

**Submission to the Finance and Expenditure
Select Committee on**

***Water Services Economic Efficiency and
Consumer Protection Bill***



17 February 2023

Introduction

1. The Timaru District Council thanks the Finance and Expenditure Select Committee for the opportunity to submit on the Water Services Economic Efficiency and Consumer Protection Bill (“Water Efficiency Bill”).
2. This submission is made by the Timaru District Council, 2 King George Place, Timaru and is authorised by the Mayor, Nigel Bowen who has the unanimous support of all Councillors on the issue of Three Waters reform.
3. The contact person regarding the submission content is Bede Carran, Chief Executive, Timaru District Council (bede.carran@timdc.govt.nz).
4. Timaru District Council wishes to speak to its submission.

Council’s position on the Water Services Economic Efficiency and Consumer Protection Bill (the Water Efficiency Bill)

5. Timaru District Council (TDC) is a member of the Communities For Local Democracy (C4LD) group. This submission supports and endorses the C4LD submission. We are also supportive of submissions presented by Local Government New Zealand and Taituarā.
6. TDC remains opposed to the Water Services Reforms for reasons provided in earlier submissions prepared on this reform agenda. TDC through C4LD, has publicly asked the Labour government to review this policy agenda and work with councils to ensure the retention of local influence with any changes made to water services.
7. However, TDC has a duty to ensure that as the Water Services Reform proceeds, the rights of people and communities as users of these services are protected; the process to transfer assets is efficient and effective; and the respective roles and responsibilities of WSEs and local authorities are clear. This submission highlights areas of potential concern.

The Water Services Economic Efficiency and Consumer Protection Bill

8. Council acknowledges the purpose of the Water Efficiency Bill to:
 - Regulate the price and quality of water infrastructure services; and
 - Provide for consumer protection for water infrastructure services.
9. TDC supports the purpose of the Water Efficiency Bill as far as regulation and protection for consumers and creating a framework that is responsive and viable to the community.
10. The measures that have been proposed under this Water Efficiency Bill do not address all the issues that the current council lead water services provide, mainly the monopoly created by the suite of Water Services Bills.
11. The Bill provides Consumer Dispute Resolution Service for consumers to have a direct complaints process, however the Bill refers to Schedule 2 for the ways this service will interact with consumers. Schedule 2 does not provide timelines nor time guarantees for the process. Residents prefer to direct complaints either to officers or to their elected member if there are issues with their water supply.
12. Council acknowledges the regulations in the Water Efficiency Bill have similar attributes to telecommunications and energy networks, however there are significant differences, mainly the inability for residents to be able to 'take their business to another provider' and the need to protect water services as a life sustaining service.

Specific Water Efficiency Bill Issues for Comment

Role of Councils

13. WSEs will be jointly owned by local authorities, who currently have the knowledge and experience in delivering water services. Council supports having a voice in establishing the regulations because of the wealth of knowledge in water services delivery.
14. In New Zealand, elected councillors currently hold the council CEO, and senior management to account for water services and this accountability is transparent and information available through Local Government and Official Information and Meetings Act (LGOIMA) processes. This transparency and accountability is lesser under the Water Efficiency Bill as it is currently drafted.
15. Council agrees with the LGNZ submission that by councils continuing to act as a collection service on behalf of WSEs until 2029, not only will this lead to confusion, but the actual and real costs of collection will be difficult to calculate to ensure that councils are not being financially burdened.

The Water Services Commission

16. The functions of the Water Services Commission include monitoring of the quality of services provided and monitoring whether outcomes in the markets are consistent as if WSE was within a competitive market. In order to do this the

Commission will use tools; namely information disclosure, quality regulation and price/quality regulation.

17. Council supports the creation of the Commission and the position of commissioner, but holds concerns because of the unique nature of water delivery services, particularly with stormwater, that particular skills are necessary for this person to be appointed Commissioner.
18. TDC supports the C4LD submission that the Water Efficiency Bill be amended to make it the responsibility of the Water Commissioner to determine the charging principles rather than leaving it to other legislation to make that determination.
19. Council holds concerns about the Commission's ability to introduce quality regulation in the first regulatory period as it would be unrealistic and recommend that the first regulatory period consist only of information disclosure. As the Commission will be a new regulatory body it will not have historical data to draw from. Again, this is where the specialist knowledge of councils will support the transition effectively.
20. The first regulatory period will be used as an information gathering period. This will support higher quality regulations being made in the second regulatory period including for the Commission to consider the maximum price or maximum revenue to set as per clause 42 of the Bill.
21. The information gathering period needs to engage with communities to ensure a full understanding is gained of community needs. This local approach is standard practice for Councils under the Local Government Act.

Input Methodology

22. Input methodologies are the rules, requirements and processes that must be determined for regulated services and are set by the Commerce Commission for other regulated services such as electricity lines. The Water Efficiency Bill provides an exhaustive list of what must and can be included. In agreeance with the C4LD submission, TDC does not consider mandatory provisions good legislative practice and does not enable clauses that can provide flexibility to support effective inputs as the needs arise. TDC would support the exhaustive list being changed to a "such as" list allowing for flexibility of effective inputs.
23. In Council's view, input methodology for drinking water may have conflicting standards due to the overlap between Taumata Arowai setting health regulations and the Commission setting quality standards. The Water Efficiency Bill requires further drafting to establish clearly the boundary between these and what consultation Taumata Arowai will have as part of input methodology.

Consumer protection

24. Water supply, sewer and stormwater affects all persons in New Zealand. Regulation of pricing will be challenging particularly in communities as diverse as the Timaru District. Timaru District has urban, regional and rural properties as well

as lake, river and sea ecology. Recognition of these differences needs to consider in this consumer model.

25. There are three core fundamental differences between WSEs and other network utility providers:
 - People cannot live without water
 - Consumers have no choice but to pay for the service whether they use it or not
 - In most cases, there will be no alternative service provider.
26. There is no right of individuals to access safe and affordable drinking water and wastewater services enshrined in the legislation. There is no definition of what is considered 'affordable'.
27. The UN General Assembly recognises acceptable, accessible, affordable and safe drinking water and sanitation services as fundamental human rights (Resolution 641292) and defines what those terms mean.
28. TDC supports the C4LD proposal and adds to the request for a statutory bar to WSEs discontinuing drinking water or wastewater services to individual households in the event of a debt owing, other dispute, or any other reason other than a temporary disconnection associated with an infrastructure maintenance, repair or upgrade.
29. The Water Efficiency Bill does not provide for vulnerable New Zealanders either as vulnerable individuals or communities. Considering how rural some areas are in the Timaru District, availability for WSEs to ensure adequate solutions for all consumers regardless of their regional location needs to be enshrined.
30. Part Three of the Water Efficiency Bill deals with the Consumer Complaints process and consumer dispute resolution service. However, the Water Efficiency Bill does not address the underlying power imbalance for consumers' vs a monopoly. Provisions need to ensure that all persons and organisations can access the complaints process and not be overly prescriptive to prevent access, such as disability and language barriers.
31. The Water Services Economic Efficiency & Consumer Protection Bill requires WSEs to establish and maintain a complaints resolution service and report annually to the Commerce Commission on complaints.
32. Council suggest that an expert, independent voice to be able to advocate on behalf of consumers be established. This will be similar to one already established in the electricity industry. This will be of great benefit for consumers if their complaint is about stormwater as it is a complex issue affecting more than one household.

Stormwater

33. Stormwater is not an individually consumed/used resource in the same way as drinking water and wastewater. The management of stormwater is vastly different as it is largely a public good rather than an individual consumer good, and the recovery of costs to pay for stormwater is therefore more complex

34. In Cabinet documents it was pointed out that less is known about stormwater assets but the document acknowledged that Councils had deeper knowledge. The bill needs to be drafted to reflect the subject matter expert, particularly at the time of transition of services, are councils.
35. The implications for councils having to collect stormwater charges are not sufficiently considered:
 - Councils may be required to collect water charges on behalf of the entity
 - Councils may not even have systems to fully support collection of charges
 - There is an issue of perception, and confusion amongst the public about what organisation is accountable.
36. Pricing of stormwater cannot use the same input methodology as drinking and wastewater services because of the lack of individuals ability to change usage of storm water. Input methodology for stormwater cannot be the same as for drinking and wastewater. The inputs need to consider the potential for the different effects stormwater has to urban environments vs rural environments.

Recommendations

37. Timaru District Council:
 - a) Supports recommendations as set out in the C4LD submission.
 - b) Recommends ongoing transitional arrangements working with Councils as the subject matter experts in water services.
 - c) Recommends clearly defined separation between the roles of Taumata Arowai as water health regulator and the roles of WSEs.
 - d) Recommends that input methodology be re-drafted from an exhaustive list to a “such as” to enable flexibility of input methodology that can be used.
 - e) Does not support council continuing to collect water service charges until 1 July 2029 due to the duplicitous confusion it will create for users.
 - f) Supports the C4LD submission that the Water Efficiency Bill be amended to make it the responsibility of the Water Commissioner to determine the charging principles rather than leaving it to other legislation to make that determination.
 - g) Recommends that the first regulatory period consist only of information disclosure.
 - h) Supports greater recognition of stormwater as a public service rather than an individual water service and recognises the needs for different input methodologies particularly for price setting.
 - i) Recommends it is enshrined in legislation that consumer’s water services will not be turned off for any reason other than usual maintenance, unexpected repair or upgrade.
 - j) Recommends the right to safe drinking water be enshrined as a protected right under the Water Efficiency Bill.

- k) Supports the establishment of an expert body to advocate on behalf of consumers.

A handwritten signature in blue ink, appearing to read 'Nigel Bowen', followed by a small dot.

Nigel Bowen

Timaru District Mayor