

Memorandum of Understanding

between

**the Commerce Commission | Te
Komihana Tauhokohoko**

and

Taumata Arowai



This memorandum of understanding (MoU)

Between the Commerce Commission | Te Komihana Tauhokohoko (the Commission)

And Taumata Arowai—the Water Services Regulator (Taumata Arowai)

together, the “**Parties**”

Ko wai? | Who are we?

1. This Memorandum of Understanding (MoU) provides the foundation for a cooperative relationship between the Commission and Taumata Arowai. The Parties acknowledge that there are areas of common interest in the water services sector and opportunities to coordinate their respective activities.
2. The Commission is an independent Crown entity established under section 8 of the Commerce Act 1986 with statutory functions under that and other statutes, including the Fair Trading Act 1986, the Credit Contracts and Consumer Finance Act 2003, the Telecommunications Act 2001, the Fuel Industry Act 2020, and the Dairy Industry Restructuring Act 2001. The Commission has transitional powers under the Water Services Entities Act 2022 and will become the economic and consumer protection regulator for water when the Water Services Economic Efficiency and Consumer Protection Bill is enacted.
3. Taumata Arowai is a Crown agent and is responsible for the regulation of drinking water under the Taumata Arowai—the Water Services Regulator Act 2020 (TAWSRA) and the Water Services Act 2021 (WSA). From late 2023, Taumata Arowai will also have an oversight, standard-setting and public reporting role in relation to the environmental performance of wastewater and stormwater networks.
4. The document is not intended to be legally binding or to affect either party’s exercise of its statutory functions, duties, or powers.

He aha te kaupapa? | What is the purpose of the MoU?

5. The purpose of this MoU is to provide a framework for establishing a relationship of cooperation between the Parties, on the basis that this relationship will help to:
 - 5.1 build and enhance their understanding of the water services sector and their respective responsibilities to give effect to Te Mana o te Wai and to Te Tiriti o Waitangi | The Treaty of Waitangi;
 - 5.2 develop and clarify understanding of each other’s roles in the water services sector;
 - 5.3 ensure their activities are appropriately coordinated;
 - 5.4 explain their complementary roles to external audiences; and
 - 5.5 minimise the regulatory burden on regulated communities or people and maximise the effective use of regulator resources.
6. This document sets out the principles that support the Parties’ relationship.

7. In time, Schedules to this MoU may be developed that set out protocols relating to specific activities, including information sharing and timeframes for key deliverables.
8. Given our maturing roles and the changing landscape in the water services sector, we would expect to regularly review this MoU.

Ngā hononga | Relationship principles

9. The Parties will each:
 - 9.1 Act fairly and in good faith.
 - 9.2 Engage early and communicate in an open, honest and timely manner.
 - 9.3 Raise issues promptly and respond promptly to requests or other contact from the other.
 - 9.4 Share staff training and development opportunities and provide mutual operational support.
 - 9.5 Work collaboratively to avoid duplication of expenditure of publicly funded resources.
 - 9.6 Advise the other's Relationship Manager promptly of any operational or policy concerns and/or opportunities.
 - 9.7 Implement policies, procedures and systems as appropriate to support the operation of this MoU.
 - 9.8 Consult (where practicable) with the other before providing information or comment to the public, Parliament and the media on issues in which both Parties have an interest.
10. Where practicable and permitted by law, and to the extent appropriate, each Party will:
 - 10.1 Provide information and advice where it will assist the other party in the performance of its current and anticipated statutory functions, powers or duties, and as contemplated by this MoU (Schedule to be developed).
 - 10.2 Advise the other in advance of actions to be taken, or proposed to be taken, which the other might reasonably expect to be notified of or consulted about.
 - 10.3 Where it identifies a risk or potential risk falling within the jurisdiction of the other, signal that to the other party.
 - 10.4 Engage and consult with the other on any material proposed changes in legislation, regulatory policy, guidance, or decisions on regulation that may materially impact on the objectives and/or functions of the other.
 - 10.5 Notify the other if the implementation of legislation, regulatory policy, guidance or decisions on regulation by one party may impact on the objectives and/or functions of the other.

Ngā hui | Meetings and other arrangements

11. The Parties have established, and agree to continue, a schedule of regular meetings between senior staff to discuss each party's current and proposed work programme:

- Bi-monthly meetings between:
 - Taumata Arowai and Te Puna Chairs (including senior leadership team members); and
 - Representatives from the Commission's Water Committee / Division (including senior leadership teams members).
- Bi-annual joint Board meetings (including Te Puna)

12. Each party will appoint a **Relationship Manager** to assist with the implementation of this MoU and the continuing relationship between the Parties. The initial Relationship Managers for each party are:

The Commission	Taumata Arowai
Andy Burgess General Manager - Infrastructure 44 The Terrace Wellington Telephone: [REDACTED]	Katy Te Amo Head, Strategy and Insights 10 Brandon Street Wellington Telephone: [REDACTED]

13. The Relationship Managers will:

- 13.1 be the first point of contact between the Parties with respect to the day-to-day implementation of this MoU;
- 13.2 meet as required to discuss the progress of activities undertaken pursuant to this MoU, activities that could constitute current or future matters of joint interest, and any other matters relevant to the relationship between the Parties;
- 13.3 develop or amend protocols relating to specific procedures and activities, as required; and
- 13.4 notify each other of any changes to their representatives under this MoU.

14. Either party may terminate the relationship established by this MoU by giving three months' notice in writing to the other party.

15. Any modification of this MoU, including the addition, modification or termination of any Schedules, shall first be discussed by the Relationship Managers, and, once agreed, shall be recorded in writing between the Parties.

Issue or dispute resolution

16. All issues, disputes and differences between the Parties about the interpretation or performance of this MoU will be resolved at the earliest opportunity between the Relationship Managers, wherever possible.
17. Each party will raise any operational or policy concerns through appropriate internal channels at the other party, rather than through the media.

Costs

18. Unless the Parties mutually determine otherwise, the cost of meeting the commitments of this MoU shall be met by the party incurring the cost.

Legal

19. This MoU is non-binding and nothing in this MoU shall make either party liable for the actions of the other or constitute any legal relationship between the Parties.
20. The provisions in this MoU are to be read subject to any Chief Executive, Public Service Commission or Cabinet directives, and any enactment, regulations, rules or applicable case-law. For the avoidance of doubt, nothing in this MoU should be interpreted or applied inconsistently with either party's statutory functions, powers or obligations.
21. Where there are changes to Government policy or legislation that affect the purpose and functions of this MoU, each party agrees to inform the other of those changes at the earliest possible time thereafter and both Parties agree to meet to re-negotiate, if necessary, any aspects of the MoU.

Review of this MoU

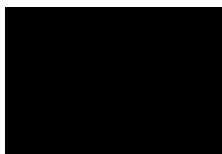
22. The MoU will be reviewed 12 months following its signing.

Signed for the Commerce Commission



Vanessa Horne
Acting Chief Executive
Date: 25 July 2023

Signed for Taumata Arowai—the Water Services Regulator



Allan Prangnell
Chief Executive
Date: 25 July 2023

Schedule 1: Information sharing, use, storage and retention protocols

1. Requests for information from the other party should be made in writing to the Relationship Manager. Oral requests must be followed up by a written request as soon as practicable, or as agreed at the time of the request.
2. A party may request information from the other for the purpose of facilitating the effective and efficient performance of that party's duties, powers and regulatory functions. Requests should specify:
 - 2.1 the information requested (identifying the type of documents or information sought) and, where applicable, the statutory authority for requesting that information;
 - 2.2 the purpose for which the information is sought, including any background information necessary to understand and respond to the request;
 - 2.3 the timeframe in which the information is needed, and the reasons for any urgency requested;
 - 2.4 any risks identified as part of any risk assessment, and any risk mitigation measures to be adopted;
 - 2.5 the names and contact details of the relevant individuals or case team of the requesting party; and
 - 2.6 any other relevant matters.
3. The Parties will respond to requests for information as soon as is practicable or within the timeframe requested. In the case of an urgent request, each party will endeavour to consult to ensure a response to the request is expedited if possible.
4. Where a party holds the information requested but declines to provide it to the other party, it will (to the extent it is able to do so) inform the other party of the reason for declining the request.
5. Before requesting information, a party should consider whether the information is already in the public domain and can be obtained without the need for a formal request.
6. The Parties may share confidential information where permissible by law and in accordance with the providing party's policies.
7. Obligations regarding the use, storage and retention of any information shared between the Parties are set out below.

Use, storage and retention of information

8. Any information shared between the Parties will:
 - 8.1 be used and kept by the receiving party for legitimate purposes and in line with the law and that party's policies, processes and systems;
 - 8.2 be held in accordance with any stated sensitivity, terms or restrictions advised in writing by the party providing the information at the time it is shared; and

- 8.3 be stored with appropriate security measures, whether the information is in electronic form, hard copy or otherwise.
9. Each party will, upon request by the other, provide their internal guidelines and policies relating to the use, storage and retention of information, together with any other information required to verify that the other party is meeting its obligation in paragraph 8 above.
10. The Parties will retain any information shared in accordance with this MoU as required by the Public Records Act 2005.
11. The Parties agree that shared information may be disclosed by the receiving party to a third party only where the receiving party has first obtained the consent of the other party, or where the receiving party is legally required to disclose that information and has informed the other party of this requirement prior to disclosing the information.
12. The Parties recognise that they are each subject to the Official Information Act 1982. The Parties agree to consult each other before determining requests for official information that reasonably relate to the other Party, the Parties' relationship, or information shared between the Parties.
13. The Parties acknowledge that:
- 13.1 If any criminal proceedings are initiated, the Criminal Disclosure Act 2008 will apply in relation to all relevant information held by the prosecuting party.
- 13.2 If any civil proceedings are initiated, the relevant rules of court will apply in relation to all relevant information held by either party.