

Office of Hon Nanaia Mahuta

MP for Hauraki-Waikato

Minister of Foreign Affairs

Minister of Local Government

Associate Minister for Māori Development



28 September 2021

Simon Upton

Parliamentary Commissioner for the Environment, Te Kaitiaki Taiao a Te Whare Pāremata
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Tēnā koe Simon

The Health Committee has completed its consideration of public submissions on the Water Services Bill (the Bill) and has reported on the Bill back to Parliament. I understand the committee received a number of high-quality submissions, including from many councils. The committee also received a letter from you at a late stage. I want to thank those who took the time and effort to make a submission or to contact the committee.

Based on the ongoing feedback I have received, I also proposed changes to the Bill through a supplementary order paper. Parliament has agreed to these changes, and they will form part of the legislation when it is enacted. These include new provisions that relate to Taumata Arowai's broader oversight powers in relation to wastewater networks. Some of these changes are particularly important to regional councils in their roles as consent authorities and regulators under the Resource Management Act 1991, and so I have written separately to regional council chief executives.

Institutional arrangements

You have asked whether Taumata Arowai's wastewater-related functions could be implemented in other ways – for example, through a national environmental standard made under the Resource Management Act. You have also questioned whether different institutional arrangements might be more appropriate or effective, such as an expanded Environmental Protection Authority or a Water Commission. I want to reassure you these options were all considered by Cabinet, following cross-government work led by the Department of Internal Affairs together with the Ministry for the Environment. Officials have also engaged local government at all levels over a number of years, including with regional councils.

The decision by Cabinet to give Taumata Arowai the wastewater and stormwater functions set out in the Bill, and enhanced through my supplementary order paper, reflects the priority the Government places on the need to make progress on all three waters, alongside the need for clear regulatory line-of-sight over this important infrastructure. It was also made in the context of proposals for reform of the resource management regime, which Cabinet has before it.

I want to emphasise these are ultimately decisions for Cabinet, based on comprehensive advice over a long period.

When the Bill was introduced, I was clear that Taumata Arowai's powers will not displace the regulatory functions of regional councils. I want to reassure you this continues to be the case with the new functions and powers that were included in the Bill through the supplementary order paper, and I have clarified this in my legislative statement tabled at the third reading.

Oversight functions – Taumata Arowai

When the Bill was introduced, it included powers to enable Taumata Arowai to “shine a light” on the environmental performance of wastewater and stormwater networks and their operators and provide greater transparency. These powers will come into effect two years after the Bill is passed, to enable Taumata Arowai to prioritise compliance with the drinking water regime given the significant public health implications associated with a contamination event.

These powers are necessary so that there is better national-level oversight and consistency, particularly around publicly owned wastewater networks. Ongoing reviews have found that the transparency around the environmental impact of wastewater networks is poor, conditions and limits set in resource consents are inconsistent and piecemeal, and compliance and enforcement practices vary widely. These research reports, which were commissioned from leading professionals in the area, have been publicly available for a long period and have informed the ongoing engagement with local government in this area.

Infrastructure challenge

Since introduction of the Bill, it has however become clear that transparency alone will not be enough. At a national level, the wastewater system faces an infrastructure challenge. Approximately 25% percent of wastewater treatment plants are currently operating on expired consents – some have been doing so for decades. Around 60% of wastewater treatment plants will require reconsenting in the next ten years. Many communities face a greater challenge with wastewater overflows – there are no clear expectations for progress, and no clear way forward.

There needs to be clearer requirements around the national-level expectations for this infrastructure, particularly as councils are considering the Government's proposals for reform of service delivery for three waters.

Te Mana o te Wai

Community expectations around wastewater discharges have changed. It is no longer acceptable for many communities for partially treated or untreated sewage to be discharged to beaches or freshwater. Māori in particular find this practice abhorrent. Widespread discharge of mortuary waste into council networks, and subsequently to freshwater or beaches, has been occurring for many years. This practice is also unacceptable to Māori.

Under the new arrangements, all parts of the system will be required to give effect to Te Mana o te Wai. This is a requirement under the Bill, and Taumata Arowai is already required to give effect to Te Mana o te Wai when discharging its functions. Cabinet has agreed that water services entities, which will deliver water services in place of councils, will also be required to give effect to Te Mana o te Wai.

This will present a significant challenge to the existing system. Many wastewater plants and networks will require significant upgrades to give effect to Te Mana o te Wai. There needs to be clear requirements around the national-level expectations for meeting this challenge, in a way that is properly integrated into the new system.

New wastewater functions for Taumata Arowai

Through changes made to the Bill through my supplementary order paper, Taumata Arowai will be able to set minimum environmental performance standards for publicly owned wastewater networks following a mandatory consultation process. This will bring New Zealand into line with international best practice. Many other countries have had minimum standards regimes of this kind for many years. Where Taumata Arowai makes a wastewater environmental performance standard, consent authorities will have to, as a condition of granting a consent, include requirements that are no less restrictive than is necessary to give effect to the standard and will not be able to grant consents contrary to it. Regional council will remain the consent authorities and regulators.

I expect that the Ministry for the Environment will work with Taumata Arowai to ensure that wastewater environmental performance standards are appropriately integrated with Resource Management Act processes and considerations. Councils will also need to give effect to standards in bylaws if they relate to trade waste.

The supplementary order paper will require every public wastewater network to have a network-based risk management plan, which is similar to a source water risk management plan. This will require greater planning around this infrastructure.

The supplementary order paper also clarified that the oversight functions of Taumata Arowai for wastewater networks encompass trade waste that is introduced into those networks. This was always the intention of the Bill and the supplementary order paper takes it beyond doubt. This will give Taumata Arowai the ability to provide some much-needed transparency in this area. I understand you met with my officials and requested reform to trade waste to meet concerns being expressed directly to you.

Targets – three waters infrastructure

Taumata Arowai will have the power to set environmental performance targets for three waters infrastructure. Targets, like the environmental performance measures already in the Bill, are a reporting mechanism – network operators will be required to provide information about progress against targets, which Taumata Arowai will include in a national-level report on the environmental performance of three waters infrastructure. This will enable Taumata Arowai to track progress against goals, such as giving effect to Te Mana o te Wai.

Drinking water network functions – Taumata Arowai

Taumata Arowai will have functions and powers that enable it to report on the environmental performance of drinking water networks, analogous to those that already exist in the Bill for wastewater and stormwater networks. This change will mean that Taumata Arowai will publish an annual report on all three waters infrastructure and will enable Taumata Arowai to report on aspects of drinking water infrastructure that have an environmental impact, like rates of leakage.

Extension of time for compliance with drinking water regime

Finally, my supplementary order paper extends the time that unregistered suppliers will have to register and comply with the drinking water regime. This will give the system time to fully mature, and for Taumata Arowai to work with all suppliers and tailor the regime. It also aligns with the establishment of the new entities I have proposed, which will provide three water services in place of councils.

I hope that you find this letter informative and useful. Thank you again for your ongoing work in this area.

Nāku noa

A handwritten signature in black ink, appearing to read 'N. C. Mahuta', with a stylized flourish at the end.

Hon Nanaia Mahuta
Minister of Local Government