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Committee Secretariat
Finance and Expenditure
Committee Parliament Buildings
Wellington

Via email to: fe@parliament.govt.nz

Submission on the Water Services Economic Efficiency and Consumer Protection Bill 2022

1. The Hurunui District Council (HDC) thanks the Select Committee for the opportunity to comment on the Water Services Economic Efficiency and Consumer Protection Bill 2022 (the Bill).
2. **The Hurunui District Council wishes to appear before the Finance and Expenditure Committee to speak to its submission.**
3. The Hurunui District is located in North Canterbury. It has approximately 13,450 residents and cover an area of 8,640km². The Hurunui District is primarily a rural district with large areas dedicated to primary production interspersed with small service towns. Hurunui District Council operates and maintains the assets of twenty community owned water schemes, seven wastewater schemes and a stormwater network.
4. HDC remains strongly in opposition to the proposed three waters reforms. Nothing in this submission should be read as indicating that HDC now concurs with the reforms. Nevertheless, it recognises that it is important that any new legislation which may be passed is well drafted, and hence is submitting on the Bill in this spirit.
5. ***HDC agrees that legislation promoting economic efficiency and consumer protection is needed as the water services entities are effectively monopolies in their regions.***
6. ***HDC concurs with the proposal to establish a Water Commissioner within the Commerce Commission for the purpose of promoting water services economic efficiency and consumer protection.***
7. However, it believes that the Commission's powers under the Bill extend significantly beyond economic efficiency and consumer protection. Clause 39 sets out the performance requirements which may be included in quality paths and clause 42 sets out those associated with price-quality paths.

The vision of the Commerce Commission is "... *that New Zealanders better off. New Zealanders are better off when markets work well, and consumers and businesses are confident market participants*". Some of the performance requirements are compatible with the vision and usual

role of the Commerce Commission, e.g. reporting requirements, requiring an AMP to be prepared (but not the contents thereof). However, others would result in the Commission making detailed decisions about operational matters, such as requiring providers to make particular types of investment and the ability to prevent water service providers from using ring-fenced funds without prior approval.

It is appreciated that a key goal of the reforms is to ensure strong, viable and cost-effective water infrastructure. However, having the Commission participate in/direct the operation of the water services entity in these areas could potentially reduce its independence and possibly its credibility. An analogy would be having an auditor preparing a company's financial statements and then auditing them. The proper role for an auditor is to issue a report advising the public and the board of concerns, not to prepare financial statements or manage money.

A further matter is that it is unlikely that the Commissioner will have the broad spectrum of expertise, time and/or access to all of the information used by water service entities in making investment decisions. As the entities are not-for-profit organisations, the decision to spend money in one area is likely to mean not spending it somewhere else. Even if supported by a large team with expertise in multiple areas and provided with extensive information, there is no reason to believe that the Commission will be better placed to make investment decisions than the water services entities whose goals are already community focussed.

It is recommended that the list of performance requirements for quality and price-quality regulation be modified to reflect the Commission's usual role in monitoring and oversight and exclude operational matters such as the ability to direct investment into particular areas and the spending of ring-fenced funds.

8. In principle, HDC also supports the proposal to establish quality standards. Quality standards, such as continuity of supply and prompt call out response times are particularly critical in rural areas due to the dependence on stock water. However, ***HDC recommends that there is a clearer delineation of the respective roles of Taumata Arowai and the Commerce Commission in the area of quality only regulation of drinking water.*** It will be important to avoid duplication, or worse, contradictory obligations.
9. Clause 19(1) provides that the Commission must make initial determinations for information no later than 1 July 2027 and for quality regulation no later than the start of the first regulatory period (currently expected to be 1 July 2027, although it may be deferred by up to 2 years by Order in Council). HDC believes that the information collected during the information disclosure phase will be critical for the effective setting of quality standards and the operation of quality regulation. ***Hence it recommends that quality only regulation does not commence until the second regulatory period.***
10. Clause 70 sets out the contents of the Commission's service quality code. While three matters must be specified, the contents of the code will largely be determined by the Commission with regard to the overall goals of consumer protection and quality service (clause 60). It is unclear what these will entail and how these will relate to the quality performance standards and price-quality performance standards referred to in clauses 39 and 42.

It appears that a key difference between service quality codes and quality and price-quality performance standards is that there is a requirement to consult regarding service quality codes. Therefore, for simplicity, to minimise cost, and other reasons, it seems likely that the Commission will use the mechanism of performance standards rather than service quality codes in most instances. At present, it appears that the only matter on which there must be consultation is the penalty rate for unpaid debt (clause 70(c)) – a matter for which consultation would appear to be of limited value.

It is recommended that the contents of service quality codes be more specifically defined and distinguished from quality performance standards/price-quality performance standards.

11. Clause 76 provides for the establishment of a consumer dispute resolution service, which is approved by the Minister. Clause 5 of Schedule 2 outlines the mandatory considerations the Minister must have regard for in approving a service provider. It is essential that the service have a good understanding of the needs and contexts of the diverse range of customers. In the context of this district, the needs of rural customers are significantly different from those of urban customers. ***It is recommended that Schedule 5 Clause 5(1) be supplemented by a clause: “whether the applicants directors and senior managers can demonstrate a strong understanding of the needs of diverse customer groups”.***
12. Clause 78 provides that the consumer may appeal to court against any determination of the consumer dispute resolution service. However, there is no provision for the water services provider to appeal. While it is recognised that the purpose of the legislation is to protect consumers, it is also important that regulatory processes are both just and seen to be just. ***It is recommended that both the consumer and the water service provider may appeal a determination of the consumer dispute resolution service.***
13. The Bill provides for extensive involvement of the Commission in the operation of the water services entities. As territorial authorities are the legal owners of the water services entities, and regional representative groups are responsible for appointing members of the governing boards, it is important that there is strong communication between the Commission and these key stakeholders. This is particularly critical when the Commission is making decisions which affect the operation of the water services entities and resulting services to the community. ***It is recommended that the Bill be amended to provide for reporting by the Commission to regional representative groups including in respect of water service provider compliance with the three regulation regimes provided for in the Bill.***

Hurunui District Council appreciates the opportunity to submit on this Bill and would be grateful for your consideration of the above matters.