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Hon Nanaia Mahuta, Minister of Local Government

Proactive release of Cabinet material about the Water Services Act Commencement Order 2021 and Taumata Arowai—the Water Services Regulator Act 2020 Commencement Order (No 2) 2021, 1 November 2021

These documents have been proactively released:

1 November 2021, CAB-21-MIN-0446 Minute: Report of the Cabinet Legislation Committee: Period Ended 29 October 2021; and

28 October 2021, LEG-21-MIN-0177 Minute: Water Services Act Commencement Order 2021 and Taumata Arowai—the Water Services Regulator Act 2020 Commencement Order (No 2) 2021; and

28 October 2021, Cabinet Paper: Water Services Act Commencement Order 2021 and Taumata Arowai—the Water Services Regulator Act 2020 Commencement Order (No 2) 2021; and

1 November 2021, Commencement Order: Water Services Act Commencement Order 2021

1 November 2021, Commencement Order: Taumata Arowai—the Water Services Regulator Act 2020 Commencement Order (No 2) 2021.

The proactive release of Cabinet material for the Taumata Arowai – the Water Services Regulator Act Commencement Order 2021, can be accessed here:

[Taumata Arowai - the Water Services Regulator Act Commencement Order 2021 \(dia.govt.nz\)](https://dia.govt.nz)

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Cabinet

Minute of Decision

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Report of the Cabinet Legislation Committee: Period Ended 29 October 2021

On 1 November 2021, Cabinet made the following decisions on the work of the Cabinet Legislation Committee for the period ended 29 October 2021:

Out of scope



LEG-21-MIN-0177

**Water Services Act Commencement Order 2021 and
Taumata Arowai—the Water Services Regulator Act
2020 Commencement Order (No 2) 2021**
Portfolio: Local Government

CONFIRMED

Out of scope



Out of scope

Michael Webster
Secretary of the Cabinet

Proactively released by the Minister of Local Government



Cabinet Legislation Committee

Minute of Decision

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Water Services Act Commencement Order 2021 and Taumata Arowai–the Water Services Regulator Act 2020 Commencement Order (No 2) 2021

Portfolio **Local Government**

On 28 October 2021, the Cabinet Legislation Committee:

- 1 **noted** that the Water Services Act 2021 received Royal assent on 4 October 2021;
- 2 **noted** that, to allow for an orderly transfer of operations and responsibility to Taumata Arowai, the Minister of Local Government proposes to phase the commencement of the Water Services Act 2021;
- 3 **agreed** to commence the Water Services Act 2021 from 15 November 2021, with the limited exceptions outlined in paragraphs 4 and 5;
- 4 **agreed** that section 58: 'Exemption: residual disinfection' of the Water Services Act 2021 will commence on 1 March 2022, to allow Taumata Arowai to implement the necessary exemption application processes and to provide relevant information to drinking water suppliers;
- 5 **noted** the following provisions are excluded in the Water Services Act Commencement Order 2021 and Taumata Arowai–the Water Services Regulator Act 2020 Commencement Order (No 2) 2021 (the Commencement Orders), as they will be commenced on 4 October 2023 by section 2(1)(b) of the Water Services Act 2021:
 - 5.1 section 138: Wastewater environmental performance standards;
 - 5.2 section 139: Wastewater network risk management plans;
 - 5.3 sections 141(c) and (d): Monitoring and reporting on environmental performance of networks, related to wastewater and stormwater networks and network operators;
 - 5.4 section 144: Network registers;
 - 5.5 section 146(1)(c): Record-keeping requirements for monitoring and reporting purposes, related to wastewater network operators, wastewater environmental performance standards, and the requirements of wastewater network risk management plans;
 - 5.6 section 147: Annual reporting on networks;
 - 5.7 section 148: Further provisions relating to reporting;

- 6 **agreed** to commence section 10(b) of the Taumata Arowai–the Water Services Regulator Act 2020 on 15 November 2021, to give Taumata Arowai the objective to effectively administer the drinking water regulatory system;
- 7 **noted** that a waiver of the 28-day rule is sought:
- 7.1 so that the Commencement Orders can come into force on 15 November 2021 and Taumata Arowai can become fully operational;
- 7.2 to ensure compliance with statutory obligations, as Ministry of Health may no longer be able to fulfil its legal obligation regarding drinking water safety standards, and Taumata Arowai will require the legislative mandate to assume that responsibility;
- 8 **agreed** to waive the 28-day rule so that the Commencement Orders can come into force on 15 November 2021;
- 9 **authorised** the submission to the Executive Council of the:
- 9.1 Water Services Act Commencement Order 2021 [PCO 24202/2.0];
- 9.2 Taumata Arowai–the Water Services Regulator Act 2020 Commencement Order (No 2) 2021 [PCO 24223/2.0].

Rebecca Davies
Committee Secretary

Present:

Hon Chris Hipkins (Chair)
Hon Carmel Sepuloni
Hon Andrew Little
Hon David Parker
Hon Stuart Nash
Hon Willie Jackson
Hon Michael Wood
Hon Dr David Clark
Kieran McAnulty, MP

Officials present from:

Office of the Prime Minister
Officials Committee for LEG

Office of the Minister of Local Government

Chair
Cabinet Legislation Committee

Water Services Act Commencement Order 2021 and Taumata Arowai–the Water Services Regulator Act 2020 Commencement Order (No 2) 2021

Proposal

1. I seek approval for the Water Services Act Commencement Order 2021 and Taumata Arowai–the Water Services Regulator Act 2020 Commencement Order (No 2) 2021 (Commencement Orders) to be submitted to the Executive Council. This will bring into force the Water Services Act 2021, with limited exceptions, and the remaining provision of the Taumata Arowai–the Water Services Regulator Act 2020

Taumata Arowai as the three waters services regulator

2. The Water Services Act (the Act) provides for the new drinking water regulatory system that Taumata Arowai, the new dedicated water services regulator, will administer. It also provides for Taumata Arowai to shine a light on the environmental performance of wastewater and stormwater networks. The establishment of Taumata Arowai and passing of the Act fulfils a major part of our response to the Havelock North drinking water contamination event in 2016, an event that resulted in four deaths and the illness of around 5,000 people, and which drew the nation's attention to the gravity of the problems facing drinking water in New Zealand.
3. It is now time for the planned transfer of drinking water regulation from the Ministry of Health to Taumata Arowai. I intend to start that transition by phasing the commencement of the Act, as outlined in the proposed Commencement Orders.
4. The first phase is the transfer of responsibility and operations for the regulation of drinking water safety from the Ministry of Health to Taumata Arowai. I propose to do this from 15 November 2021. Taumata Arowai will then be the drinking water regulator.
5. Both Taumata Arowai and the Ministry of Health are working towards a transfer on 15 November 2021, and this has been formally communicated to the public health sector. Public health and drinking water contract providers have been notified and financial transfers between the relevant Votes have been completed.
6. For the final phase, I propose to commence the wastewater and stormwater functions in the Act from 4 October 2023, making Taumata Arowai the three waters services regulator. This will happen automatically with the commencement provisions in the Act.

Making Taumata Arowai a dedicated drinking water regulator

Most of the Act will commence on 15 November 2021

7. The Act received Royal assent on 4 October 2021. The commencement provisions allow for commencement to be phased. I propose to bring the Act into force on 15 November 2021, with the limited exceptions discussed below.

8. In addition, there is one provision in the Taumata Arowai–the Water Services Regulator Act 2020 still to be brought into force. Section 10(b) gives Taumata Arowai the objective to effectively administer the drinking water regulatory system.
9. I propose to bring section 10(b) into force on 15 November 2021, to give Taumata Arowai this objective.

One provision will commence on 1 March 2022

10. The Act requires an owner of a drinking water supply to have a drinking water safety plan. Where a drinking water supply includes reticulation, the plan must require and provide for the use of residual disinfection, unless an exemption is granted under section 58: 'Exemption: residual disinfection'.
11. The requirement for a drinking water safety plan does not need to be met straight away. Supply owners have either one year or seven years to comply, depending on whether they were registered as a drinking water supplier under the Health Act 1956 at the time of commencement of this Act.
12. I propose to bring section 58, which provides for the residual disinfection exemption process, into force from 1 March 2022. This will allow the necessary time for Taumata Arowai to implement the exemption processes, and to provide relevant information to drinking water suppliers on how to apply for an exemption. Suppliers intending to seek an exemption will likely choose to wait for that exemption to be considered, rather than developing a drinking water safety plan unnecessarily.

Making Taumata Arowai the three waters services regulator

13. I tabled a Supplementary Order Paper (SOP) to the Water Services Bill in September 2021. It included new powers and functions for Taumata Arowai, particularly relating to wastewater. These powers enable Taumata Arowai to provide much-needed national-level oversight and consistency around publicly-owned wastewater networks. Taumata Arowai will be able to set minimum environmental performance standards for wastewater networks, bringing New Zealand in line with many other countries. The SOP also clarified that the oversight powers of Taumata Arowai extend to trade waste.
14. To allow Taumata Arowai to focus initially on its primary role as the drinking water regulator, I propose to allow the commencement provisions in the Act to bring the following provisions into force on 4 October 2023:
 - 14.1 section 138: Wastewater environmental performance standards;
 - 14.2 section 139: Wastewater network risk management plans;
 - 14.3 sections 141(c) and (d): Monitoring and reporting on environmental performance of networks related to wastewater and stormwater networks and network operators;
 - 14.4 section 144: Network registers;
 - 14.5 section 146(1)(c): Record-keeping requirements for monitoring and reporting purposes related to wastewater network operators, wastewater environmental performance standards, and the requirements of wastewater network risk management plans;
 - 14.6 section 147: Annual reporting on networks;

- 14.7 section 148: Further provisions relating to reporting.
15. The commencement provisions in the Act will automatically commence these provisions on 4 October 2023, which is two years after Royal assent.

Timing and 28-day rule

16. Changes to commencement order legislation take effect on 28 October 2021, when latent provisions in the Legislation Act 2019 come into force. The amendments remove the exception from the 28-day rule for commencement orders.
17. Taumata Arowai cannot become fully operational on 15 November 2021 without the legislation being in force. Taumata Arowai is dependent on the commencement of the Act for its regulatory authority. Without the Act in force, the current Health Act regime will remain in place, and drinking water suppliers will not be subject to the new legislation. Taumata Arowai will not have any operative compliance and enforcement functions or powers, nor any ability to respond to any drinking water emergencies that could potentially arise, including over the Christmas period.
18. To commence the relevant provisions, I seek a waiver to the 28-day rule so the necessary legislation can commence from 15 November 2021. I expect the Commencement Orders will be gazetted by 4 November 2021.
19. I consider a waiver is warranted as:
- 19.1 early commencement is necessary to comply with statutory obligations as Ministry of Health may no longer be able to fulfil its legal obligation regarding drinking water safety standards, and Taumata Arowai will not have the legislative mandate to assume that responsibility;
- 19.2 the legislation confers only benefits on the public, with a dedicated drinking water regulator.
20. The commencement of the legislation was very well communicated during the Parliamentary process, and Taumata Arowai and Ministry of Health have been working with the sector since Royal assent to prepare for regulatory handover on 15 November 2021.

Compliance

21. The Commencement Orders comply with each of the following:
- 21.1 the principles of the Treaty of Waitangi | Te Tiriti o Waitangi;
- 21.2 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 or the Human Rights Act 1993;
- 21.3 the principles and guidelines set out in the Privacy Act 2020;
- 21.4 relevant international standards and obligations;
- 21.5 the *Legislation Guidelines (2018 edition)*, which are maintained by the Legislation Design and Advisory Committee.
22. There are no other statutory prerequisites that exist for these Commencement Orders.

Regulations Review Committee

23. It is not anticipated that the Regulations Review Committee will wish to draw the Commencement Orders to the attention of the House of Representatives under Standing Order 327.

Certification by Parliamentary Counsel

24. The Commencement Orders 2021 have been certified by the Parliamentary Counsel Office as being in order for submission to Cabinet.

Impact Analysis

25. Two regulatory impact assessments were prepared in accordance with Cabinet requirements and accompanied the policy papers that were considered by Cabinet on 30 September 2019 [CAB-19-MIN-0506] and 14 June 2021 [CAB-21-MIN-0226].

Publicity

26. The Commencement Orders will be notified in the New Zealand Gazette.
27. Taumata Arowai will update its website, send targeted emails to key stakeholders, and release a media statement.

Proactive release

28. I intend to publish this paper, in accordance with Cabinet Office circular CO (18)4, subject to any redactions that may be appropriate under the Official Information Act 1982.

Consultation

29. Ministry of Health and Taumata Arowai were consulted on this paper.
30. Both organisations stressed the importance of the transferring responsibility and operations for the regulation of drinking water safety from Ministry of Health to Taumata Arowai on 15 November 2021. They highlighted several risks if that does not happen, including:
 - 30.1 the health sector is extremely busy with a worsening COVID outbreak;
 - 30.2 transitioning immediately prior to the summer break carries high risks; for example:
 - 30.2.1 resourcing – key staff across central and local government will not be available;
 - 30.2.2 sector confusion – as they have already been advised the handover would occur on 15 November 2021.
31. Taumata Arowai advised that a 15 November 2021 commencement date “will allow adequate time prior to the Christmas holiday period for engagement with currently registered drinking water suppliers about the need for them to confirm their details on the new supplier register maintained by Taumata Arowai. Those details are critical to a number of regulatory functions, including responses to any drinking water-related incidents that occur over summer”.

32. A group of other agencies were also engaged in the Three Waters Review throughout 2018 and 2019, and more recently with the development of the Act. They have been informed of this paper and the Commencement Orders.

Recommendations

33. The Minister of Local Government recommends that the Cabinet Legislation Committee:
1. **note** the Water Services Act 2021 received Royal assent on 4 October 2021;
 2. **note** that, to allow for an orderly transfer of operations and responsibility to Taumata Arowai, the Minister of Local Government proposes to phase the commencement of the Water Services Act 2021;
 3. **agree** to commence the Water Services Act 2021 from 15 November 2021, with the limited exceptions outlined in recommendations 4 and 5;
 4. **agree** that section 58: 'Exemption: residual disinfection' of the Water Services Act 2021 will commence on 1 March 2022, to allow Taumata Arowai to implement the necessary exemption application processes and to provide relevant information to drinking water suppliers;
 5. **note** the following provisions are excluded in the Water Services Act Commencement Orders 2021, as they will be commenced on 4 October 2023 by section 2(1)(b) of the Water Services Act 2021:
 - 5.1 section 138: Wastewater environmental performance standards;
 - 5.2 section 139: Wastewater network risk management plans;
 - 5.3 sections 141(c) and (d): Monitoring and reporting on environmental performance of networks, related to wastewater and stormwater networks and network operators;
 - 5.4 section 144: Network registers;
 - 5.5 section 146(1)(c): Record-keeping requirements for monitoring and reporting purposes, related to wastewater network operators, wastewater environmental performance standards, and the requirements of wastewater network risk management plans;
 - 5.6 section 147: Annual reporting on networks;
 - 5.7 section 148: Further provisions relating to reporting;
 6. **agree** to commence section 10(b) of the Taumata Arowai—the Water Services Regulator Act 2020 on 15 November 2021, to give Taumata Arowai the objective to effectively administer the drinking water regulatory system;
 7. **note** that a waiver of the 28-day rule is sought:
 - 7.1 so that the Orders in Council can come into force on 15 November 2021 and Taumata Arowai can become fully operational;
 - 7.2 to ensure compliance with statutory obligations, as Ministry of Health may no longer be able to fulfil its legal obligation regarding drinking water safety standards, and Taumata Arowai will require the legislative mandate to assume that responsibility;
 8. **agree** to waive the 28-day rule so that the Water Services Act 2021 Commencement Orders 2021 can come into force on 15 November 2021; and

9. **authorise** the submission to the Executive Council of the Water Services Act Commencement Order 2021 and Taumata Arowai–the Water Services Regulator Act 2020 Commencement Order (No 2) 2021.

Authorised for lodgement

Hon Nanaia Mahuta

Minister of Local Government

Proactively released by the Minister of Local Government



Water Services Act Commencement Order 2021

Cindy Kiro, Governor-General

Order in Council

At Wellington this 1st day of November 2021

Present:

Her Excellency the Governor-General in Council

This order is made under section 2(1)(a) of the Water Services Act 2021 on the advice and with the consent of the Executive Council.

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Order

1 Title

This order is the Water Services Act Commencement Order 2021.

2 Commencement of certain provisions of Water Services Act 2021

- (1) Section 58 of the Water Services Act 2021 comes into force on 1 March 2022.
- (2) The rest of the Water Services Act 2021 comes into force on 15 November 2021, except—
 - (a) sections 138 and 139; and
 - (b) section 141(c) and (d); and
 - (c) section 144; and

- (d) section 146(1)(c); and
- (e) sections 147 and 148.

Michael Webster,
Clerk of the Executive Council

Explanatory note

This note is not part of the order, but is intended to indicate its general effect.

This order brings the Water Services Act 2021 into force on 15 November 2021 other than section 58, which comes into force on 1 March 2022, and the following sections that are not yet commenced:

- sections 138 and 139:
- section 141(c) and (d):
- section 144:
- section 146(1)(c):
- sections 147 and 148.

Issued under the authority of the Legislation Act 2019.
Date of notification in *Gazette*: 4 November 2021.
This order is administered by the Department of Internal Affairs.



Taumata Arowai—the Water Services Regulator Act Commencement Order (No 2) 2021

Cindy Kiro, Governor-General

Order in Council

At Wellington this 1st day of November 2021

Present:

Her Excellency the Governor-General in Council

This order is made under section 2(1)(a) of the Taumata Arowai—the Water Services Regulator Act 2020 on the advice and with the consent of the Executive Council.

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Order

1 Title

This order is the Taumata Arowai—the Water Services Regulator Act Commencement Order (No 2) 2021.

2 Commencement of provision of Taumata Arowai—the Water Services Regulator Act 2020

Section 10(b) of the Taumata Arowai—the Water Services Regulator Act 2020 comes into force on 15 November 2021.

Michael Webster,
Clerk of the Executive Council.

Explanatory note

This note is not part of the order, but is intended to indicate its general effect.

This order brings section 10(b) of the Taumata Arowai—the Water Services Regulator Act 2020 into force on 15 November 2021.

The rest of that Act (other than section 11(e), which is repealed by Schedule 2 of the Water Services Act 2021 on 15 November 2021) was brought into force on 1 March 2021 by the Taumata Arowai—the Water Services Regulator Act Commencement Order 2021.

Issued under the authority of the Legislation Act 2019.

Date of notification in *Gazette*: 4 November 2021.

This order is administered by the Department of Internal Affairs.