Water Users’ Group feedback on proposed levy to recover Commerce Commission costs of regulating water services

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’]
	☒ Yes ☐ No
2.	What is your name?*
	Chris Milne
3.	Do you consent to your name being published with your submission?*
	☒ Yes ☐ No
4.	What is your email address? Please note this will not be published with your submission.*
	Privacy of natural persons
5.	What is your contact number? Please note this will not be published with your submission.*
	Privacy of natural persons
6.	Are you submitting as an individual or on behalf of an organisation?*
	☐ Individual (skip to 8) ☒ Organisation
7.	If on behalf of an organisation, we require confirmation you are authorised to make a submission on behalf of this organisation.
	☒ Yes, I am authorised to make a submission on behalf of my organisation
8.	If you are submitting on behalf of an organisation, what is your organisation’s name? Please note this will be published with your submission.
	Water Users Group (NZ) Incorporated

9.	If you are submitting on behalf of an organisation, which of these best describes your organisation? Please tick one.
	☐ Territorial authority ☐ Regional council ☐ Existing regulated supplier under the Commerce Act 1986 ☒ Consumer organization ☐ Non-governmental organisation ☐ Academic Institution ☐ Central government ☐ Iwi, hapū or Māori organisation ☐ Academic/Research ☐ Other. Please describe:

Responses to questions

<table>
<tr><th colspan="2">Part 1: Levy structure</th></tr>
<tr><td rowspan="2">1.</td><td>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.</td></tr>
<tr><td>We support the use of a levy to recover the Commerce Commission’s costs of regulating water service suppliers.

The use of a levy rather than direct Crown expenditure promotes a continuing supplier interest in the efficiency of the Commission’s work, at least in theory. The theoretical downside of that perspective is that it could promote a Commission view that the suppliers are their client, instead of consumers.

Nevertheless we regard the proposed approach as right in principle. Regulated suppliers should have some incentive to minimise the administrative and other costs of the regime. That will, of course depend on the relative amount of the levy, whether suppliers feel that they can individually affect the efficiency of the regulatory oversight, and whether it genuinely delivers on its claim to be ‘exacerbator pays’.

On that last point, it is not clear to us that the classifications intended to deliver ‘exacerbator pays’ will in practice do that. They seem likely to be seen by those paying to be scarcely affected by any conduct of the regulated entity.

Accordingly we submit that to truly deliver ‘exacerbator pays’ incentives, there should be:

- An obvious likelihood of Commission recovery of any extraordinary costs incurred that can be fairly attributed to the conduct of a particular supplier, which it could have mitigated with reasonable conduct; and

- Careful attention to the practical effect on the permitted recovery of the regulatory cost of capital of levies and particularly excess levies triggered by conduct of the supplier. They should not be able to recover levied Commission costs that would not have been incurred if they were a reasonable and prudent supplier. Poor performers that cause greater regulatory costs should bear the burden of their own costs, rather than being cross-subsidised by suppliers who have cultures inherited from competent authorities.

We raise the question of treatment of legal and expert advisory costs, for the Commission, suppliers, and for consumer advocacy in relation to regulatory settings and investigations. The same principles should apply, with the exception for consumer advocacy explained below.

Consumer advocates incur cost exposure that benefits consumers generally, but is unlikely to benefit a particular consumer or subset of them enough to outweigh the</td></tr>
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	costs of their participation. There is a very low likelihood of establishing a mechanism to secure reimbursement from the dispersed beneficiaries. The quality and balance of consultation procedures for regulatory resets can depend on consumer participation and consumer ability to be equally armed with expert analysis. Accordingly, recognising the free-rider issues, it would be reasonable to provide that at the least, that such advocates should not face liability to meet any Commission or supplier costs of such proceedings. Ways should be found for consumer advocates to be reimbursed from the levy for reasonable advocacy where it is clear that they have not caused unjustified increases in the process costs. If consumer perspectives are not routinely advanced with the benefit of sophisticated analysis, there is a substantial risk that regulatory settings come to represent a group-think of a coterie of supplier experts and Commission experts. Consumer challenge can be vital to maintain the rigour and even the perceived neutrality of the regime, against establishment status quo complacency
Part 2: Levy design	
2.	What are your views on the proposed levy design?
	We support the consistency with the cost recovery principles. We support the current decisions on the design as opposed to the alternatives. However, it is not clear to us that there will be enough discretion or flexibility to ensure a reasonably significant imposition of ‘exacerbator pays’, or that costly suppliers will be prevented from simply passing on to water users any specific cost imposts on them. We commend MBIE’s concerns around cross-subsidisation. Under the previous government’s Three Waters reforms, local authorities that had prudently managed their water services were fearful that the amalgamation of their water services would mean their communities would end up paying for the mistakes of neighbours that had been feckless in their management of water services. An attitude explicitly seeking to avoid cross-subsidisation is a welcome change. We note the proposed alternative that the preparatory costs of additional regulation be apportioned prior to the regulation taking effect. We endorse the concern that the first providers to be regulated with the additional tools will face disproportionate costs compared to others that become subject to them later on. We suggest that first movers should see an incentive to collaborate in the development phase.
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.
	See the comments about the regime needing to consider cost reallocation from regulatory reset consultations, and on responding to applications by suppliers for waivers, concessions or special treatments

4.	Do you have any comments on how the levy design could be improved? Please provide reasons.
	As set out above, more power to recover extra costs necessitated by dealing with obstructive or ineffective or incompetent suppliers. And power to reimburse responsible consumer representatives or advocates for principled representation of consumer concerns.
Part 3: Levy apportionment	
5.	Do you have any comments on the preferred option for apportionment of the levy to each regulated supplier?
	N/A
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.
	N/A
7.	Do you have any comments on alternative options to apportion the levy? If another option is preferred, please provide reasons.
	We note that several of the alternative options have benefits over a simple calculation based on district population, but are not favoured due to a lack of sufficient information to implement them. We understand that the levy is to be the enduring approach. Therefore MBIE should consider which alternative options would be most beneficial if the information issues did not apply, and consider whether it is worth working toward gaining the information necessary to implement the best long-term option. We note this due to the numbers of people who self-supply or are otherwise not connected to water mains, particularly in more rural districts. Apportioning costs on the basis of simple district population may not be fair to districts with higher proportions of unconnected water users. We understand the current administrative and information limitations, but are sceptical as to whether this is the best solution to lock-in for the long term.
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?

	N/A
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?
	N/A
10.	Do you have a preference for when the levy should be reviewed next? If so, why?
	N/A

General Comments:

N/A