

Office of Hon Nanaia Mahuta

MP for Hauraki-Waikato

Minister of Foreign Affairs

Minister of Local Government

Associate Minister for Māori Development



11 November 2021

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Tēnā koe Dame Karen

LETTER OF EXPECTATIONS 2021/22 - Updated

This letter sets out my expectations for Taumata Arowai—the Water Services Regulator in 2021/22. The purpose of the letter is to assist the Board to develop its strategic planning.

I expect you to ensure your entire Board is aware of the expectations contained in this letter.

This letter replaces the initial letter of expectations I issued on 23 August 2021. As discussed with you on 8 November 2021, I have identified some additional matters that I would like Taumata Arowai to focus on during 2021/22. These matters have been included in a new section at the end of the letter.

Enduring letter of expectations

The enduring letter of expectations¹ remains in effect, and I would like to emphasise three enduring expectations in particular:

- ensuring a unified and value-based government for all New Zealanders;
- supporting future-focused Māori Crown relations; and
- contributing to improving wellbeing.

As a general rule, you should inform me promptly of matters of significance to my portfolio responsibilities, particularly where these matters may be controversial or become the subject of public debate.

¹ Refer to <https://ssc.govt.nz/resources/enduring-letter-of-expectations-to-statutory-crown-entities-2019/>

I note the Water Services Act 2021 contains provisions that require Taumata Arowai to consult me before making certain decisions, including declaring a drinking water emergency. These requirements would take effect when the Bill is enacted.

In addition, I expect you to keep me informed of incidents affecting the safety or supply of drinking water, which do not result in the declaration of an emergency yet still pose a serious risk to public health.

Public Sector priorities

Building on the foundations laid in its first term, the Government has identified three overarching priorities:

- keeping New Zealanders safe from COVID-19;
- accelerating our economic recovery; and
- laying the foundations for a better future.

To achieve these overarching priorities, three priority outcomes have been identified with support from Ministers, agencies, and the sector:

- economic recovery;
- vibrant, innovative sectors; and
- better access and participation.

Taumata Arowai has an important role in contributing to these outcomes, both independently and in collaboration with others. To that end, I expect you to ensure existing baseline expenditure is aligned with Government priorities and is delivering value for money.

Entity direction

Beyond the objectives identified in the Taumata Arowai—the Water Services Regulator Act 2020, my specific expectations for Taumata Arowai in 2021/22 are that it will:

- collaborate closely with the Department of Internal Affairs and the Ministry of Health to ensure a successful transition to the new regulatory regime for drinking water, and that the future system operates effectively;
- manage its relationships with other government agencies with interests in the wider water services landscape;
- manage its relationships with Te Puni Kōkiri and Te Arawhiti from a Crown-Māori perspective;
- participate constructively in the ongoing Three Waters Reform Programme, including through the transition process;
- develop an interim strategy and statement of performance expectations, prior to preparing an organisational strategy and statement of intent for 2022/23 and outyears; and
- establish critical business systems required for the commencement of the Water Services Act.

Planning and reporting requirements for the extended establishment phase

Although Taumata Arowai became a legal entity on 1 March 2021, it does not become fully operational until the enactment and commencement of the Water Services Act 2021.

I recognise that it would be very difficult for Taumata Arowai to develop its inaugural statement of intent and statement of performance expectations before the final shape of the regulatory regime is known. Equally, Taumata Arowai will not be able to produce a comprehensive statement of performance expectations when it has yet to assume its full regulatory responsibilities, and when the nature and extent of those responsibilities have not been finalised in legislation.

Accordingly, I have made the following decisions regarding the initial planning requirements for Taumata Arowai:

- I am extending the period of time for Taumata Arowai to prepare a statement of intent by one year, until prior to the beginning of the 2022/23 financial year, since the entity is likely to have a significant change in the nature or scope of its functions following the enactment of the Water Services Bill (section 139B of the Crown Entities Act 2004 refers). I ask that you provide me with a draft statement of intent by 30 April 2022.
- I am waiving the requirement for Taumata Arowai to prepare a statement of performance expectations for the 2020/21 financial year, but will require the first statement to cover the period from the date on which the entity was established until the end of the entity's first full financial year (section 149D of the Crown Entities Act 2004 refers).

To enable the first statement of performance expectations to incorporate the regulatory regime to be provided for by the Water Services Bill, I ask that you provide me with the draft statement, for comment, by 30 April 2022, with the intent that it be finalised by 30 June 2022.

I also expect you to provide me and the Department of Internal Affairs, as the monitoring department, with quarterly reports on progress against financial and non-financial performance targets, key initiatives and risks, and organisational health.

I understand that the Minister of Finance has agreed to exempt Taumata Arowai from requirements to prepare an annual report for the 2020/21 year (section 150A of the Crown Entities Act 2004 and subpart 1 of Part 5 of the Public Finance Act 1989 refer). However, the first annual report will be expected to cover the period from the date on which Taumata Arowai was established until the end of its first full financial year (that is, 1 March 2021 to 30 June 2022).

Finally, I note that the Water Services Act provides for specific reporting requirements for Taumata Arowai, including:

- a drinking water compliance, monitoring and enforcement strategy, to be reviewed every three years;
- a drinking water regulation report, to be presented to Parliament annually

before
1 July; and

- an annual stormwater and wastewater network monitoring report.

Funding and financial matters

As a Crown entity, Taumata Arowai is required to operate in a financially responsible manner (section 51 of the Crown Entities Act refers). For this purpose, the Board must ensure Taumata Arowai prudently manages its assets and liabilities, and acts as a successful ongoing concern.

I recognise that Taumata Arowai's funding situation has been a point of concern during the initial months of operation. Arrangements have been made recently to ensure Taumata Arowai has appropriate funding levels for the next three years, until the anticipated levy regime commences. This includes ensuring that the transfer of drinking water regulatory responsibilities from the Ministry of Health is accompanied by a transfer of funding associated with undertaking these responsibilities.

I have asked the Department of Internal Affairs to continue developing options for a levy that would commence on 1 July 2024. This levy, alongside central government financial support, would provide Taumata Arowai with the financial certainty to perform its roles and functions. I expect Taumata Arowai will provide the necessary assistance to progress this work.

Section 165 of the Crown Entities Act applies to Taumata Arowai, as it does to many other Crown entities. According to this provision, in certain circumstances, Crown entities may be required to repay a net surplus to the Crown. This reflects that it is generally considered inappropriate and undesirable for Crown entities to be accumulating surpluses, and carrying these over from one financial year to the next.

I note that this provision does not apply automatically, and does not mean that Taumata Arowai is unable to carry forward a surplus. The legislation is worded so that the Minister of Finance *may*, in writing, require an entity to pay to the Crown a sum equal to the whole or any part of a net surplus. Before such a requirement is issued, the Minister of Finance must consult with each responsible Minister, and a responsible Minister must consult with the Crown entity.

I have received no indication that Taumata Arowai might be required to repay the net surplus accrued during 2020/21. Given Taumata Arowai's current financial circumstances, I would raise concerns if this was being considered. However, while the approach Taumata Arowai has taken is understandable and pragmatic in the short-term, accumulating surpluses is not something that should be encouraged in the longer-term.

Governance

I expect the Board to continue to oversee the performance and long-term strategic direction of Taumata Arowai and provide best-practice governance. This includes monitoring the financial wellbeing and long-term viability of Taumata Arowai, and ensuring that it has robust risk awareness and management processes in place.

It is good practice for boards to periodically undertake independent evaluations of their governance practices. I think it would be timely for you to undertake one before the end of the 2021 financial year. I expect the findings of the evaluation, and any intended actions flowing out of it, to be reported to me and the Department of Internal Affairs.

While the Board has the most immediate and direct responsibility for monitoring the performance of Taumata Arowai, I expect it to continue to provide the Department of Internal Affairs, as my agent, with information on performance against planning documents and timely information on risks and opportunities.

November 2021 update – additional expectations for 2021/22

Since issuing my initial letter of expectations in August 2021, I have identified some additional matters that I would like Taumata Arowai to focus on during 2021/22. These matters relate to the work Taumata Arowai is doing, and the approach you are taking, to:

- engage with rural communities;
- engage with marae and papakāinga;
- build capability within the head office and regions to support Te Mana o te Wai aspirations; and
- implement the advice of the Māori Advisory Group.

I expect engaging with rural communities, marae and papakāinga, and supporting Te Mana o te Wai, to be areas of continuous focus for Taumata Arowai. There should be a clear sense of how you are approaching these important issues, throughout your planning, reporting, engagement, and communications activities. I also expect the Board to ensure the advice of the Māori Advisory Group is being considered and implemented – both with regards to these specific areas of interest and expertise, and more generally across all areas of work.

There are important intersections between these matters and the work that is currently underway in the three waters service delivery reform programme. I expect Taumata Arowai to collaborate with the Department of Internal Affairs, and other agencies as necessary, to ensure there is consistency and cohesiveness across the three waters system. In turn, I expect the Department to ensure Taumata Arowai is connected into the reform programme. This includes work relating to rural supplies, the development of obligations on the new water services relating to Te Mana o te Wai, and the design of the new economic regulatory system.

As referenced above, the Water Services Act 2021 includes requirements for Taumata Arowai to prepare a drinking water compliance, monitoring and enforcement strategy. Now the Act has been passed, and there is clarity about the nature and extent of the new regulatory framework, I expect significant progress to be made with developing that strategy during 2021/22.

The compliance, monitoring and enforcement strategy is a critical document, which will:

- provide transparency about Taumata Arowai's intended approach to achieving

compliance with drinking water regulatory requirements over a three-year period, and the outcomes sought from that approach; and

- provide the basis on which Taumata Arowai is accountable for the performance of its regulatory functions and the use of its regulatory powers.

The strategy will include information on how Taumata Arowai intends to support drinking water suppliers of different types, sizes, and abilities to build and maintain capability to comply with their regulatory responsibilities. This means it connects closely with the areas of focus identified above, regarding engaging with rural communities, marae and papakāinga, and the approach that will be taken to providing education and advice to small suppliers.

There are also connections between the information and intended approach that will be set out in the strategy and Taumata Arowai's financial forecasting and budgetary requirements. The Department of Internal Affairs will need this information to undertake work relating to the development of the levy, referred to earlier in this letter.

I expect Taumata Arowai to have finalised the first compliance, monitoring and enforcement strategy by 30 June 2022.

Conclusion

I invite you to respond to this letter outlining the key strategic challenges and opportunities facing Taumata Arowai, and how you intend to respond to the specific expectations contained in this letter.

I would like to acknowledge the work of your Board, the Māori Advisory Group and Taumata Arowai in these first few months, and look forward to a successful year ahead.

Nāku noa, nā



Hon Nanaia Mahuta
Minister of Local Government

cc: Bill Bayfield, Chief Executive, Taumata Arowai

cc: Paul James, Chief Executive, Department of Internal Affairs