



Te Tari Taiwhenua
Internal Affairs

Three Waters reform: Process for developing entity constitutions

14 December 2022

Find out more at www.dia.govt.nz/Three-Waters-Reform-Programme

December 2022

Background

- Under the Water Services Entities Act (Act), each of the four Water Services Entities (WSEs) must have a constitution setting out the entity's governance and accountability arrangements.
- Constitution development provides an important opportunity for local government and mana whenua in each entity area to shape how these arrangements will work in practice.
- An outline of the proposed process and timelines for the development of the constitutions is contained within these slides.
- The process of developing entity constitutions is an opportunity to lay the foundations for the future participation of mana whenua and local government, including the process of establishing Regional Representative Groups (RRGs).
- A co-design approach is proposed, with a process and timing that reflects the feedback from engagement in September 2022. This includes the establishment of Working Groups to lead development of the constitutions.



What are the constitutions?

- The WSE constitutions will define the framework for each entity's governance and accountability. This includes the rules and procedures that will apply to the Regional Representative Group (and regional advisory panels), including the process for electing or appointing these groups, and to the entity board.
- Under the Act, the first constitutions for the WSEs will be set in regulation, made on the recommendation of the Minister of Local Government following engagement with territorial authorities and mana whenua in the service area.
- A constitution will ensure effective governance arrangements are established and help strengthen relationships between local government and iwi/Māori within entity boundaries.
- Each constitution must be consistent with the requirements set out in the Act. However, there is room for variation in how some of these requirements are met. The role of the Working Groups is to develop draft constitution content appropriate for their service area, which will then be put to the Minister for her approval to be 'made' as regulations.
- Once the initial constitutions have been made as regulations, amendments can be made by the RRG (subject to a 75 percent threshold) with approval from the Minister for Local Government.

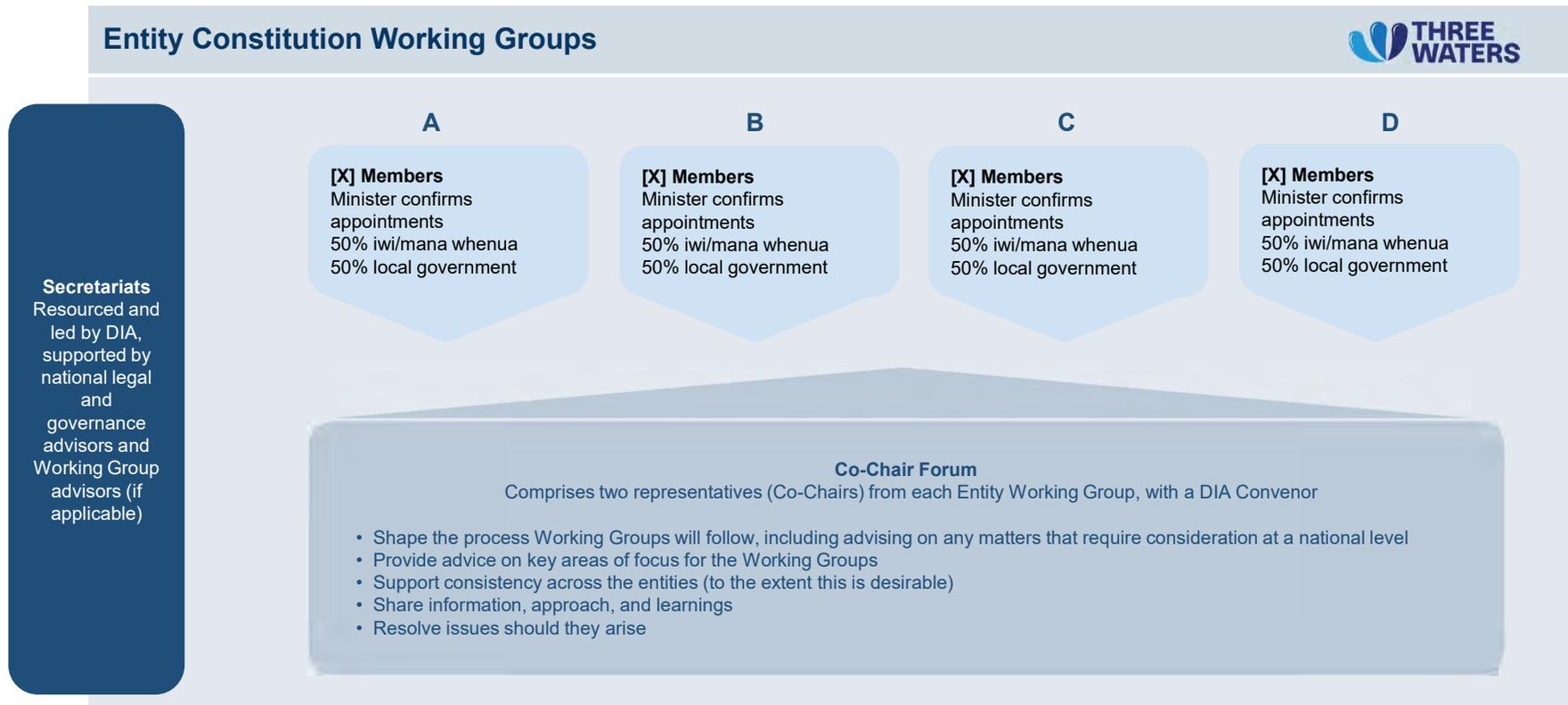
Key considerations

- The first constitutions for the Water Services Entities need to be developed in time for the appointment or election of RRGs prior to 1 July 2024.
- The Act anticipates engagement with local government and mana whenua on the development of the constitutions, in accordance with section 202 of the Act.
- The approach and timelines outlined in this slide pack have been designed to ensure that there is time for a meaningful co-design process, the process for developing the constitutions meets the consultation obligations in the Act, and that the regulation-making process is concluded sufficiently in advance of entity commencement.
- The programme of work also must take into account the 2023 general election, and the impact this has on the timing of both Cabinet policy decisions and the subsequent regulation-making process.

Constitution development process

- It is proposed that development of the draft constitutions will be led by **four entity Constitution Working Groups**, with a balanced number of local government and mana whenua representatives.
- As representatives of their communities, Working Group members will be asked to engage with their communities on the proposed content as it is developed.
- It is proposed that the Co-Chairs of these four groups form a national **Co-Chair Forum**, which would meet an estimated two to three times over the constitution development phase. The Co-Chair Forum will be convened by Paul James (DIA Chief Executive), and will support the Working Groups by:
 - helping shape the process and programme of work the Working Groups will follow;
 - advising on key areas of focus;
 - supporting consistency (where appropriate);
 - sharing information and learnings; and
 - resolving issues should they arise.
- Over the constitution development phase, Secretariats, supported by legal and governance advisors, will work alongside each Working Group and the Co-Chairs Forum to support iterative development of the constitutions.

Working Group + Forum structure



Indicative timeframes

- The Working Groups and Co-Chairs Forum will be appointed and formed in February 2023.
- The Working Groups will meet approximately **six to eight times** over the development phase, beginning in March 2023. Meetings will be a mix of in person and on-line.
- In developing proposed content, Working Group members will determine the appropriate engagement approach for their own community.
- Following the General Election, regulations will be made and the constitutions will **come into effect** (estimated late March 2024).
- An indicative timeline for the constitution development process is at the end of this slide pack.

Secretariat and support

- Over the constitution development phase, DIA-led and resourced Secretariats will work alongside each Working Group and the Co-Chairs Forum to support iterative development of the content of the constitutions.
- The Secretariats will be supported by national-level legal and governance advisors, funded by DIA, representing the respective interests of the three parties.
- The Secretariat will, for example, assist with:
 - a high-level outline and issues to be addressed
 - suggestions on generally accepted (or standardised) content
 - helping formulate regional variations or bespoke content, where this is appropriate.
- There will be provision for each Working Group to obtain further advice (for example regarding bespoke or regional content) as identified by the Co-Chairs and in consultation with DIA.

Nominations and proposed appointees

- The Minister has written to LGNZ and to Iwi Collectives regarding nominations and appointments for each Working Group and asked that they facilitate the process to form the Working Groups.
- LGNZ and the Iwi Collectives are asked to provide their proposed local government and mana whenua appointees, including proposed Co-Chairs, in the new year.
- The number of members on each Working Group is not set, beyond the need for balanced representation. DIA's suggestion is that each Working Group comprise twelve or fourteen members, ie six or seven from both local government and mana whenua.
- Local government and the respective Iwi Collectives are encouraged to collaborate and where possible reach an agreement around the number of appointees to each working group.
- DIA will engage with LGNZ, the respective Iwi Collectives and the proposed Co-Chairs, before making a recommendation to the Minister on the number of members for each Working Group (noting that if there is an equal number of proposed representatives from local government and mana whenua this will not be necessary).

Establishment

- The above arrangements will be set out in a Terms of Reference, which DIA will develop with input from LGNZ and the Iwi Collectives.
- In late February 2023, the Minister will:
 - confirm the Terms of Reference for the Working Groups (including confirming the number of members on the Working Groups)
 - confirm the fee arrangements (to be determined in line with the Cabinet Fees Framework)
 - appoint the working group members and co-chairs.
- In March 2023, there will be induction and agreement (through the Co-Chair Forum) on the work programme (and meeting schedule) across the Working Groups.

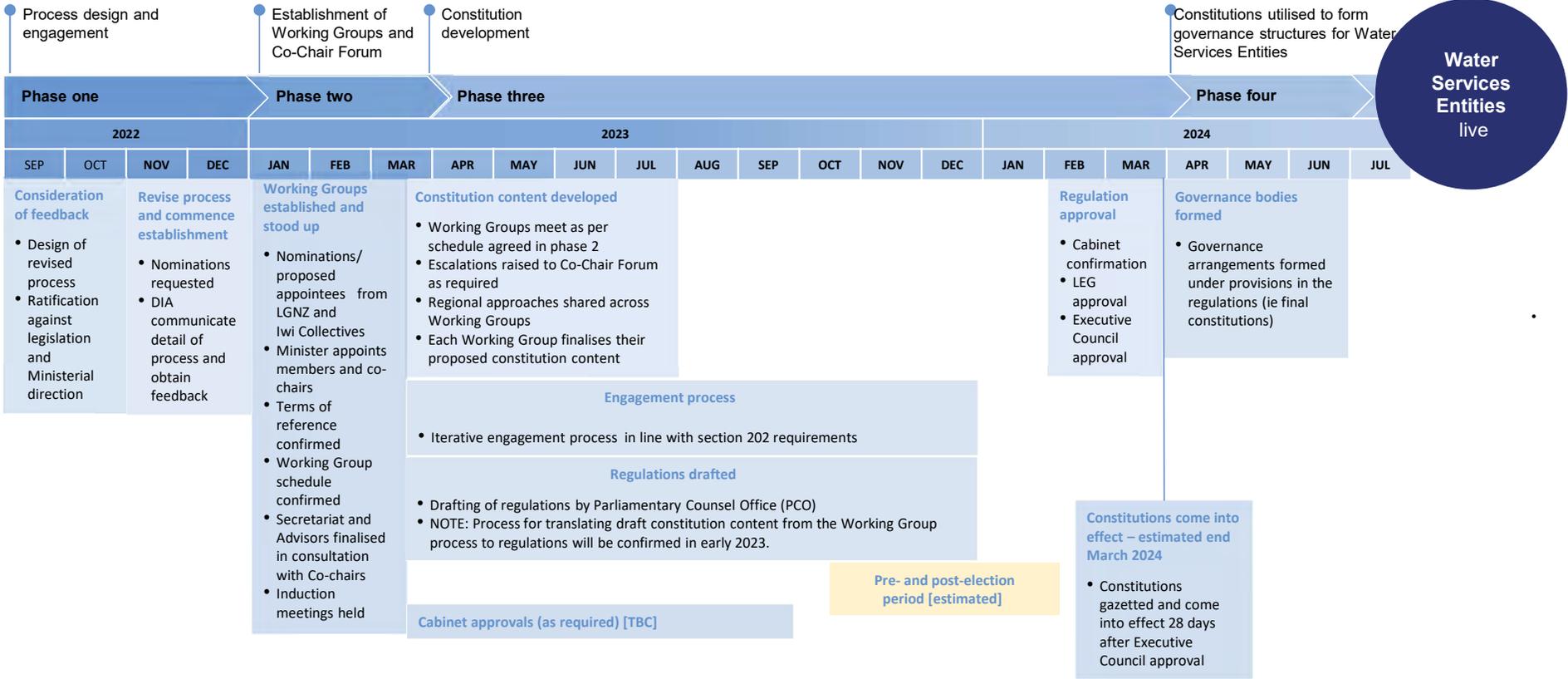
Questions and other information

DIA welcomes feedback from LGNZ and the Iwi Collectives as the detail of the process is refined and the four Working Groups are formed in the new year.

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Constitution development: Indicative timeline





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