regulator, it has not been a co-design process. Again, I refer to the considerations outlined at paragraphs 123 and 124 above. There will be further opportunities for Māori to contribute to the design of the regulator through the work of the Establishment Unit and the interim Māori Advisory Group.

139. Treaty of Waitangi considerations and Māori interests are being reflected and protected in the design of the regulator. The objectives, operating principles, and capability and governance arrangements proposed in this paper are also intended to equip the regulator to work closely with Māori, and to be able to respond to any decisions the Government makes about co-design in future.
Engagement with local government

140. Officials have discussed proposals for the form, location and scope of the regulator with representatives from the local government sector. As noted earlier in this paper, representatives expressed a strong preference for a standalone, Crown agent, which would be independent from Ministers and focused on improving the drinking water regulatory system.

Financial implications

Establishment Unit

141. As detailed in Part B of this paper and the accompanying business case, I seek additional operating funding of $8.6 million over 2019/20 and 2020/21 to cover the costs associated with operating the Establishment Unit for 18 months and transitioning to the new regulator. I am proposing the Establishment Unit is set up in the Department of Internal Affairs, in October 2019.

142. Cabinet Office Circular CO (18) 2, Proposals with Financial Implications and Financial Authorities, requires that proposals for funding from the between-Budget contingency demonstrate that the proposal cannot be funded through reprioritisation, cannot be deferred until the next Budget, and should be supported with the same degree of information as a Budget proposal.

143. The Department of Internal Affairs has reviewed options for reprioritising funding from within the Vote Internal Affairs baselines of the fiscal forecast period. I am advised that, although Budget 2019 initiatives have provided some relief, significant cost pressures remain an issue for the Department to manage over the forecast period. These cost pressures have been driven largely by increased demand for Crown-funded services, and the required investment to meet service delivery expectations. As such, I am advised that the costs to establish and transition to the new regulator cannot be met within the Department's existing baselines.

144. Any further reduction of funding to existing activities would have a detrimental impact on outputs and outcomes. If additional funding is not approved, the Department would need to reprioritise its existing resources and work programmes, which will lead to a reduction in the provision of goods and services, or rescinding commitments that have been entered into.

145. The funding is required urgently and cannot be deferred until Budget 2020. As explained above, designing and building the new regulator will be a significant task, which will take 12 to 18 months. Deferring the decision would mean we lose nine months of momentum.

146. It is imperative that this work begins immediately, to ensure the new regulator is ready to 'go live' when the legislation is enacted. If this does not occur, there would be a significant delay before the new organisation is ready to begin implementing the new drinking water regulatory system. This jeopardises the success of the regulator and our drinking water reform programme, and heightens the risks remaining in the system that were highlighted by the Havelock North Inquiry.

147. Accordingly, I am seeking approval for an $8.6 million increase to the Vote Internal Affairs appropriations in 2019/20 and 2020/21 to cover the costs of establishing and transitioning to the new regulator.
National Environmental Standard for wastewater discharges and overflows

148. In July 2019, Cabinet agreed to include a proposal for a new National Environmental Standard for wastewater discharges and overflows (wastewater NES) in the Essential Freshwater consultation material.

149. Recent research indicates that nearly a quarter of all wastewater plants in New Zealand are currently operating on expired consents, and nearly 60 per cent of all plants require consenting in the next 10 years. This provides a unique window to ensure that the several billion dollars’ worth of imminent investment needed in wastewater plants is done on the basis of a good regulatory standard that provides better environmental outcomes for New Zealand.

It is important this work proceeds alongside establishment of the drinking water regulator, to maintain the momentum in improving our water services.

Human rights / gender implications / disability perspective

151. There are no human rights, gender, or disability implications arising from the proposals in this paper.

Treaty of Waitangi

152. The regulatory proposals that were considered by Cabinet on 1 July 2019 included a discussion of Treaty of Waitangi implications. The establishment of the regulator is a continuation of that work.

153. Treaty of Waitangi considerations and Māori interests have been reflected and protected in the proposals for the regulator in the following ways:

153.1 by including ‘recognising and providing for Te Mana o te Wai with regard to drinking water’ in the regulator’s objectives;

153.2 in the list of proposed operating principles, which include early and meaningful engagement with Māori; understanding, supporting and enabling mātauranga Māori and tikanga Māori and kaitiakitanga to be exercised; and supporting local authority and tangata whenua engagement on Te Mana o te Wai with regard to drinking water;

153.3 in the governance arrangements, by specifying that the regulator’s board must include members with Treaty of Waitangi and tikanga Māori expertise, and through the establishment of a Māori Advisory Group;

153.4 by specifying that the regulator will need to build capability to engage kaupapa Māori in all its roles, ‘hard wire’ mātauranga and tikanga into its systems and processes, and have regional relationships and presence.

Legislative implications

154. A Water Services Bill is included on this year’s legislative programme, to implement the suite of reforms to the drinking water regulatory system that were agreed to by Cabinet on 1 July 2019 [CAB-19-MIN-0332 refers].
155. I consider that it is desirable to use a separate bill to establish the new drinking water regulator, so we can have confidence that this entity will be up and running within this term of government. My officials have been advised by the Legislation Design and Advisory Committee that this would be a sensible approach.

156. I am seeking approval to include an additional item – a 'Crown Entity (Water Services) Establishment Bill' – on the 2019 Legislation Programme, with a priority category 4 (to be referred to select committee in 2019). Subject to approval of this approach, I am aiming to introduce this bill by the end of 2019, with enactment by July 2020. The proposed timing of both bills is illustrated in the diagram at Appendix C.

157. If this approach is agreed, the proposals in Part A of this paper would be included in this bill. If not, I seek agreement to implement the proposals through the Water Services Bill.

158. There are also matters of a technical nature that would need to be provided for in legislation, regarding the establishment, transitional and organisational arrangements for the regulator and its operations as a Crown entity. These matters would include, for example:

- 158.1 transition of functions into the new regulator;
- 158.2 delegations;
- 158.3 the regulator's planning and reporting obligations during the first year of its operations;
- 158.4 how other provisions for financial accountability in the Crown Entities Act would be dealt with (such as the acquisition of financial products, borrowing, guarantees, indemnities and derivatives).

159. I am seeking authority to make decisions on these and other matters of detail that may arise during the course of drafting.

Regulatory impact analysis:

160. Regulatory impact analysis requirements apply to proposals in this paper. A regulatory impact assessment has been prepared by the Department of Internal Affairs, and is attached to this paper. The following comments have been provided in relation to the quality assurance assessment of this document.

161. "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.

162. 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.

163. 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.
164. 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.

165. 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.

166. 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.

167. 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.

Publicity

168. I intend to publish this paper, subject to any redactions, pursuant to Cabinet Office circular CO (18) 4.

Recommendations

169. The Minister of Local Government recommends that the Cabinet Economic Development Committee:

1. note that, on 1 July 2019, Cabinet:

   1.1 agreed to a suite of system-wide reforms to the regulation of drinking water, including the establishment of a centrally-located regulator to oversee the entire drinking water regulatory system;

   1.2 agreed to targeted reforms to improve the regulation and performance of wastewater and stormwater systems, including new regulatory functions that would be undertaken by a central regulatory agency;

   1.3 invited the Minister of Local Government to report back, in September 2019, with:

      1.3.1 proposals for the form, location, costs and funding of a centralised drinking water regulator; and

      1.3.2 advice on the costs, benefits and feasibility of the drinking water regulator also delivering the new wastewater and stormwater regulatory functions [CAB-19-MIN-0332 refers];
2. **note** that this paper contains advice and proposals that respond to this report back, and has been informed by a detailed business case for a drinking water regulator and a series of discussions with a group of Three Waters Regulatory Ministers;

**Part A: Institutional arrangements for a new drinking water regulator**

3. **note** that Three Waters Regulatory Ministers have narrowed down the options for the organisational form of the new drinking water regulator to a Crown agent, with a choice between:
   3.1 locating the regulator within an existing organisation, with the most logical option being the Environmental Protection Authority (EPA); or
   3.2 a new, standalone Crown agent;

4. **note** that creating the regulator as a new, standalone Crown agent would:
   4.1 deliver a strengthened approach to drinking water regulation, and a clear, enduring focus on drinking water safety;
   4.2 provide for a dedicated, independent entity with an organisational structure that relates solely to water, which would ensure drinking water regulation is prioritised and resources are directed accordingly;
   4.3 help to build and maintain public and stakeholder confidence, including the confidence of local government and Iwi/Māori;
   4.4 recognise that water is critically important, and will become more so in future;
   4.5 have longer term, strategic benefits relating to water issues;

5. **agree** to establish the drinking water regulator as a new Crown agent in legislation;

6. **agree** that the regulator’s statutory objectives would relate to:
   6.1 protecting and promoting public health outcomes and drinking water safety;
   6.2 administering the drinking water regulatory system;
   6.3 building capability among drinking water suppliers, and across the wider water industry, including by promoting collaboration, education and training;
   6.4 recognising and providing for Te Mana o te Wai, with regard to drinking water;

7. **agree** that the legislation would include operating principles to guide and inform how the regulator delivers its objectives and functions, relating to:
   7.1 building and maintaining credibility and integrity;
   7.2 ensuring the organisation has suitable expertise to build confidence in its capability as a regulator;
   7.3 developing sector capability, by promoting collaboration, education and training;
   7.4 partnering and engaging meaningfully with other people and organisations;
   7.5 partnering and engaging early and meaningfully with Māori;
7.6 understanding, supporting and enabling mātauranga Māori and tikanga Māori and kaitiakitanga to be exercised;

7.7 supporting local authority and tangata whenua engagement on Te Mana o Te Wai with regard to drinking water;

7.8 seeking to protect and enhance environmental outcomes and mitigate the negative effects of climate change;

8. agree that the legislation would include provisions that enable government policy statements to be issued to the regulator, and require the regulator to give effect to these statements, where these do not interfere with the regulator’s statutory independence in carrying out its compliance, monitoring and enforcement activities;

9. agree that the remit of the new drinking water regulator would include the delivery of the following centralised wastewater and stormwater regulatory functions, which would be provided for in legislation and reflected in the regulator’s powers and high-level organisational objectives:

9.1 providing oversight of the operation of national standards for wastewater discharges and overflows;

9.2 setting national performance metrics for wastewater and stormwater;

9.3 collecting, analysing and publishing performance information provided by wastewater and stormwater operators;

9.4 identifying and promoting national guidelines and good practices for wastewater and stormwater network design and management;

9.5 providing input into national expectations for compliance, monitoring and enforcement approaches for wastewater and stormwater network design and management;

9.6 identifying and monitoring emerging contaminants in drinking water, wastewater and stormwater;

The regulator will have a governance board and Māori Advisory Group

10. agree that the regulator would have a governance board comprising between five and seven members, appointed by Ministers;

11. agree that members of the governance board would collectively have knowledge and experience that includes:

11.1 the work of the regulator, including public health knowledge, and the broader environment in which the regulator operates;

11.2 the Treaty of Waitangi and its principles, perspectives of Māori, and tikanga Māori;

11.3 performance monitoring and general governance procedures;

12. agree that a duty of the board would be to ensure that the regulator maintains systems and processes to ensure that the organisation has the capacity and capability to uphold the Treaty of Waitangi and its principles, and to be able to engage with Māori and understand Māori perspectives;

13. agree that a Māori Advisory Group be established in legislation to advise the regulator on how to uphold Te Mana o Te Wai, and how to enable mātauranga, tikanga Māori and kaitiakitanga to be exercised;
14. **agree** that the board of the regulator would be required to have regard to the advice of the Māori Advisory Group, and demonstrate how it has done this in the entity’s annual report;

15. **agree** that the Māori Advisory Group would have between five and seven members, appointed by Ministers using a process that includes engagement with Māori;

16. **agree** that it will be important for the regulator to perform certain functions independently of Ministers and regulated parties, so it can make decisions and take enforcement actions without risk of interference;

17. **agree** to create the statutory position of ‘Chief Drinking Water Inspector’ to ensure particular powers and functions can be delegated to an appropriate position within the organisation, subject to further consideration by the State Services Commission about how this approach could work within the framework of the Crown Entities Act;

**Resourcing and funding arrangements for the new regulator**

18. **note** that the decisions made by Cabinet on 1 July 2019 empowered the regulator to carry out a range of new and enhanced functions, increased the scope of the drinking water regulatory system, and put a strong focus on compliance, monitoring and enforcement;

19. **note** that the regulator will require extensive capabilities to undertake its functions and responsibilities, and it will be important for the regulator to be well-resourced and to have both a central/national and regional presence;

20. **note** that the business case that accompanies this paper provides an overview of the size and types of functions and capabilities the regulator will need, but that these numbers require further analysis and refinement;

21. **agree** that, subject to decisions in Part B below, the financial information in the business case would undergo further development and refinement by the proposed Establishment Unit, to provide greater clarity and certainty about the levels of funding and resourcing required to operate the regulator on an ongoing basis;

22. **9(2)(n)(iv)**

23. **note** that there are choices to be made about funding mechanisms for the regulator, including an appropriate mix of Crown and third-party funding in the short and longer term, **9(2)(n)(iv)**

24. **agree** to equip the regulator with appropriate funding tools, should these be needed in future, by including provisions in the legislation that enable regulations to be made to recover costs from third parties, through fees, charges, and/or levies;

25. **agree** to include provisions in legislation that enable current drinking water regulatory staff to be transferred to the new regulator;
Part B: Transition and establishment arrangements for the new regulator

26. note that it will take up to 18 months to build the new regulator, and it is important to start this work immediately to enable a smooth and fast transition from the current regulatory regime to the new regime;

27. agree to create an Establishment Unit to design and operationalise the new regulator, and ensure it is ready to ‘go live’ when legislation is passed;

28. agree that, subject to the funding decisions below, the Establishment Unit would be:
   28.1 set up in the Department of Internal Affairs, in October 2019;
   28.2 governed by a Transition Board, which would be appointed in early 2020, and accountable to the Ministers of Local Government and Health;

29. note that the Establishment Unit would not be, or become, the regulator, but would carry out functions relating to:
   29.1 transition and implementation planning;
   29.2 building new regulatory functions;
   29.3 establishing an operating model;
   29.4 communications and stakeholder relations;

30. agree to increase funding in Vote Internal Affairs in 2019/20 and 2020/21 to fund the Establishment Unit for 18 months;

31. approve the following change to appropriations to meet the costs associated with establishing and transitioning to the new regulator, with a corresponding impact on the operating balance and net core Crown debt:

<table>
<thead>
<tr>
<th>Vote Internal Affairs Minister of Internal Affairs</th>
<th>$million - increase/(decrease)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2019/20</td>
<td>2020/21</td>
</tr>
<tr>
<td>Multi-Category Expenses and Capital Expenditure:</td>
<td></td>
</tr>
<tr>
<td>Policy Advice MCA, Departmental Output Expense:</td>
<td></td>
</tr>
<tr>
<td>Policy Advice - Local Government (funded by revenue Crown)</td>
<td>2.900</td>
</tr>
<tr>
<td>Non-Departmental Other Expense:</td>
<td></td>
</tr>
<tr>
<td>Miscellaneous Grants - Internal Affairs</td>
<td></td>
</tr>
<tr>
<td>Total Operating</td>
<td>2.900</td>
</tr>
</tbody>
</table>
32. **agree** that the proposed change to appropriations for 2019/20 above be included in the 2019/20 Supplementary Estimates and that, in the interim, the increase be met from Imprest Supply;

33. **agree** that the expenses incurred under recommendation 31 above be charged against the between-Budget contingency established as part of Budget 2019;

**Further decisions on policy advice and system stewardship arrangements**

34. **note** that after Cabinet makes decisions about the organisational form and remit of the new regulator through this paper, there will be a need to consider what these decisions mean for the location of policy advice, monitoring, and system stewardship functions, as well as Ministerial portfolio responsibilities;

35. **invite** the Minister of Local Government to report back in December 2019, in consultation with the Minister of Health, Minister for the Environment, and Minister of State Services, to confirm proposed arrangements for the future location of policy advice, monitoring, system stewardship, and portfolio responsibilities relating to the new regulator;

**Implementation of proposals and issuing of drafting instructions**

36. **note** that a Water Services Bill is included on this year’s legislation programme, to implement the suite of reforms to the drinking water regulatory system that were agreed to by Cabinet on 1 July 2019;

37. **note** that it is desirable to use a separate bill to establish the new drinking water regulator and give effect to the associated proposals in this paper, to enable this entity to be up and running within this term of government.

38. **approve** the inclusion of an additional item, a Crown Entity (Water Services) Establishment Bill, on the 2019 Legislation Programme, with a priority category 4 (to be referred to select committee in 2019);

39. **agree** that the policy decisions in Part A of this paper be implemented:

   39.1 through the Crown Entity (Water Services) Establishment Bill, if approved under paragraph 38 above; OR

   39.2 if the additional bill is not approved, through the Water Services Bill that is already included in the 2019 Legislation Programme;

40. **Invite** the Minister of Local Government to issue drafting instructions to Parliamentary Counsel in accordance with the decisions in this paper;

41. **authorise** the Minister of Local Government to approve matters of detail that may arise following decisions about the form, location, and/or remit of the new regulator, or during the course of drafting, including technical decisions around its establishment, transitional and operational arrangements.

Authorised for lodgement

Hon Nanaia Mahuta

Minister of Local Government
APPENDIX A: Three waters regulatory roles of central government and regional councils

**Drinking water**

**Central government**
- Sector leadership
  - coordination, oversight, public communications
  - monitoring of sector, leading or overseeing the response to drinking water emergencies
  - identify and monitor emerging contaminants
- Setting/reviewing standards
  - develop and review standards for drinking water
  - develop requirements for multi-barrier approach to manage drinking water risks
- Compliance monitoring and enforcement
  - consider and grant exemptions
  - audit and monitor of water safety plans (including source water risk management plans)
  - monitor drinking water suppliers
  - take enforcement actions, including working with suppliers that are at risk of defaulting on their regulatory duties.
- Capability building
  - ensure the sector has enough capability to fulfil its responsibilities
  - maintain registers for drinking water suppliers, and water sampling and testing laboratories
  - develop accreditation, certification and/or occupational regulation systems
- Information, advice and education
  - centre for technical and scientific expertise
  - best practice advice and guidance to suppliers
  - facilitate research into drinking water science
- Performance reporting
  - collate and publish drinking water compliance and monitoring information

**Regional councils**

Main regulator of wastewater discharges:
- Develop objectives, policies and rules for the control of wastewater discharges and overflows
- Consider and grant resource consent applications for wastewater discharges and overflows
- Monitor compliance with resource consents for wastewater discharges
- Take enforcement action for non-compliance with regional plans rules and/or resource consents
- Monitoring and reporting

**Wastewater**

**Central government**
- Oversight of national standards for wastewater discharges and overflows
- Input into national expectations for compliance, monitoring and enforcement approaches
- Collect, analyse and publish performance information

**Regional councils**

Main regulator of wastewater discharges:
- Develop objectives, policies and rules for the control of wastewater discharges
- Consider and grant resource consent applications for wastewater discharges
- Monitor compliance with resource consents for wastewater discharges
- Take enforcement action for non-compliance with regional plans rules and/or resource consents
- Monitoring and reporting

**Stormwater**

**Central government**
- Promote national guidelines and good practices for network design and management
- Collect, analyse and publish performance information

**Regional councils**

Main regulator of stormwater discharges:
- Develop objectives, policies and rules for the control of stormwater discharges
- Consider and grant resource consent applications for stormwater discharges
- Monitor compliance with resource consents for stormwater discharges
- Take enforcement action for non-compliance with regional plans rules and/or resource consents
- Monitoring and reporting
APPENDIX B TO CABINET PAPER

Capability and capacity of the drinking water regulator – based on status quo service delivery arrangements

Science and Technical
- Support development of standards and best practice guidance
- Input to education and training programmes, including internally and externally
- Provide science and technical advice to other parts of the organisation
- Lead relationships with national and International agencies e.g. WHO
- Facilitate and drive drinking water science research in NZ
- Participating in national and International forums
- Disseminating knowledge internally and externally
- Support the procurement of science and technical support for the organisation
- Mātauranga Māori
- Water science – microbiology, chemistry
- Groundwater science
- Toxicology
- Water treatment
- Engineering
- Public Health
- Modelling
- Planning and consenting practice

Operational Policy
- Develop standards and best practice guidance, including tools
- Develop and monitoring accreditation and licensing regimes
- Develop regulatory strategy and practice
- Monitoring effectiveness of regulatory practices
- Operational intelligence and data analysis
- Reporting on sector performance
- Input to policy development impacting on role of regulator and on drinking water quality

Regulatory Operations
- Maintain register of suppliers
- Managing water supplier data
- Compliance monitoring and enforcement of Water Safety Plan requirement
- Receive and assess requests for exemptions
- Resolving and responding to incident reporting and complaints
- On call function
- Undertaking investigations
- Issuing compliance orders
- Taking enforcement actions
- Leading response to drinking water emergencies, and participating in leadership of response to other emergencies, e.g. earthquakes, weather events

Legal
- Provide legal advice to support compliance and enforcement actions
- Support the development of regulatory practice
- Support the development of tools and guidance
- Supporting operational policy development
- Provide in-house legal training, as required

Education and Engagement
- Lead development of sector engagement and education plans
- Support the development of regulator workforce education plans
- Work with education providers to ensure training is available
- Deliver in-house capability building
- Develop stakeholder engagement strategy and plans
- Lead and support engagements with suppliers
- Lead and support engagement with iwi and Māori, including building relationships
- Lead sector education campaigns
- Provide marketing and communications advice and support
- Media management
- Support international engagements

Corporate and Governance
- IT, including development
- Information Systems
- Human Resources
- Finance
- Organisational strategy and planning
- Risk & Assurance
- Property
- Procurement and contract management
- Organisational performance reporting
- Internal communications
- Governance support (board secretariat)
- Advisory group support
- Ministerial servicing
- Project management

Total FTE: 100-134, excluding corporate and governance

Possible efficiencies in future?

What if there were fewer drinking water suppliers?
- Reduction in number of water safety plans that need to be reviewed by regulator
- Suppliers have more capability to prepare and implement water safety plans, and meet other regulatory requirements
- Streamlined engagement (with fewer suppliers)
- More technical innovation (e.g. real-time sensors)

This could mean the regulator requires fewer resources in certain roles: compliance and enforcement; education and engagement

The regulator will need to build capability to engage in kaupapa Māori in all its roles, and 'hard wire' mātauranga and tikanga into its systems and processes

Roles
- Chief Science Advisor
- Chief Engineering Advisor
- Science and technical advisors
- Māori advisors
- Policy advisors (mix of seniority, numbers)
- Māori Advisors
- Research and evaluation advisors
- Data analyst
- Administrative support
- Compliance officers (drinking water assessment) (mix of seniority, numbers)
- Enforcement officers
- Māori Advisers
- Administrative support
- Legal counsel
- Māori relationship and engagement advisors
- Relationship and engagement advisors
- Learning and development advisors
- Trainers
- Various

Suppliers have fewer drinking water suppliers)
-fewer drinking water suppliers)
- Fewer drinking water suppliers)
- Fewer drinking water suppliers)
- Fewer drinking water suppliers)
- Fewer drinking water suppliers)
Appendix C - Implementation timeline for the drinking water regulator

2019 2020 2021

- Sept Oct Nov Dec Jan
- Feb March April May June July Aug
- Sept Oct Nov Dec Jan
- Feb March April

New drinking water regulator

- Cabinet decision on the regulator
- Interim CE appointed to Establishment Unit
- Water Services Bill is introduced

Establishment Unit key tasks:
- Undertake transition and implementation planning
- Build new regulatory functions
- Establish an operating model
- Develop communications and stakeholder capability
- Refine size of the regulator and develop detailed business case

Regulator Board appointed

Regulator goes live

Ministry of Health – regulatory oversight of the current drinking water regulatory regime

‘GO LIVE’
New regulatory regime
(subject to Water Services Bill enactment)

Establishing the new drinking water regime

- Select committee deliberations
- Water Services Bill is introduced (uncertainty over introduction date due to size and complexity)
- Select committee deliberations
- (Uncertainty around timeframes in select committee phase due to size and complexity)

Water Services Act is passed
(subject to select committee deliberations)