

# Briefing under embargo until 11am, Friday 29 April

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Department of Internal Affairs  
29 April 2022

Find out more at <https://www.dia.govt.nz/Three-Waters-Reform-Programme>  
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# Overview

- Context
- Representation, Governance and Accountability Working Group recommendations and Government response
- Next steps

**Context**

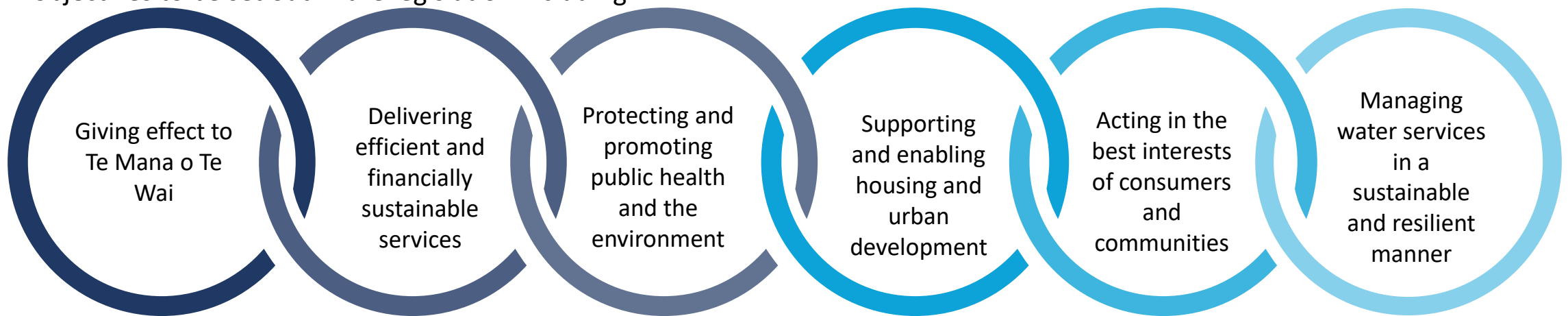
# History of reform

- The challenges facing three waters delivery have been discussed by central and local government for decades:
  - The Report from the Parliamentary Commissioner for the Environment (June 2000) Aging Pipes and Murky Waters: Urban water system issues for the 21st century notes **“industry and community evidence indicates that the ‘model’ has now reached the end of its design life.”**
  - The Report of the Land and Water Forum: A Fresh Start for Fresh Water (September 2010) notes **“further changes are desirable to improve water services management in order to contribute to a step-change in the outcomes for water management in New Zealand”**
  - The 2011 National Infrastructure Plan identified two key challenges **“insufficient resources in each local authority area or community to meet the cost of deferred maintenance on aging assets...For example, communities most in need of improved reticulated systems are often the least able to afford it. ”** and **“The extent to which there may be a ‘hidden’ long-term investment problem in the urban water sector.”**
  - Three Controller and Auditor General Reports all raise persistent challenges **“local authorities might not be reinvesting enough in three waters assets, suggesting that these assets could be deteriorating to an extent that they are unable to meet the levels of service that their communities expect”**
  - The Stocktake report from the Technical Committee of the Climate Change Adaptation Technical Working Group (2017) Adapting to climate change in New Zealand notes **“Sea-level rise will cause seawater to run up stormwater pipes, significantly affecting drainage capability...[which] may not cope with more intense and frequent heavy rain events.”**
- The Government has extensively engaged with local government, iwi and the water industry for more than four years to understand the case for change and assess options for reform.
- We have considered a wide range of options. The best evidence and analysis strongly shows the best way forward is for these services to be drawn together into four publicly-owned, specialist water authorities.

# Objectives of reform

The Government's reforms aim to significantly improve **the safety, quality, resilience, accessibility, and performance** of three waters services, in a way that is **affordable** for New Zealanders now and into the future

The **purpose** of the entities will be to **provide safe, reliable and efficient water services**. With high-level objectives to be set out in the legislation including:

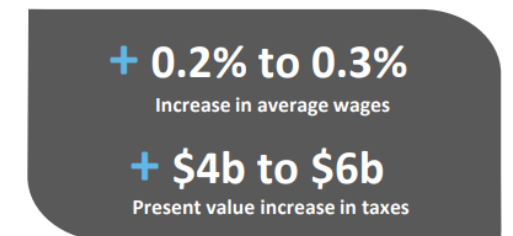
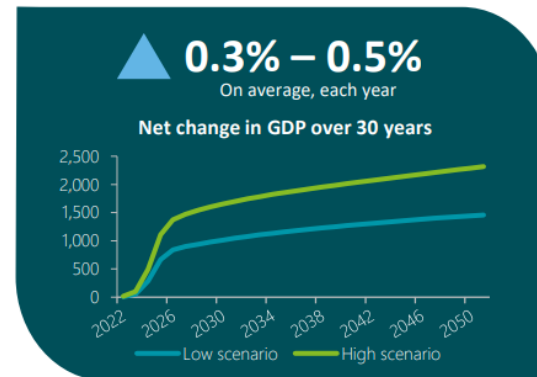


The Government also wants to ensure it delivers on **Treaty-related obligations**, including by improving outcomes for iwi/Māori in relation to three waters service delivery and **upholding Te Mana o Te Wai**. Integral to this is effective infrastructure delivery, underpinned by an **efficient, high-performing, financially-sustainable, and transparent three waters system**

# Opportunities of Reform

- The Three Waters Reforms present an opportunity to work together as a country to ensure drinking water, wastewater and stormwater services meet our safety, cultural and environmental expectations at an affordable price no matter where you live
- The reforms also present opportunities to:
  - Build a world-leading, innovative three waters system as a stronger foundation for healthy, prosperous and growing communities
  - Put Te Mana o Te Wai – the health and wellbeing of water – at the centre of the system. The health and wellbeing of people and communities depends on the health and wellbeing of water
  - Take a catchment-based and interconnected view of the water system from source to sea – ki uta, ki tai
  - Grow the local workforce and unlock new professional pathways and development opportunities
  - Unlock housing and economic development, and create a secure pipeline of infrastructure investment that will grow the national and regional economies
  - Embody true partnership between mana whenua, local government, and central government in the interests of all communities across New Zealand

[Deloitte Industry Development Study and Economic Impact Assessment](#)



# Current state

- Every New Zealander has a right to safe drinking water no matter where they live. We also expect strong and resilient stormwater and sewage services that enable communities to prosper and grow, while protecting the environment
- The three waters system is significant for upholding Te Mana o te Wai, environmental health, the performance of the economy, building resilience to climate change and natural hazards, and unlocking housing and growth
- Every year, it is estimated that 35,000 New Zealanders get sick from tap water that does not meet the international benchmark for clean drinking water.
- The Ministry of Health released the 2020/21 Drinking Water Quality Report. This report showed persistent problems in the current provision of drinking water. In the reporting period:
  - Over a million New Zealanders did not have access to safe drinking water at some point in the last year.
  - Only 78 percent of the report population (3,155,000 people) received drinking-water that complied with all the Standards, which is a decrease of 1 percent compared with the previous reporting period.
  - Large council supplies that did not comply with all of the Standards include: Taupo District Council; Hastings District Council; Marlborough District Council; Ashburton District Council; Christchurch City Council; and Dunedin City Council.
  - Tasman and Carterton District Councils did not take prompt remedial action in response to transgressions.

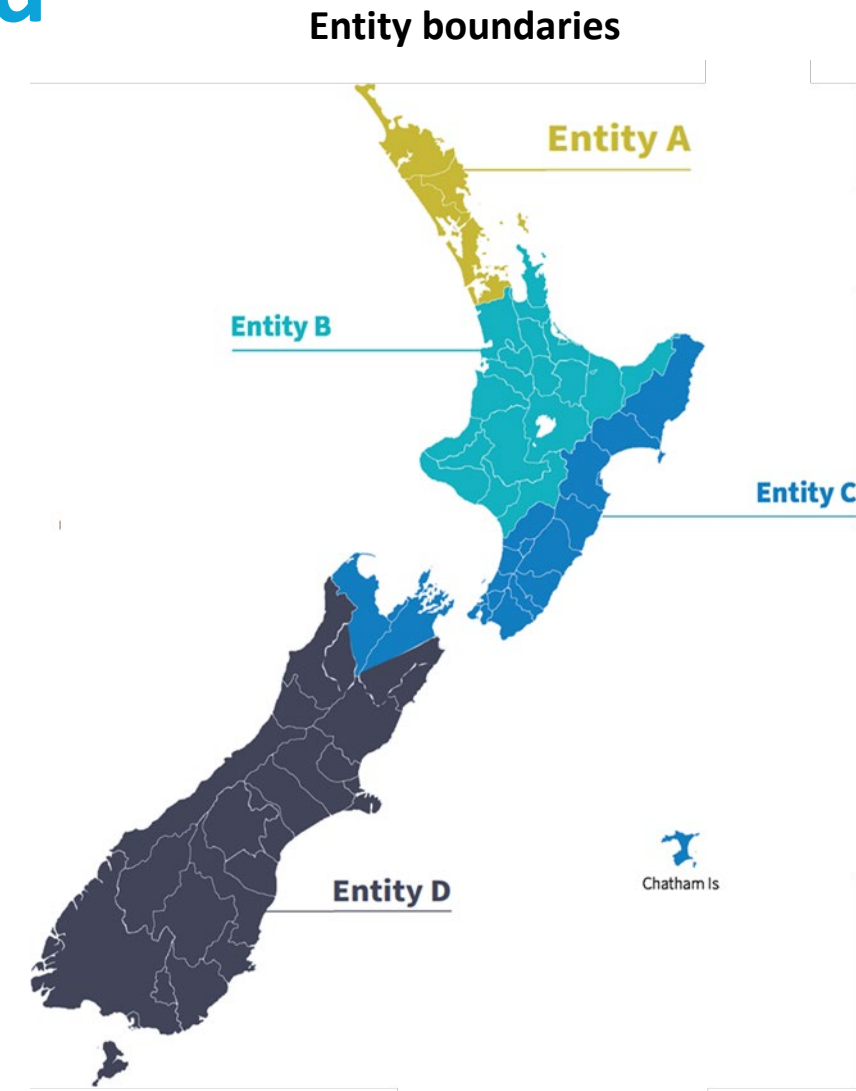
# Current state (cont.)

- Water NZ recently released the 2020/21 [National Performance Review](#), covering 38 councils and 87% of New Zealand’s population. The findings show:
  - **Service delivery costs are driving increases in water and wastewater charges and there is large variation in charges around NZ.** The average residential water charge increased by 7% last year to \$471, and the average wastewater charge by 8% to \$522.
  - **Revenue and expenditure are insufficient to cover depreciation in some service districts.** Water supply revenue fell short in 47% of drinking water service districts, 54% of wastewater service districts, and 48% of stormwater service districts.
  - **Total water losses are around 20%** of overall water supplied, but **reach as high as 55%**. This is more than the volume of water supplied by Hamilton, Rotorua, Dunedin and Christchurch City combined.
  - In 2021 there were 2,754 dry-weather **wastewater overflows** (i.e. blockages or system failures) and 1,159 wet-weather overflows (i.e. rainfall events), and a further 355 from combined **wastewater and stormwater networks**. Out of 37 participants, there were 648 reported consent non-conformances in wastewater treatment plants.
  - 18% of drinking water, 17% of wastewater, and 14% of stormwater network is rated as in an **unknown condition**.
- DIA’s 2019 analysis shows of New Zealand’s 321 wastewater treatment plants, more than 100 are breaching consents and 60 require upgrades to meet minimum National Policy Statement for Freshwater Management standards.
- In March 2022, the Regional and Unitary Councils Aotearoa wrote to the Minister of Local Government noting “There are numerous examples of performance issues with current water services delivery model that need addressing: Aged infrastructure in need of renewal **with 25% of all Waste Water Treatment Plans operating on expired consents**” and “Poor compliance performance of some reticulated wastewater systems.”



# What has the Government proposed

- The Government's Three Waters Reforms are proposing to shift the current 67 council-owned and operated three waters services into **four new publicly-owned entities** to manage the future delivery of these services
- The government's bottom lines are that these new entities will:
  - be **publicly-owned by councils** on behalf of communities, with strong protections against any future privatisation
  - have **joint oversight** through Regional Representative Groups made up of equal local government and mana whenua membership to ensure the entities are driven by community expectations and priorities
  - have **independent competency-based boards** that will run the day-to-day management of the entities and oversee the maintenance and renewal of this infrastructure
  - be **financially separate from councils** with a greater ability to borrow to fund long-term infrastructure
- The Government has also proposed a **new economic regulatory regime and consumer protections** to protect consumer interests and drive efficient investment and performance



**Working Group  
recommendations and  
response**

# Why the Working Group was established

- In July 2020, in agreement with LGNZ National Council at the Prime Minister's Central/Local Government Forum, the Government launched the Three Waters Reform Programme in response to mounting evidence of the challenges facing three waters service delivery nationally.
- Following extensive engagement with local government, iwi and the water industry during 2020 and the first half of 2021, Cabinet made a series of decisions through 2021 to transform the three waters service delivery system, and create four new water services entities.
- In August and September 2021, the local government sector was given the opportunity to engage with, and provide feedback on, the Government's proposals. While there was general agreement about the need for reform, this engagement highlighted concerns about certain aspects of the proposals, particularly around the representation, governance and accountability arrangements, and ownership of water assets.
- In response to this feedback, and in recognition that improvements could be made to the proposed model, in October 2021 the Government established the Working Group on Representation, Governance and Accountability to examine these key areas of concern.
- This approach represents a continuation of the partnership-based approach that the Government has taken to the development of policy throughout the three waters reforms, upholding our obligations as a Treaty Partner, and the commitments the Crown made to Local Government New Zealand through the Heads of Agreement signed in July 2021.

# About the Working Group

- The Working Group was established with an equal number of representatives from local government and iwi/Māori to consider feedback and make recommendations about the governance, representation and accountability arrangements in the Government's reform proposals.
- The Group was led by an independent chair and included a balance of membership from across all four entity boundaries and a mix of rural, provincial and metropolitan leadership.
- The Working Group followed an effective and inclusive process, with consensus-based decision making to develop its recommendations. The final report reflects this constructive approach, and the consensus that was reached among members.
- Through their process, the Working Group considered potential alternative models including: a 'co-op' model; the Wellington Water model; the council-controlled organisation (Watercare) model; the Hawke's Bay regional model; a Ngāi Tahu model; the 'Communities 4 Local Democracy' alternatives; and a shareholding model.
- The also considered: core concepts of accountability, oversight, control and decision making; financial capacity and separation; other governance models that were considered during the development of the Government's reform proposals; Te Mana o te Wai and co-governance considerations; community ombudsman schemes; and stormwater considerations.

# Working Group recommendations

- The Working Group developed a set of **47 recommendations** to enhance the reform proposals and deliver stronger representation, governance and accountability.
- These recommendations cover the following main areas:
  - a **public shareholding structure that makes community ownership clear**, with shares held by councils on behalf of their communities – to provide a tangible expression of ownership that is recognisable by communities and territorial authorities;
  - **ensuring mana whenua have input in the delivery of water services through equal representation** on the regional representative group, **while maintaining a merit-based approach to board appointments**;
  - **recognising and embracing Te Mana o te Wai as a korowai**, or principle, that applies across the water services framework;
  - **tighter accountability from each water services entity board to the community**, through new and stronger mechanisms, including strengthening and clarifying the role of the regional representative group; and
  - **strengthened connections to local communities**, including sub-committees feeding into the regional representative group, comprised of representatives of regional communities, to ensure local voice is considered as part of investment prioritisation.

# The Government's bottom lines

- The Working Group considered a range of reform options, analysis, and considerations both within their Terms of Reference. This included consideration of wider context as reflected in their recommendations.
- The Government considers the **recommendations fall within its bottom lines**, which represent important elements of the design of the future system.
  - **Good governance** will ensure competency-based boards govern the entities with the right combination skills, expertise and capabilities in delivering large infrastructure within the New Zealand context;
  - **Public ownership** through collective council ownership, among other protections, will safeguard these services for future generations to come and ensure they continue to deliver services to those communities that have invested in them;
  - **Balance sheet separation** will ensure the entities are not constrained in their ability to invest in infrastructure needed to meet future needs and expectations. This will in turn ensure councils are freed up to focus their investment on things that matter to local place-making and community wellbeing; and
  - **Upholding the Treaty partnership**, through the joint strategic direction and oversight of these entities, will ensure these new entities benefit from the intergenerational knowledge and experience of mana whenua alongside local government leadership in setting local priorities for these services.

# Government response

- Cabinet has agreed to progress almost all of the Working Group recommendations in some form.
- These changes will be incorporated into the Water Services Entities Bill prior to introduction.
- Key changes to the Government's reform proposals in response to the Working Group recommendations relate to the following themes:
  - Ownership
  - Governance and accountability
  - Te Mana o te Wai
  - Strengthening the application of Te Tiriti o Waitangi
  - Other matters relating to iwi/Māori rights and interests
- The following slides set out a summary of the Working Group recommendations for each of these areas and the Government response.

# Ownership

## Summary of Working Group recommendations

- Introduce a shareholding model with one share per 50,000 of population, rounded up, to ensure a minimum of one share per **territorial authority**.
- This would be rebased every five years to provide communities with a tangible expression of ownership.
- Shareholdings only carry voting rights in relation to merger or sale proposals and must carry a unanimous vote – to preserve balance sheet separation, there is no financial interest attached.



# Ownership

## Government Response

- The Government has agreed with the Working Group's recommendations to strengthen community ownership of the new entities.
- The legislation establishing the new entities will provide that ownership of a water services entity is **through shares assigned to each territorial authority** in an entity's service area, with each share assigned to the relevant council per 50,000 people in its district (rounded up, with at least one share for every territorial authority).
- The council owners of the entity will need to **vote unanimously in support of any proposal to divest ownership** in water services or lose control of significant infrastructure for it to proceed. This is in addition to the further protections against privatisation already proposed by the Government, meaning the public in the service area would then need to vote with a **75% majority in support** of any proposal of this nature.
- To preserve balance sheet separation between council owners and water services entities, and provide further protection against any future privatisation, the **council shares cannot be sold or transferred for any reason** and will not carry any financial or decision making interests.
- The Government is also proposing the Bill would be introduced with a further level of protection against privatisation by requiring a 75% Parliamentary majority to make any legislative changes necessary to enable privatisation ('entrenchment') – this would need to be voted on by Parliament at the Committee of the whole House

# Governance and accountability

## Summary of Working Group recommendations

- There are several Working Group recommendations to strengthen the governance and accountability.
- In particular, the Group recommends:
  - strengthening co-governance arrangements through the introduction of **co-chairs to the Regional Representative Group (RRG)** and consensus voting
  - **introducing ‘sub’ regional representative groups** to provide regional/catchment level input into the RRG, while maintaining co-governance
  - **clarifying the role of the RRG and the range of inputs it may consider to strengthen accountability** (example inputs include: the Government Policy Statement, direction from regulators, local community priorities within the region as outlined in council strategic documents, Te Mana o te Wai statements, and alignment with the Resource Management Act (or its replacement))
  - that each entity will be required to **fund the support to its RRG to properly exercise its functions and powers**, including any remuneration arrangements for territorial authority or iwi/hapū representatives
  - the regional representative group issues the **statement of strategic and performance expectations and has approval rights over strategic matters in the statement of intent**

# Governance and accountability

## Government Response

- **The Government has agreed to give effect to the Group's recommendations** in a way that provides for flexibility (likely via entity constitutions), so that the unique characteristics of each entity can be provided for over time.
- **This will include provisions in the legislation which set out that:**
  - The regional representative groups will have co-chairs and consensus decision making to cement co-governance principles.
  - The constitution of a water services entity can enable sub-regional advisory groups or committees of a regional representative group. These would be based on regional or geographic areas in the service area of the water services entity, with equal representation from mana whenua and councils in the geographic area.
  - Through their constitution, each entity and regional representative group will establish appointment processes that reflect their unique community needs.
  - The entity provides the information and support required by its regional representative group to deliver its functions.
  - The constitution of each entity would contain provisions that enable a regional representative group to consider information and other inputs when developing a statement of strategic and performance expectations.
  - The Government agrees the regional representative group should have power to approve the strategic direction of the entity and is investigating how best to give effect to this recommendation while preserving balance sheet separation.
- It is important to note **the water services entities will have a two-tier governance system**, and co-governance - equal representation between local government and mana whenua - applies to the regional representative oversight group. The entity boards are independent, with merit-based appointments taking into account relevant knowledge, competency and experience.

# Te Mana o te Wai

## Summary of Working Group recommendations

- **Te Mana o te Wai to apply to all functions and powers** – Te Mana o te Wai is a korowai, or overarching requirement, that applies to everything in the Bill
- **Te Mana o te Wai should apply to all water** for the purpose of the three waters system (including marine, estuarine and harbours, and rivermouths).

## Government Response

- The Government agrees that the legislation should require every person that exercises a function, power, or duty under the Act has to give effect to Te Mana o te Wai to the extent that Te Mana o te Wai applies to the function, power or duty.
- The Government agrees in principle that for the purposes of reform, Te Mana o te Wai encompasses the interconnection with, and the health and wellbeing of, all water bodies affected by the three waters system.
- Further work is required to ensure alignment with other Government frameworks and legislation that relates to Te Mana o te Wai, such as, concepts in resource management reform and Taumata Arowai establishing legislation and regulatory framework and the National Policy Statement for Freshwater Management.
- The Government will undertake this further work and consider changes in legislation to implement this recommendation as part of the second bill that will implement the three waters service delivery reforms.

# Strengthening the application of the Treaty

## Summary of Working Group recommendations

- **Principles of Te Tiriti to apply to all functions and powers** – The requirement to give effect to Te Tiriti should apply equally to the Crown, including when it makes a Government Policy Statement, where engagement with Te Tiriti partners should be elevated above any consultation processes.
- **Preserving iwi, hapū and Māori rights and interests in water** – The Bill should state that nothing in the Act creates or transfers ownership in water, or limits, extinguishes or adversely affects iwi or hapū authority over, or rights in, water. The intention of the Working Group is to ensure that the status quo is preserved while the Crown and Te Tiriti partners continue discussion about the scope and nature of those rights in the context of resource management reform.

## Government Response

- The Government accepts the recommendation of the Working Group to strengthen legislative provisions to give effect to Te Tiriti in the three waters system.
- The Government also accepts the recommendation to include a clause in the Bill preserving the status quo for iwi and hapū customary authority, rights and interests in water, while the Crown and Te Tiriti partners continue discussion about the scope and nature of those rights in the context of resource management reform
- The Government agrees that the Bill should require **all persons** who exercise functions, duties and powers under the Act to give effect to the principles of Te Tiriti o Waitangi, to the extent that it applies to their duties, functions and powers. This requirement will apply equally to decisions made by entities and Ministers under the Act.

# Other matters re: iwi/Māori rights and interests

## Summary of Working Group recommendations

- **Ensure Treaty settlements are enduring** – legislation includes provisions to ensure Treaty settlements are enduring.
- **Definition of mana whenua** – Inclusion of a definition of “mana whenua” in the Bill.
- **Resourcing to ensure iwi, hapū and Māori can participate in the new arrangements** – That the Crown provides equitable resourcing to enable the full and effective participation of iwi and hapū in the three waters regime. The Working Group’s priority for this recommendation is to ensure there is proper resourcing.

## Government Response

- The Government agrees it is important that Treaty settlement obligations prevail and any arrangements relating to water services that councils have entered into with mana whenua are carried forward from councils to the new water services entities. This will be given effect to across the suite of legislation establishing the new entities.
- To avoid ambiguity, Cabinet has agreed include a definition of mana whenua for the purposes of the water services entities as an iwi or hapū holding and exercising customary rights, interests and authority in accordance with tikanga in an identified area.
- This definition of mana whenua will allow mana whenua on the RRGs to be written into the constitution of each entity.
- Mana whenua representation for Entities A, B and C will be through iwi and hapū appointments on a tikanga basis reflecting whakapapa affiliations through waka groupings. Mana whenua representation for Entity D will be through appointments on a tikanga basis reflecting hapū groupings.
- The legislation will also clarify that mana whenua may make Te Mana o te Wai statements on an individual iwi or hapū or on a multi-iwi/hapū basis, and the statements may relate to a single catchment or a multi-catchment area.
- Each water services entity will fund the support and other resourcing arrangements to enable its RRG to properly exercise its functions and powers, including any remuneration arrangements for council or mana whenua representatives. The Government will give further consideration to the ongoing support and resourcing for mana whenua in the implementation of the reforms

**Next steps**

# Two further Working Groups

- Resource management and planning alignment, and regulatory compliance costs for rural water schemes, remain important issues for the reforms. The Department of Internal Affairs has established two further technical working groups to inform the development of policy in these areas:
  - **Planning Technical Working Group** – to support development of policy proposals to ensure an effective interface between the water services entities and the planning and regulatory system
  - **Rural Supplies Technical Working Group** – to bring a rural perspective to the development of policy to implement the water services reforms, including the obligations water services entities will have to support rural water schemes and the communities they serve
    - The Rural Supplies Technical Working Group is also considering issues for rural water schemes relating to the regulation of drinking water, which Taumata Arowai will take into account in its implementation of the Water Services Act 2021 – including proposals to simplify compliance
- The Department will consider the recommendations of the above technical working groups in drafting the further legislation later this year
- The Department will continue working closely with iwi, local government and the water industry in the establishment of and transition to the new entities ahead of them going live on 1 July 2024



# Next steps

- These reforms will be implemented through a series of legislation.
- The exposure draft version of the Water Services Entities Bill – which informed the Working Group considerations – will be amended before being introduced in the coming months.
- Further legislation is planned for the coming year to:
  - provide the functions and powers relating to service delivery;
  - implement the new arrangements (for example, transfer assets, liabilities and contracts);
  - make any changes to preserve Treaty settlements or other arrangements between mana whenua and councils;
  - establish economic regulation and consumer protection regimes; and
  - make detailed, technical changes to other legislation (for example, the Local Government Act 2002).
- Once the first Bill is introduced and referred to Select Committee, the public, including councils, iwi/hapū, community groups and individuals, will be able to submit their views on the reform proposals through written and oral submissions. Timing will be subject to Parliament.

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**Ngā mihi  
Thank you**

Find out more at <https://www.dia.govt.nz/Three-Waters-Reform-Programme>  
or email [threewaters@dia.govt.nz](mailto:threewaters@dia.govt.nz)