



Commerce Commission levy for the economic regulation of water services

Discussion Document

NOVEMBER 2024





**MINISTRY OF BUSINESS,
INNOVATION & EMPLOYMENT**
HĪKINA WHAKATUTUKI

Ministry of Business, Innovation and Employment (MBIE) Hīkina Whakatutuki – Lifting to make successful

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The Ministry of Business, Innovation and Employment (MBIE) seeks written submissions on the issues raised in this document **by 5pm on Friday, 24 January 2025**.

Your submission may respond to any or all of these issues. Where possible, please include evidence to support your views, for example references to independent research, facts and figures, or relevant examples.

Please use the submission template provided at: <https://www.mbie.govt.nz/have-your-say>. This will help us to collate submissions and ensure that your views are fully considered. Please also include your name and (if applicable) the name of your organisation in your submission.

Please include your contact details in the cover letter or e-mail accompanying your submission.

You can make your submission by:

- Sending your submission as a Microsoft Word document to competition.policy@mbie.govt.nz.
- Mailing your submission to:

Competition Policy team
Building, Resources and Markets
Ministry of Business, Innovation & Employment
PO Box 1473

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New Zealand

Please direct any questions that you have in relation to the submissions process to competition.policy@mbie.govt.nz.

Use of information

The information provided in submissions will be used to inform MBIE's policy development process, and will inform advice to Ministers on setting a levy for the Commerce Commission for its upcoming role as the economic regulator for water services. We may contact submitters directly if we require clarification of any matters in submissions.

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Minister's foreword

Over the past year, the Government has taken several steps to implement Local Water Done Well, the Coalition Government's plan for financially sustainable locally delivered water infrastructure and services. These reforms recognise the importance of retaining local decision making and flexibility for communities, while providing incentives and regulatory oversight to improve levels of investment and performance.



The Local Government Water Services Bill (**the Bill**) will be introduced to the House of Representatives in late 2024, which will include a new economic regulation and consumer protection regime for local government water services suppliers, to be implemented by the Commerce Commission (**the Commission**) under Part 4 of the Commerce Act 1986 (**Commerce Act**).

I am committed to equipping the Commission with a range of tools to promote sufficient revenue recovery, and efficient investment and maintenance so that water services meet regulatory requirements and are delivered at a quality that communities expect. The Commission's role will be critical to safeguarding consumer interests.

To provide peace of mind to Kiwis that we are getting value for money from our water services, we are proposing to implement a new levy to fund the Commission's new role. After the Bill passes, it is expected that this will be applied to regulated water service suppliers under the Commerce Act.

I want to hear your views on a proposed levy design to recover the cost of the economic regulation regime and ways the levy design could be improved to reflect the principles of equity, efficiency (which includes simplicity), justifiability, and transparency.

Introduction

The Local Government (Water Services Preliminary Arrangements) Act 2024 (**Preliminary Arrangements Act**) establishes the Local Water Done Well framework and the preliminary arrangements for the new water services system, including a foundational information disclosure regime and a bespoke interim economic regulation regime for Watercare. The Government is now establishing a new economic regulation and consumer protection regime for local government water services suppliers under Local Water Done Well, which will be implemented by the Commission.

Economic regulation is a way of influencing the price and quality of products and services supplied by natural monopolies where consumers have limited choices, such as water services. Issues that are apparent in the water services system include:

- significant long-term underinvestment in water infrastructure, including councils not investing in and planning for growth, urban development, and resilience;
- pricing practices that do not reflect costs, including undercharging leading to inadequate revenue to support necessary investment;
- poor asset and financial management;
- drinking water and wastewater services that do not meet regulatory standards and requirements, or community expectations – in some cases, resulting in poor quality drinking water, unreliable supplies, poor environmental outcomes, and/or a lack of resilience to meet requirements to continue to function in an emergency;
- ineffective transparency and accountability mechanisms.

The Commission has a strong track record of implementing economic regulation regimes in other sectors including certain international airports, gas pipelines services, electricity lines services and fibre networks.

This discussion document has been prepared based on Cabinet’s approvals for the water services economic regulation regime.¹ The Bill will be introduced to the House of Representatives in late 2024. When passed in mid-2025, the Bill will provide the Commission functions and powers to regulate local government water services suppliers (**regulated suppliers**) under Part 4 of the Commerce Act and enable these regulated suppliers to be levied for these activities. As the Bill progresses through the House of Representatives, amendments are likely to be made which may impact some of the assumptions and analysis in this paper. The Bill provides a risk-based and flexible economic regulatory regime to promote sufficient revenue recovery and investment for the benefit of consumers.

The regime will give New Zealanders peace of mind that revenue collected by local government water services suppliers through rates or water charges is being spent on the level of water infrastructure needed.

The Commission will have a range of tools to promote sufficient revenue recovery, and efficient investment and maintenance so that water services meet regulatory requirements and are delivered at a quality that communities expect.

¹ [https://www.dia.govt.nz/diawebsite.nsf/Files/Proactive-releases-2024/\\$file/Paper-2-Local-Water-Done-Well-Stage-3-Water-Services-Regulatory-System-and-ECO-Minute.pdf](https://www.dia.govt.nz/diawebsite.nsf/Files/Proactive-releases-2024/$file/Paper-2-Local-Water-Done-Well-Stage-3-Water-Services-Regulatory-System-and-ECO-Minute.pdf)

The tools include:

- **Information disclosure:** The Commission will set requirements relating to when certain information must be collected and published. All regulated suppliers will be required to disclose this information to inform the need for any further regulatory intervention and promote transparency about their performance. The Commission's role under information disclosure also includes preparing and publishing reports on regulated suppliers' performance over time.
- **Revenue thresholds:** The Commission will be able to set revenue thresholds at their discretion, so that regulated suppliers have a clear understanding about the level of revenue they need to collect and invest in water infrastructure.
- **Financial ringfence:** The Commission will monitor and enforce the requirement that water services revenue is spent on water services alone.

The Bill will also include a process that enables the following tools to be made available for the Commission (**designation**):

- **Quality regulation:** Infrastructure quality standards or quality incentives to improve services.
- **Performance requirements:** Requirements to perform certain actions or deliver outcomes to improve network service quality. For example: to make specific types of investments.
- **Price-quality regulation:** Minimum and/or maximum prices that may be charged, and/or minimum and/or maximum revenues. Alongside quality and performance requirements.

The designation process will follow a similar process as other Part 4 regulated sectors, which include making recommendations to the Minister of Commerce and Consumer Affairs, and an Order in Council that declares a type of regulation is applied or removed. However, we propose the process is less onerous to ensure there is flexibility to deal with the specific issues as they arise.

The Bill will provide ways to address any issues that are identified in relation to how consumers are being treated by regulated suppliers, including enabling regulations to be set relating to complaints processes and for the Commission to develop a service quality code. The Commission will also be tasked with monitoring compliance with regulatory requirements and, where necessary, taking enforcement action.

The Commission needs effective engagement with the regulated sector and consumers, sector experience, and skills in data analysis, consumer engagement, behavioural economics, along with the ability to identify where they can deliver the biggest overall benefit to existing and future consumers.

The Commerce Commission needs to be resourced carry out its functions

In Budget 2024, the Commission received transitional funding of \$2.232 million for FY2024/2025 to implement the foundational information disclosure regime under the Preliminary Arrangements Act. The Commission has also been appointed as the Crown Monitor for Watercare under the Preliminary Arrangements Act, which is subject to separate funding arrangements (discussed further in Part 1 – Levy structure). This funding arrangement is dedicated to the Crown Monitor functions.

A Crown appropriation from FY2025/2026 onwards will be set up to fund the Commission's functions under the Bill. This appropriation will cap the Commission's costs.

The Government is proposing to implement a levy to fully recover the costs of the Commission's new functions from 1 July 2025 onwards, excluding litigation and Crown Monitor costs for Watercare. It is

proposed that this approach best promotes the principles of equity, efficiency (which includes simplicity), justifiability, and transparency.

This proposed levy model is used to recover the Commission's costs of performing their relevant functions, powers and duties under the Commerce Act, and for this to be fiscally neutral for the Crown. Under this model, the Commission would have incentives to operate efficiently and effectively within the appropriation, and it would return any unspent funds to the Crown. A levy wash-up process would ensure the regulated suppliers only pay the Commission's actual costs, promoting equity, efficiency and justifiability.

Who the levy will apply to and when it will apply

It is expected that the Bill will enable the levy making power (section 53ZE of the Commerce Act) to be applied to regulated water services suppliers (discussed further in Part 1 – levy structure). This would require regulated water services suppliers to pay to the levy determined in accordance with regulations. The Ministry of Business, Innovation and Employment (**MBIE**) administers the levy on behalf of the Minister.

Levy regulations may be made (or amended) on the recommendation of the Minister, after the Minister consults with the suppliers of regulated goods or services, or representatives of those suppliers (section 53ZE(4)).

It is expected that Bill 3 will provide transitional provisions to enable the water services economic regulation regime to be set up. This could include the ability to treat consultation on this discussion document as sufficient for the purposes of meeting the requirement for the Minister to consult before recommending regulations be made setting levies on water services suppliers under section 53ZE(4).

It is expected that the Bill will also enable regulations to be made specifying the amount of levies, or method of calculating the amount of levies on the basis that the estimated costs for an appropriation period of performing the Commission's functions, powers, and duties, and of collecting the levy money, should be met fully out of levies. The proposed levy structure and design is discussed further in Parts 1 and 2.

If the levy regulations come into force after 1 July 2025, the levy making power includes provisions that allow for the recovery of the Commission's costs incurred before the regulations were made and/or before regulated suppliers became subject to Part 4. These provisions will ensure the Commission's costs for the full 2025/26 financial year may be recovered (section 53ZE(2)(g) of the Commerce Act).

Your feedback will help shape the structure and implementation of the levy

We welcome feedback on the proposals contained in this discussion document, which will help shape the levy structure, design, apportionment and implementation.

Once submissions have been received and analysed, a final levy proposal will be developed for the Minister's consideration.

Water Services Authority consultation on levies

As part of Local Water Done Well, the Water Services Authority – Taumata Arowai (**the Authority**) will play a critical role in regulating drinking water suppliers to ensure they meet quality standards and providing oversight of the environment performance of water services networks (including

wastewater and stormwater). The Authority is also consulting on levy funding for the Authority's functions for FY 25/26 and beyond. Local water services suppliers should plan for those proposed costs alongside those covered in this discussion document. Information about the Authority's consultation may be found here: <https://www.taumataarowai.govt.nz/>

Part 1: Levy structure

The preferred option is to set a levy to 100 per cent recover the Commission’s costs

The Bill will be introduced to the House of Representatives late 2024. When passed in mid-2025, the Bill will provide the Commission functions and powers to regulate regulated suppliers under the Commerce Act and enable these regulated suppliers to be levied for these activities.

It is expected that the Bill will enable the levy making power (section 53ZE) to be applied to regulated water services suppliers. This would require regulated water services suppliers to pay to the Minister the levy determined in accordance with regulations.

It is expected that the Bill would also enable regulations to be made specifying the amount of levies, or method of calculating the amount of levies on the basis that the estimated costs for an appropriation period of performing the Commission’s functions, powers, and duties, and of collecting the levy money, should be met fully out of levies. Part 2 discusses our proposed approach for specifying a levy method, rather than fixed amounts.

The **preferred option** is for a levy to commence to fully (ie 100 per cent) recover the costs of the Commission’s new functions from 1 July 2025 onwards from regulated water services suppliers, excluding litigation and Crown Monitor costs for Watercare. Litigation will be funded from the Commission’s major litigation fund, which is a dedicated fund for litigation related to all the legislation that the Commission administers.

Depending on the transitional provisions under the Bill, this levy may include some costs of the Commission’s associated with its role implementing the ‘foundational information disclosure’ regime under the Preliminary Arrangements Act, however this cost is currently estimated at \$0.00 as no council or council related water services supplier has been designated as subject to this ‘foundational information disclosure’ regime.

This approach of 100 per cent levy recovery is consistent with other regulated services under Part 4 of the Commerce Act (ie electricity lines, gas pipeline services and specified airport services). It reflects the ‘exacerbator pays’ principle, whereby the regulated suppliers drive the need for the Commission’s functions and should bear the costs. Further discussion around who the ‘regulated suppliers’ are is provided below.

It is proposed that a Crown appropriation would be established from FY2025/2026 onwards, and the levy would fully recover the costs of the appropriation, making it fiscally neutral to the Crown.

A forecast of the Commission’s costs of implementing and administrating the regime for the first five years has been set out in Table 1 below, capped by the appropriation.

Table 1: Forecast of the Commission’s costs of implementing and administrating the economic regulation regime

Financial year	2025/26	2026/27	2027/28	2028/29	2029/30	Total
Forecast cost (\$000)	\$6,500	\$6,500	\$7,500	\$7,000	\$7,000	\$34,500

Regulated water services suppliers

It is anticipated that a ‘regulated supplier’, in relation to water services, will be a local government water service supplier that makes core decisions about water services, which is likely to include capital and operating expenditure on the service and the level of charges or revenue recovery for that service. This means there could be more than one regulated supplier within a geographic location if councils choose a split decision-making model. There may also be flexibility to bring in further suppliers if problems persist in the future.

The levy should reflect the Chatham Islands and Watercare’s specific circumstances

It is expected that the Bill will exclude the Chatham Islands Council from the economic regulation regime since it receives much of its funding from central government and the benefits associated with economic regulation are unlikely to outweigh the costs. Consistent with the ‘exacerbator pays’ principle, it is proposed that Chatham Islands Council is also excluded from the levy regime.

Watercare is currently subject to a bespoke interim economic regulation regime under the Preliminary Arrangements Act. Under this legislation, the Commission has been appointed as the Crown Monitor, responsible for monitoring Watercare’s compliance with a charter that sets out minimum service quality standards and financial performance objectives. The charter is currently under development and is expected to come into effect mid 2025. The Crown Monitor’s costs are directly recoverable from Watercare and are hypothecated for the Crown Monitor’s functions.

The Crown Monitor may require Watercare to provide any information the Crown Monitor considers may enable it to perform or exercise its functions, duties or powers under the Preliminary Arrangements Act,² and must monitor Watercare’s performance under the Charter.³

It is expected that Watercare will be subject to the economic regulation regime under the Bill once it passes. In practice, this means that Watercare, alongside all other regulated water services suppliers, would be subject to information disclosure requirements and could be subject to other information requiring provisions⁴ under the Bill while the Charter is in effect. This is to reflect the fact that the information requiring provisions under the Preliminary Arrangements Act are more limited and specifically related to the interim regime, but the Commission will need these tools under the Bill to set up its enduring function of regulating Watercare, and other regulated water services suppliers.

It is also expected that at the end of the Charter period, Watercare will transition to a price-quality path under the Bill. The proposed levy is designed so that the direct costs associated with this Watercare price-quality regulation, are recovered from Watercare (see Part 2 – levy design).

Other options considered

Consideration was given to a 100 per cent Crown funded model, but this model would not promote the principle of equity, and the ‘exacerbator pays’ principle, whereby those whose actions give rise to costs and those who benefit from regulation, should pay most of the costs associated with the regulation.

² Section 89.

³ Section 86

⁴ Section 53ZD and 98 of the Commerce Act 1986.

Questions on this section:

1. What are your views on the preferred option for a levy to fully recover the costs of the Commission's new functions from 1 July 2025 onwards from regulated water services suppliers, excluding litigation and Crown Monitor costs for Watercare? Please provide reasons.

Part 2: Levy design

Levies specified for classes of additional regulatory costs (preferred option)

The Commerce Act provides that different levies may be specified for different classes of suppliers, or goods or services (section 53ZE(2)(d)).

The Government has agreed to a risk-based and staged approach to the economic regulation of water services. The Commission will be empowered with a flexible set of regulatory tools so that it may target specific problems present for any or all classes of regulated suppliers or water services. The Government has also agreed that regulated suppliers can be brought into the economic regulatory regime in a staged approach, with the Commission having flexibility to determine which tools apply to particular regulated suppliers, and when.⁵

We propose that this flexible approach should also be reflected in the levy design. Where practicable, the Commission's costs related to a particular regulatory tool should be recoverable from those regulated suppliers subject to that regulatory tool at that time. This is consistent with good cost recovery principles.

Proposed levies for different classes of suppliers

We propose that the levy regulation should specify levies to recover the Commission's costs for different regulatory tools or activities as discussed in the following table:

Activities for which levy payable	Discussion	Regulated suppliers who must pay levy
Core regulation of water services	Information disclosure regulation is intended to apply to all regulated suppliers. The Commission will incur costs of maintaining the information disclosure requirements, including setting rules on core metrics such as asset valuation and cost allocation, performance monitoring and reporting, and compliance investigations. The costs of other regulatory tools, including revenue thresholds, monitoring the financial ringfence and preparatory costs for additional regulation, are also included. We propose that these costs should be recoverable from all regulated suppliers.	All regulated suppliers
Performance requirements	Performance requirements may apply to any regulated supplier following designation from 1 January 2026.	Only regulated suppliers subject to performance requirements

⁵ Cabinet Committee Paper and Minute of Decision, *Local Water Done Well Stage 3: Water Services Regulatory System*, ECO-24-MIN-0107, proactively released and available here: [https://www.dia.govt.nz/diawebsite.nsf/Files/Proactive-releases-2024/\\$file/Paper-2-Local-Water-Done-Well-Stage-3-Water-Services-Regulatory-System-and-ECO-Minute.pdf](https://www.dia.govt.nz/diawebsite.nsf/Files/Proactive-releases-2024/$file/Paper-2-Local-Water-Done-Well-Stage-3-Water-Services-Regulatory-System-and-ECO-Minute.pdf)

Activities for which levy payable	Discussion	Regulated suppliers who must pay levy
Quality only regulation	Quality only regulation may apply to any regulated supplier following designation from 1 January 2026.	Only regulated suppliers subject to quality only regulation
Price-quality regulation	Price-quality regulation may apply to any regulated supplier following designation. The Commission will incur costs relating to setting and administering price-quality regulation. This form of regulation could be imposed from 1 July 2026.	Only regulated suppliers subject to price-quality regulation
Consumer protection measures ⁶	The Bill will enable consumer protection measures to be introduced by regulation, if required. The Commission may also have a role in relation to service quality codes. If regulations relating to consumer protection measures are made, we anticipate that the Commission's costs will be separately identified and recovered from regulated suppliers at that time.	Only regulated suppliers subject to consumer protection measures
Class of waters (stormwater)	Economic regulation will initially apply to water supply (drinking water) and wastewater services only. If stormwater services are subsequently designated as subject to the economic regulation regime, we anticipate that the Commission will develop and apply tailored regulatory tools (eg information disclosure requirements) for regulated suppliers of stormwater services. These costs may be recovered from those regulated suppliers at that time.	Only regulated suppliers of stormwater services

Creating levies to reflect that regulated suppliers may be subject to different regulatory tools is intended to reduce the potential for cross subsidisation and support transparency.

Indicative estimate of Commission's costs

A forecast of Commission costs by activity for the first five years of the economic regulatory regime is as follows:

⁶ Cabinet Paper and Minute of Decision, Local Water Done Well Stage 3: Further Decisions, CAB-24-MIN-0277.03, proactively released and available here: [https://www.dia.govt.nz/diawebsite.nsf/Files/Proactive-releases-2024/\\$file/Paper-3-Local-Water-Done-Well-stage-3-further-decisions-redacted.pdf](https://www.dia.govt.nz/diawebsite.nsf/Files/Proactive-releases-2024/$file/Paper-3-Local-Water-Done-Well-stage-3-further-decisions-redacted.pdf)

Activities for which levy payable	2025/26 (\$000)	2026/27 (\$000)	2027/28 (\$000)	2028/29 (\$000)	2029/30 (\$000)	Total (\$000)
Core regulation of water services	\$6,500	\$6,500	\$6,500	\$6,500	\$6,500	\$32,500
Performance requirements	0	0	0	0	\$0	0
Quality only regulation	0	0	0	0	0	0
Price-quality regulation	0	0	\$1,000	\$500	\$500	\$2,000
Consumer protection measures	0	0	0	0	0	0
Stormwater regulation	0	0	0	0	0	0
Forecast cost (\$000)	\$6,500	\$6,500	\$7,500	\$7,000	\$7,000	\$34,500

Ministers have agreed that the Commission’s expenditure for core regulation of water services should be capped at no more than \$6.5 million per year, unless otherwise agreed following a review. Within core regulation, the Commission is expected to:

- In 2025/26, set initial information disclosure requirements, with summary and analysis beginning from 2026/27. The costs of administering these core information disclosure regulations continues in outyears.
- In 2026/27, carry out preparatory work for setting a price-quality path for Watercare. From 2026/27, the Commission may also develop methods and approaches to determine revenue thresholds and develop rules on core metrics such as asset valuation and cost allocation (in advance of input methodologies).

In relation to other additional activities, these forecast costs are based on the following assumptions:

- Stormwater is not designated during this period.
- No consumer protection measures are introduced in this period.
- From 1 July 2028, Watercare will become subject to a price-quality path under the Bill. A year before Watercare’s price-quality path under the Bill comes into effect (i.e. 2027/28) the direct costs incurred in preparing Watercare’s price-quality path is allocated to Watercare. Once price quality paths are in place, ongoing monitoring costs will be incurred.
- Quality only and Performance requirements regulations are not designated during this period.

It is expected that any regulated supplier would only incur the additional activities’ costs, after the regulated supplier (or service, in the case of stormwater) is designated as subject to the additional tool (discussed above). These costs are subject to change.

Other options considered

Alternatives to the proposed option include:

- Further itemising classes of costs – sub levies could be created with greater specificity further reflecting different characteristics of classes of regulated suppliers and the risks they pose. We consider that imposing specific levies on classes of suppliers who are subject to additional regulatory tools is risk-based, as additional regulation is likely to be imposed on those regulated suppliers with greater risk. Any further specificity would create complexity in administration of the levy.
- One levy for all activities – charging all regulated suppliers a share of the Commission’s total costs for its functions under the Bill would be administratively simpler but would result in cross-subsidisation.
- Apportioning general preparatory costs of additional regulation to regulated suppliers prior to that regulation taking effect – for example, the Commission will incur preparatory costs for price-quality regulation for Watercare that will have benefit for regulated suppliers that subsequently become subject to that regulation before those price-quality paths commence. If first water service suppliers to be regulated under these additional tools paid for all preparatory work, this could result in a disproportionately higher share of the costs, from which other regulated suppliers that may subsequently be subject to the same regulation may also benefit.

Questions on this section:

2. What are your views on the proposed levy design?
3. How would the proposed levy design impact on your organisation (whether now or in the future)? Please provide your assessment of the nature and extent of these impacts.
4. Do you have any comments on how the levy design could be improved? Please provide reasons.

Part 3: Levy apportionment

Levy apportioned based on population in regulated supplier district (preferred option)

The levy regulations may specify a method of calculating how the Commission’s costs should be apportioned to individual regulated suppliers. We propose that each regulated supplier should pay a portion of the total cost of the activities attributable to them based on its share of the population normally residing within the district areas of all regulated suppliers subject to those activities. The population normally residing within the district area of each regulated supplier shall be based on the latest census data, currently the 2023 Census.

This would require the levy to be determined based on the following:

- Step 1: determine the costs of regulation for each activity by allocating the estimated Commission costs for that financial year (including indirect costs) between the relevant activities.
- Step 2: determine the total population of regulated suppliers subject to each activity by adding up the population within the district of each of the regulated suppliers who must pay that sub-levy for that financial year.
- Step 3: calculate each levy for each regulated supplier by using the following formula:

$$\text{costs of regulation for activity} \times \frac{\text{regulated supplier's normally residing population within district area}}{\text{total population within district of regulated suppliers subject to activity}} = \text{levy for the activity}$$

- Step 4: obtain the total levy amount for each regulated supplier by adding together the activities that the regulated supplier must pay.

The total costs of regulation must not exceed the appropriation or proposed appropriation for the Commission.

As discussed in Part 1, there could be more than one regulated supplier within a geographic location if councils choose a split decision-making model. If two regulated suppliers serve the same normally residing population within the district area, this will be reflected in the levy apportionment.

The Appendix includes an indication of apportionment of levies to councils based on the Commission’s current estimate of costs for the first two years of the economic regulation regime.

As the Commission’s costs in the first two years are expected to relate to ‘core regulation of water services’, the cost per person in each regulated suppliers’ district area in each year will be the same (as outlined in the table below):

	2025/26	2026/27
Per person	\$1.30	\$1.30
Per household (2.7 people ⁷)	\$3.51	\$3.51

This method of apportionment is preferred because:

- Allocating costs proportional to each regulated supplier’s share of the total population normally residing within the related district areas means the amount of levy payable by each regulated supplier reflects the size of population each regulated supplier serves. Regulated suppliers serving larger population districts will pay a greater share of the costs of regulation, but also the relative proportion of those people who benefit from the regulation.
- The method of apportionment is consistent and verifiable, being based on the latest census data. Being standardised will allow for populations within each regulated supplier’s district to be recalculated as regulated suppliers merge or form new service organisations. For example, Wellington Water serves populations in Lower Hutt, Porirua, Upper Hutt and Wellington cities. We note that as census data is collected every five years, this method will result in some inaccuracies, such as people moving from one district to another in between census periods. However, we are advised that historical rates of population growth suggest these inaccuracies should not be significant.
- The method is relatively transparent and administratively simple.

Other options considered

Alternatives to the proposed option (and the reasons these methods are not preferred currently) include:

- A charge based on serviced population of each regulated supplier – under this option the population data for each district area would be adjusted to reflect the population that receives water services from the regulated supplier. This adjustment would exclude that portion of the population within the district that are not connected, such as due to being on self-supply. However, this option is not supported due to lack of accurate data and administrative complexity.
- The number of connections each regulated supplier is responsible for – this option is not supported at this time. The available data is inaccurate and methods of counting connections are not standardised.
- The value of regulated asset base of each regulated supplier – this method is used to apportion Commission costs in the calculation of the levy for regulation of electricity lines, gas pipelines and specified airfield activities. Therefore, it would have the benefit of consistency. However, it

⁷ [https://www.stats.govt.nz/information-releases/family-and-household-projections-2018base-2043/#:~:text=The%20national%20projections%20\(medium%20B,2043%20\(an%20increase%20of%20474%2C000\)](https://www.stats.govt.nz/information-releases/family-and-household-projections-2018base-2043/#:~:text=The%20national%20projections%20(medium%20B,2043%20(an%20increase%20of%20474%2C000))

will be some years before valuations of regulatory assets are standardised, verifiable, and has Commission oversight.

- Annual gross revenue of each regulated supplier – similar to the option above for the value of the regulated asset base, we expect it will be some years before revenue for each regulated supplier is collected and verifiable. This method would be administratively complex to apply if councils transfer responsibilities for all or some water services to service organisations.
- A flat charge for each regulated supplier– this method results in a higher charge per consumer of smaller regulated suppliers. It can be argued that this is unfair to consumers in smaller networks, as they are paying more for the costs of regulation relative to other consumers. It may also impact on the financial viability of some smaller regulated suppliers.
- Costs allocated based on time spent by the Commission on regulation of each regulated supplier – this method would be administratively difficult for the Commission to assign costs. It would lead to costs of regulation varying significantly for regulated suppliers year by year depending on the action taken by the Commission in relation to regulation. The first water service suppliers to be regulated or investigated under the economic regulatory regime could also pay a disproportionately higher share of the costs, from which other regulated suppliers subject to the same regulation may also benefit.
- A combination of methods – For example, levying for information disclosure regulation on a flat rate, and levying for price-quality regulation based on share of value of regulated asset base, or some other method. This would be complex to administer.

The merits of any of these options may change over time as more data is collected, standardised and verified. The options could be considered again in any future review.

Exemptions or waivers of levy not proposed

Section 53ZE(2)(i) of the Commerce Act provides that the levy regulations may specify exemptions or waivers from all or any part of the levy for any case or class of cases. No exemptions or waivers are proposed, as this would likely result in other regulated suppliers paying a disproportionate share of the Commission's costs (or the taxpayer). An exemption or waiver would conflict with the principles of equity and simplicity. As discussed in Part 1, it is expected that the Bill will exclude the Chatham Islands Council from the economic regulation regime therefore it is proposed that Chatham Islands Council is also excluded from the levy from the outset.

Questions on this section:

5. Do you have any comments on the preferred option for apportionment of the levy to each regulated supplier?
6. How would the proposed method of apportionment impact on your organisation (whether now or in the future)? Please provide your assessment of the nature and extent of these impacts.
7. Do you have any comments on alternative options to apportion the levy? If another option is preferred, please provide reasons.

Part 4: Levy implementation

Plan to implement and review the levy

The levy will be payable from 1 July 2025 and invoiced as soon as practicable after that date. Consistent with the existing levy recovery regime under Part 4 of the Commerce Act, MBIE will administer the levy on behalf of the Minister, including by:

- Calculating the estimate of the Commission's costs at the start of the financial year, for that activity and apportioned to regulated suppliers at that time; and
- Invoicing regulated water services suppliers quarterly in advance.⁸

The levy wash-up process is proposed to occur annually to ensure the regulated suppliers only pay the Commission's actual costs. As the wash-up would be based on the Commission's actual cost, this would enable any underspend, or additional spend, to be returned, or recovered from regulated suppliers. The Commission's actual costs would be capped by the appropriation.

Under the proposed model, regulated suppliers will have flexibility to decide how best to fund payment of the levy. A Council Controlled Organisation that provides drinking water and wastewater services, for example, may choose to charge the households and businesses connected to its networks an equal amount.

Alternatively, a regulated supplier, such as territorial authority that provides drinking water, wastewater and stormwater services in its district, may choose to pass on the levy through a targeted rate directed at connected properties for drinking water and wastewater services, and a targeted rate directed at ratepayers who own properties in an urban area for stormwater services.

It will be up to regulated water services supplier to determine how best to recover the levy costs from consumers (ie rates, water charges, etc.) and how best to ensure these costs are recorded (ie, whether to include levy charges as an explicit line in rates bills).

Monitoring and evaluation of the levy

Given that it is proposed that a levy methodology, rather than fixed levy costs, are prescribed in regulations, the approach is designed to be enduring. However, the levy will still need to be monitored and reviewed to ensure it continues to promote the principles of equity, efficiency (including simplicity), justifiability, and transparency.

It has been proposed that the Commission will be funded through a Crown appropriation. The first review of the levy and appropriation will be undertaken after two years in FY2027/2028, unless issues are identified earlier. This aligns with when the Water Services Authority – Taumata Arowai, is proposing to review its levy. The Minister will consult regulated suppliers or their representatives as part of this levy review.⁹

⁸ In the first year, transitional arrangements will allow for recovery of any Commission costs arising after 1 July 2025 and before the levy regulations are passed or before the regulated supplier becomes subject to the regime.

⁹ This is consistent with other levy regimes to recover the Commerce Commission costs. For example, *Review of the Commerce Commission's funding for the regulation of Telecommunications and Fibre under the Telecommunications Act 2001*, 2020 (available here: [\[link\]](#))

MBIE also supports the Minister to fulfil their role as being responsible for the Commission in accordance with the Crown Entities Act 2004. Performance measures will be set to monitor the Commission's performance, including specifying expected outputs (eg quantity, timeliness and quality) and intended impacts. The Commission will be subject to normal accountability arrangements to Parliament relating to its activities under the appropriation, such as annual reporting and incorporating the new water services regime into its Statement of Intent and annual Statement of Performance Expectations.

Questions on this section:

8. Do you see any issues with your implementation of the levy (receipt of invoices, payment and passing the cost on as you may determine)? If so, what are those issues?
9. Would the proposed implementation approach create any challenges for your organisation? If so, what would these be in practice and are there solutions you wish to propose?
10. Do you have a preference for when the levy should be reviewed next? If so, why?

Appendix 1: Submission form

We welcome your feedback

This is the Submission Form for responding to the Discussion Paper released by the Competition Policy team at Ministry of Business, Innovation and Employment (MBIE) 'Commerce Commission levy for the economic regulation of water services'. MBIE welcomes your comments by **5pm on Friday, 24 January 2025**.

Please make your submission as follows:

1. Please see the full Discussion Paper to help you have your say.
2. Please read the privacy statement and fill out your details under the 'Submission information' section.
3. Please fill out your responses to the questions in the tables provided. Your submission may respond to any or all of the questions. Questions which we require you to answer are indicated with an asterisk (*). Where possible, please include evidence to support your views, for example references to independent research, facts and figures, or relevant examples. If you would like to make other comments not covered by the questions, please provide these in the 'General Comments' section at the end of the form.
4. If your submission contains any confidential information, please:
 - a. State this in the cover page and/or in the e-mail accompanying your submission.
 - b. Indicate this on the front of your submission (e.g., the first page header may state "In Confidence").
 - c. Clearly mark all confidential information within the text of your submission.
 - d. Set out clearly which parts you consider should be withheld and the grounds under the Official Information Act 1982 (OIA) that you believe apply.
 - e. Provide an alternative version of your submission with confidential information removed in both Word and as a PDF, suitable for publication by MBIE.
5. Before sending your submission, please delete this first page of instructions.
6. Submit your submission by:
 - a. Emailing this form as both a Microsoft Word and PDF document to the Competition Policy team at competition.policy@mbie.govt.nz; or
 - b. Posting your submission to:

Competition Policy team
Ministry of Business, Innovation and Employment
15 Stout Street
PO Box 1473
Wellington 6140

Please direct any questions that you have in relation to the submissions process to competition.policy@mbie.govt.nz.

Release of Information

Please note that submissions are subject to the OIA and the Privacy Act 2020. In line with this, MBIE intends to upload copies of submissions received to MBIE's website at www.mbie.govt.nz. MBIE will consider you to have consented to uploading by making a submission unless you clearly specify otherwise in your submission. MBIE will take your views into account when responding to requests under the OIA and publishing submissions. Any decision to withhold information requested under the OIA can be reviewed by the Ombudsman.

Privacy statement

The information provided in your submission will be used to inform MBIE and other interested agencies' final recommendations to government on the design of a levy to recover the Commerce Commission's costs for economic regulation of water services. Your submission will also become official information, which means it may be requested under the Official Information Act 1982 (**OIA**). The OIA specifies that information is to be made available upon request unless there are sufficient grounds for withholding it.

Use and release of information

To support transparency in our decision-making, MBIE proactively releases a wide range of information. MBIE will upload copies of all submissions to its website at www.mbie.govt.nz. Your name, and/or that of your organisation, will be published with your submission on the MBIE website unless you clearly specify you would like your submission to be published anonymously. Please tick the box provided if you would like your submission to be published anonymously i.e., without your name attached to it.

If you consider that we should not publish any part of your submission, please indicate which part should not be published, explain why you consider we should not publish that part, and provide a version of your submission that we can publish (if we agree not to publish your full submission). If you indicate that part of your submission should not be published, we will discuss with you before deciding whether to not publish that part of your submission.

We encourage you not to provide personally identifiable or sensitive information about yourself or others except if you feel it is required for the purposes of this consultation.

Personal information

All information you provide will be visible to the MBIE officials who are analysing the submissions and/or working on related policy matters, in line with the Privacy Act 2020. The Privacy Act 2020 includes principles that guide how personal information can be collected, used, stored and disclosed by agencies in New Zealand. Please refrain from including personal information about other people in your submission.

Contacting you about your submission

MBIE officials may use the information you provide to contact you regarding your submission. By making a submission, MBIE will consider you to have consented to being contacted, unless you clearly specify otherwise in your submission.

Viewing or correcting your information

We may share this information with other government agencies, in line with the Privacy Act 2020 or as otherwise required or permitted by law. This information will be securely held by MBIE. Generally, MBIE keeps public submission information for ten years. After that, it will be destroyed in line with MBIE's records retention and disposal policy. You have the right to ask for a copy of any personal information you provided in this submission, and to ask for it to be corrected if you think it is wrong.

If you'd like to ask for a copy of your information, or to have it corrected, please contact MBIE by emailing competition.policy@mbie.govt.nz.

Submission information

(Please note we require responses to all questions marked with an *)

Release of information

Please let us know if you would like any part of your submission to be kept confidential.

I would like my submission (or identified parts of my submission) to be kept confidential, and **have stated below** my reasons and grounds under the Official Information Act that I believe apply, for consideration by MBIE.

I would like my submission (or identified parts of my submission) to be kept confidential because [\[Insert text\]](#)

[To check the boxes above: Double click on box, then select 'checked']

1. Personal details and privacy	
1.	I have read and understand the Privacy Statement above. Please tick Yes if you wish to continue* [To check the boxes below Double click on box, then select 'checked'] <input type="checkbox"/> Yes <input type="checkbox"/> No
2.	What is your name?*
3.	Do you consent to your name being published with your submission?*
	<input type="checkbox"/> Yes <input type="checkbox"/> No
4.	What is your email address? Please note this will not be published with your submission.*
5.	What is your contact number? Please note this will not be published with your submission.*

6.	<p>Are you submitting as an individual or on behalf of an organisation?*</p> <p><input type="checkbox"/> Individual (skip to 8)</p> <p><input type="checkbox"/> Organisation</p>
7.	<p>If on behalf of an organisation, we require confirmation you are authorised to make a submission on behalf of this organisation.</p> <p><input type="checkbox"/> Yes, I am authorised to make a submission on behalf of my organisation</p>
8.	<p>If you are submitting on behalf of an organisation, what is your organisation's name? Please note this will be published with your submission.</p> <p></p>
9.	<p>If you are submitting on behalf of an organisation, which of these best describes your organisation? Please tick one.</p> <p><input type="checkbox"/> Territorial authority</p> <p><input type="checkbox"/> Regional council</p> <p><input type="checkbox"/> Existing regulated supplier under the Commerce Act 1986</p> <p><input type="checkbox"/> Consumer organization</p> <p><input type="checkbox"/> Non-governmental organisation</p> <p><input type="checkbox"/> Academic Institution</p> <p><input type="checkbox"/> Central government</p> <p><input type="checkbox"/> Iwi, hapū or Māori organisation</p> <p><input type="checkbox"/> Academic/Research</p> <p><input type="checkbox"/> Other. Please describe:</p>

Responses to questions

The Competition Policy team welcomes your feedback on as many sections as you wish to respond to, please note you do not need to answer every question.

Part 1: Levy structure	
1.	What are your views on the preferred option for a levy to fully recover the costs of the Commission's new functions from 1 July 2025 onwards from regulated water services suppliers, excluding litigation and Crown Monitor costs for Watercare? Please provide reasons.
Part 2: Levy design	
2.	What are your views on the proposed levy design?
3.	How would the proposed levy design impact on your organisation (whether now or in the future)? Please provide your assessment of the nature and extent of these impacts.
4.	Do you have any comments on how the levy design could be improved? Please provide reasons.
Part 3: Levy apportionment	
5.	Do you have any comments on the preferred option for apportionment of the levy to each regulated supplier?

6.	How would the proposed method of apportionment impact on your organisation (whether now or in the future)? Please provide your assessment of the nature and extent of these impacts.
7.	Do you have any comments on alternative options to apportion the levy? If another option is preferred, please provide reasons.
Part 4: Levy implementation	
8.	Do you see any issues with your implementation of the levy (receipt of invoices, payment and passing the cost on as you may determine)? If so, what are those issues?
9.	Would the proposed implementation approach create any challenges for your organisation? If so, what would these be in practice and are there solutions you wish to propose?
10.	Do you have a preference for when the levy should be reviewed next? If so, why?

General Comments:

Thank you

We appreciate you sharing your thoughts with us. Please find all instructions for how to return this form to us on the first page.

Appendix 2: Indicative estimate of levy by regulated supplier in first two years

Regulated supplier (eg Council or service organisation)	2023 Census Population	Percentage of Total Population	Indicative levy 2025/26	Indicative levy 2026/27
Ashburton district	34,746	0.7%	45,231	45,231
Watercare - Auckland	1,656,486	33.2%	2,156,341	2,156,341
Buller district	10,446	0.2%	13,598	13,598
Carterton district	10,107	0.2%	13,157	13,157
Central Hawke's Bay district	15,480	0.3%	20,151	20,151
Central Otago district	24,306	0.5%	31,640	31,640
Christchurch city	391,383	7.8%	509,485	509,485
Clutha district	18,315	0.4%	23,842	23,842
Dunedin city	128,901	2.6%	167,798	167,798
Far North district	71,430	1.4%	92,984	92,984
Gisborne district	51,135	1.0%	66,565	66,565
Gore district	12,711	0.3%	16,547	16,547
Grey district	14,043	0.3%	18,281	18,281
Hamilton city	174,741	3.5%	227,470	227,470
Hastings district	85,965	1.7%	111,905	111,905
Hauraki district	21,318	0.4%	27,751	27,751
Horowhenua district	36,693	0.7%	47,765	47,765
Hurunui district	13,608	0.3%	17,714	17,714
Invercargill city	55,599	1.1%	72,376	72,376
Kaikoura district	4,215	0.1%	5,487	5,487
Kaipara district	25,899	0.5%	33,714	33,714
Kapiti Coast district	55,914	1.1%	72,786	72,786
Kawerau district	7,539	0.2%	9,814	9,814
Lower Hutt city (Wellington Water)	107,562	2.2%	140,020	140,020
Mackenzie district	5,115	0.1%	6,658	6,658
Manawatu district	32,415	0.6%	42,196	42,196
Marlborough district	49,431	1.0%	64,347	64,347
Masterton district	27,678	0.6%	36,030	36,030
Matamata-Piako district	37,098	0.7%	48,293	48,293
Napier city	64,695	1.3%	84,217	84,217
Nelson city	52,584	1.1%	68,452	68,452
New Plymouth district	87,000	1.7%	113,253	113,253
Ōpōtiki district	10,089	0.2%	13,133	13,133
Ōtorohanga district	10,410	0.2%	13,551	13,551
Palmerston North city	87,090	1.7%	113,370	113,370
Porirua city (Wellington Water)	59,445	1.2%	77,383	77,383
Queenstown-Lakes district	47,808	1.0%	62,234	62,234
Rangitikei district	15,663	0.3%	20,389	20,389
Rotorua district	74,058	1.5%	96,405	96,405

Regulated supplier (eg Council or service organisation)	2023 Census Population	Percentage of Total Population	Indicative levy 2025/26	Indicative levy 2026/27
Ruapehu district	13,095	0.3%	17,046	17,046
Selwyn district	78,144	1.6%	101,724	101,724
South Taranaki district	29,025	0.6%	37,783	37,783
South Waikato district	25,044	0.5%	32,601	32,601
South Wairarapa district	11,811	0.2%	15,375	15,375
Southland district	31,833	0.6%	41,439	41,439
Stratford district	10,149	0.2%	13,212	13,212
Tararua district	18,660	0.4%	24,291	24,291
Tasman district	57,807	1.2%	75,251	75,251
Taupō district	40,296	0.8%	52,456	52,456
Tauranga city	152,844	3.1%	198,966	198,966
Thames-Coromandel district	31,995	0.6%	41,650	41,650
Timaru district	47,547	1.0%	61,895	61,895
Upper Hutt city (Wellington Water)	45,759	0.9%	59,567	59,567
Waikato district	85,968	1.7%	111,909	111,909
Waimakariri district	66,246	1.3%	86,236	86,236
Waimate district	8,121	0.2%	10,572	10,572
Waipa district	58,686	1.2%	76,395	76,395
Wairoa district	8,826	0.2%	11,489	11,489
Waitaki district	23,472	0.5%	30,555	30,555
Waitomo district	9,585	0.2%	12,477	12,477
Wellington city (Wellington Water)	202,689	4.1%	263,852	263,852
Western Bay of Plenty district	56,184	1.1%	73,138	73,138
Westland district	8,901	0.2%	11,587	11,587
Whakatane district	37,149	0.7%	48,359	48,359
Whanganui district	47,619	1.0%	61,988	61,988
Whangarei district	96,678	1.9%	125,851	125,851
Total	4,993,254	100.00%	6,500,000	6,500,000



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