



Summary of Underpinning Analysis: Commerce (Part 4 Regulation—Tiaki Wai Limited) Order 2026

Agency responsible	Ministry of Business, Innovation and Employment
Portfolio	Commerce and Consumer Affairs
Date finalised	14 September 2026
Identification Number	REG-2262

Good law-making: 9(i)

The importance of consulting, to the extent that is reasonably practicable, the persons or representatives of the persons that the responsible agency considers will be directly and materially affected by the legislation

Inconsistency identified? NO

Summary of agency analysis

The Commerce Commission (**the Commission**), as the economic regulator for the water services sector, consulted from 7 to 28 May 2026 on its draft recommendation that performance requirement regulation be applied to Tiaki Wai Limited (**Tiaki Wai**). The Commission received five submissions, including from Tiaki Wai. Some submissions supported the proposal, while others raised concerns about the suitability and timing of additional regulation.

Tiaki Wai supported making performance requirement regulation available as a credible regulatory backstop but emphasised that any requirements should not interfere with governance or operational flexibility.

The Ministry of Business, Innovation and Employment (**MBIE**) considers that this consultation was undertaken with the persons directly and materially affected by the proposed Order to the extent that was reasonably practicable. It also met the requirement in section 57H(1)(b) of the Commerce Act 1986 (**the Act**) for the Commission to consult interested parties before making its recommendation to the Minister of Commerce and Consumer Affairs.

The Order would apply performance requirement regulation to Tiaki Wai. The Commission would then be required to consult interested parties on any specific requirements that it intends to set, in accordance with Schedule 7, clause 35 of the Act.

Good law-making: 9(j)

The importance of carefully evaluating—

- the issue concerned; and
- the effectiveness of any relevant existing legislation and common law; and
- whether the public interest requires that the issue be addressed; and
- any options (including non-legislative options) that are reasonably available for addressing the issue; and
- who is likely to benefit, and who is likely to suffer a detriment, from the legislation

Inconsistency identified?

NO

Summary of agency analysis

Tiaki Wai has been subject to economic regulation under Part 4 of the Act since 1 July 2026 when it assumed responsibility for water service delivery in the Wellington metropolitan area. This includes sector-wide information disclosure (ID) requirements for water supply and wastewater services.

On 12 August 2026, the Commission announced additional ID requirements specifically for Tiaki Wai. These include accelerated and strengthened asset management disclosure requirements and independent expert verification of key plans and forecast expenditure.

The Commission's focus on Tiaki Wai follows identification of material risks relating to asset management, delivery, financial sustainability, and non-financial performance. On 29 June 2026, the Commission recommended to the Minister of Commerce and Consumer Affairs that performance requirement regulation be imposed on Tiaki Wai, on top of additional ID, to address these risks.

In late August, the Moa Point Crown Review Team provided its report to the Minister of Local Government. The report found that the Moa Point flooding was not a one-off failure, but the result of longstanding weaknesses in governance, investment, asset management, and risk management. This also highlights the need for stronger regulatory oversight of Tiaki Wai and the consequences of its predecessor's failures.

In developing its recommendation, the Commission considered whether applying performance requirement regulation would better promote the long-term benefit of consumers, as required by section 57H of the Act. It assessed ID alone and considered that transparency and scrutiny may not provide sufficiently strong or timely incentives, especially during the establishment period when Tiaki Wai is rapidly increasing investment and establishing new operational capabilities such as customer billing.

MBIE agrees with the Commission that the alternative, relying on ID alone, will not suitably address the magnitude of risks Tiaki Wai is facing or discipline its performance. Performance requirement regulation is a more powerful tool and would empower the Commission to require Tiaki Wai to take certain actions to improve performance, such as

adopt a particular approach to risk management, to consult the Commission on certain investment decisions, to undertake cost-benefit analysis, or to make certain investments. Tiaki Wai is also subject to accountability and governance requirements under the Local Government (Water Services) Act 2025 and water quality regulation set by the Water Services Authority—Taumata Arowai. Performance requirement regulation is intended to complement these existing measures, with a specific focus on improving the delivery of infrastructure investments.

The primary benefits of the Order are expected to accrue to Wellington water services consumers through improved scrutiny and delivery incentives. These benefits would apply from commencement of the regulatory tool, providing additional discipline during Tiaki Wai's establishment window regardless of when any specific requirements are activated.

The costs of additional regulation will be passed onto Wellington residents by Tiaki Wai, and the full extent will depend on the requirements subsequently proposed and determined by the Commission following consultation.

Good law-making: 9(k)

The importance of the responsible agency identifying and developing effective arrangements for implementing the legislation

Inconsistency identified?	NO
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Summary of agency analysis

The Order would be implemented through the established Part 4 framework. The Commission would be responsible for consulting on, determining, monitoring, and enforcing any Tiaki Wai performance requirements.

Implementation risks will be managed through the Commission's statutory consultation and determination processes, including consideration of the scope, timing and practicality of any proposed requirements.

\$420,000 in annual funding has been approved for the Commission's additional regulatory costs and is recoverable from Tiaki Wai under the existing levy regime in the Commerce (Levy on Suppliers of Regulated Goods and Services) Regulations 2009.

Good law-making: 9(l)

Legislation should be expected to produce benefits that exceed the costs of the legislation to the public or persons

Inconsistency identified?	NO
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Summary of agency analysis

The Order itself would make performance requirement regulation available where the Commission considers that stronger and more immediate incentives are needed to address material performance and delivery risks.

Potential benefits include strengthened accountability for critical, high-risk projects, reduced risk of delay caused by competing operational pressures, and ongoing Commission monitoring of whether intended consumer benefits are delivered.

The Order would result in additional regulatory costs for the Commission, which would be recovered from Tiaki Wai through the existing levy regime. Tiaki Wai may also incur compliance and implementation costs if the Commission subsequently determines performance requirements. The extent of those costs cannot be established until specific requirements are developed. The costs would depend on the nature of any extra steps Tiaki Wai is required to take, with the aim of ensuring it delivers services at a quality that meets consumer demands.

Additional annual costs of \$420,000 will have an expected impact of approximately \$1 per consumer per year. By comparison, Tiaki Wai's projected capital expenditure programme of \$6.8 billion over ten years represents an average of approximately \$1,575 per consumer per year.

On this basis, MBIE expects the benefits of making the regulatory tool available and greater oversight of Tiaki Wai's delivery of capital expenditure will exceed the costs. The costs and benefits of specific performance requirements will also be subject to assessment through Commission processes.

Good law-making: 9(m)

Legislation should be the most effective, efficient, and proportionate response to the issue concerned that is available

Inconsistency identified?

NO

Summary of agency analysis

The Order is considered the most effective, efficient, and proportionate response to the identified issue. It makes performance requirement regulation available in addition to information disclosure (**ID**) regulation but does not itself prescribe the content of any requirements.

The Commission considered reliance on ID alone but concluded that transparency and external scrutiny may not provide sufficiently strong or timely incentives to drive improvements in Tiaki Wai's delivery. It considered that performance requirements would provide a more targeted and directly enforceable mechanism to address the identified risks.

The Commission also considered price-quality regulation. In its final decision on additional ID for Tiaki Wai, it concluded that its current priority is the establishment of a sufficiently

robust information base and that imposing price-quality regulation at this time would not better promote the long-term benefit of consumers.

MBIE agrees that making performance requirement regulation available is more effective than relying on ID alone and more appropriate than applying price-quality regulation at this stage. The Order is also an efficient response as Orders are relatively low cost to create, while providing the Commission with greater flexibility to target interventions at areas of greatest risk and, where necessary, intervene quickly to ensure Tiaki Wai's investments deliver tangible improvements for consumers.

Rule of Law: 9(a)(i)

The law should be clear and accessible

Inconsistency identified? NO

Summary of agency analysis

The Order has been drafted to be clear and accessible. It will be published on the Legislation website (www.legislation.govt.nz) and its creation will be notified in the New Zealand Gazette.

Rule of Law: 9(a)(ii)

The law should not adversely affect rights and liberties, or impose obligations, retrospectively

Inconsistency identified? NO

Summary of agency analysis

The Order does not retrospectively affect rights and liberties or impose obligations.

Rule of Law: 9(a)(iii)

Every person is equal before the law

Inconsistency identified? NO

Summary of agency analysis

The Order creates no immunity, exemption from legal accountability or preferential treatment for the Crown or any other person. It applies an existing regulatory tool under Part 4 of the Act to Tiaki Wai.

Rule of Law: 9(a)(iv)

There should be an independent impartial judiciary

Inconsistency identified? NO

Summary of agency analysis

The Order has no impact on judicial independence or impartiality.

Rule of Law: 9(a)(v)

Issues of legal right and liability should be resolved by the application of law, rather than the exercise of administrative discretion

Inconsistency identified? NO

Summary of agency analysis

The Order does not determine legal rights, liabilities, or substantive performance obligations. It enables the Commission to exercise a statutory power under Part 4 of the Act within defined legislative parameters and for specified purposes.

Liberties: 9(b)

Legislation should not unduly diminish a person's liberty, personal security, freedom of choice or action, or rights to own, use, and dispose of property, except as is necessary to provide for, or protect, any such liberty, freedom, or right of another person

Inconsistency identified? NO

Summary of agency analysis

The Order does not impose limits on individual liberties, personal security, freedom of choice or action, or property rights.

Taking of property: 9(c)

Legislation should not take or severely impair, or authorise the taking or severe impairment of, property without the consent of the owner unless-

- **there is a good justification for the taking or severe impairment; and**
- **fair compensation for the taking or severe impairment is provided to the owner; and**
- **the compensation is provided, to the extent practicable, by or on behalf of the persons who obtain the benefit of the taking or severe impairment**

Inconsistency identified? NO

Summary of agency analysis

The Order does not take or severely impair property without the consent of the owner.

Taxes, fees and levies: 9(d)

The importance of maintaining consistency with section 22(a) of the Constitution Act 1986 (Parliamentary control of taxation)

Inconsistency identified? NO

Summary of agency analysis

The Order does not impose or authorise any tax.

Taxes, fees and levies: 9(e)

Legislation should impose, or authorise the imposition of, a fee for goods or services only if the amount of the fee bears a proper relation to the cost of providing the good or service to which it relates

Inconsistency identified? NO

Summary of agency analysis

The Order does not impose or authorise any fees for goods or services.

Taxes, fees and levies: 9(f)

Legislation should impose, or authorise the imposition of, a levy to fund an objective or a function only if the amount of the levy is reasonable in relation to both—

- **the benefits that the class of payers is likely to derive, or the risks attributable to the class, in connection with the objective or function; and**
- **the costs of efficiently achieving the objective or providing the function**

Inconsistency identified? NO

Summary of agency analysis

The Order does not create a new levy power but increases an existing levy. The Commission's costs will be recovered from Tiaki Wai under the existing levy regime in the Commerce (Levy on Suppliers of Regulated Goods and Services) Regulations 2009. In particular, the *Performance requirement regulation of water supply services and wastewater services* sub-levy would apply to Tiaki Wai.

Performance requirement levy recovery is capped at \$420,000 annually by the appropriation, *Commerce and Consumer Affairs: Regulation of Water Services*. MBIE considers that this amount is reasonable in relation to the improved delivery and performance outcomes for Tiaki Wai that performance requirement regulation is expected to provide.

Role of courts: 9(g)

Legislation should preserve the courts' constitutional role of ascertaining the meaning of legislation

Inconsistency identified? NO

Summary of agency analysis

The Order would not restrict the courts' ability to interpret legislation or determine the meaning of regulatory provisions.

Role of courts: 9(h)

Legislation should make rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review

Inconsistency identified? NO

Summary of agency analysis

The Order would add performance requirement regulation to the Commission's regulatory toolkit with respect to Tiaki Wai. The Commission's powers are specified within a legislative framework and are subject to judicial review. There is also a right of appeal to the High Court on questions of law against any Commission performance requirement determination that may be exercised by any supplier or consumer of goods or services to which the determination relates.

Additional information

Relevant publicly available inquiry, review, or evaluation reports

Further information on the Commission's work leading to the Order, including its consultation and stakeholder submissions, is available at: [Regulation of Wellington's water services](#).