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

Submission by Water New Zealand - Economic regulation and consumer protection for three waters services in New Zealand

1. Water New Zealand ("**Water NZ**") appreciates the opportunity to provide a submission on the Discussion Document - Economic regulation and consumer protection for three waters services in New Zealand ("Discussion Document").

About Water NZ

2. Water NZ is a national not-for-profit organisation which promotes the sustainable management and development of New Zealand's three waters (drinking water, wastewater and stormwater). Its ~2,600 members are drawn from all areas of the water management industry including regional councils and territorial authorities, consultants, suppliers, government agencies, academia and scientists. Water NZ is the leading voice for the three waters sector in New Zealand, providing leadership and support in the water sector through advocacy, collaboration and professional development.

The context of Water NZ's response to the Discussion Document

3. Water NZ has responded to all the questions in the submission form. We consider it fundamental to put some context around the responses we have given to ensure that our overall message regarding economic regulation of the three water services is not lost.
4. Water NZ considers the establishment of a three waters economic regulator is critical to complement and strengthen the overall regulatory regime for the three waters services sector in Aotearoa / New Zealand and to enable the following outcomes:
 - (a) safe, reliable drinking water;
 - (b) better environmental performance of wastewater and stormwater services;
 - (c) efficient, sustainable, resilient and accountable multi-regional water and sewage services; and

(d) making water affordable for future generations¹.

5. Water NZ is concerned to ensure that economic regulation does not sit in a silo completely unrelated to the public health, environmental, cultural, and social contexts within which three waters sit.
6. Three waters sit within the broad framework for freshwater management which is significantly influenced and driven by the concept of Te Mana o te Wai as set out in the National Policy Statement for Freshwater Management 2020 and included in the Water Services Act 2021.
7. At the time of preparing this submission the Water Services Entities Bill is yet to be tabled in Parliament. However, it is expected that this Bill will require the Water Service Entities (WSE) to give effect to Te Mana o Wai (to the extent Te Mana o te Wai applies to the duties and functions of the entities)². These obligations will mirror those in the Water Services Act 2021, which requires all those with powers, functions, and duties under the Act to give effect to Te Mana o te Wai.
8. No regulation (economic or otherwise) of water can occur without ensuring that Te Mana o Te Wai and the principles of Te Tiriti o Waitangi / The Treaty of Waitangi are given effect to. Te Mana o te Wai establishes a hierarchy requiring the health and well-being of water bodies and freshwater ecosystems to be prioritised ahead of the health needs of people, and the ability of people and communities to provide for their social, economic, and cultural wellbeing now and in the future. This is the important constitutional context that should underpin any economic regulation of three waters.
9. For these reasons Water NZ is concerned that the Discussion Document appears to focus on economic regulation in a way that is divorced from the unique and important place held by three waters in Aotearoa / New Zealand. A regulatory response that utilises the same frameworks as those for other sectors, such as telecommunications or electricity, is not appropriate for three waters economic regulation. However, we acknowledge that in regulating the three waters there will be opportunities to leverage experience and draw upon certain aspects of the regulated environments of telecommunications and electricity.
10. While consumer protection is, of course, important it is not the only factor in relation to economic regulation of water. The regulation of water is complex, multi-faceted and as already noted overlain by Te Mana o Te Wai and Te Tiriti. The danger of not being mindful of this in any economic regulation would likely mean that conflicts between different regulatory frameworks and requirements will inevitably occur.
11. Water NZ consider that it is imperative that the Department of Internal Affairs and Taumata Arowai are heavily involved in the development of the detail for the economic regulatory and consumer protection framework for three waters to ensure there are both clear independent roles and responsibilities for each regulatory agency and wider stakeholders and clear areas of coordination between the regulating agencies to achieve system level change. This cohesion must be across drinking water quality

¹ Refer [link](#) for reform programme outcomes.

² Refer 14 June 2021, Cabinet Paper: A New System for Three Waters Service Delivery: Paper One, Office of the Minister Local Government, Para 80.6.

regulation, environmental regulation, climate regulation, consumer protection, economic regulation, and accountability to communities/local representatives and mana whenua.

12. There are several aspects that need to be carefully considered in relation to the pace and form of the economic regulation and consumer protection process:
- (a) The no-dividend nature of the WSEs. Most commonly, economic regulation is introduced to force or incentivise outcomes from monopoly businesses that are consistent with a workably competitive market and to avoid excessive returns.
 - (b) The transition from 67 Councils to 4 WSEs over the next 2.5 years. Three waters provision across the 67 Councils is, understandably, across physical infrastructure, technology, environmental performance, and staffing at different levels of capability and capacity. Developing and introducing a new economic regulatory regime at the same time the WSEs are being stood up must not risk the goal of delivering safe, clean water and enabling scope and scale efficiencies during the transition and ultimately improving water outcomes in Aotearoa / New Zealand.
 - (c) The size of the transformation required is significant - \$185b of new infrastructure investment is forecast over a 30-year period. Note, this does not consider investments that may be required to address climate mitigation or climate adaptation, nor resilience to natural disasters. Until recently Councils spent on aggregate ~\$1.5b per annum on capital investment. With the Delivery Plan funding this has increased to ~\$2.7b pa. To achieve \$185b will require a trebling or quadrupling of typical annual expenditures. There are skills shortages right across construction and including the water workforce - Water NZ's 2019/20 National Performance Review indicating job vacancies of ~8% amongst three waters staff. The introduction of an economic regulatory regime which may necessitate assessment of capital investments over some materiality threshold must not lead to an investment hiatus at a point when the need for significant investment has been acknowledged.
 - (d) The Working Group on Representation, Governance and Accountability of the new Water Services Entities³. This working group has been established to ensure the new WSEs have accountability to the communities they serve, and to ensure there is an open and transparent process.

Economic regulation

13. Water NZ is aware that members have a range of views regarding who should be the economic regulator. On the one hand setting up of a specific three waters economic regulator and on the other the Commerce Commission. The critical issue is the overall regulatory framework, which must take appropriate account of the broader regulatory framework for water.

³ Refer Media Release, [Working group to ensure local voice in Three Waters reform | Beehive.govt.nz](https://www.beehive.govt.nz/news/working-group-to-ensure-local-voice-in-three-waters-reform)

14. Economic regulation is important as the new WSEs will be large infrastructure monopolies and will not be subject to normal competitive market forces. This means alternate forms are required to incentivise outcomes that are consistent with a workably competitive market.
15. Further, Water NZ considers that the purpose statement for the specific three waters economic regulator should recognise Te Mana o te Wai, be coherent with key local government outcomes (especially community focus) and the outcomes being sought from the overall reform package outcomes.

Consumer protection

16. Water NZ supports steps to put in place strong consumer protection arrangements.
17. It is important to recognise that identifying who is the consumer in a three waters context is not necessarily straightforward, and to ensure that roles and responsibilities for consumer protection are clear:
 - (a) Who is the consumer? For example, wet weather wastewater overflows may be experienced by a group of consumers or a whole community rather than an individual household. Similarly, a stormwater event may flood a property, a subdivision or large part of a community. A drinking water contamination event may have detrimental health effects for a whole community.
 - (b) Need for clear roles and responsibilities. For example, Regional Councils and Taumata Arowai will both have an interest in environmental performance of three waters: Regional Councils via resource consents, and Taumata Arowai via environmental performance measures under the Water Services Act. Under c39 of the Water Services Act Taumata Arowai may appoint a person to provide a dispute resolution process on its behalf.
 - (c) Provide clarity on the role of consumer in economic regulation, and the pathway for consumers to elevate concerns.
18. Water NZ supports the establishment of a dispute resolution scheme.

Conclusion

19. This is a once in a generation opportunity to put in place an economic regulatory and consumer protection regime for the three waters which while leveraging domestic and overseas experience recognises that:
 - (a) Water in Aotearoa / New Zealand is not the same as electricity, gas, telecommunications, and airports in Aotearoa / New Zealand. It is not sufficient to simply add water into the Commerce Act.
 - (b) Water in Aotearoa / New Zealand is a taonga, and the broad framework for freshwater management requires the health and well-being of water bodies and freshwater ecosystems to be prioritised ahead of the health needs of people and the ability of people and communities to provide for their social, economic, and cultural wellbeing now and in the future. It is not sufficient to simply adopt an overseas economic regulatory regime for water.
 - (c) The three waters sector is at the beginning of a period of significant transformation. During this period there will be a need for transparency of

processes, for trust to be built, for an increase in water literacy (a general understanding about all things three waters), and, ultimately, for an increase in equity of service delivery across Aotearoa / New Zealand. This requires clear roles and responsibilities and cohesion across the regulatory regime for water.

- (d) There is a significant infrastructure deficit across the three waters. This must start to be addressed now, at the same time as the WSEs are being established and the economic regulation and consumer protection regimes are being developed. The economic regulator and the WSEs should work together to ensure efficient and effective investment is realised through a collaborative/coaching relational framework rather than a regulatory regime that is unnecessarily adversarial, too prescriptive and compliance focussed.

20. Finally, Water NZ is available to provide technical water expertise as the details of the economic regulatory regime is developed. If you have any questions on this submission, please contact me.

Ngā mihi nui

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