

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

Your name and organisation

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Organisation (if applicable)	Watercare Service Limited (Watercare)

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> <ul style="list-style-type: none"> • Our views on the case and the form of economic regulation of three water infrastructure in New Zealand are described below and in the accompanying summary to this submission. • As noted, in the accompanying summary, we believe there is a strong case for well-developed economic regulation. • However, the regulatory design, reflecting the unique circumstances of the sector, should not be constrained, or squeezed into existing methodologies. Instead, the scope and importance of the sector demands more vision and ambition to reflect there is a once in a lifetime opportunity to create progressive, fit-for-purpose regulations benefiting all New Zealanders. • Fit-for-purpose economic regulation means that the regulation of three waters infrastructure in New Zealand needs to be designed in a way that recognises the uniqueness of the regulatory problem it needs to address. <ul style="list-style-type: none"> – Most significant, is that the intended regulation will apply to not-for-profit entities whose objectives will be aligned with their customers and the broader community.¹ Furthermore, the new entities will have professional independent boards, face reputational risk, and comparative competition to improve performance outcomes.² – These fundamental and very distinctive features of the New Zealand water sector business model require the legislator to adopt significant deviations from the existing economic regulation framework.³

¹ This is acknowledged in the Discussion Paper (para. 37).

² There is evidence from Australia. Byrnes et al (2009) examined the relative efficiency of non-metropolitan water utilities in New South and Victoria. The found that a key advantage of the larger utilities is that there were governed by skills-based boards, which they argued enabled those utilities to attract and retain relatively more skilled staff. See: Byrnes, Joel, Lin Crase, Brian Dollery, and Renato Villano. "An analysis of the relative efficiency of wastewater utilities in non-metropolitan New South Wales and Victoria." *Australasian Journal of Regional Studies*, 15, no. 2 (2009): 153-169.

³ Such as the economic regulation applied under Part 4 of the Commerce Act or Part 6 of the Telecommunications Act.

2.	<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>
	<ul style="list-style-type: none"> • There are no compelling reasons to exclude the stormwater networks components operated by the four entities from non-prescriptive forms of economic regulation. • Excluding stormwater would add complexity, requiring stormwater networks to be defined by their physical and economic characteristics to distinguish them from drinking water and wastewater networks. • Ultimately the cost of the services would form part of the charges levied by the water entities. In the short-term the cost of the services may need to continue to be recovered by Councils until transition can be achieved. The exclusion of components of stormwater assets and service should however be reviewed, to ensure accuracy of future cost recovery.
3.	<i>What are your views on whether the four statutory Water Services Entities should be economically regulated?</i>
	<ul style="list-style-type: none"> • The four statutory Water Services Entities should be economically regulated. • Although these entities do not have a profit-motive, the lack of market competition means there is still some benefit from introducing incentives and discipline for firms to be efficient and improve their performance in meeting their objectives. • Economic regulation can mitigate this lack of competition discipline and incentive by providing an independent, external reviewer of performance. In effect, the regulator may act as a performance coach assisting the entity's board to maximise the performance of the entity.
4.	<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>
	<ul style="list-style-type: none"> • Economic regulation should not apply to community schemes, private schemes, or self-suppliers. • In these situations, the costs of regulation are likely to be disproportionately large and outweigh benefits. We understand that for most schemes, customers own the scheme and consequently any potential benefits would be small. • Furthermore, such a requirement would be inconsistent with practices in other sectors.⁴ If such a requirement were imposed it would need to be reflected in a specific purpose statement.⁵

⁴ Imposing price-quality regulation to community schemes, private schemes or self-suppliers, would be inconsistent with the threshold that the Commerce Commission applies under Part 4 of the Commerce Act (12 electricity lines are exempt from price-quality regulation as they are community-owned) and Part 6 of the Telecommunications Act (local fibre companies are currently exempt from price-quality regulation).

⁵ Such a requirement could be introduced via a specific purpose statement for information disclosure that would apply to community schemes, private schemes or self-suppliers. This would require introducing a definition that captures these small entities (such as the definition of consumer-owned under section 54D of the Commerce Act) in order to apply specific information disclosure requirements to such entities.

5.	<i>What are your views on whether the Water Services Entities should be subject to information disclosure regulation?</i>
	<ul style="list-style-type: none"> • Water Services Entities should be subject to information disclosure regulation. Information disclosure regulation provides several benefits. <ul style="list-style-type: none"> – It provides a discipline for the entities to organise their information. – It provides confidence for consumers and other stakeholders.⁶ – Common metrics facilitate comparative rivalry and enable entities to benchmark their performance. This alone can provide strong incentives to continue to seek performance improvements.⁷ • Care is required in design. <ul style="list-style-type: none"> – Information disclosure requirements can impose a substantial administrative and compliance burden. – To reduce the risk of excessive burden, it is preferable that that development of outcomes and other performance measures are led by industry (in consultation with stakeholders) but with regulator input, challenge, and oversight.
6.	What are your views on whether Water Services Entities should be subject to price-quality regulation in addition to information disclosure regulation?
	<ul style="list-style-type: none"> • We support non-prescriptive, fit-for-purpose forms of price-quality regulation. • In contrast to traditional price-quality regulation used in New Zealand,⁸ we recommend the entities continue to lead and remain fully accountable for achieving their objectives. • Due to the absence of a profit motive, a less prescriptive approach is less costly and more appropriate because: <ul style="list-style-type: none"> – the objectives of the entities and regulator will be aligned – the regulator does not have any additional knowledge or skills to improve on the decisions made by the entities⁹ – we are unaware of literature or experience elsewhere that provides a case for prescriptive price-quality regulation in the absence of a profit motive.¹⁰

⁶ This requires that information of interest to customers and stakeholders is disclosed and presented in a way that can be easily understood by them.

⁷ There is some international evidence of the benefit of transparency in water sector. De Witte and Saal (2008) studied the behaviour of Dutch drinking water companies before and after the introduction of sunshine regulation that involved transparent publication of relative performance. The authors found that in the 10 years following the regulatory change, water quality and service levels increased steadily, and the sector experienced a productive efficiency increase (i.e., increase in output per unit of cost) of around 23 per cent.

⁸ Such as the economic regulation applied under Part 4 of the Commerce Act or Part 6 of the Telecommunications Act.

⁹ Rather, the regulator has substantially less industry knowledge than the entities, and this will be particularly significant in the initial period

¹⁰ Biggar (forthcoming, Sect. 2.3) reviews the literature on the 'Regulation of non-commercial enterprises' and notes the issue of the economic regulation 'has received very little attention in the economics literature.' See Biggar, Darryl (forthcoming) 'Seven Outstanding Issues in Energy Network Regulation'.

	<ul style="list-style-type: none"> • Good regulatory practice requires a robust assessment of the costs and benefits of each potential regulatory response.¹¹ In the absence of such analysis we note: <ul style="list-style-type: none"> – introducing traditional price-quality regulation to the water sector in New Zealand would be complex, costly and will take time.¹² It seems unrealistic to expect that the traditional price-quality regulation could be applied to all four statutory Water Services Entities as of 1 July 2027, when such entities have yet to be formed. – a cautious approach should be adopted – which would support a less costly non-prescriptive approach (at least as a starting point). Furthermore, the threat of further intervention provides an additional performance incentive, which lends weight to a non-prescriptive approach. • The regulator’s role in non-prescriptive price-quality regulation remains critically important, but changes in function to that we would compare to that of a “performance coach”. The coach’s role is to instil discipline and challenge the entity to improve performance.¹³ • We recommend a dedicated Water Commissioner be appointed and become responsible for ensuring additional transparency, setting content and standards for the entities business planning, undertake periodic reviews and publish independent commentary on the entity’s comparative performance and achievement against its plans.
7.	<p><i>What are your views on the appropriateness of applying individual price-quality regulation to the Water Services Entities?</i></p>
	<ul style="list-style-type: none"> • The paper discusses the choice between two options of “Individualised” and “Low-cost Default” price-quality regulation. • As noted above, we disagree with the need for prescriptive price-quality regulation (given the broader reforms proposed governance arrangements and lack of profit motive) and consequently do not consider there is a need to choose between these two options. • Nevertheless, if a prescriptive approach were to be adopted, Watercare believes each entity would require an individualised (i.e., customised) approach that reflects the unique circumstances of each entity. • The advantages of a default approach are that it is simple, consistently applied, and low-cost. However, a default approach would not be appropriate for the water sector, particularly at this stage, given the small number of entities,¹⁴ the expected extent of variation in costs and issues across the entities, and the significant work that will be required in transition.

¹¹ The tests for regulation under Part 4 of the Commerce Act are a good example. Section 52G includes the criterion that goods or services may only be regulated if ‘the benefits of regulating the goods or services in meeting the purpose of this Part materially exceed the costs of regulation.’

¹² We note that the time span between consulting on the new Part 6 of the Telecommunication Act and the final price-quality decisions will be 6 years (September 2015 to December 2021).

¹³ The point is made by Biggar (forthcoming, p. 12) who concludes ‘The regulator may be able to facilitate and improve the governance task through performance monitoring and comparison, such as through benchmarking of comparable firms against each other.’ See Biggar, Darryl (forthcoming) ‘Seven Outstanding Issues in Energy Network Regulation’.

¹⁴ We note that in the electricity sector the default approach is applied to 13 electricity distribution businesses.

	<ul style="list-style-type: none"> Reflecting our earlier comments, a less prescriptive approach focussed on information disclosure and instilling additional discipline and challenge to improve performance is preferable. Our recommended approach would be least cost and would accommodate the need to tailor the outcomes to the specific needs of each entity.
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>A) The economic regulation should be implemented gradually from 2024 to 2027.</p> <ul style="list-style-type: none"> The scope and scale of broader reforms is unprecedented. It will take time for each entity to integrate staff, services, systems, and assets of the new entities. Consistent with our earlier views, and answer to Part B of this questions, there is a material risk that a traditional price-quality approach cannot be implemented in the timeframes stated. However, if as we have recommended, a non-prescriptive approach is adopted, the business plans of the newly established entities would provide a good starting point for the introduction non-prescriptive price-quality regulation we have outlined in our response. <p>B) Neither party (the Government or independent economic regulator) will have the ability within the context of reforms and the timeframes to make sound decisions regarding a transitional price-quality path.</p> <ul style="list-style-type: none"> Instead, we advocate that the entities themselves develop business plans based upon the plans of the merged entities. During the transitional period the regulator’s role should be to assess the veracity of the plans and focus on the development of appropriate information disclosure and performance benchmarking. An advantage of this non-prescriptive approach is that it could be designed and implemented much earlier as it would be based on existing 3 yearly Long-term planning and asset management plans (modified to include our suggested components discussed in accompanying summary and response to question 6). If a prescribed price or revenue approach is to be introduced, it is preferable this is only done in the future after the regulator has gained some experience and only after it becomes clear that the benefits outweigh the costs.¹⁵
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>

¹⁵ To ensure that the benefits and costs are appropriately considered, an appropriate statutory process could be established. For example, there could be a clear statutory process for the regulator and Government to change the form of regulation similar to that for airports under the Part 4 of the Commerce Act. that requires a rigorous assessment of costs and benefits. A requirement for the regulator to conduct a review within a certain number of years could be introduced.

	<p>B) <i>What factors do you consider the economic regulator should include in their advice to the Minister?</i></p>
	<p>We agree that there should be scope for reducing or extending the application of regulation and that this may be done based on advice from the economic regulator</p> <ul style="list-style-type: none"> • We expect that there may be benefits to extending disclosure regulation to other suppliers in the future. • However, changes in regulation should proceed with caution. <ul style="list-style-type: none"> – It is important that the entities have certainty in their planning process and cycle. To achieve this, it is important to agree on plans for a defined period and then to allow the entities the opportunity to execute the plans. – Changes in regulation or approach should be undertaken in defined periods – of say 3 and 6 years, rather than a continuous and potentially destabilising process, which would likely increase costs and risks for the entities. – A useful mechanism within the establishing legislation for economic regulation would be to include a defined review process and timing e.g., 6 years after establishment. – Changes in regulation should only be done where it is clear the benefits outweigh the costs.¹⁶ <p>B)</p> <ul style="list-style-type: none"> • The key factor to consider in extending or reducing economic regulation is whether the benefits to doing so will materially exceed the costs. • To the extent that suppliers have objectives that align with their customers and community, the views of the suppliers as to the net benefits will be important.
<p>10.</p>	<p>A) <i>What are your views on whether the purpose statement for any economic regulation regime for the water sector should reflect existing purpose statements in the Telecommunications Act and Part 4 of the Commerce Act given their established jurisprudence and stakeholder understanding?</i></p> <p>B) <i>What are your views on whether the sub-purpose of limiting suppliers' ability to extract excessive profits should be modified or removed given that Water Services Entities will not have a profit motive or have the ability to pay dividends?</i></p> <p>C) <i>Are there any other considerations you believe should be included in the purpose statement, or as secondary statutory objectives?</i></p> <p>D) <i>What are your views on how Treaty of Waitangi principles, as well as the rights and interests of iwi/Māori, should be factored into the design of an economic regulatory regime for the three waters sector?</i></p>
	<p>A)</p> <ul style="list-style-type: none"> • The purpose statements in the of Telecommunications Act and Part 4 of the Commerce Act are not relevant to the objectives that need to be established for the economic regulation of the water infrastructure in New Zealand.

¹⁶ Refer footnote 15.

	<ul style="list-style-type: none"> • Similarly, the jurisprudence of those bodies of law provides little benefit to the water sector, which is characterised by publicly owned and governed non-profit entities with complex objectives and circumstances. • The statutory objectives of the economic regulation of the four statutory Water Services Entities must therefore be specifically designed to address the uniqueness of the New Zealand three water sector. <p>B)</p> <ul style="list-style-type: none"> • There is no need for a sub-purpose of limiting suppliers’ ability to extract excessive profits. <p>C)</p> <ul style="list-style-type: none"> • The objectives for economic regulation should align with those of the entities and the Government in supporting the best interests of customers and the community. • Consequently, the purpose of the regulation should be to support the entities in meeting their objectives, which as discussed above they can do by supporting transparency, instilling discipline in undertaking processes, and challenging the entities to improve performance. • Government policy objectives should be expressed to the entities in the first instance, who will then formulate a plan to implement them. The regulator, in our preferred non-prescriptive process can challenge and review the plans and monitor how the plans are achieved over time. <p>D)</p> <ul style="list-style-type: none"> • We expect that the economic regulation will naturally factor in the Treaty of Waitangi principles, as well as the rights and interests of iwi/Māori. We expect the process will reflect these in a similar way to other government objectives. <ul style="list-style-type: none"> – These matters will be incorporated into the objectives of Government and the water sector entities. – They will then be considered alongside other objectives by the entities and the regulators when applying economic regulation.
11.	<p><i>What are your views on whether a sector specific economic regulation regime is more appropriate for the New Zealand three waters sector than the generic economic regulation regime provided in Part 4 of the Commerce Act?</i></p>
	<ul style="list-style-type: none"> • A sector specific economic regulation regime is more appropriate for the New Zealand three waters sector. • The generic economic regulation provided in Part 4 of the Commerce Act is not appropriate for the New Zealand three water sector. This is because the absence of a profit motive for the four statutory Water Services Entities, and their obligations to promote the social, economic, environmental and cultural well-being of communities, does not accord with promoting outcomes that are consistent with outcomes produced in competitive markets.
12.	<p><i>What are your views on whether the length of the regulatory period should be 5 years, unless the regulator considers that a different period would better meet the purposes of the legislation?</i></p>

	<ul style="list-style-type: none"> • It is preferable that the regulatory period mirrors the business planning period that the entities will have. Changing the business planning period, or having different regulatory and planning processes, will increase costs on the entities without any apparent gain. • In the first instance, consistency with local government business practices is preferable. We recommend 6 years, with interim reviews after 3 years. We recognise that the optimal period may change over time as the entities become established.¹⁷
13.	<p>A) <i>What are your views on whether the economic regulator should be required to develop and publish input methodologies that set out the key rules underpinning the application of economic regulation in advance of making determinations that implement economic regulation?</i></p> <p>B) <i>What are your views on whether the economic regulator should be able to minimise price shocks to consumers and suppliers?</i></p> <p>C) <i>What are your views on whether the economic regulator should be required to set a strong efficiency challenge for each regulated supplier? Would a strong 'active' styled efficiency challenge potentially require changes to the proposed statutory purpose statement?</i></p>
	<p>A) The economic regulator should not be required to develop and publish input methodologies.</p> <ul style="list-style-type: none"> • The regulator can add value in setting standards and common definitions to aid transparency and comparison, but it should not adopt a prescriptive approach to establishing methodologies such as the building blocks of traditional price-quality regulation. • The regulator should develop criteria for business planning to aid the entities in meeting the standards required and explain how it will assess these plans against the objectives and performance requirements of the sector. This approach is consistent with our view that less prescription is required, and that the role of the regulator is more aligned with that of a performance coach focussed on the performance challenge of the entities. <p>B) Smoothing price shocks as opposed to minimising them to consumers is an appropriate objective for a regulator to monitor within the context of non-prescriptive regulation we have described.</p> <ul style="list-style-type: none"> • The water entities will be best placed to set prices, based on appropriate methodologies, and therefore determine the most appropriate price paths. The regulator would review this work to ensure a smoothing objective, alongside other relevant objectives, was being adequately considered. • The regulator should not prescribe price paths. For example, an entity may need to increase expenditure or invest, or both, to fund its business plan and it would not be appropriate for the regulator to limit prices increases at the expense of other objectives (e.g., to improve water quality).

¹⁷ The length of the planning period is often linked to cost of capital and financing approaches. We note, recent discussion on the length of the review period in NSW, which suggested that a 4-year period is too short. See: NSW Independent Pricing and Regulatory Tribunal, Encouraging innovation in the water sector Discussion Paper August 2021. Available at <https://www.ipart.nsw.gov.au/documents/discussion-paper/discussion-paper-encouraging-innovation-water-sector-august-2021>

	<ul style="list-style-type: none"> • The regulator is well placed to ensure that reporting on expected price changes is transparent and ensure that entities publish the implications of pricing strategies on customer groups. <p>C) The regulator should not set an efficiency challenge. Rather, the regulator should develop comparative benchmarking and use this analysis to ensure the businesses identify and set appropriate efficiency challenges within their business plans. The regulator can also encourage efficiency by questioning the efficiency challenges the entity sets.</p> <ul style="list-style-type: none"> • The regulator lacks the information and knowledge to set efficiency challenges without input or knowledge of the opportunities within each business. • Greater transparency, professional independent board structures and comparative benchmarking should provide strong incentives to encourage efficiency.
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> <ol style="list-style-type: none"> <i>The Water Services Entity, following engagement with their governance group, communities, and consumers?</i> <i>The economic regulator?</i> <i>The Government or Ministers?</i> <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) Policy objectives for the price structure</p> <ul style="list-style-type: none"> • The key relevant policy objectives for the price structure are: <ul style="list-style-type: none"> – efficiency – encouraging efficient use of the service – cost recovery – ensuring that the entity can recover its efficient costs – fairness – including ensuring that prices are affordable and price changes are fair across customer groups – simplicity (ease of administration) and transparency. • There is no case for parliament to directly control or regulate aspects of the structure of three water prices. Doing so would just add cost. Parliament’s social objectives should be implemented in a more transparent way than interference within the price structure. <p>B) Responsibility for determining the price structure</p> <ul style="list-style-type: none"> • The entities should have responsibility for determining the structure of prices • The entities are best placed to determine price structure, having the relevant information and close relationship with stakeholders. <p>C) Role of the regulator</p>

	<ul style="list-style-type: none"> • There is no need for the regulator to prescribe specific aspects of the pricing structure in any way. • The value of the regulator is in challenging the entity to ensure price structures are efficient and fair, for example, by requiring the entity to undertake a transparent process, justify prices, and explain how proposed price changes will affect customer groups.
15.	<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>
	<ul style="list-style-type: none"> • A merits review process, whereby independent adjudication of a regulatory decision is undertaken, should be established if a prescriptive regulatory approach is adopted.¹⁸ This process helps to improve the quality and consistency of decisions. The Government and Water sector ambitions for improvement are aligned and naturally this ambition should extend to the governance of any regulator assisting the water sector to achieve its objectives. • Arguments against merits review processes include prolonged appeals and associated costs. These perspectives often ignore the real net benefits of obtaining optimal decisions. This is due to value of societal, environmental, and financial impacts of critical regulatory decisions. From a purely financial perspective the potential impact on estimated expenditure of more than \$5 billion per year for the next 30 to 40 years is clearly very high. Continuously improving the quality of regulation, and the enhancement of this through the availability of merit review must be an essential component of high-quality regulation.
16.	<i>Do you broadly agree that with the compliance and enforcement tools? Are any additional tools required?</i>
	<ul style="list-style-type: none"> • Within a non-prescriptive regulatory environment, it is preferable to rely on reputational incentives rather than pecuniary penalties. The absence of a profit motive largely removes the incentives generated by pecuniary penalties. As we have discussed elsewhere, information disclosure, comparative benchmarking, and the introduction of independent boards will provide more powerful incentives in the proposed structure. • Care is required to ensure general power to gather information are not overused. There is a risk that the information gathering powers will needlessly increase cost when used outside of proposed processes. Information flows should primarily be associated with the business plan submission (and regulator response) followed by monitoring
17.	<i>Who do you think is the most suitable body to be the economic regulator for the three waters sector? Please provide reasons for your view.</i>
	<ul style="list-style-type: none"> • We do not have a view on the most suitable body for the economic regulator. The nature of regulation, and, in particular, achieving a fit-for-purpose non-prescriptive regime is more important than who undertakes the role. • Regardless of the body, it is important that the regulator have the focus, skills, and knowledge relevant to the industry and the type of regulation. To that end we expect

¹⁸ If a non-prescriptive regulatory model is adopted, the need for merits regulation should be light.

	that a dedicated expert Water Regulation Commissioner with extensive water industry knowledge and experience should be appointed.
18.	<i>What are your views on whether the costs of implementing an economic regulation regime for the three waters sector should be funded via levies on regulated suppliers?</i>
	<ul style="list-style-type: none"> • A levy funded model is appropriate for the regulatory model.
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>
	<ul style="list-style-type: none"> • The levy regime should require the regulator to consult on and collect levy funding within the total amount determined by the Minister.
20.	<i>Are there any other levy design features that should be considered?</i>
	<ul style="list-style-type: none"> • A business plan for the regulator should be submitted for consultation to the boards of the entities in a similar fashion to the submission of business plans from the entities to the regulator. This is appropriate in a collaborative non-prescriptive regime because: <ul style="list-style-type: none"> – the entities will be required to raise these levies from customers – governance of the regulator is as important as governance of the entities – the entities' reputation will in part be impacted by sector performance and therefore there is a collective interest in the overall performance of all entities by each entity.
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>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>
	<ul style="list-style-type: none"> • We agree with the Discussion Paper that there may be some consumer¹⁹ protection 'gaps' around the aspects of customer/quality of service that will not be dealt with by

¹⁹ The discussion paper does not expressly state who is the consumer. Based on the consumer regulation "gaps" discussed, we assume consumers refer to those responsible for paying their water bills and using the service. For example, the paper requests feedback on how to ensure that vulnerable consumers have access to water services, acknowledging that some consumers' circumstances mean that they have genuine difficulty in paying their bills. The paper also refers to the Electricity Authority Consumer Care Guidelines in respect of vulnerable consumers who may have difficulty paying their bills, and in the electricity context, it is the consumer not the landowner that contracts directly with the electricity provider. The discussion document also recognises that consumer protection has a "strong and unrelenting focus on long-term consumer welfare" but again, this does not necessarily shed light on who is the direct customer of the water services (given the term consumer can cover both the end-user and the landowner).

	<p>public health, environmental, or economic regulators. As noted in the Discussion Paper (para. 163), these gaps could include issues relating to the communications, handling of complaints, and billing practices.</p> <ul style="list-style-type: none"> • We also agree that there is value in additional consumer protections. <ul style="list-style-type: none"> – While we expect that reputational incentives (enhanced by comparative competition) will provide significant protection, we expect these will be inadequate for some consumer issues that affect individual customers – Furthermore, we expect that the presence of a consumer protection regime will: <ul style="list-style-type: none"> ▪ increase consumers’ trust and satisfaction with their water supplier ▪ provide guidance to entities as to service expectations ▪ help to ensure entities have discipline in addressing consumers matters. • We recommend the consumer protection regime scope relates to matters of conduct and consequently, the key elements of the regime should include: <ul style="list-style-type: none"> – a mandatory code of conduct, and – a dispute resolution process.²⁰ • A bespoke purpose statement that reflects these key elements is appropriate. The purpose statements in the Consumer Guarantees Act and Fair Trading Act are not fit for this purpose. We recommend refinements to the proposed wording in the Discussion Paper relating to the objective. We believe the paramount objective relates to protection of the consumer. In terms of the subclauses, we: <ul style="list-style-type: none"> – agree with the subclause ‘providing consumers with effective redress where the quality of service does not meet appropriate standards’ – do not think the subclause ‘providing consumers with transparency regarding water charges’ is necessary as this should be covered by economic regulation – disagree with the subclause ‘providing consumers with a strong voice in how water services are delivered’. While this is important, this is not an appropriate objective of the consumer protection regime. The need is more aligned with the process of developing business plans and the public governance of the entities that is concurrently being developed – disagree with subclause ‘enhancing the quality of water services over time.’ While we expect the consumer protection regime would contribute to improving service quality, this objective is a primary objective of economic regulation.
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>
	<ul style="list-style-type: none"> • We agree with the need for a mandated code of conduct that has been developed with input from consumers. Where possible it is preferable to adapt elements of consumer protection in other sectors. • However, we recommend that this is developed by the industry (i.e., the entities) in conjunction with the consumer protection regulator and engagement with other

²⁰ The Water Service Act 2021 requires water entities to have dispute resolution processes and requires Taumata Arowai to monitor and resolve disputes not resolved by the entities themselves.

	<p>stakeholders. This is important as the entities will have a deeper understanding of consumers, consumer issues, and the ease with which they can be addressed.</p> <ul style="list-style-type: none"> • While we expect, as discussed in response to question 25 below, minimum service level requirements may vary by region, we expect there would be a standardised approach across New Zealand.
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>
	<ul style="list-style-type: none"> • The consumer protection regulator should also be empowered to issue guidance alongside a code. The guidance could include definitions and broader descriptions of performance areas and their associated metrics, which would help reduce the risk of misinterpretation. The guidance would be particularly important for water suppliers other than the four Water Services Entities.
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>
	<ul style="list-style-type: none"> • Yes, it is preferable to have provisions that regulate the quality of water services (not regulated by Taumata Arowai) in a single piece of economic regulation and consumer protection legislation. This would ensure that the incentives to achieve the required level of consumer protection standards are reflected in the framework for economic regulation.
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>
	<ul style="list-style-type: none"> • Minimum service level requirements should be able to vary across different types of customers and geographical regions. While minimum standards for some measures such as water quality may be consistent across all consumers, other minimum requirements, such as response times and commitments to continuous delivery, may need to vary. For example, minimum service standards might: <ul style="list-style-type: none"> – vary between a small remote scheme with a single source and a large urban scheme with multiple sources – be higher for essential service customers. • Minimum service standards and how they vary may also need to differ by entity, at least during a transition period.
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>
	<ul style="list-style-type: none"> • The regulatory regime should include the mandatory considerations for protecting vulnerable consumers. • Any such mandatory requirements also need to be appropriately implemented under the economic regulation, to avoid any distortion in capex and opex incentives.

27.	<i>What are your views on how Treaty of Waitangi principles, as well as the rights and interests of iwi/Māori, should be factored into the design of a consumer protection regime for the three waters sector?</i>
	<ul style="list-style-type: none"> • The Treaty of Waitangi principles (broadly referred to as partnership, protection and active participation) must apply to all aspects of the proposed water sector reform. In terms of the consumer protection regime these principles can be reflected in how the parameters/expectations are established, codified and monitored. • For example, there could be an explicit purpose of the regime to actively consider the special relationship of iwi/Māori to water sources within their rohe. This might influence the way consumer protection guidelines are written to reflect a Te Ao Māori view of what is an acceptable standard of performance and/or require participation in the standard setting process. • Given the importance of the water sector reform to Māori, we believe the regulator will need to have adequate cultural competence, particularly in relation to Te Tiriti o Waitangi, and Te Reo Māori me ona tikanga.
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>
	<ul style="list-style-type: none"> • We expect the incremental costs of a consumer protection regime will be light and be outweighed by the incremental benefits for all water suppliers. Applying the consumer protection regime to all suppliers will also avoid any potential social/geographic divide between the consumers across New Zealand. • To manage the regulatory impost on community and private schemes it would be appropriate for the regulator to consider whether all elements of the regime need to apply to these schemes and to consider transitional arrangements as appropriate.
29.	<i>Do you broadly agree that with the compliance and enforcement tools proposed? Are any additional tools required?</i>
	<ul style="list-style-type: none"> • We do not agree that pecuniary penalties are appropriate.²¹ Enforcement and non-pecuniary incentives impacting reputation should be favoured as the application of a penalty will ultimately harm the consumer base, as profit prohibition is in practice cost recovery.
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>
	<ul style="list-style-type: none"> • We recognise the Commerce Commission may be a suitable body to take the role of the consumer protection regulator for the three waters sector.

²¹ We note there are pecuniary penalties in the Water Service Act 2021 including fines up to \$650,000.

	<ul style="list-style-type: none"> • However, we expect the Commerce Commission would need to secure additional resources and skills to efficiently apply consumer protection in the specific context of the water sector in New Zealand. • Recommend the appointment of a dedicated Water Commission with appropriate expertise and knowledge of the water sector.
31.	<p><i>What are your views on whether the regulator should be required to incentivise high-quality consumer engagement?</i></p>
	<ul style="list-style-type: none"> • There is clear evidence that incentives for consumer engagement leads to more consumer engagement, and there appears to be general agreement that water utilities appreciate a greater focus on customer engagement.²² • However, care is required. A challenge to an economic regulator incentivising consumer engagement is that regulators themselves are not experts in consumer engagement.²³ • Consumer engagement needs to be meaningful and not a ‘tick the box’ exercise. The value, importance and type of engagement will vary by issue. <ul style="list-style-type: none"> – other than to pay the bill, consumers generally only interact with their water utility when there is a service issue. – engagement will have greatest value when targeted to consumers on matters that they have some experience (e.g., on service disruptions to consumers that have experience disruptions). • To date there is limited evidence that requirements for utilities to increase customer engagement has led to improved supplier performance.²⁴ There are also costs and risks of an excessive focus on customer engagement. Engaging customers on some issues can be expensive and challenging²⁵ and may encourage decisions not in the long-term interest of consumers.²⁶

²² An independent review of the Victorian (‘PREMO’) reforms to economic regulation found ‘clear evidence that PREMO was successful in giving stronger emphasis to customer engagement for most water businesses.’ and that the increased emphasis was supported by businesses. See pp. 21–22 of Farrier Sweir (2019). *Victoria’s water sector: The PREMO model for economic regulation*. 28 March 2019. Available at <https://www.esc.vic.gov.au/water/how-we-regulate-water-sector/premo-water-pricing-framework>

²³ Consistent with this view, the Victorian Essential Services Commission – when it introduced reforms that increased the focus on customer engagement in the water sector in Victoria – took the position that it would not guide the utilities on how they should engage with their customers.

²⁴ Hahn et al. (2020) concluded they “...were unable to find rigorous studies that document a clear relationship between CE [customer engagement] and economic variables of interest.” A more recent paper (Ananda et al, n.d.) found some anecdotal evidence (in Victoria from the regulated utilities) of benefits linking customer engagement to customer satisfaction. See: Hahn, R., Metcalfe, R., & Rundhammer, F. (2020). Promoting customer engagement: A new trend in utility regulation. *Regulation & Governance*, 14(1), 121–149.

<https://doi.org/10.1111/rego.12182>; Ananda, J., Pawsey, N., & Nayeem, T. (n.d.) Customer-centric regulation: The case of Victorian urban water sector. *Regulation & Governance*, <https://doi.org/10.1111/rego.12368>.

²⁵ For example, in a report for the NSW economic regulator, Gillespie Economics (2020) found significant issues in the research of NSW water utilities on how much their customers value environmental outcomes. See: Gillespie Economics. (2020). *Assessment of Hunter Water and Sydney Water Customer Willingness to Pay Surveys*. IPART. Available at <https://www.ipart.nsw.gov.au>

²⁶ For example, based on customer feedback, some water utilities in Victoria have raised water usage charges above the efficient price (see for example, City West’s 2018 Price Submission, p. 74.). A possible reason is that

	<ul style="list-style-type: none"> • Nevertheless, we expect there is value in the consumer protection regulator encouraging the entities to continually, consistent with our proposed performance coach model, improve their consumer engagement and require that the entities document how they engaged with customers and incorporated the feedback into their plans.
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>
	<ul style="list-style-type: none"> • It is difficult to comment on this issue without knowing the final governance arrangements of the proposed entities. • Our preliminary view is that there does not appear to be a need or value²⁷ of having an additional consumer advocacy body to advocate on technical issues, which as outlined in the Discussion Paper may include matters such as the weighted average cost of capital and technical solutions for wastewater. <ul style="list-style-type: none"> – it is not clear that such issues will materialise in practice, and, therefore, whether a solution is warranted at this stage. – the economic regulator should be well placed to comment on many technical matters (e.g., cost of capital, price structures). – an additional body may add additional bureaucracy and cost, could stifle innovation, and once established it may be difficult to dismantle. • In light of the above, we recommend deferring this component of consumer regulation until a need has been demonstrated.
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>
	<ul style="list-style-type: none"> • Our preliminary view is that such an expert body should not be established until a need has been demonstrated.
34.	<p><i>What are your views on whether there is a need for a dedicated three waters consumer disputes resolution scheme?</i></p>
	<ul style="list-style-type: none"> • We note that the recently enacted Water Services Act 2021, has established a complaints framework for drinking water suppliers. It includes a requirement for suppliers to establish a complaints process and enables consumers to escalate their complaint to Taumata Arowai or a party appointed by Taumata Arowai, for resolution. • We support the establishment of a dedicated disputes resolution service. The requirement under the Water Service Act and Taumata Arowai role would appear to only cover drinking water service and therefore only a subset of potential complaints. • It would be sensible for the entities to establish internal complaints resolution processes for all complaints, not just drinking water. It would also seem sensible to

higher usage prices benefit most consumers (because the median usage is less than the average usage), at the expense of large consumers.

²⁷ We note that the Discussion Paper (para. 211) claims ‘Such bodies ... have demonstrated significant gains for consumers through their ability to engage with regulators and Water Services Entities on technical issues.’ We are unaware of such evidence with regard to technical issues.

	establish a single dispute resolution solution covering both drinking water complaints and other complaints.
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>
	<ul style="list-style-type: none"> • See our response to question 34
36.	<i>What are your views on whether a mandatory statutory consumer disputes resolution scheme should be established for the water sector?</i>
	<ul style="list-style-type: none"> • See our response to question 34
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>
	<ul style="list-style-type: none"> • We favour the appropriate expansion of an existing scheme over the creation of a new scheme due to the benefits of experience and scale. The input of Taumata Arowai and the entities to establish an appropriate scheme is recommended.
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>
	<ul style="list-style-type: none"> • The consumer disputes resolution schemes should apply to all water suppliers.
39.	<i>Do you think the consumer dispute resolution scheme should incentivise water suppliers to resolve complaints directly with consumers?</i>
	<ul style="list-style-type: none"> • The Water Service Act requires entities to resolve complaints directly with consumers rather than rely on resolution services.
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>
	<ul style="list-style-type: none"> • Yes, there should be special considerations for traditionally under-served or vulnerable communities. • Watercare currently funds the Water Utility Consumer Assistance Trust to provide financial support to Watercare customers who are struggling to manage their water and/or wastewater costs.²⁸ This model should be examined and used to form a template for the other entities.
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>
	<ul style="list-style-type: none"> • The costs of implementing a consumer protection regime for the three waters sector should be funded via levies on all water suppliers.

²⁸ <http://www.waterassistance.org.nz/>

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>
	<ul style="list-style-type: none"> The levy regime should require the regulator to consult on and collect levy funding within the total amount determined by the Minister.
43.	<p><i>Are there any other levy design features that should be considered?</i></p>
	<ul style="list-style-type: none"> No.
Implementation and regulatory stewardship	
44.	<p><i>Do you consider that regulatory charters and a council of water regulators arrangements will provide effective system governance? Are there other initiatives or arrangements that you consider are required?</i></p>
	<ul style="list-style-type: none"> We agree that coordination across drinking water, safety, environmental, economic, and consumer protection regulation is essential and that it is important that there is a formal system for regulators to coordinate activities. To this end we also agree with: <ul style="list-style-type: none"> the development of a regulatory charter(s), which as noted in the discussion paper would set out the system objectives, roles of key players, and how the system objectives will be delivered and monitored; and²⁹ a ‘council of regulators’ that would provide a forum for policy and regulatory bodies to meet to share information about system performance and discuss system issues that require coordination across agencies. The council of regulators should adopt transparent practices, including meetings which are open to the general public and Water entities to participate in.³⁰
45.	<p><i>Do you consider it is useful and appropriate for the Government to be able to transmit its policies to the economic and consumer protection regulator(s) for them to have regard to?</i></p>
	<ul style="list-style-type: none"> The Discussion Paper notes that the Government is proposing that the forthcoming Water Services Entities Bill will include provision for a Government Policy Statement (GPS) through which the Government would provide high-level strategic direction to the new Water Services Entities.

²⁹ It is important the regulatory charters and arrangements work efficiently as too many arrangements could be seen as bureaucracy driving additional cost that is ultimately borne by customers.

³⁰ Engagement with the entities is important as it can lead to collaboration and improved practices. For example, changes in health and safety practices by electricity networks in response to the introduction of Work Safe Act and informal guidance from Worksafe New Zealand, lead to a reduction in their quality performance. See: Security and Reliability Council, Electricity Authority, “Reliability implication of reduced use of high voltage live line work techniques”, 28 July 2017. Available at <https://www.ea.govt.nz/assets/dms-assets/22/22381SRC08-Reliability-implications-of-reduced-live-line-work.pdf>

	<ul style="list-style-type: none"> • It is not necessary for the Government to transmit these to the economic and consumer protection regulator(s). Rather we would expect that the GPS would be transmitted directly to the entities and that these – alongside the entities’ objectives – would be considered by the regulators in reviewing their performance. • Of note, we expect that the community’s interests are best served through long-term and stable policy objectives. In this regard, it is important that the policies and principles established in the GPS are robust and developed through a careful process.
46.	<p><i>What are your views on whether the economic and consumer protection regulator should be able to share information with other regulatory agencies? Are there any restrictions that should apply to the type of information that could be shared, or the agencies that information could be shared with?</i></p>
	<ul style="list-style-type: none"> • The economic and consumer protection regulator should be allowed to share information with other regulatory agencies so long as there are no issues of privacy or confidentiality. • Nevertheless, it is generally preferable that the regulators liaise with the entities prior to sharing information to minimise the risk that the information will be misinterpreted and/or used in the wrong context. • The sharing of information issue highlights the importance of more substantive issue around alignment of regulator activities and the need for the regulatory charters.
Other comments	