



## COVERSHEET

<b>Minister</b>	Hon Dr David Clark	<b>Portfolio</b>	Commerce and Consumer Affairs
<b>Title of Cabinet paper</b>	Approval to release discussion paper: Economic and consumer protection regulation of three waters services in New Zealand	<b>Date to be published</b>	27 October 2021

<b>List of documents that have been proactively released</b>		
<b>Date</b>	<b>Title</b>	<b>Author</b>
27 October 2021	Approval to release discussion paper: Economic and consumer protection regulation of three waters services in New Zealand	Office of the Minister of Commerce and Consumer Affairs
27 October 2021	Economic and Consumer Protection Regulation of Three Waters Services: Discussion Document CBC-21-MIN-0110	Cabinet Office

### **Information redacted**

### **YES / NO**

Any information redacted in this document is redacted in accordance with MBIE's policy on Proactive Release and is labelled with the reason for redaction. This may include information that would be redacted if this information was requested under Official Information Act 1982. Where this is the case, the reasons for withholding information are listed below. Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.

Some information has been withheld for the reason of Confidential advice to Government.

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Office of the Minister of Commerce and Consumer Affairs

Cabinet Business Committee

**Approval to release discussion paper: Economic and consumer protection regulation of three waters services in New Zealand**

**Proposal**

- 1 I am seeking approval to release for public consultation a discussion paper titled *Economic regulation and consumer protection for three waters services in New Zealand* (the discussion paper), with a view to reporting back on the outcome of the consultation in April 2022.
- 2 The discussion paper seeks public feedback on the Government's preliminary positions on the key policy decisions for the economic regulation and consumer protection regulatory regimes in the three waters sector. It provides a range of options on these issues without ruling out any options.
- 3 This Cabinet paper should be read alongside the Minister of Local Government's Cabinet paper *Further decisions on the three waters reforms (Paper 5)* which sets out some potential issues relating to the structure of prices and the transition to economic regulation, and the need for further work and public consultation.

**Relation to government priorities**

- 4 This Government is committed to significantly improving the safety, quality, resilience, accessibility, and performance of three waters services, in a manner that is efficient and affordable for New Zealanders.
- 5 In April 2019, it was agreed that the Three Waters Review is a Government priority. The 2020 Labour Party Manifesto committed to reform New Zealand's drinking water and wastewater system, and upgrade water infrastructure to create jobs across the country. These reforms are anticipated to occur in parallel with reforms to the resource management system.

**Executive Summary**

- 6 The Government's Three Waters Reform process has revealed a range of problems that relate to natural monopoly characteristics, including:
  - 6.1 quality of service that does not reflect consumer demands;
  - 6.2 long term underinvestment in three waters infrastructure;
  - 6.3 inefficient pricing practices and a lack of transparency around the costs of delivering three waters services; and

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- 6.4 concerns about the capability and capacity of the three waters sector to be able to deal with increasing Government and community expectations of three waters infrastructure and service delivery.
- 7 I am of the view that there is a strong case for economic regulation of the three waters sector. I propose to release for public consultation a discussion paper that seeks feedback on the key design parameters of the economic regulation regime, including:
  - 7.1 whether economic regulation should apply to all three waters, or just drinking water and wastewater;
  - 7.2 which suppliers economic regulation should be applied to, such as the four proposed Water Services Entities;
  - 7.3 what form of economic regulation should be applied, such as information disclosure and price-quality regulation; and
  - 7.4 how an economic regulation regime could be designed, including the statutory objectives, legislative vehicle, and requirement to set input methodologies.
- 8 I also consider that mechanisms to give consumers and communities a voice should be incorporated throughout the design of the three waters regulatory system to ensure it is responsive and accountable to these groups. I am therefore seeking public feedback on the following:
  - 8.1 whether additional consumer protections are warranted for the three waters sector, and what tools might be required to enhance the quality of water services over time. These protections are most likely to focus on aspects of customer service that fall outside, but complement, the quality aspects controlled by an economic regulation regime e.g. the time taken to respond to queries or complaints from consumers;
  - 8.2 how to give consumers a strong voice and resolve consumer disputes;
  - 8.3 who the economic and consumer protection regulator(s) should be, and how these regimes should be funded; and
  - 8.4 how economic and consumer protection regulation should interface with other aspects of three waters regulation and governance.
- 9 I will use the feedback received to consider if economic regulation and consumer protection regulatory regimes are needed for the three waters sector in New Zealand and, if so, how they should be designed. This consideration will be consistent with Cabinet's previous in-principle agreement that an economic regulation regime will be employed on a substantially reformed three waters sector, with information disclosure regulation as a minimum [CAB-20-MIN-0512.01 refers].
- 10 I want to explore and consider the views of New Zealanders to ensure that I find the best solution for New Zealand. To make this consultation process more user-friendly, I will publish a summary document alongside the final

discussion paper that everyday New Zealanders are able to engage with. A draft of this summary document is included in Appendix 1 of this paper.

- 11 Following the public consultation and policy development processes, I will be coming back to Cabinet in April 2022 to seek further policy decisions on economic regulation and consumer protection legislation for three waters.

### **Background**

- 12 In July 2020, the Government launched the Three Waters Reform Programme – a three-year programme to reform local government water service delivery arrangements. The Government’s Three Waters Reform process has revealed a range of problems that can be substantially or partially attributed to issues relating to natural monopolies that economic regulation regimes are often used to address. Similarly, issues have been identified that consumer protection regulation regimes are often used to address.

- 13 On 14 June 2021, Cabinet made decisions on a comprehensive package of proposals to reform the three waters service delivery system [CAB-21-MIN-0226; CAB-21-MIN-0227; and CAB-21-MIN-0228 refer]. In summary, these proposals provide for:

- 13.1 the aggregation of local government three waters services into four, publicly-owned Water Services Entities, and the transfer of asset ownership from local government to the new entities;
- 13.2 the Water Services Entities to operate within a joint oversight framework, with representatives of local authorities and mana whenua from within the geographical area covered by the respective entities;
- 13.3 independent, competency-based, professional boards to govern the new entities, and make investment decisions about infrastructure delivery;
- 13.4 mechanisms to provide for strong community and consumer voice in relation to the new entities and recognise the rights and interests of iwi/Māori; and
- 13.5 strengthened system oversight and stewardship, including through a Government Policy Statement that provides for national strategic direction to the Water Services Entities.

- 14 At that time, it was also noted that:

- 14.1 the full benefits of reform cannot be achieved by scale alone, and the ability of new Water Services Entities to realise any efficiencies will depend on several other factors, including the establishment of an economic regulation regime and mechanisms for protecting consumers;
- 14.2 in December 2020, Cabinet noted that economic regulation plays a critical role in protecting consumer interests and providing high-quality performance information, and agreed in principle that:

- 14.2.1 an economic regulation regime will be employed on a reformed New Zealand three waters sector; and
  - 14.2.2 an information disclosure regime that allows the performance of entities to be compared will apply, at a minimum, to a substantively reformed three waters sector [CAB-20-MIN-0521.01 refers];
  - 14.3 effective economic regulation and consumer protection mechanisms are an integral part of the overall reform package, but further work needs to be undertaken to explore and consult on the options for an appropriate economic regulation and consumer protection regime;
  - 14.4 responsibilities relating to economic regulation and consumer protection fall within the portfolio of the Minister of Commerce and Consumer Affairs, and the preparation of advice would be led by the Ministry of Business, Innovation and Employment (MBIE);
  - 14.5 an indicative timetable for progressing this component of the reform package has been prepared, and includes:
    - 14.5.1 issuing a discussion paper in October 2021 and seeking Cabinet decisions in April 2022;
  - 14.6 introducing legislation in late 2022, with anticipated enactment in mid-to-late 2023; and
  - 14.7 implementation of the first regulatory cycle from 1 July 2024, to align with the 'go live' date of the new Water Services Entities.
- 15 This Cabinet paper seeks approval to release for public consultation a discussion paper that explores these issues in more detail and seeks feedback on potential economic regulation and consumer protection regulation of water services.

### **Proposal to consult on how economic regulation could apply to Water Services Entities**

- 16 The Government's Three Waters Reform programme has identified a number of issues relating to the natural monopoly characteristics of water services:
- 16.1 quality of service that does not reflect consumer demands, particularly in areas related to service quality, environmental outcomes, public health, and the impacts of climate change;
  - 16.2 long-term underinvestment in three waters infrastructure, including under-funding of asset maintenance and renewal, and issues associated with depreciation provisions from three waters infrastructure being used for other purposes;
  - 16.3 inefficient pricing practices and a lack of transparency around the costs and performance of delivering three waters services; and

- 16.4 concerns about the capability and capacity of the three waters sector to be able to deal with increasing Government and community expectations associated with three waters infrastructure.

*Economic regulation should be applied to some three waters services suppliers to drive better consumer outcomes*

- 17 The issues set out in paragraph 14 above raise significant questions about whether three waters infrastructure is being operated in line with the best long-term interests of consumers. Other developed countries have implemented economic regulation to help resolve these issues e.g. Australia, United Kingdom.
- 18 While the scale of the four Water Services Entities should significantly increase their likelihood of delivering good outcomes for consumers, there is a risk that the entities become less responsive to consumer needs as a result of their increased scale. The Government has proposed a range of governance and consumer voice protections to mitigate this risk; however, economic regulation would provide a strong and complementary regulatory backstop.
- 19 Given the Government's strong focus on the long term affordability and quality of water services, I believe there is a strong case for economic regulation of the three waters sector. The discussion paper is seeking to test this view, including the Government's previous in-principle decisions, with stakeholders.
- 20 In terms of the boundaries of the economic regulatory regime, my view is that it is highly desirable that drinking water and wastewater networks be economically regulated, given the physical and economic characteristics of these networks. Evidence and analysis that has been undertaken by the Department of Internal Affairs shows that there is significant scope for catch-up and ongoing efficiency gains in the New Zealand water sector.
- 21 I also hold a preliminary view that stormwater networks should be economically regulated, but recognise that the benefits and costs of doing so are more nuanced than they are for drinking water and wastewater networks.
- 22 In addition, my view is that economic regulation should be applied to the new Water Services Entities, but not to community schemes, private schemes, or self-suppliers. This is largely due to the compliance costs involved, and the need to ensure that any regulation delivers benefits to the small number of consumers of these types of entities that exceed the costs of regulation.

*I am proposing to apply information disclosure and price-quality regulation to Water Services Entities*

- 23 The discussion paper seeks feedback on what form of economic regulation should be applied to regulated suppliers, including whether information disclosure and price-quality regulation should be applied to the three waters sector.

- 24 My view is that information disclosure should apply to Water Services Entities at a minimum, given:
- 24.1 the Government's reform objectives and the strong natural monopoly characteristics in the three waters sector; and
  - 24.2 issues in the sector around poor quality information, large infrastructure deficit, immature asset management, and the significant need to realise operating and capital efficiencies.
- 25 Information disclosure would give consumers and other interested parties visibility over the performance of regulated suppliers. It would also allow regulatory and policy agencies to assess whether the regulation is meeting key objectives, and assist the regulator in setting price-quality paths.
- 26 My preliminary view is that Water Services Entities should also be subject to price-quality regulation. Among other reasons, this because the Water Services Entities will have:
- 26.1 natural monopoly characteristics and could therefore have the ability to charge prices that are higher, or provide services that are of a lower quality and less efficient, than would be expected in a workably competitive market; and
  - 26.2 complex and novel governance arrangements that are likely to result in some stakeholders questioning the incentives of Water Services Entities to be responsive to consumer demands, despite the existing protections the Government has put in place. These protections include consumer forums, and requirements on the Water Services Entities to engage with communities on their strategic direction, investment planning, pricing and charging.

*Options for applying price-quality regulation to Water Services Entities*

- 27 As explained in the discussion paper, price-quality regulation in New Zealand has tended to employ one of two forms:
- 27.1 individual price-quality regulation for sectors with a few large suppliers; and
  - 27.2 low-cost generic or 'default' price-quality regulation in sectors with a larger number of suppliers.
- 28 My view is that individual price-quality regulation is the most appropriate form of price-quality regulation. This is because of the strong objectives that the Government has around service quality, efficiency and affordability, and the reformed three waters sector comprising four large Water Services Entities.
- 29 A high degree of tailoring is also likely to be required to reflect that the Water Services Entities do not have a profit motive, and are not able to pay distributions or dividends to owners. In particular, the economic regulator is likely to need to have a strong focus on setting a hard budget constraint to

avoid cash that is unable to exit the entity being used inefficiently. These factors mean that the approach of the economic regulator will need to be quite different from what occurs in the electricity, gas, airports, and telecommunications sectors.

- 30 The discussion paper also seeks feedback on options for implementing a price-quality path.

*I am proposing to consult on whether the regulator should be able to recommend the Minister apply economic regulation to other suppliers*

- 31 I consider that it is important that any economic regulation regime for water services be flexible enough to respond to changes in the sector. To achieve this I propose to consult on whether:

31.1 the Minister of Commerce and Consumer Affairs should be able to reduce or extend the application of regulation on advice from the economic regulator; and

31.2 what factors the regulator should have to include in its advice to the Minister.

### **Economic regulation for water services would require a legislative framework**

- 32 One key component of the legislative framework for any economic regulation regime for water infrastructure will be the statutory purpose of an economic regulation regime.

33 My preliminary position is that the purpose statement for economic regulation that applies to the water sector should be similar to the purpose statements in existing economic regulation legislation, such as Part 4 of the Commerce Act 1986 and Part 6 of the Telecommunications Act 2001. These purpose statements are well understood by industry and regulatory stakeholders in New Zealand, and the purpose of Part 4 of the Commerce Act has been through numerous judicial and merits review processes.

34 I propose to consult on whether a similar purpose statement should be included in any economic regulation regime for water. However, I am also seeking stakeholder views as to whether other legislative objectives, such as Te Mana o te Wai (the vital importance of water), water security and resilience to climate change and natural hazards, should be considered.

35 I propose to seek feedback on my preliminary view that standalone sector-specific three waters economic regulation legislation, rather than Part 4 of the Commerce Act, is the appropriate legislative vehicle due to the unique characteristics of water services and aspects of the broader reform.

36 In particular, the absence of a profit motive and the prohibition on dividend payments means that the approach to economic regulation will be substantively different to that taken in other economically regulated sectors (e.g. electricity, gas, airports, and telecommunications) even if the statutory purpose and outcomes sought are similar.



*Input methodologies could underpin economic regulation of the three waters sector*

- 37 To provide greater certainty to regulated suppliers and other stakeholders, New Zealand's economic regulation regimes typically require the regulator to set rules, requirements and processes underpinning economic regulation, known as input methodologies. These typically cover issues such as the valuation of assets, cost of capital, allocation of common costs, and treatment of taxation, and must be applied by the regulator in making its determinations on how information disclosure and price-quality will apply.
- 38 My preliminary position is that the economic regulator for the three waters sector should be obligated to develop and publish input methodologies in advance of making determinations that implement information disclosure and price-quality regulation.
- 39 I also propose to consult on what accountability mechanisms could be included in any regulatory framework. My preliminary view is that the economic regulator's decisions on input methodologies and price-quality regulation for water services should be subject to judicial reviews and merits appeal. However, I do not consider it would be useful for the regulator's determinations that implement procedural processes such as information disclosure regulation to be subject to merits appeal.

*Pricing issues and the transition to economic regulation*

- 40 Consistent with the Minister of Local Government's companion Cabinet paper *Further decisions on the three waters reforms*, I intend to consult on whether the economic regulator should have a role in setting pricing methodologies that specify the structure of prices faced by consumers.
- 41 I also intend to consult on how the transition to economic regulation should be managed, particularly whether there is a need for some form of transitional price-quality path.

*Compliance and enforcement*

- 42 I also propose to consult on what compliance and enforcement tools the regulatory regime should include in order to achieve its purpose. My preliminary view is that this could include education activities, comparative benchmarking of supplier performance, warning letters, information disclosure and price-quality path obligations, as well as a general information-gathering power.

**Proposal to consult on consumer protection requirements in the three waters sector**

- 43 In my view, additional consumer protections over and above what is available in general consumer protection legislation are required for the three waters sector. New legislation could cover some or all of the following issues:
- 43.1 the level of service consumers can expect when they contact a water supplier with a query or complaint;

- 43.2 expectations for the level of communication with consumers on planned and unplanned network outages;
- 43.3 requirements around transparency of billing practices;
- 43.4 effective redress where the quality of service does not meet appropriate standards;
- 43.5 the conditions for the provision of water services to customers experiencing a form of hardship or other vulnerability; and
- 43.6 requirements for consulting and engaging with consumers.

*Options for including consumer protection requirements in three waters legislation*

- 44 I am seeking feedback on whether any new regime should require suppliers to comply with minimum service level requirements that would be prescribed via codes. Providing such codes are developed with strong input from consumers, and complemented by an enforcement regime, they are likely to lead to significant short and medium term improvements in consumer welfare. This is particularly the case given the variable service quality that exists currently across currently, and which results in inequities in service standards between communities.
- 45 I am also proposing to consult on whether consumer protection regulation should apply to Water Services Entities only, or also include community and private schemes.

**There are two main options for how consumers should be given a strong voice**

- 46 One option to strengthen consumer voice in the three waters system would be to provide the economic regulator with a positive legislative obligation to incentivise high quality consumer engagement. Another option would be to establish an expert body to advocate on behalf of consumers by engaging with regulators and Water Services Entities on technical issues. There are two options for the establishment of the expert advocacy body:
  - 46.1 create a bespoke advocacy group that could build up expertise and develop a reputation as an expert advocate in the water sector; or
  - 46.2 extend the mandate of an existing advocacy body, such as the Consumer Advocacy Council (CAC) in the electricity sector.
- 47 While the CAC is still in its establishment phase, my preliminary view is that expert advocacy in the water sector would best be achieved via an extension of the jurisdiction of the CAC. I propose to seek feedback on this view, as well as the options to incentivise engagement or set up an expert body.

**Proposal to consult on consumer disputes resolution**

- 48 To ensure that consumers have the ability to raise disputes regarding the provision of water services, I propose to consult on my preliminary view that

consumers should have access to a dispute resolution scheme for the three waters sector. These types of schemes could be operated by Utilities Dispute Limited or another disputes resolution provider such as Fairway Resolution Limited. I note that these proposals would likely require modifications to the backstop dispute resolution scheme currently contained in the Water Services Bill.

- 49 At a basic level, the disputes subject to a resolution scheme should be those between customers and water service providers. This could cover a wide range of issues such as billing disputes, as well as complaints about water restrictions, access to land, and actions of staff. Disputes that would fall outside the remit of a dispute resolution scheme could include those that are better dealt with through judicial processes or disputes which are subject to other channels of resolution. For example, disputes between a local authority and a water services entity relating to investment plans or residual disinfection (e.g. chlorination), would be better dealt with through an alternative dispute resolution mechanism.
- 50 This could be achieved through either industry-initiated schemes, or mandatory schemes. My preliminary view is that a mandatory consumer dispute resolution scheme could remove the issue of some consumers not having access to appropriate dispute resolution mechanisms. I propose to seek views on whether this should be achieved through a new scheme or by expanding the mandate of an existing scheme or schemes.

**Proposal to consult on who the economic and consumer protection regulator should be**

- 51 The discussion paper sets out the following criteria for evaluating options as to who the economic and consumer protection regulator for the three waters sector should be:
- 51.1 operate at arms-length from Government in making determinations and taking enforcement action;
  - 51.2 expertise and credibility implementing economic regulation and consumer protection regimes;
  - 51.3 appropriate knowledge of the three waters sector;
  - 51.4 improvements to the regulatory system can be delivered quickly;
  - 51.5 enhances and realises synergies from New Zealand's broader economic regulation and consumer protection eco-systems; and
  - 51.6 overall value for money.
- 52 In my view, the assessment criteria above suggest there are three potential options for the economic and consumer protection regulator:

- 52.1 Taumata Arowai – the new drinking water regulator that will also have functions regulating the environmental impacts of wastewater and stormwater networks;
  - 52.2 the Commerce Commission – New Zealand’s competition, consumer and economic regulation agency; or
  - 52.3 a new water economic regulation and consumer protection authority – this would involve the passage of legislation to establish a new independent Crown entity.
- 53 The main advantage of choosing Taumata Arowai as regulator is that it would allow water sector expertise and decision making to be centralised in one agency. However, Taumata Arowai does not have economic regulation and consumer protection expertise and does not have the degree of independence from Government that international best practice suggests is essential for effectively implementing these types of regulation. Furthermore, there are potential tensions between quality regulation and economic regulation that might be better externalised rather than internalised within the one regulator. Typically, there are separate water quality and economic regulators in jurisdictions that have undertaken similar types of reform.
- 54 Broadening the Commerce Commission’s mandate to include the three waters sector would allow the deep expertise of the Commerce Commission to be applied to the water sector in a way that realises synergies, and delivers value for money through economies of scope and scale. While the Commerce Commission does not currently have deep expertise in the water sector, it has a strong track record of implementing new economic regulation regimes like those applying to the dairy and fuel sectors, and new regime that is proposed for the retail payments sector. If desired, a dedicated water sector focus could be brought to the Commerce Commission via the appointment of a ‘Water Commissioner’ that could operate in a similar way to the current Telecommunications Commissioner.
- 55 The discussion paper also includes the option of a new standalone water economic regulation authority. This option could potentially preserve a degree of policy space to consider the best model for the New Zealand water sector in future. Based on the initial analysis carried out by MBIE officials, there appear to be significant drawbacks from establishing a new standalone water authority. Establishing a new authority would take considerable time to commence operation, involve significant additional cost, and would likely see New Zealand’s scarce economic regulation and consumer protection expertise spread across multiple agencies in a way that prevents synergies being realised.
- 56 In particular, the exit of this scarce expertise from the Commerce Commission would carry significant risks to the stability and quality of the economic regulation regimes applying to the electricity, gas, airports, dairy and telecommunications sectors. In my view, this kind of dispersion of expertise would be detrimental to the long-term interests of consumers in these sectors.

- 57 I propose to consult on who is the most appropriate body to be the economic and consumer protection regulator for the three waters sector.

**Options for funding the economic regulation and consumer protection regime for three waters**

- 58 The discussion paper explains that fees and levies are often suited to situations where there are significant 'private' benefits to individuals or groups rather than society at large. If there are significant 'public' benefits, then funding from general taxation is likely to be a more appropriate funding tool.
- 59 The ability to identify and cost effectively charge the ultimate beneficiaries of the economic regulation and consumer protection regime suggests that the costs of the regime should be met from charges on consumers. Because the costs of the regime will be levied on regulated three waters suppliers as a proxy for consumers, levies are more appropriate than fees. I propose to seek feedback on this preliminary view.
- 60 In terms of the consumer protection regime, levies would be used to cover the cost of developing and maintaining a minimum service level code. However, the costs involved in developing and operating a consumer disputes resolution scheme would likely be met by regulated suppliers.
- 61 I propose to consult on what level of consultation is required when setting and collecting levies.

**Proposal to consult on how economic and consumer protection regulation should interface with other aspects of three waters regulation and governance**

- 62 Coordination across drinking water, environmental, economic, and consumer protection regulation will be essential for delivering high quality outcomes. This will involve the economic and consumer protection regulator developing close working relationships with the consumer disputes resolution schemes, Taumata Arowai, regional councils, and Water Services Entities.
- 63 Tools such as a 'regulatory charter' and a corresponding 'council of water regulators' are likely to be required to ensure effective stewardship of the three waters regulatory system. A report back by the Minister of Local Government to Cabinet on these longer term stewardship arrangements is due in September 2024.
- 64 In the short-term, I propose to consult on whether it would be useful to include a legislative provision that allows the economic and consumer protection regulator to share information with, and receive information from, other bodies that have regulatory functions pertaining to the three waters sector. The aim of this would be to achieve better use of information and avoid multiple regulators collecting the same or similar information.

**Financial Implications**

- 65 There are no financial implications from the release of the attached discussion paper.

- 66 Should Government decide to establish economic regulation and consumer protection legislation for three waters, there are likely to be significant implementation costs. The extent of these costs will depend on the detailed design of the regime and the level of third party funding. If Cabinet were to agree that the regime be levy funded when final policy decisions are sought, a separate public consultation process on the quantum of levy funding would be undertaken.
- 67 As outlined in the Minister of Local Government's Cabinet paper *Further decisions on the three waters reforms (Paper 5)*, the transition to economic regulation would require \$1.5m in 2022/23 and \$2.5m in 2023/24 from the *Transforming Three Waters Service Delivery for New Zealanders: Transition and Implementation* tagged contingency established as part of the Budget 2021 process.

### Legislative Implications

- 68 The release of the discussion paper does not raise any legislative implications. A Bill would be required to establish economic regulation and consumer protection for three waters, should the Government decide to do so.
- 69 *An Economic and Consumer Protection Regulation of Water Services Bill*

Confidential advice to Government

### Impact Analysis

#### Regulatory Impact Statement

- 70 The Regulatory Impact Analysis panel at the Ministry of Business, Innovation and Employment has reviewed and confirmed that the discussion paper can substitute for an interim Regulatory Impact Statement. It will lead to effective consultation and support the eventual development of a quality Regulatory Impact Statement.

#### Climate Implications of Policy Assessment

- 71 The Climate Implications of Policy Assessment (CIPA) team has been consulted and confirms that the CIPA requirements do not apply to this proposal as there is no emissions impact at this stage. The CIPA team will work with Ministry of Business, Innovation and Employment officials to assess the emissions impact of proposals as they are advanced, as appropriate.

#### Population Implications

- 72 I do not expect there to be significant implications on specific population groups as a result of the discussion paper.

#### Human Rights

- 73 The options included in the discussion paper are consistent with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.

## Consultation

- 74 The following agencies have been consulted: the Commerce Commission, Taumata Arowai, Ministry for the Environment, Ministry for Primary Industries, Ministry for Housing and Urban Development, Ministry of Health, the Treasury, Department of Internal Affairs, Te Puni Kōkiri, Ministry of Transport, Infrastructure Commission, and the Te Kawa Mataaho.
- 75 The Department of Prime Minister and Cabinet (Policy Advisory Group) has been informed.
- 76 My officials have also consulted a number of interested three waters industry stakeholders, as well as disputes resolution organisations. In addition, engagement has been undertaken with the Three Waters Steering Committee comprising Local Government New Zealand, Taituarā (formerly the Society of Local Government Managers), together with a range of local authority mayors and chief executives.

## Communications

- 77 I propose to release the discussion paper in mid-October 2021 for an eight week public consultation, and to issue a media statement on its release (following consultation with the Minister of Local Government).
- 78 I expect there to be some divergent views in response to the consultation. Some stakeholders may view additional regulation as unnecessarily burdensome in an industry that is already undergoing significant legislative reform. Some stakeholders may have views on the scope of any new regime, e.g. which services and entities it should apply to.
- 79 I also expect to hear from industry stakeholders on who the economic and consumer protection regulator for three waters should be. Some individuals may object to the regime being funded via levies.

## Proactive Release

- 80 I intend to proactively release a copy of this paper, subject to any necessary redactions, within 30 business days of decisions being confirmed by Cabinet.

## Recommendations

The Minister of Commerce and Consumer Affairs recommends that the Committee:

- 1 **note** that economic and consumer protection regulation is likely to play a critical role in achieving the Government's Three Waters Reform objectives as previously noted by Cabinet [CAB-21-MIN-0226 refers];
- 2 **note** that the attached discussion paper seeks feedback on:
  - 2.1 whether New Zealand needs economic regulation of water services or entities and who this regulation should apply to;

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- 2.2 how an economic regulation regime for three waters could be designed, including the form and key features of this regime;
  - 2.3 whether New Zealand needs additional consumer protections for three waters and how any regime could be designed;
  - 2.4 how consumer disputes should be resolved in the three waters sector;
  - 2.5 who the economic and consumer protection regulator(s) should be;
  - 2.6 how economic and consumer protection regulation should be funded;  
and
  - 2.7 how economic and consumer protection regulation should interface with other aspects of three waters regulation and governance.
- 3 **agree** to the release of the discussion paper titled *Economic regulation and consumer protection for three waters services in New Zealand*, subject to any amendments consistent with the policy direction in this paper, in October 2021 for an eight week public consultation;
  - 4 **invite** the Minister of Commerce and Consumer Affairs (in consultation with the Minister of Local Government) to report back to the Cabinet Economic Development Committee on the outcome of the consultation in April 2022;
  - 5 **note** that the Minister of Commerce and Consumer Affairs (in consultation with the Minister of Local Government) will issue a media statement on the release of the discussion paper;
  - 6 **agree** that the Minister of Commerce and Consumer Affairs proactively release a copy of this paper within 30 working days of decisions being confirmed by Cabinet.

Authorised for lodgement

Hon Dr David Clark

Minister of Commerce and Consumer Affairs



**Appendix 1: Economic and consumer protection regulation of three waters infrastructure in New Zealand – summary document**

**Appendix 2: Economic regulation and consumer protection for three waters services in New Zealand – discussion paper**