



Three Waters Regulation

Report on targeted
stakeholder engagement
June 2019



Te Tari Taiwhenua
Internal Affairs



Ministry for the
Environment
Manatū Mo Te Taiao

**NOT GOVERNMENT
POLICY**

New Zealand Government

Proposals have been tested through targeted stakeholder engagement

- Emerging proposals were tested with stakeholders with regulatory interests and expertise in drinking water, source water, wastewater, and stormwater, including from the following sectors:
 - Local government
 - Health
 - Environment
 - Rural
 - Māori
 - Industry.
- Initial thinking was tested with a group of expert “critical friends” drawn from these sectors.
- This was followed by nine targeted engagement workshops in regions across the country – see Appendix 1 for notes on workshop format; Appendix 2 for locations and dates.
- In addition, we held stakeholder briefings and meetings (see Appendix 3), including with:
 - Government agencies affected by the proposals (e.g. DOC, Education, Corrections, Defence)
 - Iwi/Māori (including Kāhui Wai Māori): see Appendix 4
 - Local government reference groups (representing regional councils and territorial authorities)
 - Water advisory bodies (MfE).
- In parallel with the regional targeted engagement workshops, Ministry of Health officials held additional engagement meetings with:
 - Drinking water assessors, medical officers of health and other public health professionals
 - Entities with roles relating to drinking water and its regulation (eg MPI, TPK, MBIE, MoE).
- **The purpose of the engagement was to inform the development of the policy proposals: consideration of key stakeholder feedback towards policy advice is provided in slides 11-14**

High-level overview of stakeholder responses

- There has been general agreement with the central proposition that the regulation of drinking water requires urgent attention. Issues that have generated the most discussions include:
 - Costs, funding and compliance burdens – particularly for small communities and suppliers, for example marae, potentially brought into the regulatory system
 - Capability, support, and resources
 - Having an independent regulator
 - Obligation on local government to supply or ensure access to safe drinking water, and whether this is reasonable
 - Mandatory residual treatment and an associated exemption – with strong views for, and sometime against, this approach.
- Reaction to wastewater and stormwater proposals has been more nuanced, with arguments for and against particular aspects including, most prominently:
 - New national standards for treatment of wastewater discharges and overflows
 - Risk management plans for wastewater and stormwater networks
 - Stronger central oversight
 - Costs and funding.
- Māori articulated considerations including:
 - Upholding Te Mana o Te Wai* as the guiding principle driving this regulatory work
 - The importance of having a design role in regulatory arrangements
 - Providing a clear link to the rest of the Government's Essential Freshwater work programme
 - The need for cultural values and mātauranga Māori to be built into standards, regulations and consenting decisions
 - Wai is wai: there needs to be an holistic approach to managing water.
- **For Māori, Te Mana o Te Wai means the integrated and holistic well-being of a freshwater body. In terms of water management or decision-making it generally means the health and well-being of the water should come first.*

Iwi/Māori: emerging themes

- Whatever approach is taken, there is a need to uphold Te Mana o Te Wai.
- There is a need for community education about the value of water – communities need to own and lead the conversation so there is self-regulation.
- Māori emphasise they have rights and interests in water, which need to be addressed, and urge us to take care not to inadvertently undermine these through three waters reforms.
- Agreement of need for a holistic approach with support for one regulator for all three waters:
 - This would make it easier for iwi to engage with the regulator directly
 - A new combined regulator should have a built-in Te Ao Māori approach and capability.
- Cultural values and measures are not commonly well understood or accommodated in consenting decisions. These need to be built into regulatory design and standards.
- Mutually acceptable outcomes (including for disposal of wastewater) are more likely to be achieved when iwi and hapū are brought into Council planning processes early but they do need resourcing to engage.
- Māori are over-represented in communities with small or no water supplies. They are concerned that the costs and burden of compliance will disproportionately fall on these communities.
- Thought needs to be given to how emerging proposals will impact on iwi/Māori models such as papakāinga housing.
- Water reservoirs are often on land acquired under the Public Works Act in an iwi's rohe. The water is piped past marae yet marae are unable to access it.
- There is a view that current arrangements have no “teeth” and that there should be consequences and people/organisations held to account when rules are broken, particularly in relation to wastewater.

Key stakeholder feedback on drinking water: duties and obligations

(from local government, health, environment, iwi/Māori, rural and water industry sectors)

- **Extension of regulatory coverage**
 - General agreement in principle to purpose of supplying safe drinking water for all.
 - Capability and cost issues arise particularly for small suppliers including the 800,000 people not presently covered.
- **All suppliers to provide consistently safe drinking water – no affordability exemption**
 - Who or what constitutes a water supplier – e.g. is a marae or a community hall a water supplier; and cost/benefits of being brought into the regime.
 - If there is no affordability exemption, who meets the costs to meet standards when small suppliers cannot?
- **Water safety plans and source protection**
 - Some concern on the part of small suppliers as to costs and compliance burden of water safety plans, compliance more generally and the need to ensure that processes do not duplicate existing requirements, or planning such as whitua plans.
 - General agreement with the need for greater source water protection. Opportunity to strengthen iwi/hapū/whānau role, as kaitiaki. Proposals need to enable mātauranga in different areas.
 - Some questions as to how this will work in practice and the associated costs and capability issues.

Drinking Water: mandatory treatment and obligation to supply

(from local government, health, environment, iwi/Māori, rural and water industry sectors)

- **Multi-barrier approach**
 - General agreement with the logic of a multi-barrier approach.
- **Residual disinfection including chlorination**
 - Some suppliers oppose mandatory chlorination on the grounds of cost and taste.
 - Most others, including those with water expertise, are of the view that chlorination is the best and most practicable way to ensure drinking water safety through any reticulated system.
- **Exemptions if supplier is able to demonstrate to regulator that water is safe**
 - Some concerns, again on the part of small suppliers, at how this might work for them – what would they have to do to gain such an exemption?
 - The need for an exemption clause was widely queried although a vocal minority supported this.
 - An exemption could lead to undue complexity and administration costs.
- **Obligation to ensure access to reliable supply of safe drinking water**
 - Some in local government oppose this on the grounds of potential costs.
 - Others accept that local government is where the responsibility should lie but also question how the costs of picking up existing suppliers that exit might be covered.
 - Some feel the discussion of regulatory issues needs to be joined up with service delivery considerations.

Drinking water: compliance, monitoring and enforcement

(from local government, health, environment, iwi/Māori, rural and water industry sectors)

- **Compliance, monitoring and enforcement to lie with central regulator**
 - General agreement with central regulator but with regional presence.
 - Views expressed of the need for a central regulator to be a non-aligned, independent body.
 - Regulator will need to have capability to work with all communities, including iwi/Māori.
 - Some Māori have said iwi/hapū/whanau should play a role in monitoring of waterways and source protection.
- **Enforcement managed by regulator**
 - General support for this provision.
 - Would have to have significant resources.
 - Concern expressed about the lack of capability in the water industry and lack of young people coming through.
 - Need for training and education.
- **Range of enforcement tools including criminal enforcement**
 - Some discussion over “liability” and where this might lie.
 - Frustration expressed over current, in practice, inability to enforce .
- **Wider range of penalties**
 - General agreement that for compliance to be meaningful there had to be effective monitoring.
 - Also that any new enforcement regime has to “have teeth”.

Wastewater and stormwater: lifting performance, promoting transparency

(from local government, health, environment, iwi/Māori, rural and water industry sectors)

• New national standards for treatment of wastewater discharges and overflows

- There is some support for standardisation either at the discharge level or in terms of standardisation of consent conditions and templates. The latter approach appears to be favoured among service providers.
- There is also a view that a new national standard for wastewater discharge would not necessarily improve environmental outcomes at a catchment level because of the more significant impact of agricultural discharges.
- Some think introducing a national standard could promote a “race to the bottom” attitude – ie operators would do the minimum required.
- Some attendees questioned how a standard would work alongside the effects-based approach of the RMA – national standards would need to have sufficient flexibility to reflect local, community and catchment-based solutions.
- Others feel that the current system does not allow dischargers to be held to account – national standards could help rectify this: regulation could drive performance up.
- There is a concern over how costs for any new standards regime might be met, and whether it would create unnecessary costs to upgrade treatment plants in some cases.
- National standards could help lower costs and reduce timeframes of consenting Wastewater Treatment Plants.
- Opportunity to reflect mātauranga Māori and other community values.

• Proposals to improve transparency

- Some see value in risk management plans, but participants are cautious about potential overlap with existing reporting asset management plan requirements, and resource consent decisions.
- More data is required to support the application of best practice and risk management.
- Monitoring for greater transparency is expensive – need to be careful in choosing metrics, and involve practitioners.
- A dedicated body would be required to analyse data.
- Performance metrics are not useful unless they are integrated into regulatory requirements.
- Auditing needs to inform a national process (eg National Environmental Standards developments).

Wastewater and stormwater: improving central government oversight

(from local government, health, environment, iwi/Māori, rural and water industry sectors)

- **Auditing and publishing wastewater and stormwater performance information**
 - A view that there has to be an established purpose for this.
 - General agreement that central government could take over or support the role that Water New Zealand has played regarding their National Performance Review, and make participation mandatory.
 - Guidelines are not sufficient – there need to be compliance requirements.
- **Support industry training and certifications schemes**
 - There is strong support for central government direction in training and certification.
 - Activity specific training and accreditation scheme would help people get consistent advice on delivering appropriate solutions.
 - Training and accreditation schemes would help identify and accelerate innovation.
 - There is a need to recognise existing on-job skills and experience.
- **Develop nationally-coordinated approach for emerging contaminants**
 - There was a general agreement that this could be helpful.
 - There needs to be source control intervention – removal of waste products including emerging contaminants before entering waste stream.

Government agencies: typical feedback

- There needs to be clarity on definitional issues – for example, what constitutes a “water supplier” – this is a particular concern for DoC in relation to supplying water at tramping huts around New Zealand.
- Good to coordinate new regulatory regime with existing regulatory requirements.
- Thought to be given as to how private tramping/tour operators on DoC land are captured by regulations.
- Drinking water (safety) obligations are reasonable but there are questions/clarifications as to where and how they would apply. These could be an issue for Education with a significant number of self-supplying schools.
- Defence and Corrections current planning and development is aligned with drinking water proposals.
- There is agreement that if agency (i.e. public) properties and three water assets/services are currently consented activities, then they will be captured by new regulatory proposals.
- There is a need for consistency across the system for new regulatory arrangements.
- It is important to keep the regulation of three waters together.
- The risk management plan approach needs to be incentivised.
- Increasing public awareness of impacts is an important factor to support improvements, particularly for stormwater.

Incorporating stakeholder feedback: **Drinking water proposals**

- General agreement with the central proposition that the regulation of drinking water requires urgent attention affirms policy advice to Ministers.
- This extends to advice on the establishment of a central regulator for drinking water, with detail required, among other issues, on: how the regulator would manage enforcement; the range of enforcement tools and penalties; and the relationship between Compliance, Monitoring and Enforcement (CME) roles and educative and support roles of the regulator.
- Further thinking and policy work covering the role and functions of a regulator is under way. It is recognised that, should Cabinet decide to progress a regulator, legislative drafting would provide additional clarity, and that some details would be for the regulator itself to define or refine.
- Stakeholder engagement canvassed the question of whether such a regulator should be a drinking water regulator or a two or three waters regulator. While there were differing viewpoints, most stakeholders, including iwi/Māori, some council water managers and many industry practitioners, advocated for a single dedicated three waters regulator.
- This feedback has contributed to policy work clarifying the functions of a new regulatory system, and in identifying alignments between centralised drinking water, wastewater and stormwater regulatory functions.
- The consistent feedback regarding the capability and capacity challenges of many smaller suppliers and providers across the three waters system has underscored the preference for a single regulator with sufficient heft to support regulated parties build their capabilities, and to provide a body of scientific, technical and mātauranga Māori advice relevant to regulatory practice.
- There was widespread “in-principle” support for expanding the scope of regulations to cover all drinking water suppliers except for single household self-suppliers. Stakeholder feedback on the definition of “single household self-suppliers”, whether and how the extension of coverage applies to rural, marae/papakāinga and holiday home schemes, and potential exemptions policy, would most likely become questions for a regulator.

Incorporating stakeholder feedback: **Drinking water proposals**

- The requirement that all drinking water suppliers will have to consistently provide safe drinking water, and will no longer have recourse to non-compliance on the grounds of affordability, raised the need for detail about transition periods, and how compliance and enforcement might be sequenced.
- This requirement also raised the question of how small water suppliers being brought into regulatory coverage could meet the associated costs. The question of funding was also of concern for much of local government sector in relation to increased regulatory obligations. This remains a live question for both officials and Ministers.
- Concerns about an obligation on local government to ensure access to safe drinking water for communities centred mainly on questions of cost and where that cost might fall, transition arrangements and clarification around a staged approach regarding a territorial authority's role. This will be taken into account in further work.
- There was a general acceptance of the proposed risk management approach to source water, but also a view that accountabilities will need to be clarified in the regulatory framework and this is noted.
- There was general agreement to a multi-barrier approach for safe drinking water, with some further information required around “secure bore status”: as a result, officials are clarifying in their advice that secure bore status is not proposed to be part of the new regulatory regime.
- Most stakeholders support the proposal for mandatory residual treatment (chlorination) – Christchurch and some small providers being exceptions. While officials' advice is that it should remain, it is recognised this proposal is controversial in some parts of New Zealand.
- Some stakeholders considered it critical that a regulator clearly defines the conditions for limited exemptions to mandatory residual treatment – where suppliers are able to demonstrate that all risks are being managed. This has been noted.

Incorporating stakeholder feedback: **Waste and stormwater proposals**

- There is general agreement to the proposition that we cannot always be confident acceptable environmental, cultural and community outcomes are being achieved by wastewater and stormwater systems.
- However, stakeholder feedback that these systems are complex and the solutions more nuanced than for drinking water is noted and accepted.
- Officials note the value of some form of standards for treatment of wastewater discharges and management of wastewater overflows, but additional work is required, and is in progress, to clearly define their nature, relationship with existing RMA regulation and the intended impacts.
- The suggested requirement for wastewater and stormwater network operators to report on nationally prescribed environmental performance measures is noted, as is the need for refinements and the importance for an advisory group to co-design the appropriate metrics.
- Stakeholders have diverse views on certified risk management plans for wastewater and stormwater networks. Further definition is required on how these would relate to or integrate with existing requirements and this is noted.
- There is general agreement between stakeholders and officials on the benefits of promoting good practice for stormwater network design and management but the scope of this and how it relates to land-use considerations will need to be clarified.
- Stakeholders view positively a greater central government oversight role including setting expectations, auditing, certifying and publishing data, but detail on the nature and extent of this is required.
- Industry training, a national approach to emerging contaminants and the commissioning of scientific and technical advice are all supported: points to note include the need for public education around the critical importance of the water sector and the ability to attract and retain a qualified workforce; the necessity of working with other agencies – eg NZTA – on emerging contaminants; and being aware of and incorporating existing technical work and data into a centralised body of knowledge.

Incorporating stakeholder feedback: iwi/Māori

- Iwi/Māori have articulated challenges and cultural factors that need to be accounted for in the regulation of three waters. Engagement to further explore this is ongoing.
- Māori have consistently identified that three waters regulatory proposals need to uphold Te Mana o Te Wai and promote a holistic approach to water – this includes the option of one regulator for all three waters which is being considered in advice to Ministers.
- In a similar vein, feedback also includes the need for clearer links and integration of three waters regulation with the Government’s Essential Freshwater programme and work is underway to explore the ways in which this might be progressed.*
- Iwi/Māori stakeholders, Kāhui Wai Māori and other iwi representatives have expressed a strong interest in the design of the regulator, its role, functions and guiding principles, and the inclusion of mātauranga Māori (Māori knowledge and expertise about water management) to be given due weight alongside scientific knowledge. This will be explored in further discussions.
- Iwi/Māori have noted the potential impact of proposals on marae and papakāinga, with support for ensuring the supply of safe drinking water. Concerns raised about costs and compliance burdens will be addressed in ongoing policy work.
- Engagement reinforced that Māori values and expertise should be incorporated into national standards and environmental performance measures, with specific examples cited – e.g. working on wastewater disposal with Hastings District Council – of how this can be achieved to meet local objectives in a cost-effective way. Officials have noted this kaupapa for consideration in new regulatory arrangements.

*See Appendix 5 for diagram exploring the relationship between Three Waters and Essential Freshwater

Appendix 1: Format of targeted workshops

- The purpose of this engagement phase was to test and inform emerging proposals with a range of stakeholders having expertise, experience and interests in regulation of the three waters.
- Among those canvassed in nine regional workshops were local government (territorial authorities and regional councils), the health and environment sectors, the water industry, Māori, community water schemes and the rural sector.
- The three-hour workshops were presented by officials from the Department of Internal Affairs, Ministry of Health and Ministry for the Environment.
- The presentation is at www.dia.govt.nz/three-waters-review and consisted of an initial section on problem definition and general context (DIA); emerging proposals for drinking water regulation (MoH); and emerging proposals for wastewater and stormwater issues (MfE).
- Separate breakout groups for drinking water regulation, wastewater and stormwater, and iwi/Māori perspectives considered, discussed and gave feedback on problem definition, emerging proposals and potential impact of proposals on their communities.
- Feedback from each breakout group was presented by a volunteer member of the group to a plenary session of the workshop. Views were captured on flipcharts and recorded for subsequent reflection and consideration by officials.

Appendix 2: Date and location of targeted regional workshops

| Date | Location | Time | Stakeholders |
|----------|------------------|-------------|---|
| 4 March | Upper Hutt | 10am-1pm | Wairarapa, Wellington region, Nelson/Marlborough |
| 5 March | Palmerston North | 11am-2pm | Taranaki, Ruapehu, Manawatu, Central North Island |
| 13 March | Gisborne | 1-4pm | Gisborne and East Coast |
| 14 March | Hastings | 1-4pm | Hawke's Bay, Wairoa, Tararua |
| 28 March | Rotorua | 9-11.30am | Rotorua, Bay of Plenty |
| 28 March | Hamilton | 2.30-5pm | Waikato, King Country Thames-Coromandel, Auckland |
| 2 April | Kaikohe | 11.30am-3pm | Northland, Auckland |
| 10 April | Christchurch | 11am-2.30pm | Canterbury, South Canterbury, Nelson, West Coast |
| 11 April | Queenstown | 12-3pm | Otago, Southland |

At most workshops MoH held additional meetings with regional stakeholders

Appendix 3: **Additional stakeholder engagement**

| Date | Location | Time | Stakeholders |
|-------------|------------------|---------------|--|
| 27 February | Wellington (DIA) | 1-5pm | Critical Friends initial meeting |
| 6 March | Wellington (MfE) | 10am-12pm | Urban Water Working Group |
| 7 March | Wellington (MfE) | 10am-12pm | Local Government Resource Managers Group |
| 26 March | Wellington (DIA) | 9-11.30am | Crown Agencies (Defence, Corrections, Conservation, Education) |
| 5 April | Wellington (DIA) | 10.30-11.30am | Teleconference with West Coast CEs and Mayors |
| 8 April | Wellington (DIA) | 9.30am-12pm | LGNZ Territorial Authority Reference Group |
| 11 April | Invercargill | 4-6pm | Water NZ meeting |
| 12 April | Wellington (MfE) | 10am-12pm | LGNZ Regional Council Reference Group |
| 16 April | Auckland Council | 10.30-1pm | Auckland Council and Watercare |
| 17 April | Wellington (DIA) | 9am-2.30pm | Critical Friends meeting |

Appendix 4: **Additional iwi/Māori engagement***

| Date | Location | Time | Stakeholders |
|----------|------------------|------|---------------------|
| 15 April | Wellington (DIA) | | Iwi representatives |
| Various | Wellington | | Kāhui Wai Māori |
| 2 May | Taupo | | Te Pae Urungi |
| 23 May | Hamilton | | Waikato River Iwi |

**List does not include early discussions about Three Waters reform pre Feb 2019 and raising the reform in forums such as Ministry for the Environment regional engagement.*

Appendix 5: Relationship with Essential Freshwater programme

