

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

Your name and organisation

Name	Richard Taylor
Organisation (if applicable)	Thomas Consultants Limited, Auckland

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>I believe there is a strong case for economic regulation of three waters infrastructure in New Zealand, except that due to the complexities around stormwater, I think stormwater services should be excluded, or at least for an initial period until water supply and wastewater services have been adequately covered.</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>I don't think stormwater networks should be economically regulated, or not at least for an initial period (of say 5 years).</p>
3	<p><i>What are your views on whether the four statutory Water Services Entities should be economically regulated?</i></p> <p>I believe there is a strong case for economic regulation of the proposed four Water Services Entities. I have outlined a number of examples in the 'Other Comments' section at the end of this document where regulation is needed (or some controls beneficial) in my opinion.</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>I don't think the economic regulation should apply to these schemes but that they should increasingly be subject to the water quality regulator Taumata Arowai in the first instance (which will take many years to implement). I think that providing safe water to drink is the priority for these schemes, and it is better not to introduce too many changes over a short period; better to focus on what is important.</p>
5	<p><i>What are your views on whether the Water Services Entities should be subject to information disclosure regulation?</i></p> <p>Yes I believe it will be important for the four proposed Water Services Entities to be subject to information disclosure regulation. It will be important that the public have confidence in the management of these large significant organizations managing essential public</p>

	<p>infrastructure, and the only way to guarantee transparency and the quality of information and decision making will be by having a regulator in my opinion. I think there will need to be strong accountability for the management of the public assets. It will be important that the four entities are all relatively consistent in this regard, and only a regulator will be able to manage this.</p>
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>There are currently over 70 'water network operators' in New Zealand and each of these will have its own history of development, asset condition and age, accessibility to water sources, cost of water services etc., and so when these are combined into four new entities it will be a major undertaking to perhaps categorise schemes withing each jurisdiction and try to establish common levels of service and pricing for 'categories' of schemes. This will surely require price-quality regulation to oversee and ensure that decisions made are reasonable, and to deal with complaints. i.e. it is inevitable that some customers will be subject to water service price increases, and some price reductions, and this transition from the status quo will require managing. Explanations, reasoning and strategy documents will be required outlining the history, the targets and goals for the water services, and the cost and price implications to achieve the changes, and the level of detail and robustness of these documents will require peer review/regulation to ensure there is consistency in approach between the four entities. Perhaps guidelines from the economic regulator should be prepared in advance to facilitate this process.</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>Further to my comments in 6) above, there will be differences between regions due to the size, number and nature of urban and rural schemes that will almost certainly mean differences in water price for different regions. Hence, I believe individual price-quality regulation for the Water Services Entities will be required in my 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>Just a comment regarding the northernmost Entity.</p> <p>As Auckland and all water networks north of Auckland are 'fully metered schemes' i.e. all customers have an individual water meter and are currently paying for water supply based on water use (some with a fixed charge covering a base water use I think), then the transitional path for this particular Entity could be different to the other three in my opinion.</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>

	No comment.
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>
	No comment.
11	<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>
	No comment.
12	<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>
	No Comment.
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. I expect this will be required to provide clarity to the Water Entities.</p> <p>B. I agree with this statement as I believe price shocks should be avoided.</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. I think the economic regulator should have the ability to intervene on price proposals from the Entities if deemed necessary. I imagine there will be a need to balance a number of issues: backlog (of underinvestment in asset renewals), achieving water quality compliance in all schemes, setting up/combining new systems and processes, current and proposed debt levels, investment priorities, timeliness to achieved desired outcomes/ levels of service etc. that the economic regulator will be the only body in a position to review the proposals from all four entities, and to respond accordingly.</p> <p>B. I think a) in the first instance, then proposals from all four entities should be reviewed by the economic regulator (as discussed above), and any disputes dealt with following a process as discussed in question 10 D. response above. The Government or Minister should be an absolute last resort.</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 comment.</p>
16	<p><i>Do you broadly agree that with the compliance and enforcement tools? Are any additional tools required?</i></p>
	<p>No comment.</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>I think a new small entity which sits alongside Taumata Arowai is required. It could have some in-house resources, but also draw on expertise from the private sector for specialised assistance.</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>I think this would be appropriate (funded via a levy on regulated suppliers)</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 comment.</p>
20	<p><i>Are there any other levy design features that should be considered?</i></p> <p>This is an interesting question. A few comments.</p> <p>Currently (I believe) water suppliers pay a ‘project levy’ to WaterNZ as part of their annual membership. WaterNZ facilitate a ‘Water Services Managers Group’ (along with many other groups) who in turn prioritise and carry out joint research/projects using the funding. Perhaps the economic regulator could collect some additional funds via the main level referred to above, to build up a fund for carrying out investigations /economic studies etc. relating to ‘economic regulation’ matters and issues.</p> <p>Perhaps also, funding could be collected and set aside to help one or more of the four entities deal with extra-ordinary events – a bit like insurance or ACC. Or for training of water services staff nationwide in specific ‘economic regulation’ related matters?</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>
	<p>A. I believe additional consumer protections are necessary. (Refer to my examples under ‘Other Comments’ at the end of this document).</p> <p>B. No comment.</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>As alluded to previously, there are many factors influencing levels of service for water and wastewater services in different towns, cities and regions. Any attempt to standardize levels of service too quickly will be problematic. Selecting the ‘lowest common denominator’ as a ‘minimum service level requirement’ may not be of much relevance either, and may in fact result in perverse outcomes. (I suggest letting the four entities have a first attempt at examining and categorizing their schemes, and proposing sets of meaningful service levels, possibly with a timeframe for more standardization. The economic regulator would then be in a position to compare proposed service levels nationwide and make recommendations for standard service levels and timeframes.).</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>

	Yes, I think so. Refer also my examples under ‘Other Comments’ at the end of this document.
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>In my opinion any matter related to ‘potable water quality’ then it should be covered by Taumata Arowai.</p> <p>Other aspects of water and wastewater service delivery (i.e. response times to faults, asset condition, water loss (leakage), fire fighting water, security of supply, supply pressures etc) should be monitored by the economic regulator in my opinion.</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>From my experience, it will be necessary to have varying minimum service levels for different types or categories of consumers – particularly between urban and rural consumers. Refer also to other responses above.</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>It is only reasonable that any vulnerable person should be protected.</p> <p>However I am not exactly sure of what type of vulnerability you are referring too. It appears you mean that service levels can be compromised if necessary to provide a water supply service to a vulnerable customer. This would have to be dealt with on a case by case basis, and may be reasonable if public health risk was not compromised.</p> <p>As an alternative take on ‘vulnerable’ my example B under ‘Other Comments’ below could be considered a vulnerable person. And yes, I believe they do need protecting.</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>I would expect Treaty of Waitangi principles and the rights of iwi/Maori to be included in the development of all customer service levels, service provision and dispute resolution processes etc.</p> <p>However there are different political views on what this looks like. <i>He Puapua</i> sets out one view of this and other voices have other views. We believe a wider discussion and consensus is required to better define what this should look like in implementation.</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. I think it would be good if the consumer protection regime could apply to ‘all’ water suppliers (i.e. covering anyone paying a water bill).</p>

29	<i>Do you broadly agree that with the compliance and enforcement tools proposed? Are any additional tools required?</i>
	No comment (haven't researched this).
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 would agree with this.
31	<i>What are your views on whether the regulator should be required to incentivise high-quality consumer engagement?</i>
	I would hope that the four entities would carry out an appropriate and acceptable level of consumer engagement.
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 support this as I have personal experience with not having an expert advocacy body to refer a specific technical matter to. It may only be needed from 'time to time' on an 'as required basis'.
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>
	Without knowing the scope of the 'Consumer Advisory Council's jurisdiction' it would seem appropriate. As mentioned above, the services of an expert advocacy body may only be needed occasionally.
34	<i>What are your views on whether there is a need for a dedicated three waters consumer disputes resolution scheme?</i>
	My view is that this probably isn't required. The Commerce Commission could be contacted by customers who have matters that are unresolved with the 'entity'. Once cases are dealt with and precedents are documented (and all entities advised), hopefully the number of unresolved matters referred to the Commerce Commission should diminish.
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 think each of the proposed four entities should have a complaints resolution process for dealing with complaints in the first instance. Refer also my comments above under question 10 D.
36	<i>What are your views on whether a mandatory statutory consumer disputes resolution scheme should be established for the water sector?</i>
	Refer my comments above. Perhaps some guidelines (or minimum requirements) could be prepared and offered to each of the four proposed entities. Otherwise I think each entity should be able to develop their own dispute resolution process.

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>
	Refer above.
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>
	Refer Ques. 28. I think it would be good if 'any water customer' can take an unresolved water services issue to the Commerce Commission or other equivalent body.
39	<i>Do you think the consumer dispute resolution scheme should incentivise water suppliers to resolve complaints directly with consumers?</i>
	In my opinion this shouldn't have to be incentivised. Water suppliers should be resolving issues directly with customers. What might be more appropriate is if the Commerce Commission (or the complaints body) reports on the number of unresolved water services issues referred to them (by entity), and of these, how many reflected an 'unreasonable' response from the entity.
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>
	No comment (not sure of the context).
41	<i>What are your views on whether the costs of implementing a consumer protection regime for the three waters sector should be funded via levies on regulated suppliers?</i>
	This would seem appropriate (unless the Commerce Commission can cover it with their current resourcing).
42	<i>Do you think that the levy regime should:</i> A) <i>Require the regulator to consult on and collect levy funding within the total amount determined by the Minister? OR</i> B) <i>Require the Ministry to consult on the levy (on behalf of the Minister) and collect levy funding within the total amount determined by the Minister?</i>
	No comment.
43	<i>Are there any other levy design features that should be considered?</i>
	No comment.
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</i>

	<i>consider are required?</i>
	No comment.
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 comment.
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>
	I think that information should be shared between regulatory organizations.

Other comments

	<p>I am a civil engineer who has worked in the public water supply sector for over thirty years, 22 years as a water engineer/ three waters manager for a former council in Auckland, and 11 years as a consultant assisting councils (16 to date) manage their water network losses and water networks.</p> <p>I have several examples which I would like to share with you to demonstrate why I believe an economic regulator and consumer protection regime will be important with the proposed three waters reform in New Zealand.</p> <ol style="list-style-type: none"> 1. Management Issue Implementing Customer Water Metering. In some areas of New Zealand there is (or has been) political pressure to not implement customer water metering when it is by far the best option economically. Ten years ago I completed a water demand study for a council which included the option of introducing customer water meters versus upgrading and building new water treatment plants (WTPs). The net present value (NPV) analysis clearly indicated the option with the greatest financial benefit was the option to reduce public water losses and also implement customer water metering, deferring the need to upgrade and build a new WTP. However due to the political climate no action was taken on customer metering. This highlights the need for less political involvement in the management of NZ's public water supply schemes. 2. Customer Issue In my current role I provide advice on the water supply servicing of new developments both in the Auckland area and in other locations. I am aware of varying policies regarding fire mains to provide fire coverage as required by the New Zealand Fire Service Code of Practice (NZFS COP). In one instance the water supplier will not assume ownership of a fire main on private property (required where properties are more than 135m from the road reserve so that a hydrant has to be located down joint owned right of way servicing the development), whereas other
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councils will assume ownership. In the former case, a bulk water meter is required on the (typically 100mm) watermain at the property boundary (road frontage), individual property watermeters are required within the property (at the end of the 100mm watermain after the hydrant), a Body Corporate is required to firstly receive the water bill from the water supplier based on readings on the bulk meter, secondly, arrange meter reading of the individual property meters, calculate water use and invoice all of the individual properties, thirdly, deal with any billing issues due to private leaks, and finally, repair any fault on the private fire main and maintain the fire hydrant. This will all add a significant margin of cost to the 'normal' retail cost of water, and yet the properties are essentially receiving the same level of service as other customers; fire coverage plus a water supply. I have personally written to the water supplier concerned requesting a change of policy but to no avail (after several months). For other councils these properties would be treated no differently to road front properties, and the section of (brand new) watermain on private property will be covered by an easement in favour of the water supplier. There is a significant on-going cost penalty to these customers in the former case, and a potential risk of managing a private section of watermain to which they are probably totally unaware. A customer protection regime may well address these inequities and make a determination as to whether such a policy on private watermains was reasonable, or at least establish a standard policy nationwide. This is a technical issue as well as a customer issue, and at present there does not seem to be any easy way to address such issues.

3. **Policies resulting in Increased Construction Costs** From my experience, sometimes large water suppliers only tend to use 'large' consultancies and 'large' contractors, most likely in order to simplify their management of capital works. While this policy has some benefits, I think it has resulted in higher construction costs. The cost of watermain construction has basically doubled in Auckland over the last 11 years. There will be a number of reasons for the increased costs, but I think one reason is because small to medium sized contractors have largely been excluded (to my knowledge). This may be beyond the scope of an economic regulator or customer protection regime, however in my opinion some form of monitoring of such matters is needed as ultimately it affects the cost of service provision.
4. **Purchasing Policies** With the move to (only) four Water Service Entities there is a huge risk to hundreds of suppliers, consultants and contractors that these water entities will centralise their purchasing arrangements and adopt policies which have a significant impact on hundreds and thousands of water service sector staff and resources. At present risk (purchasing policies) are spread amongst over seventy councils, allowing for niche contractors, suppliers and consultants to operate successfully. This could all change markedly to a small number of selected suppliers, who can then increase their prices once their competitors 'disappear'. This may well need careful consideration and appropriate intervention if necessary – or a complaints procedure available to businesses.
5. **Impact on Provincial Centres** A further effect to that outlined above is the fact that the centralisation of suppliers and water services staff (with combined design and asset management offices etc.), local provincial suppliers and contractors who currently carry out water supply and wastewater works for their local council may well be overlooked (or won't qualify) for future 'large' contracts. Although appearing to be cost effective, the reality is that costs will likely increase under this scenario.

Provincial centres will also be negatively impacted by staff and their families moving out of 'small town NZ' into the larger centres where offices will be located. It would be beneficial if there could be some form of regulation or policy guidance to lessen the

impact on the provinces.

6. **Water Loss** I have been involved in water loss management (from public water supply networks) for over 30 years. I am a member of the International Water Association (IWA) Water Loss Specialist Group (WLSG), have attended many of their conferences, was part of an IWA WLSG Task Force to Australia in 2005, have organised seven two-day national water loss training events between 2006 and 2021, and have worked with 16 councils in NZ over the last 11 years as a consultant with Thomas Consultants Ltd.

I have witnessed sufficient over the last 30 years to realise that water loss management only occurs when there is a commitment from very senior levels within the organization. Unfortunately (or fortunately depending on your viewpoint), water networks typically operate successfully even with very high levels of leakage, and sadly, this is the case in many parts of NZ. Until there is a water shortage or crisis, there is generally no focus on water loss management. When a crisis occurs, cost relativity disappears as water becomes an essential service and no expense is spared to ensure water is available to customers. Managing water loss is in fact 'good water network management'; low water loss reflects a well-managed system (unless it is very new system where losses are low anyway). Often water network management is overlooked because 'water quality' and urgent service related issues take up all the resources that councils have employed.

One would hope that an economic regulator can bring more focus on water loss management as part of ensuring the four proposed water entities manage the water schemes throughout NZ to a high standard. Even ensuring robust and consistent calculating and reporting of water losses nationwide will be a big step forward.