
Water Services Economic Efficiency and Consumer Protection Bill

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Water Services Economic Efficiency and Consumer Protection Bill 2022

1 Introduction

- 1.1 The New Zealand Law Society Te Kāhui Ture o Aotearoa (**Law Society**) welcomes the opportunity to comment on the Water Services Economic Efficiency and Consumer Protection Bill (**Bill**).
- 1.2 The Bill forms part of the Three Waters Reform Programme. It establishes an economic regulation and consumer protection regime for the three waters sector, and empowers the Commerce Commission to act as regulator.
- 1.3 This submission has been prepared with input from the Law Society's Public and Administrative Law Committee.¹ The submission identifies one drafting issue, and two procedural issues relating to the dispute resolution processes in the Bill, and makes suggestions to improve the practical workability of those processes.
- 1.4 The Law Society does not wish to be heard.

2 Consumer dispute resolution service

- 2.1 Subpart 3 of the Bill provides for a consumer complaints process, with a consumer dispute resolution service. Determinations made by the consumer dispute resolution service are binding on the service provider and the consumer.
- 2.2 Clause 78 allows a consumer to appeal to the "court" against a determination. Three issues arise from this clause.

Definition of "court"

- 2.3 It is not clear which court will hear the appeals. The word "court" is not defined, and clauses 122 and 123, which provide for the jurisdiction of the District and High Courts, do not clearly grant jurisdiction in relation to the appeals process. Both clauses grant jurisdiction to hear "applications ... for a court to exercise any other power ... under the provisions of **this part**" (emphasis added), which relates to Part 4 (whereas clause 79 is in Part 3).
- 2.4 The Law Society proposes that a definition of "court" is added to clause 61, which contains the definitions for the purposes of Part 3.

Time to file appeal

- 2.5 Clause 79 gives a consumer only 5 working days to file an appeal. This is a very short period of time, especially given the scheme is intended for consumers who may not be represented, may have limited resources, and therefore little ability to file an appeal quickly.
- 2.6 The Law Society proposes that consumers are granted 20 working days to file an appeal. That would be in line with standard appeal time frames, would not unduly slow the process, and would reflect the purpose of the scheme and its intended users.

¹ More information about this Committee can be found on the Law Society's website: <https://www.lawsociety.org.nz/branches-sections-and-groups/law-reform-committees/public-and-administrative-law-committee/>.

Rights of appeal

- 2.7 Clause 79(1)(b) provides that the service provider is “not entitled to be represented at the hearing of the appeal”. It is not clear whether the prohibition is on the service provider appearing at all (which, as a corporate person, it would have to do through a representative) or on its obtaining legal representation.
- 2.8 If the former, this appears to be a denial of natural justice. There is some recourse for service providers, who are able to challenge a determination to the “court” on the basis that it is “manifestly unreasonable”.² However, given the high threshold for a challenge, that provision does not appear to fully address the natural justice issues described above.
- 2.9 The Law Society considers that the prohibition might encourage service providers to bring judicial review proceedings in some cases, which would undermine the appeal process. Therefore, we invite the select committee to consider whether the drafting of clause 79(1)(b) could be improved to preserve natural justice and ensure procedural fairness.
- 2.10 If the intention is to prohibit a service provider from obtaining legal representation, we recommend modelling clause 79(1)(b) on section 38 of the Disputes Tribunal Act 1988, which clearly provides that a party cannot be represented at a hearing by a representative.



Caroline Silk
Vice-President

² Clause 80(3).