

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

Your name and organisation

Name	
Organisation (if applicable)	Auckland Council

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 believe there is a strong case for economic regulation of three waters in New Zealand. However, we also strongly believe that the regulator must be fit-for-purpose, acknowledge the differences between the delivery of three waters services and other regulated services (such as electricity), and ensure that all the wellbeings that make up economics (social, cultural, environmental, and financial) are considered and that the <i>economic</i> regulator does not operate as a de facto <i>financial</i> regulator. Effect must also be given to Te Tiriti o Waitangi, Te Mana/Mauri o te Wai, and the role of mana whenua in their exercise of Kaitiakitanga.</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>While the council understands this discussion document relates to economic regulation of Three Waters, it is important to contextualise our comments around stormwater. Auckland Council has real concerns about the way the elements of the reform, including stand-alone entities, an environmental regulator, an economic regulator, community aspirations as articulated by local government, will practically work together to provide better outcomes than occur today, particularly in the Auckland context.</p> <p>In relation to stormwater, it plays a key part in land-use and water management across catchments. Stormwater solutions speak directly to environmental, cultural and social wellbeings of communities. Solutions that enhance the wellbeings through, for example, daylighting of water courses or construction of wetlands, will better give effect to Te Mana o te Wai than historical hard-engineering solutions.</p> <p>One of the key roles of local government is to articulate and deliver on community aspirations through our strategies, policies, plans and investments. Even if the Three Waters are removed to a stand-alone entity, local government still need to deliver on community aspirations. How will an economic regulator consider the importance of outcomes that are greater than just the minimum engineering or cost option or purely environmental quality when they make decisions on price and investment? A financial/cost-weighted consideration of Three Waters, and particularly stormwater, is unlikely to give effect to Te Mana o te Wai or the four wellbeings. This goes to the heart of Auckland Council’s concerns around the dilution of democratic accountability in the proposed Water Services Entity governance</p>

structure, reservations about the transfer of stormwater to the new entities and the implications of economic regulation.

We can understand the case to regulate stormwater along with drinking water and wastewater given the basis of the Government's reform to combine Three Waters. We note that this will be somewhat unique in the global sense. It would be difficult in practice for the same entity to provide both regulated and unregulated services and we consider that this likely means that only certain parts of the stormwater networks will be regulated whereas other parts (streams, fields, natural wetlands, drainage gullies along roads) will be unregulated. This creates some additional complexity but does not preclude a regulatory regime.

Paragraph 20 of the discussion paper notes that economic regulation and the government have aligned objectives in terms of outcomes for 'consumers' and these are all related to price, quality, efficiency and holding to account through comparable performance metrics. This seems to ignore the government's much broader reform objectives and amenity that stormwater investment provides. Because of this, it is hard to see how stormwater could be regulated in the same way as water and wastewater.

Further, regulating stormwater may stop investment in aspects of the network not owned/operated/or maintained by the entity but which more effectively/efficiently achieve an outcome. As described in the discussion paper, it is unclear how regulation would apply to parts of the stormwater network that are not operated by the newly created entities.

The discussion paper (and current DIA performance measures) also puts stormwater very much into a conveyance/flood prevention paradigm and this is not reflective of how Auckland Council manages stormwater in our current wellbeing paradigm. The danger here is that regulation could mean a reinforcement of the conveyance/flood prevention view, but without overall wellbeing considered.

There will also be challenges of defining the "customer" for stormwater that quality standards are being set. This could create unintended consequences.

3 *What are your views on whether the four statutory Water Services Entities should be economically regulated?*

Given the strong case for economic regulation in general and regardless of the number of entities, it is sensible that the four statutory water service entities should be regulated as they will make up the bulk of the three waters service provision in New Zealand.

4 *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.*

While, in theory, regulating these entities could be net beneficial, it is likely that the costs (administrative and otherwise) of complying with the regulatory authority would be greater than the benefit to be gained. It is our understanding that, for most of these schemes, the owner(s) of the provider and the customers are one and the same. Consequently, there is already a strong incentive for these schemes to be quite responsive to the needs of the consumers. More broadly, the costs to both the schemes and the regulator to regulate these disparate providers is likely to be unjustified by the benefit that could be realised.

5 *What are your views on whether the Water Services Entities should be subject to information disclosure regulation?*

	<p>Water services entities should be subject to information disclosure regulation. In the absence of a profit motive or shareholders, this would encourage:</p> <ul style="list-style-type: none"> • transparency, • competition between providers, and • the keeping of good data. <p>However, information disclosure should be structured in a way that is sensible and not overly burdensome to the entities. The regulator should also work with the entities to determine the best and most efficient way to collect useful data.</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>In general, we favour price-quality regulation in addition to information disclosure regulation. It is unlikely for information disclosure regulation to generate the full range of potential benefits of regulation per se. But it will be very important that the price-quality regulation regime not be overly prescriptive or narrow in scope. That is, “price” regulation cannot only mean the lowest possible price for the minimum currently acceptable quality of service. Rather, price regulation must take into account future growth, investments required, etc.</p> <p>It is likely that a price-quality regime required by a regulator would be helpful to manage the price consumers pay and the quality of service they receive, provided it is set up in concert with the entities and not in a vacuum.</p> <p>The nature of the industry likely means that at the start of the regulatory regime, the regulator will not have any additional information or expertise compared to the entities. It is unclear how a regulator in this position would create credible price-quality paths for the entities to follow. Thus, it may be necessary to have a less prescriptive approach to economic regulation, particularly at the beginning of the regime.</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>It is likely untenable to have a “one-size-fits-all” approach to price-quality regulation. Given the enormously different levels of proposed aggregation (from 4 entities merging to become 1 entity at the top of Te Ika-a-Māui to roughly 20 entities merging in each of the other areas), it would be foolish to expect the new entities to be on a level playing field, particularly near the beginning of the regulatory regime. They will also be facing different topologies, population densities, and all of the other things that make providing three waters services unique in different areas.</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 feel that the economic regulation regime should be implemented gradually from 2024 to 2027. This is purely for practical purposes as the newly formed entities will not have the data to inform a useful price-quality path, nor would the economic regulator or the Government have the necessary information (e.g., the data from the new entities) and/or insights to set a</p>

price-quality path during the very early period of amalgamation.

However, that does not mean that guidance and coaching will not be of use at this point. Like all transitions, we would expect there to be some difficulties both planned for and otherwise. The regulator can help point the new entities in the right direction without setting an under-informed or overly prescriptive price-quality path.

9

- A) *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?*
- B) *What factors do you consider the economic regulator should include in their advice to the Minister?*

It is sensible that the Minister of Commerce and Consumer Affairs should be able to adjust the application of regulation going forward. Not to do so would be to expect everything to be perfect from the beginning with no straightforward manner to adjust the regulatory regime in response to understanding it better and who it should or should not apply to.

However, it would be troublesome to have the scope of regulation able to be changed unsystematically. It is necessary to have a high degree of certainty in the regulatory regime. Changes in regulation should be restricted to the review periods (whether they be three years, five years, or some other duration) to minimize costs and maximise certainty.

When providing advice to the Minister, the regulator should consider all relevant facts. In particular whether regulation has been (or appears to be) successful, the degree to which the costs of regulation are outweighed by the benefits, and any other pertinent issues that determine whether the state of the regulatory regime is positively impacting consumers of three waters services.

10

- A) *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 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?*

While it would be convenient to use existing legislation, it would be unfortunate to saddle a once-in-a-lifetime opportunity to reform the three waters system with an inferior regulatory regime. It is likely that the Telecommunications Act and Part 4 of the Commerce Act are not *totally* fit-for-purpose to regulate the three waters industry. In particular, three waters providers are proposed to be non-profit, publicly-owned entities which naturally have different goals than a for-profit monopoly provider of other goods and services (such as electricity, gas, or certain airport services). However, in theory, as long as the existing legislation can be adequately used for three waters regulation, there should be no problem. In practice, however, if there is any reason to suspect that existing legislation will be inadequate, that will need to be remedied.

Given the fact that none of the proposed entities will have a profit motive or shareholders, it is likely unnecessary to amend any rules to limit their ability to extract excessive profits. It could, however, be useful to put this into legislation to avoid any profit motives going forward and ensure that three waters services do not become a for-profit industry in New Zealand.

Local government is required by the local government act to promote the social, economic, environmental, and cultural well-being of communities in the present and for the future. Water (water, wastewater and stormwater) infrastructure has a hugely positive impact on public health and financial wellbeing but has historically and continues to have a negative impact on environmental and cultural wellbeing. We must ensure that the Economic regulatory process will assess these benefits and not become a de facto financial regulator.

To this end, we recommend an assessment methodology be produced by the regulator that Water Services Entities must use to assess the costs and benefits of each investment. Existing methodologies exist and are used by (at least some of) the current entities. These could be adopted/improved/standardised for the newly formed entities to use.

Finally, everything that is done by government must be in accordance with the Treaty of Waitangi. The economic regulation of three waters is no different.

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?*

A regulatory regime particularly suited to the three waters sector is necessary to properly regulate three waters. Using suboptimal, generic legislation could lead to suboptimal regulation. Given the scale and scope of three waters reform, why use an insufficient legislative structure?

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?*

The optimal regulatory period is one that is lined up with the planning cycles of the newly created entities. Whether that is five years has yet to be determined. Five years seems like a reasonable length of time for a regulatory cycle once the new entities are established, though the interim periods should likely be shorter.

13 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?*
 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?*

It is always preferable when a regulator publishes the key rules outlining their goals before trying to implement them. Knowing the "rules of the game" is essential for being able to play the game properly. However, we acknowledge that there is the possibility of being overly

prescriptive and creating excessive cost. It will be a necessary exercise for the regulator and the newly created entities to determine the level of detail required to meet the needs of regulation without being onerous and creating excess cost.

Price shocks are undesirable from a consumer perspective as they create difficulty in budgeting and create unplanned stress. However, they may be unavoidable in some cases as the newly created three waters industry adjusts. The regulator should act in a validation capacity to verify that these costs are justified and reflect the true cost of the provision of water services.

Increasing efficiencies is the primary benefit of a regulator and the main source of benefits of three waters reform according to the WICS analysis. But the regulator should not set efficiency challenges in a vacuum, in the absence of consultation with the water providing entities. It is likely that the entities will have a much more comprehensive view of water operations and areas where efficiencies are to be gained. By working together, the entities and the regulator can work to best to deliver efficiencies to consumers.

- 14
- A) *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?*
 - B) *Who do you consider should have primary responsibility for determining the structure of three waters prices:*
 - a) *The Water Services Entity, following engagement with their governance group, communities, and consumers?*
 - b) *The economic regulator?*
 - c) *The Government or Ministers?*
 - C) *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?*

Prices in the three waters industry need to meet several criteria. They need to be simple, transparent, fair, and reflect the cost of providing the service. As water is a human right, it is also necessary that pricing reflect that there is a minimum amount of water that should be affordable to all households. There is likely no place for parliament to directly control or regulate prices in the three waters industry. Pricing should not be able to be politically motivated, and policy goals of parliament can be implemented in other ways.

The structure of the prices should be determined by cooperation between the economic regulator and the water services entity. The entities are best placed to understand their cost structure and the needs of their customers. The regulator, along with the entities, should set attainable pricing goals and the regulator's job is to then hold entities to account. The cooperation of the entities and the regulator is the primary mechanism to attaining benefits from regulation and the price structure is one of the avenues for this.

15

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?

Merits appeals should be available. While they can appear to be costly at times, they are

	<p>necessary to ensure optimal outcomes occur.</p> <p>This process helps to improve the quality and consistency of decisions. The Government and Water sector ambitions are aligned on this point and naturally this ambition should also extend to the governance of any regulator assisting the water sector to achieve its objectives.</p> <p>Arguments against merits review processes include prolonged appeals and associated costs. These perspectives often ignore the real net benefits of obtaining optimal decisions. This is due to value of societal, environmental, and financial impacts of critical regulatory decisions. From a purely financial perspective the potential impact on estimated expenditure of more than \$5 billion per year for the next 30 to 40 years is clearly very high. Continuously improving the quality of regulation, and the enhancement of this through the availability of merit review must be an essential component of high-quality regulation.</p>
16	<p><i>Do you broadly agree that with the compliance and enforcement tools? Are any additional tools required?</i></p>
	<p>Basic human behaviour shows that people respond to incentives. The compliance and enforcement tools proposed act as incentives for compliance.</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>In theory, it should not matter where in government the economic regulator sits. In practice, however, we feel that it will matter a great deal.</p> <p>We suggest consumer protection and economic regulation should be performed by the same entity which could be the Commerce Commission. However, they would need to develop adequate specialist understanding, not only of regulation, but of the three waters industry. They should not treat three waters the same as the other things they regulate. Given the nature of three waters, its non-profit structure, and water's status as more than just another commodity, the Commerce Commission is probably not currently set up to regulate three waters properly, so will require additional specialist competencies to regulate three waters.</p> <p>Another option would be for Taumata Arowai to be both the water quality regulator and the economic regulator. While we could support this in theory, the fact that Taumata Arowai is not independent from the crown is a point against them being the economic regulator. Independence is necessary for an economic regulator to operate satisfactorily.</p> <p>Finally, the economic regulator could be a newly formed bespoke organisation exclusively set up to economically regulate three waters. The drawback to this option is that we would be starting from scratch and potentially competing with the Commerce Commission for some of the same skills.</p> <p>While it would be quite convenient for Taumata Arowai to be both the quality and economic regulator, it could create conflicts of interest between water quality and service quality/price/etc. This combined with the lack of independence from the crown makes it unviable.</p> <p>Thus, on balance, we suggest the economic regulator should be an independent organisation (like WICS in Scotland) with specialist three waters capability or the Commerce Commission (with the addition of the necessary specialist competencies), with a slight preference towards 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>

	In theory, it should not matter how the regulation regime is funded, as it will ultimately be passed through to consumers. Because levies are straightforward and transparent, they are likely the most appropriate funding mechanism.
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>
	The levy regime should require the regulator to consult on and collect levy funding within the total amount determined by the Minister.
20	<i>Are there any other levy design features that should be considered?</i>
	The determination of the levy should be a transparent process so that consumers can determine where and what they are ultimately paying for.
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>Additional consumer protections are warranted for the three waters sector.</p> <p>The consumer protection regime should contain a bespoke purpose statement rather than relying on the Consumer Guarantees Act and Fair Trading Act. The four objectives of the consumer protection regime described in the discussion are reasonable on their face. However, there are a few things that are unclear.</p> <p>First, it is unclear what qualities of water service would not be regulated by public health, environmental or economic regulators. No examples are given, and it is difficult to see what these might be. Second, it is unclear what is meant by providing consumers a strong voice in how water services are delivered. It is unlikely that this means that consumers should have a say in the specific materials and engineering solutions, as that would be absurd. However, it is not clear what is meant. The other suggestions are both clear and reasonable.</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>
	Setting minimum service level requirements will be a critical to economic regulation. However, these should not be set in a vacuum. It should also include the water service providers and local governments, as they will have critical insights into what is possible and what future growth plans there are.
23	<i>What are your views on whether the consumer protection regulator should also be empowered to issue guidance alongside a code?</i>
	The consumer protection regulator should be empowered to issue guidance. The guidance

	would be particularly important for water suppliers other than the four Water Services Entities.
24	<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>
	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.
25	<i>What are your views on whether minimum service level requirements should be able to vary across different types of consumers?</i>
	Minimum service level requirements should be able to vary across different types of consumers. While certain measures should have a universal standard (for instance, minimum acceptable drinking water quality), other measures such as response times and acceptable service interruptions should be able to vary across consumers. What is an acceptable response time in a remote area of the country may be completely unacceptable in a more urban area. Similarly, there will be consumers for which any interruption in service is gravely serious, where other types of consumers are able to withstand service outages more easily. A one-size-fits-all approach would be inadequate to address these issues.
26	<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>
	The regulatory regime should have a positive obligation to protect vulnerable consumers. In that vein, it should also define what and who a vulnerable consumer is.
27	<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>
	Given that the Treaty of Waitangi is a foundational document that guides governance in New Zealand, it should obviously be factored into the design of the consumer protection regime for three waters. The Department of Internal Affairs states that one of the goals of three waters reform is to “recognise and provide for iwi/Māori rights and interests in the Reform with a specific focus on service-delivery. It is proposed that iwi/Māori will have a greater role in the new Three Waters system, including pathways for enhanced participation by whānau and hapū as these services relate to their Treaty rights and interests.” Given this, the rights and interests of iwi/Māori should clearly be factored into the design of the consumer protection regime.
28	<i>A) 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> <i>B) Do you support any other options to manage the regulatory impost on community and private schemes?</i>
	Unlike economic regulation which is unlikely to deliver benefits to consumers of smaller-scale water suppliers, the consumer protection regime should apply to all water suppliers as it will

	be an entity set up specifically to deal with consumer protection issues in the three waters industry.
29	<i>Do you broadly agree that with the compliance and enforcement tools proposed? Are any additional tools required?</i>
	These tools are likely to be sufficient for the consumer protection regulator to be able to ensure compliance by the service providers. There could be other options that would also incentivise behaviour by the new service providers, and we are open to any that would be appropriate.
30	<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>
	Of the options presented, none of them are the perfect place for the economic and consumer protection of three waters regulator to sit. However, one of the most important aspects of the regulator is that it be independent from the crown, which eliminates Taumata Arowai as a candidate. The Commerce Commission could be a very good fit for the economic/consumer protection regulator, but currently they do not have all the expertise or institutional knowledge to appropriately regulate water. If the Commerce Commission is ultimately chosen, they would need to secure additional resources and skills to efficiently apply consumer protection in the specific context of the water sector in New Zealand.
31	<i>What are your views on whether the regulator should be required to incentivise high-quality consumer engagement?</i>
	We are not opposed to high-quality engagement between consumers and their water service providers. However, it is not clear that the economic and/or consumer protection regulator will have the expertise to determine what is high quality engagement or how to ensure it.
32	<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>
	While this sounds good in theory, it should be a function that can be fulfilled from within the existing regulators and/or service providers. It is also unclear how much interest or value such a body would generate. We would suggest a further investigation before a decision is made on this issue.
33	<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>
	It has not been determined if the expert body is needed. If it is determined that one is required, it should be placed wherever is most appropriate.
34	<i>What are your views on whether there is a need for a dedicated three waters consumer disputes resolution scheme?</i>
	We feel that this is dependent upon the number of disputes that are expected to occur and need to proceed to independent resolution. It is yet to be determined how the new entities will operate and what level of dispute there will be. It is probably more appropriate to take a "wait and see" approach with the caveat that any disputes that occur in the interim would be handled by an appropriate, analogous body.

35	<p><i>What are your views on whether these kinds of disputes should be subject to a dispute resolution schemes? Are there any other kinds of issues that a consumer dispute resolution provider should be able to adjudicate on?</i></p>
	<p>There should be a dispute resolution mechanism for any of the types of disputes mentioned in the discussion paper. If there are other disputes that occur that are more appropriately dealt with elsewhere, then they should not be subject to a specific three waters dispute resolution scheme.</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>We agree that the consumer disputes resolution scheme be mandatory.</p>
37	<p><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></p>
	<p>We do not hold a strong opinion on how/where the new mandatory scheme happens, provided it is done efficiently and appropriately.</p>
38	<p><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></p>
	<p>Like consumer protection regulation, dispute resolution schemes should apply to all water suppliers, regardless of size.</p>
39	<p><i>Do you think the consumer dispute resolution scheme should incentivise water suppliers to resolve complaints directly with consumers?</i></p>
	<p>As this is likely to be quicker and more efficient, we believe the scheme should incentivise direct resolution of complaints. However, in the event that a satisfactory resolution is unable to be agreed upon, the ability to escalate to the consumer disputes resolution scheme is necessary.</p> <p>It will be critical that the new water entities have a simple and transparent process for consumers to raise issues with service. Currently, elected members often act as a “consumer protection agency” to get traction on issues. This role and accountability will be removed under the reform and it is imperative that consumers and communities need to be well-served through regulation and the broader reform.</p>
40	<p><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></p>
	<p>Yes, vulnerable and underserved communities should be given special considerations. We do not hold a strong opinion on how this should be given effect, only that it be done appropriately and effectively.</p>
41	<p><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></p>
	<p>The costs of implementing a consumer protection regime should be funded via a levy on all suppliers that the regime applies to.</p>

42	<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>
	<p>The regulator should be the party to consult on levy funding.</p>
43	<p><i>Are there any other levy design features that should be considered?</i></p>
	<p>No</p>
<p>Implementation and regulatory stewardship</p>	
44	<p><i>Do you consider that regulatory charters and a council of water regulators arrangements will provide effective system governance? Are there other initiatives or arrangements that you consider are required?</i></p>
	<p>Regulatory charters would be a useful addition for water, particularly given the large overlaps and grey spaces around stormwater. For stormwater, as the issues are greatly non-economic, and we suggest that MBIE wouldn't be an appropriate adjudicator.</p> <p>The role regional councils play in this (and how that interacts with representation on RRGs for unitary authorities) isn't clear, especially with RMA reform changing the regulatory framework for resource and land use management.</p>
45	<p><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></p>
	<p>The economic regulator should give regard to all policy that guides the water service entities. The larger issue is the governance of the entity and how they prioritise investment to meet policy and strategic objectives (GPS, Te Mana o te Wai, Statement of Performance Expectations, customer input).</p> <p>It could be good to have an aligning tool across the entities and at least two of the regulators, but at this stage without having seen the approach for developing the GPS in the Water Reform Bill we may want to be cautious.</p>
46	<p><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></p>
	<p>The economic and consumer protection regulators should not only be allowed but <i>required</i> to share information with other regulatory agencies so long as there are no issues of privacy or confidentiality.</p>

Other comments

While the 46 discussion paper questions are useful to some extent, they do not address what we feel are the most consequential aspects of the economic regulation of three waters. They

discuss the structure of a potential regulator but do not discuss the operational details of the regulator or how it will liaise with other three waters regulators and local governments. These issues are of concern, and the following points (presented in no particular order) raise questions that need to be addressed.

- The way the three regulators will work together needs more thought, especially the role of consenting, and how economic regulation would fit with other direction that the entities will be getting via Taumata Arowai/GPS etc.
- It is vital that the connection is being made between DIA work on stormwater asset transfer and the MBIE work on potential risks and implications of stormwater economic regulation. The type of economic regulation applied to stormwater could impact the breadth of stormwater assets and functions that would best be transferred and vice versa.
- Specific engagement with local government on the proposed structure is needed before the bill is written/introduced.
- How quality is defined (particularly for stormwater) will be pivotal. Current performance measures have a narrow view of the service and the customer with key aspects of environmental performance (e.g. water quality) not touched on directly. Whilst councils will be able to regulate these through the resource management system, this reform is going to remove the wider incentives for greater emphasis on this. That is, stormwater quality seems to be currently defined by the amount of flooding and the compliance of discharge. This is a narrow view of stormwater service quality.
- The regulator needs to understand the price pressures, not just efficiency. And the regulator needs to make sure that local governments are coordinated with when it comes to growth aspirations and the extension/growth of three waters infrastructure.
- Te Mana o te Wai (or Te Mauri o te Wai in Tāmaki Makaurau) is now enshrined in legislation. This means that water cannot be treated in the same way as, say, electricity. What is the role of an economic regulator in a system which will need to sustain the mauri of water and its relationship with people?
- How will all the regulators work together? And what mechanism will exist to resolve disputes across the different regulators?
- Within councils, how will the councils' regulatory arms deal with the regulators?
- How do planning and regulatory cycles get linked? Will the planning cycles of councils and regulatory cycle of the regulators be harmonised?
- How do we ensure that the new entity trades off properly between new investment and benefits?
- The regulator should not be making policy decisions because then it's a conflict of interest.