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

Your name and organisation

Name	Hamish Clareburt
Organisation (if applicable)	Utilities Disputes Limited (UDL)

Responses

Economic regulation	
1	*What are your views on whether there is a case for the economic regulation of three waters infrastructure in New Zealand?*
	No comment
2	*What are your views on whether the stormwater networks that are currently operated by local authorities should be economically regulated, alongside drinking water and wastewater?*
	No comment
3	*What are your views on whether the four statutory Water Services Entities should be economically regulated?*
	No comment
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.*
	No comment
5	*What are your views on whether the Water Services Entities should be subject to information disclosure regulation?*
	No comment
6	*What are your views on whether Water Services Entities should be subject to price-quality regulation in addition to information disclosure regulation?*
	No comment
7	*What are your views on the appropriateness of applying individual price-quality regulation to the Water Services Entities?*

	No comment
8	*A) Do you consider that the economic regulation regime should be implemented gradually from 2024 to 2027, or do you consider that a transitional price-quality path is also required?* *B) If you consider a transitional price-quality path is required, do you consider that this should be developed and implemented by an independent economic regulator, or by Government and implemented through a Government Policy Statement?*
	No comment
9	*A) What are your views on whether the Minister of Commerce and Consumer Affairs should be able to reduce or extend the application of regulation on advice from the economic regulator?* *B) What factors do you consider the economic regulator should include in their advice to the Minister?*
	No comment
10	*A) What are your views on whether the purpose statement for any economic regulation regime for the water sector should reflect existing purpose statements in the Telecommunications Act and Part 4 of the Commerce Act given their established jurisprudence and stakeholder understanding?* *B) What are your views on whether the sub-purpose of limiting suppliers' ability to extract excessive profits should be modified or removed given that Water Services Entities will not have a profit motive or have the ability to pay dividends?* *C) Are there any other considerations you believe should be included in the purpose statement, or as secondary statutory objectives?* *D) What are your views on how Treaty of Waitangi principles, as well as the rights and interests of iwi/Māori, should be factored into the design of an economic regulatory regime for the three waters sector?*
	10 D): We set out below our views on how Treaty of Waitangi principles and the interests of iwi/Māori should be factored into the design of economic regulation. Partnership: Fundamental to the Crown and Iwi Māori relationship is this principle of partnership, which we know to be the principle that creates an obligation on both parties to act reasonably, honourably, and in good faith. We are heavily impacted by this principle and see value in its purpose, because we understand that this principle is closely connected to the te ao Māori concept of utu (reciprocity) which values mutual benefit. To align with this principle, the economic regulatory regime must enable partnerships between the Crown and Iwi Māori. In our view, a process that enables partnership can assist us in creating Kaupapa Māori frameworks for dispute resolution that are endorsed by Iwi Māori and their respective communities. It is hoped that this Treaty principle can be factored into the design and implementation of an economic regulatory regime for Māori consumers,

as a platform of engagement in resolving future issues of water supply, maintenance, disposal, and withdrawal.

Participation:

It is UDL's understanding that without participation, partnerships cannot be enabled and affirmed. For Māori consumers to truly participate in the economic regulatory regime for three waters, the regime needs to allow for Māori consumers to be part of the design of regime itself. This is especially important for any aspect that may deal with disputes.

The regime must have participatory mechanisms for Māori to implement it in a way that is culturally appropriate to them and within an achievable timeframe. This should especially apply in areas where Crown and Māori relationships require restoration, as the participation of Iwi Māori in remedying the situation is essential for equitable outcomes. This type of participation with regards to the design and implementation of an economic regulatory regime for three waters, will be a step forward for Māori consumers. Whanaungatanga (kinship relationships) must also be at the forefront of its design to ensure the Crown and contracted agencies are progressive, and instilling confidence in Māori to participate.

Protection:

Whether it is in its physical, linguistic, or ideological forms, the guarantee of protection over the taonga in these forms is essential to building whanaungatanga relationships.

We understand this principle requires an active attribute in protecting Māori interests. An important part of this principle is ensuring Māori can make informed decisions by providing them with all relevant resources and having constructive engagements. We understand that tino rangatiratanga (absolute sovereignty), as guaranteed in the Treaty is something that is at the forefront of Māori issues with regards to water, especially in learning from the submitters and mana whenua participants in Wai262. To ensure that learnings from such developments are shown, regulators should have an operational mechanism that allows for policy changes in response to learning from ever evolving issues like those from Wai262.

Need for discussion of whether Treaty principles from Waitangi Tribunal Hauora Report 2019 (Wai2575) are applicable:

The supply of fundamental utilities is important to the modern functions of health and wellbeing in Māori communities, especially in consideration of Covid-19. There needs to be constructive discussions regarding economic regulation aimed at providing fair and affordable pricing to water consumers in Māori communities, that also includes their living costs of electrical power, gas, and broadband. Taumata Arowai and the economic and consumer protection regulators could be used as a mechanism to drive equitable outcomes for the wellbeing of utility users and water consumers in Māori communities, including those that are largely based in rural areas.

Rights and interests of iwi:

Iwi with Treaty settlements and those who are undergoing them, have formed partnerships with utility suppliers (such as Whanganui and Genesis Energy) that may require a unique process in upholding the settlement responsibilities owed to them. These types of rights and interests need to be recognised and prioritised over any te mana o te wai policy that may conflict with the Crown's Treaty settlement obligations.

11	*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?*
	No comment
12	*What are your views on whether the length of the regulatory period should be 5 years unless the regulator considers that a different period would better meet the purposes of the legislation?*
	No comment
13	*A) What are your views on whether the economic regulator should be required to develop and publish input methodologies that set out the key rules underpinning the application of economic regulation in advance of making determinations that implement economic regulation?* *B) What are your views on whether the economic regulator should be able to minimise price shocks to consumers and suppliers?* *C) What are your views on whether the economic regulator should be required to set a strong efficiency challenge for each regulated supplier? Would a strong 'active' styled efficiency challenge potentially require changes to the proposed statutory purpose statement?*
	No comment
14	*A) What do you consider are the relevant policy objectives for the structure of three waters prices? Do you consider there is a case for parliament to directly control or regulate particular aspects in the structure of three waters prices?* *B) Who do you consider should have primary responsibility for determining the structure of three waters prices:* *a) The Water Services Entity, following engagement with their governance group, communities, and consumers?* *b) The economic regulator?* *c) The Government or Ministers?* C) *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?* *No comment*
15	*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?*
	No comment

16	*Do you broadly agree that with the compliance and enforcement tools? Are any additional tools required?*
	It is not straightforward to predict in advance the extent of compliance and enforcement tools required for a new economic regulatory regime. While input from other jurisdictions will have been sought Aotearoa New Zealand with its significant three waters reform is likely to face differing challenges. Ensuring the tools act as a deterrent yet remain flexible, proportionate, and fit for purpose will be a work in progress. Providing a wide discretionary power for the regulator will be useful as well as ensuring any changes that may be required in the future can be achieved without a lengthy consultation and amendment process.
17	*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.*
	UDL believes the Commerce Commission is the logical choice for economic regulator and is preferable to establishing a new authority or using Taumata Arowai given that body's more independent status as a Crown Agent. The Commerce Commission has the experience and expertise, and while not specifically related to water as Table 5 illustrates, this work is comparable with the Commission's work in the energy distributors and telecommunications sectors, and it could readily adapt to the water sector. UDL would support a Water Commissioner role being established within the Commerce Commission functioning in a similar manner to the Telecommunications Commissioner. Having a dedicated role sitting within the Commission would ensure that critical issues faced by the water sector are kept front of mind and paramount.
18	*What are your views on whether the costs of implementing an economic regulation regime for the three waters sector should be funded via levies on regulated suppliers?*
	UDL believes a levy paid by the regulated supplier is the most appropriate method of funding. While this may ultimately be passed on to the consumers it should also allow input and consultation regularly by the regulated suppliers that are paying the levies to ensure relevancy and accountability. The regulated suppliers will be able to ensure that economic regulation is designed and maintained to advantage consumers in the long term.
19	*Do you think that the levy regime should:* *A) Require the regulator to consult on and collect levy funding within the total amount determined by the Minister? OR* *B) Require the Ministry to consult on the levy (on behalf of the Minister) and collect levy funding within the total amount determined by the Minister?*
	In our view option A is preferable. We believe it would be appropriate for the Minister to approve the rules, mechanism, basis for determining the levy and any subsequent changes. However, it would be preferable if the economic regulator was responsible for producing the appropriate methodology and rules, consulting with all relevant stakeholders and collecting the levy when approved. This would provide more certainty and participation for suppliers.
20	*Are there any other levy design features that should be considered?*
	No comment
Consumer protection	

21	*A) What are your views on whether additional consumer protections are warranted for the three waters sector?* *B) What are your views on whether the consumer protection regime should contain a bespoke purpose statement that reflects the key elements of the regime, rather than relying on the purpose statements in the Consumer Guarantees Act and Fair Trading Act? If so, do you agree with the proposed limbs of the purpose statement?*
	In our view, additional consumer protections are needed for the water sector. While the Consumer Guarantees Act and Fair Trading Act are effective, there is no specific agency tasked with enforcement of the Consumer Guarantees Act. There are also other issues with the Consumer Guarantees Act in that it is complex and commercial entities often contract out of the provisions. To be effective in the energy sector amendments were required (see s7A). This may also be required in the water sector. Additional protections would complement existing legislation and inform consumers of the minimum standards they should expect from their water supplier. Guidelines can also be used to address any failures to maintain those standards. The consumer care guidelines have been introduced in the electricity sector and a Retail Service Quality code is being introduced in the telecommunications sector. Clear guidelines and codes ensure consumers receive consistent standards of service and information from all water suppliers. They can also ensure suppliers apply best practice when managing connections, outages, failures, and leaks. They can require price transparency and common billing practices across all suppliers as well as minimum advertising and disclosure standards. This can also prescribe safeguards for vulnerable consumers to ensure water services are maintained. Such guidelines can also ensure positive steps are taken to inform consumers of the additional channels available to support and advocate for them. An example of this is the requirements to include details of UDL and Powerswitch on all electricity and gas bills and other relevant communications. Introducing these protections would ensure consistency with other utilities. They would also facilitate the resolution of consumer issues in an efficient cost-effective manner. Consumers can refer to them when raising a concern with their provider. Taumata Arowai and a dispute resolution service provider can do the same. This provides a less formal path to resolve issues rather than relying solely on the mechanisms of the CGA, FTA and Commerce Commission. A bespoke purpose statement similar to the Electricity Industry Act and Telecommunications Act should be used to ensure the purpose of any consumer care guidelines or retail service quality are clear and unambiguous. This can be tailored to the purpose of the three waters reform and ensure the role of Te Tiriti of Waitangi is clearly embedded. We agree with the proposed limbs of the purpose statement but would also include transparency over decisions that affect their interests, in addition to bill transparency. An overarching statement regarding the adoption of behaviours and decision-making processes that maximise consumers potential to access quality and affordable water services could also be included to ensure water providers maintain a consumer centric approach.
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?*

	Our view is that the consumer protection regulator should issue minimum service level requirements via a mandatory code rather than consumer charters or consumer contracts. While generally self-compliance is encouraged previous deficiencies around water services make this vital. Given the level of maturity of the water sector at this specific time it also appears preferable to have minimum service level requirements and promote consistency across the sector. Consultation when developing these levels would need to be wide reaching across comparable overseas jurisdictions and all stakeholders including all demographics of users in Aotearoa New Zealand.
23	*What are your views on whether the consumer protection regulator should also be empowered to issue guidance alongside a code?*
	The consumer care guidelines referred to above (issued 1 July 2021) require all electricity retailers to have mirrored these in their internal policies by December 2021. It reserves the right for these to become mandatory should there be widespread non-compliance. From the perspective of a dispute resolution scheme provider such guidance is extremely helpful in being able to point to best practice for both providers and consumers. The EA has produced specific explanatory versions for consumers and for health and support agencies - also helpful. UDL would support a code issued by the consumer protection regulator with supporting guidance (which is able to be quickly amended where necessary) in the water sector.
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?*
	Including water service quality with economic regulation and consumer protection legislation in a single piece of sector specific legislation will make it easier for all stakeholders and prevent confusion as to which consumer legislation to use. However, consideration may need to be given to the availability of common law available from legislation such as the Consumers Guarantees Act and Fair Trading Act which might be lost should water specific consumer protection legislation be introduced. So far as including service quality in legislation regard could be had to the work of the Commerce Commission under the Telecommunications Act to improve retail service quality. This includes such issues as customer service, faults, installation, contracts, product disclosure, billing, switching, service performance, speed, and availability. The Commission can issue regular reports where it sees improvement is needed.
25	*What are your views on whether minimum service level requirements should be able to vary across different types of consumers?*
	Ideally water consumers should receive the same level of service whether it is provided by a large entity or a small community supplier. However, given the scope of the three waters reform UDL would support a longer lead in time for smaller suppliers to comply with the minimum service level requirements with the ultimate goal that standards across all of Aotearoa New Zealand are comparable. The health and safety of consumers must be paramount when it comes to water supply.

26	*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?*

	UDL supports an obligation in the regulatory regime to protect all consumers (including vulnerable) and a minimum service level that is flexible enough to accommodate a wide range of approaches to address consumer harm and vulnerability.
	
	UDL's experience in the energy sector has seen a sector mature significantly particularly over the last ten years in part, from having a strong independent mandatory dispute resolution scheme.
	
	The recent development of the Electricity Authority's consumer care guidelines addresses most of the vulnerable consumer issues raised in the discussion paper. The guidelines promote the same minimum service level for all consumers, rather than focusing solely on consumers who meet a definition of 'vulnerable'. This acknowledges the fact that vulnerability comes in many forms and consumers can move in and out of vulnerability over time.
	
	The guidelines include minimum recommended actions across all major consumer interactions such as billing, data handling, disconnections, debt practices, account management, and fees. The guidelines have a strong focus on assisting consumers who experience payment difficulties and set out specific recommendations for assisting medically dependant consumers.
	
	UDL recommends a similar approach to the guidelines be explored. Water suppliers should:
	• identify, record, and use customers' communication preferences. E.g., channel, language, time and day, alternate contact
	• identify, record, and use customer preferences for invoicing such as frequency of invoice, day of payment
	• keep information about customers' potential to experience payment difficulties or be harmed by lack of access to supply
	• have a system in place so that people don't have to repeat stories relating to payment difficulty
	• address potential payment difficulties early by:
	  ○ building rapport and recognising potential payment difficulties
	  ○ using customer account data to predict payment difficulties and offer targeted assistance
	  ○ contacting customers as soon as an invoice is overdue to offer support to resolve any payment difficulties

27	*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?*
	UDL fully supports Treaty of Waitangi principles and the rights and interests of iwi/Māori being embedded in all facets of three waters including the consumer protection regime for

	the reasons we have set out in question 10 D) above and to achieve the purpose of the planned reforms. Where applicable to Treaty settlements, the te mana o te wai approach is essential in the success of Taumata Arowai as a relevant entity to iwi Māori. Continuous and open engagements with mana whenua on how Māori interests should be embedded in all consumer protection areas will be critical for its success to iwi Māori.
28	*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?* *B) Do you support any other options to manage the regulatory impost on community and private schemes?*
	UDL believes it is important that the consumer protection regime applies to all water suppliers. As an example, all large energy providers and all secondary networks must belong to the mandatory energy scheme. The electricity consumer care guidelines apply equally to all electricity retailers, large or small and the Gas Industry Co is in the process of replicating them for gas retailers. Some examples of poor behaviour seen in the electricity sector involve very small providers. One example is disconnecting electricity of vulnerable customers due to non-payments unrelated to power. This leads us to believe all consumers of water regardless of their supplier should have the benefit of the same consumer protection regime. The regulator could decide on time frames however the goal must be all suppliers having the same duties to their customers regardless of size or numbers.
29	*Do you broadly agree that with the compliance and enforcement tools proposed? Are any additional tools required?*
	We agree broadly with the enforcement tools proposed and note the Water Services Bill provides for a broad range of enforcement responses. However, we believe Taumata Arowai (or the Minister) should have express authority to prescribe or delegate any relevant information collection, compliance, and reporting powers to anyone who is delegated to operate its dispute resolution process under s38(2A) of the Water Services Bill. This could follow the provisions contained in Schedule 4 of the Electricity Industry Act 2010 if necessary, so that any dispute resolution provider has clear rules that allow it to respond effectively to any consumer complaint. This can include the power to order the payment of targeted compensation or costs to a consumer which is largely missing in the other legislation. It would also create an effective response mechanism, avoiding the time and expense involved in pursuing a claim in the Disputes Tribunal or Courts. Taumata Arowai or its delegate should also have similar powers to those contained in ss 96 and 97 of the Electricity Industry Act 2010 for any water provider that fails to fulfil a requirement to join any mandatory dispute resolution scheme or comply with its orders. This can be an important measure for dealing with smaller providers and is a necessary tool in the electricity sector.

30	*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?*
	Yes. As confirmed in the discussion paper, effective economic and consumer protection regulation has played a critical role in delivering better outcomes for consumers in other countries that have faced similar issues to New Zealand, such as bridging the significant infrastructure deficit and ensuring water remains affordable. UDL notes the Commerce Commission plays a similar role in relation to electricity in tandem with the Electricity Authority. UDL believes this model should also be used for water and agrees the Commerce Commission is the most appropriate consumer protection regulator for the three waters sector. UDL believes the Commission, as suggested by the discussion paper, should have a dedicated water sector focus, for example by creating a 'Water Commissioner', like the Telecommunications Commissioner. Its role would complement that of Taumata Arowai. A specific focus would enable the Commerce Commission to give sufficient attention to water – an area of highest significance in Aotearoa - for iwi, mana whenua, councils, and water users. The Commerce Commission having a regulatory role for water, telecommunications and electricity would ensure these crucial utilities are delivered in a consistent and cost-effective way for all consumers. It would also create one simple pathway for consumers and avoid confusion, which is particularly crucial at a time when energy providers are increasingly choosing to combine the bundle of utilities that they offer. In our view it is essential that the scope of the Commission (and empowering legislation) is wide enough to include future water emerging technologies and environmental issues to ensure it remains relevant and has appropriate jurisdiction for the future. Consideration should also be given to as to which consumers the regime will be responsible for – is it restricted to individuals and small/medium businesses or all users including large business if needed. UDL agrees with the other reasons set out in the submission paper as to why the Commerce Commission is the most suitable body to be the consumer protection regulator.
31	*What are your views on whether the regulator should be required to incentivise high-quality consumer engagement?*
	UDL fully supports water suppliers being incentivised to provide high quality consumer engagement. By doing so, they will be providing consumers with a greater level of service. This is important for a number of reasons including: • ensuring the suppliers stay relevant to consumers allowing them to identify their needs and the information they require to improve the delivery of services, and • providing an opportunity for regular review and feedback on suppliers' processes and the methods they use to resolve issues. Trust and an open dialogue with consumers allow for greater efficiency and effectiveness when engaging with water suppliers. The requirements for a consumer forum and engagement and reporting requirements will assist with the providing a strong consumer voice and increasing engagement by users.

	In our experience community engagement work helps improve awareness, accessibility, and user experience. Vulnerable communities often seek assistance from financial mentors, community agencies or support organisations in the first instance rather than engaging directly with utilities providers due to the reasons identified in para 207 of the discussion paper. Cameron Ralph Khouri in its 2021 review of the telecommunications dispute resolution service commented favourably at para 56 on proactive community engagement which can also build consumer awareness. The Governors Representative Group has an important role. A more contemporary name could be considered to describe its purpose.
32	*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?*
	UDL does not believe there is a need to create a new expert advocacy body to advocate technical issues. There are already existing consumer bodies such as the new Consumer Advisory Council (CAC) that could be expanded to include the expertise that is required to advocate for technical issues (see answer to Q 33 below). There are a number of jurisdictions where energy and water are combined such as the energy and water ombudsman network in Australia. UDL is also aware of the New South Wales (NSW) Australia Public Interest Advocacy Centre[1]. It has an energy and water consumers advocacy program (EWCAP) to ensure all NSW households have access to affordable and sustainable energy and water services. The team engages with community organisations, consumer advocates, state and federal governments, rule-makers, regulators, ombudsmen, and industry stakeholders, and receives policy input from a community-based reference group. As another option UDL would like to illustrate, that for our existing government approved schemes we set up advisory committees for our schemes to advise UDL and its Board to ensure there are no knowledge or technical gaps. Our advisory committees are made up of sector and consumer representation. Their purpose is not to make decisions or advise on any complaint, rather for UDL to consult with on a quarterly basis to ensure our work meets the sector's needs and ensuring we are delivering it in a way that gives priority to sector best practice and is technically accurate. The CAC could establish a similar process or ensure that if its work is expanded to include water that it has access to the required technical expertise either by including experts in its membership or having access to a technical advisory committee.
33	*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?*
	As set out above we believe that the Consumer Advocacy Council (CAC) which is currently in place with appropriate support from MBIE could also fulfil the water advocacy role. The current work that the CAC is planning for energy is comparable as a utility and the CAC could be strengthened by the appointment of water sector specialists including iwi/manawhenua representatives. This will avoid replication of engagement with many of the consumer-focused hardship agencies that the CAC will be engaging with noting those agencies often complain about excessive engagement by different groups preventing their attending to

[1] Public Interest Advocacy Centre ***https://piac.asn.au/project-highlight/ewcap-vision-and-priorities/***

	their core work. Consumers who are in hardship for energy payment issues will also be in hardship for water payments and there appears to be a good synergy.
34	*What are your views on whether there is a need for a dedicated three waters consumer disputes resolution scheme?*
	UDL supports the need for a dedicated three waters disputes resolution scheme which we recommend should be mandatory (see Q 36 below). We agree that the Disputes Tribunal can be confusing for consumers and the adversarial approach may be inhibiting and not be helpful in this context. A dedicated consumer dispute resolution scheme can promote more informal, cost effective and consistent practices in resolving complaints which can improve the level of service for all consumers and lead to consumer improvements across the sector. A disputes resolution scheme would need to adhere to accepted best practice principles such as accessibility, independence, user focused, fair, efficient effective and accountability. It is also recommended that any mandatory dispute resolution scheme for the water sector is required to benchmark itself against the Government Centre of Dispute resolution framework. There are numerous advantages in having a disputes resolution scheme including ○ providing an independent place for consumers to approach if their complaint is not resolved satisfactorily, ○ assisting with power imbalances, ○ providing learnings and trends to the sector, ○ identifying systemic issues across the wider sector, ○ developing strong effective working relationship with key stakeholders, ○ commitment to tikanga Māori and Treaty of Waitangi in culture and processes, ○ regular independent reporting on the consumer performance of providers, ○ transparency of consumer issues through published complaint outcomes, ○ community engagement and targeted awareness, ○ training delivered to Industry.
35	*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?*
	We agree the kinds of disputes set out in the discussion document are appropriate. Thought could be given as to how historic or transitional disputes will be handled so consumers are not prevented from addressing longstanding issues in a cost-effective way. We also believe provision should be made to allow complaints to be declined if there is a more appropriate forum for considering the issue. This may be due to the significance, complexity or value of the issue raised which may make it more suitable to be dealt with by the Courts or another forum. For example, this provision is available in the electricity sector where complaints are intrinsically linked to the framework of the industry, are commercially motivated, or involve significant sums of money. It is preferable that decisions for these types of issues are made with the benefit of broad industry and regulatory input, which is

	not necessarily appropriate in a consumer disputes process more designed for consumer issues.
36	*What are your views on whether a mandatory statutory consumer disputes resolution scheme should be established for the water sector?*
	UDL believes for a dispute resolution scheme to operate effectively, mandatory membership is desirable fair and promotes consistency. It should be operated on a not-for-profit basis in line with the no profit motive intended by government for water services entities. UDL is a member of ANZEWON, the Australia and New Zealand Energy and Water Ombudsman Network. In 2019 ANZEWON commissioned research from the University of Sydney to better understand the dispute resolution needs of consumers in the energy and water markets in 2020, 2025 and 2030 to ensure schemes are fit for purpose. One of the recommendations is that ***all*** *licensed water suppliers, regardless of their corporate or municipal status, be required to become over time a member of the relevant Scheme*. It said it was apparent that unless membership is mandated the integrity of the Scheme was likely to suffer. Our view is that all sector specific dispute resolution schemes should be mandatory. This is even more important in the water sector given its essential role in our community and to ensure the widest effect at every level to the intended reforms. A mandatory scheme would put users at the forefront and ensure all consumer voices are able to be heard. A scheme can be funded by its industry and remain independent if membership of the scheme is mandatory and the scheme is not-for-profit. Care needs to be taken to ensure sector representation in governance of a mandatory dispute resolution scheme is not portrayed in a way that could affect any perception of independence. A scheme where membership is not mandatory and is for profit might be viewed by consumers as being influenced by industry. A for profit dispute resolution scheme is also potentially a reputational risk if government is endorsing a particular service provider and does not align with government's intention that water services entities will not have a profit motive or an ability to pay dividends to shareholders. UDL believes mandatory membership of a scheme can reduce any perceived influence by scheme members on case management and decision-making processes. An extreme example of a potential problem with a voluntary scheme could be where a scheme member threatens to withdraw because of a finding that was not favourable towards them or suggested systemic costly improvements in the scheme members internal processes were warranted.
37	*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?*
	UDL believes that there would be greater cost efficiencies and benefits for the water sector and consumers if the jurisdiction of an existing scheme or schemes were expanded and mandated. Setting up an entirely new service is time-consuming and expensive and can require a significant length of time and operational experience to become truly effective. While all schemes are different it can be useful to leverage off existing schemes and experience when delivering a new scheme. An existing scheme provider's experience and expertise would offer an advantage to the sector including a costs advantage.

	Consideration should also be given to the synergy of bundled services in the utilities sector. As noted in the discussion paper the 2005 finding of Philip Hampton showed some evidence of consumer benefits from having a single point of contact for similar types of disputes across utility sectors. This is illustrated by the prevalence of combined Energy and Water Ombudsman roles in Australian States, UK, and USA States
38	*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?*
	UDL believes consumer disputes resolution schemes should apply to all water suppliers, regardless of size. As an example, in the energy sector, anyone providing energy to a consumer must belong to the energy complaints scheme. This includes secondary networks such as entities like rest homes or body corporates of apartment blocks. Secondary networks which belong to the UDL energy scheme pay a minimal yearly membership fee. UDL suggests that this model be replicated in the water scheme, capturing all water suppliers. A concession could be provided for smaller suppliers in that the date for joining the scheme is extended however consumer safety must be paramount and belonging to a dispute resolution scheme is not a burden for suppliers and should be achievable quickly. This needs to be tempered by our response to Q 22 above. If a small water supplier is subject to a disputes resolution scheme yet not required to fully comply with Taumata Arowai's standards fully this may lead to different outcomes depending on the size of the water supplier and the complaint.
39	*Do you think the consumer dispute resolution scheme should incentivise water suppliers to resolve complaints directly with consumers?*
	Yes. UDL believes suppliers should always have the opportunity to resolve complaints directly with the consumer first. This is in line with Ombudsman and Disputes Resolution Schemes in New Zealand, Australasia and internationally and would encourage water suppliers to improve their customer service and organisational processes. Suppliers can also identify underlying internal issues and resolve them accordingly. More specifically a consumer dispute resolution scheme should incentivise water suppliers to resolve complaints directly with their customers. A best practice dispute resolution scheme is funded by its member companies through a membership levy and/or case-based fees. Levies can be structured to incentivise early resolution of claims. Generally, there is no cost to a complainant to bring a complaint to a dispute resolution scheme, which removes any barrier to claims for low level complaints. Within our current government approved schemes, UDL incentivises providers to resolve complaints directly with customers by charging levies based on the different stages of a dispute. UDL also provides free initial complaints handling training to its providers to improve their skills in that area. The vast majority of complaints are resolved prior to UDL accepting them as a deadlocked complaint and charging a levy. When providers are levied for a complaint that has been accepted (after the provider has had an adequate opportunity to resolve it themselves) there is a constant incentive for them to improve their customer service and resolve issues earlier which benefits everyone. If a provider believes it has investigated the customer's complaint adequately and made a reasonable offer to resolve it, it can ask UDL to not accept the complaint which is then considered.

40	*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?*

	Accessibility to and awareness of consumer protection regimes for all communities in New Zealand will be crucial to its success. While it is not always easy to achieve a high level of awareness in traditionally underserved or vulnerable communities, UDL believes it is essential for any water dispute resolution scheme to have a clear plan towards achieving that goal. While general awareness may be a preference it is also important to ensure people can find a dispute resolution service when it needs it.
	
	However, it is not just underserved or vulnerable communities that do not access dispute resolution schemes. Many consumers do not have the time or emotional energy to raise a complaint. The UK Ombudsman found in a 2019 survey that 62% of millennials said the idea of making a complaint fills them with dread. Thirty-eight percent would do so on social media and 70% of vulnerable customers suffer in silence.
	
	Barriers can be limited by having multiple access points and accepting verbal complaints. Ensuring access points cater for all ethnic and demographic groups, and their differing preferences and are easy to use is essential.
	
	Some ways to improve accessibility include:
	• Having dedicated community engagement plans to build authentic and long-lasting relationships with social agencies representing under-represented and vulnerable communities
	• Ensuring cultural competence such as:
	  ○ Following the Government Centre of Dispute Resolution (GCDR) principles
	  ○ Regularly engaging with Māori and Pasifika community organisations
	• Ensuring information points meet the NZ Government Web Accessibility Standard and the Web Content Accessibility Guidelines to ensure all content is accessible to people with disabilities
	• Measuring those who do engage and targeting those that do not.

41	*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?*
	UDL agrees a consumer protection regime for the three waters sector should be funded via a levies structure. From UDL's experience as a dispute resolution scheme provider this model has worked well for both its government approved energy scheme and broadband shared property access scheme. The levies model is based on market share with a variable component for deadlocked cases accepted by UDL for complaint resolution. A separate defined dispute resolution scheme within an existing dispute resolution organisation will increase transparency and value, as some costs (e.g., non-operational costs) can be shared across schemes.
42	*Do you think that the levy regime should:*

	A) Require the regulator to consult on and collect levy funding within the total amount determined by the Minister? OR *B) Require the Ministry to consult on the levy (on behalf of the Minister) and collect levy funding within the total amount determined by the Minister?*
	In relation to levies for any dispute resolution scheme we believe consumers would be well served by a levy mechanism that operates in a similar way to the energy sector. Under s 128(3)(f) of the Electricity Industry Act 2010 the Minister approves the rules for the operation of the consumer disputes scheme, which includes the levy mechanism, which is determined following consultation with the sector and all relevant stakeholders. This approval could be delegated to Taumata Arowai, but in our view it would be effective to remain with the Minister. Under this mechanism the dispute resolution scheme operator would consult on and collect the levy. The process works well in the energy sector. UDL has an established method for apportioning the costs of its services and levies. This provides certainty for the electricity sector and ensures the scheme can respond to any changes in the sector due to emerging technology or change in business practices. It can also provide for changes to be made in response to any identified weakness or omission. Consultation requirements can be placed on the disputes scheme operator, to ensure the Commerce Commission, MBIE, Taumata Arowai and other key stakeholders are part of any engagement together with iwi, hapu and consumer advocates.
43	*Are there any other levy design features that should be considered?*
	The levy to cover the operational costs for the consumer disputes scheme under the Electricity Industry Act 2010 includes case and market share-based components. Having a case-based levy based on duration and days to resolve more protracted cases incentivises good customer service and complaints handling. Over time UDL has seen this approach has resulted in improvement to service levels and a decline in case-based levies as electricity providers have raised their internal levels of service. We believe this is the most appropriate model for the service and would provide a cost-effective way to fund any similar scheme.
44	*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?*
	Yes. The paper has usefully drawn together the diverse and competing issues in three waters reform. The work required will be wide ranging and a structured and strategic method of governance is needed to achieve the purposes of the reforms. One option is to issue overarching policy requirements or guidance that could be coupled with reporting requirements and information sharing directions in the regulations for each entity. For instance, if the consumer protection regime becomes aware of an issue affecting public safety that will be reportable to the Minister and the Ministry of Health. Similar requirements could require reporting to the Ministry for the Environment. UDL needs more information on the suggested Council of Water Regulators before commenting further on its merits. It may be preferable for reporting to be overseen by the

	Minister who could call on an expert panel to provide guidance, rather than create a standalone entity. Reporting obligations could be complemented by structured meetings between all regulatory players. We understand this happens in the education sector on a quarterly basis. These could address issues that align with the purpose of the three waters reforms. Regular huis with all stakeholders particularly in the first years of operation will be crucial to ensure all divisions are working together and that governance is effective. These huis should be formally arranged at regular intervals and smaller ad hoc stakeholder meetings encouraged between stakeholder groups that work more closely together
Implementation and regulatory stewardship	
45	*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?*
	Yes, high level strategic direction from Government should be allowed so long as it is not directive or operational. We believe this could follow the approach that we understand is taken in the education sector where the government issues policy direction for multiple delivery agencies, including early childhood, primary, tertiary, and private education institutes to ensure there is a focused and strategic delivery of services across the entire sector.
46	*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?*
	UDL believes it is imperative that the economic and consumer protection regulators for water can share appropriate information gained through those roles with other regulatory agencies. It is suggested this be clearly set out in primary or secondary legislation subject to general privacy and similar considerations. An inability to share information with other regulatory agencies (and stakeholders) can be counterproductive, stifle progress and affect consumers' wellbeing in the long-term. It can also be seen as a lack of transparency and affect the reputation of the regulators. There may be some restrictions and the extent of these can potentially be gleaned through local workshopping and engaging with overseas jurisdictions.

Other comments

	UDL wishes to compliment MBIE on the quality and thoroughness of its discussion paper.