WESTLAND
District Council | Te Kahui o Poutini

# Submission to the Finance and Expenditure Select Committee on the Water Services Economic Efficiency and Consumer Protection Bill

# 1. Introduction

Thank you for the opportunity to share our feedback on the Water Services Economic Efficiency and Consumer Protection Bill 2022 (the "Water Efficiency Bill").

Westland District Council (WDC) is a statutory entity based on the West Coast of the South Island of New Zealand.

Our vision statement is: *We work with the people of Westland to grow and protect our communities, our economy and our unique natural environment.*

The Westland District is approximately 450 km in length and one of the most sparsely populated parts of New Zealand, with an area of 1,186,272 hectares and a population of 8,640 people (2018 Census, Stats NZ). Approximately 33% of the population (2,960) lives in Hokitika. The remaining 66% live in small villages and rural areas such as Ross, Franz Josef and Haast. The district has a focus on the outdoors and outdoor recreation (87% of the land area is DOC land), which is a tourism drawcard, alongside dairy farming, mining and other enterprises.

WDC is a plenary member of the Communities 4 Local Democracy - He hapori mō te Manapori (C4LD) coalition and we support their submission to the Select Committee. On behalf of the Westland Community, WDC owns $117 million of three waters assets. These assets have been bought and paid for by these communities over many generations. The Westland community wishes to retain meaningful control and influence over the three waters assets. The Water Services Entities Bill (the Bill) before the Select Committee removes these rights.

Reform of the three waters sector is necessary and WDC is in support of this. WDC agrees with achieving appropriate health and environmental outcomes and ensuring that local iwi and hapū have appropraite input into investment decision-making at the local level. WDC disagrees with the governance model and transfer of assets from the local community to a large entity with no real connection to the Westland District, and supports the continued lobbying of C4LD for an alternative approach.

**Recommendations in our submission are contained in part 8.**

Westland District Council does not wish to appear before the Select Committe to speak to this submission.

# 2. Executive Summary

This submission from WDC outlines its support for the approach proposed in the C4LD submission.

WDC owns three water assets on behalf of the Westland community. These assets have been bought and paid for by Westland District ratepayers over many generations. WDC wishes to retain meaningful control and influence over the assets that we own on behalf of the community.

Our disagreement with the Government is centred on its approach to asset reconfiguration in the sector. We do not disagree with achieving appropriate health and environmental outcomes nor do we disagree with ensuring local iwi and hapū have appropriate input into Three Waters decision-making at a local level.

WDC considers that the Price and Quality Regulation (PQR) provisions in Part 2 of the Water Efficiency Bill largely, and mostly appropriately, mirror the equivalent provisions in Part 4 Commerce Act 1986 and Part 6 Telecommunications Act 2001. The drafting reflects the benefit and evolution in thinking from the third iteration of the PQR provisions across the three sets of industry regulation.

WDC also supports introduction of specific consumer protection provisions, including minimum retail service quality requirements, consumer complaints resolution process requirements, and a mandatory consumer dispute resolution scheme (CDRS).

## 3. Convergence of regulatory regimes should help promote regulatory certainty and predictability

WDC supports the submission by C4LD that the closer the porposed new PQR provision 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 Part 7 of this submission) is to make sure departures from existing precedent are appropriate and suitably justified.

We agree with C4LD that the Commerce Commission is the obvious choice to implement the new water PQR regime effectively.

## 4. The Water Services Entities Act undermines the potential benefits of the Water Efficiency Bill

WDC supports the submission by C4LD that the new PQR regime will fit poorly with the Water Services Entities Act and the preculsion for entities to earn profits or provide dividends. We agree with their assumption that there may be greater benefits from information disclosure and use of benchmarking to lift performance than from price regulation and that "'quality only' regulation … is arguably most appropriate when … regulated suppliers have limited ability or incentive to charge excessive prices".1

## 5. Heavy-handed regulation has been shoe-horned into the Water Efficiency Bill to fix problems caused by the Water Services Entities Act

WDC agrees with C4LD and supports their submission that adoption of heavy-handed regulation, that goes beyond orthodox price control and can involve the regulator 'stepping into the shoes' of the regulated suppliers and directing how they should operate their businesses is not the right approac to the funding and fiscal risks created by the Water Services Entites Act.

We do not support the introduction of:

- provisions (clauses 39(3) and 42(3)) that PQR may include performance requirements, "including any of the following: (i) requirements to adopt a particular approach to risk management: (ii) requirements in relation to the condition of assets and remaining asset life: (iii) requirements to make particular types of investment: … (vi) requirements to adopt asset management policies and practices: …"; and
- requirements 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 (clauses 39(5) and 42(5)).

## 6. Transitional arrangements need to take into account the upheaval involved in combining 67 different entities into four new Water Services Entities

WDC agrees with the submission from C4LD that the time-frames provided for the transitional arrangements in the Water Efficiency Bill could be overly ambitious. There will be considerable upfront work for the Commerce Commission to establish the new regulatory regime/and for the WSEs to prepare for the new compliance requirements. These challenges will be exacerbated if WSEs are going through a parallel merger process under the Water Services Entities Act.

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

## 7. Clause-by-clause review of the Water Services Economic Efficiency and Consumer Protection Bill

WDC supports the clause-by-clause review submitted by C4LD and their comparison with the Commerce Act, Electricity Industry Act and Telecommunications Act: the principal statutes on which the Bill is based.

The C4LD analysis is set out below:

| Water Efficiency Bill provision | C4LD response |
|---|---|
| **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.<br><br>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.<br><br>We note the equivalent Commerce Act and Telecommunications Act requirements do not include 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). |
| Subpart 2—Timing | C4LD recommends:<br>(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);<br>(ii) the first regulatory period lasts for a period of 4 years rather than 3 years (clause 20(1)),<br>(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<br>(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. |
| 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:<br><br>***207 Regulatory periods***<br>*(1) The first regulatory period starts on the implementation date and lasts for a period of 3 years.*<br>*(2) The duration of subsequent regulatory periods must be determined by the Commission and must be between 3 and 5 years.*<br>*(3) The Commission must notify the duration of each new regulatory period in a section 170 determination.* |

| Water Efficiency Bill provision | C4LD response |
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| 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.<br><br>Section 178(2) of the Telecommunications Act allows the Commission "at any time after the implementation date, [to] determine further input methodologies (IMs) for fibre fixed line access services".<br><br>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:[2]<br><br>> "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."<br><br>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:[3]<br><br>> "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]"<br><br>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".[4]<br><br>We do not consider there is any valid reason to restrict the Commerce Commission from establishing new IMs. We support the views of 2degrees[5] and Transpower[6] 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". |
| 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.<br><br>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. |
| 34 Section 15 determination to set out information disclosure requirements<br><br>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.<br><br>There are no equivalent provisions in Part 4 Commerce Act or Part 6 Telecommunications Act.<br><br>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 …" |

| Water Efficiency Bill provision | C4LD response |
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| 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 clauses 39(3)(b) and 39(5). |
| 39 Section 15 determination to set out quality path requirements<br><br>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.7<br><br>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." |
| | 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.8<br><br>These are very heavy-handed regulatory powers.<br><br>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. |
| 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.<br><br>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.<br><br>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. |
| 43 Wash-up mechanism for maximum revenues specified in initial price-quality paths | Clause 43 appropriately transposes the equivalent section 196 Telecommunications Act provisions. C4LD considers that the Water Efficiency Bill and Telecommunications Act both improve on Part 4 Commerce Act which does not explicitly include a wash-up mechanism. |

[2] 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.
[3] 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.
[4] 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.
[5] 2degrees, Telecommunications Act Review: Options Paper, 2 September 2016, available at https://www.mbie.govt.nz/dmsdocument/1143-2degrees-tar-options-paper-sub-pdf
[6] Transpower, Telecommunications Act Review: Options Paper, 2 September 2016, available at https://www.mbie.govt.nz/dmsdocument/1167-transpower-tar-options-paper-sub-pdf
[7] Subject to our comments on clauses 39 and 42.
[8] A consequential change is that the reference to regulation of "performance" should be removed from clause 40.

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| 44 Smoothing revenues and prices | C4LD supports clause 44, including the "financeability" test.<br><br>Clause 44 transposes section 197 Telecommunications Act provision allowing the Commerce Commission to smooth prices and revenue "over 2 or more regulatory periods".<br><br>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.<br><br>We note there has been a substantial emphasis on "financeability"9 in submissions to the Commerce Commission as part of its review of the Part 4 Commerce Act Input Methodologies. Vector, for example, has submitted:10<br><br>"The Commission should amend the IMs to introduce a financeability test. These are common practice by regulators internationally.<br><br>"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." |
| Part 2, Subpart 7—Reviews | C4LD supports the provisions for deregulation review. |
| 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.11 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).<br><br>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".<br><br>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). |

[9] Financeability refers to a business's ability to meet its financing requirements and to raise new capital efficiently.
[10] 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
[11] Charging principles etc have now been added to Part 11 of the Water Services Legislation Bill.

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| | 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."12 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. |
| **Part 3 Consumer protection** | |
| Part 3, Subpart 2—Service quality code | C4LD supports the establishment of a Service Quality Code, but recommend the enabling provisions in the Water Efficiency Bill should be modelled more closely on Part 7 (sections 233-37) of the Telecommunications Act e.g.:<br>• 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;[13] and<br>• 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. |
| 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).<br>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.14 |
| Consumer Advocacy Council | We agree with MBIE15 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 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.<br>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. |

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

[13] We similarly consider that the related provisions (clause 325) of the Water Services Legislation Bill should be removed.

[14] https://comcom.govt.nz/news-and-media/media-releases/2022/over-100,000-telco-customers-left-with-a-harder-road-to-complain,-says-commission

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

| **Part 5 Miscellaneous** | |
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| 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.<br><br>We support the provision on the basis that:<br><br>• 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<br><br>• 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.<br><br>We agree with MBIE's assessment of the relative costs and benefits of operating the Water Commissioner within the Commerce Commission or as a new stand-alone regulator e.g.:[16]<br><br>"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. …<br><br>"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 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". |
| 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.<br><br>C4LD considers this to be a substantial omission. The way the schedule is currently drafted, the Commission could review the CDRS (clause 9), make |

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

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| | recommendations for improving the service (clause 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.<br><br>C4LD recommends that Schedule 2 remedy this omission by including the equivalent of sections 8 – 11 of Schedule 3C of the Telecommunications Act. |

## 8. Recommendations

WDC supports the recommendations proposed by C4LD as set out below:

| **Clause** | **Recommendation** |
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| Part 2, Subpart 2: Timing: | (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)**;<br>(ii) the first regulatory period lasts for a period of 4 years rather than 3 years (clause 20(1)),<br>(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<br>(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. |
| Clause 20 Regulatory periods: | The Bill specify a minimum regulatory period and that this should be set at 4 years. |
| Part 2, Subpart 3: Input methodologies: | The equivalent of section 178(2) of the Telecommunications Act be included in the Bill. |
| Clause 27 Matters covered by input methodologies: | 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 than provided by "such as". |
| Clauses 34 and 35 (information disclosure requirements): | Clauses 34(2)(l), 35(1)(b) and 35(3)(d) be removed from the Bill. |
| Clauses 39 and 42 (price-quality path requirements): | Clauses 39(3)(b) and 42(3); in particular, sub-clauses (i) – (vii) be removed from the Bill. |
| Clauses 39 and 42 (ring-fencing requirements): | Clauses 39(5) and 42(5) be removed from the Bill. |
| Part 2, Subpart 8—Commission review of funding and pricing plans: | The Bill be amended such that the Water Commissioner will be responsible for determining charging principles rather than leaving it to (unspecified) other legislation, and that this 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.<br><br>Clause 27 Matters covered by input methodologies should be amended, consistent with the equivalent |

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| | section 52T(1)(b) in the Commerce Act, to include "pricing methodologies". |
| Part 3, Subpart 2—Service quality code: | The enabling provisions for the establishment of a Service Quality Code should be modelled more closely on Part 7 (sections 233-37) of the Telecommunications Act e.g.:<br>(i) 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"; and<br>(ii) there should be provision allowing WSEs to develop and propose a Service Quality Code. |
| Part 3 Consumer protection (Consumer Advocacy Council): | The Bill include provision for a water advocacy body or extension of the CAC's role. |
| Schedule 2, clause 3 Rules of approved service: | 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: | A requirement be added (consistent with the equivalent provisions in Schedule 3C, section 4, Telecommunications Act) to consider "the views of persons who are required to be members". |
| Schedule 2 (Consumer Dispute Resolution Scheme): | Schedule 2 should include the equivalent of sections 8 – 11 of Schedule 3C of the Telecommunications Act. |
| WDC further submits that: | |
| Schedule 2, clause 1(2)(a)(ii0 | Amend this clause to ensure that the neutral third party is agreed by both parties to the dispute before being appointed:<br>(ii)<br>if the dispute cannot be resolved by agreement between the parties, the dispute is determined by a neutral third party, *agreed by both parties to the dispute*, whose decision is legally binding on the regulated water services provider; |

## 9. Conclusion

WDC supports the following points raised by C4LD:

- It is desirable that the Bill draws heavily from the Part 4 Commerce Act and Part 6 Telecommunications Act PQR regimes. Convergence of regulatory regimes should help promote regulatory certainty and predictability.

- The Commerce Commission's experience with regulation of airports, electricity, gas and telecommunications (including fibre) under Part 4 of the Commerce Act and Part 6 Telecommunications Act should assist it to implement the new regime effectively.
- The adoption of an orthodox PCR regime sits awkwardly with the Water Service Entities Act. The operation of PQR regimes relies heavily on profit incentives to drive improvements in efficiency, innovation and investment. However, the WSEs will be not-for-profit and will have a range of socio-cultural objectives to meet that cannot be measured easily with typical financial and economic toolkits used by regulators. The incentive the Water Services Entities Act creates is for WSEs to prefer the 'quiet life' over improving efficiency, innovating and reducing costs.
- 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".[17] One implication is that introduction of information disclosure and benchmarking is likely to be more important for driving consumer outcomes than price regulation.
- It has been well canvassed that the ownership/governance arrangements under the Water Services Entities Bill, as well as neutering incentives to improve efficiency or innovate, are likely to result in funding and fiscal risks. It appears heavy-handed regulation has been shoe-horned into the Water Efficiency Bill in an attempt to fix this problem with the Water Services Entities Act. For example, the Bill provides for the Commerce Commission to introduce requirements to adopt a particular approach to risk management and to make particular types of investment, as well as ring-fenced expenditure restrictions. There are no such requirements under the Commerce or Telecommunications Act. This has the potential not only for PQR to regulate prices and service quality but to extend to the Commerce Commission dictating how WSEs should run their businesses. C4LD considers this to be regulatory over-reach and does not support price regulation being used to fix problems with the Water Services Entities Act. Price regulation should not be used as a substitute for addressing governance issues.

**WDC does not wish to appear before the Select Committee to speak to its submission.**

Ngā mihi nui,

Simon Bastion, Chief Executive

Helen Lash, Westland District Mayor

Scott Baxendale, Group Manager: District Assets

[17] Hon David Clark, Minister of Commerce and Consumer Affairs, Economic Regulation and Consumer Protection in the Three Waters Sector", 8 December 2022.