Whakatāne District Council Submission

Water Services Economic Efficiency and Consumer Protection Bill

15 February 2023

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1. Introduction

Whakatāne District Council (WDC) is submitting on the draft Water Services Economic Efficiency and Consumer Protection Bill (WSEECP) to ensure the requirements and needs of our local communities are clearly understood by the Crown, as they progress their decision making for the Three Waters Reform. This submission builds upon our previous submission on economic regulation (December 2021) and other submissions throughout 2021 and 2022.

2. Background

The Whakatāne District has a population of 38,200 and forms part of Entity B. In September 2021 there were some significant concerns raised in respect to the cost of this reform for our local ratepayers and the ability for them to fund the significant improvements identified ($120bn to $185bn investment required). Further clarity has been requested around the investment required (as stated above), and no further information has been made available that helps to clearly understand the future cost structure**. <u>This remains a concern for WDC.</u>**

Other key concerns raised in respect to Economic efficiency and consumer protection include:

- Cost of governance and delivery (with a lot of additional requirements for the WSE defined) will reduce their ability to make savings and stated reductions for consumers highlighted by central government will not be achieved
- Overall household costs for consumers need to be considered as part of any pricing model
- Costs for stormwater is driven by peak demands, as a result of climate change the investment in stormwater could be significant – there is no detail on how the cost saving for stormwater will be achieved
- We need certainty that our communities will not be 'worse off' through this reform

3. Whakatane District Council Submission points on Water Services Economic Efficiency and Consumer Protection Bill

Whakatane District Council has assessed various draft submissions from Local Government NZ, Taituara, Water NZ and Communities 4 Local Democracy (C4LD). Alongside this, councils of Entity B commissioned Simpson Grierson to review the proposed legislation and provide legal advice to support councils with the preparation of each of our submissions. The appendices provide details around the Whakatane District Council position in regard to the comments raised from this advice and other submissions.

Within this section, Whakatane District Council details the key submission points for consideration by the select committee.

3.1 First regulatory period should focus on 'information gathering' to support future quality regulation

Comments: -

- As the WSEs cannot make any profit or take dividends, the price and charging regulation should focus on gathering good information to inform regulation.
- The focus of the policy work (as suggested in the bill) notes economic regulation should focus on (i) quality information to support robust asset management, (ii) efficiency, (iii) transparency and accountability for expenditure and investment. Whakatāne District Council strongly agrees this should be the focus in the short term.
- The Water Services Entity Act (and the Water Services Legislation Bill) already require WSEs to be transparent and share information through public document - adding costly regulation and reporting into this does not make sense.
- This simplified approach would provide clarity in the early stages of reform and avoid setting regulation too early and without adequate information to support this regulation.

Recommendations for the Select committee: -

- Regulation for pricing and charging needs to focus on information gathering to support future quality regulation
- Light touch regulation should be adopted whilst this information is gathered to inform future quality regulation

3.2 Language around 'excessive profits' should be removed

Comments: -

- The Bill views the water services sector as similar to existing monopolised utility industries. In particular, the Bill aims to limit WSEs' ability to 'extract excessive profits'. We think this language is inflammatory, inaccurate and unnecessary given the proposed public ownership model.

Specific changes requested of the Bill: -

- Remove subclause 12(d) as unnecessary given the design features of water service entities.

3.3 Purpose of Regulation of price and quality of water infrastructure services (Part 2 and 3) not clearly defined

Comments: -

- This purpose statement has been taken verbatim from the Commerce Act – focus on private companies with clear profit intent or State Owned Enterprises (SOEs) who act commercially. As the WSEs do not have that commercial imperative the purpose statement is inappropriate.

- There is no mention of environmental or health drivers in the purpose statement (which could be very different from consumer needs) – this need to be updated.
- The purpose of part 3 should refer to consumer demands (as the purpose of part 2 does)
- Drinking water and wastewater services differ from other networks in that they are subject to health regulation through Taumata Arowai. So, for example, the New Zealand Drinking Water Standards set standards relating to bacterial, protozoal and chemical contamination. There are also standards relating to the aesthetics of drinking water. These are all matters of quality.
- We are therefore unclear how the economic and consumer protection regime fits with the health and regulatory requirements set by Taumata Arowai. Is there the potential for the two regulators to duplicate or (worse) set a conflicting standard?

- In addition, the Bill should specifically include Taumata Arowai as one of the parties that must be consulted in developing methodologies and quality standards.
- "Improvements" noted in Part 2 purpose should not mean continuous improvements in service quality beyond what consumers are happy with, as consumers would ultimately bear the cost of that.

Specific changes requested of the Bill: -

- That the Select Committee include an explicit requirement on the Commission to consult Taumata Arowai when developing input methodologies and quality standards.
- **Amend Part 2(12b) purpose** as follows "have incentives to improve efficiency and provide services at a quality that reflects consumer demands **and meets applicable health, environmental and societal requirements in the provision of water infrastructure services**; and"
- **Amend Part 3 (60)** as follows "The purpose of this Part is to provide for consumer protection and improvements in the quality of service provided to consumers by regulated water services providers and drinking water suppliers, reflecting consumer demands."
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Recommendations for the Select committee: -

- That the Select Committee seek advice from officials regarding the quality standards that the Government proposes be set by the Commerce Commission and how they differ from those that Taumata Arowai is empowered to set.
- That the Select Committee seek clarity from agencies which are responsible for regulation, oversight and policy setting roles across all water issues (fresh, drinking, waste, storm, economic and consumer protection) to ensure consistency and alignment

- That the Select Committee ensure definitions for regulation is aligned across legislation.

3.4 Elements of the bill are too prescriptive and could impact the objectives of reform

Comments: -

- With the wide range of regulatory and policy instruments that bind WSEs governance role, it may result in difficulty in recruiting skilled directors, impacting one of governments bottom lines of 'good governance'.
- The more prescriptive the legislation, the less empowered WSEs are to "(be) innovative in the design and delivery of water services and water services infrastructure" or to apply "water-sensitive design" methods. Often the generation of efficiency gains arises out of an innovation – the Committee should be wary of this.
- One of the checks on regulatory agencies is a requirement that they undertake an analysis of the costs and benefits of their regulatory proposals. We refer the Committee to examples such as the analyses that the Ministry for the Environment prepares in regards the introduction or amendment of National Policy Statements and National Environmental Standards as a model.

Specific changes requested of the Bill: -

- That the Select Committee insert requirements on the Commission to undertake a regulatory analysis of any proposals made under clauses 27, 34 or 39.

3.5 Elements of the bill provides the commission with much power over the WSEs

Comments: -

- Clause 39(3)(b)(i) provides the Commission with the power to regulate a particular approach (emphasis supplied) to risk management – we do not disagree that the WSEs should be managing risks in accordance with commercial and best practice. But this clause goes further and empowers the Commission to regulate a particular approach to risk management.

- Similarly, clause 39(3)(b)(vi) provides the Commission with powers to "adopt asset management plans and practices". Asset planning has been a practical requirement in three water services since around 1996, and a legal requirement since 2010. And again, it is commercial and best practice. The WSEs are legislatively required to develop both an infrastructure strategy and an asset plan. The Bill therefore appears to contemplate prescription as to an approach or to the content of these plans.
- Clauses 51 to 53 are another example of the broad nature of the powers afforded to the Commission. The Commission has the power to review funding and pricing plans and issue what is effectively a direction to amend the plan. The Bill appears to contemplate that the Commission's review would come after a final plan has been adopted and made publicly available. The Commission should be weighing in during the drafting of the plan in the first instance, with a further, final check before the plan in made publicly available.
- As the legislation currently stands, the Commission need only provide a WSE with a direction to reconsider the WSE's plan. It appears this direction need not even be in writing. Given the Commission's power overrides a policy decision made by the WSE Board and its community, there should be a greater onus on the Commission to document its reasons and provide some suggestion as to how the WSE might amend the plan to give effect to the principles.

Specific changes requested of the Bill: -

- REMOVE the words "a particular approach" from 39(3)(b)(i)

- REMOVE clause 39(3)(b)(ii)
- REMOVE clause 39(3)(b)(vi)
- REMOVE clause 39(3)(b)(ix)
- REMOVE clause 39(3)(b)(ix)
- That the Select Committee agree to amend clause 51 to require the Commission to review drafts of funding and pricing plans during the engagement on these documents and before the final plans are adopted by the WSE.

- That the Select Committee agree to amend clause 52 to require that any direction from the Commission (i) be in writing and (ii) set out the nature of the inconsistency between the charging principles and the funding and pricing plan; the Commission's reasons for reaching this conclusion and (iii) what action or actions the entity might take to resolve the inconsistency.

3.6 Pricing and pricing methodologies – Further clarity required

Comments: -

- In most regulation the overall revenue is regulated, not the individual price for a customer.
- For individual pricing, a separate 'pricing methodology' would normally be mandated. Within the current legislation there is no details on the 'pricing methodology' approach

Recommendations for the Select committee: -

- Need to clarify if the regulator is only regulating revenue, as opposed to individual pricing

3.7 Industry Levy to support innovation

Comments: -

- Missing from this bill are clear mechanisms that can help drive innovation across the sector, and also improve consistent standards across NZ

Recommendations for the Select committee: -

- An industry levy to support innovation, maintenance and development of industry standards, and code of practices is included within the bill

Appendix 1 : LGNZ Submission

The draft LGNZ submission was provided through to Whakatāne District Council, the format of the themes provided a useful framework for commenting on the bill; see below an extract of the LGNZ draft submission and the LGNZ position. We have captured our Whakatāne District Council position in relation to this and highlighted key points within the LGNZ submission for ease of reading.

Theme	LGNZ Position	WDC Position

Problem Definition	• We do not think the Economic Regulation Bill approaches the core 'problem definition' from the right perspective.
	• The Bill views the **water services sector as similar to existing monopolised utility industries**. In particular, the Bill aims to limit WSEs' ability to **'extract excessive profits'**. We think this language is inflammatory, inaccurate and unnecessary given the proposed public ownership model.
	• The policy work supporting the Bill suggests the focus of economic regulation should be:
	  ○ quality information to support robust asset management;
	  ○ efficiency; and
	  ○ transparency and accountability for expenditure and investment.
	• In our view, information disclosure should be the primary focus (at least in the first instance).
		Strongly support – **Unclear why the language around 'excessive profit' is even used?**
		
		If adequate information can satisfy in the interim – this may be the most cost-effective way to progress this.

Information disclosure	• The information disclosure elements of the Economic Regulation Bill can deliver on most of the regulatory policy outcomes the Government has targeted for improvement. In particular, information disclosure is likely to deliver accountability, transparency and efficiency, and support development of asset management systems and processes. • However, the **Government should provide the Commerce Commission with a clear (and focused) direction on the problem definition, which would then inform key elements that need to be covered in information disclosure**. This would ensure information disclosure does not end up being overly prescriptive or onerous relative to the Government's objectives. • It appears the Government wants to increase information/transparency around assets held by the WSEs (and their condition), expenditure and revenue/charging. We question whether this is	Strongly support – **An information disclosure approach should be the initial focus.**

Theme	LGNZ Position	WDC Position
	already provided for in the Water Services Entities Act (and the WSL Bill), and whether there is **any additional value to be obtained from adding a costly resource- and expertise- intensive regulatory reporting and compliance regime into the mix.** • The initial 'information disclosure step' (in combination with the other proposed elements of the three waters model) will deliver substantially all of the benefits offered by economic regulation, and solve the most obvious and pressing issues at the centre of the problem definition. • If just this information disclosure element was adopted (at least initially), the simplified approach would provide clarity in the early stages of reform. It would be simple to explain and understand, and would: ○ **Avoid creating a medium/long term source of regulatory risk on day one** that is impossible to accurately predict and factor in at a time when key WSE systems (including funding arrangements and long term planning) need to be put in place. ○ **Ensure councils (and communities) are not required to accept a delivery model with a key element still undecided**. By creating clarity at the start of reform, councils would be able to give their communities a clear, simple outline of what to expect. Alternatively, adopting an incomplete regulatory regime will mean New Zealand's communities are committing to potentially negative future outcomes, without an ability to turn back. • Not focusing on information disclosure alone and asking stakeholders to embrace a high trust/high hope approach to a central component of the reform will only heighten existing scepticism around (and potentially opposition to) the proposed reform.	
Quality regulation	• Introducing quality regulation in the first regulatory period is **an unrealistic target.** • Quality regulation applies to other utilities. However, quality regulation requires: ○ A clear (and quantified) long-run view of current quality performance across the whole asset base (i.e. a baseline);	Strongly support – **An information disclosure approach should be the initial focus.**

Theme	LGNZ Position	WDC Position
	○ Information on the level of service quality consumers support, and are prepared to pay for; and ○ An understanding of what level of quality performance is realistically achievable in the future, on what timeframe and at what cost. ○ This is particularly important given failure to comply with quality standards exposes both the WSE and individual directors and officers to civil and criminal liability. ○ Other sectors (e.g. electricity or telecommunications) implemented their quality regulations with an existing historic data set of network performance, which provided a clear baseline and supported a forecast of achievable future performance. Outside of the main metros, we doubt this would be the case for three waters. • The **first regulatory period should instead be dedicated to information gathering to support future quality regulation** (including engaging with communities to understand what they will need from the service). Quality regulation should be introduced, at the earliest, in the second regulatory period, not the first, and utilise information obtained through information disclosure in the first regulatory period. • Information disclosure is likely to achieve most of the aims of economic regulation. Rather than an option to defer (which is the current approach), imposition of quality regulation should be conditional on the Minister making a recommendation on the advice of the Commerce Commission. • The performance requirements that the Commerce Commission may regulate are also unprecedented and unduly intrusive. **They would allow the Commission to substitute its own view for the engineering judgement of the WSE. This goes well beyond the incentives-based regulation that has traditionally (and effectively) applied in New Zealand. Not only is the Commission not well placed to carry out this role, but it would compromise the ability of the board to discharge its duties.**	

Theme	LGNZ Position	WDC Position
	• The relationship between quality regulation and service quality codes under Part 3 also needs to be clarified.	
Price-quality regulation	• Price-quality regulation should similarly be delayed and made subject to a further recommendation by the Minister. • **Price-quality regulation is an extremely costly and complex form of regulation.** It is not realistic to roll out price-quality regulation just three years into the new regime. It is also likely to represent a disproportionate regulatory burden in light of the gains that can be made with information disclosure alone. • **Price-quality regulation aims to address excessive profits and increase efficiency. As we outlined above, excessive profit taking is not an issue in the three waters sector. Efficiency would be addressed through the information disclosure regulation**. We think the information disclosure component should be given a chance to do its work, before we move to a more complex, onerous, and costly form of regulation. • Information disclosure has been effective in other sectors. For example, airports are regulated with information disclosure only, and it has been effective in driving efficiency. It doubles as a 'soft' from of price control, because financial returns can be exposed to scrutiny. • **Similar to quality regulation, price-quality regulation is more effective with better data.** If price-quality regulation becomes necessary down the track, the regulator would be better placed to implement it with two or more regulatory periods of data.	Strongly support – **An information disclosure approach should be the initial focus.**
Debt capacity and financial concerns	• We are concerned about the **potential impact this regulation could have on the short/medium term debt capacity of the new water services entities**. • In particular, we are unsure of the impact this regulation would have on WSEs' ability to meet their share of the 'better off' funding commitment to councils without using the debt needed to meet three waters compliance costs (including regulation) and their existing/expected future investment requirements. • If WSEs could not fund their mandatory commitments, we think the **Crown should fund an**	Neutral – **There is no specifics around debt capacity issues identified; this may become an issue when input methodologies are available.**

Theme	LGNZ Position	WDC Position

	interim solution and only look to recover that cost (for example, by transitioning the debt to the WSEs) when the WSEs can handle it without compromising their operations.
	• We also think WSEs should only make financial support package payments out of 'excess' borrowing capacity, and **so long as that debt burden does not result in a materially increased cost to consumers.**
	• If the economic pricing and transitional arrangements create 'abnormal financial circumstances' for the WSEs, **we think the Government should provide additional financial support to the entities in order to bridge the gap** between:
	  ○ The 'known realities' the entities will face during the transition phase; and
	  ○ The financial position the modelling assumes the entities will be in to operate as intended and start delivering on the benefits intended to accrue from the new model.
	• **This may mean the Government will need to make a short-term compromise on one or more of its policy bottom lines during this initial period of fragility.**	

Te Mana o te Wai and Te Tiriti obligations	• We would like to get a better sense of how the Commission will account for the **WSEs' obligations under Te Tiriti, Te Mana o te Wai, and Treaty settlements.** How will these aspects be reconciled with the Commission's well-established economic/input data-based approaches for regulating other utilities? Taumata Arowai is better placed to address these matters. The Commission should have regard to Taumata Arowai's position on these matters.	Strongly support – **Really good point & it would be good to understand more fully.**

Appendix 2 : Taituarā Submission

The draft Taituarā submission was provided through to Whakatāne District Council, Taituarā provided specific recommendations on the changes to the clauses within the bill, which has been extremely useful. See below an extract of the Taituarā draft submission and the Taituarā position. We have captured our WDC position in relation to this and highlighted key points within the Taituarā submission for ease of reading.

Area	Recommendation	WDC Position
Economic regulation is fundamental to the success of three waters reform	Reforms are likely to founder if there is any suggestion that water users are being 'overcharged' for their service, or that the funds raised are not being spent 'appropriately'. Overseas jurisdictions rely on a framework of economic regulation to exercise some control over price, quality, and investment. Typically, this regulation is based on requirements to disclose key information about charges, costs, and investments (a good example are the disclosure regulations that apply to various parts of the energy sector in this country). It is also appropriate that the regime for economic regulation of three waters services is purpose built. Although three waters infrastructure have similar attributes to telecommunications and energy networks, there are some important differences. Three waters infrastructure is subject to a regime designed to promote a set of public health outcomes (administered by Taumata Arowai) and a mix of national and regionally set environmental standards. And unlike these other services, three waters services are necessary to sustain life. Additionally, some features in the design of the water services entities (WSEs) should influence the degree of regulation. While the model of public ownership is somewhat unconventional, there are significant restrictions on the ability to take the WSEs outside of this ownership model. The Water Services Entities Act 2022 expressly prohibits the WSEs from distributing any surplus to their owners (and one of the unconventional aspects of the ownership model is that it does not entitle the owners to any of the revenues or surplus). This points to a regime that is 'lighter-handed' and more about supporting the accountability of the WSEs to their public for their planning and financial management (thus avoiding price shocks or at least minimising them).	Strongly support – **Regulation should be tailored to suit & lighter handed regulation appropriate.**

Area	Recommendation	WDC Position
	Information disclosure regimes and the associated 'benchmarking' are a commonly used tool to introduce some degree of competitive tension into monopoly services.	
The purpose clause of the regulatory regime could be better defined.	We note the purpose of the regulations (as per clause 3 and 12) has been modelled on the Telecommunications Act 2001. Taituarā considers that this could be further improved, We are concerned that the above purpose clause does not have a specific recognition of long-term sustainability of services. This is critical to counteracting the understandable, but undesirable, tendency to short-termism, and promoting long-term management of the assets. Arguably sustainability of service might be captured by the phrase 'long-term benefit of consumers', though it should be clearer. The purpose statement refers to service quality that reflects consumer demands. In many services that's appropriate. However three waters services are subject to a higher level of regulation of quality standards than consumers might set in a free market, especially safety and environmental standards. The purpose statement should be expanded to include regulatory requirements. WSEs cannot distribute profits to their owners. That being the case, there is little incentive for these entities to price in a manner that would generate excess profits. We are not convinced that there is any need for 12(d). **That the Select Committee amend clause 12 by** **- adding references to the long-term sustainability of service** **- adding references to consistency with regulatory standards** **- deleting subclause 12(d) as unnecessary given the design features of water service entities.**	Strongly Support – **minor changes to the purpose statement for clarity.**
The regime's prescriptiveness may inadvertantly work against some of the reform objectives	Our submission on the Water Services Entities expressed a concern that the wide range of regulatory and policy instruments that bind WSEs could limit the governance role, and give rise to some difficulty recruiting skilled directors. If this occurs then one of the Government's 'four bottom lines' for the reforms, good governance, would be placed at risk. While we support economic regulation in principle, we the Commerce Commission has wide powers and a very	Strongly support – **Quality regulation to be made explicit.** **Need to ensure the regulation is not too**

Area	Recommendation	WDC Position
	wide scope as to the matters that it can regulate. In particular we look at the range of matters where the Commission may introduce an input methodology, and the range of matters subject to section 15 determinations. We refer the Committee to clauses 27 and 34, and 39 (more on that shortly). Legislation that is over-prescriptive also works against two of the principles under which the WSEs are expected to operate. Specifically the more prescriptive the legislation, the less empowered WSEs are to "(be) innovative in the design and delivery of water services and water services infrastructure" or to apply "water-sensitive design" methods. Often the generation of efficiency gains arises out of an innovation – the Committee should be wary of this, Drinking water and wastewater services differ from other networks in that they are subject to health regulation through Taumata Arowai. So for example, the New Zealand Drinking Water Standards set standards relating to bacterial, protozoal and chemical contamination. There are also standards relating to the aesthetics of drinking water. These are all matters of quality. We are therefore unclear how the economic and consumer protection regime fits with the health and regulatory requirements set by Taumata Arowai. Is there the potential for the two regulators to duplicate or (worse) set a conflicting standard. The Committee should invite officials to clarify exactly what quality standards will be set by the Commission and how those will differ from those that are set by Taumata Arowai. As an additional backstop the Bill should specifically include Taumata Arowai as one of the parties that must be consulted in developing methodologies and quality standards. One of the checks on regulatory agencies is a requirement that they undertake an analysis of the costs and benefits of their regulatory proposals. We refer the Committee to examples such as the analyses that the Ministry for the Environment prepares in regards the introduction or amendment of National Policy Statements and National Environmental Standards as a model.	**prescriptive as to limit innovation.**

Area	Recommendation	WDC Position
	Such a requirement should apply to the issuing of any clause 15 determinations required under clauses 27, 34 and 39. There should be some tolerance built in to allow the Commissioner to avoid producing a regulatory analysis or tailor such an analysis for amendments are minor or technical. **That the Select Committee seek advice from officials regarding the quality standards that the Government proposes be set by the Commerce Commission and how they differ from those that Taumata Arowai is empowered to set.** **That the Select Committee include an explicit requirement on the Commission to consult Taumata Arowai when developing input methodologies and quality standards.** **That the Select Committee insert requirements on the Commission to undertake a regulatory analysis of any proposals made under clauses 27. 34 or 39.**	
Clause 39 stands out as particularly intrusive	Clause 39(3)(b)(ii) empowers the Commission to direct certain types of investment. Clause 39(3)(b)(ix) specifies a particular type of project evaluation methodology – cost/benefit analysis. And clause 39(3)(b)(xi) appears to give the Commission powers to dictate consultation and engagement provisions over and above those that Parliament set in the Water Services Entities Act. Clause 39(3)(b)(i) provides the Commission with the power to regulate a particular approach (emphasis supplied) to risk management – we do not disagree that the WSEs should be managing risks in accordance with commercial and best practice. But this clause goes further and empowers the Commission to regulate a particular approach to risk management. We submit that this effectively inserts the Commission into what is an operational matter, and by so doing it also puts the Commission (and Government) in the firing line should there be a fault in any regulated approach. Similarly, clause 39(3)(b)(vi) provides the Commission with powers to "adopt asset management plans and practices". Asset planning has been a practical requirement in three water services since around 1996, and a legal requirement since 2010. And again, its	Strongly support – **The powers within these clauses should not be with the regulator.**

Area	Recommendation	WDC Position
	commercial and best practice. The WSEs are legislative required to develop both an infrastructure strategy and an asset plan. The Bill therefore appears to contemplate prescription as to an approach or to the content of these plans. **That the Commission agree to:** **- delete the words "a particular approach" from 39(3)(b)(i)** **- delete clause 39(3)(b)(ii)** **- delete clause 39(3)(b)(vi)** **- delete clause 39(3)(b)(ix)** **- delete clause 39(3)(b)(ix)**	
Commission directions to amend funding and pricing plans should come with greater mandatory disclosure on the Commission's part.	Clauses 51 to 53 are another example of the broad nature of the powers afforded to the Commission. The Commission has the power to review funding and pricing plans and issue what is effectively a direction to amend the plan. The Bill appears to contemplate that the Commission's review would come after a final plan has been adopted and made publicly available. We say this because there is no reference to any consultation or engagement process, nor is there any qualifier such as the word 'draft' in the reference to the funding and pricing plan in clause 51. That cannot be what was intended, that a WSE would develop and engage on a plan, then adopt only to have the Commission tell them to reconsider an aspect or aspects of the plan (in effect that the WSE has 'got it wrong'). The Commission should be weighing in during the drafting of the plan in the first instance, with a further final check before the plan in made publicly available. That process may necessitate amendments to the Water Services Entities Act 2022 to require WSEs to send drafts and proposed final funding and pricing plans to the Commission. As the legislation currently stands the Commission need only provide a WSE with a direction to reconsider the WSE's plan. It appears this direction need not even be in writing. Given the Commission's power overrides a policy decision made by the WSE Board and its community, there should be a greater onus on the Commission to document its reasons and provide some suggestion as to how the WSE might amend the plan to give effect to the principles.	Strongly support – **The commission's review of the funding & pricing plan should be during the draft and before making publicly available.**

Area	Recommendation	WDC Position
	That the Select Committee agree to amend clause 51 to require the Commission to review drafts of funding and pricing plans during the engagement on these documents and before the final plans are adopted by the WSE. **That the Select Committee agree to amend clause 52 to require that any direction from the Commission (i) be in writing and (ii) set out the nature of the inconsistency between the charging principles and the funding and pricing plan; the Commission's reasons for reaching this conclusion and (iii) what actions or actions the entity might take to resolve the inconsistency.**	

Appendix 3 : Simpson & Grierson legal advice

As part of the 22 council collaboration within Entity B, it was agreed that initial legal advice be sought to help support councils with their submission. Below is an extract of the advice received and Whakatāne District Council's position in regard to this advice.

Theme	Simpson Grierson Advice received	WDC Position
Purpose of Regulation of price and quality of water infrastructure services (Part 2) not clearly defined.	• Purpose has been taken verbatim from the commerce act – focus on private companies with clear profit intent or State Owned Enterprises (SOE's) who act commercially. As the WSE's do not have that commercial imperative the purpose statement is inappropriate. • There is no mention of Environmental or health drivers in the purpose statement (which could be very different from consumer needs) – this need to be updated. • No mention about interaction with other water services regulator (Taumata Arowai) or their functions – Quite a silo'd piece of legislation • The purpose statement should reflect customer demands	Strongly support – **Purpose needs to be updated to address these points.**
Regulatory instruments – consider out of cycle major capex projects	• Leveraging the Transpower process, Opex and Capex are defined and agreed at the start of their regulatory lifecycle – we expect this to work in the same manner. • Large projects may be identified (e.g. Over $20m) that need additional scrutiny or overview by the commission, it makes sense to have something similar allowing for some additional oversight for these larger projects.	Strongly support – **Include in process for commission to assess larger projects.**
Further clarity required on price and pricing methodologies	• In most regulation the overall revenue is regulated, not the individual price for a customer. • For individual pricing, a separate 'pricing methodology' would normally be mandated. Within the current legislation there is no details on the 'pricing methodology' approach	Strongly agree – **Need to include details of 'pricing methodology' into the legislation.** **Need to clarify if the regulator is only regulating revenue, as opposed to individual pricing.**

Theme	Simpson Grierson Advice received	WDC Position

Default deadlines for implementation – clarity	• There are clear dates defined in the bill, these are
	  ○ 1 Jul 2026 : Deadline for input methodologies for information disclosure and price-quality regulation
	  ○ 1 Jul 2027 : Start of regulatory period 1 & deadline for information disclosure and quality determinations
	• It is unclear why price-quality regulation will occur one year ahead of quality determinations, this does not make sense.
	• The Bill does not set a minimum period for future regulatory periods, only a maximum (6 years). The minimum should also be defined in the bill (e.g. 4 years)
		Strongly support - **price-quality regulation and quality determinations should occur at the same time**.
		
		Update the bill to set minimum time periods for the future regulatory periods – to give certainty.

Incentives / Recommendations versus Direct Control	• The bill currently allows the commission to direct the WSE's in the following areas:
	  ○ Approach to risk management
	  ○ Asset condition and remaining life
	  ○ Making particular types of investments
	  ○ Asset management policies and practices
	  ○ Ring-fencing of revenue
	• This direct control afforded to the commission seems to overstep what the regulator should be there to do. The commission should be saying yes or no, not stepping into WSE business decisions.
	• Ring-fencing of revenue – for example all monies collected for drinking water should be spent on drinking water projects. Unclear why this is specifically needed.
		Strongly support – **Remove direct control aspects of the commission and remove ring-fencing.**

Consumer protection – regulations on non-regulated water suppliers	• Regulated information disclosures are mandated, it ststes this is for both regulated and non-regulated water suppliers • It is unclear why non regulated water suppliers would have to comply with this	Strongly support – **remove reference to non-regulated water suppliers.**
LoS should be affordable	• The regulation states that there will be continuous improvements and quality of service, this could lead to a gold plated service that the consumer does not want, and also is not affordable.	Strongly support – **Ensure any continuous improvement is linked to affordability & customer needs.**

Appendix 4 : Water NZ Submission

The Water NZ draft submission dated 8 February 2023 was reviewed. Water NZ has reviewed the bill from a technical delivery perspective of water services on behalf of the water industry and it's members.

Area	Water NZ Recommendations	WDC Position
Consistency and cohesion	- Regime must support WSEs meeting their statutory objectives (s12 WSE Act and s13 WSL Bill)Expand s12 purpose. - Expand matters Commission must take into account (s5). - Definitions: Must cover water infrastructure services and water services. - Commission should have regard to a gazetted Government Policy Statement on Water Services, not simply economic policies of the Government. - Taumata Arowai and the Commission should share data they require WSEs to collect –avoid duplication, and unnecessary compliance costs. - Align scheduling of Regulatory Control Periods with schedules for Funding & Pricing Plans, Asset Management Plans and Infrastructure Strategies. - Align penalty regimes under WS Act, and this Bill. - Clarify how the Commission considers funding for drinking water safety initiatives, given the carve out provisions.	**Support – ensure improved alignment / clarity**
Provide recognition of relationship with iwi/Māori.	- Commission should give greater weight to Te Mana o te Wai Statements than currently provided for. - WS Commissioner and staff should have a requirement for their own continuing education on the principles of Te Mana o teWai and Te Tiritio Waitangi/Treaty of Waitangi.	**Support – further details on how enforcement of TMOTW required**
Recognise sector differences whilst leveraging the wider economic regulatory regime.	- Water sector in Aotearoa New Zealand has fundamental and distinctive features. As the regime is being developed continue to test whether appropriate account has been taken of the uniqueness of water, and the differences to the other utilities regulated under the Commerce Act 1996. - Support a dedicated Water Services Commissioner. - Support acting as a Water Services Commissioner.	**Support – Water commissioner should have appropriate knowledge of water sector**

Area	Water NZ Recommendations	WDC Position
	- Strengthen requirement for WS Commissioner to have knowledge of water sector. - Support aim of leveraging experience e.g. in relation to the compliance systems required (call on other regulated entities/advisors). But need translation into water! - Commission's duties should include a requirement to ensure three waters services capacity and capability.	
Balance between certainty of process, and flexibility.	- Study is undertaken to assess the cost-benefit of transitioning from Information Disclosure to a quality regulatory regime, and to price-quality regulatory regime. - Clarify WSEs will not be subject to default quality or default price quality regulation. - Input Methodologies used must be the same for all WSEs. - Part 4 should have a purpose statement consistent with parts 2 and Parts 3. This should be captured in s5, matters to be considered by the Commission/Minister.	**Support – study to assess information disclosure vs other regulatory regime. Also input methodologies same for each WSE.**
Workability	- Sense check timing. Want successful establishment of WSEs, and wider regulatory regime. - Input Methodologies must consider the requirements of the Funding & Pricing Plans, Asset Management Plans and Infrastructure Strategies. - Consider the types of consumers who may raise complaints, and the nature of the complaints under the consumer protection scheme. - Price-quality determinations should be able to be subject to merit reviews by the High Court. - Consider expanding the definition of consumer to include communities. - Need cohesion with the resource management reforms -all decision-makers have regard to statements, plans and strategies prepared under other legislation, including the Spatial Planning Bill, the Natural & Built Environment Bill and the Climate Adaptation Bill. - Provide for adhoc adjustments to determinations should a WSE be required to take financial responsibility for "failing" supplies.	**Support**
Further clarity	- Clarify which agencies are responsible for regulation, oversight and policy setting roles	**Support – Important that**

Area	Water NZ Recommendations	WDC Position
	across all water issues (fresh, drinking, waste, storm, economic and consumer protection). - Can Commission require amendment or require the Board to reconsider the Funding and Pricing Plan. - Definitions must be aligned across legislation. - Consider whether the complaints scheme should be free to consumers. - Government Centre for Dispute Resolution should review schedule 2, and that the Commission and MBIE work with them in providing advice to the Minister on which application for the role of the consumer dispute resolution scheme should be approved. - Clarify which water service providers will be covered by the consumer protection regime.	**there is clarity how the wider water regulation fits.**
Missing concepts	- Industry levy to support innovation, maintenance and development of industry standards, and codes of practice.	Support – Great idea on mechanism to drive innovation

Appendix 5 : Communities 4 Local Democracy (C4LD) Submission

The C4LD draft submission dated 6 January 2023 was reviewed. C4LD continue to oppose the Three Waters Reform, however acknowledges that if an alternative model to reform is progressed some form of economic regulation would be required given the monopolistic nature of water infrastructure services.

Area	Recommendation	WDC Position
Convergence of Regulatory Regimes should help Promote Regulatory Certainty and Predictability	We agree with the Commerce Commission that "Utility-style regulation has worked well in New Zealand, Australia and the UK for the regulation of natural monopolies. The closer the proposed new PQR provisions in Part 2 of the Water Efficiency Bill are to Part 4 Commerce Act and Part 6 Telecommunications Act the greater the precedent value of decisions in each regime to the others, enhancing the level of regulatory certainty and predictability over time. A focus of our clause-by-clause assessment of the Water Efficiency Bill (see discussion below) is to make sure departures from existing precedent are appropriate and suitably justified.	Support – **Commerce Commission is logical regulator; need to ensure the utility regulation for water services is appropriate.**
The Water Services Entities Act undermines the Potential Benefits of the Water Efficiency Bill	We have previously canvassed that the new PQR regime is likely to fit clumsily, at best, with the introduction of the Water Services Entities Act. The Water Services Entities Act precludes Water Services Entities (WSEs) from earning profits or providing dividends, a restriction that is not imposed on regulated suppliers in other industries. The profit ban means WSEs cannot benefit or be rewarded for improving efficiency, innovating or reducing costs. One of the implications of the not-for-profit incentives is that there may be greater benefits from information disclosure and use of benchmarking to lift performance than from price regulation. We agree that "Given the lack of profit motive, price-quality regulation will play a lesser role in the water sector but may add some additional benefit, above information disclosure regulation alone, for example, in driving efficiency gains.	Strongly support - **Concern on 'profit ban' undermines innovation – needs to be addressed in bill.** Strongly Support – **Focus on information disclosure & benchmarking, as opposed to focus on price regulation.**
Heavy-handed Regulation has been Shoe-Horned into the Water Efficiency Bill to fix	C4LD's submission in response to the Water Services Entities Bill : • *"The reforms also increase fiscal risk because the Crown is providing a fiscal backstop for the four water service entities who will become*	Strongly Support – **No need for heavy handed regulation.**

Area	Recommendation	WDC Position
problems caused by the Water Services Entities Act	*some of the largest corporates in New Zealand. "* • *"The mega entity borrowing programmes will ultimately be the Crown's responsibility if there is any risk of default.* It appears the drafting of the Water Efficiency Bill recognises the funding and fiscal risks created by the Water Services Entities Act and attempts to address them by introducing provision for more heavier-handed regulation. C4LD does not support adoption of heavy-handed regulation.	
Transitional arrangements need to take into account the upheaval involved in combining 67 different entities into four new Water Services Entities	C4LD is concerned the time-frames provided for the transitional arrangements in the Water Efficiency Bill could be overly ambitious. If the time-frames are too tight they could force the Commerce Commission to make trade-offs that could adversely affect the quality of the new regulatory rules. There will also be an element of 'learning to walk before you can run'. The Water Commissioner may need information provided under the new Information Disclosure regime to determine current water service quality levels and to set new water service requirements under quality-only regulation or PQR	Strongly Support – **Focus on information disclosure initially.**

C4LD's submission provided a clause by clause review and suggested recommendations, details are captured below.

Water Efficiency Bill provision	C4LD response	WDC Position
Part 1 Preliminary provisions		
5 Matters to be considered by Commission and Minister	C4LD supports clauses 5(2)(c) and 5(3) as presently drafted. The current drafting of clause 5 carefully ensures Treaty of Waitangi matters do not extend into unrelated aspects of the PQR regime. We would be concerned if these clauses were changed in a material way, particularly if these matters could not be precisely described without resort to litigation. We note the equivalent Commerce Act and Telecommunications Act requirements do not include	Support

Water Efficiency Bill provision	C4LD response	WDC Position
	reference to the Treaty of Waitangi and climate change.	
Part 2 Price and quality regulation		
17 Power to exempt disclosure of commercially sensitive information	C4LD supports the clause 17 provision providing for protection of commercially sensitive information, and the related provision in clause 33(4).	Support
Subpart 2—Timing	C4LD recommends: (i) the legislation provides for a longer delay in introduction of new regulation than the 2 years provided for in the Bill (we would prefer 3 years); (ii) the first regulatory period lasts for a period of 4 years rather than 3 years (clause 20(1)), (iii) the Water Commissioner be given discretion to introduce Information Disclosure only in the first regulatory period and delay quality regulation until the second regulatory period; and (iv) the discriminatory provisions (clause 4) which provide for price-quality regulation to potentially apply to Auckland/Northland from the first regulatory period be removed.	Neutral – **The bill has regulation starting from 1 July 2027, with determinants on information disclosure by 1 July 2026.**
20 Regulatory periods	C4LD supports a 6-year limit (clause 20(2)) on regulatory periods but recommends the Bill specify a minimum regulatory period and that this should be set at 4 years. This would bring the Bill in line with equivalent Commerce Act (4 year minimum) and Telecommunications Act (3 year minimum) provisions which include both a maximum and minimum limit on regulatory periods; in particular, section 207 of the Telecommunications Act states: ***207 Regulatory periods*** *(1) The first regulatory period starts on the implementation date and lasts for a period of 3 years.* *(2) The duration of subsequent regulatory periods must be determined by the Commission and must be between 3 and 5 years.* *(3) The Commission must notify the duration of each new regulatory period in a section 170 determination.*	Neutral – **'….no longer than 6 years' - there is flexibility here.**

Part 2, Subpart 3—Input methodologies	C4LD recommends the equivalent of section 178(2) of the Telecommunications Act be included in the Water Efficiency Bill. Section 178(2) of the Telecommunications Act allows the Commission "at any time after the implementation date, [to] determine further input methodologies for fibre fixed line access services". Section 178(2) was introduced because the Commerce Commission did not consider it could determine new IMs under the Commerce Act. The Commerce Commission considers that:[1] > "We consider the absence in Part 4 of such express permission to determine further IMs in equivalent terms to section 178(2) of the Telecommunications Act shows parliamentary intent to distinguish Part 6 from Part 4 in this respect. This affirms our preliminary view from the 2016 IM review, and strongly suggests that expanding the scope of Part 4 IMs to cover matters not already covered by the existing IMs is a matter for Parliament – not us." The Commerce Commission's legal opinion in 2015 was that once the initial IMs were established under Part 4 of the Commerce Act it does not have discretion to create new IMs:[2] > "Our preliminary view is that we cannot create an IM on a matter not covered by an existing published IM for a particular type of regulated service as part of the IM review process. The review is of each IM after its date of publication. [footnote removed]" As part of the Commerce Commission's initial work on the 2023 review of the Part 4 IMs, it reconfirmed that "We have reconsidered, but not changed, our position from the 2016 IM review … on the scope under Part 4 for IMs on new matters".[3] We do not consider there is any valid reason to restrict the Commerce Commission from establishing new IMs. We support the views of 2degrees[4] and Transpower[5] on this matter. Both 2degrees and Transpower were of the view that there was no good reason for such a restriction and this should be fixed as part of adoption of Part 6 Telecommunications Act (which it was). Transpower, for example, submitted "This would seem like an unnecessary, and unintended, restriction".	To be considered – This seems practical, however unsure of the implications of this for WSE's

[1] Commerce Commission, Part 4 Input Methodologies Review 2023, Draft Framework paper, 20 May 2022, available at: https://comcom.govt.nz/__data/assets/pdf_file/0030/283863/Part-4-Input-Methodologies-Review-2023-Draft-Framework-paper-20-May-2022.pdf.

[2] Commerce Commission, Input methodologies review, Invitation to contribute to problem definition, 16 June 2015, paragraph 44, available at https://comcom.govt.nz/__data/assets/pdf_file/0020/60365/Input-Methodologies-Review-invitation-to-contribute-to-problem-definition-16-June-2015.pdf.

[3] Commerce Commission, Part 4 Input Methodologies Review 2023, Draft Framework paper, 20 May 2022, available at: https://comcom.govt.nz/__data/assets/pdf_file/0030/283863/Part-4-Input-Methodologies-Review-2023-Draft-Framework-paper-20-May-2022.pdf.

[4] 2degrees, Telecommunications Act Review: Options Paper, 2 September 2016, available at https://www.mbie.govt.nz/dmsdocument/1143-2degrees-tar-options-paper-sub-pdf

[5] Transpower, Telecommunications Act Review: Options Paper, 2 September 2016, available at https://www.mbie.govt.nz/dmsdocument/1167-transpower-tar-options-paper-sub-pdf

Water Efficiency Bill provision	C4LD response	WDC Position
27 Matters covered by input methodologies	C4LD does not consider it good legislative drafting practice for a mandatory provision ("The input methodologies relating to water infrastructure services must include") to include an open-ended "such as" provision. C4LD recommends consideration be given to whether clause 27(1)(b) could be tightened to provide greater certainty about what "must" be included as part of the "regulatory processes and rules" IM. We are aware, for example, that the uncertainty about this provision in section 52T(1)(c) Commerce Act resulted in litigation over what was required and whether it meant the Commerce Commission needed to establish a Starting Price Adjustment IM.	Support – **wording should be amended.**
34 Section 15 determination to set out information disclosure requirements 35 Information required may include information about goods or services not subject to regulation under this Part	C4LD recommends clauses 34(2)(l), 35(1)(b) and 35(3)(d) be removed. There are no equivalent provisions in Part 4 Commerce Act or Part 6 Telecommunications Act. We do not consider there is any good reason to require disclosure of information "about goods or services that are not subject to regulation under this Part", or how this would be useful "to enable the Commission to monitor – (b) the ongoing capability of a regulated water service provider to raise finance …"	Support – **wording should be amended.**
Part 2, Subpart 5—Quality regulation	C4LD supports the inclusion of Subpart 5—Quality regulation and provision for quality-only regulation, subject to addressing our concerns about clause 39(3)(b) and 39(5).	Support – **Noting there needs to be clarity on quality regulation between Taumata Arowai and the Commerce Commission.**

Water Efficiency Bill provision	C4LD response	WDC Position
39 Section 15 determination to set out quality path requirements 42 Section 15 determination to set out price-quality path requirements	C4LD supports the provisions in clauses 39, 42(3)(a)(iv) and 42(3)(b) allowing the Water Commissioner to apply comparative benchmarking to determine performance requirements.[6] We consider this to be a positive departure from the Part 4 Commerce Act (section 53P(10)) provisions which state: "The Commission may not, for the purposes of this section, use comparative benchmarking on efficiency in order to set starting prices, rates of change, quality standards, or incentives to improve quality of supply."	Support – **Use of comparative benchmarking.**
	C4LD does not support clauses 39(3)(b) and 42(3); in particular, sub-clauses (i) – (vii) and recommends they be removed from the Bill.[7] These are very heavy-handed regulatory powers. The Commerce and Telecommunications Acts do not have equivalent provisions. The ethos of PQR under the existing legislation is that it provides incentives for regulated suppliers to invest, innovate and improve efficiency but it is left to the regulated suppliers and not the Commerce Commission to determine how best to achieve this.	Support – **Should adopt 'light touch' regulation.**
Ring-fencing requirements (clauses 39(5) and 42(5)).	C4LD does not support clauses 39(5) and 42(5) and recommends they be removed from the Bill. We do not consider there to be any valid reason for a requirement to ring-fence revenue in a manner which may include a requirement not to spend the relevant funds without the approval of the Commerce Commission. There are no equivalent provisions in Part 4 Commerce Act or Part 6 Telecommunications Act. We are also unclear how ring-fencing revenue/restrictions on spending funds without the approval of the Commission (clause 39(5)) has anything to do with quality-only regulation.	Support
43 Wash-up mechanism for maximum	Clause 43 appropriately transposes the equivalent section 196 Telecommunications Act provisions. C4LD considers that the Water Efficiency Bill and	Neutral – **a wash-up mechanism may be useful for regulator**

[6] Subject to our comments on clauses 39 and 42.
[7] A consequential change is that the reference to regulation of "performance" should be removed from clause 40.

Water Efficiency Bill provision	C4LD response	WDC Position
revenues specified in initial price-quality paths	Telecommunications Act both improve on Part 4 Commerce Act which does not explicitly include a wash-up mechanism.	**for over or under recovery of revenue.**
44 Smoothing revenues and prices	C4LD supports clause 44, including the "financeability" test. Clause 44 transposes section 197 Telecommunications Act provision allowing the Commerce Commission to smooth prices and revenue "over 2 or more regulatory periods". The principal difference is that under the Telecommunications Act, the Telecommunications Commissioner can only smooth revenues to assist regulated suppliers if it helps minimise "undue financial hardship", whereas the Water Efficiency Bill allows the Water Commission to do so to "provide for the financeability of a regulated water services provider". We consider "financeability" is a more appropriate test than "undue financial hardship" for determining whether to adopt revenue and price smoothing. We note there has been a substantial emphasis on "financeability"[8] in submissions to the Commerce Commission as part of its review of the Part 4 Commerce Act Input Methodologies. Vector, for example, has submitted:[9] "The Commission should amend the IMs to introduce a financeability test. These are common practice by regulators internationally. "Amending the IMs to introduce financeability testing would better support the Part 4 purpose by ensuring regulated businesses can finance their networks efficiently. This would ensure consumers are able to benefit from needed investments and greater efficiency by ensuring regulated businesses can invest at the optimum time rather than when cashflows permit investment. It would also support the ability of regulated businesses to obtain debt finance on favourable terms, thereby keeping the cost of debt low."	Support – **Mechanism in place to minimise price shocks to consumers.**

[8] Financeability refers to a business's ability to meet its financing requirements and to raise new capital efficiently.
[9] Vector, Submission on the IM Review 2023 Process and Issues Paper, undated, available at: https://comcom.govt.nz/__data/assets/pdf_file/0022/288022/Vector-Submission-on-the-Process-and-Issues-paper-11-July-2022.pdf

Water Efficiency Bill provision	C4LD response	WDC Position
Part 2, Subpart 7—Reviews	C4LD supports the provisions for deregulation review.	Support – **this provides flexibility to the regulator.**
Part 2, Subpart 8—Commission review of funding and pricing plans	C4LD recommends the Water Efficiency Bill be amended such that the Water Commissioner will be responsible for determining charging principles rather than leaving it to (unspecified) other legislation.[10] This should be accompanied with the back-stop that the Government can issue Government Policy Statements on pricing that the Commissioner would be required to have regard to (similar to the current Part 4, "Subpart 2—Government policy statement on water services" provisions in the Water Services Entities Act", section 26 Commerce Act, section 17 Electricity Industry Act and section 19A Telecommunications Act). We consider that clause 27 Matters covered by input methodologies should be amended, consistent with the equivalent section 52T(1)(b) in the Commerce Act, to include "pricing methodologies". The industry regulator is normally responsible for determining pricing or charging principles/methodologies e.g. the Commerce Commission in relation to airports and gas (Part 4 Commerce Act) and the Electricity Authority in relation to electricity distribution and transmission pricing (section 32 Electricity Industry Act). We agree with Transpower that: "Getting the right balance between the roles of Parliament, in setting legislation, and the Commerce Commission, responsible for applying the legislation, is an important component of ensuring a stable and predictable regulatory environment."[11] A problem with relying on legislation to set pricing principles is it means they are less able to evolve and adapt to changing industry circumstances and issues.	Support
Part 3 Consumer protection		
Part 3, Subpart 2—	C4LD supports the establishment of a Service Quality Code, but recommend the enabling provisions in the	Neutral – Need to understand

[10] Charging principles etc have now been added to Part 11 of the Water Services Legislation Bill.
[11] Transpower, Telecommunications Act Review: Options Paper, 2 September 2016, at https://www.mbie.govt.nz/dmsdocument/1167-transpower-tar-options-paper-sub-pdf

Water Efficiency Bill provision	C4LD response	WDC Position
Service quality code	Water Efficiency Bill should be modelled more closely on Part 7 (sections 233-37) of the Telecommunications Act e.g.: • we do not consider there is a need for a mandatory provision that the Code "must … (c) specify a penalty rate for unpaid debt owed to regulated water services providers by consumers, or a method of calculating the penalty due, or both". There is no comparable provision in the analogous Electricity Industry Act and Telecommunications Act provisions;[12] and • we consider that there should be provision allowing WSEs to develop and propose a Service Quality Code. The Telecommunications Act includes appropriate provisions for industry-led code development, with section 236 enabling the Commission to develop a retail service quality code if "(a) no industry retail service quality code has been mode" or (b)(i) the industry retail service quality fails to achieve its purpose, or (b)(ii) a Commission code would better achieve the purpose.	implication of specifying penalty rate for unpaid debt which seems reasonable
Part 3, Subpart 3—Consumer complaints process and consumer dispute resolution service	C4LD is comfortable with the proposed requirements for WSEs to have a complaints resolution process (including the specific requirements for the process) and to be subject to a mandatory independent consumer dispute resolution scheme (CDRS). We note these requirements go further than equivalent Electricity Industry Act and Telecommunications Act provisions e.g. there is no mandatory obligation on telecommunications service providers to join a CDRS but all major telecommunications service providers have chosen to join the scheme.[13]	Strongly Support
Consumer Advocacy Council	We agree with MBIE[14] that the consumer voice in the water sector could be strengthened by the establishment of an expert body to advocate on behalf of consumers. We also agree the best way to	Strongly Support

[12] We similarly consider that the related provisions (clause 325) of the Water Services Legislation Bill should be removed.
[13] https://comcom.govt.nz/news-and-media/media-releases/2022/over-100,000-telco-customers-left-with-a-harder-road-to-complain,-says-commission
[14] Ministry of Business, Innovation & Employment, Economic Regulation and Consumer Protection for Three Waters Services in New Zealand, 27 October 2021.

Water Efficiency Bill provision	C4LD response	WDC Position
	do this would be to extend the mandate of the existing Consumer Advocacy Council (CAC). The feedback we have received about the CAC from stakeholders in the electricity industry is that it is making a positive contribution even though it has only been recently established. The Water Efficiency Bill does not include provision for a water advocacy body or extension of the CAC's role, which we consider to be an omission that should be rectified.	
Part 5 Miscellaneous		
Part 5, Subpart 1—Water Services Commissioner	C4LD supports the Part 5, subpart 1 provisions for establishment of a Water Commissioner within the Commerce Commission. We support the provision on the basis that: • experience elsewhere (e.g. telecommunications) shows it is better to have the new regulator operating within the Commerce Commission rather than as a new, stand-alone regulator (i.e. the Electricity Authority); and • the drafting of the provisions in the Water Efficiency Bill provides clearer/superior specification of how the Water Commissioner fits within the Commerce Commission e.g. clause 130 explicitly provides that the functions, duties, and powers of the Commission under this Water Efficiency Bill can be be performed or exercised by "the Water Services Commissioner alone"; or "if the chairperson of the Commission agrees, by the Water Services Commissioner with 2 or more other members of the Commission". This is standard practice under the Telecommunications Act but not explicit in the Act. We agree with MBIE's assessment of the relative costs and benefits of operating the Water Commissioner	Strongly support

Water Efficiency Bill provision	C4LD response	WDC Position
	within the Commerce Commission or as a new stand-alone regulator e.g.:[15] "In creating a new economic regulator that has similar functions to the Commerce Commission, there is an unavoidable risk that a significant proportion of the Commission's expertise that is currently working on the regulation of the electricity, gas, dairy, and telecommunications sectors would exit to the new water economic regulator. … "Establishing a new water economic regulator would also likely take an additional 18 months to two years depending on how quickly funding could be made available. On the other hand, an economic regulator dedicated to the water sector may develop deeper sector specific expertise over time. A dedicated water regulator may also make it easier for policy makers to consider best model for New Zealand water sector in future."	
Schedule 2 Consumer dispute resolution service		
Schedule 2, clause 1(2)(a)	Does C4LD have any concerns about this requirement? Note that Schedule 2, clause 1(2) mirrors Schedule 3C, section 1(2) Telecommunications Act EXCEPT for the inclusion of this clause.	n/a
Schedule 2, clause 3 Rules of approved service	C4LD recommends the rules of an approved service (Schedule 2, clause 3) include "what rights parties to a dispute (other than scheme members) have to appeal against a determination" (as per the equivalent Schedule 3C, section 12(1)(m) Telecommunications Act).	
Schedule 2, clause 5 Mandatory considerations for approval	C4LD supports the mandatory considerations for approval of a dispute resolution service (clause 5), subject to addition of a requirement (consistent with the equivalent provisions in Schedule 3C, section 4, Telecommunications Act) to consider "the views of persons who are required to be members".	Strongly Support
Schedule 2	Schedule 2 includes provisions dealing with the process and requirements for approval of a CDRS but is silent on the process and requirements for withdrawal of approval. C4LD considers this to be a substantial omission. The way the schedule is currently drafted, the Commission could review the CDRS (clause 9), make recommendations for improving the service (clause	Support

[15] Ministry of Business, Innovation & Employment, Economic Regulation and Consumer Protection for Three Waters Services in New Zealand, 27 October 2021.

Water Efficiency Bill provision	C4LD response	WDC Position
	9(4)), report to the Minister if the recommendations have been implemented/the service fails to achieve its purpose (clause 9(5)) but there is no (explicit) ultimate sanction or remedy if these matters are not addressed. C4LD recommends that Schedule 2 remedy this omission by including the equivalent of sections 8 – 11 of Schedule 3C of the Telecommunications Act.	

SIGNED:

Dr Victor Luca

Mayor

Whakatane District Council