

UNCLASSIFIED

Hon Nanaia Mahuta, Minister of Local Government

Proactive release of Cabinet material about introduction of the Taumata Arowai – Water Services Regulator Bill, 9 December 2019

The following documents have been proactively released:

9 December 2019, CAB-19-MIN-0659 Minute: Taumata Arowai – the Water Services Regulator Bill: Approval for Introduction, Cabinet Office; and

9 December 2019, Cabinet Paper: Taumata Arowai – Water Services Regulator Bill: approval for introduction, Office of the Minister of Local Government.

[© Crown Copyright, Creative Commons Attribution 4.0 International \(CC BY 4.0\)](https://creativecommons.org/licenses/by/4.0/)

UNCLASSIFIED



Cabinet

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

Taumata Arowai - the Water Services Regulator Bill: Approval for Introduction

Portfolio **Local Government**

On 9 December 2019, Cabinet:

1 **noted** that on:

- 1.1 1 July 2019, Cabinet agreed to a suite of system-wide reforms to the regulation of drinking water, including the establishment of a centrally-located regulator to oversee the entire drinking water regulatory system [CAB-19-MIN-0332];
 - 1.2 30 September 2019, Cabinet agreed to the institutional arrangements for the new drinking water regulator, including:
 - 1.2.1 establishing the drinking water regulator as a new Crown agent in legislation;
 - 1.2.2 the regulator's statutory objectives;
 - 1.2.3 the regulator's operating principles to guide and inform how the regulator delivers its objectives and functions;
 - 1.2.4 a governance board and Māori Advisory Group;
- [CAB-19-MIN-0506]

2 **noted** that the Taumata Arowai – the Water Services Regulator Bill:

- 2.1 holds a category 4 priority on the 2019 Legislation Programme (to be referred to a select committee);
- 2.2 establishes Taumata Arowai – the Water Services Regulator, as a Crown agent, and provides for its objectives, functions, and governance arrangements;

3 **approved** for introduction the Taumata Arowai – Water Services Regulator Bill [PCO 22478/9.0], subject to the final approval of the government caucuses and sufficient support in the House of Representatives;

4 **agreed** that the Bill be introduced on 9 December 2019;

5 **agreed** that the government propose that the Bill be:

5.1 referred to the Health Committee for consideration;

5.2 enacted by 31 July 2020.

Michael Webster
Secretary of the Cabinet

Hard-copy distribution:

Prime Minister
Deputy Prime Minister
Minister of Local Government

Proactively released by the Minister of Local Government

Office of the Minister of Local Government

Chair
Cabinet

Taumata Arowai – Water Services Regulator Bill: approval for introduction

Proposal

1. This paper seeks approval to introduce the Taumata Arowai – Water Services Regulator Bill. The Bill gives effect to previous Cabinet decisions to establish a new Water Services Regulator, as a Crown agent, and provides for its objectives, functions, and governance arrangements.
2. The Water Services Regulator – to be known as ‘Taumata Arowai’ – will be responsible for the proposed new drinking water regulatory system, and for a small number of new functions relating to the regulation and performance of wastewater and stormwater networks.

Policy

3. During 2019, Cabinet considered a series of papers on the Three Waters Review, and made decisions about a suite of reforms to the regulation of drinking water, wastewater, and stormwater. In April 2019, it was agreed that the Three Waters Review is a Government priority.
4. On 30 September 2019, Cabinet agreed to establish a new Water Services Regulator, as a Crown agent, and made decisions relating to the Regulator’s objectives, remit, functions, and governance arrangements [CAB-19-MIN-0506 refers].
5. I was invited to issue drafting instructions for a Bill to give effect to these decisions. This legislation is needed because the Water Services Regulator, which will be known as Taumata Arowai, will be a Crown entity. The Bill holds a priority category 4 on the 2019 legislation programme.
6. Taumata Arowai will be responsible for implementing, administering, and enforcing the new drinking water regulatory system that was agreed to by Cabinet on 1 July 2019, and which will be given effect through a separate Water Services Bill [CAB-19-MIN-0332 refers]. It will also be responsible for a small number of new functions relating to the regulation and performance of wastewater and stormwater networks.
7. Together, these Bills form a significant core of the Government’s response to the Inquiry into Havelock North Drinking Water, and our priorities for freshwater. There is likely to be significant public, Māori, and stakeholder interest in both Bills, and in the Water Services Bill in particular.
8. The Taumata Arowai – Water Services Regulator Bill (the Bill) is largely administrative in nature. The wider reforms to the drinking water regulatory system, including Taumata Arowai’s detailed functions and enforcement powers, will be provided for in the Water Services Bill. That Bill is currently being prepared, and is expected to be introduced in early 2020.

UNCLASSIFIED

9. It is highly desirable that this Bill is enacted within this parliamentary term. Taumata Arowai needs to become a legal entity as quickly as possible, so it can employ staff, enter into contracts, and be in a strong position to take on its new regulatory responsibilities and other functions. Delaying enactment would jeopardise the success of Taumata Arowai and our drinking water reform programme.

Summary of the contents of this Bill

10. The purpose of this Bill is to establish Taumata Arowai – the Water Services Regulator, and provide for its objectives, functions, and governance arrangements. These provisions comprise the majority of the Bill, and are located in the following clauses:
 - 10.1 Clauses 8 and 9 establish Taumata Arowai – the Water Services Regulator, and specify that it is a Crown entity.
 - 10.2 Clause 10 describes Taumata Arowai's objectives.
 - 10.3 Clause 11 describes Taumata Arowai's general functions.
 - 10.4 Clauses 12 and 13 provide for the board of Taumata Arowai, including requirements for board members to have particular capabilities and experience.
 - 10.5 Clauses 14 to 17 establish a Māori Advisory Group, and provide for the membership and role of that Group.
 - 10.6 Clause 18 provides for a set of operating principles to guide Taumata Arowai in the performance and delivery of its objectives and functions.
 - 10.7 Clause 19 provides for the collective duties of the board, which apply in addition to the general duties in the Crown Entities Act 2004.
11. Schedule 1 of the Bill provides for transitional matters:
 - 11.1 Clauses 1 and 2 of Schedule 1 enable contracts relating to the Regulator to be transferred between the Department of Internal Affairs and Taumata Arowai, once it is a legal entity. Work to design and establish the new organisation is occurring within the Department of Internal Affairs over the next few months, and the Department will be entering into contracts concerning the operation of the Regulator. Once the Bill has been passed, Taumata Arowai will assume responsibility for these contracts.
 - 11.2 Clause 3 of Schedule 1 enables the Ministry of Health to share information relating to the current drinking water regulatory system with Taumata Arowai, without breaching the Privacy Act 1993.

Regulatory impact analysis

12. 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

13. The Bill complies with:
 - 13.1 the principles of the Treaty of Waitangi;

- 13.2 the rights and freedoms contained in the [New Zealand Bill of Rights Act 1990](#) and the Human Rights Act 1993;
- 13.3 the disclosure statement requirements;
- 13.4 the principles and guidelines set out in the Privacy Act 1993;
- 13.5 relevant international standards and obligations; and
- 13.6 the [Legislation Guidelines \(2018 edition\)](#), which are maintained by the Legislation Design and Advisory Committee.

Consultation

Departmental consultation

14. 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.
15. 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, Ministry of Civil Defence and Emergency Management, Department of the Prime Minister and Cabinet (Policy Advisory 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 and sector stakeholders

16. The regulatory proposals that were considered by Cabinet on 1 July 2019 were informed by engagement with iwi/Māori. There has also been ongoing targeted engagement on the proposals for a new Regulator with iwi and national representative groups.
17. Feedback from iwi/Māori highlighted that Māori interests need to be reflected throughout the new Regulator's governance and organisational layers. Regarding the organisational form of the Regulator, there was a preference for it to have a degree of independence from Ministers, and have its own decision-making and enforcement powers.
18. There has been targeted engagement on the broader package of regulatory proposals with local government, water industry representatives, and the health, environmental, and rural sectors. Officials discussed proposals for the form, location, and scope of the Regulator with representatives from the local government sector.
19. As noted in the policy paper on the Regulator, local government sector representatives expressed a strong preference for a standalone Crown agent, which would be independent from Ministers and focused on improving the drinking water regulatory system [CAB-19-SUB-0506 refers].

Ministerial and party consultation

20. 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 the Ministers of/for Local Government, Health, Environment, Infrastructure, Commerce and Consumer Affairs, Conservation, and Rural Communities.
21. Additional Ministers, including the Ministers of Finance, Housing, Urban Development, Climate Change, Civil Defence, and Transport, were consulted on the policy papers relating to the Bill.

Coalition and confidence and supply partners

22. 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

23. The Act will be binding on the Crown. While explicit agreement to this was not sought at the policy stage, it is implicit in the decisions to create a new Crown entity, made on 30 September 2019 [CAB-19-MIN-0506 refers].

Creating new agencies

24. The Bill creates a new Crown agent, which will be subject to the Crown Entities Act 2004, the Ombudsman Act 1975, and the Official Information Act 1982.
25. As a Crown agent, Taumata Arowai will be governed by a board. Members will be appointed by Ministers through the Appointments and Honours process.
26. Taumata Arowai will also be informed and guided by a Māori Advisory Group. The role of this Group is to provide advice on Māori interests and knowledge, as they relate to the objectives, functions, and operating principles of the organisation and the collective duties of the board.

Allocation of decision making powers

27. The Bill does not involve the allocation of decision-making powers between the executive, the courts, and tribunals.

Associated regulations

28. The Bill does not include provisions that empower the making of regulations. However, one of Taumata Arowai's objectives (subclause 10(b) of the Bill), and one of its functions (subclause 11(e) of the Bill), would be brought into force by Order in Council.

Other instruments

29. The Bill does not include provisions that empower the making of other instruments.

Definition of Minister/department

30. The Bill contains a definition of Minister, 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".

Commencement of legislation

31. All of the substantive provisions in this Bill will come into force on the day after the date of Royal assent. As noted above, one of Taumata Arowai's objectives, and one of its functions, would be brought into force by Order in Council. These provisions relate to matters that are located in the separate Water Services Bill, and would take effect around the time that Bill is enacted.

Parliamentary stages

32. The Bill should be introduced on 9 December 2019, and passed by 31 July 2020. As I explain earlier in this paper, it is highly desirable that the Bill is enacted within this parliamentary term, to enable Taumata Arowai to become a legal entity as quickly as possible.
33. I am proposing that the Bill is referred to the Health Committee.

Proactive release

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

Recommendations

35. The Minister of Local Government recommends that Cabinet:
 1. **note** that the Taumata Arowai – Water Services Regulator Bill holds a category 4 priority on the 2019 legislation programme;
 2. **note** that the Bill establishes Taumata Arowai – the Water Services Regulator, as a Crown agent, and provides for its objectives, functions, and governance arrangements;
 3. **approve** the Taumata Arowai – Water Services Regulator Bill for introduction, subject to the final approval of the Government caucus and sufficient support in the House of Representatives;
 4. **agree** that the Bill be introduced on 9 December 2019;
 5. **agree** that the Government propose that the Bill be:
 - 5.1 referred to the Health Committee for consideration; and
 - 5.2 enacted by 31 July 2020.

Authorised for lodgement

Hon Nanaia Mahuta

Minister of Local Government