

Competition and Consumer Policy
Building, Resources and Markets
Ministry of Business, Innovation & Employment
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Economic Regulation and Consumer Protection for Three Waters Services in New Zealand - Discussion Paper

1. Introduction

Thank you for the opportunity to make a submission on the Economic Regulation and Consumer Protection for Three Waters Services in New Zealand Discussion Paper. This submission is from Consumer NZ, an independent, non-profit organisation dedicated to advocating on behalf of New Zealand consumers. Consumer NZ has a reputation for being fair, impartial and providing comprehensive consumer information and advice.

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2. Our comments

Given the natural monopolistic nature of the three waters sector, we strongly support economic and consumer protection regulation. We consider this regulation will result in better outcomes for New Zealand consumers and better performance of the sector.

Our answers to specific questions in the Discussion Paper are set out below.

Thank you for the opportunity to provide comment. If you require any further information on the points raised, please do not hesitate to contact me.

Yours sincerely



Jon Duffy
Chief Executive

Submission on economic regulation and consumer protection for three waters services in New Zealand

Your name and organisation

Name	Aneleise Gawn
Organisation (if applicable)	Consumer NZ

Responses

Economic regulation	
1	<p><i>What are your views on whether there is a case for the economic regulation of three waters infrastructure in New Zealand?</i></p> <p>We agree there is a strong case for economic regulation of the three waters infrastructure in New Zealand. We consider regulation will result in better outcomes for consumers and better performance of the sector overall.</p> <p>Overseas, economic regulation in the water sector has been shown to generate positive benefits for consumers in the form of lower prices and improved quality of service. Benefits beyond cost savings have also been experienced as a result of regulation overseas. For example, in the decade following regulation in England and Wales, the sector delivered a 30% reduction in leakage.</p>
2	<p><i>What are your views on whether the stormwater networks that are currently operated by local authorities should be economically regulated, alongside drinking water and wastewater?</i></p> <p>We consider it would be in the best interests of consumers to regulate stormwater alongside drinking water and wastewater. Excluding stormwater from regulation would result in unnecessary complexity and compliance costs from having regulated and unregulated services operated by the same supplier.</p>
3	<p><i>What are your views on whether the four statutory Water Services Entities should be economically regulated?</i></p> <p>We agree the four statutory Water Services Entities should be economically regulated given the significant risks that, left to their own devices, the entities would not be properly incentivised to act in the long-term interests of consumers, as we have seen in other sectors such as the electricity sector.¹</p>
4	<p><i>What are your views on whether economic regulation should apply to community schemes, private schemes, or self-suppliers? Please explain the reasons for your views.</i></p> <p>In our view, it would be preferable for the entire system to be regulated but we understand</p>

¹ See <https://www.ea.govt.nz/monitoring/enquiries-reviews-and-investigations/2021/wholesale-market-competition-review-2/> for one example.

	<p>the rationale for excluding community schemes, private schemes, and self-suppliers from the regime. We consider leaving smaller schemes unregulated would be acceptable provided there is an ability to bring these parties into the regime later, if deemed necessary.</p>
5	<p><i>What are your views on whether the Water Services Entities should be subject to information disclosure regulation?</i></p> <p>We strongly support the Water Services Entities being subject to information disclosure regulation but do not consider this will be sufficient, in itself.</p>
6	<p><i>What are your views on whether Water Services Entities should be subject to price-quality regulation in addition to information disclosure regulation?</i></p> <p>We strongly support the introduction of price-quality regulation in the sector. Water services provide access to a necessity of life, they are essential services. In our view, price regulation is critical to ensuring consumers are provided with affordable and high-quality water services. If implemented sensibly, price regulation should ensure suppliers are subject to similar incentives and pressures to those operating in a competitive market, while balancing the need to ensure services meet the needs of consumers.</p>
7	<p><i>What are your views on the appropriateness of applying individual price-quality regulation to the Water Services Entities?</i></p> <p>We agree individual price-quality regulation is the most appropriate form of price-quality regulation as it will allow the regulator to adapt the rules applicable to each entity.</p>
8	<p>A) <i>Do you consider that the economic regulation regime should be implemented gradually from 2024 to 2027, or do you consider that a transitional price-quality path is also required?</i></p> <p>B) <i>If you consider a transitional price-quality path is required, do you consider that this should be developed and implemented by an independent economic regulator, or by Government and implemented through a Government Policy Statement?</i></p> <p>We consider the interests of consumers would be best protected by introducing a transitional price-quality path. Gradually implementing economic regulation would result in price and quality of services being effectively uncontrolled until 2027 so we do not support this approach.</p> <p>We have no comment on Part B of this question.</p>
9	<p>A) <i>What are your views on whether the Minister of Commerce and Consumer Affairs should be able to reduce or extend the application of regulation on advice from the economic regulator?</i></p> <p>B) <i>What factors do you consider the economic regulator should include in their advice to the Minister?</i></p> <p>We agree the Minister should be able to reduce or extend the application of regulation on advice from the economic regulator.</p> <p>We have no comment on Part B of this question.</p>
10	<p>A) <i>What are your views on whether the purpose statement for any economic regulation regime for the water sector should reflect existing purpose statements in the</i></p>

Telecommunications Act and Part 4 of the Commerce Act given their established jurisprudence and stakeholder understanding?

- B) What are your views on whether the sub-purpose of limiting suppliers' ability to extract excessive profits should be modified or removed given that Water Services Entities will not have a profit motive or have the ability to pay dividends?*
- C) Are there any other considerations you believe should be included in the purpose statement, or as secondary statutory objectives?*
- D) What are your views on how Treaty of Waitangi principles, as well as the rights and interests of iwi/Māori, should be factored into the design of an economic regulatory regime for the three waters sector?*

We agree the purpose statement for economic regulation for the water sector should reflect existing purpose statements in the Telecommunications Act and Part 4 of the Commerce Act. We consider it important to reflect Te Tiriti principles in the purpose statement and recognise the special relationship Māori have to water both as a resource and a taonga.

11 *What are your views on whether a sector specific economic regulation regime is more appropriate for the New Zealand three waters sector than the generic economic regulation regime provided in Part 4 of the Commerce Act?*

We agree a sector specific regime would be more appropriate than the generic economic regulation regime under the Commerce Act.

12 *What are your views on whether the length of the regulatory period should be 5 years, unless the regulator considers that a different period would better meet the purposes of the legislation?*

We support a regulatory period of 5 years and agree the regulator should be able to consider a different period. We also consider there should be a shorter regulatory period of 2 to 3 years for the first regulatory period.

- A) What are your views on whether the economic regulator should be required to develop and publish input methodologies that set out the key rules underpinning the application of economic regulation in advance of making determinations that implement economic regulation?*
- 13 *B) What are your views on whether the economic regulator should be able to minimise price shocks to consumers and suppliers?*
- C) What are your views on whether the economic regulator should be required to set a strong efficiency challenge for each regulated supplier? Would a strong 'active' styled efficiency challenge potentially require changes to the proposed statutory purpose statement?*

We agree there are pros and cons to requiring the economic regulator develop and publish input methodologies in advance of making determinations. However, we consider providing consumers, suppliers and other stakeholders with clarity and transparency is important. We therefore support the development and publication of input methodologies in advance of making determinations.

We agree the economic regulator should be able to minimise price shocks to consumers and suppliers.

We also agree the economic regulator should be required to set a strong efficiency challenge

	<p>for each regulated supplier. We do not consider changes to the purpose statement would be required.</p>
14	<p>A) <i>What do you consider are the relevant policy objectives for the structure of three waters prices? Do you consider there is a case for parliament to directly control or regulate particular aspects in the structure of three waters prices?</i></p> <p>B) <i>Who do you consider should have primary responsibility for determining the structure of three waters prices:</i></p> <p>a) <i>The Water Services Entity, following engagement with their governance group, communities, and consumers?</i></p> <p>b) <i>The economic regulator?</i></p> <p>c) <i>The Government or Ministers?</i></p> <p>C) <i>If you consider the economic regulator should have a role, what do you think the role of the economic regulator should be? Should they be empowered to develop pricing structure methodologies, or should they be obliged to develop pricing structure methodologies?</i></p> <p>We consider pricing policies should encourage efficiency and agree it may be appropriate to deal with specific fairness issues through the use of various targeted tools.</p> <p>We consider the economic regulator should have responsibility for developing the structure of the three waters prices.</p>
15	<p><i>What are your views on whether merits appeals should be available on the regulators decisions that determine input methodologies and the application of individual price-quality regulation?</i></p> <p>We consider merit appeals should be allowed to ensure accountability and rights to natural justice are met.</p>
16	<p><i>Do you broadly agree with the compliance and enforcement tools? Are any additional tools required?</i></p> <p>Yes, we agree with the compliance and enforcement tools.</p>
17	<p><i>Who do you think is the most suitable body to be the economic regulator for the three waters sector? Please provide reasons for your view.</i></p> <p>We agree the Commerce Commission would be the most suitable body to be the economic regulator for the three waters sector. Despite the fact it has no existing expertise in the sector, we think this could be built up relatively quickly. More importantly, it has proven expertise in implementing economic regulation in many other sectors.</p> <p>We agree a viable alternative option could be to establish a Water Commissioner within the Commerce Commission.</p>
18	<p><i>What are your views on whether the costs of implementing an economic regulation regime for the three waters sector should be funded via levies on regulated suppliers?</i></p> <p>We support the cost of the regime being funded via levies.</p>

19	<p><i>Do you think that the levy regime should:</i></p> <p>A) <i>Require the regulator to consult on and collect levy funding within the total amount determined by the Minister? OR</i></p> <p>B) <i>Require the Ministry to consult on the levy (on behalf of the Minister) and collect levy funding within the total amount determined by the Minister?</i></p>
	No comment.
20	<i>Are there any other levy design features that should be considered?</i>
	No comment.
Consumer protection	
21	<p>A) <i>What are your views on whether additional consumer protections are warranted for the three waters sector?</i></p> <p>B) <i>What are your views on whether the consumer protection regime should contain a bespoke purpose statement that reflects the key elements of the regime, rather than relying on the purpose statements in the Consumer Guarantees Act and Fair Trading Act? If so, do you agree with the proposed limbs of the purpose statement?</i></p>
	<p>We strongly agree that additional consumer protections are warranted for the three waters sector. Existing generic consumer protection laws (in the Consumer Guarantees Act and Fair Trading Act) will not be sufficient to provide adequate protection in the three waters sector. Without consumer protection regulation, there will be significant gaps in the framework that could harm the long-term interests of consumers. Also, it is particularly important to ensure there are adequate protections in place when an essential service, such as water, is being provided by a monopoly provider.</p> <p>We also consider a bespoke purpose statement reflecting the key elements of the regime is appropriate and we agree with the proposed limbs of the purpose statement.</p>
22	<i>What are your views on whether the consumer protection regulator should be able to issue minimum service level requirements via a mandated code that has been developed with significant input from consumers?</i>
	<p>We support the consumer protection regulator having the ability to issue minimum service level requirements via a mandated code developed with significant input from consumers. Experience both in New Zealand and overseas shows that minimum services level requirements can be highly effective at improving service quality and providing clarity for consumers.</p> <p>We do not support voluntary codes as they are not effective at achieving the desired outcomes and given their voluntary nature, may not be widely adopted.</p> <p>We acknowledge these are more costly to develop and enforce but consider the overall benefits outweigh the costs.</p>
23	<i>What are your views on whether the consumer protection regulator should also be empowered to issue guidance alongside a code?</i>
	We support the consumer protection regulator being empowered to issue guidance alongside a code. We consider this would provide greater clarity for consumers, suppliers and

	<p>organisations such as Consumer NZ. As a consumer organisation, we frequently refer to guidance issued by regulators (such as the Unfair Contract Terms guidelines) to help consumers understand their rights.</p>
24	<p><i>What are your views on whether it is preferable to have provisions that regulate water service quality (not regulated by Taumata Arowai) in a single piece of economic regulation and consumer protection legislation?</i></p>
	<p>We agree it is preferable to have all provisions relating to the three waters in a single piece of economic and consumer protection legislation.</p>
25	<p><i>What are your views on whether minimum service level requirements should be able to vary across different types of consumers?</i></p>
	<p>Vulnerable consumers often need stronger protections than other consumers so we consider it would be appropriate that the minimum service level requirements vary depending on the type of consumers.</p>
26	<p><i>What are your views on whether the regulatory regime should include a positive obligation to protect vulnerable consumers, and that minimum service level requirements are flexible enough to accommodate a wide range of approaches to protecting vulnerable consumers?</i></p>
	<p>We agree there should be a positive obligation on the regulator to consider the interests of vulnerable consumers. We also agree the requirements should be flexible enough to accommodate a wide range of approaches to addressing consumer harm and vulnerability.</p>
27	<p><i>What are your views on how Treaty of Waitangi principles, as well as the rights and interests of iwi/Māori, should be factored into the design of a consumer protection regime for the three waters sector?</i></p>
	<p>We support these principles, rights and interests being factored into the design of the regime but have no comment on how to best achieve this.</p>
28	<p>A) <i>Do you consider that the consumer protection regime should apply to all water suppliers, water suppliers above a given number of customers, or just Water Services Entities? Could this question be left to the regulator?</i></p> <p>B) <i>Do you support any other options to manage the regulatory impost on community and private schemes?</i></p>
	<p>We think the consumer protection regime should apply to all water suppliers, as it does in Western Australia. We consider all consumers should be entitled to the same protections, regardless of which supplier they use.</p>
29	<p><i>Do you broadly agree with the compliance and enforcement tools proposed? Are any additional tools required?</i></p>
	<p>Yes, we broadly agree with the compliance and enforcement tools proposed.</p>
30	<p><i>Do you agree with our preliminary view that the Commerce Commission is the most suitable body to be the consumer protection regulator for the three waters sector?</i></p>
	<p>We agree the Commerce Commission is the most suitable body to be the consumer protection regulator for the three waters sector. We also consider it appropriate that the</p>

	same body is the economic regulator and consumer protection regulator for the sector.
31	<p><i>What are your views on whether the regulator should be required to incentivise high-quality consumer engagement?</i></p> <p>We agree there are many barriers to consumers having their voices heard. It would be regrettable if the regulator was to focus on the (albeit important) economic interventions and not have the resourcing to examine the outcomes experienced by consumers as a result of those interventions. We therefore strongly support requiring the regulator to incentivise high-quality consumer engagement. Done well, we consider these types of incentives will result in improved performance by suppliers and increased levels of consumer satisfaction.</p>
32	<p><i>What are your views on whether there is a need to create an expert advocacy body that can advocate technical issues on behalf of consumers?</i></p> <p>We agree there is a need to create an expert advocacy body that can advocate technical issues on behalf of consumers. Although we provide advocacy services for consumers on many technical issues across many industries, we currently do not have the resources to undertake a deep dive on every consumer issue across every sector. As a result, consumers interests are not always represented, or they may only be represented at a high level. This needs to be remedied and an expert advocacy body would assist in this regard.</p>
33	<p><i>What are your views on whether the expert body should be established via an extension to the scope of the Consumer Advisory Council's jurisdiction?</i></p> <p>We would support an expert body being established via an extension to the Consumer Advisory Council, as long as sufficient resourcing was made available.</p>
34	<p><i>What are your views on whether there is a need for a dedicated three waters consumer disputes resolution scheme?</i></p> <p>We agree a dedicated consumer dispute resolution scheme is required for the three waters sector.</p>
35	<p><i>What are your views on whether these kinds of disputes should be subject to a dispute resolution scheme? Are there any other kinds of issues that a consumer dispute resolution provider should be able to adjudicate on?</i></p> <p>We agree the kinds of disputes listed on page 81 of the discussion paper should be subject to a dispute resolution scheme. We also consider complaints about payment difficulties, debt collection and poor customer service should be included.</p>
36	<p><i>What are your views on whether a mandatory statutory consumer disputes resolution scheme should be established for the water sector?</i></p> <p>Given the problems with the voluntary nature of the Telecommunications Dispute Resolution Scheme (TDRS), we strongly support a mandatory statutory consumer disputes resolution scheme for the water sector. Although potentially more expensive and time consuming to set up, we consider such a scheme would provide better outcomes for consumers.</p> <p>We do not support there being more than one scheme for dispute resolution as we consider this provides unsatisfactory results for consumers and generates confusion. In the financial sector for example, there are multiple dispute schemes, all with different processes, procedures and limits on jurisdiction. This creates confusion and uncertainty for consumers.</p>

	Having multiple schemes also reduces overall awareness of the schemes. For these reasons, we strongly recommend a single scheme.
37	<i>Do you consider that a new mandatory statutory consumer disputes resolution scheme should be achieved via a new scheme or expanding the jurisdiction of an existing scheme or schemes?</i>
	Provided there are not multiple schemes, we do not envisage any issues with expanding the jurisdiction of an existing scheme such as Utilities Disputes. In Australia, there are Energy and Water Ombudsman services in each state that deal with both energy and water disputes.
38	<i>Do you consider that the consumer disputes resolution schemes should apply to all water suppliers, water suppliers with 500 or more customers, or just Water Services Entities?</i>
	Yes, we consider the consumer disputes resolution schemes should apply to all water suppliers. Consumers should be able to have their disputes heard, whether they belong to a small private scheme or one of the four main entities. This would promote consistent and equitable improvement in the welfare of all water consumers. If the scheme does not apply to all suppliers, there will be consumers who are likely to have limited forms of redress. We also consider there should be periodic reviews of the dispute resolution scheme, as there is with the TDRS. These can help identify and address issues with the scheme to ensure they are functioning optimally. For the sake of transparency, the scheme should be required to publish its decisions.
39	<i>Do you think the consumer dispute resolution scheme should incentivise water suppliers to resolve complaints directly with consumers?</i>
	Yes, the scheme should incentivise water suppliers to resolve complaints directly with consumers. However, there should be processes around this to ensure the dispute resolution process is not unduly delayed. If the scheme refers matters back to water suppliers for resolutions, the total number of matters referred in this way should be reported on, naming the supplier, to increase the transparency of the scheme.
40	<i>Do you consider that there should be special considerations for traditionally under-served or vulnerable communities? If so, how do you think these should be given effect?</i>
	Yes, we agree some consumers face difficulties accessing dispute resolution schemes. The existence of multiple schemes does not assist in this respect. We consider information about a scheme should appear in large print on every bill and communication from suppliers. There should also be other targeted awareness raising campaigns for the scheme. We also support consideration being given to providing resources in multiple languages, providing the ability to lodge complaints by multiple means, the availability of support people and staff training to identify and respond to vulnerabilities.
41	<i>What are your views on whether the costs of implementing a consumer protection regime for the three waters sector should be funded via levies on regulated suppliers?</i>
	We support the costs of the regime being funded via levies.
42	<i>Do you think that the levy regime should:</i> A) <i>Require the regulator to consult on and collect levy funding within the total amount determined by the Minister? OR</i>

	<i>B) Require the Ministry to consult on the levy (on behalf of the Minister) and collect levy funding within the total amount determined by the Minister?</i>
	No comment.
43	<i>Are there any other levy design features that should be considered?</i> No comment
44	<i>Do you consider that regulatory charters and a council of water regulators arrangement will provide effective system governance? Are there other initiatives or arrangements that you consider are required?</i> No comment.
Implementation and regulatory stewardship	
45	<i>Do you consider it is useful and appropriate for the Government to be able to transmit its policies to the economic and consumer protection regulator(s) for them to have regard to?</i> No comment.
46	<i>What are your views on whether the economic and consumer protection regulator should be able to share information with other regulatory agencies? Are there any restrictions that should apply to the type of information that could be shared, or the agencies that information could be shared with?</i> Yes, we agree the economic and consumer protection regulator should be able to share information with other regulatory agencies.

Other comments

	No comment.
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