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Submitted via: economicregulation@mbie.govt.nz

Competition and Consumer Policy
Building, Resources and Markets
Minister of Business, Innovation & Employment
Wellington

RE: Economic Regulation and Consumer Protection for Three Waters Services in New Zealand – Discussion paper

Water services are essential services that whānau need for health, wellbeing and social participation. No one should face losing access to essential water services because of an inability to pay or because of barriers around engaging with organisations providing water.

FinCap welcomes the opportunity to comment on the Ministry of Business, Innovation and Employment (MBIE) *Economic Regulation and Consumer Protection for Three Waters Services in New Zealand – Discussion paper (Discussion Paper)*. FinCap supports 900 financial mentors who walk alongside people to overcome or avoid hardship in Aotearoa.

We support robust consumer protections and economic regulation being brought in if proposed wider changes with the provision of water services progress. To ensure barriers to accessing water services do not cause or contribute to whānau facing hardship we recommend that the overall focus of such regulation is fostering and maintaining a community wellbeing focused culture within organisations who provide water services in Aotearoa. This should be underpinned by minimum standards for support where whānau face payment difficulty and mechanisms to ensure fair charges for essential services.

It is also vital that decisions that lead to the way whānau will access water services for decades are informed by ongoing funding for expertise on water issues within the Consumer Advocacy Council which is currently being established with a focus on energy issues. Such funding should include specific requirements for the Consumer Advocacy Council to embed advocacy led by Māori in its functions or specific separate funding for consumer advocacy led by Māori. This would act as a guarantee that community concerns or potential gaps in protections will be appropriately considered in decision making.

We respond to the Discussion Paper questions and expand on these comments below.

About FinCap

FinCap (the National Building Financial Capability Charitable Trust) is a registered charity and the umbrella organisation supporting the 200+ local, free financial mentoring services across Aotearoa. These services support more than 70,000 people in financial hardship annually. We lead the sector in the training and development of financial mentors, the collection and analysis of client data and encourage collaboration between services. We advocate on issues affecting whānau to influence system-level change to reduce the causes of financial hardship.

Responses to Discussion Paper questions

Q1. What are your views on whether there is a case for the economic regulation of three waters infrastructure in New Zealand?

FinCap strongly supports economic regulation to ensure appropriate oversight and a focus on good outcomes for the community. Better outcomes for the community in the provision of essential services generally reduces the chances of barriers to water services access causing avoidable hardship.

Q2. 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?

We support the Discussion Paper view that stormwater networks should be regulated on the basis that this would disincentivise providers from obscuring costs that are not in the interests of the community within unregulated parts of their organisation.

Q3. What are your views on whether the four statutory Water Services Entities should be economically regulated?

We support economic regulation of the proposed four statutory Water Services Entities to push constant improvement in the provision of essential water services for the community.

Q4. 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.

We support the Discussion Paper commentary around such regulation likely being practically unworkable for small providers where owners and consumers are likely the same people. However, if whānau who face barriers to accessing essential water services in their home are supplied by these community schemes, private schemes, or self-suppliers there is a risk of significant harm where they 'fail.' Therefore some form of support needs to be available to restore appropriate access for health, wellbeing and social participation if such situations arise. This is especially the case where whānau are already facing hardship in such circumstances.

We recommend regular basic information disclosure requirements be put in place for these ways of providing water services. There should also be requirements for immediate self-reporting of issues relating to water services supply by these providers wherever there are issues causing significant risk to the health, wellbeing or ability to socially participate for any whānau. Immediate self-reporting would help with timely visibility for relevant experts and decision makers when issues are emerging. Such information could indicate whether support is needed to help address issues that are causing hardship or if the approach to requiring economic regulation needs reviewing.

Q5. What are your views on whether the Water Services Entities should be subject to information disclosure regulation?

We strongly support requiring information disclosure. This would provide transparency to communities in Aotearoa that builds trust that all is well with the supply of essential water services or that any issues will be identified and addressed.

Q6. What are your views on whether Water Services Entities should be subject to price-quality regulation in addition to information disclosure regulation?

We strongly support price-quality regulation in Aotearoa that can bring better affordability and prevent unnecessary charges for water services causing whānau to face hardship.

Q7. What are your views on the appropriateness of applying individual price-quality regulation to the Water Services Entities?

As well as universal systemic issues causing hardship, financial mentors also report localised issues in particular communities. On this basis we support Discussion Document commentary that individual price-quality regulation is most appropriate. This approach will increase the likelihood that different community concerns across Aotearoa are not overlooked.

Q8.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?

Q8.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?

Whichever of the options discussed in the Discussion Paper is chosen, we recommend funding to set up expert consumer advocacy should be prioritised so community views cannot be ignored by decision makers.

Q9.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?

We support this mechanism if there are appropriate safeguards, especially the need to consult impacted communities' representatives, particularly where whānau facing hardship are impacted. Clear ways to deter the use of, or quickly close, loopholes that undermine initiatives to improve outcomes in the community are desirable.

Q9.B) What factors do you consider the economic regulator should include in their advice to the Minister?

Evidence of thorough community engagement with whānau who are impacted by any systemic issue or their representatives should have to be included in such advice.

Q10. 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?

If there is disagreement over the initial approach taken, then there should be a scheduled review included within the proposed changes to the provision of water services in Aotearoa. This review should include expert consumer input and extensive community engagement.

Q10.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?

This should be left in, but drafting should be expanded to specifically note that this 'limb' is intended to address any development where a 'for profit' provider reaches a scale that community interests need protecting through appropriate regulation.

Q10.C) Are there any other considerations you believe should be included in the purpose statement, or as secondary statutory objectives?

Specific mention of water services as essential services for the health, wellbeing and social participation of whānau should be embedded in the purpose statement.

Q10.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?

Specific consideration of Te Tiriti o Waitangi and the rights and interest of iwi/Māori should be built into all initiatives that will impact how our essential services are delivered.

Q11. 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?

We strongly support sector specific economic regulation of these services and agree the proposed Water Services Entities have unique characteristics.

Q12. 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?

We support this as an initial approach to timing and agree an initial shorter period might be appropriate once visibility of services is improved. We also urge that expert consumer advocacy be funded for input that will improve the quality of decision making from the start.

Q13.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?

If there is disagreement over the initial approach taken, then there should be a scheduled review included within the proposed changes to the provision of water services in Aotearoa. This review should include expert consumer input and extensive community engagement.

Q13.B) What are your views on whether the economic regulator should be able to minimise price shocks to consumers and suppliers?

We strongly support the economic regulator being able to minimise price shocks. A sudden increase in cost for an essential service can see whānau working with financial mentors facing significant harm through cashflow changes. These cashflow issues can mean they are put at risk of going without essentials or a debt spiral, or both.

Q13. 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?

We support this on the basis that it improves affordability of essential services while still ensuring provision of the service is viable.

Q14. 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 setting of any proposed billing arrangements that are direct to whānau must be focused on making charges simple to understand for whānau. Financial mentors have reported to FinCap that whānau they support have faced energy hardship after not being confident around using the energy they need due to difficulty understanding complicated demand-based network tariffs. Whoever the decision maker is should seek community views on what structure of pricing so that as many as possible end users will be able to understand.

Q14. B) Who do you consider should have primary responsibility for determining the structure of three waters prices: a. The Water Services Entity, following engagement with their governance group, communities, and consumers? b. The economic regulator? c. The Government or Ministers?

If there is disagreement over the initial approach taken, then there should be a scheduled review included within the proposed changes to the provision of water services in Aotearoa. This review should include expert consumer input and extensive community engagement.

Q14. 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?

Please see our above response to Q14.A). We also consider there is a role for the regulator to ensure that the interests of whānau more likely to face hardship have been considered in pricing structure methodologies.

Q15. 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 regulation?

If merits review is available, then there should be funding made available for expert consumer representative intervention in a merits review wherever a regulated entity challenges a regulator decision that the community has requested.

Q16. Do you broadly agree that with the compliance and enforcement tools proposed above? Are any additional tools required?

Harm caused by non-compliance with regulation of an essential service can lead to significant hardship. Enforcement by regulators is crucial and they should therefore have the tools necessary to provide redress to any impacted whānau and focus on what additional support is needed where non-compliance has triggered debt spirals for some whānau.

Q17. 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.

FinCap is currently regularly engaged with the Credit and Telecommunications teams at the Commerce Commission and therefore sees this as workable, especially where that regulator is specifically resourced for community engagement.

However, while the Commerce Commission currently holds responsibility for similar regulation of electricity lines, we question why there is also not consideration of the current inconsistent approach to regulation of aspects of other utilities by the Electricity Authority and Gas Industry Company. Where water services may end up directly billed they will likely seem similar in day-to-day experience to gas and electricity supply for whānau, despite not having retail competition. Establishing a regulator that consistently provides economic regulation and consumer protections over essential services could be an additional option to be considered. That approach has the potential to consistently improve outcomes for whānau with all essential services.

Q18. 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?

Whichever approach is taken, there should be mechanisms to waive charges where costs end up billed to whānau who have an inability to pay.

Q19: 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?

Whichever process is likely to be most transparent for communities and likely to include the most opportunities for considering costs and benefits of levies on whānau facing hardship should be pursued.

Q20: Are there any other levy design features that should be considered?

Please see our response to Q.18.

Q21: A). What are your views on whether additional consumer protections are warranted for the three waters sector?

Water services are essential to the health, wellbeing and social participation of whānau. Unfair conduct from providers can therefore cause significant hardship and related harm. Robust consumer protections are needed.

We also encourage initiatives like a fund for free emergency leak repair where whānau would have to take out an unaffordable loan to address an issue that impacts the network but is on their property. Depending on developments, initiatives should also be progressed such as water services providers proactively reaching out and offering assistance where it appears a whānau may have an undetected leak or similarly where it appears a whānau might be restricting usage to the detriment of their health due to hardship.

Q21: 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?

We strongly support a bespoke purpose statement for providing additional relevant protections around these essential water services. Drafting should go further and put forward protections around minimum standards for support to maintain ongoing access to services for whānau having difficulty paying.

Q22. 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?

We strongly support this approach. Mandatory codes created in this way provide clear pathways for whānau working with financial mentors to avoid or resolve issues with accessing essential services.

Q23. What are your views on whether the consumer protection regulator should also be empowered to issue guidance alongside a code?

We support this. A mandatory code should be developed with guidance to encourage those regulated to strive towards desired outcomes for whānau, not just 'tick the box.' Guidance can help foster and maintain organisational cultures focused on community wellbeing. Guidance can also prevent inadvertent non-compliance that is harmful.

Q24. 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?

We support this and agree with Discussion Paper commentary that this will make sense for community members trying to understand the systems in place.

Q25. What are your views on whether minimum service level requirements should be able to vary across different types of consumers?

We support the recent approach of the Electricity Authority developing 'Consumer Care Guidelines' for the supply of electricity to all residential properties. While these guidelines aim to prevent hardship and support those at risk of losing access to an essential service, they rightly protect all whānau as all can face circumstances that cause hardship. Therefore, it may be appropriate to

recognise residential consumption separate to consumption for business purposes but any assistance targeted at preventing hardship should be universal for whānau where they reside.

Q26. 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?

FinCap strongly supports protections that will prevent the loss of access to essential water services whenever any whānau faces an inability to pay. Water services entities should be required to have publicly available hardship and vulnerability policies (best actually named in language with less stigma attached such as ‘care’ or ‘payment difficulty’), with clear commitments. These should meet enforced minimum standards developed in consultation including direct engagement with communities and community organisations that provide expert representation.

Robust protections will prevent avoidable hardship or give whānau and the financial mentors supporting them a clear way to resolve issues with hardship that arise from non-compliance.

Q27. 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?

We encourage direct engagement with the financial mentoring services run by Māori, for Māori across Aotearoa on this question. FinCap is willing to make resources available to work with MBIE to see if this is possible in the new year.

Q28. 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?

Generally, FinCap supports consumer protections for essential services being universal and this should be the general principle applied. Whānau currently accessing water through arrangements where MBIE has little visibility might be most at risk of harm from losing access. We encourage more information being gathered as a priority and the regulator being given the power to decide what private and community schemes should be subject to regulation following consultation including direct engagement with the whānau accessing those schemes.

Q28. B) Do you support any other options to manage the regulatory impost on community and private schemes?

There could be consideration of an exemption scheme with specific extra protections for whānau supplied by those schemes, or their financial mentor, to be supported in raising and addressing any issues causing harm.

Q29. Do you broadly agree that with the compliance and enforcement tools proposed above? Are any additional tools required?

Harm caused by non-compliance with consumer protections around an essential service can lead to significant hardship. Enforcement by regulators should therefore have the tools necessary to provide redress to any impacted whānau and focus on what additional support is needed where non-compliance has triggered debt spirals for some whānau.

Q30. 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?

Please see our comments in response to Q17. The consideration of establishing a regulator across services is particularly relevant when considering consumer protections as the Electricity Authority is likely to soon have a consumer protection function and has worked on Consumer Care Guidelines for

electricity services. Many aspects of that 'Consumer Care' guidance would be relevant to maintaining access to essential water services for whānau.

Q31. What are your views on whether the regulator should be required to incentivise high-quality consumer engagement?

We strongly support this approach. Initiatives for expert customer forums formed through reviews of suppliers approaches to regulation as were trialled by AusNet Services for electricity in Victoria¹ and followed an approach by Scottish Water² are worthy of consideration.

Q32. 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?

As mentioned above we strongly recommend decisions that lead to the way whānau will access water services for decades are informed by ongoing funding for expertise on water issues within the Consumer Advocacy Council which is currently being established with a focus on energy issues. Such funding should include specific requirements for the Consumer Advocacy Council to embed advocacy led by Māori in its functions, or specific separate funding for consumer advocacy led by Māori. This would act as a guarantee that community concerns or potential gaps in protections will be appropriately considered in decision making.

Q33. 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?

We support this approach. In Australia organisations like the Public Interest Advocacy Centre and Consumer Action Law Centre, who both have links to and are informed by financial counsellors, have been funded to advocate on water and electricity. These organisations have had a positive impact from building on expertise around both services simultaneously.

Q34. What are your views on whether there is a need for a dedicated three waters consumer disputes resolution scheme?

We strongly support a mandatory dedicated three waters consumer disputes resolution scheme. Financial mentors and the whānau they support value the option to resolve issues causing or contributing to hardship through free, independent and effective dispute resolution schemes.

Q35. 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?

Dispute resolution should have a focus on best supporting those most likely harmed by unfair conduct. A priority should be ensuring fair outcomes with appropriate redress where complaints are made around suppliers not meeting minimum standards for the support to be offered for whānau who are having difficulty paying. Dispute resolution should also be required to publicly report on complaints received which name members and publicly report on, as well as work to identify and address systemic issues.

Q36. What are your views on whether a mandatory statutory consumer disputes resolution scheme should be established for the water sector?

We strongly support a mandatory consumer disputes resolution scheme being established.

Q37. 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?

¹ <https://www.aer.gov.au/networks-pipelines/new-reg/ausnet-services-trial>

² <https://www.customerforum.org.uk/about-us/>

We support expanding an existing scheme and support only one approved scheme as opposed to a choice for suppliers. If multiple existing schemes express an interest in becoming the approved water disputes scheme, we request that a decision is made with input from financial mentors as to which scheme is likely to be most effective for their work.

Q38: 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?

Those accessing essential water services through suppliers that decision makers currently have little visibility of may be at the greatest risk of harm. Therefore, there should be a requirement for all to register their existence and disclose information about their operations with a regulator and be a member of a disputes resolution scheme to resolve any issues that arise. The Energy and Water Ombudsman Victoria's approach to membership for embedded electricity network operators who are required to join may provide insight on how to strike the right balance.³ Please also see our responses to Q.4 and Q.28.

Q39. Do you think the consumer dispute resolution scheme should incentivise water suppliers to resolve complaints directly with consumers?

Yes. There should also be work on identifying and addressing systemic issues, including public reporting.

Q40. 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?

We strongly support these considerations. In addition to the list in paragraph 238 of the Discussion Paper there should also be a direct requirement to work closely with financial mentors and similar community support workers. There should also be requirements to undertake targeted community engagement to counter barriers to accessing and maintaining engagement with the scheme where harm arises.

Q41. 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?

We are not opposed to levies as long as there are mechanisms to waive direct charges to whānau who are unable to pay.

Q42. 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?

Whichever process is likely to be most transparent for communities and likely to include the most opportunities for considering costs and benefits of levies on whānau facing hardship should be pursued.

Q43. Are there any other levy design features that should be considered?

There may also be a cost associated with ongoing funding for the Consumer Advocacy Council or other expert consumer advocacy to improve outcomes.

Q44. 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?

³ <https://www.ewov.com.au/members/joining-ewov>

FinCap supports this approach and sees it as desirable that we could engage with a coherent co-ordinated group of entities in relation to a system issue with essential water supply that is across several organisations' jurisdictions.

Q45. 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?

Yes. Such signalling may be useful if regulators have strayed from community expectations.

Q46. 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?

We strongly support regulators sharing information where this creates cohesion in the interest of whānau having fair access to essential water services.

Please contact Jake Lilley, senior policy advisor at FinCap on 027 278 2672 or at jake@fincap.org.nz to discuss any aspect of this submission.

Ngā mihi,



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