

# SUBMISSION

## WATER SERVICES ECONOMIC EFFICIENCY AND CONSUMER PROTECTION BILL 2022

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### 1. INTRODUCTION

Taupō is a provincial council managing strong and consistent growth within a complex three waters network with unique geography and soils.

We acknowledge that the current system is not suitable for all councils and that change is necessary.

However, our view is unchanged, we are still not supportive of the reform model currently proposed, nor the pace of this reform. However, in acknowledgement that reform is likely to continue, we have prepared this submission identifying opportunities for improvement to this Bill.

We agree that economic regulation is required to exercise some control over price, quality and investments of the Water Services Entities and to protect consumers from a *de facto* natural monopoly.

We agree with the proposed regulatory regime imposing information disclosures requirements and price-quality regulations on the Water Services Entities. This is a sensible approach to ensure quality of service and ongoing consumer confidence in the reform.

We welcome the provisions setting up an independent consumer disputes resolution service and requirements on Water Services Entities to report on consumer complaints.

### 2. OPPORTUNITIES FOR IMPROVEMENT

**2.1 Fragmented regulatory roles and responsibilities.** Provision of three waters services will be subject to a complex regulatory and oversight regime delivered through the Commerce Commission, the Department of Internal Affairs, Taumata Arowai, and regional councils. The Bill largely treats waters services as another utility and as such does not address the interaction between regulators. There is a need to develop a holistic regulatory system - as opposed to focussing upon just the role of the Commerce Commission - and as such there is the potential for duplication and conflict, particularly with respect to setting and implementation of quality standards between Taumata Arowai and the Commerce Commission.

**Recommendation:** That the Bill be modified to clearly delineate the functions of the three waters regulatory bodies, and particular making clear how the Commerce Commission will interact with other three waters regulatory organisations.

**2.2 The uniqueness of wai needs to be reflected in the Purpose statement in Part 2.** As a lifeline utility water services holds a status elevated above that of other utilities regulated under the Commerce Act. Wai holds special importance to mana whenua and its networks are complex, particularly for stormwater.

The regulatory regime must account for the uniqueness of water and be cognisant of the Water Service Entity (WSE) objectives and support them in achieving these.

**Recommendations:**

- That the matters that the Commission must take into account (cl. 5) are expanded to reflect other strategic matters that WSEs must give effect to, such as Government Policy Statements and the Statement of Strategic and Performance Expectations issued by Regional Representative Groups.
- That the purpose (cl. 12) of the Bill be expanded to reflect the uniqueness of the water services.
- That Input Methodologies must consider the requirements of the Funding & Pricing Plans, Asset Management Plans and Infrastructure Strategies.

### 2.3 The Bill oversteps the line into directing the Water Services Entities' business.

The role of an economic regulator should be to incentivise and make recommendations to the regulated entity, not to control directly the regulated entity's business. Some of what is anticipated for performance requirements in quality and price-quality regulation (clauses 39(3)(b) and 42(3)(b)) crosses inappropriately into directive control. Of particular concern is the potential for the Commission to direct regulated water services providers as to:

- their approach to risk management
- their approach to asset condition and remaining life
- making particular investments
- asset management policies and practices
- ring-fencing revenue for Commission-approved investments only.

The Bill should not provide for this type of directive control. The Commission is not an expert in the provision of water infrastructure services or any of the other utilities it regulates.

Water Services Entities are already subject to 'direction' from Government Policy Statements, Te Mana o Te Wai Statements, Statements of Strategic and Performance Expectations issued by Regional Representative Groups, and standards set by Taumata Arowai. We have concerns that enabling the Commerce Commission to directly influence the above operational and business-level decisions will mean it competes with, and potentially undermine, directions given by these other entities, including the strategic direction set by the Regional Representative Group, which is already competing with a myriad of other strategic 'directors'.

**Recommendation:** That the Bill be modified to remove the Commerce Commission's ability to direct Water Services Entities on operational matters.

### 2.4 Clarify which water service providers are regulated. It is unclear whether subsidiaries, successors and interconnected body corporates of the Water Service Entities are by default regulated<sup>1</sup> under clauses 13 and 61 or whether they need to be designated as regulated water services provider by an Order in Council. Subsidiaries, successors and interconnected body corporates should be required to comply with the same rules as their Water Services Entity.

**Recommendation:** For avoidance of doubt, we recommend that the Bill explicitly states that subsidiaries, successors and interconnected bodies corporate of the water services entities have to comply with the same information disclosure requirements and price/quality regulation imposed on their parent company.

### 2.5 Minimum regulatory period. There may be some merit in establishing a minimum regulatory control period to provide the Water Services Entities with stable planning and investment horizons. If set at three years, then these can be aligned with three yearly review of Water Service Entities' Funding & Pricing Plans, Asset Management Plans and Infrastructure Strategies.

<sup>1</sup> Clauses 13 and 61 state that subsidiaries are to be regulated. However clauses 54 and 62 state that non-statutory water services providers (which by definition includes subsidiaries) can be designated to become regulated water services providers. This implies that subsidiaries are not regulated until explicitly designated by Order in Council.

**Recommendation:** That a minimum regulatory control period be introduced into the Bill.

- 2.6 Extent of regulation appropriate for Alternative Operators.** Alternative Operators primarily supply water for agriculture and horticulture purposes and are limited to the number of dwellings they can service (1,000 dwellings). The cost of meeting the economic and regulatory requirements outlined in the Bill would be untenable for most operators of this size.

**Recommendation:** That the Bill be modified such that Alternative Operators are subject to less stringent to economic or regulatory requirements.

- 2.7 Ensuring long-term sustainability of water services is missing.** The functions of the Commerce Commission set out in the Bill require it to monitor the Water Services providers on a range of outcomes. However, a key outcome that directly impacts on the long-term benefit to consumers is the sustainability of water services infrastructure over the long term. This is a key function that is missing in the Bill.

**Recommendation:** That the Bill includes *the long-term sustainability of water services* as a separate function of the Commission.



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