

Submission template

Economic regulation and consumer protection for three waters services in New Zealand

This is the submission template for the discussion paper, *Economic regulation and consumer protection for three waters services in New Zealand*.

The Ministry of Business, Innovation and Employment (MBIE) seeks written submissions on the issues raised in the discussion paper by 5pm on **20 December 2021**. Your feedback will help us advise the Government on the design of the future three waters regulatory system.

MBIE intends to upload PDF copies of submissions received to MBIE's website at www.mbie.govt.nz. MBIE will consider you to have consented to uploading your submission in full including your name by making a submission, unless you clearly specify otherwise. Please note that submissions are subject to the Official Information Act 1982.

Submission instructions

Please make your submission as follows:

1. Fill out your name and organisation in the table, "Your name and organisation".
2. Fill out your responses to the consultation document questions in the table, "Responses to discussion paper questions". Your submission may respond to any or all of the questions in the discussion paper. Where possible, please include evidence to support your views, for example references to independent research, facts and figures, or relevant examples.
3. We also encourage your input on any other relevant issues in the "Other comments" section below the table.
4. When preparing to send your submission:
 - a. Delete these first two pages of instructions.
 - b. Include your e-mail address and telephone number in the e-mail or cover letter accompanying your submission – we may contact submitters directly if we require clarification of any matters in submissions.
 - c. If your submission contains any confidential information:
 - i. Please clearly indicate this on the front of your submission or in the accompanying cover letter or e-mail. Any confidential information, together with reasons for withholding the information, should be clearly marked within the text of your submission. MBIE will take such objections into account and will consult with submitters when responding to requests under the Official Information Act 1982.
 - ii. Please provide a separate version of your submission excluding the relevant information for publication on MBIE's website.
 - d. If you do not wish for your submission to be published:
 - e. Please clearly indicate this in the cover letter or e-mail accompanying your submission. However, please note that submissions remain subject to request under the Official Information Act 1982.

5. Send your submission:

- as a Microsoft Word document or searchable PDF to ../Townsew/AppData/Roaming/OpenText/OTEdit/EC_mako/c93190713/mailto_economicregulation@mbie.govt.nz (preferred), or
- by mailing your submission to:

*Competition and Consumer Policy
Building, Resources and Markets
Ministry of Business, Innovation & Employment
PO Box 1473
Wellington 6140
New Zealand*

Please direct any questions that you have in relation to the submissions process to ../Townsew/AppData/Roaming/OpenText/OTEdit/EC_mako/c93190713/mailto_economicregulation@mbie.govt.nz.

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

Your name and organisation

| | |
|-------------------------------------|------------------------------------|
| Name | Paul Utting |
| Organisation (if applicable) | Asset Optimisation Consultants Ltd |

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>Absolutely.</p> <p>The proposed 4 entity structure does not directly allow for competition for customers and this seems unlikely to occur naturally. You are therefore looking for ‘competition by comparison’ and this means that information needs to be presented in a comparable format and freely available to the public, and the regulator.</p> <p>It is also apparent that the current system is not working despite the decisions being made by locally elected councillors, the Long Term Plan being audited, specific requirements being included for the content of the Infrastructure Strategy and Financial Strategy in relation to what future works are required, when they will be needed, what they will cost, who will pay, what will be the impact on prices and when key decision need to be made.</p> <p>Despite Audit New Zealand routinely reviewing these documents the 3 waters study indicates they are not worth the paper they are written on and a far more competent reviewer is required.</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>As noted in the discussion document stormwater is a very different service to water and wastewater. Water and wastewater are specific services delivered to a defined customer and utilising pipes and other facilities that the water is intended to be entirely contained within.</p> <p>The pipes portion of the stormwater system has many similarities with the water and wastewater networks in relation to operations and the construction of new works and renewals. However this system is only designed to manage up to around the 1 in 5 year storm event. Events beyond this are managed by overland flows, open channels, storage basins/dams and major river networks.</p> <p>The pictures on the News of roads blocked, houses flooded or swept away have little to do with the adequacy of the pipe networks. It has much more to do with land use management, intensification, building on low-lying land, the layout of the roading network and appetite for risk.</p> <p>It is also apparent that the necessary and dramatic response to climate change and sea level</p> |

rise will have little to do with the adequacy of the piped stormwater system.

While the skills within the 4 new entities could readily manage the stormwater pipe networks a very different set of skills is required to manage the impact of climate change and sea level rise. This will require close integration with land use planning.

If the 4 water entities are to be responsible for comprehensive management of stormwater than this needs to be considered very carefully. This consideration is further complicated by the non-inclusion of the Regional Councils in the reform process. The regional councils are often responsible for the management of the major river systems and their associated flood plains – often running through, or immediately adjacent to, towns and cities.

The costs and issues associated with management of climate change and sea level rise have not been considered in the case for reform. Given the likely magnitude of these issues and costs it would seem unlikely that local councils are suitable entities to manage this given their apparent inability to manage water supply and wastewater. Whether the 4 new entities are suitable for this task is debatable. They will focus on piped services to defined customers and recovery of the direct costs involved through customer charges. Managing climate change and sea level rise will require regulatory powers and an ability to rate land owners. It also seems likely that the government will need an agency(s) to utilise government funding for these activities.

The complexity of managing stormwater should not be underestimated. This is evidenced by the stormwater not being directly included as part of Manukau Water, Watercare Services Ltd, Metrowater or (I believe) Wellington Water.

3

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

Yes – this is the only way to ensure that their performance and budgeting can be compared on an equitable and consistent basis.

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.

Not worth the complications in the initial setup. There will be a lot to learn from the establishment of the 4 new entities and they will establish a benchmark for the performance and pricing of the others.

5

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

Yes – these are essentially still part of Local Government. Hiding behind walls of ‘commercial sensitivity’ would be intolerable to the community.

6

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

In my view there are 2 primary targets for the new entities :

Effectiveness – doing the right things and making good decisions

Efficiency – Delivering the outcomes as efficiently as possible in terms of both cost and timing

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| | <p>Economic regulation as it relates to return on assets is irrelevant as there are no dividends allowed to be generated. Depreciation is also largely irrelevant other than as an accounting principle.</p> <p>The key outcome is ensuring that the entity has sufficient funding available over the long term to meet its short term operating costs (including debt servicing) and its long term capital provisions for growth, level of service changes, renewals and climate change.</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>Don't have a view</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>Make the rules as clear as possible for the start but have a gradual implementation towards a long-term sustainable structure.</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>Focus needs to be on compliance with health, resource consent, health and safety and customer service standards plus adequate provisioning and planning for future requirements.</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>In relation to D – Consideration of Maori values may influence resource consent processes and the proposed reform is silent on building their strength in this area. Within the new entities we all want high quality services, protected future outcomes and environmental</p> |

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| | protection at the minimum price that can be efficiently, and sustainably, achieved. |
| 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>Not familiar with this.</p> <p>Please do not reinvent the wheel. You can look at Ofwat (UK), IPART (NSW), ESC (Victoria) and State Govt overview in South Australia, West Australia, NT and Queensland.</p> <p>A composite of these should cover all the bases.</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>There is merit in aligning with the 3 year cycle embedded into Local Government. Even with this the forecasts change rapidly and unpredictably.</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 – Yes</p> <p>B – Price smoothing is highly desirable but requires clear rules about management of debt levels and also consideration of intergenerational equity.</p> <p>C – There need to be strong drivers for efficiency gains but setting unrealistic targets and simply running a deficit because these have not been achievable helps no-one. Have we learnt nothing from the Health Boards.</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> |

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| | <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>D) Pricing should be managed by the entity. However consideration needs to be given to a number of issues such as tariff structures, whether wastewater should be charged on a volumetric basis, will meters become compulsory, will tariffs be postage stamp based or scheme specific, should industry be charge on a different basis to domestic. These are all questions that are much more relevant to the reform than this question section.</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>No opinion</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> <p>It would seem that Audit NZ have not done a good job with Local Government. Commerce commission is more focussed on business undertakings.</p> <p>Using Taumata Arowai would seem to make sense providing there is sufficient capacity and no conflict of interest.</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> <p>Yes – all costs should be contained within the industry. Also highlights the cost of regulation.</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> <p>No opinion</p> |
| 20 | <p><i>Are there any other levy design features that should be considered?</i></p> <p>No opinion</p> |
| Consumer protection | |
| 21 | <p>A) <i>What are your views on whether additional consumer protections are warranted for the three waters sector?</i></p> |

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| | <p>B) <i>What are your views on whether the consumer protection regime should contain a bespoke purpose statement that reflects the key elements of the regime, rather than relying on the purpose statements in the Consumer Guarantees Act and Fair Trading Act? If so, do you agree with the proposed limbs of the purpose statement?</i></p> |
| | <p>A water industry ombudsman would be the most effective protection for customers and independent of the individual entities dispute resolution services.</p> |
| 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>A mandated schedule of standards would be useful but the individual targets for such standards should be set by each entity. If they are all the same why have 4 entities ?</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>No opinion</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>Yes – clarity always preferred</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>Yes – The Scottish Water survey identified the very different standards delivered (by choice) to rural communities. The ability to vary the level of service is key to efficient management of schemes.</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>There are already obligations in relation to ability of water providers to turn off the supply.</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>Depends on whether you think Maori and non-Maori should be treated differently.</p> <p>Any consumer protection regime should take account of any cultural and language barriers that may exist but essentially seek to deliver a consistent service.</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</i></p> |

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| | <i>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> |
| | <i>Just the new entities initially.</i> |
| 29 | <i>Do you broadly agree that with the compliance and enforcement tools proposed? Are any additional tools required?</i> |
| | <i>No opinion</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> |
| | <i>No – this is an extension of Local Government – not business.</i> |
| 31 | <i>What are your views on whether the regulator should be required to incentivise high-quality consumer engagement?</i> |
| | <i>No opinion</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> |
| | <i>No – this should develop through co-operation between the entities and support any recommendations from a Water Services Ombudsman.</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> |
| | <i>No – should be water focussed</i> |
| 34 | <i>What are your views on whether there is a need for a dedicated three waters consumer disputes resolution scheme?</i> |
| | <i>Support</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> |
| | <i>All matters where the customer is not able (in their opinion) to get a satisfactory response from the entity. Otherwise we risk having it manged through ‘Fair Go’.</i> |
| 36 | <i>What are your views on whether a mandatory statutory consumer disputes resolution scheme should be established for the water sector?</i> |
| | <i>Have to support</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> |

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| | <i>No opinion</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> |
| | <i>Water entities only initially</i> |
| 39 | <i>Do you think the consumer dispute resolution scheme should incentivise water suppliers to resolve complaints directly with consumers?</i> |
| | <i>'incentivise' is the wrong word. The entity has the obligation to engage and seek resolution. If this does not happen then penalties, and bringing to the attention of the entity Board, are more appropriate.</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> |
| | <i>No opinion</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> |
| | <i>Yea – all cost contained within industry</i> |
| 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> |
| | <i>Doesn't matter as long as costs are transparent and reasonable.</i> |
| 43 | <i>Are there any other levy design features that should be considered?</i> |
| 44 | |
| 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> |
| | <i>Does it deliver :</i> <i>Compliance with obligations</i> <i>A robust forecast of future expenditure and justification for it</i> <i>An acceptable tariff profile over the long term</i> |

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| 46 | <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> |
| | No opinion |
| 47 | <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> |
| | No – absolute transparency and ability to make valid comparisons required. This is not a competitive market. |

Other comments

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