

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

Your name and organisation

Name	Gavin Ion
Organisation (if applicable)	Waikato District Council

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>WDC is favour of consumer protection for three waters infrastructure.</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>Stormwater requires careful consideration in respect to who benefits from the activities. Developments, subdivisions and roads often carry consented conditions for stormwater infrastructure operations and maintenance to be carried out by private and public organisations and individuals. The water quality from this infrastructure can have an impact on the downstream consented public stormwater infrastructure and water quality standards which councils are responsible for. Costs for stormwater should fall with the owner, public or private. Given the diverse nature of stormwater infrastructure and the multiple owners, WDC are of the opinion that Economic Regulation of stormwater will be difficult to achieve.</p>
3	<p><i>What are your views on whether the four statutory Water Services Entities should be economically regulated?</i></p> <p>Council understands that economic regulation of the four Water Service Entities is necessary to be fair and reasonable to the communities that receive current water services. The Entities are large organisations with a monopolistic market position. Water costs should not be significantly different to the costs water consumers face now. Council is concerned that new layers of bureaucracy with the addition of Taumata Arowai, Entity B and the Economic Regulator will add additional costs that the water user will have to bear without necessarily receiving any additional benefit.</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>All water supplies are required to meet the drinking water rules. Council is of the view that economic regulation can only be applied to the larger water suppliers. Marae would be severely disadvantaged and have significant cost (which may well be unaffordable) if they were to be subjected to economic reform where currently there is none. Whilst safe healthy drinking water should be accessible by all users, economic regulation may not be required</p>

	across all water supplier categories.
5	<i>What are your views on whether the Water Services Entities should be subject to information disclosure regulation?</i>
	Council believes that transparency in water services is vital. Water consumers should understand and have information available to them to ensure they are receiving not only value for money but that their local constraints and considerations in delivering levels of service and accommodating growth are available to them
6	<i>What are your views on whether Water Services Entities should be subject to price-quality regulation in addition to information disclosure regulation?</i>
	Price quality regulation is seen as paramount. Water Service Entities need to be held accountable for procurement decisions and costs in providing service to ensure service delivery is equitable, corporate overheads are maintained to reasonable levels and fraudulent activities are not able to be incorporated into day-to-day deliverables.
7	<i>What are your views on the appropriateness of applying individual price-quality regulation to the Water Services Entities?</i>
	Given the geographic regions of the entities are so large, the uniqueness of location is averaged out across each entity. On this basis price quality regulation can be applied equally across each individual Entity.
8	<i>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?</i>
	<i>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?</i>
	As with Entity transition, it will take several years for the Entity to become fully effective from the date of handover. On that basis Council is of the view that economic regulation can be implemented gradually from 2024 to 2027 alongside Entity transition.
9	<i>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?</i>
	<i>B) What factors do you consider the economic regulator should include in their advice to the Minister?</i>
	A) The framework for the economic regulator needs to be established and implemented to determine what area of improvement is required over time. The Economic regulator needs to be empowered and influence control as time move on. Council recommends that the Ministry of Commerce or Consumer Affairs should be able to extend or reduce the application on advice from the regulator.
	B) Factors the economic regulator should include are environmental considerations, Iwi and Hapu views to ensure Te Mana o te Wai are delivered upon including water supply and wastewater and stormwater disposal, local considerations for growth and development, the requirement to ensure healthy water is supplied and water treatment is to a satisfactory level that protects public health and availability, affordability and the impact on the community

that the water services provide as a whole. Benchmarking would be useful to demonstrate the effectiveness of each water service provider.

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- 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?*

A) The status of the Water Services Entities as unique statutory entities and the current ownership structure would suggest that the purpose statement for any economic regulation regime is developed specifically for the water sector. We do agree that aspects of the Telecommunications Act and Part 4 of the Commerce Act could be utilised within drafting of a new Act ensuring that the tried and true is incorporated alongside the specific requirements the Water Entities require.

B) Limiting suppliers' ability to extract excessive profits should be modified or removed. WDC currently organise their water business to be cost neutral. Other than rural water schemes where shareholders invest to supply water for agricultural purposes, all water suppliers supplying water for public consumption should not be able to create profit or create significant cash reserves through over charging or under spending. Any surpluses should have to be reinvested back into infrastructure.

C) WDC wants to ensure New Zealand wide equality when it comes to access to water, water quality and water service delivery. We understand modelling for the four entities show each entity will have different price regimes, but the differences are modest. We would expect the secondary objectives of the economic regulator to provide pricing that is in line with this modelling.

D) WDC has worked hard to ensure it has developed strong relationships with local Hapu and Iwi. The considerations of the Treaty of Waitangi principles must be factored into the design of an economic regulatory regime for the three waters sector. Equitable outcomes and minimising unintended impacts on all water users including Māori need to be considered. Profiteering from the sale of water or water ownership should not form part of this discussion. Marae should not have significant impact or cost in relation to access to water that is has traditionally been used for drinking, bathing, cultivation, healing, spiritual ceremonies and cultural activities.

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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?

The status of the Water Services Entities as unique statutory entities and the current ownership structure would suggest that any economic regulation regime is developed specifically for the water sector. Shoehorning the water sector into an existing purpose

statement such as in Part 4 of the Commerce Act means that the specific requirements of the water entities may not be fully reflected. We would prefer that the relevant parts of the Commerce Act are extracted and used in the drafting of water specific economic regulation regime.

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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?

The Entities will require a bedding in period once established. As price-quality paths are usually for periods of between 4 and 6 years, it may take this time for the entities to understand and accommodate all the pricing methodologies inherited from the councils making up each of the four Entities. Initially WDC would suggest the regulatory period is three years to allow commonality and scheme variance to be amended. Five-year intervals beyond the first three-year period would seem reasonable providing it doesn't limit the ability of councils to support their growth aspirations.

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?*

WDC supports the notion that there should be transparency around the input methodologies. Council is used to procuring and operating its business within frameworks and reporting to DIA on objective outcomes. The Entities should also be providing economic outputs that are driven on best practise, transparent and measurable that are known prior to establishment. The input methodologies do require regular review to ensure they maintain currency and allow flexibility as technology and operational methodology evolves and investment in new technology, applications, consumer demand or growth is required.

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B) *What are your views on whether the economic regulator should be able to minimise price shocks to consumers and suppliers?*

WDC recommend that prices should be controlled to minimise shocks. Upon establishment of the Entities, WDC envisages there may well be a prescribed timetable to achieve similar price schedules throughout the entities geographic boundary to normalise pricing throughout the geographic area that the Entities control. After establishment WDC would be in favour of a mechanism that minimises 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?*

WDC see no issue with providing the economic regulator with an obligation to set a strong 'active' efficiency challenge for regulated suppliers. The outcome of the challenge needs to be fully understood and it is the outcome that will determine the willingness to drive the efficiency challenge.

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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?

The community that we serve should be at the heart of three waters pricing. The pricing structure should consider WWTP and WTP design requirements and upgrades along with network costs, utilisation, depreciation, O&M and renewals. Councils have always had to balance the cost of treatment and design with affordability and growth. Entity will have similar constraints with the exception that the increased debt ceiling creates an ability to access greater capital. WDC suggests that parliamentary control should exist where significant investment is desired in a particular geographic area to ensure that it remains relevant, prudent and affordable whilst at the same time not limiting the availability of capital and investment in other geographic areas. Councils desire that their objectives outlined in Long Term Plans are maintained and coordinated with Entity investment to ensure the district development plans are continued.

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?*

The economic regulator is preferred as the role that sets water pricing, The are the most impartial and do not have a political influence being an independent office. WDC is concerned that under Entity control, our rate payers could be exposed to higher costs of water as pricing is harmonised across the Water Entity geographical zone. WDC would like to state strongly that our Ratepayer should not be worse off with higher water costs and should expect a reduction based on the Water Entity size and scale.

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?

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Our preliminary view is that merits review should be available on the input methodologies developed by the economic regulator, and determinations that implement individual price-quality regulation. However, we do not consider merits reviews should be available on the regulator's determinations that implement procedural processes, such as information disclosure regulation.

Do you broadly agree that with the compliance and enforcement tools? Are any additional tools required?

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WDC broadly agrees with the compliance and enforcement tools. We do note that the fines (Pecuniary penalty of up to \$500,000 for an individual or \$5,000,000 in any other case for breach of information disclosure or breach of price quality) may be excessive when considering the number of small suppliers. Small suppliers may not recover from such penalties. Whilst we agree that should the breach have got so far that a court issues a fine, the supplier deserves to face a penalty, WDC would like the penalty regime to consider the

	size of the supplier and suggest a minimum fine apply for all.
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>WDC believes the best agency to provide economic regulation to be the Commerce Commission. WDC would advocate that a specific office is set up for water with the appointment of a Water Regulator and staff within the Commerce Commission. The Water Regulator would have the ability to access Commerce Commission expertise whilst the regulator would bring the initial water expertise. The independence of the Commerce Commission is maintained and Taumata Arowai is not conflicted with water quality and the issues of economic regulation.</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>Onsite and offsite costs are familiar concepts to water suppliers. Having to fund offsite costs such as administration, insurance, head office costs etc is normal. We believe the costs of an Economic Regulator funded by levy on regulated suppliers is an acceptable way forward. These costs would be passed on by the regulated suppliers to their customers as part of the water rate.</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>
	WDC doe does not hold a specific view as the outcomes appear to deliver a similar outcome
20	<p><i>Are there any other levy design features that should be considered?</i></p> <p>WDC would like to ensure that Levys are only imposed on larger water suppliers for the aspect of economic regulation and pricing.</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> <p>Monopolistic organisations (such as an Entity) can occasionally demonstrate behaviour that is not customer focused or does not have a customer perspective. WDC would like to see a disputes resolution process that Councils and end users can access when the Entity has not performed appropriately. WDC would suggest the disputes process be managed by an independent arbitrator with the ability to determine and enforce final outcomes.</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>
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	<p>WDC agrees that a bespoke purpose statement that reflects the key elements of the regime is the most appropriate way forward and agree with the proposed limbs of the purpose statement.</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>WDC would agree that the consumer protection regulator should be able to issue minimum service level requirements</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>WDC would agree that the consumer protection regulator should be empowered to issue guidance alongside a code</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>If Taumata Arowai is the regulator that regulates water quality, then the economic regulator may be best to regulate level of service the consumer/user is paying for. If that level of service is not delivered upon and the customer cannot reach a satisfactory conclusion with the supplier, a mediator and arbitrator can provide final unbiased determination. Given the supplier will have a monopolistic position, the Economic Regulator will enable a balance to prevail between the supplier and the customer.</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>WDC can't see a reason why service levels should vary between consumers. Only one possible reason could exist in our minds and that is consumers who rely on high quality water delivery for medical conditions that are a matter of life or death.</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>Vulnerable consumers require a voice and including a positive obligation to protect them is a great starting position. We would hope that at a minimum, vulnerable consumers cannot have levels of service terminated and that water restrictions are as far as a supplier may go in reducing levels of service.</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>WDC wants to ensure the Treaty of Waitangi principles, as well as the rights and interests of iwi/Māori, are factored into the design of a consumer protection regime. It is important to note that Tangata Whenua are local hapu and IWI, they are people of that area. They need to have recognition of the water on their Whenua and the historical and traditional access they have had to those water sources.</p> <p>Of equal importance is the utilisation of alternative water sources when water runs low. The Waikato has many lakes which look attractive when water scarcity occurs, However these lakes are often tapu and hold sacred significance to Tangata Whenua. When water scarcity is evident Tangata whenua should be consulted in looking at alternative water.</p> <p>With lessons learned from the COVID19 vaccination response and consultation with Maaori on vaccination, WDC recommends that the Economic Regulator works with Māori to develop specific programs that aligns with Māori culture when designing policy and procedure.</p>
28	<p><i>A) Do you consider that the consumer protection regime should apply to all water suppliers, water suppliers above a given number of customers, or just Water Services Entities? Could this question be left to the regulator?</i></p> <p>The consumer protection regime should apply to all regulated water suppliers. It is not a question of it being left to the regulator, it is a protection right and safe guard for all consumers and customers of regulated supplies.</p> <p><i>B) Do you support any other options to manage the regulatory impost on community and private schemes?</i></p> <p>WDC is comfortable that the protections suggested by regulatory impost on community and private schemes is sufficient.</p>
29	<p><i>Do you broadly agree that with the compliance and enforcement tools proposed? Are any additional tools required?</i></p> <p>WDC is satisfied with the compliance and enforcement tools proposed</p>
30	<p><i>Do you agree with our preliminary view that the Commerce Commission is the most suitable body to be the consumer protection regulator for the three waters sector?</i></p> <p>WDC is in agreement that the Commerce Commission is the most suitable body to be the consumer protection regulator</p>
31	<p><i>What are your views on whether the regulator should be required to incentivise high-quality consumer engagement?</i></p> <p>WDC is supportive of the regulator staying in touch with consumers to ensure they maintain</p>

	<p>the consumers voice and understanding of requirements. Given the regulator will potentially be the voice of the consumer through the dispute process, high quality consumer engagement should be part of the role and not require incentivising.</p>
32	<p><i>What are your views on whether there is a need to create an expert advocacy body that can advocate technical issues on behalf of consumers?</i></p> <p>WDC is of the view that consumers need to be able to access impartial expert advice for matters that affect them in respect to water quality, levels of service and price.</p>
33	<p><i>What are your views on whether the expert body should be established via an extension to the scope of the Consumer Advisory Council's jurisdiction?</i></p> <p>WDC recommends that access to impartial expert advice should be established via an extension to the scope of the Consumer Advisory Council's jurisdiction or from empowering Water NZ to carry out that function.</p>
34	<p><i>What are your views on whether there is a need for a dedicated three waters consumer disputes resolution scheme?</i></p> <p>WDC recommends that due to the monopolistic position of water suppliers and Entities that there is a need for a dedicated three waters consumer disputes resolution scheme</p>
35	<p><i>What are your views on whether these kinds of disputes should be subject to a dispute resolution schemes? Are there any other kinds of issues that a consumer dispute resolution provider should be able to adjudicate on?</i></p> <p>A dispute resolution scheme would be preferred as it offers a known framework for consumers to utilise.</p>
36	<p><i>What are your views on whether a mandatory statutory consumer disputes resolution scheme should be established for the water sector?</i></p> <p>WDC believes that the dispute should first be settled by the compliant and the water supplier. If no satisfactory settlement or resolution can be reached, then a mandatory statutory consumer disputes resolution scheme could be utilised.</p>
37	<p><i>Do you consider that a new mandatory statutory consumer disputes resolution scheme should be achieved via a new scheme or expanding the jurisdiction of an existing scheme or schemes?</i></p> <p>WDC recommends that a new mandatory statutory consumer disputes resolution scheme is developed. Water is a bespoke service with public health outcomes. It is not the same as buying a consumer product and poor water delivery has the ability to severely impact on consumers mental and physical health. A new regime is the best way to achieve this.</p>

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>
	WDC is of the opinion that the consumer disputes resolution schemes should apply to all water suppliers. Based on the answer above, all water consumers should have the ability to utilise an advocate who can mediate of their behalf.
39	<i>Do you think the consumer dispute resolution scheme should incentivise water suppliers to resolve complaints directly with consumers?</i>
	Water suppliers should be customer focused and should have the first opportunity to resolve customer complaints to the mutual satisfaction of both parties. Incentivisation should not be needed for the water supplier to do the right thing.
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>
	WDC are wishing to ensure that traditionally under-served or vulnerable communities are protected and that water services are maintained regardless of the situation. Under current conditions, Councils have the ability to put water debt onto a property as an unpaid rate. The water debt is then either paid off or is recouped on the eventual sale of the property. We would like to see similar arrangement made available going forward.
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>
	WDC is supportive of the costs of implementing a consumer protection regime for the three waters sector funded via levies on regulated suppliers
42	<p><i>Do you think that the levy regime should:</i></p> <p>A) <i>Require the regulator to consult on and collect levy funding within the total amount determined by the Minister? OR</i></p> <p>B) <i>Require the Ministry to consult on the levy (on behalf of the Minister) and collect levy funding within the total amount determined by the Minister?</i></p>
	WDC does not hold a specific view as the outcomes appear to deliver a similar outcome
43	<i>Are there any other levy design features that should be considered?</i>
44	Levies should be rated against the regulated supplier so that poor performers have a higher burden based on the number of complaints received as a ratio of customers/population served.
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>
	WDC considers that a regulatory charter and a council of water regulators will provide an effective system of governance if they are also required to take account of direction supplied by the Water Entities Representative Group.

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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?

Water is an essential life commodity. Government should enable the appropriate act to support the office of the economic regulator but not be able to politicise the delivery of water.

WDC recommends the enabling statutes allow for the introduction of the economic regulator with clearly set out mandate that supports the water reform objectives. Following on from establishment we would support the economic regulator and water entities providing recommendations for change to Government.

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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?

WDC believes data should be able to be shared amongst regulatory agencies providing the data does not identify individuals or provide personal information about individuals.

Other comments

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