

## Discussion Paper: 'Economic Regulation and Consumer Protection for Three Waters in New Zealand'

Questions:

1. *What are your views on whether there is a case for the economic regulation of three waters infrastructure in New Zealand?*

It is agreed that there is a case for economic regulation of three waters and for the creation of a regulatory agency. Water is an essential service, critical to life and to the way we live. It is therefore important that water services are delivered efficiently and equitably. However water services are also natural monopolies, and as such are susceptible to negative behaviours. For this reason, the role of regulators, particularly an economic regulator, is widely considered to be a fundamental driver of efficiency. Based on my understanding of economic regulators throughout the world and the experience from previous roles, I concur with the statement in paragraph 58 of the discussion document that: “[o]verseas experience suggests that economic regulation has played a critical role in driving efficiency gains that are able to be shared with consumers via lower prices and improved quality of service, compared to the prices and quality consumers experience in the absence of regulation”.

2. *What are your views on whether the stormwater networks that are currently operated by local authorities should be economically regulated, alongside water and wastewater?*

There are clear and obvious differences between stormwater and the other two waters (drinking water and waste water), which make stormwater unique. I note that significant work is still underway in order to understand which stormwater assets should be transferred to WSEs; the mechanisms for revenue gathering and how governance oversight should be provided. These unknowns mean that robust comment on economic regulation for stormwater is not possible, at this time. Notwithstanding, my in-principle view is that economic regulation should apply to stormwater, as many of the same concerns, such as inefficient investments, apply. Ideally, economic regulation for stormwater should be the same (or similar) as the approach taken to drinking water and waste water, in order to avoid gaming by the Water Service Entities (such as re-classification of expenditure between classes of infrastructure in order to artificially achieve regulatory benchmarks).

3. *What are your views on whether the four statutory Water Services Entities should be economically regulated?*

As noted in question 1, economic regulation for the four proposed Water Services Entities is supported. It may also be useful for an information disclosure regime to be introduced for Councils during the transition. The National Transition Unit could have a role in this, to ensure basic data is captured and validated. This will also help provide consumers with a better understanding of price changes arising from the transition to new entities.

4. *What are your views on whether economic regulation should apply to community schemes, private schemes, or self-suppliers? Please explain the reasons for your views.*

The costs of applying an economic regulation regime are very likely to outweigh the benefits for very small private and community schemes, and therefore my recommendation would be that they are not included, at least from the outset. I note however that there are some schemes that supply water services to reasonably considerable populations, such as:

- ski-fields and other tourist destinations (which can service tens of thousands of visitors during a season)
- rural communities serviced by industry (including dairy factories and meat works), and
- public sector activities, such as prisons, schools, military camps etc....

In addition, it is not inconceivable that entities could arise in the future that warrant economic regulation, and therefore including provision to add new water service providers to the list of entities being regulated would be useful.

5. *What are your views on whether the Water Services Entities should be subject to information disclosure regulation?*

Information disclosure should be the minimum requirement of any new economic regulation regime. However there are significant gaps in the information held on water infrastructure, including basic information such as condition assessments of pipes. This information is critical to robust regulatory (and asset management) decisions and needs prompt attention. It would be ideal if the development of robust asset data could be included as an activity within the transition process.

However, it is not clear that information disclosure by itself will be sufficient. There are a range of pressures, including matters such as historic under-investment, climate change, increasing public scrutiny, and a proposed, novel governance arrangement, that have the potential to influence and distort investment decisions. It is also likely to be relatively easy for the proposed entities to argue that they are unique in various ways and therefore that higher costs, or lower service standards are justified. In these circumstances information disclosure, and price-quality regulation, may have limited effectiveness. It may be appropriate to consider a bespoke arrangement to economic regulation in this case, such as the RAPID approach mentioned in the answer to question 13.

6. *What are your views on whether Water Services Entities should be subject to price-quality regulation in addition to information disclosure regulation?*

Based on a global overview, price-quality regulation appears to be a normal, and expected component of most economic regulation regimes for waters. However, it is essential that price-quality regulation is based on solid data, which is not currently possible (as noted in the response to question 5, above). It is therefore recommended that provision be made under legislation for price-quality regulation, but that it only be rolled out when the economic regulator is confident that the data is reliable. Reliable data will also enable the economic regulator to make an assessment about the added value that would be derived from this form of regulation, noting that implementing and complying with price-quality regulation is costly, both for the regulator and the Water Services Entities, and that there is also a risk of regulatory failure.

7. *What are your views on the appropriateness of applying individual price-quality regulation to the Water Services Entities?*

If it is considered that price-quality paths are justified (see the response to question 6, above) it would be logical for this to be undertaken on an individual, bespoke basis. The needs and issues faced by a Water Services Entity which includes Auckland City are likely to be quite different from the issues being faced by an entity comprising the bulk of the South Island, and therefore it is unlikely that 'one size' will fit everyone.

8.

- a. *Do you consider that the economic regulation regime should be implemented gradually from 2024 to 2027, or do you consider that a transitional price-quality path is also required?*

The reform of the three waters sector has a very high profile. For consumer confidence it will be important that the new regime proves itself as soon as possible. On the other hand, as noted in the response to questions 6 and 7 above, access to reliable information is problematic.

No decision can be made concerning the value of a price-quality path until adequate data is available, however when information is available, and if it is considered that a price-quality path will be cost-effective, my view is that a transitional path would be appropriate. This is because the data available to the economic regulator, and their understanding of infrastructural deficits, appropriate financial levers and uniquely New Zealand characteristics, such as Te Mana o te Wai, will evolve and improve over time. A transitional path is preferred because it recognises that early guidance is desirable, but that 'perfection' cannot be the enemy of progress.

- b. *If you consider a transitional price-quality path is required, do you consider that this should be developed and implemented by an independent economic regulator, or by Government and implemented through a Government Policy Statement?*

It would be preferable for a transitional price-quality path to be developed by the economic regulator based on solid information. There are significant dangers in having a price-quality path defined through a Government Policy Statement, or by the local authority owners, including the danger of establishing a path that undermines the WSE's ability to finance the existing, substantial infrastructure deficit.

9.

- a. *What are your views on whether the Minister of Commerce and Consumer Affairs should be able to reduce or extend the application of regulation on advice from the economic regulator?*

As noted in my answer to question 4, situations can be foreseen where it may be appropriate for new entities to be brought into the economic regulation framework. For that reason I agree that it would be appropriate for the Minister to have this authority.

- b. *What factors do you consider the economic regulator should include in their advice to the Minister?*

I agree that the factors set out in paragraph 90 of the Discussion Document are appropriate.

10.

- a. *What are your views on whether the purpose statement for any economic regulation regime for the water sector should reflect existing purpose statements in the Telecommunications Act and Part 4 of the Commerce Act given their established jurisprudence and stakeholder understanding?*

It would make sense for the purpose statement to be as close as possible to existing legislation, for the reasons noted above (i.e. jurisprudence and stakeholder understanding). I do however note that Water has many characteristics which differ from regulated industries such as electricity and telecommunications. This means that some alterations, such as the inclusion of Te Ao Maori, are likely to be necessary (and desirable).

- b. *What are your views on whether the sub-purpose of limiting suppliers' ability to extract excessive profits should be modified or removed given that Water Services Entities will not have a profit motive or have the ability to pay dividends?*

While it does seem difficult to justify the inclusion of a profit-focussed sub-purpose for the four water services entities, as they are currently configured, it is important to recognise that the creation of a profit (or perhaps 'surplus') is a tangible demonstration that the entity is achieving, or exceeding, its targets. Any surpluses generated by a WSE can be re-invested in their activities.

- c. *Are there any other considerations you believe should be included in the purpose statement, or as secondary statutory objectives?*

It would be desirable for the objectives of the economic regulator to align with the purposes of the WSEs. For example, facilitating housing and urban development generally and giving effect to Te Mana o te Wai are two objectives that look likely to be included in the objectives of the WSEs. It would therefore be useful if these objectives were also able to be taken into account by the economic regulator.

- d. *What are your views on how Treaty of Waitangi principles, as well as the rights and interests of iwi/Maori, should be factored into the design of an economic regulatory regime for the three waters sector?*

It is important that Te Tiriti o Waitangi, Te Mana o Te Wai and Te Ao Maori are factored into the regulator's thinking. A resolution to Maori rights and interests in water requires some key decisions to be made by government, including complex issues such as the right to water allocations. It will be difficult for an economic regulator to usefully consider the rights and interests of Maori without these matters being resolved.

11. *What are your views on whether a sector specific economic regulation regime is more appropriate for the New Zealand three waters sector than the generic economic regulation regime provided in Part 4 of the Commerce Act?*

Water services, and the use of freshwater generally, has characteristics which are substantially different from other regulated sectors, as noted in my response to previous questions. For this reason it is considered that sector specific legislation would be most appropriate.

12. *What are your views on whether the length of the regulatory period should be 5 years, unless the regulator considers that a different period would better meet the purposes of the legislation?*

It would be appropriate for the regulatory period to be more flexible (i.e. shorter) in the early years, as the robustness of the underlying data is resolved and disparate pricing methodologies and asset management plans are reconciled. A four to six year regulatory period would seem to provide an appropriate balance between the need for certainty versus pressure to find efficiency gains, on an ongoing basis.

13.

- a. *What are your views on whether the economic regulator should be required to develop and publish input methodologies that set out the key rules underpinning the application of economic regulation in advance of making determinations that implement economic regulation?*

A clear understanding of 'the rules of the game' is always to be encouraged. This shouldn't preclude the potential for changes at following reviews, as circumstances change.

- b. What are your views on whether the economic regulator should be able to minimise price shocks to consumer and suppliers?*

Avoiding price shocks to consumers is certainly a factor that needs to be borne in mind. In order to do this, it will be desirable to balance the respective roles of consumers (as represented in a consumer forum); the role of the Regional Representative Group (who – irrespective of whether they should or not – will have a strong view on pricing); and the role of other regulators (health and environmental) who will want certain works undertaken within specified periods of time.

It is generally considered appropriate that regulators retain independence in decision making. However, the circumstances in this case – and particularly in the early years – suggests that a forum of interests perhaps based on the UK's experience with 'RAPID' – the Regulator's Alliance for Progressing Infrastructure Development (see the response to question 44) may be a useful mechanism to allow regulators (and possibly Iwi, the WSEs and Councils) to come together to determine the trade-offs required to achieve the best practical outcomes, without incurring undesirable financial consequences.

- c. What are your views on whether the economic regulator should be required to set a strong efficiency challenge for each regulated supplier? Would a strong 'active' styled efficiency challenge potentially require changes to the proposed statutory purpose statement?*

As noted in my response to question 10(b), the challenge of returning a surplus has some benefits, particularly where surpluses can be re-invested in the network. For this reason an efficiency challenge is considered desirable.

It is unnecessary to change the purpose statement; the word 'incentives' has a broader interpretation than just a financial profit and is important in the context of encouraging innovation and the adoption of new technologies and processes.

14.

- a. What do you consider are the relevant policy objectives for the structure of three waters prices? Do you consider there is a case for parliament to directly control or regulate particular aspects in the structure of three waters prices?*

The overarching principle and focus for water pricing should be economic efficiency, supported by optimal technology options (e.g. smart meters). It is however noted that the water regulator will need to be sympathetic to the purpose and objectives of the WSEs, including factors such as climate change, environmental sustainability, social equity... that are likely to be imposed on WSEs through legislation, the Government Policy Statement, statements of strategic and performance expectations issued by the Regional Representatives Group and Te Mana o te Wai Statements developed by mana whenua. Pricing decisions will also potentially be influenced by consumer forums. For these reasons it will not be possible for the economic regulator to make pricing determinations based solely on the assessed 'lowest cost'.

- b. Who do you consider should have primary responsibility for determining the structure of three waters prices:*
- i. The Water Services Entity, following engagement with their governance group, communities, and consumers?*

- ii. The economic regulator?*
- iii. The Government or Ministers?*

Parliamentary control of water prices would be undesirable, for a number of reasons. These include the avoidance of politically motivated determinations, most likely to reduce consumer charges, which would have the potential to compromise WSE's ability to finance the existing infrastructural deficit. Secondly, the involvement of central government in price setting would seem inconsistent with removing that role from asset owners - councils on behalf of their communities.

It would be ingenuous to pretend that there are no equity considerations involved in price setting. An obvious trade off will be the tension between cross-subsidisation of small communities (a key driver of the reforms) versus the likely reality that some small schemes will be found to be unaffordable (for example, rural schemes that mainly supply livestock). However, Water Services Entities will be in the best position to take the unique characteristics and circumstances of local communities into account, and therefore also in the best position to make pricing decisions. These decisions cannot however be unilateral.

It is clear that in the early stages of reform the issue of pricing may be contentious, due to the likelihood that there will be winners and losers (i.e. some will pay more for their water and some will pay less) and that decades of under-investment will need to be addressed (potentially forcing price increases). Local WSEs are in the best position to address these trade-offs, in consultation with consumers and within parameters established by the independent regulator.

- c. If you consider the economic regulator should have a role, what do you think the role of the economic regulator should be? Should they be empowered to develop pricing structure methodologies, or should they be obliged to develop pricing structure methodologies?*

The economic regulator needs to have the ability to influence pricing decisions through mechanisms such as the development and publication of efficient pricing principles, for all the reasons listed in the Discussion Document (e.g. being a natural monopoly).

- 15. What are your thoughts on whether merits appeals should be available on the regulators decisions that determine input methodologies and the application of individual price-quality regulation?*

It is agreed that merit appeals should be available.

- 16. Do you broadly agree with the compliance and enforcement tools proposed above? Are any additional tools required?*

In broad terms, Yes. The ability to accept enforceable 'undertakings' and action plans, accompanied by significant scrutiny and published progress reports, have been amongst the most effective tools agencies such as OfWat have been able to deploy. 'Undertakings' are a legal mechanism whereby WSEs will be able to 'break the rules' without penalty, based on an agreed pathway towards an acceptable resolution. For example, if water regulations set a manganese standard and a WSE is failing it, and can't instantly resolve it, they can be given time to implement an acceptable solution. Specifically, the regulator is empowered to give an undertaking that this standard will be breached at location X until date Y. If the regulator is doing their job monitoring the performance of entities against a range of agreed metrics, they will know if performance is trending in the right direction and can take action if it is not. As part of their monitoring role, the regulator can ask the WSE to submit

an action plan to reverse the trend. If that does not achieve the desired outcome, further action can be taken.

*17. Who do you think is the most suitable body to be the economic regulator for the three waters sector? Please provide reasons for your view.*

The Commerce Commission has the necessary expertise in economic regulation and will bring instant credibility to pricing arrangements based on its long track record. It is acknowledged that the Commerce Commission does not have waters expertise, however water expertise is relatively easily available within New Zealand, including through contract. The Commerce Commission also appears to have a weak appreciation of Te Ao Maori, at least from external observation. This however is a matter that should be addressed on an organisation-wide basis. The importance of water to Maori may prove to be a useful corporate catalyst for the Commission.

*18. What are your views on whether the costs of implementing an economic regulation regime for the three waters sector should be funded via levies on regulated suppliers?*

It would be appropriate to fund the economic regulation of water and waste water services by way of levies on the WSEs (which will be passed through to consumers). Stormwater is more problematic, as there are a range of public benefits to take into account; direct beneficiaries are not so easily identified; and there are exacerbator and free rider issues also at play. In the case of stormwater it is suggested that there is likely to be a good case for at least some funding to be received from a local tax, preferably established and gathered by local authorities.

*19. Do you think that the levy regime should:*

- a. Require the regulator to consult on and collect levy funding within the total amount determined by the Minister? OR*
- b. Require the Ministry to consult on the levy (on behalf of the Minister) and collect levy funding within the total amount determined by the Minister?*

On balance my view is that it would be preferable to require the regulator to consult with the industry when it sets its fees, noting that the Minister's involvement will mean that there is some ongoing oversight.

*20. Are there any other levy design features that should be considered?*

The proposed design canvasses the key features well.

*21.*

- a. What are your views on whether additional consumer protections are warranted for the three waters sector?*

I support the view that consumer protection is warranted.

- b. What are your views on whether the consumer protection regime should contain a bespoke purpose statement that reflects the key elements of the regime, rather than relying on the purpose statements in the Consumer Guarantees Act and Fair Trading Act? If so, do you agree with the proposed limbs of the purpose statement?*

It is agreed that the consumer protection regime would be better as bespoke legislation. As a general comment, there is a concern that the discussion document does not clearly distinguish between economic regulation and consumer protection in places, and that there appears to be a potential for duplication. It is important that the new regime commences with clear roles and

responsibilities between the regulators, and other parties (such as the Regional Representatives Group and government).

*22. What are your views on whether the consumer protection regulator should be able to issue minimum service level requirements via a mandated code that has been developed with significant input from consumers?*

It is proposed that water quality (health) and environmental standards will be set by the Ministry of Health, Taumata Arowai and Regional Councils, and an economic regulator will provide mechanisms to influence pricing. A consumer protection agency will then be added to consider matters such as response times to complaints, the number of unscheduled outages, water pressure, equity of access etc.... However, the number of agencies regulating, or proposed to regulate, WSEs creates a danger of overlap. Success requires that there be clarity about the roles and responsibilities of the consumer protection agency vis-à-vis the role of other regulatory bodies and that any areas of overlap are minimised.

The ability to issue minimum service level requirements via a mandated code is supported. There will however be a need for diligence to ensure that minimum standards don't become de facto targets, and that opportunities to (for example) reduce response times or avoid unplanned disruptions beyond what is specified in the standards aren't foregone as a result.

*23. What are your views on whether the consumer protection regulator should also be empowered to issue guidance alongside a code?*

I support the issue of guidance documents, by any of the regulators.

*24. What are your views on whether it is preferable to have provisions that regulate water service quality (not regulated by Taumata Arowai) in a single piece of economic regulation and consumer protection legislation?*

Including water service quality provisions (except aspects already regulated by others, such as Taumata Arowai and regional councils) in a single piece of legislation would be logical.

*25. What are your views on whether minimum service level requirements should be able to vary across different types of consumers?*

Minimum service level requirements should have the capacity to vary across different types of consumer, for a variety of reasons. For example, capacity issues may require that rural consumers are limited to trickle-feed supplies, which would be unacceptable in urban areas. There are also likely to be existing variations in service levels across the country which will take time, and considerable capital, for WSEs to resolve.

*26. What are your views on whether the regulatory regime should include a positive obligation to protect vulnerable consumers, and that minimum service level requirements are flexible enough to accommodate a wide range of approaches to protecting vulnerable communities?*

It is agreed that there should be a positive accommodation for vulnerable consumers and that minimum service level requirements should have flexibility. Water is an essential element and therefore it is important that nobody is denied the right to access it, directly or indirectly.

*27. What are your views on how Treaty of Waitangi principles, as well as the rights and interests of iwi/Maori should be factored into the design of a consumer protection regime for the three waters sector?*



Te Ao Maori should be holistically woven throughout the regulatory regime. From a Maori perspective the mauri of water is of significant importance. Any consumer protection regime (and other regulators) will need to have the capability to address these cultural imperatives.

28.

- a. *Do you consider that the consumer protection regime should apply to all water suppliers, water suppliers above a given number, or just Water Services Entities? Could this question be left to the regulator?*

The cost of compliance suggests that it would be inefficient for a consumer protection regime to apply to small suppliers. However, on the other hand, the trade-off is that poorer communities (disproportionately rural and Maori) will continue to receive lower quality water services than their urban cousins. One approach might be to apply a light-handed information disclosure regime to any scheme which is not a self-supply, and not a WSE.

- b. *Do you support any other options to manage the regulatory impost on community and private schemes?*

No other options present themselves.

29. *Do you broadly agree with the compliance and enforcement tools proposed above? Are any additional tools required?*

I agree with the list of compliance and enforcement tools proposed. A key to the success of the consumer protection regime will be how these tools are used. I would expect that in the transition period the focus will be on education, however the regulator will need to have a willingness to deploy more stringent enforcement procedures where these are required. My observation is that a lack of enforcement of environmental standards by Regional Councils has contributed to poor environmental outcomes. It would be unfortunate if this was replicated in consumer protection.

30. *Do you agree with our preliminary assessment that the Commerce Commission is the most suitable body to be the consumer protection regulator for the three waters sector?*

Yes, particularly given the Commission's existing expertise and ability to operate at arms-length from political influence. It's also noted that the range of activities left for a consumer protection agency is reasonably limited, given that environmental issues will be regulated by regional councils (with overview from Taumata Arowai) and that health issues will be the province of Taumata Arowai with support from the Ministry of Health.

31. *What are your views on whether the regulator should be required to incentivise high-quality consumer engagement?*

A very good approach. As an example, it is quite likely that a consumer forum would take a more conservative view on fees and charges where increases are necessary to support issues such as environmental protection or social standards (e.g. a 'minimum living wage'). Allowing this consumer voice to be factored into the price-quality path would allow entities to progress these social / community desires at a quicker pace, where that is appropriate.

32. *What are your views on whether there is a need to create an expert advocacy body that can advocate technical issues on behalf of consumers?*

My view is that regulatory decision making is better informed by consumer advocacy bodies. On this basis I would support the creation of an expert advocacy body. Balancing this however are two provisos.

Firstly, the introduction of a consumer voice early in the development of the regulator and WSE's, before there has been an opportunity to generate and validate sound infrastructure data, will almost certainly be unhelpful, and possibly counter-productive. This suggests that this approach should be a medium-term goal, not an immediate priority.

It would also be concerning if there were a multitude of different regulatory bodies, with the potential to lead to consumer confusion about which body has jurisdiction in a particular circumstance. There is also a danger that the various regulators will lack a holistic view of consumer concerns (which is contrary to Te Ao Maori); and that if WSE's were by-passed they could become disconnected from the concerns of consumers.

*33. What are your views on whether the expert body should be established via an extension to the scope of the Consumer Advisory Council's jurisdiction?*

It would be better to utilise an existing, complementary agency rather than creating a new one.

*34. What are your views on whether there is a need for a dedicated three waters consumer disputes resolution scheme?*

On balance a bespoke disputes resolution scheme would seem beneficial, particularly if it could be administered by an existing provider. There would be benefit in the regulators, particularly Taumata Arowai and the economic regulator, being connected with the scheme in some way (perhaps as funders?) to ensure that they are aware of any trends in complaints.

*35. What are your views on whether these kinds of disputes should be subject to a dispute resolution scheme? Are there any other kinds of issues that a consumer dispute resolution provider should be able to adjudicate on?*

Would it be better to define the scope of disputes by exclusion? For example, everything except disputes that are within the mandate of another regulator, and above a prescribed dollar value.

For stormwater complaints, the local authority will retain ownership of a good proportion of the network, such as roads and reserves. A disputes resolution process will therefore need to include some mechanism to draw in third parties, such as Councils. A similar situation could possibly arise in urban growth, where the WSEs, local Councils and developers will need to work very closely together to enable cohesive development. In these situations it will also be important that a disputes resolution scheme can take all views into account.

*36. What are your views on whether a mandatory statutory consumer disputes resolution scheme should be established for the water sector?*

There is value in making membership of a consumer disputes resolution scheme mandatory. There are also advantages in specifying the scheme the water sector must join, as this will allow comprehensive oversight of sector issues.

*37. Do you consider that a new mandatory statutory consumer disputes resolution scheme should be achieved via a new scheme or expanding the jurisdiction of an existing scheme or schemes?*

My suggestion is that it would be better to use an existing scheme, particularly given that there are a number of infrastructure-focussed schemes already in existence.

*38. Do you consider that the consumer disputes resolution schemes should apply to all water suppliers, water suppliers with 500 or more customers, or just Water Services Entities?*

Consumer disputes resolution scheme should not apply to all suppliers, for example including self-suppliers would be pointless. On the other hand, a threshold of 500 consumers would seem to be very high.

*39. Do you think the consumer disputes resolution scheme should incentivise water suppliers to resolve complaints directly with consumers?*

Yes. It is important that contact between the WSEs and their customers is not compromised by a dispute resolution scheme. The WSE needs to understand what their customers are thinking and saying about their service and be able to learn from complaints in order to continuously improve.

*40. Do you consider that there should be special considerations for traditionally under-served or vulnerable communities? If so, how do you think these should be given effect?*

Yes, special considerations which support accessibility to higher risk, under-served and vulnerable communities are important.

*41. What are your views on whether the costs of implementing a consumer protection regime for the three waters sector should be funded via levies on regulated suppliers?*

I agree that costs should be funded via levies, however there should also be some recognition of 'exacerbator pays'. Specifically, the entity(s) that most frequently have complaints upheld against them should be required to contribute more to the scheme than those who do not.

*42. Do you think that the levy regime should:*

- a. Require the regulator to consult on and collect levy funding within the total amount determined by the Minister? OR*
- b. Require the Minister to consult on the levy (on behalf of the Minister) and collect levy funding with the total amount determined by the Minister?*

Communication between the consumer protection authority and WSEs is to be encouraged, and in reality will be difficult to avoid where the consumer protection authority is also the economic regulator. The final decision on levies will be made by the Minister in either case.

*43. Are there any other levy design features that should be considered?*

As above, there should be some element of 'exacerbator pays' so that entities that perform poorly have a financial incentive to improve.

*44. Do you consider that regulatory charters and a council of water regulators arrangements will provide effective system governance? Are there other initiatives or arrangements that you consider are required?*

A regulatory charter and council of water regulators would seem to be a logical place to start. Experience in the UK with 'RAPID' – the Regulator's Alliance for Progressing Infrastructure Development is that it provides a useful form for accelerating the development of new, strategic infrastructure; the design of new cohesive regulatory frameworks and the ability to join together to

advance very large, complex problems which require multiple inputs. Water allocation modelling is a good example of this.

It is noted that, unlike other sectors, there will be several regulatory agencies with an interest in the waters sector. These primarily include Taumata Arowai (human health and environmental standards regulation), the new economic regulator and 13 regional and unitary authorities (environmental quality). (Other agencies with an interest include the Ministry of Health, District Health Boards, Fire and Emergency NZ, civil defence etc...). The alignment / integration between water quality and environmental performance standards will drive a significant share of required investment, and therefore economic regulation. There needs to be a method to ensure these inherent tensions are resolved.

*45. Do you believe 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?*

No. There should be a clear distinction between the Government and the regulators (notwithstanding Taumata Arowai, which is a Crown Agent and therefore required to 'give effect' to Government policy). The general direction should be provided for in legislation, which has much greater permanence and therefore consistency.

*46. What are your views on whether the economic and consumer protection regulator should be able to share information with other regulatory agencies? Are there any restrictions that should apply to the type of information that could be shared, or the agencies that information could be shared with?*

It is agreed that information should be able to be shared. New legislation could also enable information sharing with Taumata Arowai. There may be some circumstances where a consumer advocate may wish to keep the identity of a complainant confidential, so there will likely be some exceptions.