

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

Overview of the Water Services Economic Efficiency and Consumer Protection Bill as introduced

The Water Services Economic Efficiency and Consumer Protection Bill (**the Bill**) is part of the suite of water services reform legislation. The reformed sector will see the establishment of new water services entities (**entities**) to provide drinking water, wastewater, and stormwater services (**services**) to the majority of New Zealanders. This Bill introduces an economic regulation and consumer protection regime for the water services sector, with the Commerce Commission (**Commission**) as the regulator.

The key components of the Bill are as follows.

Economic regulation regime

The entities will be subject to economic regulation. Economic regulation aims to promote the long-term benefit of consumers in markets with little or no prospect of competition by promoting outcomes consistent with those produced in competitive markets. These outcomes relate to innovation, investment, efficiency, quality and price. The economic regulation regime is similar to the existing economic regulation regimes under Part 4 of the Commerce Act 1986 which regulates electricity lines services, gas pipeline services, and specified airport services. The approach is also similar to the regulation of fibre fixed line access services under Part 6 of the Telecommunications Act 2001.

The entities will be subject to economic regulation, with the necessary flexibility to adapt the regulatory approach for different providers and services. For example, stormwater may be subject to a different type of regulation than wastewater and drinking water. While economic regulation will initially only apply to the entities, the Bill allows it to be extended to cover other water services providers. The Bill uses the term “regulated water services provider” (**regulated provider**) to cover the entities and different providers that are designated as being subject to the regime over time.

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

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

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

Information disclosure and price-quality regulation will be underpinned by rules and processes known as input methodologies. Input methodologies will provide regulated providers and consumers with certainty about how information disclosure and price-quality regulation will apply.

As part of the economic regulation regime:

- Information disclosure and quality-only regulation will apply to the entities from the first regulatory period (1 July 2027). However, there is flexibility for information disclosure regulation to apply earlier.
- There is a presumption that price-quality regulation will apply to the entities from the second regulatory period (1 July 2030). However, there is flexibility for price-quality regulation to:
 - apply earlier in relation to the regulated provider that will serve the Auckland and Northland areas, and
 - apply later for certain (or all) entities.

Consumer protection measures

The consumer protection regime aims to provide for consumer protection and improvements to service quality to consumers. As part of the consumer protection measures:

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

Changes recommended by the Select Committee

The revision-tracked version of the Bill prepared by the Select Committee includes a number of recommendations. Many of these changes are technical in nature and improve the functioning of the Bill. Some are more substantive. I draw Parliament's attention to the following:

Provisions related to the entities' responsiveness to the needs of urban development and growth

Under s 12(d) of the Water Services Entities Act 2022 (**WSE Act**) each entity has an objective to support and enable planning processes, growth, and housing and urban development. Consistent with this objective, the Bill now explicitly requires the Commission

and Minister to take into account the relevant obligations of the entities in relation to supporting and enabling planning processes, growth, and housing and urban development. Refer to clause 5(2)(c)(v).

The Bill also requires an information disclosure determination to include requirements for each entity about how the entity is fulfilling its objective under section 12(d) of the WSE Act, and, in particular, the entity's level of responsiveness in relation to those issues. Refer to clause 34(2A).

The revision-tracked version of the Water Services Legislation Bill (**WSL Bill**) includes recommendations that require each entity to prepare a development code and obtain approval for it from the Commission. The Bill provides for the Commission to act as a regulator of water infrastructure services under the Bill, including by ensure that the development codes are prepared and approved, refer to clause 4(1)(c)(v). The Bill provides for the Commission to monitor compliance with a development code and provides for enforcement mechanisms for contraventions of a development code, including pecuniary penalties, fines, injunctions, and compensation. Refer to clauses 81A, 84(1)(cb), 85(2), 88, 90, and 102B. If the Commission considers that a development code has not been submitted or resubmitted within a reasonable time, it can also direct an entity to submit/resubmit that code by a certain time. Refer to clause 81B.

The Bill also makes it explicit that a developer is a consumer, refer to clause 7.

These changes are designed to ensure that the entities support, enable, and are responsive to planning processes and growth by being responsive to requests from developers that would support these aims. The changes would allow the entities to balance these objectives in a way that is consistent with their obligations as water services providers.

Consistency of definitions across the reforms

Some definitions were inconsistent with equivalent definitions under the WSE Act and the WSL Bill. These definitions have now been aligned, refer to clause 7.

Limits on date changes for economic regulation

There will now be additional limits on the power to change dates relating to the timing of economic regulation. This will ensure these powers are more targeted and will provide more certainty as to their limits. This means there will be:

- a three-year limit on the date by which an initial determination relating to price-quality regulation can be brought forward, refer to clause 22(1)(c)
- a three-year limit on the date by which the initial input methodologies, and initial determinations relating to information disclosure, quality, and price-quality regulation can be deferred, refer to clause 22(1)(a)-(b)
- a requirement that allows only one date change in respect of each of the following (refer to clause 22(1A)(a))
 - the date by which the Commission must determine any of the initial input methodologies
 - the date by which the Commission must determine an initial information disclosure determination
 - the date by which the Commission must determine an initial quality determination

- the date by which the Commission must determine an initial price-quality determination.

Requirement for the Commission to review tariff lists

In addition to reviewing any funding and pricing plans, the Commission will now also have to review any tariff lists made publicly available by the chief executive of a regulated provider under any legislation dealing with water services. Refer to clauses 51-52.

Refinement to the purpose of consumer protection

The purpose of Part 3 of the Bill now imposes a limit on the quality of service improvements provided to consumers that the part promotes. To avoid unnecessary increases in costs and prices due to unlimited improvements in quality beyond what consumers demand, the purpose of Part 3 now imposes a limit “to reflect consumer demands”. Refer to clause 60.

Changes to the scope and content of the service quality code

The Bill is now more specific about the contents of the service quality code to assist the Commission in its making of the code. The service quality code may (without limitation) do 1 or more of the following:

- specify a consumers' rights when they make a complaint to a regulated provider
- specify the type and frequency of communications that a regulated provider must have with consumers about outages and the time taken to respond to outages and faults
- contain rules about the transparency of billing practices, and the way in which account queries must be responded to
- set out the type of redress available to consumers when the quality of service does not meet appropriate standards (for example, in relation to pressure flow rates)
- specify conditions for the provision of water infrastructure services to consumers experiencing hardship or who have other vulnerabilities, (for example, the obligations of regulated providers when responding to non-payment by consumers)
- specify requirements for consulting consumers
- provide for any other matter that the Commission considers appropriate.

Refer to clause 70(2)(a)-(g).

The Bill now specifies that the Commission is required to actively consider the interests of vulnerable consumers when making the service quality code. This includes that the Commission must:

- take reasonable steps to identify classes of vulnerable consumers
- consider the impact of the provision of water services on those consumers and take the interests of those persons into account when making the service quality code.
- Refer to clause 72(2A).

Changes to the consumer dispute resolution service

There is now improved fairness in the process for setting aside determinations made by a service provider which operates the consumer dispute resolution service. The Bill now extends the right to make an application to set aside a determination to regulated providers and drinking water suppliers. Refer to clause 78(1). Clause 78(1) was previously limited to consumers.

There is now a limit specified in the Bill as to the level of compensation able to be ordered by the consumer dispute resolution service. The maximum amount of compensation is set at \$50,000. This will ensure that those who cannot afford court proceedings can still receive redress, but also that higher value disputes are heard in the District Court, which allows representation. Refer to clause 3A of Schedule 2.

Ability for the Minister to establish a Water Services Consumer Agency

The Bill allows the Minister to establish a Water Services Consumer Agency to represent and advocate for the interests of consumers in the water services industry. Refer to clauses 145A-B.

Changes to the provisions for fees and levies

The Bill allows the Governor-General to make regulations by Order in Council made on the recommendation of the Minister, for:

- the payment of fees by regulated providers and drinking water suppliers for dispute resolution under the consumer dispute resolution service, refer to clause 140(1)(ca) and
- levies in respect of the estimated costs incurred by the Water Services Consumer Agency, refer to clause 141(2)(a)(ii).

Changes to the qualifications for a person appointed as the Water Services Commissioner

The Water Services Commissioner role is to be established to ensure that the unique nature of water is given due primacy under this legislation. The domains of knowledge or experience that may qualify a person for the Water Services Commissioner role will now include te Tiriti o Waitangi /the Treaty of Waitangi and its principles, and perspectives of Māori and tikanga Māori. Refer to clause 128(2)(b).

Clarity provided about how certain review and associated designation provisions operate

The Bill now provides more clarity about how the reviews for additional regulation, deregulation, early price-quality regulation, and late price-quality regulation operate. Refer to clauses 139A-139O.

Finally, the Bill also provides more clarity about how the designation process operates for water services entities that are not statutory water services entities following an additional regulation or deregulation review. Refer to clauses 53A-58, and 61A-68.

