

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

Your name and organisation

Name	Garry Pellett
Organisation (if applicable)	

Responses

Economic regulation	
1	<p><i>What are your views on whether there is a case for the economic regulation of three waters infrastructure in New Zealand?</i></p> <p>There is a case</p>
2	<p><i>What are your views on whether the stormwater networks that are currently operated by local authorities should be economically regulated, alongside drinking water and wastewater?</i></p> <p>There is a case</p>
3	<p><i>What are your views on whether the four statutory Water Services Entities should be economically regulated?</i></p> <p>If the 3 Waters as proposed by this government proceeds there needs to be economic regulation that clearly sets out what is to be delivered and to what standard. The consumer who is paying is otherwise too far removed from the 4 entities. The delivery model is a maze with the end payer and supposed owner an outlier. Minister Mahuta made a statement on the AM Show that TAs would still be able to leverage assets but this is contrary to statements in the discussion document.</p>
4	<p><i>What are your views on whether economic regulation should apply to community schemes, private schemes, or self-suppliers? Please explain the reasons for your views.</i></p> <p>Community and private schemes should not be regulated. It is up to those communities to decide whether or not they want to comply with government dictates.</p>
5	<p><i>What are your views on whether the Water Services Entities should be subject to information disclosure regulation?</i></p> <p><i>Entities need to be transparent and accountable for meeting targets that government has set as the rationale for mandating 3 Waters. The amount of spin/PR drivel already in circulation provides no confidence that information will not be manipulated to meet an outcome. Para 67 of the discussion paper (first bullet point) "owners/governors of the business (including local government and Iwi) to allow them to assess the performance of the business and its board". The issue will be that once again ratepayers and consumers are totally dependent on the response by local government that may not engage with those stakeholders, certainly not by</i></p>

	<i>Iwi that will have a different agenda.</i>
6	<i>What are your views on whether Water Services Entities should be subject to price-quality regulation in addition to information disclosure regulation?</i>
	<i>Price quality regulation required to prevent price creep and underpin accountability. What happens if the after the three to five year period and the entities haven't been delivering outcomes in the best interests of the consumer</i>
7	<i>What are your views on the appropriateness of applying individual price-quality regulation to the Water Services Entities?</i>
	Essential and should have been costed in the WICS modelling. As usual the consumer ends up picking up the tab anyway
8	<i>A) Do you consider that the economic regulation regime should be implemented gradually from 2024 to 2027, or do you consider that a transitional price-quality path is also required?</i>
	<i>B) If you consider a transitional price-quality path is required, do you consider that this should be developed and implemented by an independent economic regulator, or by Government and implemented through a Government Policy Statement?</i>
	<i>Nothing should commence until all regulations have been completed and agreed. The consumer can only hope that its representatives reflect its wishes.</i>
9	<i>A) What are your views on whether the Minister of Commerce and Consumer Affairs should be able to reduce or extend the application of regulation on advice from the economic regulator?</i>
	<i>B) What factors do you consider the economic regulator should include in their advice to the Minister?</i>
	A transitional approach leave the way open for commitment creep and the consumer not receiving any of the promised benefits. All the rules of the game need to be developed and agreed prior to it being played.
10	<i>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?</i>
	<i>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?</i>
	<i>C) Are there any other considerations you believe should be included in the purpose statement, or as secondary statutory objectives?</i>
	<i>D) What are your views on how Treaty of Waitangi principles, as well as the rights and interests of iwi/Māori, should be factored into the design of an economic regulatory regime for the three waters sector?</i>

	<p>d) Water is a naturally occurring, it is not made by mankind and therefore no one can claim ownership. It should not have any linkage to the ToW. There can be no ownership of water by first arrivals or by subsequent arrivals. Nor is there a case for animalist principles being applied to water by any culture. How water is used is different story and should be subject to other legislation to effect equitable distribution.</p>
11	<p><i>What are your views on whether a sector specific economic regulation regime is more appropriate for the New Zealand three waters sector than the generic economic regulation regime provided in Part 4 of the Commerce Act?</i></p>
	<p>?</p>
12	<p><i>What are your views on whether the length of the regulatory period should be 5 years, unless the regulator considers that a different period would better meet the purposes of the legislation?</i></p>
	<p>?</p>
13	<p>A) <i>What are your views on whether the economic regulator should be required to develop and publish input methodologies that set out the key rules underpinning the application of economic regulation in advance of making determinations that implement economic regulation?</i></p> <p>B) <i>What are your views on whether the economic regulator should be able to minimise price shocks to consumers and suppliers?</i></p> <p>C) <i>What are your views on whether the economic regulator should be required to set a strong efficiency challenge for each regulated supplier? Would a strong 'active' styled efficiency challenge potentially require changes to the proposed statutory purpose statement?</i></p>
	<p>If a – c are not requirements why on earth is the proposal (mandate) even being considered.</p>
14	<p>A) <i>What do you consider are the relevant policy objectives for the structure of three waters prices? Do you consider there is a case for parliament to directly control or regulate particular aspects in the structure of three waters prices?</i></p> <p>B) <i>Who do you consider should have primary responsibility for determining the structure of three waters prices:</i></p> <p>a) <i>The Water Services Entity, following engagement with their governance group, communities, and consumers?</i></p> <p>b) <i>The economic regulator?</i></p> <p>c) <i>The Government or Ministers?</i></p> <p>C) <i>If you consider the economic regulator should have a role, what do you think the role of the economic regulator should be? Should they be empowered to develop pricing structure methodologies, or should they be obliged to develop pricing structure methodologies?</i></p>
15	<p><i>What are your views on whether merits appeals should be available on the regulators decisions that determine input methodologies and the application of individual price-quality</i></p>

	<i>regulation?</i>
	<i>The regulator should develop the pricing methodologies that comply with the policy statement as the regulator will be responsible for ensuring transparency of outcomes. Any decision should be subject to appeal but not by the minister. Process compliance relative to disclosure should be subject to Ombudsman's review</i>
16	<i>Do you broadly agree that with the compliance and enforcement tools? Are any additional tools required?</i>
	<i>How is accountability consequence to be addressed whereby the consumer (or taxpayer) is not carrying the cost? Reputational damage seems to be the only consequence otherwise.</i>
17	<i>Who do you think is the most suitable body to be the economic regulator for the three waters sector? Please provide reasons for your view.</i>
	<i>Although the commerce commission is not an outstanding performer, it is probably the least expensive option for the consumer should 3 waters proceed.</i>
18	<i>What are your views on whether the costs of implementing an economic regulation regime for the three waters sector should be funded via levies on regulated suppliers?</i>
	<i>The consumer or the taxpayer are going to pay in any event. Has the cost been included in the WSIC modelling, if not why not?</i>
19	<i>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?</i>
	<i>Isn't the minister determining the amount in both cases? And the consumer/taxpayer pays.</i>
20	<i>Are there any other levy design features that should be considered?</i>
Consumer protection	
21	<i>A) What are your views on whether additional consumer protections are warranted for the three waters sector? 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?</i>
	<i>If 3 waters proceeds under mandated legislation, consumer protection is essential. There is little trust in the community that modelling and stated benefits will actually eventuate.</i>
22	<i>What are your views on whether the consumer protection regulator should be able to issue minimum service level requirements via a mandated code that has been developed with</i>

	<i>significant input from consumers?</i>
	<i>First question is how will significant input from consumers be gathered and effected. LGNZ has not acted in terms of the majority of TAs positions, nor have all TAs acted in terms of consumer opinion, EBOP good example of disparate views.</i>
23	<i>What are your views on whether the consumer protection regulator should also be empowered to issue guidance alongside a code?</i>
	<i>KISS principle needs to be applied for ease of reference by the consumer to check whether or not rights/code have been breached. A good example of what not to have are the fishing regulations where act amendments, regulations and customary “rights “form a maze for an interested party to trawl through</i>
24	<i>What are your views on whether it is preferable to have provisions that regulate water service quality (not regulated by Taumata Arowai) in a single piece of economic regulation and consumer protection legislation?</i>
	<i>See response to 23</i>
25	<i>What are your views on whether minimum service level requirements should be able to vary across different types of consumers?</i>
	<i>Equity should prevail. However the cost is the cost is the cost. The government has promised that 3 waters is an immensely reduced cost model therefore on that basis disadvantaged communities would be paying less than currently or as projected?</i>
26	<i>What are your views on whether the regulatory regime should include a positive obligation to protect vulnerable consumers, and that minimum service level requirements are flexible enough to accommodate a wide range of approaches to protecting vulnerable consumers?</i>
	<i>See response to 25</i>
27	<i>What are your views on how Treaty of Waitangi principles, as well as the rights and interests of iwi/Māori, should be factored into the design of a consumer protection regime for the three waters sector?</i>
	<i>Water as a naturally occurring phenomenon should have no special rights under the ToW. If use equity is applied through regulation and codes as to use no community should be disadvantaged.</i>
28	<i>A) Do you consider that the consumer protection regime should apply to all water suppliers, water suppliers above a given number of customers, or just Water Services Entities? Could this question be left to the regulator?</i>
	<i>B) Do you support any other options to manage the regulatory impost on community and private schemes?</i>
	<i>Private schemes should not be subject to regulations</i>
29	<i>Do you broadly agree that with the compliance and enforcement tools proposed? Are any additional tools required?</i>

30	<i>Do you agree with our preliminary view that the Commerce Commission is the most suitable body to be the consumer protection regulator for the three waters sector?</i>
	<i>Yes, hopefully better than monitoring the electricity industry</i>
31	<i>What are your views on whether the regulator should be required to incentivise high-quality consumer engagement?</i>
	<i>Again, the consumer pays. High quality consumer engagement should be a mandated obligation which is also cascaded to TAs.</i>
32	<i>What are your views on whether there is a need to create an expert advocacy body that can advocate technical issues on behalf of consumers?</i>
	<i>Agree, the discussion paper and this questionnaire are classic examples of how by the people for the people no long works!</i>
33	<i>What are your views on whether the expert body should be established via an extension to the scope of the Consumer Advisory Council's jurisdiction?</i>
	<i>Agree</i>
34	<i>What are your views on whether there is a need for a dedicated three waters consumer disputes resolution scheme?</i>
	<i>Separate scheme but with a higher value as to contestability. Utilities Disputes Ltd is an option.</i>
35	<i>What are your views on whether these kinds of disputes should be subject to a dispute resolution schemes? Are there any other kinds of issues that a consumer dispute resolution provider should be able to adjudicate on?</i>
	<i>Agree, need to add providers not meeting benefit targets as promulgated by political mandates, who is accountable?</i>
36	<i>What are your views on whether a mandatory statutory consumer disputes resolution scheme should be established for the water sector?</i>
	<i>Mandatory scheme</i>
37	<i>Do you consider that a new mandatory statutory consumer disputes resolution scheme should be achieved via a new scheme or expanding the jurisdiction of an existing scheme or schemes?</i>
	<i>New scheme unless the office of the Ombudsman can be up skilled for this purpose and is provided for by new legislation.</i>
38	<i>Do you consider that the consumer disputes resolution schemes should apply to all water suppliers, water suppliers with 500 or more customers, or just Water Services Entities?</i>
	<i>Only water services entities</i>

39	<i>Do you think the consumer dispute resolution scheme should incentivise water suppliers to resolve complaints directly with consumers?</i>
	<i>There should be no need to incentivise complaint resolution – such effect should be part of the values of the supplier and if in dispute as to complaint close out the scheme should provide for redress by any recalcitrant supplier</i>
40	<i>Do you consider that there should be special considerations for traditionally under-served or vulnerable communities? If so, how do you think these should be given effect?</i>
	<i>Equity as to use, as against water ownership, should be a key requirement. How that equity is implemented is open to the supplier provided any special provisions are transparent and reported. Any additional cost to implement special consideration hopefully have been costed into the WICS modelling.</i>
41	<i>What are your views on whether the costs of implementing a consumer protection regime for the three waters sector should be funded via levies on regulated suppliers?</i>
	<i>This is a nonsense question as the consumer and the taxpayer are likely the same in the majority of cases. Where were fees and/or levies recorded in the WICS modelling that is being promoted by CG as evidence of savings? Whatever is decided the cost should be recognisable as being part of the 3 waters mandate rather than being lost in consolidated funding.</i>
	<i>Do you think that the levy regime should:</i>
42	<i>A) Require the regulator to consult on and collect levy funding within the total amount determined by the Minister? OR</i>
	<i>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?</i>
	<i>Both A & B “determined by the minister”?</i>
43	<i>Are there any other levy design features that should be considered?</i>
44	<i>?</i>
Implementation and regulatory stewardship	
45	<i>Do you consider that regulatory charters and a council of water regulators arrangements will provide effective system governance? Are there other initiatives or arrangements that you consider are required?</i>
	<i>Para 260 – “Development of the GPS would be undertaken by the Government in close consultation with regulators, Iwi/Maori, local government and Water Services Entities”. Where is the consumer? Local government cannot be relied on to represent the views of rate payers and CG has ridden roughshod over feedback. Table 11 is a good indicator of the likely bureaucracy roadblock the poor paying consumer will be subjected to. Therefore charters are needed but approved by whom? Another mandate?</i>
46	<i>Do you consider it is useful and appropriate for the Government to be able to transmit its policies to the economic and consumer protection regulator(s) for them to have regard to?</i>
	<i>Should be part of the establishment process.</i>

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

NO

Other comments

This questionnaire and the discussion paper are a farcical attempt at consultation. Better than the condescending comic book cartoons of the blatant political promotion through multimedia streams and which was finally called out. The information is technical and bureaucratic elitism and it would have been better to have made it mandatory for TAs to respond following consultation with consumers. If the minister or any ministries use this information as an indicator of consultation with the general public then they can be fairly branded liars.