

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

Your name and organisation

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| Name | Julie Muir |
| Organisation (if applicable) | Central Otago District Council |

Responses

| Economic regulation | |
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| 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>Central Otago District Council believes there is a case for economic regulation of three waters where monopolies exist without the ability for consumer involvement or influence in the governance arrangements.</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>Stormwater services that remain with local authorities following transition to the new entities should not be economically regulated. These services are integrated with the roading networks, and Waka Kotahi have national cost oversight of the performance of these through the allocation of subsidy to local authorities roading programs.</p> <p>Stormwater services that are included in the transition to the new entities should be economically regulated to ensure that overhead costs are not disproportionately allocated across water, wastewater, and stormwater services.</p> |
| 3 | <p><i>What are your views on whether the four statutory Water Services Entities should be economically regulated?</i></p> <p>The four statutory water entities should be economically regulated as these exist within a monopoly environment without the ability for consumer involvement or influence in the governance arrangements.</p> <p>The regulation should include oversight to ensure that sound, evidence-based lifecycle asset management planning, with a minimum of 30 year planning, is undertaken and regularly updated, and that the entities investment plans are consistent with the asset management plans.</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>The implementation of the water services bill, and the establishment of Taumata Arowai will address quality issues that may exist on these supplies. The administrative costs for economic regulation of community water supplies would add unreasonable</p> |

cost burden to these supplies. Consumers typically have ability to influence the governance of these supplies.

There may be isolated instances of a single private supplier providing water to a small community. If there were significant or potential problems in delivery of service on these supplies, then the water services bill amendment of Section 127 of the Local Government Act may provide a way forward for these consumers. It is assumed that an unaffordable cost that resulted in consumers not being able to access the service would be considered a serious risk to public health. Alternatively, the response to Question 9 in this submission could cover this situation.

For these reasons economic regulation of community supplies is considered unnecessary.

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

The water services entities are publicly owned and should be subject to information disclosure regulation. The information requirements need to be balanced to ensure perverse outcomes do not occur through the achievement of measured performance to the detriment of service attributes that are not measured. For example, quick response times, but poor-quality resolution of underlying issues resulting in multiple call outs for the same problem.

We encourage early advice to the entities of the information requirements and reporting format from the economic regulator. This will ensure that the information is captured and recorded in the required format for efficient reporting to the regulator. There is the potential for the economic regulator to add unreasonable costs to the entities which will be passed onto the consumers if reporting requirements are not prescribed in an open and transparent manner.

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What are your views on whether Water Services Entities should be subject to price-quality regulation in addition to information disclosure regulation?

Price-quality regulation is required to incentivise innovation in delivering efficient and effective quality services.

This needs to consider whole of life asset management to ensure that short-term cost savings are not applied to provide good reporting outcomes, with the consequence of poor long term operating costs and asset condition.

The consequence of poor supplier performance will be large and could have significant long term cost implications for consumers.

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What are your views on the appropriateness of applying individual price-quality regulation to the Water Services Entities?

Central Otago District Council considers that tailored, individual price quality regulation is required. Tailored individual oversight will be needed to ensure that the entities deliver on the quality improvements and cost efficiencies that were used as a basis for the government's decision to mandate three waters delivery reform.

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A) 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?

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| 9 | <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>A) We believe that economic regulation should be implemented gradually from 2024 to 2027.</p> <p>There is insufficient capacity within the industry to meet existing business demand, and the transition workload requirements, as well as meet the data demands to set up the economic regulation prior to 1 July 2024.</p> <p>B) As there will be a monopoly situation without the ability for consumer involvement or influence in the governance arrangements from 1 July 2024, a transitional price quality path is required.</p> <p>This should be set using a Government Policy Statement. The period covered by the Government Policy Statement should be no longer than three years, with the expectation that the economic regulation frameworks will be in place prior to 1 July 2027.</p> |
| | <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> |
| 10 | <p>A) The ability for the Minister of Commerce and Consumer Affairs to reduce or extend the scope of suppliers to be regulated would enable situations that may arise in the future from amalgamation of small private supplies into larger networks, or if a single private supplier was providing water to a community at excessive cost and profit to be addressed.</p> <p>B) In providing advice to the Minister regarding the need to economically regulate other suppliers, the advice should include the points in Section 90 of the discussion document, as well as consideration of the ability for consumer involvement or influence in the governance arrangements of the supplier.</p> |
| | <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 Telecommunications Act and Part 4 of the Commerce Act given their established jurisprudence and stakeholder understanding?</i></p> <p>B) <i>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?</i></p> <p>C) <i>Are there any other considerations you believe should be included in the purpose statement, or as secondary statutory objectives?</i></p> <p>D) <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 an economic regulatory regime for the three waters sector?</i></p> |
| | <p>A) The statement of purpose for economic regulation for the Telecommunications Act and Part 4 of the Commerce Act are consistent with our expectations for three waters economic regulation.</p> |
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| | <p>B) We see no benefit in removing the sub-purpose limiting excessive profits, this may be relevant in the future if the case arises where a private supplier requires regulation.</p> <p>C) We agree that advancing statutory objectives is best placed with organisations other than the economic regulator. The economic regulatory regime however needs to cognisant of the requirements placed on the entities to meet statutory requirements by other organisations, such as regional councils as these vary across New Zealand. These could have significant implications on individual entities access to water, and investment to meet compliance requirements. Some entities may also be affected by climate change more than others, which will impact on costs of service.</p> <p>The regulation should require the entities to take a long-term view of at least 30 years to investment planning. The economic regulator should provide oversight of this to ensure that the information underpinning this planning is evidence based, robust, and aligned with territorial authorities spatial planning.</p> <p>D) We have insufficient experience to comment on this.</p> |
| 11 | <p><i>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?</i></p> |
| | <p>We agree that a sector specific economic regulation regime is more appropriate for three waters.</p> |
| 12 | <p><i>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?</i></p> <p>We agree with the proposal that length of the regulatory period be five years unless the regulator considers a different period would better meet the purpose of the legislation.</p> <p>The initial five-year period should be implemented following a transitional period of a maximum of three years from 1 July 2024.</p> <p>This will provide pricing certainty which will support consumers to make informed choices regarding implementing demand management initiatives.</p> |
| 13 | <p>A) <i>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?</i></p> <p>B) <i>What are your views on whether the economic regulator should be able to minimise price shocks to consumers and suppliers?</i></p> <p>C) <i>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?</i></p> |
| | <p>A) We believe that an absence of input methodologies from the economic regulator will result in a higher end to end cost.</p> <p>We encourage early advice to the Entities of the information requirements,</p> |

reporting format, and input methodologies from the economic regulator. This will ensure that the information is captured and recorded in the required format for efficient reporting. There is the potential for unreasonable costs to the entities which will be passed onto the consumers if input methodologies are not prescribed early in an open and transparent manner.

- B) It is essential that price shocks to consumers and suppliers are minimised to manage the impact of increases to individual communities. This needs to be underpinned by robust long term asset management planning to ensure that short-term smoothing of price shock does not lead to longer term issues from inadequate investment in either depreciation or routine renewals.
- C) The regulator needs to provide a strong “active” efficiency challenge to encourage the entities to make the step change in efficient and effective delivery that the government has indicated will be achieved from the reform.

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) ?

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?*

A) We believe that policy objectives for three waters prices should:

- a. Be consistent to all consumers for a baseline level of service within each entity area
- b. Be a combination of uniform annual charges and volumetric charging to manage demand and environmental effects
- c. Allow for localised increased charging for delivery of service that is above the baseline where a specific community is willing to pay more for a different level of service (e.g removal of chlorination)

B) The responsibility for determining the structure of three waters pricing should sit with the Water Services Entity, following engagement with their governance group, communities, and consumers.

C) We believe the role of the economic regulator should be to review the pricing structures developed by the entities to ensure that these:

- a. provide transparent and equitable pricing for consumers, and
- b. include demand pricing to improve environmental outcomes, improve infrastructure optimisation, and protect vulnerable communities by placing the costs of high demand on those who use the most.

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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-

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| | <i>quality regulation?</i> |
| | We agree that merits review should be available on the input methodologies developed by the economic regulator, and determinations that implement individual price-quality regulation. We agree that merits reviews should not be available on the regulator's determinations that implement procedural processes, such as information disclosure regulation |
| 16 | <i>Do you broadly agree that with the compliance and enforcement tools? Are any additional tools required?</i> |
| | We broadly agree with the compliance and enforcement tools. |
| 17 | <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> |
| | We agree that the existing economic regulatory expertise within the Commerce Commission should be leveraged to establish economic regulation for three waters. We believe that a dedicated three waters regulatory team should be established within the Commerce Commission which is able to develop deeper sector experience on economic regulation of three waters over time. |
| 18 | <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> |
| | The cost of implementing an economic regulation regime should be funded via a levy on regulated suppliers. |
| 19 | <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> 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> |
| | We have no comment on this. |
| 20 | <i>Are there any other levy design features that should be considered?</i> |
| | No comments. |
| Consumer protection | |
| 21 | A) <i>What are your views on whether additional consumer protections are warranted for the three waters sector?</i> 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> |
| | A) Additional consumer protections are necessary for the three waters sector. B) A bespoke purpose statement is required. Central Otago District Council agrees |

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| | <p>with the proposed limbs of the purpose statement, but suggests the following is also required:</p> <ul style="list-style-type: none"> • Providing consumers with a strong voice in determining appropriate levels of service. |
| 22 | <p><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> |
| | <p>We agree with a minimum service level requirement via a mandated code developed with significant input from consumers. This should be a minimum with the ability for the entities to be innovative in identifying ways to cost effectively deliver higher service levels.</p> |
| 23 | <p><i>What are your views on whether the consumer protection regulator should also be empowered to issue guidance alongside a code?</i></p> |
| | <p>We support this view.</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 support this view.</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>This relates to the ability of a person to pay their bills, and the risk of harm to health or wellbeing by reason of age, health, disability in the case of disconnection.</p> <p>The entities should be required to have appropriate policies in place relating to non-payment and payment of arrears. These policies need to consider the requirement to provide the basic necessities of three waters services, while equitably managing the implications of consumers inability to pay.</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>Entities should have an obligation to ensure that essential services are accessible to consumers. This includes those who are identified on health registers as vulnerable customers, and those who are having difficulty in paying for services.</p> <p>We believe that volumetric charging is a more equitable method of allocating the costs of service delivery, and provides improved outcomes for vulnerable communities who are typically not large water users.</p> <p>Under a volumetric charging regime, Entities should be incentivised to provide support within vulnerable communities to implement on-property measures which support demand reduction, and household cost (e.g low flow shower heads, timers on outdoor taps). This could be implemented through initiatives like the Cosy-Home Trust programme which operates in Otago.</p> |

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| 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 have insufficient expertise to comment on 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>The consumer protection regime should only apply to water suppliers where the consumers to not have ability to be involve in or influence the governance of these supplies.</p> |
| 29 | <p><i>Do you broadly agree that with the compliance and enforcement tools proposed? Are any additional tools required?</i></p> |
| | <p>Entities will also be subject to enforcement tools and prosecution under the Resource Management Act for non-compliance with environmental standards.</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 do not agree with the structure for consumer protection that is proposed in the discussion document. This structure has been based on fitting consumer protection into existing national organisations that have been established for the electricity sector, and has not been proposed based on what is best for the average three waters consumer.</p> <p>We consider the consumer protections structure that exists for the electricity sector to be disjointed and confusing to the average consumer, with too many entities involved for various parts of the system. This causes confusion for the consumer, with a lack of clarity on the pathway for resolution of issues.</p> <p>Three waters consumers are used to having a high level of engagement with the governance of these services. While the reform will change this, consumers should be able to expect a simple structure which provides clear oversight and responsibility for escalation of all consumer issues.</p> <p>We believe a new national entity should be established which establishes a bespoke position that operates at arm’s length from government, is technically knowledgeable, an advisor to government on three waters regulation, and provides oversight of consumer protection and resolution services. This entity needs to be clearly identifiable and accessible to the public. This role would also provide services like an Ombudsman.</p> <p>The bespoke three waters consumer entity should be supported by regionally established groups for each entity. We suggest that local government elected members could sit on the regional groups, as they are known within their local communities, and have experience in the escalation of consumer issues.</p> |
| 31 | <p><i>What are your views on whether the regulator should be required to incentivise high-quality consumer engagement?</i></p> |

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| | <p>We agree that the regulator should be required to incentivise high-quality consumer engagement. This should include engagement with local authorities who have a wide range of understanding of issues within local communities, and often provide advocacy on community wellbeing issues other than those that fall within their service responsibility.</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 believe this should sit within one new national water consumer affairs entity. We do not agree with this sitting in another organisation. We would also comment that the Consumer Advisory Council which provides this service for the electricity sector does not appear in a google search, which is unhelpful for consumers.</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>As stated above we do not agree with the establishment of a separate technical advisory body, this should all sit within one consumer protection agency.</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>As stated above we do not agree with the establishment of a separate consumer disputes resolution scheme, this should all sit within one consumer protection agency.</p> |
| 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>We believe that any dispute that a customer does not believe has been fairly addressed should be able to be escalated outside of the water entity. As discussed in question 30, we believe the establishment of regional panels, which operate under the oversight of a national water consumer affairs entity should be established as a disputes escalation process. This would provide ombudsman type services.</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>A mandatory statutory consumer disputes resolution scheme should be established for the water sector, but this should sit under a single national water consumer affairs entity, and not as a separate disputes resolution entity.</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>This should sit under a single new national water consumer affairs entity, and not as part of the jurisdiction of an existing scheme.</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> |

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| | To all water suppliers with 500 or more customers. |
| 39 | <i>Do you think the consumer dispute resolution scheme should incentivise water suppliers to resolve complaints directly with consumers?</i> |
| | Yes |
| 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> |
| | As per the answer to question 26. Entities should have an obligation to ensure that essential services are accessible to consumers. This includes those who are identified on health registers as vulnerable customers, and those who are having difficulty in paying for services. We believe that volumetric charging is a more equitable method of allocating the costs of service delivery, and provides improved outcomes for vulnerable communities who are typically not large water users. Entities should be incentivised to provide support within vulnerable communities to implement on-property measures which support demand reduction, and household costs(e.g low flow shower heads, timers on outdoor taps). This could be implemented through initiatives like the Cosy-Home Trust programme which operates in Otago. |
| 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> |
| | This should be funded via a levy, with reductions for the improvement of customer service by the entity which results in year on year decreases in the number of issues that are escalated. |
| 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> 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> |
| | No comment. |
| 43 | <i>Are there any other levy design features that should be considered?</i> |
| 44 | Reductions in levy cost for the improvement of customer service by the entity which results in year on year decreases in the number of issues that are escalated. |
| Implementation and regulatory stewardship | |
| 45 | <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> |
| | Disfunction between the national and regional bodies responsible for regulatory oversight will be extremely detrimental to the water entities and their consumers and will result in increased cost of service. It is essential that these entities work together in |

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| | <p>a cohesive way with clarity regarding roles, and consistent messaging and requirements. We have no comment on how this should occur.</p> |
| 46 | <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>Water entities will need to work towards long term objectives and have long term planning of a minimum of 30 years. The economic and consumer protection regulators will need to have regard to the Government Policy Statement (that will change every three years) in the context of the entities longer term plans and objectives. There may be occasions when short term (3-year) focus could be to the detriment of better longer term objectives for communities.</p> |
| 47 | <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>We agree that regulators of three waters services should have the ability to share information.</p> |

Other comments