

Legislative statement: Water Services Economic Efficiency and Consumer Protection Bill First Reading

Context

In July 2020, the Government launched the Three Waters Reform Programme to reform local government water service delivery arrangements. The reformed sector will see the establishment of four new Water Services Entities (**entities**) to provide drinking water, wastewater, and stormwater services (**services**) to the majority of New Zealanders.

However, there is a risk that, without sufficient independent scrutiny, the entities will act inefficiently. Therefore, on 6 June 2022, the Government agreed to establish an economic regulation and consumer protection regime for the three waters sector, and for the Commerce Commission (**Commission**) to be the regulator.

Economic regulation aims to promote the long-term benefit of consumers in markets with little or no competition (and little or no likelihood of a substantial increase in competition) by promoting outcomes consistent with those produced in competitive markets. These outcomes relate to innovation, investment, efficiency, quality, and price.

The Water Services Economic Efficiency and Consumer Protection Bill (**the Bill**) introduces the following economic regulation and consumer protection measures for the three waters sector:

- The entities will be subject to economic regulation, with the necessary flexibility to adapt the regulatory approach for different entities and services (such as stormwater). Economic regulation protects consumer interests by changing the incentives faced by businesses, so that businesses behave in a manner similar to what might be seen in a more competitive market. Economic regulation can do this by:
 - requiring businesses to publicly disclose certain information about their performance and operations so that businesses are more accountable to their stakeholders; and
 - directly regulating the price and quality of services to ensure consumers are receiving efficient, innovative, and high-quality services.
- The entities will be subject to consumer protection measures. This will include:
 - the Commission setting a service quality code by 1 July 2027 to provide for consumer protection and improvements in service quality provided to consumers; and
 - establishing a comprehensive and independent consumer dispute resolution service for the three waters sector, which will be subject to regular reviews by the Commission.
- The position of Water Services Commissioner will be established on the Commission's board to reflect the unique nature of the water sector and the importance of Te Mana o te Wai. The position of Water Services Commissioner is similar to the Telecommunications Commissioner under the Telecommunications Act 2001.

In addition to making decisions that promote the long-term interests of consumers, the Commission and Minister will need to take into account the relevant obligations of the regulated water services providers (**regulated providers**), including in relation to:

- te Tiriti o Waitangi/ the Treaty of Waitangi
- giving effect to Treaty settlement obligations
- Te Mana o te Wai, and
- mitigating the effects of climate change and natural hazards.

The Bill provides that the regime will be funded via levies on regulated providers on behalf of consumers. The Bill further provides for enforcement mechanisms for contraventions of regulatory obligations, including pecuniary penalties, enforceable undertakings, fines, injunctions, and compensation.

The Bill will come into force on the day after the date on which it receives Royal assent. The consumer protection regime will come into force on 1 July 2024.

Details regarding the economic regulation and consumer protection measures are described below.

Economic regulation

The entities will be subject to economic regulation, with the necessary flexibility to adapt this regulation for different entities and services, such as stormwater.

Information disclosure, quality-only, and price-quality regulation will be determined by the Commission. Information disclosure and price-quality regulation will be underpinned by rules and processes known as input methodologies. Input methodologies will be determined by the Commission by 1 July 2026.

Information disclosure will require regulated providers to publicly disclose prescribed information about their performance to make them more accountable to stakeholders.

Quality-only regulation will require regulated providers to meet certain quality standards in managing their networks and delivering services, such as standards relating to resilience and reliability. This will complement the drinking water safety and environmental oversight provided by Taumata Arowai.

Price-quality regulation will require regulated providers to not charge a higher price than the maximum price permitted or not receive more revenue than is permitted. As with quality-only regulation, it will also require regulated providers to meet certain quality standards.

Input methodologies will provide regulated providers and consumers with certainty about how information disclosure and price-quality regulation will apply.

As part of the economic regulation regime:

- Information disclosure and quality-only regulation will apply to the entities from the first regulatory period (1 July 2027). However, there is flexibility for information disclosure regulation to apply earlier.
- There is a presumption that price-quality regulation will apply to the entities from the second regulatory period (1 July 2030). However, there is flexibility for price-quality regulation to:

- apply earlier in relation to the regulated provider that will serve the Auckland and Northland areas, and
- apply later for certain (or all) entities.

Quality-only and price-quality regulation can include performance requirements for specific areas, such as:

- requirements to adopt certain asset management policies and practices
- requirements to undertake cost-benefit analysis before specific projects are begun, and
- requirements relating to consultation and engagement with consumers.

When determining price-quality regulation, the Bill allows for the Commission to apply more tailored scrutiny to individual providers, particularly regarding asset management, and the prudence and efficiency of major investments. While the economic regulation regime will initially only apply to the entities, the Bill allows it to be extended to cover other water services providers.

The economic regulation regime in the Bill is similar to the existing economic regulation regime under Part 4 of the Commerce Act 1986 and Part 6 of the Telecommunications Act 2001 which regulates electricity lines services, gas pipeline services, specified airport services, and fibre fixed line access services.

Consumer protection

The consumer protection regime aims to provide for consumer protection and improvements to service quality to consumers. While the consumer protection measures will initially only apply to the entities, the Bill allows it to be extended to cover other water services providers. As part of the consumer protection measures:

- The Commission will set a service quality code by 1 July 2027 to provide for consumer protection and improvements in service quality to consumers. The code could include requirements for issues with:
 - outages and faults
 - minimum flow or pressure rates
 - billing practices
 - the treatment of consumers facing hardship and
 - consumer rights and customer services.
- A comprehensive and independent consumer dispute resolution service will be established for the three waters sector, which will be subject to regular reviews by the Commission. This service will ensure that a person who has an unresolved dispute with a regulated provider or a drinking water supplier in relation to any of the services will have access to a dispute resolution service for resolving that dispute. This will replace the dispute resolution process provided in the Water Services Act 2021.