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 document has been proactively released:

30 September 2019, Regulatory Impact Assessment: Decision on the organisational form of a new drinking water regulator, Department of Internal Affairs.

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.
Coversheet: Decision on the organisational form of a new drinking water regulator

Advising agencies | Department of Internal Affairs
---|---
Decision sought | Policy decisions of the organisational form of the new drinking water regulator
Proposing Ministers | Minister of Local Government

Summary: Problem and proposed approach

Problem definition
What problem or opportunity does this proposal seek to address? Why is Government intervention required?

In July 2019, Cabinet agreed to a suite of system-wide reforms to the regulation of drinking water. This included the establishment of a new, centralised drinking water regulator to support a stronger, centralised approach to drinking water compliance, monitoring and enforcement.

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.

Cabinet invited the Minister of Local Government to report back on proposals for the institutional form, location, costs, and funding of a centralised drinking water regulator.

This Regulatory Impact Assessment (RIA) is intended to support policy decisions by Cabinet on the organisational form of the new drinking water regulator. It is intended to be read alongside a corresponding detailed Business Case, which is appended to the Cabinet paper.

Proposed approach
How will Government intervention work to bring about the desired change? How is this the best option?

We propose that a Crown Agent is the preferred form of the new drinking water regulator. As an independent Crown Agent, the regulator would have strong credibility and be able to gain the confidence of the drinking water sector, the Government and the New Zealand public. Its independence would protect the integrity of the regulator’s role in evidence-based decision making, and use of compliance and enforcement powers. Having a dedicated focus on drinking water regulation, and the ability to maintain that focus over time, means the regulator is also more likely to build capability and gain the confidence of the regulated parties.

A Crown Agent is the form most common to other, similar regulatory bodies in New Zealand.
The strong synergies between the new drinking water, wastewater and stormwater regulatory functions means there are significant advantages in combining these in a single regulator. The new, centralised wastewater and stormwater regulatory functions share many of the same systems, approaches, and scientific and technical expertise as the drinking water functions. This would also enable skills and knowledge across drinking water, wastewater and stormwater to be pooled, shared and developed further, helping to create a centre of water expertise.

Section B: Summary Impacts: Benefits and costs

Who are the main expected beneficiaries and what is the nature of the expected benefit?

The RIA that accompanied Cabinet’s decisions on 1 July 2019 gave an assessment of the likely costs and benefits of the enhanced three waters regulatory regime.

The planned new drinking water regulator is a key part of the enhanced regulatory regime. However, all the elements of the regulatory regime are complementary and it is difficult to attribute or allocate specific benefits that the regulator by itself would achieve outside those wider benefits.

The primary benefits of an enhanced drinking water regulatory regime are the ongoing avoided costs of illness from waterborne diseases in drinking water (estimated to be at least 34,000 illnesses across New Zealand every year), and the avoided costs from a significant contamination event (such as that which affected Havelock North in 2016, where around 5000 people became ill and there were up to four associated deaths).

There are also indirect benefits from the potential avoided cost in terms of the negative impact on tourism to New Zealand from a significant contamination event, as well as from ongoing ‘boil water’ notices.

The total estimated monetised benefits could range from $13.5 million to $26.4 million per annum.

Where do the costs fall?

The costs of the system-wide reforms to the regulation of drinking water and source water will primarily fall on drinking water suppliers. The RIA that accompanied Cabinet decisions in July 2019 gave an assessment of the likely costs and benefits of the enhanced three waters regulatory regime. These costs and benefits have been included in this RIA to provide context for the overall costs and benefits of the regulatory regime agreed to by Cabinet in July.

(Those costs for drinking water suppliers were split between larger suppliers (i.e. those that supply drinking water to more than 500 people), and small suppliers (i.e. those that supply drinking water to less than 500 people). The total monetised costs for both those groups of suppliers include estimated capital expenditure of $431 million to $695.5 million, and estimated operating expenditure of $31.8 million to $117.6 million per annum.

The costs for the new regulator to deliver its role and services, as previously agreed by Cabinet, fall on the Crown. The total monetised cost of delivering the new drinking water, wastewater and stormwater regulatory functions is estimated at $32.3 million to $44.0 million per annum by year five of the regulator’s operation. This is separate from costs of
establishing the new regulator of $7.2 million to $8.6 million (over 18 months).

There are some additional institutional costs associated with a Crown Agent compared with other institutional forms; however, these are small compared with the overall costs associated with the new regulator and regulatory system.

The recovery of the operational costs of the regulator from the regulated parties, primarily those that own and manage drinking water supply schemes, may be considered in the future, but a decision on cost-recovery is not proposed at this time.

What are the likely risks and unintended impacts, how significant are they, and how will they be minimised or mitigated?

In terms of implementation of the new regulatory regime, there is an overall risk that drinking water suppliers, particularly small suppliers, will not have the capability or resource to comply with the regulatory requirements. A core responsibility of the regulator will be building the capability of the sector, including ensuring suitable training is available, and there is information, advice and education to support those suppliers to comply with their obligations.

There are risks for the new drinking water regulator relating to its resourcing – including lack of sufficient capability, capacity, expertise, and/or funding to carry out its key functions. There are potential risks that existing regulatory staff choose not to work for the new regulator, for example, and that the regulator will be unable to recruit additional staff in sufficient numbers or with the required levels of expertise.

These risks can be mitigated by moving quickly into the establishment phase of the new regulator, to provide continuity to existing staff (such as drinking water assessors), to attract new people to the industry, and to start preparing workforce recruitment strategies and ensuring training opportunities are in place. In addition, some of the regulator’s immediate resourcing needs are likely to relate to operational policy capability (to develop regulations and guidance material, for example), as well as for education and engagement. These roles are less specialised and therefore present less of a risk in terms of availability.

Effective, dedicated funding and resourcing for the new regulator, both during establishment and as part of its ongoing operational delivery, can also help to manage this risk.

In addition, there are risks that the new regulator will find it difficult to build and maintain credibility and confidence among regulated parties, other stakeholders, and the public, have a dedicated focus on drinking water regulation, and/or have appropriate levels of independence that protects the integrity of its evidence-based decision making, and use of enforcement and intervention powers.

These factors have been built into the assessment criteria that were used to analyse the options for the organisational form of the regulator. Part of the reason that the Crown Agent (independent, standalone option) is the preferred form for the new regulator is its ability to address and overcome these factors. This option was assessed as performing very strongly in terms of building credibility and confidence, having a dedicated focus on drinking water regulation, and having an appropriate level of independence. Given the new regulator will have a significant focus on implementing the new drinking water regulator system, and making (potentially difficult) compliance and enforcement decisions, the independence of the Crown Agent model (real and perceived) is considered to be an important and attractive feature.
Identify any significant incompatibility with the Government's 'Expectations for the design of regulatory systems'.

The proposals in this RIA are consistent with the Government's 'Expectations for the design of good regulatory practice'.

Section C: Evidence certainty and quality assurance

Agency rating of evidence certainty?

There are some gaps in the evidence base, predominately in terms of the benefits of the proposals.

Certainty around evidence of the costs of the overall regime agreed to in July 2019 remains 'low to medium'. There is medium evidential certainty in terms of the cost of the new regulator, as this is underpinned by a detailed Business Case, but further refinement of costs would be undertaken by the proposed Establishment Unit.

Monetised evidence for the benefits of the enhanced drinking water regulatory regime are less certain, particularly in terms of reduction in illness caused by contaminated drinking water and the adverse impact on tourism.

Due to the sporadic nature and small scale of most outbreaks, identifying an annualised cost of those outbreaks is difficult, and the certainty of any monetised benefits must be treated as low. Published reports and studies have been used where possible to improve our confidence in those benefits, which are not insignificant. This is illustrated by the cost of the Havelock North contamination event, which has been estimated at $21 million, spread across individual households, businesses, central and local government, and the health and disability sector.

The benefits of avoided illness are also likely to be underestimated because of the significant challenges associated with identifying the number of the people who suffer from illnesses caused by poor drinking water (e.g. gastrointestinal illness), and the consequent benefits of avoiding the costs associated with that illness.

To be completed by quality assurers:

Quality Assurance Reviewing Agency:

A joint panel with representatives from the Treasury's Regulatory Quality Team (RQT), the Ministry for the Environment, the Ministry of Health, and the Department of Internal Affairs has reviewed the Regulatory Impact Assessment (RIA).

Quality Assurance Assessment:

The review panel considers that the RIA partially meets the Quality Assurance criteria.

Reviewer comments and recommendations:

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

The RIA draws on the results of earlier consultation on the role of the regulator, although
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 by Cabinet. A case has been made for a standalone Crown Agent, which is convincing on the grounds of independence of decision making, perceived credibility, and ability to focus on drinking water. The RIA also indicates that there are synergies in having stormwater and wastewater regulated by the same Crown Agent.

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

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

The panel notes that there will be further work on implementation in the next stage. As the design details are developed, it is important that better costs estimates are developed, along with further analysis of capability, resourcing, and affordability for suppliers.
Impact Statement: Decision on the organisational form of a new drinking water regulator

Section 1: General information

<table>
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<tr>
<th>Purpose</th>
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<tr>
<td>The Department of Internal Affairs (DIA) is solely responsible for the analysis and advice set out in this RIA, except as otherwise explicitly indicated.</td>
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</table>

This analysis and advice have been produced for the purpose of informing Cabinet’s final policy decisions on the operational form of the planned new drinking water regulator.

Context

In 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 to support a stronger, centralised approach to drinking water compliance, monitoring and enforcement [CAB-19-MIN-0332 refers]. 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. As part of these decisions, a RIA was prepared and considered.¹

A key element of this package of regulatory reforms was the establishment of a centrally located regulator to provide national oversight of the regulatory system. In July 2019, Ministers agreed to the broad scope and functions of the central regulator and invited the Minister of Local Government to report back, in September 2019, on proposals for the institutional form, location, costs, and funding of a centralised drinking water regulator. The Minister was also asked to consider whether the wastewater and stormwater functions should also be undertaken by the new drinking water regulator.

This RIA is intended to support the policy decision by Cabinet on the organisational form of the new drinking water regulator. It is intended to be read alongside the detailed Business Case (attached to the corresponding Cabinet paper) that also considers these issues.

Following Cabinet decisions in September 2019, further analysis of capacity and capability required by the regulator to carry out its functions, and the process for transiting the regulatory oversight functions from the Ministry of Health to the new regulator, will be implemented and managed by an Establishment Unit and Transition Board.

In December 2019, a third tranche of policy decisions relating to the service delivery and funding arrangements for three waters will be considered by Cabinet. Lifting the three waters sector’s capacity and capability to respond to the strengthened regulatory system is a key element of the reform package. However, the transition from current state to new service delivery and funding arrangements for three waters will be challenging, and the

focus in December will be to provide an update on progress and seek agreement to pursue options, rather than making significant reform decisions. This is consistent with the overall transition approach for the regulatory regime, which will focus first on the most capable providers, allowing time for the wider sector to build its capability.

**Scope**

The scope of this RIA is focused on the analysis of the institutional form of the new drinking water regulator, and its ability to carry out the functions of the central regulator that were agreed to by Cabinet in July 2019. The RIA summarises the problem and includes analysis of the impacts and stakeholder views of the three shortlisted options, as well as a cost benefit analysis of the preferred option. The costs have been based on the best information available.

The corresponding Business Case includes a full range of options considered, information on the costings, a discussion on establishing the new regulator and transition arrangements, key project risks and the approach to developing a monitoring and evaluation plan and performance framework.

The decisions being sought by Cabinet now relate to the regulator’s institutional arrangements, functions, and transitional and establishment arrangements (including establishment funding).  

The information in this RIA, and the corresponding Business Case, is designed to support Ministers in the next tranche of their decision making.

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**Key limitations or constraints on analysis**

**Level of certainty of cost and benefits estimates**

The cost estimates presented in this RIA are based on the most up-to-date information available. We are continuing to build our understanding of the how the new regulatory regime will operate and how the application of proportionate risk-based approach to compliance and future arrangements for delivery of water services will impact on smaller suppliers. The current information gaps around those small suppliers means that it is difficult to provide a cost estimate with a high level of certainty.

The cost estimates in this RIA are presented using a “low” and “medium” range and are taken from the Business Case. They provide an envelope to support Ministers to make future decisions and, if approval is given to proceed, a platform for officials and the Establishment Unit to undertake more detailed planning for establishing the regulator.

The cost estimates have been tested with the core Three Waters Review agencies, and the steering committee.²  

The benefits of the new drinking water regulator have also been estimated using the best...

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² The Three Waters Review agencies consist of DIA, the Ministry of Health and the Ministry for the Environment. The Steering Committee is comprised of director-level officials from the three waters agencies, and an independent member from the Ministry of Business, Innovation and Employment.
possible information. While the planned drinking water regulator is a key part of the enhanced drinking water regulatory regime to which Cabinet has already agreed, all the elements of the new regime are complementary.

This means that it is not possible to attribute or allocate specific benefits that the institutional form of regulator by itself would achieve outside those wider benefits. Consequently, the benefits identified in this RIA reflect those generated from the improvements to the regulatory regimes as a whole, acknowledging that the new regulator is a key enabler to realising those benefits.

Responsible Manager (signature and date):

Alan Prangnell
Director
Central Local Government Partnerships
Department of Internal Affairs
Section 2: Problem definition and objectives

2.1 What is the policy problem or opportunity?

Why do we need a new drinking water regulator?

We cannot be confident in all cases that water out of the tap is safe to drink.

The Havelock North contamination event in 2016 drew the nation's attention to the risks and issues facing our drinking water regulatory and service delivery systems. It is clear, though, that even if this event had not occurred, there is still a very strong case for improvement.

Every year, at least 34,000 people are estimated to become ill from their drinking water, and many thousands must boil their water to drink it safely. Ongoing annual reports of drinking water quality published by the Ministry of Health (MoH) make it clear that demonstrably safe drinking water is not always being supplied around the country.

There are a number of challenges with the current regulatory arrangements.

While it can be expected that some drinking water suppliers have made changes as a result of Havelock North event, there are systemic issues with current regulatory arrangements including:

- many drinking water suppliers are not regulated at all, and there are weak requirements on suppliers that are regulated;
- a lack of central leadership and oversight of the regulatory system;
- limited compliance and enforcement activity since the current system was introduced;
- significant variability in the size and capability of suppliers, with little or no support to help them comply with regulatory requirements, particularly at the regional level;
- regulatory gaps in relation to the regulation of source waters; and
- a lack of recognition of mātauranga Māori and how it can be integrated into better water management frameworks, to support kaitiakitanga.

A new drinking water regulator will be critical to lifting performance of the system.

On 1 July 2019, Cabinet agreed in principle to establish a centrally-located drinking water regulator with a strong regional presence, which would be responsible for overseeing the entire drinking water regulatory system.

A new, central drinking water regulator will contribute to the provision of access to safe drinking water by supporting:

- increased accountability, as regulatory requirements are enforced and suppliers are held to account for supply of safe drinking water;

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• improved central oversight and public transparency of performance;
• improved supplier understanding of their obligations;
• better guidance and support to the sector for the safe operation of drinking water supply;
• improved capability within the drinking water sector;
• mātauranga and tikanga Māori, and kaitiakitanga to be exercised.

What will the new regulator do?
The functions of the new regulator have been agreed by Cabinet

Cabinet has agreed that the functions of the drinking water regulator will include:

- **Sector leadership**: overseeing and monitoring of drinking water safety; public communications; ensuring coordination across the sector; leading or overseeing the response to drinking water emergencies; and emergency response planning.

- **Setting standards**: developing standards for drinking water and source water, and requirements relating to the multi-barrier approach to drinking water safety.

- **Compliance, monitoring and enforcement**: taking enforcement actions; maintaining registers for drinking water suppliers, and water sampling and testing laboratories; compliance auditing and monitoring of water safety plans; monitoring and auditing drinking water suppliers, and monitoring other obligations on local authorities; investigating complaints about suppliers; and working with suppliers that are at risk of defaulting on their regulatory duties.

- **Capability building, accreditation, and licensing**: working with suppliers and training providers to ensure suitable training is available and being taken up. In the longer term, accreditation, certification and/or licensing systems will be introduced for suppliers and/or key roles.

- **Information, advice and education**: informing regulated parties of their regulatory obligations and providing guidance on how to comply with obligations. Being a centre of technical and scientific expertise, providing best practice advice and guidance, and coordinating and facilitating research into drinking water science.

- **Performance reporting**: collating and publishing drinking water compliance and monitoring information for suppliers.

Cabinet also agreed that the feasibility of including the targeted improvements to the regulation of wastewater and stormwater within the responsibilities of the new drinking water regulator should also be considered. This is due to the strong synergies between drinking water, wastewater and stormwater, including utilisation of many of the same systems, approaches, and scientific and technical expertise. The new centralised wastewater and stormwater functions include:

- providing oversight of the operation of national standards for wastewater discharges and overflows;
monitoring the risk management practices of wastewater and stormwater network operators, including consent renewals;

collecting, analysing and publishing the information provided by wastewater and stormwater operators, in accordance with nationally-prescribed environmental performance metrics;

identifying and promoting national guidelines and good practices, including for setting consent conditions for discharges from stormwater networks, and approaches to wastewater and stormwater network design and management;

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

identifying and monitoring emerging contaminants in drinking water, wastewater and stormwater.

The Minister of Local Government is proposing that these wastewater and stormwater functions be part of the role of the new drinking water regulator.

Which stakeholders have provided feedback on the establishment and functions of the regulator?

Proposals to strengthen the overall three waters regulatory regime (including the creation of a new regulator) were tested with stakeholders with regulatory interests and expertise in drinking water, source water, wastewater, and stormwater, including from the following sectors: local government; health; environment; rural; Māori; and industry.

This was followed by nine targeted engagement workshops in regions across the country carried out by DIA, MoH and the Ministry for the Environment (MfE). In addition, officials held stakeholder briefings and meetings with:

- government agencies affected by the proposals;
- iwi/Māori (including Kāhui Wai Māori);
- local government reference groups (representing regional councils and territorial authorities); and
- water advisory bodies.

In parallel with the regional targeted engagement workshops, MoH officials held additional engagement meetings with:

- drinking water assessors, medical officers of health and other public health professionals; and
- entities with roles relating to drinking water and its regulation (including the Ministry for Primary Industries, Te Puni Kōkiri, the Ministry for Business, Innovation and Employment, and the Ministry of Education).

A Local Government New Zealand Reference Group met in August 2019 to provide specific feedback on the institutional form of the new regulator.
More information on stakeholder feedback is available in Section 5.

### 2.2 Who is affected and how?

The affected parties for the proposed change are listed in the following table.

<table>
<thead>
<tr>
<th>Affected party</th>
<th>How this party is affected</th>
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<tbody>
<tr>
<td><strong>Owners of drinking water supply schemes and operators of drinking water supply schemes</strong></td>
<td>The new regulator will regulate the owners and operators of drinking water supply schemes (except for individual self-suppliers), who may or may not be the same legal person. This will include the registration and the licensing of key people. The size and capability of these owners and suppliers is highly variable, ranging from small, user/owner rural schemes and marae to large providers of major urban centres.</td>
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<tr>
<td><strong>Local government</strong></td>
<td>Territorial authorities and regional councils are responsible for supplying drinking water for people in their areas and are, as suppliers, subject to drinking water regulations. Both regional councils and territorial authorities also have specific planning roles and responsibilities under the Resource Management Act 1991 that impact on drinking water sources. As discussed above, the regulator will (subject to Cabinet agreement) also have a small role in oversight and guidance of wastewater and stormwater operators. This may have a limited impact on regional councils’ and territorial authorities’ management of stormwater and wastewater.</td>
</tr>
<tr>
<td><strong>Government agencies subject to regulations</strong></td>
<td>Several government agencies are suppliers of drinking water and are subject to these regulations. These include Department of Conservation, Ministry of Education, Department of Corrections, and the New Zealand Defence Force.</td>
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<tr>
<td><strong>Iwi / Māori</strong></td>
<td>Iwi and Māori are key affected parties for the drinking water regulator because of their role as kaitiaki (guardians) of Te Taiao (nature). Iwi and Māori are also affected through the role of marae as providers of drinking water (who often have a very small resident population, but which often host large numbers of temporary visitors).</td>
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<tr>
<td><strong>Drinking water assessors and public health officers</strong></td>
<td>Drinking water assessors and public health officers are affected by the establishment of a new drinking water regulator because they play key roles in monitoring water quality and safety, and monitoring public health risks (and responding to emergencies).</td>
</tr>
<tr>
<td><strong>The wider public</strong></td>
<td>The wider public will also be affected by the operation of the drinking water regulator, in terms of its ability to successfully...</td>
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</table>
2.3 Are there any constraints on the scope for decision making?

In July 2019 Cabinet agreed to a suite of system-wide reforms to the regulation of drinking water and source water, including a number of centrally located regulatory functions which are designed to:

- provide clear leadership for drinking water regulation;
- significantly strengthen compliance, monitoring and enforcement relating to drinking water regulation, and take a tougher, more consistent approach to enforcement;
- manage risks to drinking water safety and ensure source waters are protected; and
- ensure people can access water that is safe to drink, by requiring all suppliers to be part of the regulatory system and to provide safe drinking water on a consistent basis.

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

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

Cabinet agreed to establish a central regulator to carry out those drinking water functions subject to further advice on its institutional form, and machinery of government arrangements. They also requested advice on including the wastewater and stormwater regulatory functions within the responsibilities of the drinking water regulator.

This RIA follows the Business Case and is focused on the preferred institutional form the new regulator to deliver the functions outlined above.

The decisions being sought by Cabinet relate to the institutional arrangements, functions and transitional and establishment arrangements (including establishment funding).

Further information on the service delivery arrangements for the new regulator is available in the Business Case, although these are not tied to any specific institutional form.

Decisions on the long-term funding of the drinking water regulatory are not being sought at this time. 9(2)(f)(iv)

If Cabinet gives approval to proceed, officials will build on the current Business Case to plan for the establishment of the regulator, and further develop the organisational design and cost estimates.
Section 3: Options identification

3.1 Which options have been considered?

Identifying the options

Officials have considered a range of options for the organisational form of the new drinking water regulator.

An initial long list was narrowed down to organisational form options that:

- **sit within the Executive Branch**: The regulator does not perform any judicial or parliamentary support functions;

- **are non-commercial in nature**: The regulator will not have any commercial objectives;

- **provide for a degree of Ministerial independence and oversight**: As noted in the Business Case, the selection of the preferred organisational form involves careful judgement about what is the appropriate level of Ministerial independence and oversight in order to achieve the desired regulatory objectives.

Consequently, all options for commercial entities, judicial entities and parliamentary support entities are excluded from further assessment. This is because the commercial, judicial and parliamentary functions of these entities do not align with the proposed regulatory functions of the new drinking water regulator.

There are also some organisational form options that broadly sit within the range of viable options, but which officials have excluded at this stage of the assessment process. Those excluded are:

- **Autonomous and Independent Crown Entities**: The level of independence from Ministerial influence means that it would be particularly difficult to direct organisational change (i.e. where there is poor performance by the regulator). The State Services Commission (SSC) supported the exclusion of these form options.

- **Non-statutory boards and Public Finance Act Schedule 4 organisations**: These organisations tend to have boards that also act as the provider of the services for which they are designed or may be supported by a small secretariat. The nature of the responsibilities of the drinking water regulator requires a full-entity regime; therefore these models are not appropriate.

- **Agency Joint Venture**: The Agency Joint Venture is a new form that will be enabled by the introduction of the new Public Sector Act. It is designed to support coordination of effort for issues that cross agency boundaries, assigning accountabilities to a board of chief executives without changing agency structures. This option is unlikely to be able to provide the level of independence required for the regulator, and the scope of the regulator does not warrant multi-agency collective accountability structures.
Shortlisted options

This RIA presents three options for the organisational form of the new drinking water regulator:

- **Option 1**: Business unit in a department (this option reflects the status quo).
- **Option 2**: Departmental agency.
- **Option 3a**: New Crown Agent – Independent, standalone drinking water regulator.
- **Option 3b**: Existing Crown Agent – Environmental Protection Authority.

These options are described in more detail below.

**Business unit in a department**

All regulatory functions would be housed in a new business unit of an existing government department. A manager reporting to the chief executive of the department would be responsible for the day-to-day management of regulatory functions.

The department’s chief executive would be accountable to a Minister for the department’s performance of its new regulatory functions.

This option provides for a high degree of Ministerial oversight and direction, as the relevant Minister would have power to direct the regulator to give effect to the policy priorities of the Government of the day. Similarly, it would have to give effect to a whole-of-government approach, if directed by the Ministers of Finance and State Services.

The regulator could be given statutory independence for its functions, if so desired.

Although this option would require additional capacity and capability beyond that provided by the current regulatory arrangement, it represents the minimum requirement to deliver the functions that have been agreed to by Cabinet. In the absence of any further decisions by Cabinet, the new regulator would default to being housed within an existing department as an enhanced and expanded business unit, building on the current regulatory arrangements.

For these reasons, this option has been identified as the counterfactual/status quo for the purpose of this RIA.

**Departmental agency**

All regulatory functions would be housed in a new departmental agency, which would be established for the purpose. The agency would have its own chief executive, appointed by the State Services Commissioner. The departmental agency would be hosted within an existing department, would be legally part of the host department, and its staff would be employed by the host.

Under proposed state sector reform changes, the departmental agency should align to the host agency as part of a wider sector, be operationally and/or strategically aligned to the host agency, and/or share corporate services with the host.

Under this model, the department agency’s chief executive is accountable to a Minister for the agency’s performance of its regulatory functions. The Minister responsible for the
agency can be different from that of the host department.

This option also provides for a high degree of Ministerial oversight, control and accountability. With this option, the Minister would have a close relationship with the regulator and would have the power to direct the regulator to give effect to government policy.

Again, the regulator can be given statutory independence for its functions if so desired.

**New Crown Agent – Independent, standalone drinking water regulator**

All regulatory functions would be housed within a newly established Crown Entity. A Crown Agent is a non-company legal entity wholly owned by the Crown.

The Crown Agent is governed by a board, which is accountable to the primary Minister. The board has responsibility for the regulator’s performance and appoints the chief executive.

Depending on primary legislation that creates and empowers the Crown Agent, regulatory accountabilities may sit with a board (e.g. the New Zealand Transport Agency), or as a designated role (e.g. the Director of Maritime NZ). The Crown Agent could have a chief executive accountable to a board appointed by the relevant Minister.

Having a separate governance board puts the regulator at arms-length from Ministers. Under this model, a regulator must “give effect to” policy that relates to the entity’s functions and objectives, if directed by the Minister. Similarly, it must “give effect to” a whole-of-government approach, if directed by the Ministers of Finance and State Services.

It can be given statutory independence for its functions, if so desired.

**Existing Crown Agent – Environmental Protection Authority**

All the regulatory functions would be housed in an existing Crown Agent, the Environmental Protection Authority (EPA).

As a Crown Agent, the EPA is a non-company legal entity wholly owned by the Crown. Governed by a Board, the EPA is accountable to the Minister for the Environment, and the Minister for Climate Change on issues relevant to their portfolios. The Ministry for the Environment monitors its activities and is the Government's principal advisor on environmental policy and legislation.

The EPA has responsibilities to administer nationally significant proposals under the Resource Management Act 1991, implement the Hazardous Substances and New Organisms Act 1996, regulate activities in New Zealand’s Exclusive Economic Zone, and administer the NZ Emissions Trading Scheme.

**Counterfactual**

As noted above, the counterfactual in this instance would be housing the new regulatory functions in a business unit in a department (Option 1), not the existing regulatory model where the MoH has the primary regulatory responsibility for drinking water standards. This is because the new role and functions of the drinking water regulator have already been agreed by Cabinet.
3.2 What criteria, in addition to monetary costs and benefits, have been used to assess the likely impacts of the options under consideration?

**Eight drinking water focused criteria have been developed**

Officials have designed criteria to assess the options identified in section 3.1 for the organisational form for the new drinking water regulator, in accordance with guidance from the SSC.

In developing these criteria, officials were mindful to ensure that they:

- considered the drinking water context;
- addressed the issues and problems identified in the July 2019 Cabinet paper;
- were consistent with the objectives and criteria from the July 2019 RIA;
- captured the intent of the drinking water regulatory objectives without pre-empting the outcome of the option assessment; and
- contributed to upholding Te Mana o te Wai and reflecting the relationship Māori have with water as kaitiaki.

Two overarching criteria were also used as an initial test to ensure that these options passed some preliminary critical success factors:

- **Contributing to Te Mana o te Wai and reflecting the relationship Māori have with water as kaitiaki**: Enabling obligations of the Treaty of Waitangi to be met and ensuring iwi/Māori interests are reflected in the form of the regulator.

- **Supporting cohesion of the state sector**: In discussion with the SSC, an overarching criterion was identified that reflects how well the shortlisted options aligned with the wider state sector, and contributed to the overall cohesion of the system.

No option for the drinking water regulator’s form would have been progressed if it did not meet these two overarching criteria.

Based in the issues identified above and the overarching criteria, officials developed the following eight drinking water-focused criteria – listed in order of priority:

- **Credibility as an independent regulator and ability to gain confidence of the sector, government, Māori and the New Zealand public**: Does this option allow an independent regulator to give confidence to the sector, government, Māori and the New Zealand public? Does it enable the regulator to have the competency to ensure that drinking water is safe, and that sources of drinking water are adequately protected?

- **Ability to have a dedicated focus on drinking water regulation, and maintain that over time**: Does this option support a dedicated and enduring focus on protecting the quality of drinking water over time?

- **Has an appropriate level of independence that protects the integrity of its evidence-based decision-making and enforcement and intervention powers**: Does this option enable the new regulator to establish and maintain an appropriate
level of independence in order to significantly strengthen compliance, monitoring and enforcement of drinking water regulation?

- **The performance of the regulator is transparent**: Does this option enable a clear assessment of the regulator’s performance with regards to drinking water regulation?

- **The ability to recruit, build and retain people with the appropriate technical and regulatory skills, stakeholder relationships, and decision-making capability**: Does the form of the regulator mean that people with the right skills and expertise will be able to be recruited and retained?

- **Affordability**: Does this option provide value for money as compared to existing public-sector agencies (including regulators) that are similar in size and scale, and drinking water regulators in other jurisdictions?4

- **The ability for the Government to deal quickly and effectively with a regulator that is not adequately achieving the objectives set for it**: Does this option provide the Government with the ability to address poor performance?

- **Responsiveness to arrangements that may arise from future decisions on Essential Freshwater and resource management reform**: Does this option allow future flexibility in the form of the regulator to allow it to accommodate other functions over time if required?

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4 An affordability criterion has been included for the purpose of this RIA, and was not listed in the criteria in the Business Case when assessing institutional form options. However, cost and affordability information for the regulator to deliver the functions agreed by Cabinet is included in another part of the Business Case, and more information is available there.
3.3 Which of these options is the proposed approach?

On balance, a Crown Agent is the preferred form for the regulator

The analysis in Section 4 below shows that Options 2, 3a and 3b could all undertake the regulation of three waters. However, Option 3a, a new standalone Crown Agent, scores best overall against all the criteria, and is consequently the strongest option. It scores particularly well against the highest priority criteria and critical success factors.

It is critical that the new regulator has credibility and can quickly gain the confidence of the regulated sector (including local government), central government, Māori and the New Zealand public. Given the regulator’s core responsibility will be to implement the new drinking water regulatory system, and it will have a range of compliance, enforcement and intervention powers, it is also critical that it has the (real and perceived) independence needed to protect the integrity of its evidence-based decision making. These factors are reflected in the ordering and prioritisation of the assessment criteria.

Option 3a, a new standalone Crown Agent, has been assessed as having the greatest likelihood of being seen as credible by the sector and public, with the further distance from Ministers supporting independence of decision-making and enforcement activity. Its dedicated focus on drinking water regulation, and ability to maintain that focus over time, means that it is also more likely to build capability to attract high quality staff, gain the confidence of the regulated parties, and secure the resources it needs to operate effectively.

While option 3b, locating the regulator within the EPA is a plausible option, particularly in terms of maintaining the connection to wider environmental management system, a standalone, dedicated regulator carries fewer risks, and offers more opportunity to address drinking water challenges.

Option 2, a departmental agency, has been assessed as being as flexible as Option 3a and 3b, in terms of responding to decisions that may arise from the wider Essential Freshwater and resource management reform programmes. Option 2 scores better against the affordability criteria than Option 3, but less well than Option 1 (a business unit in a department), and Option 3b (EPA).

Differentiation between Options 2, 3a and 3b reflects the weighting and prioritisation of the assessment criteria, in particular the need for the regulator to have credibility as an independent entity, and the ability to make independent decisions.

A more detailed impact analysis is contained in Section 4.
Section 4: Impact Analysis (Proposed approach)

4.1 How does each of the options identified at section 3.1 compare with the counterfactual, under each of the criteria set out in section 3.2?

The following tables provide an evaluation of the performance of the options for the regulatory form of the new drinking water regulator against the criteria listed above. This replicates the evaluation in the Business Case, although it applies an affordability criterion, and uses a different scoring system.

A 'no action' option has not been included as Cabinet has agreed that there will be a new drinking water regulator to oversee the new regulatory arrangements.

As noted in Section 3.1, Option 1 (a business unit within a department) is close to the status quo, so this will be the baseline against which the alternative options will be measured for the purpose of this RIA.

This reflects the options assessment set out in the Business Case for the new drinking water regulator, with the addition of an affordability criterion.

We have rated the performance of the options using the following scale:

<table>
<thead>
<tr>
<th>Rating</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>++</td>
<td>much better than doing nothing/the status quo</td>
</tr>
<tr>
<td>+</td>
<td>better than doing nothing/the status quo</td>
</tr>
<tr>
<td>0</td>
<td>about the same as doing nothing/the status quo</td>
</tr>
<tr>
<td>-</td>
<td>worse than doing nothing/the status quo</td>
</tr>
<tr>
<td>--</td>
<td>much worse than doing nothing/the status quo</td>
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<table>
<thead>
<tr>
<th>Option 1: Business unit in a department (status quo)</th>
<th>Option 2: Departmental agency</th>
<th>Option 3a: Crown Agent – Independent standalone drinking water regulator</th>
<th>Option 3b: Crown Agent – Environmental Protection Authority</th>
</tr>
</thead>
<tbody>
<tr>
<td>Credibility as an independent regulator and ability to gain confidence of the sector, government, Māori and New Zealand public</td>
<td>A significant perception risk that a regulator as a business unit in a department would lack dedicated focus and resources, be at risk of capture, and subject to competing departmental priorities and/or changes in Ministerial focus.</td>
<td>A departmental agency would provide a singular focus, which would support improved confidence, but lack of statutory board may affect perception of independence, impacting credibility and confidence. Untested form as a regulator (particularly of the nature and scale envisaged), as it is more commonly used for a targeted purpose within a wider agency.</td>
<td>Common regulatory form for a regulator that is designed to give effect to government objectives, but in a way that ensures appropriate independence over operational decision making. For example, WorksafeNZ, the Civil Aviation Authority, the Environmental Protection Authority (EPA) and Maritime NZ are all Crown Agents. Likely to be perceived as acting independently from the Government due to the presence of a statutory board. The independence and dedicated focus of a drinking water regulator, particularly in the delivery of compliance, monitoring and enforcement functions, have been highlighted in discussions as important considerations for iwi/Māori. An independent drinking water regulator is the preference of local government.</td>
</tr>
<tr>
<td>Ability to have a significant step change</td>
<td>+</td>
<td>++</td>
<td>+</td>
</tr>
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The Environmental Protection Authority (EPA) is an established regulator and has a wide range of regulatory responsibilities. However, it does not currently have any regulatory responsibility for drinking water or public health, and will need to build its capability and credibility to gain the confidence that it will achieve the step change recommended by the Havelock North Drinking Water Inquiry (Havelock North Inquiry).
<table>
<thead>
<tr>
<th>Option 1: Business unit in a department (status quo)</th>
<th>Option 2: Departmental agency Independent standalone drinking water regulator</th>
<th>Option 3a: Crown Agent – Environmental Protection Authority</th>
</tr>
</thead>
<tbody>
<tr>
<td>dedicated focus on drinking water regulation, and maintain that over time</td>
<td>The regulator may be subject to competing priorities for resourcing within a department, and to changes to Ministerial priorities over time, creating a risk that accountabilities become diluted due to a lack of a dedicated focus.</td>
<td>Clear accountabilities for delivering regulatory functions. While it provides for a more dedicated focus on drinking water outcomes compared to Option 1, it can still be subject to changing priorities over time due to having direct Ministerial accountability.</td>
</tr>
<tr>
<td>Has an appropriate level of independence that protects the integrity of its evidence-based decision-making, and enforcement and intervention powers</td>
<td>The chief executive (CE) is directly responsible to the Minister, who outlines their expectations in terms of priorities and focus of a departmental agency. This means that they can be broadly directed by the Government of the day. Can be given statutory independence for its functions.</td>
<td>A Crown Agent can have a dedicated focus and operates at arm’s length from Ministers, subject to the governance and operations requirements set out in the Crown Entities Act 2004. Ministers have power to direct the regulator to give effect to high-level policy, but decision making on how to do this sits with the statutory board and organisational leadership. Can be given statutory independence for its functions. As an independent drinking water regulator would under option 3a.</td>
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</table>

The EPA has a range of functions and competing priorities, and further changes to its roles and responsibilities could emerge as a result of Essential Freshwater and resource management reform. These work programmes are significant and there is risk of resources being redeployed to give effect to changes. The changes could negatively affect the EPA’s ability to maintain an enduring focus on drinking water safety, and direct its resources accordingly.
<table>
<thead>
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<th>Option 3b: Crown Agent – Environmental Protection Authority</th>
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<tbody>
<tr>
<td><strong>The performance of the regulator is transparent</strong></td>
<td>0</td>
<td>Reflects existing public sector accountability mechanisms in place (including parliamentary scrutiny, central agency functions and independent roles such as Controller and Auditor-General). Risk that a poor performing CE or leadership team limits transparency of performance, and/or that this is obscured by being part of a larger organisation.</td>
<td>+ Reflects existing public sector accountability mechanisms in place (including parliamentary scrutiny, central agency functions and independent roles such as Controller and Auditor-General). Board arrangements, monitoring agency, and reporting requirements in the Crown Entities Act are expected to contribute to greater visibility of performance. Risk that a poor performing board reduces transparency, but this should be mitigated by monitoring agency and reporting requirements. Higher profile of the independent drinking water regulator, and dedicated focus of planning and reporting information, may mean that it is subject to greater public (and media) scrutiny. The EPA performance reporting regime would be the same as for option 3a.</td>
</tr>
<tr>
<td><strong>Affordability</strong></td>
<td>0</td>
<td>The marginal costs for housing the new drinking water regulator</td>
<td>-</td>
</tr>
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</table>

The performance reporting and accountability mechanisms in place (including parliamentary scrutiny, central agency functions and independent roles such as Controller and Auditor-General).
<table>
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<tr>
<td>in a business unit within a department (given its proposed role and functions) are likely to be similar to the costs of hosting it in a departmental agency, but there are cost savings compared to these other options due to a lack of a monitoring agency and lower executive salary.</td>
<td>departmental agency (given its proposed role and functions) are likely to be greater than hosting it in a business unit in a department. This reflects the need for a monitoring agency and a comparatively higher executive salary.</td>
<td>Crown Agent is likely to be greater than for either Option 1 or Option 2 due to the need to have an independent board, a secretariat function to support this board, a monitoring agency and higher executive salary. The estimated costs of a Crown Agent are comparable to other regulators in New Zealand and internationally.</td>
<td>associated with locating the new regulator within the EPA, with initial estimated savings of approximately 10 per cent per year.</td>
</tr>
</tbody>
</table>

The ability to recruit, build and retain people with the appropriate technical and regulatory skills, stakeholder relationships, and decision-making capability

| 0 | + | +++ | 0 |

- A business unit in a department may not be able to attract and retain staff and talent with the right skills within the existing career structures of a department. The business unit would also have to compete for resources to invest in professional development to grow sector and technical capability.
- More likely to be able to attract and retain the right capability compared to Option 1 (the status quo) due to the dedicated subject matter focus of a departmental agency. This dedicated focus also means that it is likely to have a greater ability to direct resources to invest in professional development, and to grow sector capability.
- However, this organisational form may not have the same (high) profile as can be achieved through option 3a, and may be less attractive as an employer to senior regulatory skills.
- More likely to be able to attract and retain the right capability compared to Option 1 (the status quo) due to the dedicated subject matter focus of a Crown Agent. This dedicated focus also means that it is likely to have a greater ability to attract capability, to direct resources to invest in professional development, and to grow overall sector capability.
- A standalone regulator with its own chief executive, senior leadership team will offer more drinking water-focused senior level positions, particularly compared with option 3b (EPA).
- Including responsibility for water within the EPA will broaden its scope and offer new positions for new and existing staff. However, the EPA would need to undergo significant restructuring to ensure drinking water regulatory functions become embedded throughout the organisation's structure and culture.
- There is potential risk that placing senior responsibilities within a wider executive team (i.e. at 2nd tier) will make those positions less attractive for senior water professionals and

5 Refer to the Business Case for more information on the cost benchmarking on the new regulator with other organisations.
<table>
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<td></td>
<td></td>
<td>It is also likely to be able to build a community of practice amongst drinking water owners and suppliers, as well as similar Crown Agents who are also primarily regulators (e.g. WorksafeNZ, EPA).</td>
<td>specialists.</td>
</tr>
<tr>
<td>The ability for the Government to deal quickly and effectively with a regulator that is not adequately achieving the objectives set for it</td>
<td>0 Ministerial power to direct means that feedback can be easily provided, and changes made relatively quickly.</td>
<td>0 Compared to Options 1 and 2, it may be more difficult to direct change where there is poor performance due to the statutory independence of the board; however, this risk could be mitigated through the use of Letters of Expectation and other mechanisms. Minister can remove board members if there is a justifiable reason.</td>
<td>0 The same Crown Agent oversight framework would apply to option 3a, or an EPA.</td>
</tr>
<tr>
<td>Responsive to institutional arrangements that may emerge from future decisions on wider Essential Freshwater and resource management reform</td>
<td>0 The resources and supporting functions for a business unit are embedded in a department, making it difficult to “lift and shift” delivery of regulatory functions in the future.</td>
<td>+ A departmental agency provides future flexibility because this form does not require establishing legislation or the appointment of a board.</td>
<td>+ The ability to respond to future changes would be dependent on the level of flexibility in the establishing legislation, but could require some form of legislative change. Significant changes to functions (addition or removal) may require reconsideration of board composition. However, the dedicated focus of the Crown Agency on water quality may mean that it is more likely to have built</td>
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<td></td>
<td></td>
<td>Potentially the EPA may be more responsive to change, but like option 3a the level of flexibility is dependent on its establishing legislation. Further changes to the EPA roles and responsibilities may result from Essential Freshwater and resource management reform. While that is expected to make the EPA more responsive to wider change, as</td>
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<tr>
<td>Embedding the new drinking water regulator as a business unit in a department (Option 1) is not the preferred option. This approach would risk perpetuating many of the problems identified in this RIA, previous Cabinet papers and the Havelock North Inquiry, particularly in terms of having a lack of independence, dedicated focus, and sufficient ongoing resources to address the current regulatory challenges.</td>
<td>Creating a departmental agency to host the new drinking water regulator (Option 2) is not the preferred option. Option 2 could provide a credible and effective regulator, that could also provide significant future flexibility to deal with changes in regulatory responsibility, or to address poor performance. However, it would likely be perceived as less independent by stakeholders and the public, and the flexibility of this model means that it could more easily lose its dedicated focus on drinking water regulation over time.</td>
<td>Creating the new drinking water regulator as a standalone Crown Agent (Option 3a) is the preferred option. This option scores highest in terms of credibility with stakeholders, ability to focus on drinking water, and independence of decision making. It is the preferred option of stakeholders, particularly local government. It is also the form most common to other, similar regulatory bodies in New Zealand. Option 3a scores lowest in terms of affordability, as there are some additional costs associated with a new Crown Agent as compared to other institutional forms.</td>
<td>Including the new drinking water regulator within the roles and responsibilities of the EPA (option 3b) is not preferred 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 drinking water safety becomes 'lost' within a bigger organisation and progress on the Havelock North Inquiry recommendations is slowed or deprioritised over time.</td>
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</table>

**Overall assessment**

Embedding the new drinking water regulator as a business unit in a department (Option 1) is not the preferred option. This approach would risk perpetuating many of the problems identified in this RIA, previous Cabinet papers and the Havelock North Inquiry, particularly in terms of having a lack of independence, dedicated focus, and sufficient ongoing resources to address the current regulatory challenges.
4.2 Impact analysis conclusions

The impact assessment above shows a clear preference for a new standalone Crown Agent as the institutional form for the new drinking water regulator, scoring the best against almost all categories (particularly the highest priority ones).

The Crown Agent scores highest in terms of having the strongest credibility as an independent regulator that could gain the confidence of the drinking water sector, the Government, iwi/Māori and the New Zealand public. It also has the greatest level of independence to protect the integrity of the regulator’s evidence-based decision-making and compliance and enforcement powers, and scores well in terms of being able to attract and retain the right kind of talent.

A Crown Agent scores less well in terms of affordability. This is explored more below in Section 4.3; however, it important to note that most of the costs associated with the new drinking water regulator relate to its roles and functions already agreed by Cabinet and remain the same regardless of its institutional form.

Although there are some additional costs associated with the Crown Agent as opposed to other institutional forms, much more significant are the ongoing operational costs of delivering the regulator’s functions agreed to by Cabinet, which could be up to 9(2)(f)(iv) These costs could be incurred regardless of the institutional form.

While the proposed Establishment Unit will undertake further work on the detailed costing of a new regulator, as well as its ongoing funding, the outcome of the impact analysis is that Crown Agent is the institutional form most likely to give effect to the policy and regulatory outcomes for drinking water, wastewater and stormwater, as already agreed to by Cabinet.

4.3 Summary table of costs and benefits

The RIA that accompanied Cabinet decisions in July 2019 provided an assessment of the likely costs and benefits of the enhanced three waters regulatory regime. These costs and benefits have been included in this RIA to provide context for the overall costs and benefits of the regulatory regime agreed to by Cabinet in July. They are based on an estimate of the national cost to comply with the drinking water standards developed by Beca Limited.6 These estimates are based on aggregated costs and include all suppliers including the Crown and Marae.

The costs have been split between larger suppliers (i.e. council suppliers and non-council suppliers that supply drinking water to more than 500 people), and small suppliers (i.e. those that supply drinking water to less than 500 people).

- Larger suppliers are predominately council suppliers (569 council suppliers compared to 34 non-council suppliers), are currently regulated and have relatively high rates of compliance. Although they will be expected to comply with requirements when strengthened regime starts, it is only in the third year that the regulator will be actively monitoring the performance of those suppliers and be taking enforcement action where

appropriate. We think that these council suppliers will have included much of the cost of complying with the new regime within their long-term plans, albeit that some of the planned expenditure may have to be brought forward to enable them to comply within the third year.

- Small suppliers (those supplying to 500 people or less) are also a mix of council and non-councils’ suppliers, but very small suppliers are more likely to be non-council suppliers. Cost for those small suppliers, particularly those that supply less than 25 people, are much more difficult to estimate. These suppliers will not be expected to comply with the regulatory regime until year 5, and compliance requirements will be proportionate to their size and the level of risk. The task of identifying the costs for this group of suppliers, and the approach to supporting those suppliers to comply with the new regulatory regime, will continue to be refined as the regulator is established, and Ministers make broader decisions about the approach to service delivery and funding arrangements.

It is less complex to identify estimated, specific costs of the preferred option for the organisational form of the new regulator (a Crown Agent). We have endeavoured below to compare the costs of the regulator to the benefits of the package of enhanced regulatory change as a whole. This gives a sense of the likely magnitude of these relative costs and benefits.

It is important to note that Cabinet has already agreed that there will be a new drinking water regulator, and that it will deliver the broad functions set out in section 2.1. Cabinet has also agreed that a central regulator will carry out a small number of new wastewater and stormwater regulatory functions. As we note above, the ongoing costs of delivering the drinking water regulatory functions are significant and would apply regardless of the institutional form that is chosen.

As such, the vast majority of the costs outlined below are related to delivering those functions, regardless of the institutional form of the new regulator. Some of the costs do change depending on the institutional form, but these are comparatively minor. This is discussed in more detail below.

**Information on costs**

The information on expected costs for the establishment and operation of the new drinking water regulator has been taken from the Financial Case as part of the Business Case.

The Financial Case estimates the cost of the new drinking water regulator to deliver the new regulatory functions that were agreed by Cabinet on 1 July 2019, using both a top-down and bottom-up analysis. The top-down analysis has compared the new regulator to public-sector agencies, including regulators that are similar in size and scale, and drinking water regulators in other jurisdictions. The bottom-up analysis uses a purpose-built financial model that estimates operating and capital cost over the period of the regulator’s establishment and the first five years of its operation.

Further analysis was also commissioned to estimate the cost of the drinking water regulator to deliver the small number of new, centralised wastewater and stormwater regulatory functions, as agreed by Cabinet on 1 July 2019.

The financial model is based on a number of assumptions, including the regulator’s service delivery approach (for example, reflecting choice about when the regulator would
“buy in” services versus using its own staff), the number and type of FTE employees needed to carry out its functions, and the type of administrative and support services that the regulator would use.

As noted above, most of the costs outlined in the table below relate to decisions already made by Cabinet to establish a new drinking water regulator, and to deliver the agreed drinking water, wastewater and stormwater functions.

The differences between costs of the different institutional forms of the new drinking water regulator are relatively minor, compared with the overall cost associated with the new regulator. Further work will be undertaken by the Establishment Unit (if agreed to by Cabinet) to refine those costs.

Initial indications are that there may be some financial efficiencies associated with locating the new regulator within the EPA (option 3b) – with estimated savings of approximately 10 per cent per year compared with the operating costs for a standalone Crown Agent.

While the summary table of costs and benefits includes the total cost to the Government of delivering the new regulatory functions, it is important to note that only the costs of the different institutional forms are relevant to this RIA and the forthcoming Cabinet decisions.

Further information on how the costs for the regulator have been calculated is available in the Business Case’s Financial Case, and a list of the key assumptions used to create the financial model is included in Appendix 5 of the Business Case.

**Information on benefits**

While the planned new drinking water regulator is a key part of the enhanced regulatory regime, all the elements of the regulatory regime are complementary, making it difficult to isolate the specific benefits that the regulator by itself would achieve outside those wider benefits.

Accordingly, our approach has been to consider benefits “in the round”, and we have referred to the expected benefits identified in the July 2019 RIA that accompanied the package of reforms to strengthen the regulation of the three waters to provide an assessment of the benefits.7

As noted in that document, the primary benefit of the proposed package of reforms is the reduction in illness caused by contaminated drinking water. For example, the cost of the Havelock North contamination event has been estimated at $21 million, spread across individual households, businesses, central and local government, and the health and disability sector.

However, the ongoing benefits of avoided illness are likely to be underestimated because of the significant challenges associated with identifying the number of the people who suffer from illnesses (e.g. gastrointestinal illness) caused by poor drinking water, and the consequent benefits of avoiding the costs associated with that illness.

The tendency to underestimate the underlying waterborne disease burden is because of the difficulties of linking a sporadic case of illness to a specific source (e.g. people may

identify food/a previous meal as the cause, rather than drinking water), and the general underreporting of gastrointestinal illnesses in New Zealand.

Although New Zealand has a notifiable disease surveillance system, it is generally accepted that these patients represent a small fraction of the total community burden. It has been estimated, based on ratios reported in other developed countries, that for each notified case of acute gastroenteritis, there were an estimated 222 cases in the community.8

This issue was identified by the Havelock North Inquiry, which noted that while New Zealand has recorded between 8,927 and 10,778 cases of notifiable gastrointestinal illness per annum over the last nine years, these notified figures may significantly underestimate the real rate of gastrointestinal illness in the community. The Inquiry’s view was that the actual rate may be as high as 1.4 million cases per year.9

In identifying the benefits of avoided illness, we have relied on analysis used by the Havelock North Inquiry that was undertaken by the Law and Economics Consulting Group in 2010. This work developed a cost benefit analysis based on an estimated 35,000 cases of acute gastrointestinal illness contracted from reticulated drinking water per year. For the reasons we have set out above, we think that this may underestimate the actual incidence of illness and note that the Havelock North Inquiry heard evidence that 100,000 case per year was more likely to be accurate.10

This uncertainty about the true number of people that may be affected by poor drinking water affects the certainty of the monetised benefits of avoiding those illnesses. Overall, we have a higher confidence in the estimated costs of the new regulator than we do in the potential benefits, given the difficulty in monetising these benefits through a lack of data.

In the RIA prepared to support Cabinet’s decisions in July 2019, we noted that a strengthened regulatory system will also help to prevent one-off outbreaks of illness, which are unusual but severe in their impact. However, it is challenging to identify and monetise those benefits because of the difficulty of predicting when waterborne disease outbreaks and contamination events may occur.

While difficult to predict, waterborne disease outbreaks are not uncommon in New Zealand. The Havelock North Inquiry noted that in the 10 years preceding the Havelock North outbreak, there were 13 other recorded waterborne outbreaks. Appendix 7 to the Havelock North Inquiry’s Stage 1 Report notes that, since 1984, there have been 35 outbreaks.

The scale of most of those outbreaks were much smaller than that in Havelock North. However, there were significant outbreaks in Queenstown in 1984 with 3500 probable cases, Hutt Valley Holiday Camp in 1995 with 100 probable cases, Waikato District in 1997 with possible 3000 cases, and Canterbury in 2001 with a possible 1700 cases.

Work commissioned by MoH estimated that the cost of 413 cases of campylobacter in a South Island township fell within a range of $308,592 to $536,401. In Havelock North, where 5500 people became ill and four people died, the cost was estimated to be around

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8 The disease pyramid for acute gastrointestinal illness in New Zealand. R. J. LAKE, S. B. ADLAM, S. PERERA, D. M. CAMPBELL. Published online by Cambridge University Press: 03 March 2010

9 Havelock North Drinking Water Inquiry; Report 2 para 116

10 Ibid para 113
$21 million. This included costs relating to household inconvenience due to having to boil water, buy bottled water, and take time off normal activities during the outbreak.\textsuperscript{11}

The sporadic nature and the small scale of most outbreaks makes identifying an annualised cost of those outbreaks difficult, and the certainty of any monetised consequent benefits must be treated as low. However, if we assumed (based on recorded outbreaks) that a significant outbreak will occur at least once every 30 years, and that this outbreak falls within a range of costs incurred between the South Island township outbreak of $500,000, and the Havelock North outbreak of $21 million, then potential benefits of avoiding those outbreaks could fall within a range of approximately $16,000 to $750,000 per annum.

Finally, illness caused by poor drinking water could have a significant impact on tourism. Tourism generates a direct contribution to GDP in the order of $12.9 billion per annum. As noted in the July 2019 RIA, there are benefits from having clean safe drinking water that support the value of New Zealand’s international “Pure New Zealand” image. If an outbreak, such as those discussed above, were to affect one of New Zealand’s tourism “hotspots”, that might directly undermine that brand and affect future tourism activity.

The Havelock North Inquiry noted that New Zealand suppliers with the greatest risk of supplying unsafe water tend to be small suppliers, and that many tourist destinations receive their drinking water from those small suppliers. Research\textsuperscript{12} commissioned by MoH identified just over 50 small water treatment plants supplying drinking water to a significant number of tourists. An example identified in the Inquiry is Punakaiki, which has a water supply that does not comply with the Drinking-water Standards for New Zealand 2005. It has 230 permanent residents, but receives an estimated 500,000 tourists per year. The Inquiry’s view was that the potential impact on tourism magnifies the cost of the waterborne disease outbreak for New Zealand.

The 2010 report undertaken by the Law and Economics Consulting Group stated that, “if an outbreak of disease occurred in New Zealand due to drinking water, and that outbreak were of sufficient size or severity to garner international media attention, that might affect export markets and potential tourism activity; [however] the report authors note that we have not found any studies that estimate the size of the impact that would occur, either for New Zealand or other countries”.\textsuperscript{13}

While there is a lack of empirical research into those costs and benefits, there is a significant and persistent risk (based on the frequency of outbreaks discussed above), and therefore the potential benefits of avoiding that risk could be significant. To capture that potential risk (and the benefit of avoiding it), we have assumed that if an outbreak occurs and 5 to 10 per cent of tourists who would have visited New Zealand no longer visit, then this could have an indirect impact on the profit from tourist activities. If we assume that the profit margin for those tourist businesses is 10\% of GDP, and that those businesses can only replace 50 per cent of those profits with other activities, then the benefits of avoided cost on impact on tourism could be in the order of 5 to 10 per cent of $12.9 billion, or $32.25 to $65 million. If the odds of such an outbreak occurring are one in every 30 years,

\textsuperscript{11} \url{www.health.govt.nz/publication/drinking-water-cost-benefit-analysis}
\textsuperscript{12} Capability of Drinking water Suppliers in New Zealand. Prepared for Ministry of Health by Beca Limited. 14 May 2019
\textsuperscript{13} \url{www.health.govt.nz/system/files/documents/publications/cba-raising-quality-of-networked-drinking-water-jun2010_0.pdf}
those benefits to New Zealand in the form of avoided costs could be up to $1.0 to $2.0 million a year.

<table>
<thead>
<tr>
<th>Affected parties (identify)</th>
<th>Comment: nature of cost or benefit (eg ongoing, one-off), evidence and assumption (eg compliance rates), risks</th>
<th>Impact</th>
<th>Evidence certainty</th>
</tr>
</thead>
</table>

| | | Sm present value, for monetised impacts; high, medium or low for non-monetised impacts |

**Additional costs of proposed approach, compared to taking no action**

**Monetised Costs**

<table>
<thead>
<tr>
<th>Regulated parties</th>
<th>Estimated increased cost of complying with the drinking water Standard for:</th>
<th>Low range</th>
<th>High range</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Drinking water suppliers who supply water to more than 500 people</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Drinking water suppliers to less than 500 people</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Capex $277.3 (millions)</td>
<td>$266.1 (millions)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Opex $7.8 (millions per annum)</td>
<td>$8.0 (millions per annum)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Capex $153.7 (millions)</td>
<td>$409.4 (millions)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Opex $24 (million per annum)</td>
<td>$109.6 (million per annum)</td>
<td></td>
</tr>
</tbody>
</table>

14 These costs are drawn from the RIA prepared to support Cabinet decisions in July 2019, to strengthen the regulation of drinking water, wastewater, and stormwater.

<table>
<thead>
<tr>
<th>Regulators: Central Government</th>
<th>Establishment costs 2019/20 (6 months) 2020/21</th>
<th>Low range (millions)</th>
<th>High range (millions)</th>
<th>Medium</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>$7.2</td>
<td>$8.6</td>
<td></td>
</tr>
</tbody>
</table>

9(2)(f)(iv)
### Non-Monetised Costs

<table>
<thead>
<tr>
<th>Wider government</th>
<th>Cost of engaging with the new drinking water regulator</th>
<th>Low</th>
<th>Medium</th>
</tr>
</thead>
<tbody>
<tr>
<td>Other parties</td>
<td>Potentially increased costs to drinking water consumers through cost recovery from regulated parties (the cost will likely vary depending on the size of the supplier)</td>
<td>Low-Medium</td>
<td>Low</td>
</tr>
<tr>
<td><strong>Total non-monetised costs</strong></td>
<td>Includes costs to the Government of engaging with the new regulator, and potential cost transfer from regulated parties to drinking water consumers.</td>
<td>Low</td>
<td>Medium-Low</td>
</tr>
</tbody>
</table>

### Expected benefits of proposed approach, compared to taking no action

**Monetised Benefits**

<table>
<thead>
<tr>
<th>Other parties: New Zealand public</th>
<th>Avoided costs of reduced incidence of illness from drinking water&lt;sup&gt;20&lt;/sup&gt;</th>
<th>Low range (millions) $12.5 per annum</th>
<th>High range (millions) $23.7 per annum</th>
<th>Medium</th>
</tr>
</thead>
<tbody>
<tr>
<td>Other parties: New Zealand public</td>
<td>Avoided costs from a significant contamination event</td>
<td>Low range (millions) $0.016 per annum</td>
<td>High range (millions) $0.7 per annum</td>
<td>Low</td>
</tr>
<tr>
<td>Other parties</td>
<td>Avoided cost on impact on tourism</td>
<td>Low range (millions) $1.0 per annum</td>
<td>High range (millions) $2.0 per annum</td>
<td>Low</td>
</tr>
<tr>
<td><strong>Total Monetised Benefit</strong></td>
<td>Includes the ongoing avoided costs of illness caused by unsafe drinking water, the avoided costs of a significant contamination incident, and avoided costs on the impact on tourism</td>
<td>Low range (millions) $13.5 per annum</td>
<td>High range (millions) $26.4 per annum</td>
<td>Low</td>
</tr>
</tbody>
</table>

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<table>
<thead>
<tr>
<th>Regulated parties</th>
<th>Certainty around requirements, improved services to consumers</th>
<th>Low</th>
<th>Our expectation is that this will increase significantly as the regulator builds capability, and relationships with the sector.</th>
<th>Medium</th>
</tr>
</thead>
<tbody>
<tr>
<td>Regulators</td>
<td>Including wastewater and stormwater functions will allow the drinking water regulator to leverage their capability and capacity to establish a centre of expertise for all three waters.</td>
<td>Medium</td>
<td>Medium</td>
<td></td>
</tr>
<tr>
<td>Wider government</td>
<td>Setting, collecting, analysing and publishing performance information of wastewater and stormwater systems will improve wider governments and the community’s oversight. Stronger oversight will provide central government with assurance that drinking water is safe.</td>
<td>Medium</td>
<td>Medium</td>
<td></td>
</tr>
<tr>
<td>Iwi/Māori</td>
<td>Contribute to meeting the Crown’s Treaty obligations and upholding Te Mana o Te Wai – the holistic management of water</td>
<td>Medium</td>
<td>Medium</td>
<td></td>
</tr>
<tr>
<td>Other parties</td>
<td>Addressing inequality of access to safe drinking water for small communities Benefit to consumers of not having to boil drinking water to ensure that it is safe</td>
<td>Low</td>
<td>Medium</td>
<td>Low</td>
</tr>
<tr>
<td>Total Non-Monetised Benefits</td>
<td>Includes a range of wider benefits associated with the provision of safe drinking water</td>
<td>Low-Medium</td>
<td>Low-Medium</td>
<td></td>
</tr>
</tbody>
</table>
4.4 What other impacts is this approach likely to have?

As noted in section 2.1 above, the Minister of Local Government is also proposing that the new drinking water regulator undertake a small number of new centralised wastewater and stormwater regulatory functions.

These benefits of this approach include:

- strong synergies between the drinking water functions and the wastewater and stormwater functions, as they will utilise many of the same systems, approaches, and scientific and technical expertise;
- enabling skills and knowledge across these different waters to be pooled, shared and developed further, helping to create a centre of expertise;
- increased cost-effectiveness, as fewer staff would be needed to deliver the functions in a single regulator; and
- improved ability to consider and incorporate mātauranga Māori and work productively with iwi and hapū at a local level.

The new wastewater and stormwater functions are discrete and narrowly-focused and would be a relatively small part of the regulator’s work.

Section 5: Stakeholder views

5.1 What do stakeholders think about the problem and the proposed solution?

Between early March and mid-April 2019, officials held a series of nine regional targeted engagement workshops to test proposals to strengthen the three waters regulatory regime, as outlined in the RIA that accompanied the July 2019 Cabinet decisions.

These workshops included attendees from the local government, health, environment, rural, iwi/Māori, and water industry sectors. They informed further development of the package of reforms considered by Cabinet in July 2019. A report on targeted stakeholder engagement has been prepared and has been published on the Three Waters website.²¹

There has been general agreement with the central proposition that the regulation of drinking water requires urgent attention. Issues that have generated the most discussions include:

- costs, funding and compliance burdens – particularly for small communities and suppliers (for example, marae) that would be brought into the regulatory system;
- capability, support and resources;
- having an independent regulator;
- obligation on local government to ensure access to safe drinking water, and

whether this is reasonable; and

- mandatory residual treatment and an associated exemption – with strong views for, and sometime against, this approach.

Māori articulated considerations include:

- upholding Te Mana o Te Wai as the guiding principle driving this regulatory work;
- the importance of having a design role in regulatory arrangements;
- providing a clear link to the rest of the Government’s Essential Freshwater work programme;
- the need for cultural values and mātauranga Māori to be built into standards, regulations and consenting decisions; and
- wai is wai: there needs to be a holistic approach to managing water.

While the earlier engagement did not focus on the organisation form of a new drinking water regulator, feedback was received on the role of a central regulator, and how it should operate. The institutional form of the new regulator was also the subject of specific discussions with Kāhui Wai Māori and the Waikato River Iwi group, and a group of local government representatives.

There was general agreement that there should be a central regulator, but that it should have a regional presence. A regional approach was considered desirable given that many smaller drinking water suppliers are in rural and provincial areas. Māori feedback, 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.

Other specific feedback was that the regulator would need to have the necessary technical competency to undertake the enhanced regulatory functions and have sufficient credibility to transact confidently with regulated parties, the public and government more broadly. Enforcement should be managed by this central regulator, and it should have sufficient powers and organisational ability to hold people and organisations to account for failures.

Stakeholders also expressed the view that the central regulator should be a non-aligned, independent body, and that it should have the ability to work with all communities, including Māori. A dedicated regulator would also be required to transparently analyse and publish data on the quality of drinking water.

There was also support from Māori, in particular for a holistic approach towards managing the three waters, and therefore having one regulator for all three waters.

In August 2019, a group of local government representatives, from regional councils and territorial authorities, met to provide specific feedback on the institutional form of the new regulator. The group expressed a strong preference for a standalone, independent entity, focused on improving the drinking water regulatory system, rather than being housed within an existing government agency.
Section 6: Implementation and operation

6.1 How will the new arrangements be given effect?

The Management Case as part of the Business Case for the new drinking water regulator contains detailed information on how the new drinking water regulator will be established, and how the regulator will operate in practice.

A summary of this information is presented below.

How will the regulator be established?

Establishment planning will begin quickly

Once Cabinet decisions about the form, location and funding for the new regulator are made, officials will move quickly into planning to operationalise the regulator.

Overall, it is anticipated that it will take 12 to 18 months to build the new regulator, depending on the timing for the passage of legislation. Legislation to give effect to the new regulator is anticipated to be passed in mid-to-late 2020.

It will be important to move quickly to begin the establishment phase, otherwise it is likely that the timeframes to transition from the current regulatory regime to the new regime will be significantly extended. Delays create risks around retention of staff, where there is already a shortage of people with the right skills and experience and are likely to impact credibility and goodwill with the sector.

An Establishment Unit is proposed to carry out the programme of work to establish the regulator

It is proposed that an Establishment Unit would be set up to operationalise the new regulator. It is proposed that the Establishment Unit is hosted by DIA because:

- it is the lead policy agency for the Three Waters Review and developing legislation that will establish the regulator and new drinking water regulatory system;
- it has the primary relationship with local government (the main regulated suppliers of three waters services);
- it has a number of regulatory functions, including significant enforcement functions; and
- it has a long-established role in establishing other organisations before they operate independently.

As part of the establishment phase, an interim Māori Advisory Group has been proposed to work closely with the Establishment Unit on:

- detailed design of the regulator, including key roles and capabilities, systems and processes;
- design of regulatory strategy and practice;
- engagement and education strategy and practices;
• the purpose and functions of the ongoing Māori advisory group; and
• engaging and reporting back to iwi and Māori.

Establishing a drinking water industry sector advisory group may also be considered as part of the establishment phase. This is to ensure good communication with the sector, to begin to build the relationships the regulator will need to have with sector stakeholders and ensure a practical understanding of the different types of suppliers to inform the detailed design of the regulator.

The Establishment Unit would not act as the regulator. Its focus would be on operationalising the regulatory proposals so that the regulator is ready to function when its legislation is enacted. Up until that point, regulatory responsibilities will remain with MOH and other statutory positions still in place.

The Establishment Unit’s roles and responsibilities will cease once the regulator’s enabling legislation is enacted, and the regulator is operational.

Senior officials will provide connection with the Crown’s work to establish the regulator

Officials will continue to provide policy advice to Ministers, including on the funding model for the regulator, and support the passage of legislation.

A Senior Officials Group (Chief Executive or Deputy Chief Executive level) will meet regularly with the head of the Establishment Unit to ensure there is a good connection between the two programmes of work. The group will comprise officials from DIA, MfE, MoH and other agencies if appropriate.

To support a smooth transition, this group should maintain oversight of how different actions and decisions being taken in the current regime, and in the development of the new regime, impact the other.

An Establishment Board will need to be formed to lead the establishment programme

An Establishment Board will also be set up to lead the detailed organisational design and establishment of the operating model for the new regulator. If Cabinet agrees to the establishment (and Crown Agent) proposals in September 2019, it is possible the board appointments process could be completed early in 2020.

An Establishment Chair will be recruited with appropriate skills and experience. Ideally, the Chair would be the Chair Designate of the new entity to maintain continuity of leadership and accountability.

The remainder of the Establishment Board will comprise individuals with a range of appropriate skills and experience, particularly skills in the establishment of entities and change management. Some of these members may also transition to the new regulator’s Board upon its establishment (under the preferred Crown Agent model).

A key task of the Establishment Board will be to recruit the Chief Executive Designate of the regulator, who will take an active role in leading change and stakeholder engagement. This will provide additional certainty to affected staff and stakeholders, and firmly establish leadership and a clear direction. It will also ensure that there is a strong
accountability connection between responsibility for delivery post-transition, and responsibility for establishment of the regulator.

**Potential risks and mitigations for the implementation of the new drinking water regulator**

There are several potential risks that require consideration when implementing the new drinking water regulator. Many of these are taken from the Business Case.

These potential risks are listed below, along with strategies to mitigate these risks:

<table>
<thead>
<tr>
<th>Risks</th>
<th>Mitigations</th>
</tr>
</thead>
<tbody>
<tr>
<td>The drinking water regulator is not sufficiently resourced to carry</td>
<td>This risk can be mitigated through the effective funding and resourcing of the new regulator both during establishment and as part of its ongoing operation delivery.</td>
</tr>
<tr>
<td>out its role. There is a risk the regulator will not have sufficient</td>
<td>Moving quickly to the establishment phase of the new regulator will help to reduce this risk by supporting the retention of existing staff from the current model and the attraction of new staff. A key function of the regulator will be to work with industry groups to build sector capability, and our expectation is that the Establishment Unit will begin some of this work during the start up phase.</td>
</tr>
<tr>
<td>funding and/or personnel capacity and capability to effectively</td>
<td>In addition, the immediate need is likely to be for operational policy capability (while regulations and guidance material are developed, for example), and education and engagement. These roles are less specialised and therefore present less of a risk (in terms of availability). A detailed and robust financial case has already been developed.</td>
</tr>
<tr>
<td>carry out its key functions, meaning the transformation of the regulatory system is not able to be achieved. A related risk is that existing regulatory staff choose not to join the new regulator. The regulator may be unable to resource its functions if the level of retention of current drinking water assessors is too low.</td>
<td></td>
</tr>
</tbody>
</table>

Suppliers do not have the resource or capability to comply with new regulatory requirements. There is a risk that some suppliers may be unwilling or unable to comply with regulatory requirements, due to insufficient resourcing and capability, meaning that the regulator is unable to drive improvements in the system through its levers.

This risk can be mitigated through the approach taken by the new regulator. The regulator will scale and phase its approach to dealing with drinking water suppliers through a risk-based approach. It will start by focusing its compliance efforts on those larger and higher risk water supply schemes serving 500 or more consumers, before moving to focus on smaller schemes serving fewer than 500 consumers near the end of the five-year implementation period. A key function of the regulator will be to work with industry groups to build sector capability. At the same time, the regulator will also have the
ability to work with those regulated parties who lack the resources or knowledge to meet the
new requirements by providing information and guidance to make them aware of their
obligations and how to meet them.

The regulator does not have the mandate/support to enforce compliance with regulatory
requirements. The regulator takes an advisory/customer centric approach to achieving compliance
that results in insufficient enforcement of regulatory requirements.

This risk can be mitigated by maintaining a clear dialogue with the responsible Minister about the
importance of achieving compliance – and the need to take enforcement action, where
appropriate. (Being at arm’s length from Ministers, as an independent Crown Agent,
would best enable the regulator to take evidence-based decisions about how and when
to take action.)

The likelihood of this risk is low given the known problems with implementation of the current
drinking water regulatory regime, including a lack of enforced compliance.

Through its enabling legislation, the regulator will have a range of strengthened compliance,
monitoring and enforcement powers at its disposal.

The regulator does not achieve its objectives effectively. There is a risk that the new regulator may
fail to adequately give effect to its new objectives, particularly if it is an independent Crown Agent.

This risk can be mitigated by the use of clear and direct letters of expectation to the regulator’s
board, and through the use of a monitoring agency.

High-level objectives and operating principles would be included in legislation establishing a
Crown Agent, and provide a transparent and enduring basis for its activities and performance.

Section 7: Monitoring, evaluation and review

7.1 How will the impact of the new arrangements be monitored?

The monitoring of the establishment phase of the new regulator will be carried out by
Senior Officials group from DIA, MoH and MfE, underpinned by a relationship agreement
(or similar) with the head of the Establishment Unit (if created).

The ongoing framework for the monitoring and evaluation of the new drinking water
regulator is still being developed and will be completed as part of the establishment
phase of the new regulator.

Officials anticipate that the following key elements will form part of this framework, based
on the functions agreed by Cabinet:

- sector leadership: Is the regulator providing adequately oversight and
  monitoring of the drinking water regulatory system?
• **setting standards**: Is the regulator developing and reviewing standards for drinking water and source water?

• **compliance, monitoring and enforcement**: Is the regulator providing sufficient compliance, monitoring and enforcement of the drinking water regulatory system?

• **capability building, accreditation, and licensing**: Is the regulator working with suppliers and training providers to ensure suitable training is available and being taken up?

• **information, advice and education**: Is the regulator informing regulated parties of their regulatory obligations, and acting as a centre of drinking water scientific and technical expertise?

• **performance reporting**: Is the regulator collating and publishing drinking water compliance and monitoring information for suppliers?

The ongoing monitoring arrangements will include a separate monitoring agency for the Crown Agent (if established), as the functions of system oversight and stewardship are more appropriately located within a separate entity to the regulator (consistent with good regulatory practice).

This regulator-specific monitoring will also be supported by following best practice guidance published by the SSC.

A draft monitoring and evaluation plan will be ready for discussion with relevant stakeholders during the legislation process to establish the new regulator.

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### 7.2 When and how will the new arrangements be reviewed?

**How will the success of the investment be evaluated?**

The implementation and operation of the new regulator is expected to be reviewed after three years, and then again six years, after it is formally established, subject to when the legislation is passed.

After three years, it is anticipated that the new regulator would be actively monitoring the performance of those suppliers that provide drinking water to 500 or more consumers and be taking enforcement action where appropriate. The regulator would also be working with smaller suppliers to bring them into the regulatory system.

All suppliers are expected to be compliant with the regulatory system by the end of the fifth year. A review after the sixth year of operation will also be appropriate to test whether the new regulator is also effectively supporting smaller suppliers.

Given decisions are still to be taken about the detailed design of the regulator and wider regulatory proposals, key performance indicators have not yet been developed. These will be developed as part of the establishment phase.