

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

Your name and organisation

Name	Rhys West, Chief Executive Officer
Organisation (if applicable)	Fair Way Resolution Limited

Responses

Economic regulation	
1	<i>What are your views on whether there is a case for the economic regulation of three waters infrastructure in New Zealand?</i>
	Fair Way supports a focus on improving the infrastructure and quality of waters in an affordable and sensible way for the benefit of all New Zealanders.
2	<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>
3	<i>What are your views on whether the four statutory Water Services Entities should be economically regulated?</i>
	Fair Way supports a case for reform, to ensure efficiency gains, lower prices, and improved quality of services.
4	<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>
5	<i>What are your views on whether the Water Services Entities should be subject to information disclosure regulation?</i>
	<p>Fair Way supports the disclosure of information.</p> <p>Fair Way agrees having a strong natural monopoly characteristic would require the regular disclosure and sharing of information which will lead to transparency across the industry.</p>
6	<i>What are your views on whether Water Services Entities should be subject to price-quality regulation in addition to information disclosure regulation?</i>

7	<p><i>What are your views on the appropriateness of applying individual price-quality regulation to the Water Services Entities?</i></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>
9	<p>A) <i>What are your views on whether the Minister of Commerce and Consumer Affairs should be able to reduce or extend the application of regulation on advice from the economic regulator?</i></p> <p>B) <i>What factors do you consider the economic regulator should include in their advice to the Minister?</i></p>
10	<p>A) <i>What are your views on whether the purpose statement for any economic regulation regime for the water sector should reflect existing purpose statements in the 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) Fair Way supports the view for purpose statement(s) for any economic regulations regime for water sector to reflect the purpose statements contained in the Telecommunications Act 2001 and Part 4 of the Commerce Act.</p> <p>B) -</p> <p>C) -</p> <p>D) Fair Way recognises the importance of the Treaty of Waitangi as a founding document in New Zealand and supports an approach which is inclusive of Māori in the design of the regime.</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>Fair Way believes a sector specific economic regulation regime would be more appropriate. Creating a dedicated regime, would consider the unique characteristics of the sector, support affordability and cater for vulnerability.</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>
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) Fair Way supports the view for early publication and sharing of input methodologies setting out the key rules underpinning the application of economic regulation.</p> <p>B) Fair Way acknowledges there might be price shocks moving to a new regime. From our experience in the Telecommunication and Financial Dispute Resolution Scheme, we acknowledge price shocks could result in financial hardship for consumers which could lead to an increase in complaints. At the same time Fair Way acknowledges the importance of moving the three waters services to a more financially sustainable footing and addressing capability challenges faced in the sector.</p> <p>C) Fair Way supports the view for a strong active efficiency challenge for each supplier. From a dispute resolution lens, we would propose a system for collaboration rather than penalties if efficiencies are not achieved. Compensation paid because of poor deliveries have the potential of filter down to consumers and further erode positive change.</p>
14	<p>A) <i>What do you consider are the relevant policy objectives for the structure of three waters prices? Do you consider there is a case for parliament to directly control or regulate particular aspects in the structure of three waters prices?</i></p> <p>B) <i>Who do you consider should have primary responsibility for determining the structure of three waters prices:</i></p> <p>a) <i>The Water Services Entity, following engagement with their governance group, communities, and consumers?</i></p> <p>b) <i>The economic regulator?</i></p> <p>c) <i>The Government or Ministers?</i></p>

	<p>C) <i>If you consider the economic regulator should have a role, what do you think the role of the economic regulator should be? Should they be empowered to develop pricing structure methodologies, or should they be obliged to develop pricing structure methodologies?</i></p>
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>Fair Way supports the principles of merit reviews.</p> <p>We acknowledge the pro and cons highlighted in the discussion document.</p> <p>From a dispute resolution perspective, we suggest parties consider including alternative dispute resolution options, such as mediation.</p>
16	<p><i>Do you broadly agree that with the compliance and enforcement tools? Are any additional tools required?</i></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>
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>
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>
20	<p><i>Are there any other levy design features that should be considered?</i></p>
<p>Consumer protection</p>	
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>

A) Fair Way supports additional consumer protections because of potential gaps within the existing legal frameworks.

Additional protection will recognise the strong monopoly characteristics of the system, which would prevent consumers switching to other providers resulting in a power imbalance.

Amendments to Section 7A of the Consumer's Guarantee Act, is a good example of additional protection introduced for consumer protection.

B) Fair Way agrees the industry should have a bespoke purpose statement. We support 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?

Fair Way supports the proposed ability of the regulator to set minimum service level requirements. This will ensure high levels of accountability.

From a dispute resolution perspective, it would give clarity to both suppliers and consumers on what is acceptable and what can be expected.

It is our experience that this improves the customer experience as well as supporting the suppliers.

23

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

Fair Way supports the preliminary view that a consumer protection regulator should be able to issue guidance alongside a code. This will bring it in line with the sector specific provisions for electricity and gas.

From our experience these would be useful tools to refer to during any complaint management process.

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 consumer protection legislation?

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What are your views on whether minimum service level requirements should be able to vary across different types of consumers?

As experts in dispute resolution, Fair Way recognise the need to cater for vulnerability.

In our experience managing the Financial Dispute Resolution Scheme, we acknowledge people may need different levels of support at different times.

This has also been our experience in the Telecommunication Scheme, specifically with the 111 Contact Code, where telco providers of identified vulnerable consumers are required to provide additional support and back-up options to contact emergency services. This ensures those most vulnerable are not left behind in the wake-of changing technologies and services.

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>Fair Way supports a combination of approaches considering the interest of all parties. Vulnerability should not be a barrier to access essential services.</p>
27	<p><i>What are your views on how Treaty of Waitangi principles, as well as the rights and interests of iwi/Māori, should be factored into the design of a consumer protection regime for the three waters sector?</i></p>
	<p>Fair Way supports a dispute resolution system which is inclusive, responsive, and fit for purpose. Any scheme should be culturally responsive and adopt Treaty- consistent approaches as set out in the Dispute Resolution Capability Maturity model, developed by the GCDR.</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>A) Fair Way recognises the benefit of applying the protection to all water suppliers, however Fair Way do not have enough information about the impact this will have on smaller suppliers therefore would support the suggestion that it is a question best left for the regulator.</p> <p>B) Same as above.</p>
29	<p><i>Do you broadly agree that with the compliance and enforcement tools proposed? Are any additional tools required?</i></p>
	<p>We broadly agree with the compliance and enforcement tools proposed.</p> <p>We also advocate for a compulsory mediation process to provide parties an opportunity to be actively involved in finding a solution that is cost and time effective, whilst recognising parties / groups interests.</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>Informed by our experience in dispute resolution, we support the view of having an independent Crown entity.</p>
31	<p><i>What are your views on whether the regulator should be required to incentivise high-quality consumer engagement?</i></p>
	<p>Fair Way supports high quality engagement. However, we are conscious that over emphasis on incentives only could result in unequal outcomes for minority or vulnerable groups.</p> <p>Fair Way supports a collaborative approach.</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>Fair Way acknowledges that without an expert advocacy body it may be difficult for consumers to play an active and equal part in engagement.</p> <p>This is also true for dispute resolution. Disputes may become very technical and may prevent consumers from raising concerns because of cost, time, and a lack of technical knowledge.</p> <p>This would also benefit suppliers as it would support consumers to raise issues early providing parties with the opportunity to work together to find appropriate solutions.</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>Fair Way supports the preliminary view for the extension of the jurisdiction of the CAC.</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>Fair Way supports the establishment of a dedicated three waters consumer dispute resolution scheme.</p> <p>As noted in the discussion paper, water consumers in New Zealand currently have limited recourse to dispute resolution with water providers. The establishment of such a scheme will help to ensure the interests of consumers are paramount, by providing an accessible avenue for a fair, cost effective timely and equitable service to deal with disputes.</p> <p>Consumers should always be encouraged to resolve their complaints with water providers in the first instance. However, when problems cannot be resolved, it is essential both parties can access the services of an independent and impartial dispute resolution scheme.</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>Fair Way considers the kinds of disputes set out in paragraph 228 of the discussion paper would be suitable for referral to a dispute resolution scheme for adjudication.</p> <p>Many of the examples provided are similar to types of disputes handled by Fair Way Resolution in our Telecommunications, Financial, and International Student dispute resolution schemes. Consideration may also be given to complaints about infrastructure maintenance, and damaged caused by poor maintenance or failing to respond in a timely manner to notifications about water leaks.</p> <p>We acknowledge that some high value disputes may be more appropriately dealt with through judicial processes.</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>Fair Way supports the view that a mandatory statutory consumer DRS be established.</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>Fair Way believes a new mandatory statutory consumer dispute resolution scheme could be incorporated into an existing scheme, such as the Telecommunications Dispute Resolution Scheme which has been operated by Fair Way since 2007.</p> <p>However, given the scope of the reform programme and the scale of the proposed changes, Fair Way considers it would be most appropriate to establish a new scheme specifically for the new Three Waters system.</p> <p>Regardless of the option, the scheme requires a national coverage, with the ability to scale quickly and in a cost-effective way while delivering a service that is user focused and culturally appropriate.</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>Fair Way's preference would be that all water suppliers are included in the scheme.</p> <p>Fair Way recognises there may be an administrative burden and additional compliance costs for smaller suppliers.</p> <p>However, these costs and burdens can be managed through a tiered membership structure. A supplier's qualifying revenue, determined by the Minister/ Ministry, would then dictate the annual fee for that supplier, with the larger suppliers paying the larger share of the annual operating costs for the scheme.</p> <p>The Telecommunication Dispute Resolution scheme is similarly successfully funded in this manner using the telco development levy.</p> <p>If smaller suppliers are excluded it is possible that consumers and suppliers would not have access to the benefits of dispute resolution.</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>Yes.</p> <p>Using a model which provides for both fixed and variable charges could incentivise suppliers to resolve complaints directly with consumers at an early and informal stage.</p> <p>This will give effect to both the principles set out in the Aotearoa Best Practice Dispute Resolution Framework.</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>Fair Way acknowledges that a challenge in New Zealand is ensuring people have equal opportunity to access dispute resolution schemes.</p> <p>We strongly agree that special consideration should be given to traditionally underserved or vulnerable communities, and Fair Way Resolution already implements many of the considerations set out in paragraph 238.</p>

	In our experience, it is important to build relationships in order to develop processes that are accessible.
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> <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>
43	<i>Are there any other levy design features that should be considered?</i>

Implementation and regulatory stewardship

44	<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>
45	<i>Do you consider it is useful and appropriate for the Government to be able to transmit its policies to the economic and consumer protection regulator(s) for them to have regard to?</i>
46	<i>What are your views on whether the economic and consumer protection regulator should be able to share information with other regulatory agencies? Are there any restrictions that should apply to the type of information that could be shared, or the agencies that information could be shared with?</i>
	<p>Information sharing should align with standard best practices and policies.</p> <p>One of the benefits of sharing anonymised information is to gain insights for the benefit of improvement at a system level.</p>

Other comments

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