OUR RECOMMENDATIONS VS THE SELECT COMMITTEE'S RECOMMENDATIONS

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

On 14 June 2023, the Finance and Expenditure Select Committee reported back on the second and third pieces of legislation concerning water reform. Read their reports on the Water Services Legislation Bill and the Water Services Economic Efficiency and Consumer Protection Bill.

This document compares what we recommended against what the Committee's decision says.

Water Services Legislation Bill

General relationship between councils and WSEs
We wanted to ensure councils would not be treated as 'just another stakeholder' for the water services entities (**WSEs**) to engage with. We asked that the Bill clarify how WSEs will work *with* and support councils, who will continue to play a role in a broader system that services communities. We highlighted that the expectations placed on councils during the reform process need to be managed carefully, taking into account councils' current financial and resource constraints, especially as they work through the planning cycle. Finally, we asked for clear guidance on what the obligation to 'partner and engage' with councils will *actually* require WSEs to do in practice. The Select Committee did not make recommendations that would directly address these concerns. However, relationship agreements are now legally binding (discussed below). We expect these will now have the necessary standing to address some of our concerns around the interaction between councils and WSEs.

What we said	What the draft report says	Yes/No
Section 13: Functions of water services entities We asked the Bill to clarify what 'partnering and engaging' with territorial authorities would require the WSEs to do in practice.	**Not adopted.**	**X**

Alignment of purpose between councils and WSEs

Councils and WSEs will have different goals: councils are required to support and promote community wellbeing, while WSEs will be focused on delivering *efficient* and financially sustainable water services. We were concerned that the difference in purposes could cause tension and misalignment, especially around infrastructure investment decisions. We recommended councils' statutory duties reflected that they would have limited influence over WSEs' decision making. We were particularly concerned about growth planning and urban infrastructure, and proposed that WSEs should *have* to consider councils' growth plans and strategies when planning infrastructure development.

The Committee has recommended the introduction of a new 'development code', designed to ensure WSEs are supporting, enabling and are responsive to planning processes for and growth of additional housing and urban development. As discussed below, relationship agreements will now be binding on WSEs and councils, which we expect can be used to manage councils' concerns around planning alignment.

Councils' political accountability

Councils will still be perceived as having some responsibility for water services, even after the assets and service delivery shift to the WSEs. Councils are required to look out for community interests, and we expect people will assume councils still have major influence over the provision of water services and infrastructure investment (especially while they continue to collect water charges). Given this inevitable political accountability, we suggested councils should have a stronger say on key topics that WSEs must consider, particularly for place-making and master planning. We also proposed empowering councils to challenge decisions made by WSEs that negatively impact councils' ability to execute key elements of their approved Long-Term Plans.

Although the Committee did not make recommendations that would directly address our concerns, we expect the binding relationship agreements (discussed below) will give councils an opportunity to negotiate their own terms of engagement with WSEs, including by setting out the processes for providing input on WSEs' planning documents.

Relationship agreements need more rigour

We proposed standardising some elements of the new 'relationship agreements' to promote a best-practice approach and consistency, and to reduce the need for custom arrangements. We also expressed concern about the legal status of relationship agreements. In particular, we said relationship agreements should have a statutory mandate, giving councils *meaningful* recourse if a WSE fails to meet its commitments. We also recommended the legislation borrowed practices from the Scottish Water model by requiring WSEs to contribute to councils' planning reports and applications, enhancing WSEs' involvement and ensuring the success of local development plans.

We are pleased to see the Committee has highlighted the importance of relationship agreements, and has recommended they have binding effect. Relationship agreements must now also address areas where the parties have shared interests, and will set out how the parties will work together to perform their respective duties and functions.

What we said	What the draft report says	Yes/No
Part 5A: Relationship agreements We wanted relationship agreements to have a clear statutory mandate, giving councils meaningful recourse if a WSE fails to meet its commitments under the agreement.	**Adopted in full.** The Committee recommended relationship agreements be binding on the parties, giving councils legal recourse if a WSE fails to meet its commitments. The agreements must set out how the parties will report on compliance with their obligations under the agreement. The Committee also introduced a dispute resolution process, allowing the parties to informally resolve any dispute under the agreement, and requiring the dispute be referred to arbitration if informal dispute resolution fails.	✓

We recommended that relationship agreements create an expectation of joint stewardship and care for all relevant water systems, for the benefit of local communities. We also recommended relationship agreements require the parties to create synergies, ensuring costs are not duplicated.	**Adopted in part.** Relationship agreements are now required to set out how the parties will engage with each other in relation to *areas where they have shared interests* and in relation to the provision of water services. The agreements must also set out the general principles governing the parties' relationship. We expect these provisions will give councils an opportunity to promote a joint approach to community service.	✓
We suggested the relationship agreements require WSEs to contribute to councils' planning reports and applications, including: • contributing to the writing of 'main issues reports'; • contributing to the writing of any proposed local development plans; • contributing to the writing of any 'action programmes', which support the delivery of local development plans; and • commenting on any outlines and full planning applications referred to by local authorities.	**Adopted in part.** Relationship agreements must now set out how the parties will 'work together in relation to the performance or exercise of any statutory functions, powers and duties (for example, stormwater management, and spatial and land use planning)'. This could include any processes for WSEs contributing to councils' planning reports and applications.	✓
Government Policy Statement potentially adds an unfunded mandate		
The areas of influence that can be addressed in a Government Policy Statement were expanded to include geographically averaged pricing, redressing inequities in servicing Māori, and redressing historic service inequities. We saw this as adding to an unfunded mandate: if central government exercises control through the Government Policy Statement and local priorities are compromised to achieve central government objectives, we submitted that central government (not affected communities) should finance those priorities.		

The Committee has not addressed our concerns, and has recommended further expanding the areas of influence that may be addressed in a Government Policy Statement to include 'overall direction and priorities for charging arrangements for water services'. As such, our concerns will need to be addressed as part of the process to formulate each Government Policy Statement.

What we said	What the draft report says	Yes/No
Section 132: Minister may issue Government Policy Statement on water services As a general point, we submitted that the Government Policy Statement's expanded areas of influence were adding to an already unfunded mandate and submitted that central government (not affected communities) should finance those priorities.	**Not adopted.** We note the Committee has further extended the areas of influence that may be addressed in a Government Policy Statement to include 'overall direction and priorities for charging arrangements for water services'.	**X**

Serious consequences for Council-Controlled Organisations

A range of members told us the asset, liability and staff transition provisions set out in the Bill and Water Services Entities Act (that apply to councils) would have serious implications if they were applied to Council-Controlled Organisations (**CCOs**) which were not exclusively dedicated to water service delivery. We proposed tightening the definition of 'local government organisation' under the Bill to avoid capturing multi-purpose 'ServiceCos' that provide more than just water services. We also argued the definition of 'local government organisation' (and the asset transfer provisions) should not apply to public infrastructure providers like ports and airports. Finally, we recommended changes to the transfer provisions applying to 'mixed-shareholder CCOs' to ensure they were not accidentally treated as wholly-owned CCOs, and to ensure the council shares in mixed-shareholder CCOs were not *automatically* transferred to the WSEs (without the ability to exclude them via an Order in Council).

The Committee directly raised and agreed with our concerns. The Bill will now limit the transfer provisions to CCOs whose *predominant purpose* is providing services that support the delivery of water services by the CCO's parent council. The high threshold for 'predominant purpose' will mean a 'ServiceCo' is only captured if they are substantially focused on providing water services. Citycare is to be expressly excluded from the transfer provisions, and the Minister has additional powers to name and carve out other CCOs, if necessary. Finally, shares in mixed-shareholder CCOs will no longer be subject to automatic transfer.

What we said	What the draft report says	Yes/No
Clause 40A of Schedule 1: Application of certain provisions for this Schedule to council-controlled organisations and subsidiaries We proposed tightening the definition of local government organisation to exclude multi-purpose 'ServiceCos' providing a range of services to councils.	**Adopted in part.** The Committee has restricted the transfer provisions to CCOs whose *predominant purpose* is to provide services that support the delivery of water services by the parent territorial authority. The CCO's 'predominant purpose' assessment is linked to 85% or more of the CCO's revenue being obtained by providing services to its parent territorial authority that support the provision of water services. The Bill also expressly excludes Citycare from the transfer provisions, and gives the Minister powers to expressly exclude other CCOs if necessary.	✓
We submitted that the definition of 'local government organisation' should *not* capture public infrastructure providers like ports and airports.	**Adopted in part.** As noted above, a CCO will now only be subject to the transfer provisions if its 'predominant purpose' is to support the delivery of water services by the parent territorial authority. We expect this will exempt all public infrastructure providers.	✓
Clause 1 of Schedule 1: Interpretation For a CCO to qualify as a 'mixed-shareholder CCO', the council-owned shareholder had to be a 'local government organisation', which by definition was an organisation that provided water services. This excluded council-owned holding companies. Therefore, a CCO would not be treated as a mixed-shareholder CCO if the local government shareholder was a holding company. Instead, the mixed-shareholder CCO would be treated as a standard CCO (and would be subject to the full transfer provisions).	**Not adopted.** A mixed-shareholder CCO is still defined as a council-controlled organisation in which 1 or more of the shareholders is a 'local government organisation', which is still defined as an organisation that provides water services, and therefore excludes pure holding companies. We note the risk has been reduced by excluding 'mixed-service' CCOs from the transfer regime (discussed above). We expect many CCOs who would have 'fallen through' this definition will be excluded from the transfer provisions anyway.	X

Clause 45 of Schedule 1: Exception to clause 43 relating to shares in council-controlled organisations Under clause 45, shares in a 'mixed-shareholder CCO' would have automatically vested in the relevant WSE. Further, that transfer would not be subject to the Governor-General's power to remove assets, liabilities and other matters from automatic transfer.	**Adopted in full.** Shares in a mixed-shareholder CCO must now be specified in an Order in Council made on recommendation of the Minister before they will be transferred to a WSE.	✓
We submitted the definition of 'mixed-shareholder CCO' should be used in clause 45 of Schedule 1.	**Not adopted.**	X

Some rural supplies should be able to opt out

Under the Bill, local government-owned mixed-use rural water supplies would automatically be transferred to the WSEs, with an option to subsequently transfer them to an alternative operator provided a threshold was met. We highlighted that this was different than the approach recommended by the Rural Supplies Working Group, and submitted that communities should be able to 'opt out' of a transfer to the WSE (*before* the rural supply is transferred) provided they satisfy the transfer requirements set out in the Bill.

The Committee did not make recommendations that would address our concerns. However, the Committee has recommended that WSEs share some of the costs associated with a subsequent transfer of a small mixed-use rural supply to an alternative operator, which will reduce some of the burden placed on rural communities when preparing a transfer proposal.

What we said	What the draft report says	Yes/No
Part 8: Transfer of small mixed-use rural water services We recommended that communities using a small mixed-use rural water supply should be able to opt out of the initial asset transfer, provided they satisfy certain requirements under the Bill.	**Not adopted.** The Bill will automatically transfer small mixed-use rural water supplies to the entities. However, WSEs will now share some costs associated with a transfer to an alternative operator (e.g. sharing the costs of carrying out a community referendum).	X

Establishment period – including council planning

Under the Local Government Act (as amended by the Water Services Entities Act), any long-term planning during the 'establishment period' (which is already running and ends on 1 July 2024) must exclude content relating to water services. This includes any amendments to councils' existing Long-Term Plans. We saw this as problematic: councils will remain responsible for water services until (and in some cases after) the establishment date. We submitted that it would remain appropriate for councils to be able to make changes to their Long-Term Plans in relation to those water services, and recommended the reference to 'amendments' was removed.

The Government addressed our concerns by amending the Local Government Act via the Severe Weather Emergency Legislation Act 2023.

What we said	What the draft report says	Yes/No
Clause 27 of Schedule 1AA to the Local Government Act: Long-term planning to exclude water services during establishment period We recommended the reference to 'amendments' in clause 27 was removed, to ensure councils can update their Long-Term Plans in relation to existing water services.	**Adopted in full.** The Government amended clause 27 of Schedule 1AA via the Severe Weather Emergency Legislation Act 2023 to remove the reference to 'amendments' of Long-Term Plans.	✓

Councils should not collect water services charges

We submitted that councils should not collect charges for services they do not provide or control, as it could create confusion about who is actually responsible for the provision of water services (see our comments on political accountability above) and could require significant investment in councils' IT systems and support. If councils must provide billing services, we said they should only be expected to undertake what their current systems can handle (and should be reimbursed if they are required to upgrade those systems or increase the level of support required to provide the service) and should be insulated from any risks if they cannot meet the WSEs' billing or financial accountability expectations. Finally, we recommended councils be able to form 'shared service units' for billing, that WSEs are required to develop a clear billing communication programme for ratepayers, and that the Bill expressly

protects councils from anti-money laundering compliance risk as it relates to water charges. If councils' billing systems, and associated account management and accounting practices were already 'fit for purpose' (for their own rating and billing), then any new investment should be made to the WSEs' systems and capability.

The Committee did not make recommendations that would address our concerns, and councils will still be required to collect charges on behalf of WSEs if required (which seems inevitable). However, councils will now only be required to collect charges until 1 July 2027 (as opposed to 2029).

What we said	What the draft report says	Yes/No
Clause 65A of Schedule 1: Chief executive of water services entity may require local authorities to collect water services charges We submitted that councils should not be required to collect charges on behalf of water services entities.	**Not adopted.** Councils are still required to collect charges on behalf of a WSE if required by a WSE's chief executive. However, councils will now only be required to collect charges until 1 July 2027 (as opposed to 2029).	X
We submitted that the phrase 'the chief executive of a water services entity may *authorise* the local authority…to collect charges' was misleading, as it implied councils would make a request to collect the charges (i.e. that they had a choice).	**Adopted in full.** The Committee has changed the clause to read 'the chief executive of a water services entity may *require* a local authority…to collect charges', which we consider is a more accurate representation of the arrangement.	✓
We also submitted that: • councils should only be required to provide billing services to the standard their systems can handle; • councils should be reimbursed for any required enhancements to their billing systems; • councils should be entitled to favour their own rates if a ratepayer's bill payment (across both normal rates and water services charges) is short; • councils should be able to form a 'shared services unit' for joint billing purposes; and	**Not adopted.** There may still be an opportunity for councils to limit their risk through the charges collection agreements. If WSEs are resistant to councils' requests, councils could seek the support of the Minister to ensure that such agreements address our concerns in a fair and equitable manner.	X

• WSEs should be required to develop and deliver a communications programme to ratepayers, to clarify the billing arrangements.		
We submitted that councils should be exempt from compliance with the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 and should not be required to account for GST.	**Not adopted.**	X

Geographically averaged pricing

The Bill introduced the concept of 'geographic averaging' of water services charges for the same services, allowing WSEs to share costs across communities within a service area in order to help address affordability issues for smaller communities. We asked the Bill to clarify how and when water services charges should be geographically averaged. We also recommended that, at a minimum, WSEs should collaborate with councils and communities when deciding whether to geographically average water services charges, and we suggested the WSEs' regional representative groups (**RRG**) should have to endorse a geographic averaging policy before it can be implemented.

The Committee clarified that a decision to geographically average water charges is not limited by the general charging principles set out in the Bill. While the RRG will not have an ability to 'approve' a decision to geographically average water charges, WSEs' funding and pricing plans (which the RRG, territorial authorities and communities will have input on) are now required to state the *price* of any geographically averaged charges, and the *method* for determining them. Further, the Commerce Commission may not override a decision to geographically average water services charges made by a WSE's board.

What we said	What the draft report says	Yes/No
Clause 334: Charges for water services may be averaged geographically We asked the Bill to clarify how a decision to geographically average water services charges would interact with the water	**Adopted in full.** Nothing in clause 331 (charging principles) will limit the WSEs' power to charge geographically averaged prices for water services.	✓

services charging principles (i.e. whether the principles must be considered before geographically averaged prices can be applied).		
Councils would need an opportunity to assess how geographically averaged pricing may apply to them and their communities, after a WSE had indicated how it would apply geographic averaging in practice. We submitted that geographic averaging policies should be endorsed by the RRG before it could be implemented, especially if the funding and pricing plan would only provide high level guidance.	**Adopted in part.** The RRG will have no 'sign off' over a geographic averaging policy. However, the Committee has clarified the level of detail that would need to be included in the funding and pricing plan. The plan must now state the *price* of the geographically averaged charges, and the *method* for determining them. The funding and pricing plan must be provided to the regional representative group, and the WSE must state how territorial authority/community feedback was incorporated into the plan.	✓

Water infrastructure contributions

We submitted that the new 'water infrastructure contributions' should be subject to the same provisions set out in the Local Government Act that regulate when and how 'development contributions' could be charged. We asked for clarity on how development contributions and water infrastructure contributions would 'interact' after 1 July 2024, and what role councils will play in levying water infrastructure contributions after they grant resource/building consent. Finally, we submitted that the Crown should have to justify its exemption from paying water infrastructure contributions on a case-by-case basis.

The Committee has recommended that key protections applying to development contributions under the Local Government Act should also apply to water infrastructure contributions. Additionally, we are pleased to see Kāinga Ora will no longer be exempt from paying water infrastructure contributions.

What we said	What the draft report says	Yes/No
Part 11: Charging The Bill expanded on the concept of a 'development' by also referring to instances of 'increased commercial demand'.	**Adopted in full.** The Bill has been updated to consistently refer to the phrase 'increased commercial demand'.	✓

However, the Bill failed to use the term 'increased commercial demand' consistently where it referred to 'development' (e.g. in clause 344(1)(a)).		
Clause 348: Crown exempt from paying water infrastructure contributions Crown agencies are often major developers and can exacerbate the demand placed on water infrastructure. If the Crown would be exempt from paying water infrastructure contributions, we said the Crown should have to justify each individual exemption on a case-by-case basis.	**Adopted in part.** Although the Crown remains exempt, that exemption does *not* apply to Kāinga Ora.	✓
Part 11: Charging Development contributions (which effectively mirror water infrastructure contributions) are subject to certain requirements and protections under the Local Government Act. We were concerned these protections had not been carried across to the water infrastructure contributions regime.	**Adopted in full.** We are pleased to see the provisions governing water infrastructure contributions now include the same protective provisions that apply to development contributions under the Local Government Act, including: • providing an ability to object to and ask for a reconsideration of the assessment of water infrastructure contributions being charged; • imposing an assurance that water infrastructure contributions will be consistent with the water infrastructure contributions policy in force at the time the person submitted the relevant application; and • providing an ability to ask for a refund of water infrastructure contribution charges in certain circumstances.	✓

Combined cost to ratepayers

The reform proposal assumed the combined costs of water bills and rates bills would not change when the WSEs were stood up. We were not sure this was correct and highlighted there may be a point of 'material adjustment' where rates are increased to address any historic under-rating or cross-subsidising of different services within councils. It was also unclear how the Department of Internal Affairs planned to address situations where council rates did not drop by an amount equal to the new water charges (especially if there is disagreement as to what portion of the previous rates related to three waters service delivery).

The Committee did not make recommendations that would address our concerns.

Appointing receivers

If a receiver was appointed in respect of a security granted by a WSE over its charging revenue, the Bill empowered the receiver to assess and collect a charge from ratepayers to meet the WSE's commitment for that loan. We were concerned that ratepayers would be a 'backstop' for financing decisions made by a WSE without having any meaningful say in those financing decisions, especially considering that the WSE has wide decision making powers around the quantum and terms of its borrowing and associated financial arrangements. We also said the amount a receiver could charge should be limited, asked why the receiver's charge would be calculated on the rateable value of a property, and highlighted changes that needed to be made to the Receiverships Act to contemplate the water services reform.

The Committee updated the Receiverships Act to contemplate the appointment of receivers to the WSEs, and introduced additional limits on charges assessed by a receiver. Charges assessed by a receiver will now be assessed 'on the water services charges of a property' (as opposed to the rateable value of the property). We note that a receiver may now assess the charge on a select group of properties if the relevant WSE raised the loan in order to benefit that group.

What we said	What the draft report says	Yes/No
Receiverships Act 1993	**Adopted in full.**	✓

We recommend amending the Receiverships Act to contemplate the appointment of receivers to the WSEs.	The Committee recommended amending sections 40A – 40E and Schedule 1 of the Receiverships Act to extend the application of the Act to WSEs, rather than just local authorities.	
Receiverships Act 1993 We asked the Bill to clarify why the receiver's charge would be calculated on the rateable value of a property.	**Adopted in part.** A charge assessed by a receiver will now be assessed 'on the water services charges of a property'.	✓

Rating WSEs' assets

If the WSEs would deal with councils at 'arms-length' and treat them like 'just another stakeholder' (including to achieve balance sheet separation), we submitted that they should not be exempt from paying rates where their assets run under, through or on land they do not own (similar to the approach taken with other public utilities). However, if the relationship was intended to be a partnership for community benefit, we noted it would be more appropriate to exempt the WSEs from paying rates.

The WSEs remain exempt from paying rates where their assets run through, or sit on, land that they do not own. However, we note the Committee has recommended that WSEs are not generally exempt from paying rates under the Local Government (Rating) Act by deleting clause 137 of the Bill.

What we said	What the draft report says	Yes/No
Clause 342: Water services entity not liable for rates in certain cases If councils and WSEs would engage with each other at 'arm's length' (similar to existing utility providers), we submitted they should be liable to pay rates on assets that run through or sit on land they do not own.	**Not adopted.** However, we note clause 137 of the Bill has been removed, which (although incorrectly referenced) was intended to amend the Local Government (Rating) Act to exempt WSEs from paying rates on land *that they do own* (which will include any land transferred to them by a council on the transfer date).	X

Stormwater remains problematic

We re-emphasised the points made in our submission to the Water Services Entities Act regarding the phased transition of stormwater assets, highlighting the significant complexity in transferring urban stormwater networks to the WSEs while the transport stormwater system and mixed-use assets remain with councils. We asked the Bill to clarify how councils and WSEs would be required to work together to develop stormwater management plans, and how councils will pay the stormwater services charge imposed by WSEs if councils cannot rate or charge for water services themselves.

The Committee recommended a consolidation of stormwater management plans, stormwater network rules, and stormwater risk management plans into a single 'stormwater management strategy'. Councils are still required to provide input on stormwater management strategies, but we now expect the binding relationship agreements will become a tool through which councils and WSEs will establish how they propose to collaborate on these planning documents. Stormwater management strategies are also required to clearly identify the roles and responsibilities of different actors in the wider stormwater system, which we expect will provide additional clarity and promote alignment. We are pleased to see that the Committee has recommended deletion of the right for WSEs to charge councils for stormwater services (as was proposed by clause 63 of Schedule 1).

What we said	What the draft report says	Yes/No
Part 9, Subpart 2: Stormwater provisions If councils and WSEs would share stewardship of the wider stormwater system, we wanted relationship agreements to have sufficient legal standing to manage the relationship between the two stormwater operators.	**Adopted in full.** As noted above, relationship agreements will be binding between the parties. Stormwater management plans (which now exist under 'stormwater management strategies') must now identify the roles and responsibilities of actors managing stormwater networks in a WSE's service area (e.g. local authorities, transport corridor managers and private stormwater operators), which will provide additional clarity.	✓
Clause 253: Stormwater management plans Councils would be required to work with WSEs to develop stormwater management plans. We submitted that it was unclear how the parties would work together on these plans in practice	**Adopted in part.** Councils must now work with the WSEs to develop the wider 'stormwater management strategy'. The nature and level of input and influence a	✓

(i.e. what the process would involve), and noted it needed to be carefully managed.	council has is a matter that can be addressed in the relationship agreement.	
Clause 63 of Schedule 1: Charges for stormwater services A WSE could charge a *council* for stormwater services between 1 July 2024 and 1 July 2027 if the WSE is not charging users of the stormwater system directly. We submitted it was unclear how a council could pay for those services if they were not allowed to rate or charge of water services themselves.	**Adopted in full.** We are pleased to see the Committee has repealed clause 63 of Schedule 1. A WSE will no longer be able to charge a council directly for stormwater services.	✓

Interface with councils' roles and functions

WSEs were given the power to construct or place water infrastructure on or under land owned by councils with just a 15-day notice period. We questioned whether this would be compatible with council processes and planning, and whether a 15-day notice period is sufficient warning for councils. We also submitted that councils should be protected from any risk associated with complying with a WSE's request to share rating information, and that councils' obligation to share the information should be subject to the capacity constraints of their existing systems.

The Committee did not make recommendations that would address our concerns.

What we said	What the draft report says	Yes/No
Section 201: Notice required before carrying out work on, over, or under land We questioned whether the 15-day notice period required before a WSE could carry out works on council land would be sufficient for councils, and whether it would align with council planning and processes.	**Not adopted.** However, relationship agreements provide councils with an ability to regulate the process for engaging with a WSE that is wanting to carry out works (to ensure the engagement is conducted in a way that is consistent with council planning and processes).	X

Clause 319: Rating information needed by a water services entity If a council must provide rating information to a WSE on request, we submitted the council should be protected from any legal risk in complying with that request. We also suggested that councils' obligation to share rating information should take into account the capabilities of their existing systems.	**Not adopted.**	**X**
Councils' three waters debt		
We asked for clarity around how councils' debt (both external *and* internal) attributable to water services would be quantified. In particular, we highlighted that councils would have no recourse to the Minister if they disagreed with the Department of Internal Affairs' assessment of a council's total debt attributable to water services. We also questioned why the Bill anticipated that some councils could hold their existing debt for up to five years following the transfer. The Committee did not make recommendations that would address our concerns.		
WSE financial reporting		
We asked whether the Local Government (Financial Reporting and Prudence) Regulations 2014 should also be applied to the WSEs. The Committee did not adopt our suggestion.		
Local Government (Financial Report and Prudence) Regulations 2014 We asked whether the Local Government (Financial Reporting and Prudence) Regulations 2014 should also be applied to the WSEs.	**Not adopted.**	**X**

WSE subsidiaries

Our members were surprised by the new provisions allowing for the establishment of WSE subsidiaries, and we were concerned this would create a new level of separation from RRG oversight and democratic accountability. We highlighted that the phrases 'listed subsidiary', 'subsidiary of a subsidiary' and 'operating for profit' seemed out of place with the policy settings originally promoted by the Government. We submitted that the decision to establish a subsidiary should be regulated by the WSE's constitution and be subject to RRG approval. We also noted the provision allowing several WSEs to establish a joint subsidiary and guarantee the debts of that subsidiary, potentially making a community liable for the financial decisions made by (and adverse impacts arising for) another WSE.

The Committee did not make recommendations that would directly address our concerns, but noted they did not believe the introduction of subsidiaries will limit the public accountability of the WSEs. However, the Committee has recommended that subsidiaries should be subject to the same engagement provisions applying to WSEs, which we expect will introduce some transparency.

What we said	What the draft report says	Yes/No
Schedule 5: Subsidiaries We submitted that any decision to establish a subsidiary should be subject to approval by the RRG, and should be regulated by the parent WSE's constitution.	**Not adopted.**	X
Schedule 5: Subsidiaries In general, we were concerned that the use of subsidiaries would create a new level of separation from RRG oversight and democratic accountability.	**Adopted in part.** Although the establishment of subsidiaries is not subject to RRG approval (unless that requirement is subsequently incorporated into the parent WSE's constitution), subsidiaries must now comply with the engagement provisions set out under section 461 and 462 if they are performing a function of a water services entity that requires engagement under the Bill.	✓

Legal claims and liability		
We asked the Bill to clarify who would wear the ultimate 'legal liability' when things go wrong, including whether WSEs would be liable if the water they control damages council assets, whether landowners could bring judicial review proceedings against WSEs in certain contexts, and whether councils would remain liable for past breaches and failures relating to water infrastructure. The Committee did not make recommendations that would directly address our concerns.		
General comments		
We asked for separate guidance highlighting changes from the current Local Government Act to assist councils understanding of the reform's impact, and wanted to ensure the Department of Internal Affairs would clarify when they were 'engaging' with councils for the purpose of the Department's engagement obligations under the Bill.		
Public Works Act If any land was transferred to a WSE which subsequently became 'surplus', we wanted that land to be returned to councils for community repurposing or sale.	**Not adopted.**	X
Mana whenua arrangements We also proposed a tripartite agreement structure between councils, mana whenua and WSEs to ensure mana whenua had the capacity to engage with both groups.	**Adopted in part.** It is possible for the WSE to enter into legally binding relationship agreements with mana whenua.	✓
Councils as road controlling authorities As a general principle, we submitted that councils and WSEs should collaborate to reduce costs where either party has to	**Adopted in part.**	✓

undertake activities that affect (or interfere with) the other's assets.	We expect the now legally binding relationship agreements could provide for the parties shared intention to reduce costs and collaborate where possible.	

Water Services Economic Efficiency and Consumer Protection Bill (Economic Regulation Bill)

Summary of points		
What we said	**What the draft report says**	**Yes/No**
The problem definition is problematic We submitted that the Economic Regulation Bill's (**ERB**) purpose of limiting the WSEs' ability to 'extract excessive profits' was misleading, unnecessary and inflammatory.	**Not adopted.** The Committee considered there was still a risk that WSEs would look to extract 'excessive profits' in the form of retained earnings.	**X**
What type of regulation should apply when? We submitted that information disclosure should be applied from the first regulatory period, with quality-only regulation coming into effect from the second regulatory period. We said price-quality regulation should only come into effect upon further decision by the Minister. We considered this strategy would achieve the Government's policy objectives and ensure efficient management of water assets for the benefit of consumers.	**Not adopted.** While information disclosure remains as a form of regulation, the Committee said information disclosure would not be enough to derive price stability and cost efficiency.	**X**

Why information disclosure should be prioritised We submitted that information disclosure regulation would fulfil most of the Government's desired regulatory outcomes by increasing transparency, accountability, and efficiency. Using information disclosure in the first regulatory period would avoid creating medium/long term regulatory risk for WSEs. We also submitted that the Government should give the Commerce Commission a clear and focused direction on the problem definition, to prevent information disclosure obligations that may extend beyond what would be required to achieve the key policy outcomes or be overly prescriptive. Finally, we noted that any information disclosure obligations should not duplicate existing transparency/information provision obligations already imposed on WSEs in the WSEA (as to be amended by the Water Services Legislation Bill).	**Not adopted.** While information disclosure remains as a form of regulation, the Committee said information disclosure would not be enough to derive price stability and cost efficiency.	**X**
Quality regulation should not be applied in the first regulatory period We submitted against introducing quality regulation in the first regulatory period, and instead submitted it should be deferred until the second regulatory period by default. We thought the first regulatory period should focus on collecting data to better inform future quality regulation. We were also concerned that the ERB allowed the Commerce Commission to directly control the WSEs' asset management, which we believe the Commission is not equipped for.	**Not adopted.** Deferring quality regulation remains subject to an Order in Council. The Committee did not make recommendations that would directly address our concerns around giving the Commerce Commission an ability to directly control WSEs' asset management.	**X**
Price-quality regulation should also be put off We submitted that price-quality regulation should also be deferred, and should be subject to Ministerial approval before it is	**Not adopted.** Deferring price-quality regulation remains subject to an Order in Council.	**X**

implemented (rather than being automatically introduced). We stressed it is a complex, costly and potentially premature form of regulation to be introducing just three years into the new regime, which will be barely out of its establishment/transition phase. We also highlighted that price-quality regulation creates cost for both the Commission and suppliers, which ultimately falls on consumers. We said a cost benefit analysis should be conducted before price-quality regulation is implemented.		
Debt capacity and financial concerns We were concerned about how economic regulation (i.e. regulatory risk) might impact the WSEs' short and medium-term debt capacity and pricing. If the WSEs could not fund their mandatory support commitments to councils, we said the Crown should fund an interim solution. We also submitted that the Crown should provide additional financial support to ensure WSEs are placed in the financial position that the initial modelling assumed the entities would be in to start delivering the intended benefits of the reform.	**Not adopted.** Our concerns were not directly addressed by the Committee's recommendations.	**X**
Te Mana o te Wai and Te Tiriti obligations We highlighted that it was unclear how the Commission would account for the WSEs' obligations in respect to Te Tiriti, Te Mana o te Wai statements, and Treaty settlements. In particular, it was unclear how these aspects would be reconciled with the Commission's existing 'economic/input data-based' approach (and developed skill base) for regulating other utilities. We suggested the Commerce Commission should have regard to Taumata Arowai's position on these matters.	**Not adopted.** Our concerns were not directly addressed by the Committee's recommendations.	**X**