

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

Your name and organisation

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Organisation (if applicable)	Institute of Public Works Engineering Australasia New Zealand Division Incorporated (IPWEA NZ)

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>IPWEA NZ believes there is a case for economic regulation. The reasons are:</p> <ul style="list-style-type: none"> - to ensure that customers receiving the service have an accessible, fair and proportionate method for obtaining fair value for the service provided. - the service provider is constantly aware that they are providing an essential service, and that this has to be delivered in a balanced manner – ensuring affordability for current and future communities while maintaining the health of the environment, infrastructure and cultural values as well as enabling public health.
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>At this stage, stormwater assets should not be economically regulated. This is due to the lack of clarity regarding where legal responsibility falls between governing and controlling entities such as the local authority, NZTA – Waka Kotahi, Department of Conservation etc. Economic regulation will require clear understanding and qualification of the strategic performance outcomes of stormwater. These are significantly different across Aotearoa – New Zealand given regulation is predominantly provided via regional territorial authorities. Economic regulation of stormwater assets could be considered at a future point when accountability delineation for strategic outcomes is clear and consistently adopted across the motu. We note that economic regulation in Australia is focused on water supply and wastewater.</p>
3	<p><i>What are your views on whether the four statutory Water Services Entities should be economically regulated?</i></p> <p>We consider that water services entities should be economically regulated. We consider regulation must be based on sound, evidence-based lifecycle asset management planning, which is audited and regularly updated. Economic regulation should account for environmental and broader outcomes, where the intergenerational cost of resource</p>

	<p>utilisation and community benefits and disbenefits are accounted for.</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>We consider that wherever there is a requirement to manage network assets to ensure safe drinking water, wastewater (and potentially stormwater) is provided, then economic regulation should be applied. This is likely to be relevant to community and large private schemes.</p> <p>However we do not consider on a value benefits basis that self-suppliers (who also have individual onsite compliant wastewater systems and naturalised / natural stormwater systems) should be subject to economic regulation. We consider <i>prima facie</i> that economic regulation would be inefficient in these circumstances. In our opinion this is because regional councils already have the role of consent provision, monitoring and compliance with economic and legal powers.</p>
5	<p><i>What are your views on whether the Water Services Entities should be subject to information disclosure regulation?</i></p> <p>We consider that water service entities should be subject to information disclosure to the greatest extent possible to ensure transparency in the provision of services that are fundamental to environmental, cultural, economic and human wellbeing. Transparency assists with both understanding and accountability and supports sound consultation and decision making processes. We consider that the following information should be proactively released including:</p> <ul style="list-style-type: none"> - Risk and resilience assessments - Climate adaptation strategies and planning - Strategic infrastructure plans – covering at least a 30-year horizon - Infrastructure valuations - Growth / capacity plans covering at least a 30 year horizon (to ensure coordination between multiple agencies – local and central government) - Cost of service delivery and service provision including debt to income and debt to equity ratios - Achievement of agreed performance measures - Procurement and service delivery arrangements and performance against agreed measures - Resource consent compliance
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>We consider that the quality attribute of <i>price-quality</i> should be robustly defined and tested before considering whether regulation is applied.</p> <p>Application of infrastructure asset management practices and processes when done appropriately will ensure that quality is maintained and optimised.</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>We have no comment on this matter.</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 consider that the tool selected should ensure transparency in the relationship between price and quality, where customers can easily understand and in simple terms what value benefits they are receiving for the price they are paying.</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>
	<p>A) We have no comment on this matter.</p> <p>B) The economic regulator should consider the robustness of asset management practices as measured against industry standards such as the International Infrastructure Management Manual (IIMM) and and the International Standard for Asset Management ISO55000 when formulating any advice to Ministers about changes to the extent of regulation. A clear asset management framework to allow assessment of asset management maturity (to ensure industry progresses in AM) and measurement of performance should also be considered. The Treasury ICR (Investor Confidence Rating) is also a valuable reference point which would be useful for considering. Evidence of strong or weak asset management practices will be indicative of future asset performance against expected levels of service. It is the responsibility of the Office of the Auditor General to report on the standard of asset management, and this arrangement should be noted.</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) We have no comment on this matter.</p> <p>B) We are clear that 3 Waters are core essential services, and there should be no profit,</p>

	<p>dividend or transfer of value outside of the entity. Surplus reinvestment (if any, and as with leveraged debt funding) should be directly linked to the Statement of Intent, Strategic Plan and Asset Management Plan.</p> <p>C) We have no comment on this matter</p> <p>D) We consider that Te Tiriti o Waitangi should be given due recognition as should other laws protecting the rights and obligations of all affected parties. The fundamental concept of Te Mana o te Wai should also be factored into the design of the economic regulatory 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>We have referenced Comcom “What is a Part 4 inquiry?” which applies to electricity and gas sectors at present.</p> <p><i>This includes considering whether:</i></p> <ul style="list-style-type: none"> • <i>the goods or services are supplied in a market where there is both little or no competition; and little or no likelihood of a substantial increase in competition; and</i> • <i>there is scope for the exercise of substantial market power; and</i> • <i>the benefits of regulation materially exceed the costs.</i> <p>We consider that competition will not be possible nor appropriate in 3 Waters delivery (customer facing). We consider that a sector specific economic regulation regime would in principle be appropriate. Circular water economy costs and benefits should be clearly linked, with levels of service defined qualitatively and quantitatively, and documented for transparency. IPWEA NZ have the expertise to advise on asset management related aspects of economic regulation, including development of a suitable asset management framework and maturity assessment approach.</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 have seen the challenges sector providers face within a 5 year period with other regulated nationalised activities. The elasticity of supply and demand impacts usage. Disruption from maintenance, renewals and capital programmes will also impact usage and related economic decisions. Although it is difficult, some detailed examination of the scenarios should be investigated before a period is set.</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) The economic regulator should be required to publish input methodologies.</p>

	<p>Methodologies should include the principles, objectives and practices of physical asset management – which are outlined in the International Infrastructure Management Manual (IIMM) and ISO 55000.</p> <p>B) Consumer price shocks should be able to be managed when sound asset management principles are applied and adhered to, including risk and resilience management. IPWEA NZ provides peak body advice on this matter.</p> <p>C) A strong and active economic (including infrastructure, social, environmental and cultural) efficiency challenge should be actively applied. We consider that economic efficiency has broad underlying components (included above). Methodologies must accommodate the principles of Wai Ora, the circular water economy – Industry 4.0/5.0 broader outcomes, and cultural impact statements.</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>
	<p>A) Relevant policy objectives should be developed alongside national technical service standards and customer levels of service standards. Objectives should reflect Te Mana o te Wai and Broader Outcomes.</p> <p>B) We have no comment on this matter.</p> <p>C) We have no comment on this matter.</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>We understand that in this context “merits appeals” on a regulatory decision has regard to the specific circumstances (including the entire decision) of the matter rather than the underlying law itself. On this basis, customers should have the ability to, at an appropriate time, challenge methodology, including infrastructure strategies and asset management plans. Such challenge needs to lead to methodologies that accurately and fairly reflect the specific environments in which wai (water) is consumed/discharged. If this is not fairly reflected in the methodologies, then skewed and potentially adverse regulation could arise.</p>
16	<p><i>Do you broadly agree that with the compliance and enforcement tools? Are any additional tools required?</i></p> <p>We consider that compliance and enforcement tools should be applied to the water entities. These tools must not however result in “water poverty” where some consumers are unable</p>

	to afford 3 Waters services given they are an essential service.
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 have no comment on this matter.
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>
	We have no comment on this matter.
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 matter.
20	<i>Are there any other levy design features that should be considered?</i>
	We have no comment on this matter.
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>
	IPWEA NZ supports the concept of consumer protection in order to ensure that levels of service established through sound asset management practices provide suitable protection to all consumers. We would also recommend that consumer protection takes into account a wider macro scale of protection (community) as well as intergenerational protection given the long term impacts of decision making involved with infrastructure level assets.
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>
	If minimum service levels are issued as a mandated code, they must align with or be informed by the overall levels of service defined through sound asset management practices. Misalignment could lead to costly inefficiencies and/or two-tiered (eg basic, premium or some other standard) service delivery rather than a universal and equitable standard which can be consistently applied, achieved, measured and monitored.
23	<i>What are your views on whether the consumer protection regulator should also be</i>

	<i>empowered to issue guidance alongside a code?</i>
	We have no comment on this matter.
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>
	We have no comment on this matter.
25	<i>What are your views on whether minimum service level requirements should be able to vary across different types of consumers?</i>
	Service levels, regardless of consumer type, need to be established through sound asset management practices so as to reflect expectations of consumers and their communities. The International Infrastructure Management Manual sets out how to go about establishing levels of service across communities and consumer types.
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>
	We have no further comments on levels of service.
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>
	Te Mana o te Wai and Wai Ora concepts must be factored into design as described above.
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>
	We have no comment on this matter.
29	<i>Do you broadly agree that with the compliance and enforcement tools proposed? Are any additional tools required?</i>
	We have no comment on this matter.
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>
	We have no comment on this matter.
31	<i>What are your views on whether the regulator should be required to incentivise high-quality consumer engagement?</i>

	We have no comment on this matter.
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>
	We have no comment on this matter.
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>
	We have no comment on this matter.
34	<i>What are your views on whether there is a need for a dedicated three waters consumer disputes resolution scheme?</i>
	We have no comment on this matter.
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>
	We have no comment on this matter.
36	<i>What are your views on whether a mandatory statutory consumer disputes resolution scheme should be established for the water sector?</i>
	We have no comment on this matter.
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>
	We have no comment on this matter.
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>
	We have no comment on this matter.
39	<i>Do you think the consumer dispute resolution scheme should incentivise water suppliers to resolve complaints directly with consumers?</i>
	We have no comment on this matter.
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>
	We have no comment on this matter.
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>
	We have no comment on this matter.

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>We have no comment on this matter.</p>
43	<p><i>Are there any other levy design features that should be considered?</i></p>
44	<p>We have no comment on this matter.</p>

Implementation and regulatory stewardship

45	<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>Industry representative bodies, including IPWEA NZ need to be given and take up the opportunity to provide inputs into the design and implementation of such governance structures.</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>We have no comment on this matter.</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 have no comment on this matter.</p>

Other comments

	<p>IPWEA respectfully requests the opportunity to talk to this response with the Minister and representatives.</p>
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