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Hon Nanaia Mahuta, Minister of Local Government

Proactive release of Cabinet material related to introduction of the
Water Services Bill, 21 July 2020

The following documents have been proactively released:

***21 July 2020, LEG-20-MIN-0099 Minute: Water Services Bill: Approval for Introduction, Cabinet Office;
and***

***21 July 2020, Cabinet Paper: Water Services Bill: approval for introduction, Office of the Minister of Local
Government.***

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Cabinet Legislation Committee

Minute of Decision

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Water Services Bill: Approval for Introduction

Portfolio **Local Government**

On 21 July 2020, the Cabinet Legislation Committee, having been authorised by Cabinet to have Power to Act [CAB-20-MIN-0343]:

- 1 **noted** that in July 2019, Cabinet agreed to a comprehensive reform of the drinking water regulatory system, along with targeted reform to wastewater and stormwater regulation to increase transparency and best practice [CAB-19-MIN-0332];
- 2 **noted** that the Water Services Bill is an omnibus bill that will revoke Part 2A of the Health Act 1956 and replace it with a stand-alone Act, with discrete amendments to the Local Government Act 2002 and the Resource Management Act 1991;
- 3 **noted** that a separate bill establishing a Crown entity, the Taumata Arowai – the Water Services Regulator Bill, is currently before the House of Representatives, and will be enacted in advance of the Water Services Bill to enable the entity to prepare to take over drinking water regulation from the Ministry of Health;
- 4 **noted** that the Water Services Bill should be introduced to the House before the dissolution of Parliament, in order to ensure that Taumata Arowai and drinking water suppliers can have certainty about the new regulatory system, which needs to be in place by 1 July 2021;
- 5 **approved** for introduction the Water Services Bill [PCO 21854/6.23], subject to the final approval of the government caucuses and sufficient support in the House of Representatives;
- 6 **agreed** that the government propose that the Bill be:
 - 6.1 referred to the Health Committee for consideration; and
 - 6.2 enacted to enable its commencement before 1 July 2021.

Gerrard Carter
Committee Secretary

Attendees: (see over)

Present:

Hon Chris Hipkins (Chair)
Hon Andrew Little
Hon David Parker
Hon Stuart Nash
Hon Iain Lees-Galloway
Hon Kris Faafoi
Hon Tracey Martin
Hon Aupito William Sio
Hon Julie Ann Genter
Hon Eugenie Sage
Michael Wood MP (Senior Government Whip)

Officials present from:

Office of the Prime Minister
Officials Committee for LEG

Proactively released by the Minister of Local Government

Office of the Minister of Local Government

Chair
Cabinet Legislation Committee

Water Services Bill: approval for introduction

Proposal

1. This paper seeks approval for introduction of the Water Services Bill into Parliament. The Bill gives effect to Cabinet decisions to comprehensively reform regulation of drinking water in response to the findings of the Havelock North Drinking Water Inquiry. The Bill also proposes new national-level reporting and monitoring functions for wastewater and stormwater.
2. These regulatory functions will be administered by a new Crown entity, Taumata Arowai – the Water Services Regulator. A separate bill establishing Taumata Arowai is currently before Parliament, and will be enacted in advance of the Water Services Bill to enable the entity to prepare to take over drinking water regulation from the Ministry of Health. An establishment unit for Taumata Arowai with a chief executive has been created within the Department of Internal Affairs.
3. The Water Services Bill needs to be introduced this Parliamentary term to ensure that Taumata Arowai and drinking water suppliers can have certainty about the new regulatory system, which will be in place by 1 July 2021.

Policy

4. During 2019, Cabinet made decisions about reform of the regulation of the “three waters” - drinking water, wastewater, and stormwater [CAB-19-MIN-0332 refers]. The core policy case underpinning these decisions is, in summary:
 - 4.1 it has become clear that we cannot always be confident that drinking water is safe, its sources are being adequately protected, and that the environmental impact of wastewater and stormwater systems are acceptable. This is putting our nation’s health, environment and economy at risk;
 - 4.2 the Havelock North drinking water contamination event in 2016 drew the nation’s attention to the gravity of this situation. Around 5000 people became ill, with up to four deaths associated with this event. The economic costs have been estimated at \$21 million. The subsequent inquiry found the contamination was a result of systemic failure across service provision, regulation and source protection – all aspects of the system were implicated, and without change there are real risks a similar event will occur;
 - 4.3 even if the Havelock North contamination had not occurred, there is still a very strong case for change to the drinking water regulatory system. Every year, around 34,000 people across New Zealand become ill from their drinking water and many thousands of households must boil their water to drink it safely. The regulatory system is fragmented and weak. Additionally, many suppliers are effectively not regulated at all, including reticulated supplies to fewer than 500 people, and “specified self-supplies” which include some schools, campgrounds and tourist facilities, university facilities, hospitals, and defence properties; and

- 4.4 for wastewater and stormwater, the current regulatory system does not deliver assurance that the environmental impacts are acceptable to communities and iwi / Māori. A raft of problems have been identified – there is a significant lack of transparency and public reporting; there is no effective national-level oversight; approaches taken by regional councils are highly variable, with little formal enforcement when consent conditions are breached; and there is infrequent implementation of best-practice techniques by council and Crown owners.
5. Cabinet invited me to issue drafting instructions for the Water Services Bill to comprehensively reform the drinking water regulatory system, and make targeted reforms to wastewater and stormwater regulation to increase transparency and best practice.
6. The Water Services Bill will address challenges to the regulatory system. There are also challenges to service delivery arrangements. To address these, Cabinet has agreed a three-year programme for reform of three waters service delivery which will be implemented together with an economic stimulus package of Crown investment in water infrastructure [DEV-20-SUB-0099 refers].

Drinking water regulation

7. The Water Services Bill proposes comprehensive reform of drinking water regulation. It is an omnibus bill that will revoke Part 2A of the Health Act 1956 and replace it with a stand-alone Act. There are also amendments to the Local Government Act 2002 and a discrete amendment to the Resource Management Act 1991.
8. Combined with independent regulation through Taumata Arowai (the Water Services Regulator), the reforms will deliver a step change in drinking water regulation of the kind envisaged by the Havelock North Inquiry.
9. The drinking water regulatory framework in the Bill comprises the following core elements. These aspects of the Bill will apply to all drinking water suppliers, other than domestic self-suppliers.

Suppliers must own the safety of drinking water

10. The framework in the Bill enshrines the essential principle articulated by the Havelock North Inquiry that suppliers must own the safety of drinking water. It does so by imposing clear, specific requirements on suppliers to:
 - 10.1 provide safe drinking water and meet drinking water standards – through the main purpose of the Bill (clause 3), direct duties imposed on suppliers, and clear obligations on suppliers to act when water is unsafe or fails to meet standards (clauses 21 and 22); and
 - 10.2 ensure there is a sufficient quantity of water to support the ordinary needs of consumers (clause 25), with clear obligations to act where supply is interrupted or restricted.

11. This is a significant improvement from existing legislation which imposes lesser requirements on suppliers to take “all practicable steps” to comply with duties subject to their affordability, and to take “reasonable steps” to supply wholesome drinking water. There is no clear requirement to provide safe drinking water in existing legislation. These arrangements were subject to significant criticism by the Havelock North Inquiry.
12. Other key provisions in the Water Services Bill require drinking water suppliers to:
 - 12.1 register drinking water supplies with Taumata Arowai, and keep essential details updated each year (clause 23);
 - 12.2 have a drinking water safety plan that contains a multi-barrier approach to drinking water safety (clauses 30 and 31). Drinking water safety plans are the internationally accepted mechanism for taking a risk-based approach to drinking water. The Bill requires drinking water suppliers to implement their plan, and review it on a regular basis to reflect any changes to risks or hazards; and
 - 12.3 notify Taumata Arowai and take action where there are risks to public health arising from drinking water safety, breaches of drinking water standards, or other significant risk events.
13. Another core new feature of the Bill is a duty on officers, employees, and agents of drinking water suppliers to exercise professional due diligence – that is, the care, diligence and skill that a reasonable officer, employee, or agent would exercise in the same circumstances. The duty is based on similar requirements in the Health and Safety at Work Act 2015.

Source water risk management

14. The Bill proposes new arrangements relating to sources of drinking water – that is, the freshwater bodies from which water is abstracted before treatment. These new arrangements are based on risk management and open flows of information between local authorities, drinking water suppliers, and Taumata Arowai. Key provisions are that:
 - 14.1 drinking water suppliers must have a source water risk management plan, which identifies risks to the source of drinking water and manages, controls, or eliminates those risks as part of a drinking water safety plan (clause 42);
 - 14.2 local authorities must contribute to source water risk management plans, by sharing information about risks and undertaking actions to address them on behalf of a drinking water supplier (clause 42(4) and (5));
 - 14.3 drinking water suppliers must monitor source water quality. This information is collated and then published by regional councils every 3 years, alongside an assessment of regulatory interventions to source water (clauses 43 and 45); and
 - 14.4 the Bill inserts a new provision in the Resource Management Act 1991 to require consent authorities to have regard to risks, or potential risks, to source water when considering applications for resource consents (Part 1 of Schedule 2).

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15. The National Environmental Standard for Sources of Human Drinking Water (which is a regulation made under the Resource Management Act 1991) is also being reformed in line with recommendations for its revision by the Havelock North Inquiry. The reform process is being staged for implementation on a similar timeframe to the Water Services Bill.

Proportionate approach based on scale, complexity and risk profile

16. The Water Services Bill requires many aspects of drinking water regulation to be proportionate to the scale, complexity and risk profile of a supply. This is central to the new regime. Regulation needs to be fit for purpose, with mechanisms to ensure that it does not apply to large, capable suppliers like Watercare in the same way as to small suppliers such as marae or rural suppliers.
17. In preparation for assuming its regulatory responsibilities, the establishment unit for Taumata Arowai has already begun identifying suppliers that will require additional support to understand their requirements. This includes marae and rural suppliers.
18. The requirement for regulation to be proportionate to scale, complexity and risk profile is enshrined in the purpose clause of the Bill (clause 3(c)) alongside the following provisions:
 - 18.1 drinking water safety plans, source water risk management plans, and water quality monitoring requirements are explicitly required to be proportionate to the scale, risk and complexity of a supply;
 - 18.2 providing a toolkit to Taumata Arowai to enable it to support and provide assistance to suppliers to fulfil their obligations. This includes templates and models, meaning that small suppliers will be able to use simple online forms, and “safe harbour” acceptable solutions and verification methods for drinking water. These are based on, and designed to be a good regulatory fit with, Building Act 2004 and Building Code requirements. Other aspects of the regulatory system, such as registration and renewal requirements and submission of water monitoring results, are also able to be completed online; and
 - 18.3 review of drinking water safety plans by Taumata Arowai and consumer complaints provisions must be proportionate to risk, scale and complexity.

Exemptions

19. The Bill contains two significant exemption powers. Both powers are vested with the chief executive of Taumata Arowai to ensure they are exercised independently.
20. Clause 56 contains a general exemption allowing the chief executive of Taumata Arowai to exempt a supply or class of supply from many of the key regulatory requirements in the Bill. Back country huts and isolated campsites owned by the Department of Conservation or private clubs are examples of the types of supply a general exemption is designed to cover, where it would not be practical to comply with the Water Services Bill regime.
21. There are safeguards built into the general exemption power:
 - 21.1 exempted supplies must still be registered, to ensure that a public record of all drinking water supplies is maintained by Taumata Arowai;

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- 21.2 a general exemption can be issued for a maximum five year limit, after which renewal is required;
 - 21.3 a general exemption may only be granted if it is consistent with the main purpose of the Bill (which is to ensure that drinking water suppliers provide safe drinking water to consumers), and may be subject to conditions; and
 - 21.4 if a general exemption is granted to a class or group of supplies, it must be presented to the House of Representatives and is subject to disallowance.
22. Clause 57 contains a residual disinfection exemption, allowing the chief executive of Taumata Arowai to exempt a supply from the requirement to treat a reticulated supply with residual disinfection (such as chlorination). This will allow a supplier to adopt arrangements or use treatment methods other than chlorination to make drinking water safe. There are safeguards built into this exemption power:
- 22.1 to obtain an exemption, if the chief executive requires it, a supplier must first demonstrate to the satisfaction of the chief executive that the drinking water will be safe and comply with regulatory requirements. This is in line with recommendations made by the Havelock North Inquiry;
 - 22.2 an exemption can be subject to terms and conditions, and can be issued for a maximum five year limit after which renewal is required; and
 - 22.3 an exemption may only relate to a particular supply, class or group exemptions are not available.

Te Mana o te Wai

23. The Water Services Bill requires all persons who exercise functions, powers, and duties under the legislation to give effect to Te Mana o te Wai. This parallels requirements imposed on local authorities under the National Policy Statement for Freshwater Management, and on Taumata Arowai under the Taumata Arowai – the Water Services Regulator Bill, and will require councils to engage with tangata whenua in areas such as source water protection in their role as kaitiaki, or take account of mātauranga Māori in water management decisions.
24. As part of its governance arrangements, Taumata Arowai will have a Māori Advisory Group that is charged with advising on Māori interests and knowledge as they relate to the objectives, functions and principles of Taumata Arowai. This includes:
- 24.1 developing and maintaining a framework that provides advice and guidance on how to interpret and give effect to Te Mana o te Wai; and
 - 24.2 providing advice on how to enable mātauranga Māori, tikanga Māori, and kaitiakitanga to be exercised.

Drinking water emergencies

25. The Bill contains powers enabling Taumata Arowai to declare and manage drinking water emergencies (clauses 58 – 66). Together with its Crown entity status, these powers will enable Taumata Arowai to play a significant governance role for drinking water emergencies. The Bill clarifies that a drinking water emergency can include both a major contamination event or a drought – this was not clear under existing legislation. Taumata Arowai must consult with its Minister before declaring a drinking water emergency.
26. Emergency powers are significant and include:

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- 26.1 requiring persons to take action, or stop doing things, to protect public health;
- 26.2 requiring territorial authorities or drinking water suppliers such as Watercare to make arrangements to provide alternate drinking water, including to consumers not in the geographic area of the emergency;
- 26.3 enabling Taumata Arowai to commission emergency work to provide an alternative supply of drinking water; and
- 26.4 powers for Taumata Arowai to override the Resource Management Act 1991 for up to 28 days, or up to two years through regulations made by the Governor-General by Order in Council.

Authorisations, occupational regulation and laboratory accreditation

27. The Bill contains a framework to enable authorisation and occupational regulation of drinking water suppliers (clauses 67 – 71). This area is new and is designed to lift the professional capability of drinking water suppliers. The Three Waters Review identified this area a long-term weakness in existing arrangements.
28. Taumata Arowai has a statutory responsibility to work with the drinking water industry, accreditation and inspection agencies, and training providers to lift skills, qualifications, and establish competency requirements for drinking water suppliers. The Bill itself contains detailed regulation-making powers as follows:
 - 28.1 some organisations will need to be authorised to operate a drinking water supply under competency requirements, such as having professional skills, systems and processes (clause 67). All territorial authorities will be required to become authorised, or have their drinking water services delivered by an authorised supplier, within five years of commencement of the Bill; and
 - 28.2 some individuals that operate drinking water supplies, who test, assess or certify supplies, or who sample drinking water will be required to meet minimum skills, qualification, or experience requirements to operate drinking water supplies (clauses 68 and 69). This regime is expected over time to incentivise professionalisation of the industry, leading to better qualified individuals at all parts of the supply chain.
29. Accreditation arrangements for laboratories that test drinking water are being carried over to the new regime (clauses 72 – 81). The provisions have been modernised and incorporate findings of the Havelock North Inquiry.

Consumer complaints

30. The Bill contains a consumer complaints framework (clauses 38 – 40). This area is new and is designed ensure that consumer concerns about drinking water are properly investigated by suppliers, with action taken where necessary.
31. The detail of the consumer complaints framework will be set out in regulations and need not necessarily apply to small suppliers that provide their own drinking water such as marae. Where a consumer is not satisfied that their complaint has been properly dealt with, they will be able to seek review by Taumata Arowai.

Compliance and enforcement

32. Compliance and enforcement was an area of significant focus for the Havelock North Inquiry. There are real weaknesses in the current system, including fragmented responsibilities, lack of central oversight, limited and inconsistent compliance and enforcement, resourcing issues relating to staff, little or no support to suppliers to help them understand and comply with responsibilities, and lack of recognition of mātauranga Māori frameworks and how they can be integrated into source water management.
33. Establishing Taumata Arowai as a central regulator is core to a new approach to compliance and enforcement. The Taumata Arowai – the Water Services Regulator Bill requires the new regulator take an active role to compliance and enforcement as the steward of the system. It will be charged with providing support, assistance and guidance to suppliers, building capability and capacity in the sector, and taking appropriate action to address non-compliance.
34. The Water Services Bill contains a broad toolkit for compliance and enforcement. Along with powers carried over from the existing regime, new powers have been developed to ensure that a graduated response can be taken to non-compliance. These powers are vested in the chief executive of Taumata Arowai and its compliance officers to ensure they are exercised independently:
 - 34.1 compliance officers have powers to direct suppliers, with the chief executive able to issue compliance orders where non-compliance is persistent or serious;
 - 34.2 search and information gathering powers for compliance officers have been carried over from the existing regime with modernisation to reflect the Search and Surveillance Act 2012. These include powers to obtain documents, test water samples, deal with serious risks to public health, enter without a search warrant to inspect drinking water infrastructure where an officer reasonably believes there is a serious risk to public health, and to obtain a search warrant to investigate non-compliance;
 - 34.3 new powers enable the chief executive to enter into an enforceable undertaking with a drinking water supplier as an alternative to issuing a compliance order or seeking prosecution. In other regulatory regimes this option has proved useful in managing parties to compliance;
 - 34.4 new statutory intervention powers enable the chief executive to appoint a new operator in cases of serious or persistent non-compliance;
 - 34.5 new infringement offences are available for minor non-compliance;
 - 34.6 offences have been reformed to better direct the provisions at behaviours that need to be regulated. This includes significant new offences where a supplier exposes consumers to a serious risk of death, illness, or injury through negligent or reckless conduct. Alongside this, the levels of offences have been increased so they are commensurate with comparable regimes – the Health and Safety at Work Act 2015 and the Food Act 2014; and
 - 34.7 sentencing options have been added for the court, including tailored sentencing criteria and supervision and training orders.

Compliance, monitoring and enforcement strategy

35. It will take time for drinking water suppliers to achieve compliance with the new regime. Non-compliance with drinking water standards is a historic problem, particularly as supply size decreases, or where capability is low – examples include small councils, community suppliers such as marae, or rural supplies.
36. The Bill requires Taumata Arowai to publish a compliance monitoring and enforcement strategy (clause 134) so it can take a graduated approach to regulation, reflecting the time it will take for suppliers to reach full compliance. The strategy will provide transparency about how Taumata Arowai intends to target its activities, and support drinking water suppliers of different types, sizes and abilities. The strategy must be reviewed at least every three years and will include detail on the exercise of the following powers:
 - 36.1 monitoring and review arrangements such as compliance with drinking water safety plans;
 - 36.2 civil compliance powers and its approach to prosecution for offences;
 - 36.3 its approach to suppliers of different types, sizes and abilities; and
 - 36.4 general exemptions to the regime, and exemptions for residual disinfection (chlorination).

Defence and liability arrangements

37. The Bill contains strict liability offences (criminal offences where there is no requirement to prove a person intended to commit the offence). For these offences there is a defence (clause 156) enabling a defendant to prove the commission of the offence was due to the act or omission of another person, an accident or some other cause outside the defendant's control, and that the supplier took all reasonable precautions and exercised due diligence to avoid the commission of the offence.
38. Provisions clarify that body corporates or unincorporated bodies are liable for actions of officers, employees or agents, to ensure that an organisation cannot avoid blame by pointing to the actions of a person in the organisation (clauses 157 and 158). These provisions carry over arrangements in the Health Act 1956 with improvements.
39. There are a number of exemptions from criminal liability:
 - 39.1 officers, employees, and agents of drinking water suppliers are liable for failing to meet the duty of due diligence imposed on them, but are otherwise not liable for offences relating to drinking water suppliers (clause 159);
 - 39.2 volunteers are not liable for negligence in supply of unsafe drinking water (clause 163) or negligence in failure to take immediate action when drinking water is unsafe (clause 165), failure to provide sufficient quantity of drinking water (clause 167), failure to advise consumers about, provide and report on complaint process (clause 178), and failing to comply with duty of due diligence (clause 182); and
 - 39.3 elected local body office holders and boards of trustees are not liable for offences under the Bill (clause 161).

Annual drinking water regulation report

40. Taumata Arowai must publish an annual drinking water regulation report (clause 135) encompassing all aspects of the drinking water system, including drinking water safety, compliance with the Act and other legislation relating to drinking water, and the extent to which the Act is meeting its purposes. The report must be presented to its responsible Minister and tabled in Parliament.

Local Government Act 2002 amendment

41. The Bill contains new responsibilities for territorial authorities to ensure that communities continue to have access to drinking water, better understand the risks to ongoing access, and plan to ensure services continue to be available. The Bill also place new responsibilities on territorial authorities when supplies fail or are at risk of failing. These provisions both recognise the role that territorial authorities play in providing drinking water to their communities, and addresses the risk that, with much higher levels of compliance required under the Water Services Bill, some small private suppliers may struggle to comply and may seek to exit from supply arrangements.
42. These new responsibilities are contained in an amendment to the Local Government Act 2002 at Part 5 of the Bill that will:
 - 42.1 require territorial authorities to assess the access that communities in their district have to drinking water services every three years (new section 125). It must provide this assessment to Taumata Arowai and consider its implications for its long-term plan, infrastructure strategy, district plan, and duty to improve, promote and protect public health (new section 126); and
 - 42.2 require territorial authorities to work with a supplier, consumers of a supply, and Taumata Arowai to find a solution where drinking water services fail or are at risk of failing. Alongside this, territorial authorities have a new duty to ensure that consumers continue to have access to drinking water services - whether provided by the territorial authority itself or by another supplier (new section 127).

Wastewater and stormwater

43. The Water Services Bill proposes targeted reform that will establish new national-level reporting and monitoring functions for wastewater and stormwater (clauses 136 - 142). This will address both the lack of transparency and oversight of the performance of wastewater and stormwater operators, and limited central stewardship of this infrastructure within the devolved system under the Resource Management Act 1991.
44. Taumata Arowai will be empowered to:
 - 44.1 compile wastewater and stormwater networks in a national public database;
 - 44.2 set environmental performance measures that wastewater and stormwater operators will have to report against annually;
 - 44.3 publish an annual report on the environmental performance of wastewater and stormwater networks and their compliance with applicable regulatory requirements (such as resource consents); and
 - 44.4 identify and promote national good practice for the design and management of wastewater and stormwater networks.

45. In conjunction with these measures, the Ministry for the Environment has initiated work on a National Environmental Standard for wastewater discharges and overflows – this will be made as regulations under the Resource Management Act 1991. As Associate Minister for the Environment, I have been delegated responsibility for making decisions on the proposed new National Environmental Standard, in accordance with section 46A of the Resource Management Act 1991 and in consultation with the Minister for the Environment.

Transitional arrangements

46. Transitional arrangements in the Bill are that:
- 46.1 all supplies registered under the existing drinking water register will be transferred to the new register. Suppliers will have 12 months following commencement to either register if they own an unregistered supply, or update their details;
 - 46.2 drinking water safety plans approved under the Health Act 1956 will continue in force. Drinking water supplies serving 500 or more consumers will have 12 months following commencement to comply with new requirements, and supplies less than 500 will have five years following commencement;
 - 46.3 all territorial authorities will be required to become authorised, or have their drinking water services delivered by an authorised supplier, within five years of commencement;
 - 46.4 the first compliance monitoring and enforcement strategy must be made within 12 months of commencement; and
 - 46.5 provisions relating to wastewater and stormwater will not be commenced until two years following commencement, to allow Taumata Arowai to prioritise drinking water regulation.

Regulatory impact analysis

47. A regulatory impact assessment was prepared in accordance with Cabinet requirements and accompanied the policy paper that was considered by Cabinet on 30 September 2019 [CAB-19-MIN-0506 refers].

Compliance

48. The Bill complies with:
- 48.1 the principles of the Treaty of Waitangi;
 - 48.2 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993;
 - 48.3 the disclosure statement requirements;
 - 48.4 the principles and guidelines set out in the Privacy Act 1993;
 - 48.5 relevant international standards and obligations; and
 - 48.6 the Legislation Guidelines (2018 edition), which are maintained by the Legislation Design and Advisory Committee.

Consultation

Departmental consultation

49. The Three Waters Review is a cross-departmental working group led by the Department of Internal Affairs, comprising the Ministry of Health, the Ministry for the Environment, the Ministry of Business, Innovation and Employment, and the Treasury. The Department of Internal Affairs developed the policy proposals relating to this Bill, and the Bill itself, in consultation with these agencies and the State Services Commission.
50. A wider group of agencies were engaged in the Three Waters work throughout 2018 and 2019, and were consulted on the relevant policy papers, draft Bill, and this paper. These agencies include the New Zealand Transport Agency, Ministry for Primary Industries, the National Emergency Management Agency, Department of the Prime Minister and Cabinet (Policy Advisory Group and National Security Group), Ministry of Housing and Urban Development, Te Puni Kōkiri, Te Arawhiti, Department of Conservation, Ministry of Education, New Zealand Defence Force, and Department of Corrections.

Engagement with iwi/Māori

51. The regulatory proposals that were considered by Cabinet on 1 July 2019 were informed by engagement with iwi/Māori. There has also been ongoing targeted engagement on the proposals with iwi and national representative groups. There was engagement on the Bill with Kāhui Wai Māori (an advisory group established to give advice on Action for Healthy Waterways and reform of the National Policy Statement for Freshwater Management).
52. Feedback from iwi/Māori highlighted that:
 - 52.1 tangata whenua relationships with freshwater bodies should be preserved and enhanced by the Water Services Bill, particularly for sources of drinking water where the legislation should allow kaitiakitanga and mātauranga Māori to be fully expressed;
 - 52.2 there were concerns that new drinking water regulatory requirements would be difficult for many small Māori suppliers (such as marae) to achieve, both because of challenges with upgrades of infrastructure and the generally poor levels of capability among suppliers. For this reason, there is a strong interest in ensuring that regulatory requirements are as simple and tailored as they can be, and that Taumata Arowai provides support, assistance and guidance to Māori suppliers;
 - 52.3 where compliance officers exercise powers in relation to marae or marae owners, individuals will need to be properly trained and supported to ensure that interactions meet tikanga expectations and take into account marae kawa;
 - 52.4 Māori are overrepresented in communities where drinking water quality is poor, and there have been long-standing high rates of non-compliance with drinking water standards. The Water Services Bill needs to ensure that outcomes are improved for these communities, as this will lead to better public health and economic outcomes;

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- 52.5 tangata whenua have a strong interest in clearer oversight of wastewater and stormwater arrangements as this will lead to greater transparency, and enable better expression of kaitiakitanga and mātauranga Māori; and
- 52.6 there was a preference for ensuring that drinking water regulation is independent from Ministers with decision-making and enforcement powers at arms-length.

Engagement with sector stakeholders

- 53. There has been targeted engagement during both policy formulation and Bill drafting with local government, leading water industry representatives, and the health, environmental, and rural sectors. A technical advisory group of “critical friends” gave detailed feedback on the Bill in two rounds. In conjunction with Local Government New Zealand, regional council and territorial authority reference groups gave detailed feedback on the Bill in two rounds.

Ministerial and party consultation

- 54. A group of Ministers with portfolio interests in three waters regulation met regularly throughout 2019 to provide the strategic direction for the Three Waters Review, and to discuss detailed policy proposals relating to the regulatory reforms. This group comprised following Ministers - Local Government, Health, Environment, Infrastructure, Commerce and Consumer Affairs, Conservation, and Rural Communities.

Coalition and confidence and supply partners

- 55. Coalition and confidence and supply partners were consulted in the lead-up to Cabinet decisions on proposals and policy papers relating to this Bill, and on the draft Bill.

Binding on the Crown

- 56. The Act will be binding on the Crown.
- 57. Provisions clarify that, where a Crown organisation is a drinking water supplier, it is subject to compliance and enforcement powers exercisable by the chief executive of Taumata Arowai and its compliance officers, such as directions, compliance orders, and prosecution for offences (clauses 19 and 20). Similar arrangements exist in the Health and Safety at Work Act 2015.

Creating new agencies

- 58. The Bill does not create any new agencies.

Allocation of decision-making powers

- 59. The Bill enables a right of internal review for decisions by Taumata Arowai or a compliance officer (clauses 88 - 91).
- 60. Appeals to the District Court may be made from internal review decisions. Because of their significance, compliance orders and cost recovery decisions in a drinking water emergency are directly appealable to the District Court without internal review (clause 92).

61. District Court decisions are appealable to the High Court on a question of law only (clause 94), with appeals to the Court of Appeal or Supreme Court by leave of the court appealed to (clause 95).

Associated regulations

62. The Bill contains powers to make regulations relating to the following matters:
 - 62.1 to extend a drinking water emergency, or exemptions from Part 3 of the Resource Management Act 1991 made as part of a drinking water emergency (clause 64);
 - 62.2 for authorisation and occupational regulation of drinking water suppliers (clause 71);
 - 62.3 for consumer complaints about drinking water (clause 190);
 - 62.4 prescribing the detail of identity cards for compliance officers (clause 190);
 - 62.5 prescribing fees, charges, and levies for the purposes of the Bill or regulations (clauses 190-191);
 - 62.6 for infringement offences (clause 190); and
 - 62.7 for any other matters necessary for the purposes of the Act (clause 190).
63. The timing of regulations will need to be staged over the first three years following commencement of the Bill. Regulations relating to authorisations, occupational regulation, and consumer complaints will be of medium complexity, with the likely drafting task dependent on subsequent policy decisions on their final scope and form. All regulations will require engagement with Taumata Arowai, which will be responsible for their implementation.

Other instruments

64. Under the Health Act 1956, drinking water standards are made by the Minister of Health. The standards include both technical requirements relating to drinking water composition, along with compliance requirements for drinking water suppliers.
65. The legislative framework underpinning the standards has been an area of regulatory weakness and confusion. Compliance requirements issued under the standards do not apply to every supplier, and this means it is not clear how the obligation in the Health Act to comply with drinking water standards should be implemented in every case. There are also “safe harbour” solutions in the standards, and other requirements such as aesthetic values that are subject to different legal duties. The Water Services Bill proposes to reform these arrangements:
 - 65.1 drinking water standards will relate solely to drinking water composition and treatment outcomes, and will be made by the Governor-General by Order in Council (clause 46);
 - 65.2 compliance rules will be made by Taumata Arowai, setting the detail about how suppliers and local authorities should comply with duties in Part 2 of the Bill relating to drinking water supplies (clause 48);
 - 65.3 Taumata Arowai will have power to make “safe harbour” acceptable solutions and verification methods for drinking water, and issue templates and models (clauses 49 - 51); and

- 65.4 Taumata Arowai will also make aesthetic values for drinking water (clause 47) and suppliers will need to take reasonably practicable steps to meet these values.
66. There are safeguards in the Bill relating to the drinking water standards, rules, and instruments that are legislative in nature:
- 66.1 Taumata Arowai must ensure there is adequate public consultation (unless the instrument needs to be made urgently, deals with transitional issues, or relates to a minor amendment (clause 52); and
- 66.2 publication is required (clause 195), and standards, rules and instruments that are legislative in nature must be presented to the House of Representatives and are disallowable by the Regulations Review Committee.

Definition of Minister/department

67. The Bill contains a definition of “Minister” at clause 5, which is “the Minister of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is responsible for the administration of this Act”.
68. The Bill contains a definition of “department” at clause 5, which is “a department named in Schedule 1 of the State Sector Act 1988”.

Commencement of legislation

69. Clause 2 of the Bill enables the legislation to be commenced on a date appointed by the Governor-General by Order in Council. There is flexibility to appoint different dates for different provisions and different purposes. There is a backstop provision stating the Act will come fully into force two years after Bill receives Royal Assent.
70. It is anticipated that provisions in the Bill will be commenced on 1 July 2021 other than the wastewater and stormwater provisions (clauses 134 – 142) which will be commenced two years after the date of Royal assent.

Parliamentary stages

71. The Bill needs to be introduced before Parliament is dissolved for the 2020 general election, to ensure that Taumata Arowai and drinking water suppliers can have certainty about the new regulatory system, which needs to be in place by 1 July 2021.
72. A separate bill establishing Taumata Arowai is currently before Parliament, and will be enacted in advance of the Water Services Bill to enable the entity to prepare to take over drinking water regulation from the Ministry of Health. The Ministry of Health will continue to regulate drinking water until the Water Services Bill is commenced.
73. I propose to refer the Water Services Bill to the Health Committee.

Proactive release

74. I intend to publish this paper in accordance with Cabinet Office circular CO (18) 4.

Recommendations

75. The Minister of Local Government recommends that Cabinet:
1. **note** that the Water Services Bill holds a category 4 priority on the 2020 legislation programme;

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2. **note** that the Water Services Bill proposes comprehensive reform of the drinking water regulatory system, along with targeted reform to wastewater and stormwater regulation to increase transparency and best practice [CAB-19-MIN-0332 refers];
3. **note** that the Water Services Bill is an omnibus bill that will revoke Part 2A of the Health Act 1956 and replace it with a stand-alone Act, with discrete amendments to the Local Government Act 2002 and the Resource Management Act 1991;
4. **note** that a separate bill establishing a Crown entity - Taumata Arowai - the Water Services Regulator Bill - is currently before Parliament, and will be enacted in advance of the Water Services Bill to enable the entity to prepare to take over drinking water regulation from the Ministry of Health;
5. **note** that the Water Services Bill needs to be introduced before Parliament is dissolved for the 2020 general election, to ensure that Taumata Arowai and drinking water suppliers can have certainty about the new regulatory system, which needs to be in place by 1 July 2021;
6. **approve** the Water Services Bill for introduction, subject to the final approval of the Government caucus and sufficient support in the House of Representatives;
7. **agree** that the Government propose that the Bill be:
 - 7.1 referred to the Health Committee for consideration; and
 - 7.2 enacted to enable its commencement before 1 July 2021.

Authorised for lodgement

Hon Nanaia Mahuta

Minister of Local Government