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Hon Nanaia Mahuta, Minister of Local Government

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

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August 2019, Business Case: A New Drinking Water Regulator, Martin Jenkins for the Department of Internal Affairs.

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A NEW DRINKING WATER REGULATOR

Final Report

A business case for investment in a new
drinking water regulator

August 2019



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PREFACE

This report has been prepared for the Department of Internal Affairs by Nick Carlaw, Robyn Ward and Nick Davis from MartinJenkins (Martin, Jenkins & Associates Limited).

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Document history

- Draft Business Case version 1, 31 July 2019: Reviewed by DIA.
- Draft Business Case version 2, 1 August 2019: Reviewed by DIA, MfE, MoH and MBIE
- Draft Business Case version 2.1, 9 August 2019: Partially revised draft for DIA
- Draft Business Case version 3, 13 August 2019: For final review by Business Case Steering Group
- Final Business Case, 29 August 2019

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EXECUTIVE SUMMARY

What is the purpose and scope of this work?

The drinking water regulatory system is currently failing to provide all of the necessary assurances that water supplies across New Zealand are safe and reliable.

Challenges with the current regulatory system are being addressed through a broad range of regulatory proposals. These include extending the coverage of and increasing requirements on water suppliers (registration, accreditation), ensuring supply, and strengthening compliance monitoring and enforcement tools.

To give effect to the new regulatory proposals, Cabinet agreed on 1 July 2019 to establish a new central drinking water regulator. This Business Case supports a report-back to Cabinet in September where the Minister of Local Government will provide advice on the form, location and funding of the regulator.

Scope

The scope of our work is to develop a high-level design for the new drinking water regulator and identify its cost based on decisions taken to-date and the best information available, in order to support Ministers in the next tranche of their decision-making.

There are several aspects of the new regime that are still being developed which mean it is not possible at this stage to achieve a detailed design of the regulator. If Cabinet gives approval to proceed, officials will build on the Business Case to plan for the establishment of the regulator and further develop the organisational design and cost estimate.

Separately, officials are preparing advice on the relative costs, benefits and feasibility of locating specific new centralised wastewater and stormwater functions within the new drinking water regulator.

Why do we need a new drinking water regulator?

We cannot be confident in all cases that water that comes 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 around 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 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

At the moment, the drinking water regulatory system does not provide all of the necessary assurances that supplies across New Zealand are reliable and safe. Some drinking water suppliers are not regulated effectively, while others are not regulated at all.

There is a lack of central leadership and oversight of the regulatory system, and there has been limited compliance and enforcement activity since the current system was introduced. There is significant variability in the size and



capability of suppliers, with little or no support to help them comply with regulatory requirements. There are also gaps in relation to the regulation of source waters. There is a lack of recognition of tikanga, mātauranga Māori and kaitiakitanga and how these can be provided for in water management frameworks. There is also a lack of provision for Māori to input into decision-making.

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, which would be responsible for overseeing the entire drinking water regulatory system. A new central drinking water regulator will contribute to the provision of improved access to safe drinking water by supporting:

- improved central government oversight and transparency of performance
- improved supplier understanding of their obligations
- better guidance and support to the sector for safe operation of drinking water supply
- improved capability within the drinking water sector
- increased accountability as suppliers are held to account for supply of safe drinking water
- 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 drinking water regulator needs to be responsible for:

- **Sector leadership** – oversight 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** – set and review standards for drinking water and source water, and requirements relating to the multi-barrier approach to drinking water safety.
- **Compliance, monitoring and enforcement** – maintain 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; take enforcement actions; investigate complaints about suppliers; and work with suppliers that are at risk of defaulting on their regulatory duties.
- **Capability building, accreditation, and licensing** – work 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** – inform regulated parties of their regulatory obligations and provide guidance on how to comply with obligations. Be a centre of technical and scientific expertise, providing best practice advice and guidance, and coordinate and facilitate research into drinking water science.
- **Performance reporting** - collate and publish drinking water compliance and monitoring information for suppliers.



What form will the regulator take?

The Business Case contains an analysis of potential institutional forms for the new regulator, including an assessment of whether options support the regulator to:

- have credibility as an independent regulator and gain confidence of the sector, government, Māori and New Zealand public
- have a dedicated focus on drinking water regulation, and maintain that over time
- have an appropriate level of independence that protects the integrity of its evidence-based decision-making and enforcement and intervention powers
- recruit, build and retain people with the appropriate technical and regulatory skills, stakeholder relationships, and decision-making capability.

It also assesses whether the option supports:

- transparency of the regulator's performance
- the ability for the government to deal quickly and effectively with a regulator that is not adequately achieving the objectives set for it
- responsiveness to institutional arrangements that may emerge from future decisions on essential freshwater and resource management reform.

Enabling obligations of the Treaty of Waitangi to be met, and ensuring Māori rights and interests in drinking water are reflected, was a critical success factor in considering the form of the regulator.

No option for the drinking water regulator's form would have been progressed if it was considered that the option could not achieve this, or was

contrary to the objective of the Three Waters review to ensure that the regulatory proposals contribute to upholding Te Mana o te Wai.

A Crown agent is the preferred form for the regulator

The analysis showed that both a departmental agency and a Crown agent could provide for credible and effective regulation of three waters and the assessment between them is relatively finely balanced.

A Crown agent has stronger likelihood of being seen as credible by the sector, Māori and the broader public, with the further distance from Ministers supporting perceptions of independence of decision-making and enforcement activity. Its singular focus on drinking water regulation, and ability to maintain that focus over time, is also likely to build confidence.

A departmental agency would provide more flexibility to make changes that may be required in relation to future decisions on essential freshwater decisions and resource management reform. It would also make it easier for government to deal quickly and effectively with non-performance.

Both options are assessed as having no significant weaknesses, and differentiation between these two options came down to which criteria are weighted more heavily – perceived credibility and ability to gain confidence, ability to have a dedicated focus on drinking water regulation, and the appropriate level of independence that protects the integrity of its evidence-based decision-making and enforcement and intervention powers.

Ministers have expressed a preference for the Crown agent.



What will the regulator look like?

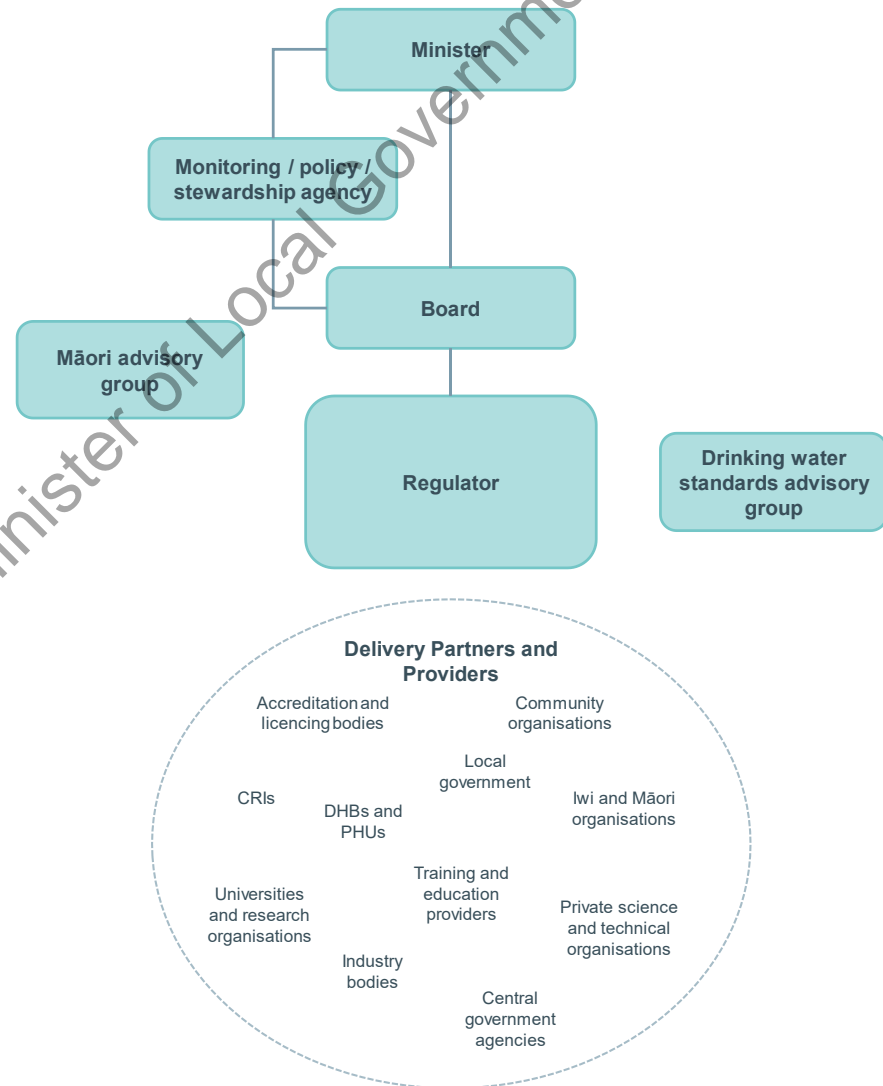
The regulator needs the right capability to work effectively, and give it credibility and mana. The people in the regulator need the scientific, technical, regulatory and mātauranga and tikanga Māori expertise that will give them credibility to lead and advise. They will also need strong engagement expertise, including with Te Ao Māori.

The regulator's resourcing needs to reflect how it delivers its functions and where its focus is going to be over time.

- The regulator will have a mixed service delivery model, delivering some functions itself, and working through partnership and providers in other areas.
- The regulator will need a regional presence, as its activities will require face-to-face engagement and site visits.
- The regulator's resourcing will change over time, reflecting the way its regulatory focus will change.

Governance, advisory and delivery arrangements

Strong central oversight and increased independence from Ministers are key features of the new regulator, and critical to achieving the shifts the new regime is intended to support. While the regulator will be independent, it will not operate in isolation. The diagram on the right illustrates the relationships the regulator will have at a governance, advisory, and delivery level.



Pages 5-6 withheld pursuant to section 9(2)(f)(iv) of the OIA



What are the transition plans and timeframes?

The transition between regimes needs to be carefully managed

It is likely to take 12-18 months to build the new regulator, with the 'go live' date dependent on the passage of legislation. The Establishment Unit would need to work closely with the existing regime to ensure there is a smooth transition to the new regulator.

Planning for the transition between regimes will be a critical activity for the Establishment Unit. Key transition points – in particular the nexus point between role of Establishment Unit, enactment of legislation/new regime and responsibility for current regime and staff – will need to be mapped out to avoid risks around the performance of the regulatory system, and ensure there is a smooth transition for staff and sector stakeholders.



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STRATEGIC CASE

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STRATEGIC CASE

The Strategic Case describes the strategic context and case for change that is driving the proposal to invest in a new drinking water regulator. This case for change has been well established and agreed by Ministers and Cabinet over a series of Cabinet papers and briefings relating to the Havelock North Inquiry and the Three Water Review.

It summarises the current drinking water regulatory regime, and provides an overview of the key challenges with the current approach. It defines the scope of the Business Case and the objectives of the investment, and identifies the expected benefits, potential risks, and constraints and dependencies.

A list of key documents and information sources that the Strategic Case draws on is included in Appendix 1.

What is driving need for this investment?

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. Around 5,000 people became ill, and up to four deaths are associated with this event. An independent report estimated the total economic costs at \$21 million, spread across individual households, businesses, central and local government, and the health and disability sector.

It is clear, though, that even if this event had not occurred, there is still a very strong case for improvement. Every year, around 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 make it clear that demonstrably safe drinking water is not always being supplied around the country. Based on 2017 monitoring data, an estimated 866,000 people were being supplied water from plants that were non-compliant with bacterial, protozoal and / or chemical standards.

The Inquiry into Havelock North Drinking Water made a number of recommendations relating to systemic issues with drinking water quality. Prior to the Inquiry's phase 2 report being released, the Government initiated a cross-agency review of three waters' infrastructure. While the contamination event was not the sole driver, the review was undertaken in part to position the Government to respond to recommendations from the Inquiry.

In 2017 and 2018, Cabinet considered a series of papers relating to the system for regulating and supplying drinking water, wastewater and stormwater (the three waters system). These papers included the initial findings from the cross-agency Three Waters Review, and issues and recommendations from the Inquiry into Havelock North Drinking Water.

Together, these papers presented a compelling case for change. They described a number of significant, inter-related concerns about the three waters system. On 5 November 2018, Cabinet noted that the best evidence available indicates there are system-wide challenges facing the three waters, and the response will require a whole-of-system approach from source to tap and back again.

Specific to the scope of this Business Case, of most significant concern is that three waters services are inadequately regulated in New Zealand. Regulation of three waters is weak across the system, with drinking water



and environmental regulation not properly providing assurance that good outcomes are always being reached, and no real system of economic regulation to ensure that the long-term interests of consumers are being protected or that services are value for money.

Drinking water is essential for life, but we cannot be confident in all cases that what comes out of the tap is safe. Effective wastewater and stormwater management systems are essential for the health of the water, the health of the environment, and the health of the people, but these systems frequently have adverse effects on cultural concerns and values (eg discharge onto mahinga kai), urban waterways, beaches, and harbours, and do not adequately reflect and link to Te Mana o te Wai.

On 1 July 2019, Cabinet agreed to a suite of regulatory proposals designed to strengthen the regulation of drinking water, stormwater and wastewater.

Specific to this Business Case, Cabinet agreed in principle to establish a centrally-located drinking water regulator, which would be responsible for overseeing the entire drinking water regulatory system, subject to further advice on options for machinery of government arrangements. This Business Case will support a report-back to Cabinet in September 2019 on the form, location and size of the regulator. Further policy advice on the appropriate mechanism for implementing wastewater and stormwater regulatory proposals will be included in the report-back, but is not in scope for this Business Case.

Links to other government work programmes

Implementing new regulatory requirements for wastewater and stormwater

As part of the Three Waters Review programme, Cabinet has agreed to a suite of regulatory proposals designed to strengthen regulation of wastewater and stormwater. Advice to support decisions about the appropriate mechanism for implementing these proposals is also due to be provided in the September report-back to Cabinet, where decisions on the form of the drinking water regulator are being sought.

Essential Freshwater

The Essential Freshwater programme, proceeding in tandem with this work, is focused on ensuring an integrated and effective freshwater management system, with an emphasis on improving all aspects of ecosystem health and includes proposed new processes and standards for reducing pollution.

There is significant overlap between the objectives and outcomes of this programme and the Three Waters Review, given the interrelationship between all of the waters. A key plank of the Essential Freshwater work programme is strengthening Te Mana o te Wai and one of objectives of the Three Waters review is supporting this work by also ensuring that the regulatory proposals contribute to upholding Te Mana o te Wai.

Governance and project management arrangements are in place to support the alignment of these programmes, and Kahua Wai Māori has been providing advice to both programmes.

Review of the resource management system

A comprehensive review of the resource management system, focused on the Resource Management Act 1991 (RMA), is also in progress. It is considering the role and use of national direction instruments, and is likely to consider the allocation of regulatory functions under the RMA.

Decisions may impact on the role and functions of a new central regulator, and it will need to fit, or be adjusted to fit, with system architecture developed through the Essential Freshwater programme and RMA reforms.



What are the current arrangements?

Overview of drinking water regulation

The regulatory approach for drinking water is based on a 'multi-barrier' compliance and monitoring system under the Health Act 1956 and the Resource Management Act 1991 (RMA). Drinking water standards (NZDWS) are set by the Ministry of Health (MoH). Compliance is monitored and verified locally by drinking water assessors, and enforced by medical officers of health or health protection officers.

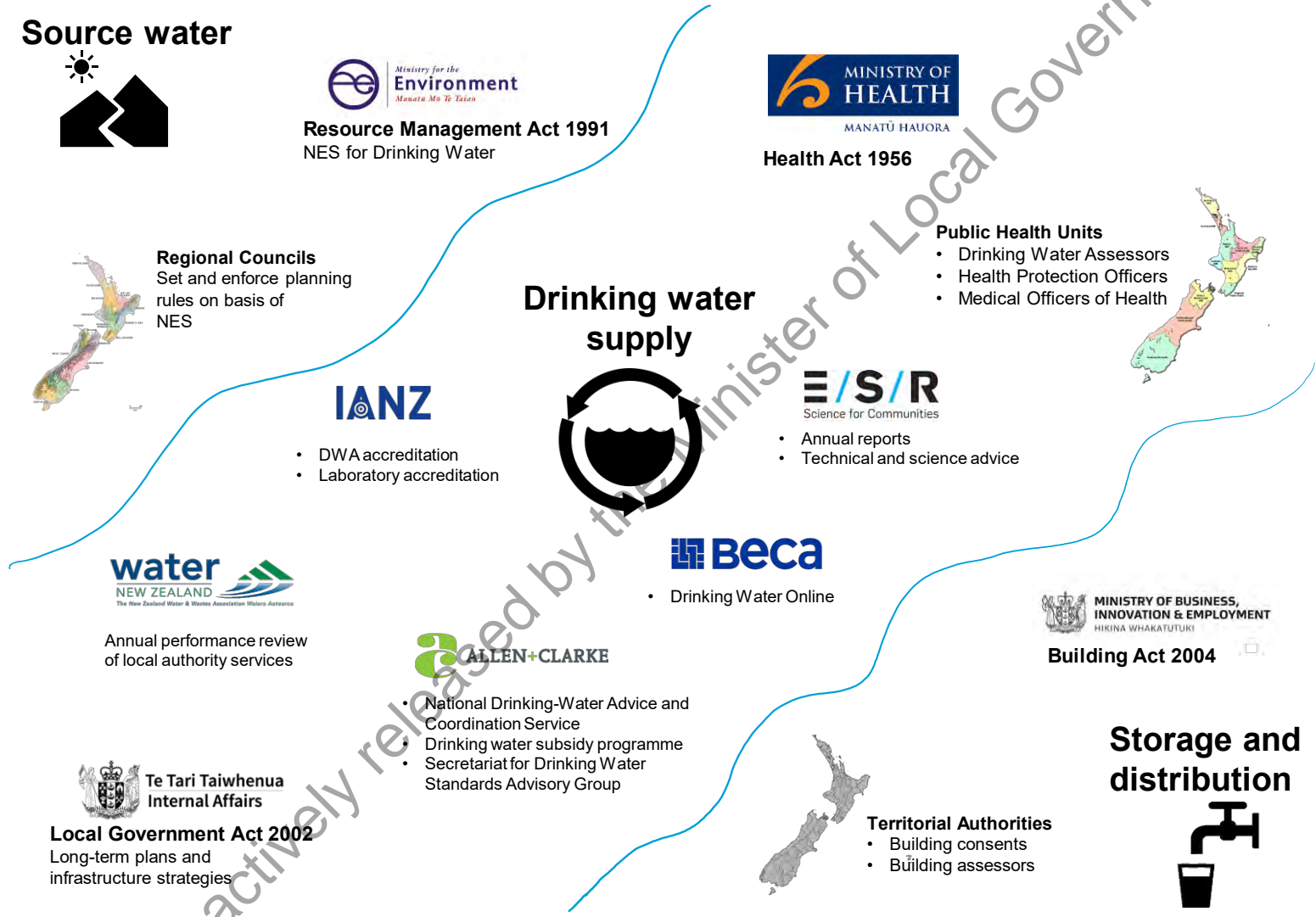
Suppliers are required to have a drinking water safety plan and take "all practicable steps" to comply with the NZDWS. MoH maintains a register of drinking water suppliers, licenses laboratories for drinking water testing, and reports annually on supplier compliance. There is a national environmental standard under the RMA, which requires regional councils to set and enforce planning rules to ensure that sources of drinking water are not affected in a way that would require higher levels of treatment to meet the NZDWS.

Complex regulatory arrangements currently apply to the provision of drinking water, covering the management of drinking water from the source to the tap. Drinking water regulation involves multiple pieces of legislation, and responsibilities are shared across multiple central government agencies, Public Health Units (PHUs) within District Health Boards (DHBs), and regional councils.

Figure 1 provides an overview of the key instruments and delivery organisations involved in the regulation of drinking water. These arrangements are described in more detail on the following pages.



Figure 1: Overview of drinking water regulation instruments and delivery organisations



Source water

The source of the water, either from below ground or from surface catchments, is primarily governed by the Resource Management Act 1991. There is a National Environmental Standard (NES) for Sources of Human Drinking Water, overseen by the Ministry for the Environment. The NES requires regional councils to set and enforce planning rules to ensure that sources of drinking water are not affected in a way that would require higher levels of treatment to meet the New Zealand Drinking Water Standards (the standards are described below).

Protection of source water is also a focus of water safety plans under the Health Act 1956, described in the next section.

Drinking water suppliers

Regulation of the quality of drinking water from suppliers is provided for in Part 2A of the Health Act 1956, and responsibilities lie with the Ministry of Health and DHBs.

The current framework in the Act was introduced in 2007, with implementation staged according to size of supply from 2012 to 2016. Prior to this time, drinking water in New Zealand was largely unregulated, and compliance with standards and other measures was largely voluntary.

Setting standards and requirements

The New Zealand Drinking-Water Standards are the reference which water quality is measured against, and provide detailed specifications for drinking-water suppliers, including maximum acceptable values for a range of contaminants and monitoring requirements. The Ministry of Health leads the development of the standards, working with the Drinking Water Advisory Group, and standards are set by the Minister for Health. Under the Act, suppliers must take all reasonably practicable steps to comply with the standards.

The Act also requires all suppliers serving more than 500 people to develop and start to implement a water safety plan. These plans consider potential risks to the water supply, and identify ways to manage those risks. Suppliers serving less than 500 people are not required to have a Water Safety Plan, but can do so if they wish, or if required by a DWA. At the moment, DWAs review and approve all water safety plans.

Registration and Accreditation

The Act requires all drinking-water suppliers serving more than 25 people to be registered, providing publicly available information including about their supplies or sources of water. The register is currently maintained by ESR on behalf of the Ministry of Health.

The Act requires that only the Director-General of Health-recognised laboratories may be used to carry out tests and analysis of raw water and drinking-water to demonstrate compliance with the Standards. This is achieved through an accreditation regime administered by IANZ on behalf of the Director-General Health.

Compliance monitoring and enforcement

Compliance by drinking water suppliers is monitored and verified locally by Drinking Water Assessors, and enforced by Medical Officers of Health or Health Protection Officers.

The key functions of a DWA are to assess the performance of drinking water suppliers to determine whether they are complying with the Act and the DWSNZ, and whether they are implementing their water safety plans.

DWAs are appointed by and responsible to the Director-General Health for their statutory functions, but employed within Public Health Units of DHBs. Though not a legislated requirement, all DWAs are also Health Protection Officers, and individuals generally have wider responsibilities than monitoring of drinking water quality. DWAs are accredited by IANZ.



Medical Officers of Health and Health Protection Officers are designated officers under the Act, with specific powers where there a serious risk to public health from drinking water being supplied is identified. These range from requiring suppliers to take actions to address the risk, stopping supply of drinking water, and issuing 'boil-water notices'.

Information, Education and Advice

To support suppliers to achieve the NZDWS, the Ministry of Health produces Guidelines for Drinking-Water Quality Management in New Zealand which provide advice for achieving high level of drinking-water quality management.

Drinking Water Online was launched in July 2017 (managed by Beca) and replaces the old Water Information New Zealand databases (managed by ESR). It has been built to provide a comprehensive and complementary service for drinking-water supply management and a tool to support the Ministry, the Public Health Units and the wider industry in continuing to meet their obligations under the Health Act 1956.

ESR is contracted by the Ministry of Health to provide technical and science advice by the Ministry of Health, and some drinking research is commissioned through the Crown Research Institute.

The Ministry of Health also contracts services from private consultancy Allen and Clarke, including operation of the National Drinking-Water Advice and Coordination Service. This includes technical advice on drinking-water supply and treatment, advice on compliance with the Drinking-Water Standards and health risks of drinking-water, and policy and regulatory advice to the Ministry of Health as required. It also supports DWAs to meet accreditation requirements; provides training for drinking-water staff, and provides GIS capability as required.

Performance reporting

The Annual Report on Drinking-Water Quality is published each year and covers previous year's compliance for all registered networked drinking-water supplies serving more than 100 people. The report describes how drinking-water suppliers met the requirements of the Drinking-water Standards for NZ and how they met their statutory requirements of the Health Act. ESR currently complies the annual report on behalf of the Ministry of Health.

Storage and distribution

Storage and distribution of water in tanks and pipes within buildings up to the point of use – from toby to tap – is regulated by the Building Act 2004 and the Building Code, administered by the Ministry of Business, Innovation and Employment. This Act takes over responsibility for water once it leaves a public networked supply and enters the building-owner's property. It also applies to water distributed within a building from its own self-supply. This regulation occurs largely via the building consent process when a building is built or when the plumbing undergoes a consented renovation.



What are the challenges with the current approach?

The drinking water regulatory system is currently failing to provide all of the necessary assurances that water supplies across New Zealand are safe and reliable. There are two core issues: some suppliers are not regulated effectively, while others are not regulated at all.

A significant proportion of New Zealanders receive drinking water from unregulated suppliers

The regulation of networked supplies is fragmented and weak. Many suppliers are effectively unregulated. This includes network supplies to fewer than 500 people. It also includes several kinds of 'self-supply', many of which are institutions and facilities that serve a lot of people, such as schools, campgrounds, universities, airports, and hospitals. It is estimated that around 800,000 New Zealanders receive their drinking water from supplies that are not regulated under the Health Act 1956.

Requirements on suppliers are not strong, and there is poor management of risks

Even when supplies are regulated, the requirements are not strong.

At the moment, suppliers are required to take "all practicable steps" to supply water that meets drinking water standards, but are deemed compliant if they start implementing a water safety plan. In effect, this means they may be technically compliant with the law, even though the water being supplied is not demonstrably safe.

There is a lack of consistent application of preventative risk management practices by drinking water suppliers that is creating unacceptable risks for residents and visitors to New Zealand.

There are fragmented responsibilities and accountabilities, and a lack of central oversight

Accountability for drinking water regulation is fragmented, with different suppliers covered by different pieces of legislation, and multiple agencies playing a role in ensuring safe drinking water is available.

There has been a lack of coordination between all players in the system, including suppliers, regional councils, district health boards, and the Ministry of Health. A lack of central government leadership and whole-of-system oversight has led to poor understanding of risks and system performance.

There are significant weaknesses in the current regulatory system in relation to compliance monitoring and enforcement

Limited compliance monitoring and enforcement actions

There appears to be a relatively high tolerance for low compliance with the drinking water standards and other requirements on suppliers. No formal enforcement action has been taken since the current drinking water regime was introduced in 2007, despite widespread annual non-compliance with a range of regulatory requirements that could have a material impact on water quality and safety (including drinking water standards, failures to meet requirements to monitor water supplies, and failures to take action taken following test results indicating E. coli contamination).

Inconsistent compliance and enforcement across the country

Decentralised employment arrangements for compliance monitoring and enforcement officers effectively create dual reporting lines for DWAs, with confusion around accountability. DWAs often seek advice and support from PHUs, as their employers, which makes it is easy for inconsistent practice to develop nationally.



Resourcing issues relating to compliance and enforcement staff

There have been, and continue to be, serious shortages of DWA resources which have not been addressed. While there are approximately 36 DWAs across the country, very few spend all of their time on drinking water. Due to the decentralised employment arrangements for DWAs, there is currently no good estimate of the FTE being applied to this compliance role.¹

There is also a question about the amount of time enforcement officers have to dedicate to their drinking water regulation role – as Health Protection Officers and Medical Officers of Health, they have multiple statutory responsibilities. With no central oversight or guidance about how much time should be spent on any one activity, they must decide themselves how to prioritise their time.

Variable capability of suppliers, with little or no support to help them comply with regulatory requirements

Understanding regulatory requirements

Regulated drinking water suppliers can be regulated under different legislative regimes and/or have different obligations. This means that it is unclear to some suppliers, what requirements they must meet, and for consumers what regulation protects them.

There is very little help or support for drinking water suppliers to identify best practice, understand their regulatory requirements, and respond to new and emerging issues.

Capability and capacity of suppliers

There are ongoing capability and resourcing problems across the drinking water sector.

The current drinking water regime has no licensing or mandatory qualification system for water suppliers or their staff, and no organisation has clear responsibilities for coordination of activities to support capability building and ensuring training is available. There is significant variability in the capacity and capability of drinking water suppliers and, in particular, smaller providers are not keeping pace with developing technology, and the increasing complexity of maintaining and operating infrastructure.

There are gaps relating to the regulation of source waters.

The current framework for addressing risks to sources of drinking water is a narrowly focused and inadequately implemented, with little real connection to broader drinking water regulation.

A lack of recognition of tikanga, mātauranga Māori and kaitiakitanga

Under the current regime, there is a lack of recognition of tikanga, mātauranga Māori and kaitiakitanga and how these can be provided for in water management frameworks. Mātauranga and tikanga Māori are not considered alongside western science in the current system.

Māori are concerned that the current regulatory does not contribute to upholding Te Mana o te Wai, and that there is a lack of opportunity to input into decision-making through-out the system, from governance to advice to monitoring and compliance.

¹ We estimate 20 FTE DWAs based on discussions with MoH officials.



What is the scope of this Business Case?

The challenges with the current system for drinking water regulation are being addressed through a broad range of regulatory proposals. These include extending the coverage of and increasing requirements on water suppliers (registration, accreditation), ensuring supply, and strengthening compliance monitoring and enforcement tools.

This Business Case is focused on the proposal to establish a new central drinking water regulator, as agreed by Cabinet on 1 July 2019. Cabinet has agreed that the drinking water regulator needs to be responsible for delivering the functions summarised in Table 1. This Business Case supports a report-back to Cabinet in September where the Minister of Local Government will provide advice on the form, location and funding of the regulator. As such, it is focused on determining:

- the preferred institutional form for the new regulator²
- the capability and capacity of the regulator
- service delivery arrangements, including the number of employees and the extent to which the regulator contracts services from third parties
- indicative costs of, and funding mechanisms for, the new regulator.

The scope of the Business Case is to develop a high-level design for the regulator and identify its cost based on decisions taken to-date and the best information available, in order to support Ministers in the next tranche of their decision-making.

There are several aspects of the new regime that are still being worked through which mean it is not practical at this stage to achieve a detailed design of the regulator.

If approval is given to proceed, officials will build on the Business Case to plan for the establishment of the regulator and further develop the organisational design and cost estimate.

Separately, officials are preparing advice on the relative costs, benefits and feasibility of locating specific new, centralised wastewater and stormwater functions within the new drinking water regulator.

Table 1: Functions of a new drinking water regulator

Function	Description
Sector leadership	Oversight 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	Set and review standards for drinking water and source water. It will also develop requirements relating to the multi-barrier approach to drinking water safety, and consider any requests from exemptions from these requirements (as part of a broader process for considering and granting exemptions).
Compliance, monitoring and enforcement	Maintain registers for drinking water suppliers, and water sampling and testing laboratories; Compliance monitoring and enforcement of water safety plans (including source water risk management plans); monitoring drinking water suppliers; and monitoring other obligations on local authorities. It would also employ staff, such as drinking water assessors; take enforcement actions; investigate complaints about suppliers; and work with suppliers that are at risk of defaulting on their regulatory duties.

² Officials are preparing advice separately on whether the regulator should be a new entity, or whether functions would be put into an existing entity.



Function	Description
Capability building, accreditation, and licensing	<p>Work with suppliers and training providers to ensure suitable training is available and being taken up, and ensure the sector has sufficient capability to fulfil its responsibilities.</p> <p>In the longer term, accreditation, certification and/or licensing systems will be introduced for suppliers and/or key roles. The regulator will need the ability to develop and implement these systems.</p>
Information, advice and education	<p>Inform regulated parties of their regulatory obligations and provide guidance on how to comply with obligations.</p> <p>Be a centre of technical and scientific expertise. Provide best practice advice and guidance to suppliers, councils, and other entities involved in drinking water safety, supply and management; and coordinate and facilitate research into drinking water science. This centre will bring together many different types of drinking water expertise, including public health, engineering, risk management, environmental science, and mātauranga Māori.</p>
Performance reporting	<p>The regulator will be responsible for collating and publishing drinking water compliance and monitoring information relating to all suppliers (except individual domestic self-suppliers).</p>

What would establishing a new regulator achieve?

The benefits of the regulatory reform proposals

The key benefits of the suite of proposals to reform the drinking water regulatory system include:

- avoided costs of reduced incidence of illness from drinking water – estimated to be between \$12.5 and \$23.5 million per annum
- national confidence in reliable, resilient drinking water supplies

- certainty for regulated parties around requirements
- improved services to consumers
- improving access to safe drinking water
- improvement in wellbeing – improved quality of life and life expectancy
- protection of international reputation, including tourism.

What are the benefits of establishing a new, central drinking water regulator?

The practical ways in which a central drinking water regulator will support realisation of these benefits is by providing for:

- **improved central government oversight and transparency of performance** – by having a dedicated focus on regulation of drinking water, a clear point of leadership for the regulatory system, and simplifying delivery arrangements to mitigate some of the current confusion around responsibilities and accountabilities in the system
- **improved supplier understanding of their obligations** – by engaging and educating suppliers about how drinking water regulatory requirements apply to them
- **better guidance and support for sector for safe operation of drinking water supply, in line with best practice and regulatory requirements** – by being a centre of science and technical expertise, and translating this expertise and knowledge into practical advice for suppliers
- **improved capability within the drinking water sector** – by setting accreditation and / or licensing requirements for suppliers and individuals working in the industry, and by ensuring appropriate training is available, and taken up



- **increased accountability as suppliers are held to account for supply of safe drinking water** – by strengthening compliance monitoring and actively enforcing regulatory requirements on suppliers where there is non-compliance
- **mātauranga and tikanga Māori and kaitiakitanga to be exercised** – through the overarching principles under which the regulator operates (system stewardship), inclusion of Mātauranga Māori, having the capability to work with iwi/hapū/whānau/Māori communities and by tailoring guidance and capability support to the particular needs and characteristics of marae and other Māori entities.

- 2 build the capability of the drinking water sector to comply with regulatory requirements and provide water that is safe to drink, through the provision of information, education and advice
- 3 significantly strengthen the consistency and effectiveness of compliance monitoring and enforcement activities in relation to drinking water regulation.

In the establishment phase, officials will develop these objectives further to make them SMART (specific, and measurable, achievable, relevant and time-bound).

What are the investment objectives?

The investment objectives provide a succinct description of what needs to be achieved by the new regulator to realise the benefits of the change to the drinking water regulatory system. These objectives, along with the critical success factors, are used in the Business Case to assess different options for the regulator.

Development of the investment objectives for the new drinking water regulator drew on recommendations from the Havelock North Inquiry, the Review of Three Waters, and subsequent advice to Ministers and Cabinet. They have been tested with officials from agencies forming the three waters working group, including the Department of Internal Affairs, Ministry for the Environment, Ministry of Health and Ministry of Business, Innovation and Employment.

Investment in a new, central drinking water regulation is intended to:

- 1 establish clear leadership and whole-of-system oversight of drinking water regulation



Risks, constraints and dependencies

The following tables set out the risks, constraints and dependencies of the proposed investment.

In this context, a 'risk' is the chance of something happening that will have an impact on the achievement of the investment objectives. The main risks are described in Table 2.

Table 2: Risks of investment

Risk	Impact	Likelihood
Existing regulatory staff are not retained. There is a risk that the regulator will be unable to resource its functions if the level of retention of current drinking water assessors is too low.	High	High to Medium ¹
The drinking water regulator is not sufficiently resourced to carry out its role. There is a risk the regulator will not have sufficient funding and/or personnel capacity and capability to effectively carry out its key functions, meaning the transformation of the regulatory system is not able to be achieved.	High	Medium
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 the levers it has.	High	High to Medium ²
Regulator does not have the mandate to enforce compliance with regulatory requirements. The regulator is directed by its Minister to take an advisory / customer centric approach to achieving compliance that results in insufficient enforcement of regulatory requirements.	High	Low

1 This risk is heightened depending on choices about location of the regulator (where staff would be required to relocate), and is likely to increase if it takes too long to provide certainty for staff.

2 Likelihood will diminish with time as the regulator and others work to build capability in the sector.

'Constraints' are limits within which the investment in a new drinking water regulatory must be delivered.

Table 3: Constraints of investment

Constraints
The level of available funding, including from government and levy sources.
Availability of the right skills and capabilities in the market.

'Dependencies' are any actions or developments required of others and outside the scope of this programme, and on which the success of the investment proposal depends.

Table 4: Dependencies of investment

Dependencies
Decisions on wastewater and stormwater regulatory functions, and future decisions on essential freshwater and RMA reforms may impact on the currently proposed scope, capability needs and location of the new regulator.
Proposed obligations on local government to ensure communities have access to safe drinking water in situations of supplier failure.
Decisions about the appropriate funding mechanisms for the regulator.
Funding for suppliers to support improvements to infrastructure and capability.



ECONOMIC CASE

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ECONOMIC CASE

Introduction

The Economic Case focuses on machinery of government choices to identify the organisational form of the regulator

The purpose of the Economic Case is to identify the preferred form of the new regulator. This has been done by first, identifying a long list of options, considering a number of different dimensions of choice. The long-list was then assessed using a set of critical success factors as well as the investment objectives identified in the Strategic Case, to produce a short-list of three options. From there, further analysis has been carried out on the benefits and risks of each short-list option to arrive at a preferred form.

The process to identify the preferred form of the regulator involved assessing possible organisational design options using criteria consistent with the State Services Commission (SSC) guidance, and aligned to the drinking water regulatory objectives.

The Economic Case consists of the following parts:

- 1 **Identification of a longlist of organisation form options:** A list of all possible organisational design choices were drawn up using the SSC's machinery of government guidance.³
- 2 **Criteria to assess options:** Criteria consistent with SSC guidance was developed over a number of discussions with the SSC, the Three

Waters agencies and the Steering Group for the development of the Business Case.

- 3 **Assessment of form options and identification of preferred regulator form:** The assessment process involved a number of workshops with officials from DIA, MoH, MfE, MBIE and briefings to regulatory ministers on implications of machinery of government choices.

³ <https://www.ssc.govt.nz/sites/all/files/mcg-suppl-guidance-design-choices.pdf>. Accessed July 2019.



Organisational form options

What are the key choices?

The dimensions of choice

SSC produces a framework to guide decision-making for organisational design choices in relation to machinery of government.⁴ We have applied the SSC framework in the context of the drinking water regulator's role and functions, its regulatory operating environment and the desired governance arrangements.

Figure 2 summarises the framework from the perspective of three main dimensions of choice. These dimensions ask:

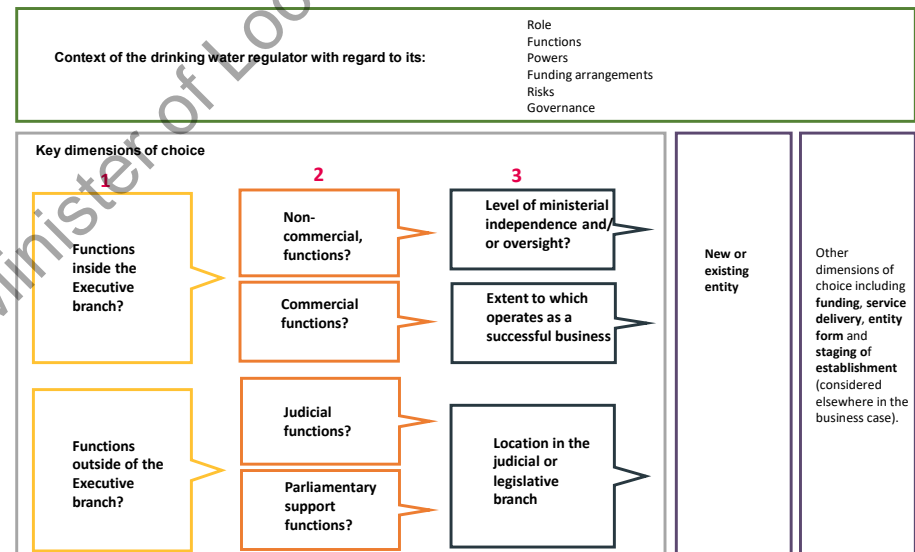
- which branch of government do the regulator's functions sit within?
- are the functions commercial or non-commercial in nature?
- what is the appropriate level of ministerial independence and oversight for the regulator?

There are further decisions about:

- Whether the regulator is located in a new or existing entity. As noted in the Strategic Case, this is outside of the scope of this Business Case, and is being considered by Ministers via a separate process.

- The roles and number of FTE staff required to deliver the functions, the extent to which the regulator purchases services from third parties, its funding and governance arrangements, and process for establishment. These choices are considered in the Financial, Commercial and Management Cases of the Business Case.

Figure 2: Machinery of government decision framework



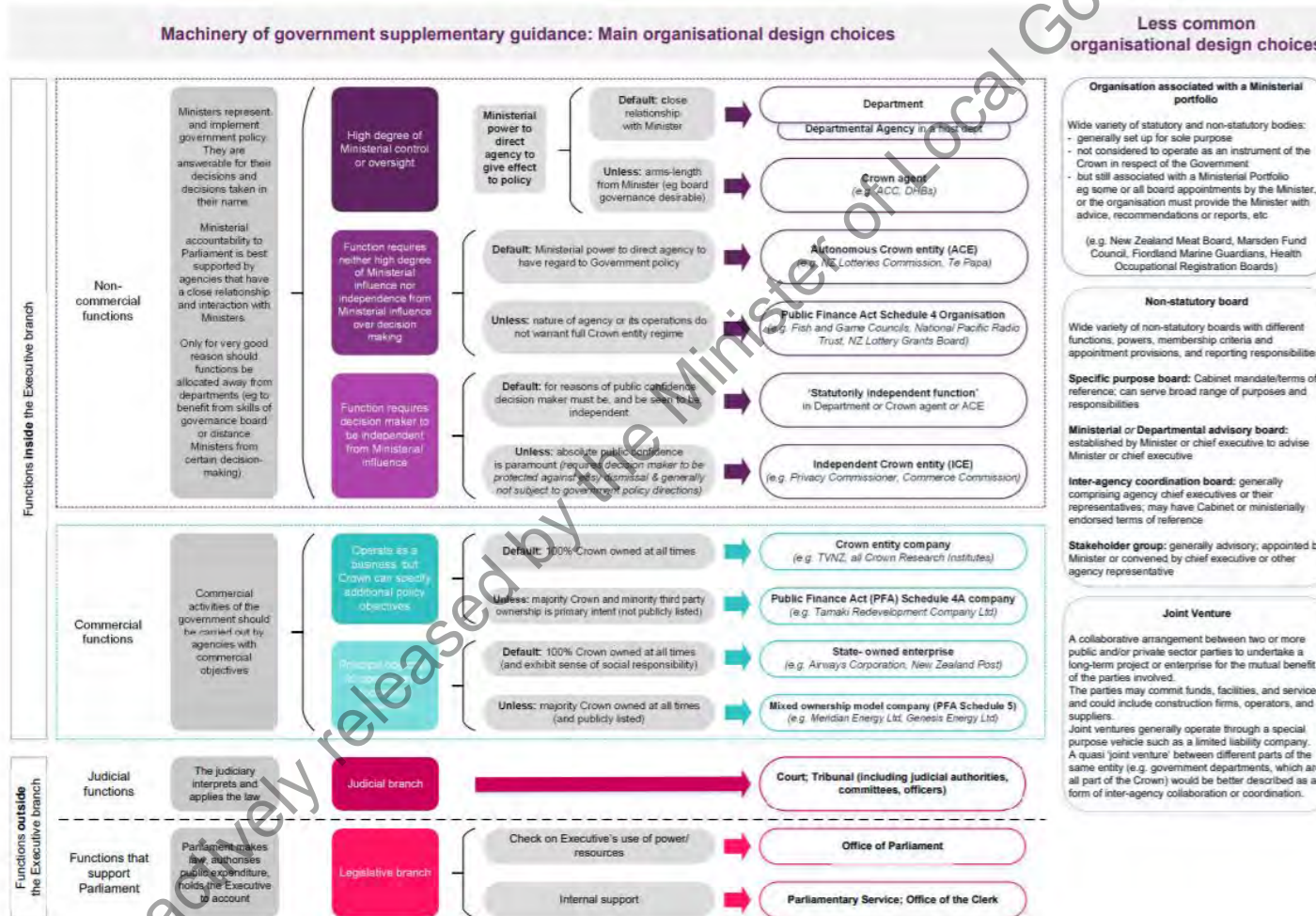
⁴ http://www.ssc.govt.nz/sites/all/files/mog_supp_guidance-design-choices.pdf. Accessed July 2019.



The long list of options

The list of possible organisational form options is set out in Figure 3 below. The figure is produced by SSC and is a component of their wider machinery of government guidance prepared for the state sector.

Figure 3: State Services Commission machinery of government guidance



Identifying the shortlisted options

The purpose and functions of the drinking water regulator narrow down the long list of form options to a smaller set of choices. These options (the “shortlist”) are carried forward for detailed analysis.

The longlist is 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.** For the reasons discussed later in the Economic Case, selection of the preferred organisation form involves careful judgement about the appropriate level of ministerial independence and oversight in order to achieve the desired regulatory objectives.

Options discounted

On this basis, all options for commercial entities, judicial entities and parliamentary support entities are excluded from further assessment.

There are also some organisational form options that broadly sat within the dimensions of choice, but which officials excluded at this stage of the assessment process. Those excluded were:

- **Autonomous and Independent Crown Entities.** The level of independence from Ministerial influence mean it would be difficult to direct change where there is poor performance of the regulator. Given

the recent regulatory failure, this is undesirable. SCC supported the exclusion of these form options.

- **Non-statutory boards and Public Finance Act Schedule 4 Organisations.** The nature of the regulator requires a full-entity regime.
- **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

The shortlist has been agreed by SSC, the Three Waters agencies and the Steering Group for the development of the Business Case.⁵

The shortlisted organisational form options are:

- **Business unit in a department** – this option reflects the current arrangement
- **Departmental agency**
- **Crown agent.**

Table 5 summarises the main characteristics of each of these shortlisted options.

⁵ The Steering Group comprised director-level officials from the Three Waters agencies and an independent member from MBIE.



Table 5: Shortlisted options

	Option 1: Located in an existing department	Option 2: Departmental agency	Option 3: Crown agent
Description	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.	All regulatory functions would be housed in a new departmental agency that 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 by an existing department, is legally part of the host department and staff are employed by the host. Under proposed state sector reform changes, the departmental agency may 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.	All regulatory functions would either be housed in an existing Crown Entity or a new Crown Entity that would need to be established. The Crown Agent is a non-company legal entity wholly owned by the Crown. The Crown Agent is governed by a board who is accountable to the primary Minister. The board has responsibility for the regulator's performance and appoints the Chief Executive.
Accountability	The department's Chief Executive would be accountable to a Minister for the department's performance of its new regulatory functions.	The department agency's Chief Executive would be 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.	Depending on primary legislation, regulatory accountabilities may sit with board (NZTA) or a designated role (eg the Director of Maritime NZ). The agency would have a Chief Executive accountable to a ministerially appointed Board.
Independence	Provides for high degree of ministerial oversight and direction. Ministerial power to direct regulator to give effect to policy. Must give effect to whole of government approach if directed by Ministers of Finance and State Services. Can be given statutory independence for its functions.	Provides for high degree of ministerial oversight, control and accountability. Minister has a close relationship with the regulator and has power to direct regulator to give effect to government policy. Can be given statutory independence for its functions.	Governance board puts regulator at arms-length from ministers. Regulator must "give effect to" policy that relates to the entity's functions and objectives if directed by Minister. Must "give effect to" whole of government approach if directed by Ministers of Finance and State Services. Can be given statutory independence for its functions.
Establishment	Cabinet agrees to establish.	Cabinet agrees to establish, including the role and principal functions of the departmental agency.	The Crown Entities Act 2004 requires separate legislation to establish a new crown agent (can be the same legislation that sets out specific powers). Alternatively, primary legislation can specify an existing crown agent to carry out the functions.
Examples	MPI's regulation of food safety or MBIE's regulation of building.	No current examples of a regulatory departmental agency.	Maritime New Zealand or EPA.



Assessment of options

Approach to assessing organisational form options

Consistent with SSC guidance,⁶ officials designed criteria to assess the options which:

- took into account the drinking water context
- addressed the issues and problems identified in the Strategic Case which gave rise to the need for a new drinking water regulator
- captured the intent of the drinking water regulatory objectives without pre-empting the outcome of the option assessment.

The criteria were refined over a number of discussions with the SSC, the Three Waters agencies and the Steering Group for the development of the Business Case.

Officials prepared streams of advice to the regulatory Ministers which Ministers considered over several meetings. Through this process, Ministers:

- agreed the shortlisted options identified by officials
- considered advice from officials on the assessment of the shortlisted options
- expressed a preference for a Crown agent.

⁶ http://www.ssc.govt.nz/sites/all/files/reviewing-moq_0.pdf. Accessed July 2019.

“Machinery of government changes do not tend to happen merely because of the existence of an abstract set of design criteria. Context is crucial. They tend to occur in response to perceived problems or inadequacies. Criteria may have a significant effect on the ultimate design, but other considerations will also be relevant such as political judgements about the suitability of different organisational forms, or practical considerations about the relative ease with which changes can be made”.

Former State Services Commissioner D K Hunn



Criteria agreed by officials

Each shortlisted option must achieve the following critical success factors

Critical success factors

Ability to achieve the objectives of the regulatory proposals

Enable the obligations of the Treaty to be met, and provide access to safe drinking water for Māori

Provide value for money and make the most efficient use of available resources

Provide achievable transition arrangements from current to new regulatory settings

Operate within sustainable funding mechanisms

Each option is then assessed against 7 drinking water-focused criteria, ranked in approximate order of priority

Criteria

- 1 Credibility as an independent regulator and ability to gain confidence of the sector, government, Māori and New Zealand public
- 2 Ability to have a dedicated focus on drinking water regulation, and maintain that over time
- 3 Has an appropriate level of independence that protects the integrity of its evidence-based decision-making and enforcement and intervention powers
- 4 The performance of the regulator is transparent
- 5 The ability to recruit, build and retain people with the appropriate technical and regulatory skills, stakeholder relationships, and decision-making capability
- 6 The ability for the government to deal quickly and effectively with a regulator that is not adequately achieving the objectives set for it
- 7 Responsiveness to changes that may be required due to future decisions on essential freshwater and resource management reform

Reflecting and protecting Māori rights in interests in drinking water, and contributing to Te Mana o te Wai

Enabling obligations of the Treaty of Waitangi to be met, and ensuring Māori rights and interests in drinking water are reflected, was a critical success factor in considering the form of the regulator.

No option for the drinking water regulator's form would have been progressed if it was considered that the option could not achieve this, or was contrary to the objective of the Three Waters review to ensure that the regulatory proposals contribute to upholding Te Mana o te Wai.

Specific proposals for how this will be enabled, in practice, are included on page 47.

Supporting cohesion of the state sector

In discussion with SCC, an overarching criterion was identified which considers how well the shortlisted options aligned with the wider state sector and contributed to the overall cohesion of the system.

Other points

Effective system oversight and stewardship is a key objective; however, this is not assessed as part of the consideration of the regulator's form. Consistent with good regulatory design and practice, these functions are more appropriately located within a separate entity to the regulator.



Summary of assessment of options

Assessment criteria	Option 1: Business unit in a department	Option 2: Departmental agency	Option 3: Crown agent*
Credibility as an independent regulator and ability to gain confidence of the sector, government, Maori and New Zealand public	<p>Greatest likelihood that the regulator is perceived to lack dedicated focus, be at risk of capture, and subject to competing department priorities and/ or ministerial influence.</p>	<p>A singular focus would support improved confidence, but lack of statutory board may affect perception of independence, impacting credibility and confidence.</p> <p>Untested form as a regulator.</p>	<p>Common regulatory form for a regulator. Likely to be perceived as acting independently from the government.</p>
Ability to have a dedicated focus on drinking water regulation, and maintain that over time	<p>May be subject to competing departmental priorities for resourcing and changes to Ministerial priorities over time. Greatest risk that accountabilities become diluted over time.</p>	<p>Clear accountabilities for delivering regulatory functions.</p> <p>Provides for a more dedicated focus on drinking water outcomes compared to Option 1, but can still be subject to changing ministerial priorities over time.</p>	<p>Clear accountabilities for delivering regulatory functions.</p> <p>Compared to Options 1 and 2, provides for a more dedicated focus on drinking water outcomes and most likely able to maintain dedicated focus over time.</p>
Has an appropriate level of independence that protects the integrity of its evidence-based decision-making and enforcement and intervention powers	<p>Perception that competing department priorities and/ or ministerial involvement may influence decision-making (eg around standard setting or enforcement).</p> <p>Can be given statutory independence for its functions.</p>	<p>Chief Executive is directly responsible to the Minister. Can be broadly directed by the government.</p> <p>Can be given statutory independence for its functions.</p>	<p>Entity has 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. Ministers have power to direct the regulator to give effect to policy.</p> <p>Can be given statutory independence for its functions.</p>
The performance of the regulator is transparent	<p>Public sector accountability mechanisms in place (including parliamentary scrutiny, central agency functions and independent roles such as Controller and Auditor-General).</p>	<p>Public sector accountability mechanisms in place (including parliamentary scrutiny, central agency functions and independent roles such as Controller and Auditor-General).</p> <p>Risk that a poor performing Chief Executive or leadership team limits transparency of performance.</p>	<p>Board and monitoring agency expected to contribute to greater visibility of performance, but existence of a board does not necessarily strengthen regulatory leadership (eg members appointed by ministers and are not required to have regulatory experience).</p> <p>Risk that a poor performing board reduces transparency of performance.</p>



Assessment criteria	Option 1: Business unit in a department	Option 2: Departmental agency	Option 3: Crown agent*
The ability to recruit, build and retain people with the appropriate technical and regulatory skills, stakeholder relationships, and decision-making capability	May not be able to attract and retain the right skills with existing career structures and 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 and greater ability to direct resources to invest in professional development and grow sector capability.	More likely to be able to attract and retain the right capability compared to Option 1 and greater ability to direct resources to invest in professional development.
The ability for the government to deal quickly and effectively with a regulator that is not adequately achieving the objectives set for it	Ministerial power to direct agency to give effect to government policy.	Ministerial power to direct and relationship between Minister and Chief Executive means direct feedback can be given and changes made.	Compared to options 1 and 2, more difficult to direct change where there is poor performance. Minister can remove board members if justifiable reason.
Responsive to institutional arrangements that may emerge from future decisions on essential freshwater and resource management reform	Resources and supporting functions may be embedded into department, making it difficult to "lift and shift" delivery of regulatory functions in the future. Ministers can be involved in the regulator's design and set-up phases.	More flexibility to respond to future changes than Options 1 and 3 because this form is stand-alone and does not have establishing legislation.	The ability to respond the changes required will be dependent on the level of flexibility in the establishing legislation. Any changes to functions (addition or removal) may also require reconsideration of board composition.

* The assessment assumes a new Crown agent.



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

It is critical that the new regulator is seen as credible and can quickly gain the confidence of the sector, government, Māori and New Zealand public. This is reflected in the ordering of the assessment criteria.

The analysis shows that Options 2 and 3 could both provide for credible and effective regulation of three waters and the assessment between them is relatively finely balanced. Figure 4 illustrates the relative merits of both Options 2 and 3.

Option 3, a Crown agent, has been assessed as having a stronger likelihood of being seen as credible by the sector and public, with the further distance from Ministers supporting perceptions of independence of decision-making and enforcement activity. Its singular focus on drinking water regulation, and ability to maintain that focus over time, is also likely to build confidence.

Option 2, a departmental agency, has been assessed as providing more flexibility to make changes that may be required in relation to future decisions on essential freshwater and resource management reform, and would also make it easier for government to deal quickly and effectively with non-performance.

Differentiation between these two options came down to which criteria are weighted more heavily – perceived credibility and ability to gain confidence, ability to have a dedicated focus on drinking water regulation, and the appropriate level of independence that protects the integrity of its evidence-based decision-making and enforcement and intervention powers.

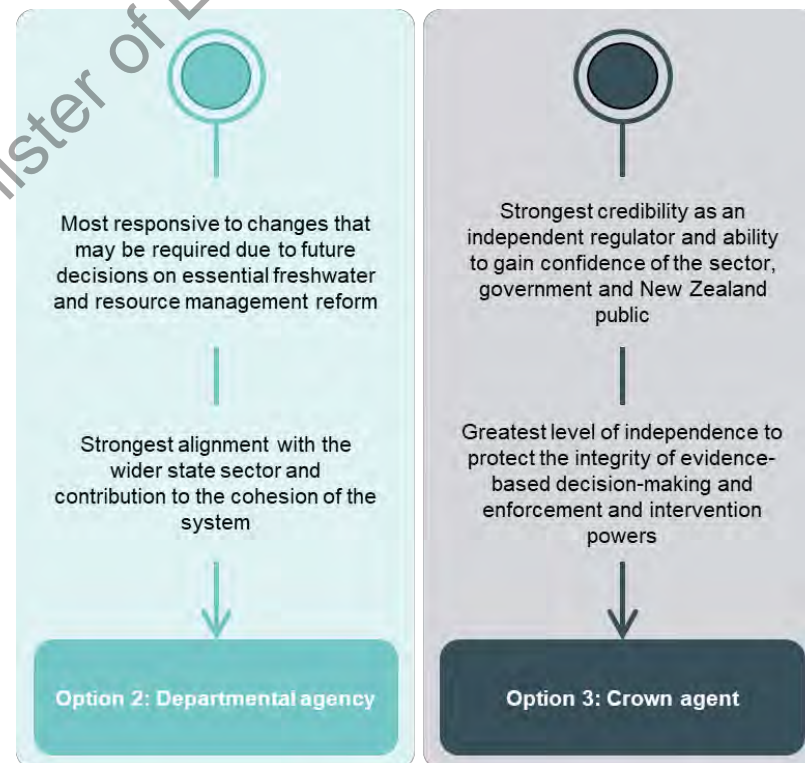
Ministerial and officials' preferences

As stated above, Options 2 and 3 could both provide for credible and effective regulation of three waters and the assessment between them is relatively finely balanced.

Three Waters officials prefer a Crown agent, to give the regulator the credibility as an independent regulator and the ability to gain confidence of the sector, government, and the New Zealand public. The SSC prefers a Departmental Agency, as this option better supports a cohesive state sector system.

Based on advice from officials on May, Regulatory Ministers expressed a preference for a Crown agent.

Figure 4: Summary of key differentiators



Focus of the remainder of the Business Case

The remainder of the Business Case is based on the regulator taking the form of a crown agent and considers the following aspects.

- **How will Māori rights and interests in drinking water be reflected and protected by the regulator?**
 - What capability does the regulator require? This should be at governance, advisory and delivery levels.
 - What other mechanisms could support Māori rights and interests in drinking water be reflected and protected by the regulator? For example, providing for Māori input to decision making.
- **How will the regulator deliver its functions?**
 - Which functions will be delivered by the regulator itself, and where does it make sense to partner or purchase services?
- **What capability and capacity does the regulator require to give effect to its functions?**
 - What is the mix of capabilities, types of roles, and FTE staff the regulator will need to be effective, focusing on areas of the new regime that are most urgent and highest risk?
 - How might the resourcing needed change over the first five years of operation, reflecting how the regulators' focus may change over time and the expertise and capacity in the industry and labour market more generally?
- **What funding will the regulator need?**
 - What level of establishment funding is required to operationalise the new regulator, including transition from the current regulator in MoH to the crown entity?
 - What level of ongoing operational funding is needed for the regulator? This includes a first principles assessment of the economic characteristics of the regulator's functions to inform the appropriate mix of Crown and third-party funding (eg levies and/or fees and charges).



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MANAGEMENT CASE

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MANAGEMENT CASE

The Management Case describes how the regulator will work, and what this means for the way it delivers its work and the type of capability and capacity it will require.

It describes how the regulator will be established, provides an indicative timeframe for the establishment and transition between regimes, and indicates how the investment should be evaluated.

The Management Case draws on:

- officials' advice to Ministers on the regulator's approach to compliance monitoring and enforcement
- workshops with officials to identify the best delivery arrangements and likely capability and capacity requirements for the regulator (these involved representatives from DIA, MoH, MfE, and MBIE)
- officials' advice to Three Waters' Chief Executives (DIA, MoH and MfE) on the establishment of the regulator.

How will the regulator work?

It will be a big challenge to bring all drinking water supply schemes into the new regulatory system and to ensure that each achieves compliance with new regulatory requirements. The challenge will be greatest for schemes operated by small communities, such as marae and user owned rural schemes. Because of this, Cabinet has agreed to a 5-year transition period. It has also agreed that the approach to compliance, monitoring and enforcement should be proportionate to provider capability and safety risks to consumers.

To achieve general compliance with new regulatory requirements, the regulator will need to:

- *ensure all suppliers are aware of their duties*, by working with regulated parties, especially smaller suppliers and marae, many of who are not currently captured by existing regulatory requirements, to ensure that each:
 - is aware of its accountabilities under the new regulatory scheme
 - knows what it must do, and how to comply with its accountabilities
- *provide support and incentives for suppliers to build or otherwise acquire capability needed to achieve compliance with regulatory requirements*, by working with and through sector organisations such as Water New Zealand, IANZ, and existing training and licensing bodies to:
 - develop and implement an accreditation scheme to provide confidence that larger and publicly owned and operated schemes have the necessary systems and processes, staff and other capabilities needed to ensure their continuous supply of safe drinking water
 - develop suitable licensing and training arrangements for persons with supervisory oversight and management roles in the operation of water supply schemes, so that small schemes can have confidence in the individuals that they rely upon to advise on, operate and manage their schemes



- *develop necessary administrative systems and processes* to enable owners and operators of water supply schemes to:
 - easily register the scheme they own, with a view to having all schemes registered by the end of the first year
 - operate each scheme in accordance with requirements for drinking water safety plans proportionate to the risks and complexity of the water scheme, with a view to:
 - a water safety plan being in place for all schemes serving 500 or more consumers within one year of the new regulatory scheme's commencement
 - plans being in place for all other drinking water schemes including certified self-suppliers within 5 years of commencement
- *develop and implement a risk-based approach to monitoring and enforcing compliance with regulatory requirements.* It is proposed that in addition to investigating incidents, that the initial focus of this approach should be on:
 - ensuring that all supply schemes are registered, with strict enforcement of the requirement following the first year from commencement
 - ensuring that all council and government schemes are operating in full compliance with all requirements as soon as possible within five years of commencement
 - developing the capability to enforce regulatory accountabilities through its investigation and prosecution of breaches of regulatory requirements
- *address issues of consistent non-compliance with regulatory requirements,* by developing an approach to working with councils, marae and communities to address schemes that are in persistent

default of their regulatory responsibilities in order to either achieve compliance or transfer operation of the scheme to a more capable entity.

The regulator's focus is going to change over time

Compliance monitoring and enforcement

Compliance monitoring and enforcement (CME) will be important functions of the new regulator. It is intended that the regulator be established with necessary capability to perform these functions from the date of commencement of the new regulatory system.

It is proposed that the regulator's focus and emphasis in performing CME functions will evolve and shift over the five-year period from commencement, as follows:

- the regulator's initial focus will be on:
 - ensuring that every regulated party is familiar with its regulatory accountabilities and how it is expected to deliver on each
 - ensuring that all regulated water supplies are registered
 - ensuring that compliant water safety plans are developed and lodged for all larger and higher risk water supply schemes serving 500 or more consumers
 - investigating contamination events
- after the first year of implementation, the regulators focus will shift to enforcement of core requirements
 - ensuring compliance, through enforcement, of requirements for drinking water schemes to be registered



- ensuring compliance, through risk-based monitoring and enforcement, of requirements for suppliers serving 500 or more residents to be operating on the basis of compliant water safety plans
- near the end of the five-year implementation period, it is intended that the regulator will shift its compliance, monitoring and enforcement activities to the requirements relating to:
 - smaller schemes serving fewer than 500 consumers to have compliant water safety plans.

Development of regulations and guidance materials

A big initial focus for the regulator will be on providing input to the development of regulations,⁷ developing the guidance materials needed to specify regulatory requirements and to provide guidance to owners and operators on what they are required to do to achieve compliance with regulatory requirements.

Through the period of the regulator's establishment and initial operation, it is expected that this focus will include:

- review of the drinking water standard
- regulations specifying the requirements for drinking water safety plans. In addition to the making of the regulation, the regulator will need to develop associated guidance material, templates and tools that smaller less capable scheme owners and operators can use to develop plans
- regulations providing for the accreditation of some drinking water operators
- regulations providing for persons with supervisory or management roles in drinking water supply to be licensed.

⁷ The policy agency with responsibility for drinking water will lead the provision advice to Ministers on regulations, with input and advice from the regulator.

While there will be role to ensure these regulations are regularly reviewed and updated, the regulator's ongoing resource requirements to input to this area will be smaller than in its initial phase.

The regulator will be independent, but not alone

Strong central oversight and increased independence are key features of the new regulator, and critical to achieving the shifts the new regime is intended to support.

However, the regulator itself will not operate in isolation. Figure 5 illustrates the relationships the regulator will have at a governance, advisory, and delivery level.

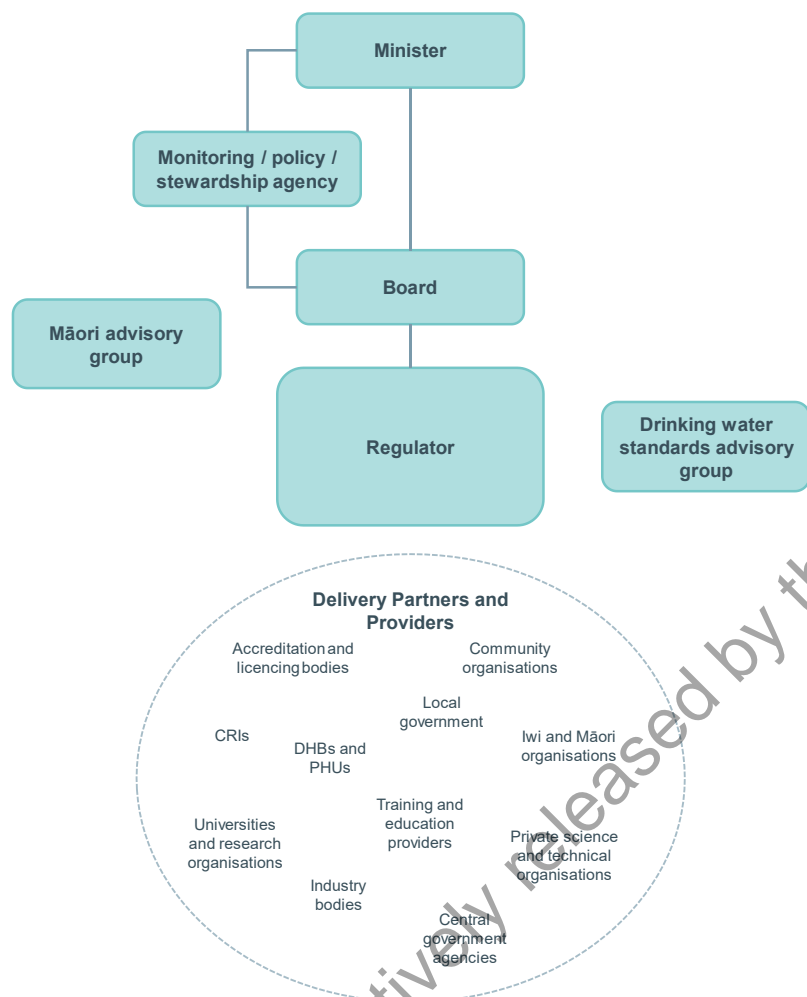
The need for a Drinking Water Standards Advisory Group will continue, to ensure standards are informed by the right expertise and capability. It will be important to establish a Māori advisory group with the mandate to inform and work with the regulator to ensure that Māori rights and interests in drinking water are reflected and protected in new regulatory regime. The regulator will work closely with iwi/hapū/Māori organisations to support small Māori suppliers to transition into the regulatory regime, to support the regulator's understanding and access to mātauranga and tikanga Māori and to support mana whenua undertaking their kaitiaki role.

The new regulator will need to maintain strong relationships with Public Health Units (PHUs). Strong coordination will be vital for disease surveillance, outbreak investigation, risk communications and related health protection activities.

The regulator will work closely with its monitoring agency to provide leadership of the drinking water regulatory system, and input to and comment on policy that impacts the regulator's role, or other aspect of drinking water quality.



Figure 5: Overview of the regulator’s governance, advisory and delivery arrangements



The regulator will be accountable for the functions determined by Cabinet, and will work with partners and providers to deliver those functions in the most effective and efficient way. A series of cross-agency workshops identified the following services and functions likely to be delivered by third parties:

- scientific and technical research and advice
 - the available pool of scientific and technical expertise relating to drinking water is limited, and it makes sense to work with others to leverage existing knowledge. ESR and private organisations provide scientific and technical research and advisory support for the current regime, and these types of services will continue to be required by the new regulator
 - there will be a role for the regulator to coordinate and drive (and potentially contribute to funding) the research agenda for drinking water, working with universities and research institutes
- accreditation and licencing schemes
 - IANZ currently accredits laboratories and drinking water assessors, and there will be an increased demand for this type of support with the proposed accreditation of suppliers
 - once the licensing requirements are established, it is likely the regulator will leverage existing expertise, for example, within MBIE, or work with existing occupational licensing boards, as appropriate
- engagement and education
 - the regulator is likely to partner with iwi and Māori, local government, relevant sector organisations and community organisations to understand, reach and inform the thousands of small suppliers in an efficient way. This leverages the local knowledge and relationships that already exist with suppliers



- workforce education – the regulator will need to work with industry bodies and education and training providers to ensure qualifications are available for those working in the sector, to build capability and meet licensing requirements.

A full summary of the service delivery model identified in workshops is included in Appendix 2, and reflected in breakdown of cost estimate for the regulator (see Appendix 4).

The regulator needs to contribute to upholding Te Mana o te Wai

One of the objectives of the Three Waters Review is to contribute to upholding Te Mana o te Wai, and this needs to be explicit in the objectives of the regulator. Te Mana o te Wai is defined in the National Policy Statement for Freshwater Management and is being strengthened through the Essential Freshwater programme. Te Mana o te Wai promotes the holistic management of water and a hierarchy of obligations. The first priority is the health of the water itself, the second is the health of people (ie drinking water) and the third is the health of the environment.

Some of the key outcomes Māori are seeking for the new regulatory system include:

- upholding Te Mana o te Wai
- opportunity to input into decision-making through-out the system from governance to advice to monitoring and compliance
- helping with compliance and monitoring – iwi/hapū organisations want to work alongside or with the regulator
- Mātauranga and tikanga Māori are considered alongside western science.

What does this mean for the way the regulator is set up and resourced?

We ran a series of workshops with representatives from DIA, MoH, MfE and MBIE to refine the key activities of the regulator, the delivery model for different functions (described above on page 42), and identify the type of capability and capacity the regulator will need to build. This included considering where the regulator would be located. Capability requirements for the regulator were also tested with Water New Zealand.

Some functions will need to be more heavily resourced early on

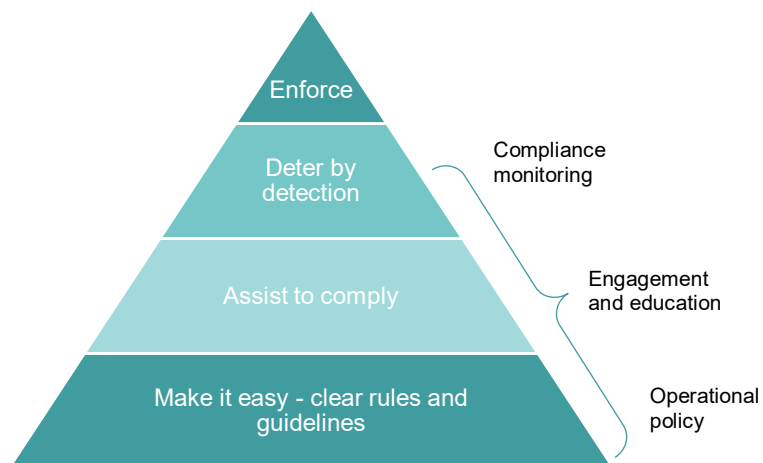
The initial resourcing of the regulator needs to reflect its focus in the first few years.

Both during establishment and in the first few years, there will be a significant requirement for operational policy capability. Implementing the new regulatory regime will require the development of regulations specifying requirements for standards, accreditation and licencing. There will also be an exercise to operationalise policy, define the regulator's regulatory strategy and practice, and develop information and guidance materials. This work will need to be closely informed by scientific, technical and legal expertise.

The other key area where the regulator will need substantial resource is in education and engagement. The regulator will need to translate the regulatory requirements on suppliers into digestible and practical information and advice, and communicate that information through campaigns and face-to-face engagements. Simply finding and registering all suppliers who have previously not been covered by the regime (or who should have been registered, but are not) will be a significant activity in and of itself.



Figure 6: Areas requiring significant early resourcing



The regulator will need a regional presence

There was general agreement in workshops that the regulator will need both a central, national presence, as well as some type of regional presence. Māori have particularly emphasised the need for a regional presence. Relationships with iwi and hapū will need to be at a regional level and mātauranga differs from between iwi, hapū and from rohe to rohe.

Workshop discussions about the number of regional locations required varied between around 5 and 12. There was general agreement that it would make sense to house regulator staff with existing central government regional offices, regulators (eg WorkSafe) or in regional councils, given that numbers in each location were likely to be small.

For the purposes of costing the new regulator, the Business Case has made some assumptions about the number of different locations (see page 81).

During the establishment phase, decisions about the where the regulator is locations will need to consider:

- actual or perceived conflicts of interest (relating to co-location)
- ability to connect, and feel connected, to the regulator as an organisation (how many locations, and size of team at each).

Reflecting discussions in the workshops, the following principles should be considered when determining specific locations and which roles should be regionally-based, as part of the detailed organisational design during the establishment phase.

The approach to determining where roles should be located should be guided by consideration of:

- where suppliers are located
- judgements of risk in different locations
- the type of activity eg where there is a need for face-to-face engagement, or site visits
- labour market considerations – where can people with the right capabilities be recruited.

The types of roles people thought should be located regionally included roles that were heavily weighted with:

- audit / inspection
- engagement
- incident management.

There were a number of other functions discussed where the location of people is relatively agnostic eg assessment of Drinking Water Safety Plans.



The regulator needs the right capability to work effectively, and give it credibility and mana

The regulator needs the right capability to work effectively, and give it credibility and mana. The people in the regulator need the scientific, technical, regulatory and mātauranga and tikanga Māori expertise that will give them credibility to lead and advise. They will also need strong engagement expertise including with Te Ao Māori, reflecting the need to partner with mana whenua (reflecting Treaty obligations and Te Mana o te Wai) and work with Māori suppliers of drinking water.

The regulator will need the capability and capacity to understand particular challenges for Māori entities and communities, and to work with these communities (Marae etc) to develop practical approaches to planning and treatment that are fit-for-purpose and fit-for-context, while also ensuring safe drinking water.

Indicative functional groupings and responsibilities

Figure 7 provides an overview of the types of functions they regulator will need to deliver on its responsibilities, describing the types of activities in each function, the capabilities required, and indicative roles.

The number and type of positions that will be in the regulator in key functional areas are summarised in Appendix 3. It shows how changes in capability requirements are expected over the first five years of operation, reflecting the changing focus of the regulator as it moves towards more of a 'steady state'.

The functions on the following page are not intended imply an organisational structure. We have not provided a detailed organisational design as this will happen during the establishment phase, and will need to respond to decisions about the regulatory strategy, the implementation of wastewater

and stormwater regulations, as well as Cabinet decisions about the level of funding available. As an example of the decisions required during detailed design, there would be options about whether Māori advisory positions are 'hubbed' into one team, or embedded in teams across the organisation.

More detail about the establishment process is provided on page 48.

More will be needed across the regulatory system to reflect and protect Māori rights and interests in drinking water

There are a number of mechanisms that will need to be in place across the regulatory system to reflect and protect Māori rights and interests in drinking water, as well ensure obligations are met under the Treaty of Waitangi.

As well as the capabilities within the regulator itself, requirements and capabilities across governance and advisory layers, and in delivery partners, will be built in across the system. This includes mechanisms to support and provide assistance to the regulator about the role of Māori as kaitiaki, and acknowledge and enhance the role of tangata whenua/mana whenua. It includes considering the role iwi and hapū can play supporting and partnering with the regulator.

Figure 8 provides an overview of the potential ways in which this could happen across the drinking water regulatory system. There will be further work required, with Māori and the Crown working together during the drafting of legislation and the establishment of the regulator, to further develop and define what this will look like in practice.

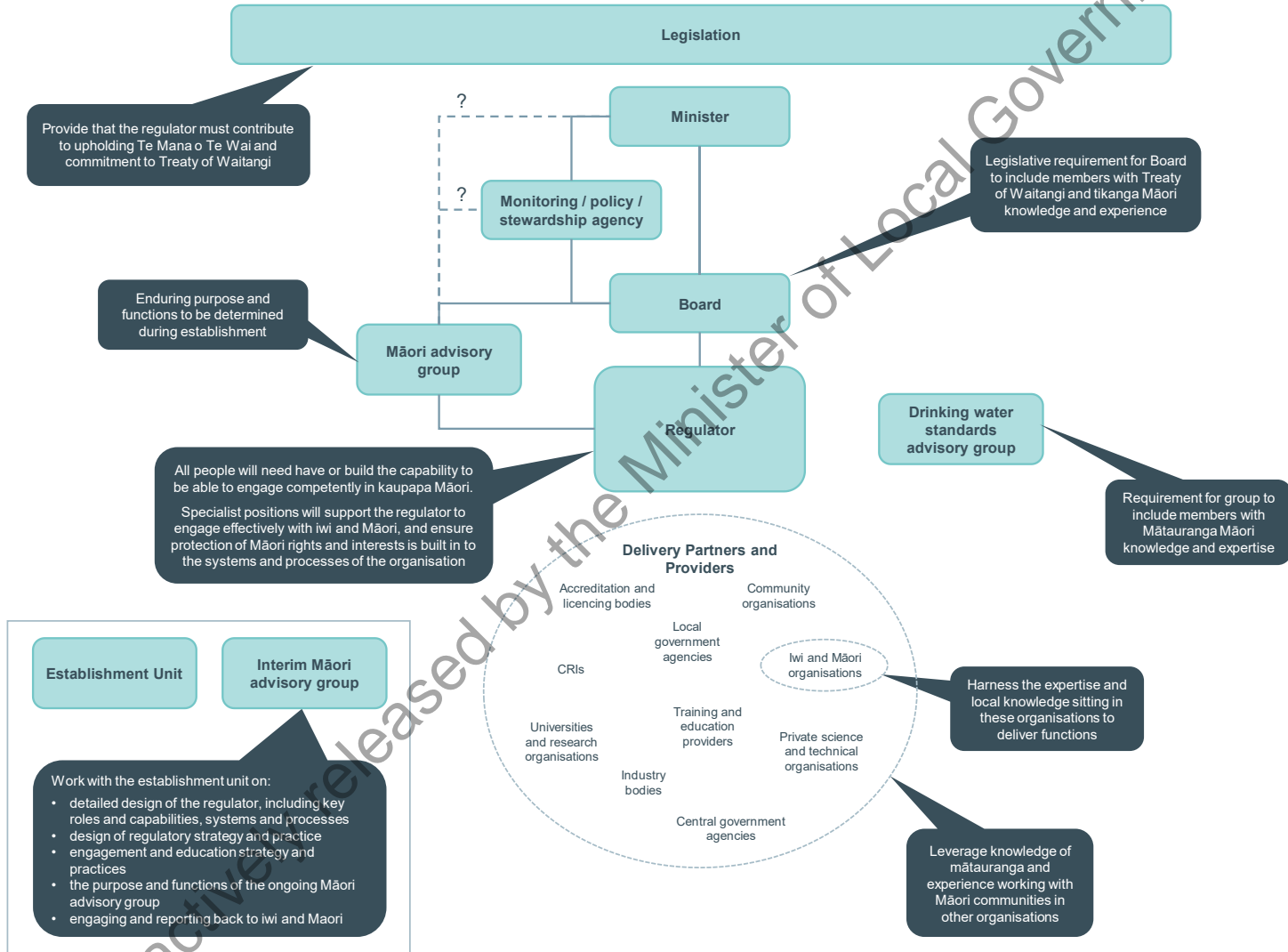


Figure 7: Indicative functional groupings, capabilities and roles for the regulator

Function	Science and Technical	Operational Policy	Regulatory operations	Legal	Education and Engagement	Corporate and Governance
Activities	<ul style="list-style-type: none"> Support development of standards and best practice guidance Input to education and training programmes, including internally and externally Provide science and technical advice to other parts of the organisation Lead relationships with national and international agencies eg WHO Facilitate and drive drinking water science research in NZ Participating in national and international fora Disseminating knowledge internally and externally Support the procurement of science and technical support for the organisation 	<ul style="list-style-type: none"> Developing standards and best practice guidance, including tools Developing and monitoring accreditation and licensing regimes Developing regulatory strategy and practice Monitoring effectiveness of regulatory practices Operational intelligence and data analysis Reporting on sector performance Input to policy development impacting on role of regulator and on drinking water quality 	<ul style="list-style-type: none"> Maintain register of suppliers Managing water supplier data Compliance monitoring and enforcement of Water Safety Plan requirements Receive and assess requests for exemptions Receiving and responding to incident reporting and complaints On call function Undertaking investigations Issuing compliance orders Taking enforcement actions Leading response to drinking water emergencies, and participating in leadership of response to other emergencies eg earthquake 	<ul style="list-style-type: none"> Provide legal advice to support compliance and enforcement actions Support the development of regulatory practice Support the development of tools and guidance Supporting operational policy development Provide in-house legal training, as required 	<ul style="list-style-type: none"> Lead development of sector engagement and education plans Lead development of regulator workforce education plans Work with education providers to ensure training is available Deliver in-house capability building Develop stakeholder engagement strategy and plans Lead and support engagements with suppliers Lead and support engagement with iwi and Māori, including brokering relationships Lead sector education campaigns Provide marketing and communications advice and support Media management Support international engagements 	<ul style="list-style-type: none"> IT, including development Information Systems Human Resources Finance Organisational strategy and planning Risk & Assurance Property Procurement and contract management Organisational performance reporting Internal communications Governance support (board servicing) Advisory group support Ministerial servicing Project management
Capabilities	<ul style="list-style-type: none"> Mātauranga Māori Water science – micro, chemistry Ground water science Toxicology Water treatment Engineering Public Health Modelling Planning and consenting practice 	<ul style="list-style-type: none"> Regulatory policy Research and evaluation Analytics Public Health Resource Management Engagement with iwi and Māori Mātauranga Māori 	<ul style="list-style-type: none"> Drinking water operations Water science Engineering Resource Management Audit and investigation Analytics [Digital water?] Engagement with iwi and Māori Mātauranga Māori 	<ul style="list-style-type: none"> Legal Engagement with iwi and Māori Mātauranga Māori 	<ul style="list-style-type: none"> Relationship management Stakeholder engagement Engagement with iwi and Māori Mātauranga Māori Education strategy and development Marketing and communications Media management 	<ul style="list-style-type: none"> Various
The regulator will need to build capability to engage in kaupapa Māori in all its roles, and 'hard wire' mātauranga and tikanga into its systems and processes						
Roles	<ul style="list-style-type: none"> Chief Science Advisor Chief Engineering Advisor Science and technical advisors Māori advisors 	<ul style="list-style-type: none"> Policy advisors (mix of seniority, numbers) Māori Advisors Research and evaluation advisors Data analyst Administrative support 	<ul style="list-style-type: none"> Compliance officers [drinking water assessors] (mix of seniority, numbers) Enforcement officers Māori Advisors Administrative support 	<ul style="list-style-type: none"> Legal counsel 	<ul style="list-style-type: none"> Māori relationship and engagement advisors Relationship and engagement advisors Learning and development advisors Trainers Marketing and communications Administrative support 	<ul style="list-style-type: none"> Various



Figure 8: Reflecting and protecting the rights and interests of Māori in the drinking water regulatory system



How will the regulator be established?

Establishment planning should begin quickly

Once Cabinet decisions about the form, location and funding for the new regulator are made, officials will need to move quickly into planning to operationalise the regulator to ensure the regulator is ready to 'go live' when legislation is passed.

If the establishment phase does not begin shortly after decisions, it is likely that the timeframe to transition from the current regulatory regime to the new regime will be significantly extended. Delays create particular 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 will carry out the programme of work to establish the regulator

It is proposed an Establishment Unit would be set up to operationalise the new regulator. Officials' preference is that this Establishment Unit is hosted by the Department of Internal Affairs (DIA), because:

- it is the lead policy agency for the Three Waters Review and developing legislation that will establish the regulator
- 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 'hard edge' enforcement functions
- it has a long-established role in building other organisations and 'spinning them'.

The Establishment Unit would be staffed by joint agencies (DIA, MoH, MfE).

An interim Māori Advisory Group would be formed 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
- engaging and reporting back to iwi and Māori.

Establishing a sector advisory group should also be considered, 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 can inform the detailed design of the regulator.

The Establishment Unit would be wound up when the regulator's enabling legislation is enacted, and the regulator is operational.

Focus of the Establishment Unit

The Establishment Unit **would not function 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 are unchanged, with the Ministry of Health and other statutory positions still in place. The Establishment Unit would need to work closely with the existing regime to ensure there is a smooth transition to the new regulator.

The key activities the Establishment Unit will need to deliver are summarised in Table 6.



Table 6: Key activities for the Establishment Unit

Focus	Key activities
Transition and implementation planning	<ul style="list-style-type: none"> • Preparing an implementation plan • Detailed organisational design • Preparing a recruitment strategy • Developing a plan to transition from the existing regulator to the new regulator, including transition of existing staff • Supporting appointment of a new Chief Executive • Establishment of ongoing Māori advisory group
Communications and stakeholder relations	<ul style="list-style-type: none"> • Communicating with key stakeholders • Maintaining a close relationship with the Ministry of Health (including planning for transition) and other key government agencies
Building new regulatory functions	<ul style="list-style-type: none"> • Compliance, monitoring and enforcement • Sector education and training • Scientific and technical capabilities
Establishing an operating model	<ul style="list-style-type: none"> • Building the foundations of an approach to mātauranga Māori • Working with the policy agency on initial design work for new regulations, interpretation of policy, and advice to select committee and ministers on regulator establishment, transition and functions • Working with IANZ to develop an accreditation system • Other third-party arrangements (eg ESR) • Further developing a proportionate approach to regulating very small suppliers
Funding	<ul style="list-style-type: none"> • Making of funding regulations (eg setting any levies, fees or charges for cost recovery)

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. This group would also:

- design funding arrangements, appropriations and accountability documents
- stand-up monitoring arrangements – relationship agreements, letter of expectations etc
- be involved in regulation development
- advise on the appointment of board members
- support staff transfer processes, as appropriate.

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 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 would be set up to lead the detailed organisational design and establishing the operating model for the new regulator. If Cabinet agrees to the establishment proposals in September, it is likely the board appointment process could be completed early in 2020.



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

The remainder of the (small) Establishment Board will comprise individuals with a range of appropriate skills and experience, including in particular entity establishment and change management. Some of these members should also transition to the new regulator Board on establishment.

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, as well as a clear direction. It will also ensure that accountability for delivery post-transition sits with those responsible for establishment.

What are the transition plans and expected timeframes?

It is likely to take 12-18 months to build the new regulator – but the ‘go live’ date is dependent on the passage of legislation.

It is imperative that the current regulatory regime can continue to operate while the new one is put in place. It will be important that those responsible for operationalising the new regulator are aware of what is happening within the current regime, and vice versa.

We expect the Establishment Unit would be in close communication with those currently regulating drinking water, to ensure that decisions and actions being taken by one does not have unintended consequences for the other. As described above, there would be value in having the Senior Officials group maintaining oversight of how different actions and decisions being taken in the current regime, and in the development of the new regime, impact the other.

Planning for the transition between regimes will be a critical activity for the Establishment Unit. Key transition points – in particular the nexus point between role of Establishment Unit, enactment of legislation/new regime and responsibility for current regime and staff – will need to be mapped out to avoid risks around the performance of the regulatory system, and ensure there is a smooth transition for staff and sector stakeholders.

Figure 9 on the next page provides an indicative timeline for the establishment and transition to a new regulator.

How will the success of the investment be evaluated?

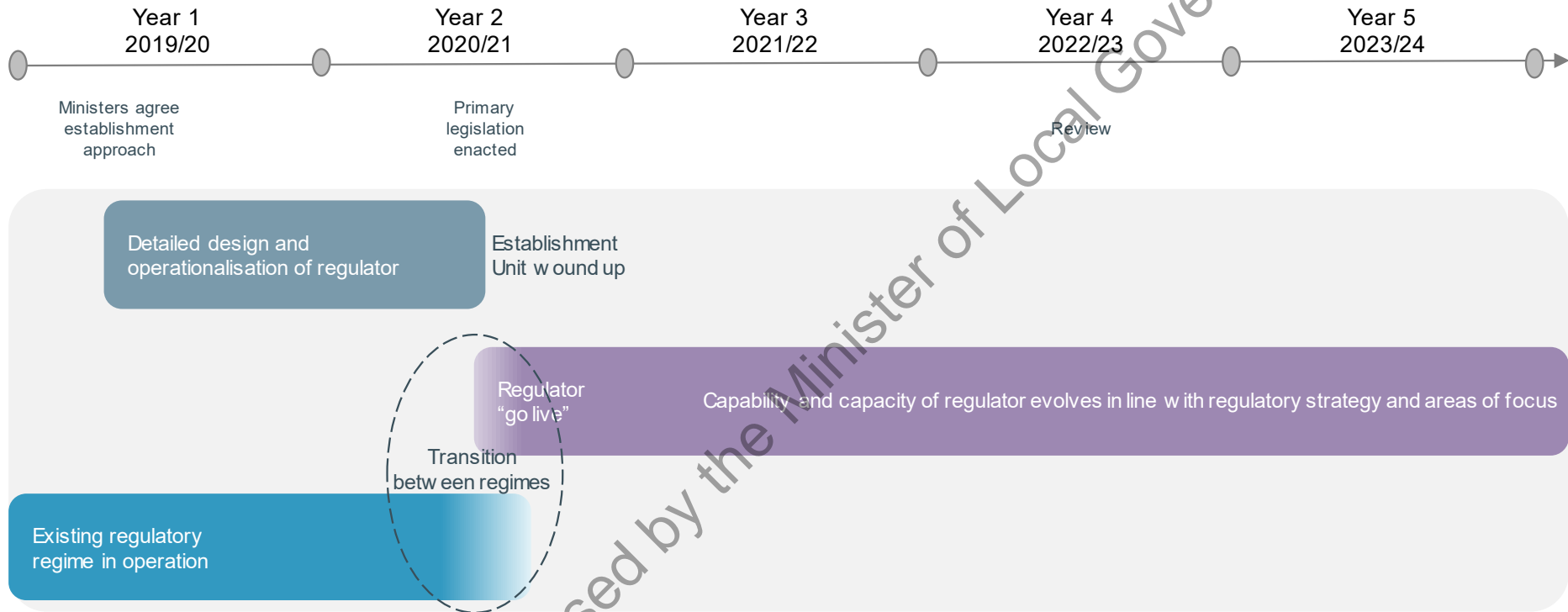
The implementation and operation of the new regulator should be reviewed two years after it ‘goes live’. This would be the minimum period to give time for the regulator to move from a ‘start-up’ phase into more of a business-as-usual mode.

The review will focus on the establishment and early operation of the regulator, and whether there is an evaluation structure in place to form a view on performance as implementation proceeds. It will also act as a point to ‘take stock’ of whether the capability profile of the organisation and its partnering arrangements are fit for purpose. As highlighted above, the focus of the regulator, in its compliance monitoring and enforcement activities, is going to shift over time, and this will be reflected in changing capability needs.

Given decisions are still to be taken about the detailed design of the regulator and wider regulatory proposals, KPIs have not been developed as part of the Business Case process. The KPIs that will form the basis of the evaluation of will be developed as part of the establishment phase.



Figure 9: Indicative timeline for establishment and transition to a new regulator



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COMMERCIAL CASE

The Commercial Case considers the ability of the market to deliver on the preferred option. For the new regulator, this relates to areas where the regulator will need to partner or purchase services to deliver its responsibilities.

The areas where the Business Case⁸ has identified that the regulator would work with third parties to deliver services include:

- science and technical advice
- accreditation and licensing
- workforce education
- research and evaluation
- specialist legal
- communications and engagement.

This Business Case provides an initial indication of the ability of the market to deliver these services. The Establishment Unit will need to engage further with market as the services to be purchased are further defined during the establishment phase.

Science and technical advice

The current regulator purchases scientific and technical advisory services from a combination of ESR and private providers.

ESR is the lead Crown Research Institute in impacts of the environment on human health, including groundwater, fresh and drinking water quality and safe biowaste use. Reflecting its purpose and the existing relationship with the current regulatory regime, an ongoing relationship between ESR and the new regulator is likely.

We have spoken with ESR to gauge how their capability and capacity aligns with the functions the new regulator will need to deliver. ESR have noted they have the breadth and depth of scientific expertise required to support the drinking water regulatory regime, ranging from service science to research, from laboratory and field facilities through to expert knowledge, and across the range of disciplines of microbiology, chemistry, public health medicine, epidemiology, data science and social systems.

ESR identified a number of specific areas where they could play a role as an independent science advisor to the new regulator:

- *gathering intelligence* - scanning the external environment to ensure that the regulator keeps alert to new developments and future opportunities that could affect the ability of the regulated system to achieve its purpose
- *policy, purpose and guidance* – advice to support setting the rules, values and perspectives that govern the regulated system
- *science and research* – advice and support in both applied science and research, across a range of disciplines including mātauranga Māori

⁸ Partnering and purchasing of services is described in the Management Case, and underpins the costing assumptions in the Financial Case.



engagement, contributing to the regulator's functions around standard setting, and being a centre of scientific and technical expertise

- *investigations* – providing specialist science support during event investigations
- *technical advice and guidance to water suppliers and community* – supporting improved understanding, knowledge and skills of water suppliers and their communities to participate in the provision of safe drinking water.

We have not spoken with the current private providers, but we consider the market has sufficient capability and capacity to support the regulator with scientific and technical advisory services.

Accreditation and licensing

Accreditation

The current regulator works with International Accreditation New Zealand (IANZ) to provide accreditation of laboratories and Drinking Water Assessment Units. IANZ is the national accreditation authority unit of the Accreditation Council, an autonomous Crown entity that delivers competency assessment and compliance with standards / schemes that add value to business and provides the assurance that Government, the public at large and industry can rely upon.

The Ministry of Health has some concerns about IANZ's capability and capacity to take on the considerably increased work to accredit suppliers. The Ministry have noted that they are encountering challenges with the current accreditation process for Drinking Water Assessment Units, as they try to increase the number accredited as part of strengthening the current regulatory regime. Their concerns relate both to the capability to deliver the accreditation, as well as the capacity.

The Three Waters team have spoken with the Chief Executive of IANZ, who is confident that IANZ can build the right capability and capacity over a five-year period to undertake the accreditation of council and council-controlled organisations operating water supply schemes. The establishment team and the new regulator would need to work closely with IANZ as further decisions about the new regime inform the scheme that will need to be in place.

While IANZ is confident it can support the new regulatory approach, it will need to provide the new regulator with assurance that it either has, or will build, the right capability and capacity to deliver the scheme, as requirements become clearer.

Licensing

While the new regime will eventually include licensing of persons with supervisory oversight and management roles in the operation of water supply schemes, the requirements for this have not yet been defined. Once it is clear what this will entail, the regulator will likely work with existing professional licensing bodies (eg the Plumbers, Gasfitters and Drainlayers Board) to deliver the licensing regime.

Workforce education

A key role for the regulator will be ensuring suitable training arrangements are in place to build the capability of those working in the sector.

The introduction of new licensing requirements, and the objective to lift the capability of the sector, will mean the regulator will need to work with training providers to ensure that courses available are fit for purpose, and that there is the capacity to support the increase in demand for qualifications these requirements will drive.

Connexus, the Infrastructure Industry Training Organisation, currently provides qualifications in water treatment, wastewater treatment and water reticulation. In April last year, Connexus launched the New Zealand



Apprenticeship in Water Treatment, with strands in Drinking-Water Multistage Processes and Wastewater Multistage Processes.

Relevant training courses for those working in the water industry are also provided or facilitated by a range of professional associations and private providers, including through Water Industry Professionals, the Institute of Public Works Engineering Australasia, and Opus.

We have not engaged with Connexus or other providers, but consider that the current existence of water qualifications and professional development courses as a positive indication of the ability of the market to meet the demand driven by the regulator.

Other services

The regulator will need to purchase other services where it doesn't make sense to build large amounts of capacity in-house, both to leverage specific expertise and to manage peaks and troughs in workload. These services include research and evaluation, legal, and communication and engagement services.

These are services that are commonly procured by organisations on an as-required basis, and there are multiple providers in the market across all of these disciplines. We have not specifically tested the market's ability to meet these requirements, but do not anticipate the regulator will face any challenges in procuring this type of support.



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FINANCIAL CASE

Pages 60-72 withheld pursuant to section 9(2)(f)(iv) of the OIA

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APPENDIX 1: KEY DOCUMENTS

Cabinet papers

- Government review of three waters services - June 2017
- Review of three waters infrastructure: key findings and next steps – April 2018
- Future state of the three water system: regulation and service delivery - November 2018
- A plan for three waters reform – July 2018
- Strengthening the regulation of drinking water, wastewater and stormwater – July 2019

Regulatory Impact Assessment

- Strengthening the regulation of drinking water, wastewater and stormwater – July 2019

Ministerial briefings

- Proposals for a proportionate and risk based approach to achieving compliance with drinking water regulatory requirements – August 2019

Review and Inquiry documents

- Review of three waters infrastructure services – key findings – November 2017
- Report of the Havelock North Drinking Water Inquiry: stage 2 – December 2017

Other Sources

- Cost Estimates for Upgrading Water Treatment Plants to Meet Potential Changes to the New Zealand Drinking Water Standards, Beca, March 2018
- Drinking-water legislation, Ministry of Health Website
<https://www.health.govt.nz/our-work/environmental-health/drinking-water/drinking-water-legislation>



APPENDIX 2: DELIVERY ARRANGEMENTS

Table 12: Indicative service delivery model for the new regulator

Function	Description	Key activities	Delivery model
Sector leadership	Oversight 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.	<ul style="list-style-type: none"> Promoting the importance of safe drinking water Coordinating different parts of the system Leading or overseeing the response to drinking water emergencies Leading emergency response planning by the drinking water sector Identifying and monitoring emerging contaminants and coordinating national policy responses (if required) 	Regulator delivers these functions.
Setting standards	Set and review standards for drinking water and source water. It will also develop requirements relating to the multi-barrier approach to drinking water safety.	<ul style="list-style-type: none"> Reviewing national water quality standards Developing mandatory treatment requirements Determining applications for exemptions 	<p>Regulator will lead the development of standards. External advisory support will be sought to inform these standards and requirements. Standards will be approved and set by the Minister.</p>
Compliance monitoring and enforcement	<p>Maintain registers for drinking water suppliers. Undertake compliance monitoring and enforcement of Water Safety Plan requirements (including source water risk management plans); monitoring drinking water suppliers; considering any requests from exemptions from treatment requirements (as part of a broader process for considering and granting exemptions), and monitoring other obligations on local authorities. The regulator would also employ staff, such as drinking water assessors; take enforcement actions; investigate complaints about suppliers; and work with suppliers that are at risk of defaulting on their regulatory duties.</p>	<ul style="list-style-type: none"> Maintaining register of drinking water suppliers Ensuring regulated parties understand what is required and how to demonstrate competence Compliance monitoring and enforcement of Water Safety Plan requirements Incident response and management Monitoring performance of Regional Councils and Territorial Authorities in their obligations relating to protection of source water Receiving and investigating complaints against suppliers Enforcement of non-compliance by suppliers Addressing supplier failure 	<p>Regulator will deliver these functions. Regulator may engage third-party support from time to time to manage peaks in workload eg legal advice.</p>



Function	Description	Key activities	Delivery model
Capability building, accreditation and licensing	<p>Work with suppliers and training providers to ensure suitable training is available and being taken up, and ensure the sector has sufficient capability to fulfil its responsibilities.</p> <p>Maintain registers for water sampling and testing laboratories. In the longer term, accreditation, certification and/or licensing systems will be introduced for suppliers and/or key roles. The regulator will need the ability to develop and implement these systems.</p>	<ul style="list-style-type: none"> Setting accreditation or certification requirements for: <ul style="list-style-type: none"> drinking water suppliers providers of water sampling and testing (laboratories) Setting training or registration requirements for professionals working in the drinking water industry Setting requirements for professionals monitoring the performance of drinking water suppliers (drinking water assessors) Working with training providers to ensure suitable training is available Supporting suppliers to comply by providing planning tools eg Water Safety Plan templates for small suppliers Building internal capability for all staff Accrediting drinking water suppliers and laboratories Licensing professionals 	<p>Regulator will deliver functions relating to determination of accreditation, certification, licensing and / or training requirements, and lead the development of any tools and templates.</p> <p>Accreditation and licensing of suppliers, laboratories and professionals will be delivered by third-party providers, in line with requirements set by the regulator. This will include maintaining relevant registers.</p> <p>Training will be delivered by third-party providers, in line with requirements set by the regulator.</p> <p>Some training will be delivered in-house to build capability of the regulator's staff.</p>
Information, advice and education	<p>Be a centre of technical and scientific expertise. Provide best practice advice and guidance to suppliers, councils, and other entities involved in drinking water safety, supply and management; and facilitate research into drinking water science. This centre will bring together many different types of drinking water expertise, including public health, engineering, risk management, environmental science, and mātauranga Māori.</p>	<ul style="list-style-type: none"> Maintaining technical expertise in house and facilitating research into drinking water science Ensuring suppliers understand the regulatory requirements they need to comply with Promoting compliance through advice and assistance to suppliers Providing best practice advice and guidance to the sector 	<p>Regulator will provide science and technical leadership and maintain some expertise in house. Regulator will engage third-party providers to provide science and technical advice and research.</p> <p>Regulator will develop best practice advice and guidance.</p> <p>Regulator will engage directly with the sector, and partner with appropriate third parties (eg iwi and Māori organisations, councils, community organisations) to deliver information and education to support compliance.</p>
Performance reporting	<p>The regulator will be responsible for collating and publishing drinking water compliance and monitoring information relating to all suppliers (except individual domestic self-suppliers).</p>	<ul style="list-style-type: none"> National-level collation and publication of drinking water compliance and performance information Communicating incidents and non-performance of suppliers to communities 	<p>Regulator will deliver these functions.</p>

Pages 76 (Appendix 3), 77 (Appendix 4), 78-81 (Appendix 5), and 82-83 (Appendix 6) withheld pursuant to section 9(2)(f)(iv) of the OIA

