

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

Your name and organisation

Name	Ivan Iafeta, Corporate Affairs Manager
Organisation (if applicable)	Citycare Water

Responses

Economic regulation

1

What are your views on whether there is a case for the economic regulation of three waters infrastructure in New Zealand?

The Government's decision to transfer responsibility for three waters from 67 councils to four new statutory Water Services Entities will create strong natural monopoly characteristics which, left unattended, is likely to result in lower levels of efficiencies, higher prices, and lower quality of outputs than might otherwise be expected in a workably competitive market. Consequently, the Government's reform objectives are unlikely to be achieved without effective economic regulation.

Therefore, an economic regulation regime which promotes consumer interests as the paramount objective is imperative to ensuring all New Zealanders have equitable access to affordable three waters services, and is necessary in order to drive efficient pricing, procurement, and asset management practices, and incentivise investment and innovation.

It will be particularly important for the economic regulator to provide as much early certainty, as possible, of its initial expectations to the Water Services Entities, local councils, mana whenua, consumers, the private sector and commercial markets, and to also signal the likely direction of future expectations, to enable all actors to plan, fund, procure and deliver prerequisite actions in order to achieve the required standards and timeframes. Early visibility of, for example, objectives, outcomes, KPI's, targets and measures will provide transparency of expectations. Taking such an approach will help to avoid the lack of certainty, investment, momentum, and progress as has been experienced previously in other sectors within New Zealand, including the amalgamation of Auckland councils into a unitary authority.

The proposed requirement for each new Water Services Entity to prepare an Asset Management Plan to show how the entity will operate, maintain, and renew existing water assets, and provide new assets to meet demand as New Zealand grows, will further support adequate investment in Three Waters assets and infrastructure, and provide greater visibility and certainty to the private sector of planned future work.

2

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?

Appropriate economic regulation of stormwater networks will be equally as relevant and necessary as it is for drinking water and wastewater in achieving the Government's reform

objectives, irrespective of decisions regarding ownership of stormwater networks and/or responsibilities.

For the avoidance of doubt, Citycare Water does not have a view on whether stormwater networks should be transferred to the new Water Services Entities. However, any uncertainty or confusion regarding ownership and/or responsibilities will likely compromise achievement of the Government's reform objectives at least in the short-term, if not longer, and will require the private sector to assess and price the associated risks accordingly.

3

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

Citycare Water agrees that the four Water Services Entities should be economically regulated for the reasons set out in the response to Question 1 above.

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.

Citycare Water considers that economic regulation should initially focus on the four Water Services Entities. Any subsequent consideration of economic regulation of community or private schemes should deliver net social, economic, environmental, and cultural well-being benefits to consumers, rather than imposing net costs. The threshold of 10,000 water consumers suggested in section 60 of the discussion paper seems reasonable in determining the size of schemes to which economic regulation should be considered.

Households and businesses serviced by community and private schemes should have the ability to request the regulatory authority to undertake a review of the performance of the scheme, and to make a recommendation for economic regulation to be applied if considered beneficial to consumers. This service should be provided on a no or low-cost basis by the relevant organisation(s).

The term "self-supplier" is not defined in the discussion paper, however, section 9(e) of the Water Services Act 2021 explicitly excludes a "domestic self-supplier", as that term is defined in section 10 of the Act, and should therefore not be subject to economic regulation.

Irrespective of the Government's final determination on this matter, Citycare Water reiterates the importance of the economic regulator providing as much early certainty, as possible, of its initial expectations to enable all actors to plan, fund, procure and deliver prerequisite actions in order to achieve the required standards and timeframes.

5

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

Citycare Water supports information disclosure regulation for the new Water Services Entities.

Requiring regulated suppliers to publicly disclose information in accordance with the requirements set by the economic regular, coupled with the economic regulator publishing a summary and analysis of the disclosed information, provides valuable information not only to owners/governors (including local government and iwi/Māori), regulatory and policy agencies, and the economic regulator itself, but also provides the private sector and commercial markets with a basis for informing relevant business strategies, plans, and investment decisions.

However, Citycare Water recognises that the existing state of data and information currently held by 67 councils across New Zealand is inconsistent and also not sufficient to enable

effective economic regulation to be implemented. In order for economic regulation to be effective, and to establish an evidence-based foundation for assessing the performance of the new Water Services Entities, the Water Services Entities must be enabled, supported, and expected to collate and assimilate accurate data and information from the relevant councils in each of their respective areas into a consistent, complete, and coherent state. Completion of this extensive exercise by each of the Water Services Entities will be one of the necessary first steps towards implementing information disclosure regulation.

6

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

Citycare Water is mindful of the extensive sector-wide effort that will be required to support the establishment and operation of the new Water Services Entities, successfully transition responsibilities from 67 local councils without disruption to local communities, and develop and implement an effective information disclosure regulation regime, all within a recently established wider regulatory environment for Three Waters that will be administered and delivered by a combination of existing and new actors into the ecosystem.

On that basis, careful consideration should be given as to whether price-quality regulation will achieve net social, economic, environmental, and cultural well-being benefits, and should be informed by the views of local consumers, communities, councils, and mana whenua.

Ultimately, it is important that the wider regulatory framework recognises the strategic context within which the water sector in New Zealand exists and operates, and in doing so provides a coherent regulatory system which aligns and drives a collaborative approach, with clearly defined roles and responsibilities for the relevant actors, towards collectively achieving the Government's desired reform outcomes.

7

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

If price-quality regulation is introduced, Citycare Water agrees that individual price-quality regulation should be applied, rather than a default price-quality path, on the basis that the responsibility for three waters will transfer from a large number councils to four new Water Services Entities.

This significant reduction in water asset owners and service providers should enable an appropriately tailored focus and scrutiny on performance and continual improvement that accounts for the differing circumstances and consumer interests between each of the entities.

8

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?

B) 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?

Citycare Water considers that economic regulation should be implemented gradually through early, regular and ongoing engagement with local councils, iwi/Māori, the new Water Services Entities, Taumata Arowai and other key stakeholders.

This would enable progressive development of a fit-for-purpose regulatory regime, in parallel with the new Water Services Entities implementing and operating their end-to-end business

processes whilst developing a working understanding of economic regulation and its impacts.

Early establishment of critical non-negotiables would allow evidence-based findings, as well as experiences from other jurisdictions, to both inform and further build out the economic regulation framework in a workable manner which seeks to avoid unnecessarily or unintentionally creating confusion, contradictions or unworkable expectations. It would also support the new Water Services Entities to align their systems and processes as they are designed and implemented.

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?*

A) Citycare Water agrees that 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) Citycare Water supports the proposition that advice from the economic regulator should include consideration of the matters specified in section 90 of the discussion paper, and further suggests that the advice should also:

- Determine the “benefits” in terms of net social, economic, environmental, and cultural well-being benefits.
- Consider the views of the relevant Water Service Entity/ies and/or other water suppliers, local councils, iwi/Māori, consumers, and other key stakeholders.

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?*

A) Citycare Water considers that the purpose statement for any economic regulation regime for the water sector must recognise the wider strategic context within which the water sector exists and operates (including obligations under Te Tiriti o Waitangi and Te Mana o te Wai), and in doing so should deliberately seek to ensure a coherent regulatory system which aligns and drives a collaborative approach, with clearly defined roles and responsibilities for the relevant actors, towards collectively achieving the Government’s desired reform outcomes.

Citycare Water does not consider that the purpose statements in either of the Telecommunications Act, or Part 4 of the Commerce Act, appropriately recognise the strategic context within which the water sector exists and operates.

- B) Based on the information currently available, Citycare Waters does not consider that there is a compelling reason for removing the ability to regulate profits at this point in time.
- C) Following on from the response provided in A above which emphasises the importance of a coherent regulatory framework, allowing a counterfactual situation to occur would risk creating fragmented institutional mandates, or at least the perception of fragmentation, where mechanisms to consider trade-offs between individual institutional priorities and broader overarching outcomes are not evident.

Instead, the regulatory framework should seek to ensure:

- Visible cohesion across the ecosystem in order to provide greater clarity, certainty and confidence to local communities, iwi/Māori, and the private sector.
- A coherent suite of legislative mechanisms, policies and performance frameworks which clearly articulate the broader outcomes to be achieved.
- Aligned institutional objectives (e.g. enacting a common set of shared, but not exclusive, core objectives) to ensure an increased degree of strategic alignment in pursuing the broader outcomes sought, thereby requiring a collaborative, efficient and effective approach to be demonstrated by all institutions towards collectively achieving the outcomes.
- Institutional mandates which:
 - encourage and foster greater collaboration among entities through a common set of core objectives
 - ensure that key roles and responsibilities for various aspects of the broader overarching outcomes are clear; are sitting within the organisations that are best placed to hold them; and are resourced appropriately and have the mandate to act.
- Such an approach would also involve:
 - Recognising that the Water Services Entities Bill is likely to require the Water Services Entities to give effect to the principles of Te Tiriti o Waitangi
 - Recognising that the Water Services Entities must meet the standards set by Taumata Arowai
 - Recognising that the Water Services Entities must give effect to Te Mana o te Wai
 - Recognising that the Water Services Entities have obligations in relation to resource management, resilience, sustainability and climate change
 - Recognising the non-profit nature of the Water Services Entities.

For further context, please refer to the evidential case study contained below in the “Other comments” section.

- D) Citycare Water is strongly of the view that economic regulation for the three waters sector must be based on a clear commitment to give effect to the principles of Te Tiriti o Waitangi (the Treaty of Waitangi), as well as recognition of the rights and interests of iwi/Māori. Early and ongoing engagement with mana whenua is essential to understanding how best to give effect to these commitments.

appropriate for the New Zealand three waters sector than the generic economic regulation regime provided in Part 4 of the Commerce Act?

Citycare Water agrees that Part 4 of the Commerce Act, as it currently stands, is not fit-for-purpose for Three Waters for the reasons outlined in the responses above as well as those noted in the discussion paper.

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?

Citycare Water supports a longer Regulatory Control Period (RCP) of at least 5 years to provide greater certainty, and therefore investment confidence, to the private sector and commercial markets. Citycare Water acknowledges that there may be a case for a shorter initial RCP of three years as the new Waters Services Entities become established, which would align with existing Council investment windows, and in recognition of a newly established wider regulatory environment for Three Waters that will be administered and delivered by a combination of existing and new actors into the ecosystem.

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?*

Based on the limited information available at this time, Citycare Water does not have a view on these points. However, as noted in previous responses above, Citycare Water considers that, as a first principle, economic regulation should be implemented gradually through early, regular and ongoing engagement with local councils, iwi/Māori, the new Water Services Entities, Taumata Arowai and other key stakeholders.

It will be particularly important for the economic regulator to provide as much early certainty, as possible, of its initial expectations to enable all actors to plan, fund, procure and deliver prerequisite actions in order to achieve the required standards and timeframes

Taking such an approach provides valuable information not only to owners/governors (including local government and iwi/Māori), regulatory and policy agencies, and the economic regulator itself, but also provides the private sector and commercial markets with a basis for informing relevant business strategies, plans, and investment decisions.

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?*

	<p>b) <i>The economic regulator?</i></p> <p>c) <i>The Government or Ministers?</i></p> <p>C) <i>If you consider the economic regulator should have a role, what do you think the role of the economic regulator should be? Should they be empowered to develop pricing structure methodologies, or should they be obliged to develop pricing structure methodologies?</i></p>
	<p>A) Citycare Water considers that the objectives should align with the outcomes being sought from the overall reform programme, and be delivered in a manner that best utilises, supports, and builds the capability of the wider water sector (including the private sector) and its workforce.</p> <p>B) Citycare Water considers that the primary responsibility for determining the structure of the three waters prices should sit jointly with the Water Services Entities <u>and</u> the economic regulator following engagement with their respective governance group, local councils, mana whenua, local communities and consumers, industry and other key stakeholders.</p> <p>C) Citycare Water considers that the economic regulator should be focused on overall economic regulation rather than just price methodology regulation (e.g. to challenge the Water Services Entities to justify their investments underpinning the prices, and to demonstrate how the pricing methodology adopted will impact different consumer groups).</p>
15	<p><i>What are your views on whether merits appeals should be available on the regulators decisions that determine input methodologies and the application of individual price-quality regulation?</i></p>
	<p>Citycare Water broadly agrees that merits appeals should be included in the suite of instruments available as set out in the discussion paper. However, we would also prefer to see other alternative, less adversarial avenues being made available which may achieve a speedier resolution and avoid unnecessarily prolonged uncertainty and delays.</p>
16	<p><i>Do you broadly agree that with the compliance and enforcement tools? Are any additional tools required?</i></p>
	<p>Citycare Water broadly agrees with the compliance and enforcement tools and encourages a significant initial proactive focus on education activities.</p> <p>In recognition of the respective enforcement roles of the economic regulator and Taumata Arowai, Citycare Water again emphasises the importance of:</p> <ul style="list-style-type: none"> • Visible cohesion across the ecosystem in order to provide greater clarity, certainty and confidence; and • A coherent suite of legislative mechanisms, policies and performance frameworks.
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>Based on the limited information available at this time, Citycare Water does not have a view on the most suitable body to be the economic regulator for the three waters sector. Nonetheless, Citycare Water again emphasises the importance of considering the wider strategic context within which the water sector exists and operates (including obligations</p>

under Te Tiriti o Waitangi and Te Mana o te Wai), and a coherent regulatory system which aligns and drives a collaborative approach, with clearly defined roles and responsibilities for the relevant actors, towards collectively achieving the Government's desired reform outcomes.

18

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?

Citycare Water agrees that the cost of implementing an economic regulation regime should be funded via levies on the Water Service Entities (and other regulated suppliers where appropriate).

The Government's reform model is predicated on significant efficiencies to be realised. On that basis, the Water Services Entities should be encouraged to transparently demonstrate that there aren't any resultant cost impacts on consumers.

19

Do you think that the levy regime should:

A) Require the regulator to consult on and collect levy funding within the total amount determined by the Minister? OR

B) Require the Ministry to consult on the levy (on behalf of the Minister) and collect levy funding within the total amount determined by the Minister?

Citycare Water does not have a view on who should consult on the levy and/or collect levy funding.

20

Are there any other levy design features that should be considered?

Consumer protection

21

A) What are your views on whether additional consumer protections are warranted for the three waters sector?

B) 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?

22

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?

23

What are your views on whether the consumer protection regulator should also be empowered to issue guidance alongside a code?

24

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

	<i>consumer protection legislation?</i>
25	<i>What are your views on whether minimum service level requirements should be able to vary across different types of consumers?</i>
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>
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>
	Citycare Water is strongly of the view that a consumer protection regime for the three waters sector must be based on a clear commitment to give effect to the principles of Te Tiriti o Waitangi (the Treaty of Waitangi), as well as recognition of the rights and interests of iwi/Māori. Early and ongoing engagement with mana whenua is essential to understanding how best to give effect to these commitments.
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>
29	<i>Do you broadly agree that with the compliance and enforcement tools proposed? Are any additional tools required?</i>
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>
31	<i>What are your views on whether the regulator should be required to incentivise high-quality consumer engagement?</i>
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>

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>
34	<i>What are your views on whether there is a need for a dedicated three waters consumer disputes resolution scheme?</i>
35	<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>
36	<i>What are your views on whether a mandatory statutory consumer disputes resolution scheme should be established for the water sector?</i>
37	<i>Do you consider that a new mandatory statutory consumer disputes resolution scheme should be achieved via a new scheme or expanding the jurisdiction of an existing scheme or schemes?</i>
38	<i>Do you consider that the consumer disputes resolution schemes should apply to all water suppliers, water suppliers with 500 or more customers, or just Water Services Entities?</i>
39	<i>Do you think the consumer dispute resolution scheme should incentivise water suppliers to resolve complaints directly with consumers?</i>
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>
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>
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>

B) *Require the Ministry to consult on the levy (on behalf of the Minister) and collect levy funding within the total amount determined by the Minister?*

43 *Are there any other levy design features that should be considered?*

44

Implementation and regulatory stewardship

45 *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?*

46 *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?*

47 *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?*

Other comments

Case Study – Insights from Canterbury’s Earthquake Recovery Ecosystem

Following the Canterbury earthquakes of 2010 and 2011, several new entities were established in Christchurch to lead and support the recovery, rebuild and regeneration of greater Christchurch.

In 2016, following the disestablishment of the Canterbury Earthquake Recovery Authority (CERA), three new entities were established:

1. Regenerate Christchurch: an independent entity jointly-owned by the Crown and Christchurch City Council, established under the Greater Christchurch Regeneration Act 2016 to provide overarching leadership, advice and recommendations for the Minister to exercise special powers under the new bespoke legislation.
2. Ōtākaro Limited: a Crown-owned company listed under Schedule 4A of the Public Finance Act 1989, established to manage Crown-owned land in the CBD acquired following the earthquakes, and to deliver major Crown-led anchor projects.
3. Development Christchurch Limited: a Council Controlled Trading Organisation (CCTO), established to manage Council-owned land, and to attract and channel investment into the city.

Following a request from the Crown and Christchurch City Council, in 2018 Regenerate Christchurch provided an evaluation of progress and advice¹ to increase momentum and achieve a step-change in outcomes.

Some of the key findings included:

- A fragmented institutional structure where mechanisms to consider trade-offs between individual institutional priorities and broader overarching outcomes were not evident.
- Individual institutional strategic priorities, decision frameworks, work programmes and priorities lacked a sense of coherency when assessed against the broader outcomes being sought.

Recommendations included:

- Visible cohesion across the ecosystem in order to provide greater clarity, certainty and confidence to local communities and the private sector.
- A coherent suite of legislative mechanisms, policies and performance frameworks which clearly articulate the broader outcomes to be achieved,
- Aligning institutional objectives (e.g. enacting a common set of shared, but not exclusive, core objectives) to ensure an increased degree of strategic alignment in pursuing the broader outcomes sought, thereby requiring a collaborative, efficient and effective approach to be demonstrated by all institutions towards achieving the outcomes.
- Institutional mandates which:
 - encourage and foster greater collaboration among entities through a consistent set of core objectives
 - ensure that key roles and responsibilities for various aspects of the broader overarching outcomes are clear; are sitting within the organisations that are best placed to hold them; and are resourced appropriately and have the mandate to act.

¹ [Central City Momentum \(regeneratechristchurch.nz\)](https://www.regeneratechristchurch.nz/)