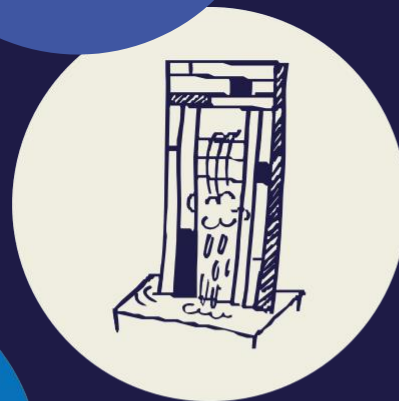


HAMILTON CITY COUNCIL SUBMISSION

Water Services Economic Efficiency and Consumer Protection Bill

The Finance and Expenditure Select Committee



17 February 2023



**Hamilton
City Council**
Te kaunihera o Kirikiriroa

Improving the wellbeing of Hamiltonians

Hamilton City Council is the territorial authority providing for the wellbeing of 180,000 residents in New Zealand's fourth-largest city. Kirikiriroa-Hamilton is unique in its youthful population, highly diverse society and highly qualified workforce. With a strong research and education sector, Council are one of New Zealand's fastest-growing cities and home to around 40,000 tertiary students.

Our city has the environment at its heart. Kirikiriroa-Hamilton has more than 1,000 hectares of open space and is built on our connection to the Waikato awa, which runs for 16km through the city. Maaori comprise around 20 percent of Hamilton's residents and around 40 percent of those identifying as Maaori are from hapuu with close ties to the Hamilton area. Hamilton has one of the fastest growing urban Maaori populations.

The Waikato-Tainui Te Kauhanganui Incorporated is the principal constitutional and legally mandated local iwi authority, encompassing some 33 hapuu and 67 marae across several local authority boundaries.

Waikato-Tainui takes on the wider governance focus for its people, its tribal culture, education, and social responsibility. Council and Waikato-Tainui work together to give effect to Te Ture Whaimana o Te Awa o Waikato – the Strategy and Vision for the Waikato River.

Economically, Hamilton is one of the key drivers of the Waikato's economic success. Its proximity to two main seaports (Auckland and Tauranga), two international airports (Auckland and Hamilton), rail connections and distribution networks, south Auckland industrial base and state highways provide significant opportunities for trade.

Under the Local Government Act 2002, Hamilton City Council must fulfil its purpose to enable democratic local decision-making and action by, and on behalf of, communities; and to promote the social, economic, environmental, and cultural wellbeing of communities in the present and for the future.

It is the lawful provider of water services to its community and will remain so until 30 June 2024 after which Hamilton City Council becomes an owner and customer of Water Services Entity B.

It is in this context that Council provides its submission to Select Committee on the Water Services Economic Efficiency and Consumer Protection Bill.

Council approval and reference

This submission was approved by the process resolved by Hamilton City Council at its meeting held on 16 February 2023.

Hamilton City Council Reference D-4597788- Submission # 721

Key Messages

Overview

1. Hamilton City Council supports economic and consumer protection regulation as beneficial to the community.
2. Price/Quality and Information Disclosure regulation is essential to validate the outcomes as presented in the Water Industry Commission of Scotland (WICS) analysis and the Water Services Entities Objectives (section 12 of the Water Services Entities Act).

Regulation

3. Regulation must take a holistic view of the cultural, social, economic and financial wellbeing of our community.
4. Waters is not a commodity, it brings life to our people for food, for housing, for businesses and for recreation.
5. Regulation must find a balance across the well-beings, not seen before in consumer and community regulation and protection.
6. With multiple regulators responsible for the wellbeing of water there must be a high level of integration across all these organisations.

Community and Consumer Protection

7. The wellbeing of the water and the quality and reliability of waters infrastructure is paramount to community well-being and the regulators.
8. The regulator must:
 - a) firstly, drive good outcomes, and
 - b) then ensure efficiency of spending, and
 - c) then ensure appropriateness of pricing across the entity rohe and across different classes of community and consumers, and
 - d) finally ensure transparency, accountability and rights of justice to the community and consumers.

Coordination with other legislation and regulation

9. The Committee must ensure that changes to the Water Services Legislation Bill are reflected in this Economic Efficient and Consumer Protection Bill. For example, alignment of definitions, including the definition of stormwater managed by the Water Services Entities.
10. The Committee must ensure the role of the economic efficiency and regulatory body fits with the matrix of other regulators (Taumata Arowai, Ministry of Health, environmental regulators and land use regulators.)

Introduction

11. Whichever governance structure the Government chooses, economic and consumer protection regulation is beneficial to the community – provided it is linked to and has balance across the four well-beings. The regulator should ensure consumers and communities receive efficient and affordable three waters services that meet their needs both now and into the future.
12. This submission is in response to the Water Services Economic Efficiency and Consumer Protection Bill (the Bill).
13. An economic regulator, with the ability to require water service providers to disclose information,

directly regulate the price and quality of services, and set a strong efficiency challenge for regulated businesses, would be beneficial to Hamiltonians.

14. The regulator would enhance the wellbeing of Hamiltonians through new and additional protections for consumers, potentially including specific protections for vulnerable consumers and the establishment of a dispute's resolution scheme.
15. Delivering these benefits does not, in itself, require aggregation of councils as laid out in the Government's Three Waters reform programme. An economic regulator is independent of the delivery system and could address price/quality concerns regardless of delivery structures, similar to the benefits derived by the establishment of Taumata Arowai as a dedicated water services regulator (taking over from the Ministry of Health).
16. However, the economic regulator could provide a layer of surety to the proposed entity model. It will address the natural monopoly characteristics of waters management and delivery and protect the beneficial reform outcomes identified in analysis by the Water Industry Commission of Scotland (WICS).
17. Hamilton City Council endorses the creation of an economic regulator for Three Waters Services, noting a regulator could provide consumer protection, security of investment, and a service guarantee for the residents of Hamilton.
18. Hamilton City Council notes economic regulatory systems are traditionally focussed on commercial and financial imperatives. This Bill is biased to these imperatives and is aggravated by simple cut and paste clauses from other industries operating with a profit motive.
19. Water is different. It should not be viewed as an asset to leverage profit but as an entity within itself and any regulatory framework must prioritise the health well-being of the water first. The regulator must include statutory provision for Te Mana o Te Wai, recognising the hierarchy of protecting the water to then enable the health needs of our people and subsequently our cultural, social, economic, and financial well-being.
20. To deliver these benefits, regulation must find a balance not seen before in consumer and community regulation and protection. The regulator must also provide transparency and accountability to the public and align with new and existing water services legislation and regulatory or oversight organisations.
21. Hamilton City Council makes the following submission in support of enhancing the wellbeing of our community through a bespoke regulatory system.

Overview

22. The well-being of the water and the quality and reliability of water infrastructure is paramount to community well-being and the outcomes from the regulation.
23. The regulator must:
 - a) firstly, drive good outcomes, and
 - b) then ensure efficiency of spending in the context of the water services entities statutory objectives, and
 - c) then ensure appropriateness of pricing across the entity rohe and across different groups of community and consumers, and
 - d) finally ensure transparency, accountability and rights of justice to the community and consumers.
24. Hamilton City Council broadly supports the provisions in the bill for economic and consumer protection regulation, the role of the Commerce Commission and the staged implementation of

the regulatory mechanisms.

25. The regulatory framework should apply to whatever governance structure the Government chooses to implement for Three Waters services.
26. As water consumers will ultimately fund the regime, it is important that the costs of regulation do not outweigh the benefits to consumers.
27. Council submits that a limited number of refinements to the legislation will improve the effectiveness and implementation of the regulation. These include:
 - a) the Commerce Commission must monitor and analyse water service entity performance in the context of their statutory objectives. This should not be optional as this is inconsistent with the overarching purpose of economic and consumer protection regulation
 - b) the proposed scope of quality regulation must be reduced as it is poorly targeted and overlaps with other regulatory mechanisms
 - c) consumer protection regulation should not seek to continuously improve service quality above consumer requirements, which may lead to affordability or finance-ability issues
 - d) the legislation should include further guidance for stakeholders on the purpose, function and form of the service code, consistent with the level of guidance provided for the other regulatory mechanisms
 - e) information disclosure and quality regulation should be assigned the same rights of appeal as proposed for price-quality regulation.

Analysis of the Bill

28. Hamilton City Council supports the overarching framework for economic efficiency and consumer protection regulation which is presented in the Bill, and the decision to enact industry specific legislation for this purpose.
29. As previously submitted, regulation is essential to achieving the objectives of the proposed industry reform to assist water service providers to support the environmental, cultural, social, economic and financial wellbeing of New Zealanders.
30. In this submission Council outlines where Council supports the proposed regulatory provisions, and also highlight specific areas which Council do not support, and our proposed amendments or refinements.
31. The remainder of this submission addresses each Part of the Bill in turn.

Part 1 – Preliminary provisions

32. Section 3 sets out the purpose of the legislation, which is to implement economic efficiency and consumer protection regulation and the duties of the Commerce Commission (Commission) to implement and administer the regulation and monitor water services provision.
33. In this respect Council supports the scope of the regulation and that the purpose of each form of regulation is to be specified in the legislation.
34. In general, Council supports the functions of the Commission as set out in Section 4 and note that the Commission will need to develop its knowledge of Three Waters in order to effectively meet its new regulatory mandate. It is important that the roles of Taumata Arowai and other regulators with the Commission are clearly defined and complementary, as addressed in Section 4(3). While in general support, Council also notes that the commission could have a role to play in ensuring that environmental outcomes (including those related to climate change), and health

and safety could be captured.

35. Council supports the Section 5 requirements for the Commission to give effect to the purpose statements for economic and consumer protection regulation and to take into account the obligations of Water Service Entities under the Treaty of Waitangi, Te Mana o te Wai, and to mitigate the effects of climate change and natural hazards.
36. Section 7 includes definitions of key terms. Council is seeking amendments and additions to definitions in the Water Services Legislation Bill that will need aligning with this Bill. We have not repeated those recommendations here but they should be applied in this Bill in order to have consistency. The following points are in addition to Council's submission on definitions in the Legislation Bill.
37. The Bill has definition of 'Green stormwater infrastructure' which is not defined in either the Water Services Entities Act nor as an amendment to that act in the Water Services Legislation Bill. Council recommends there is one common definition of this term.
38. Council has made submission points to the Water Services Legislation Bill on the lack of clarity on stormwater provisions relating to roles and responsibilities. For a service code to properly function, there needs to be clarity. Council recommends that this clarity is provided and where necessary, the definition of 'stormwater infrastructure services' is revised to account for that clarity.
39. Council considers there would be more clarity if the definition of 'water services entity' was amended to: 'water services entity means a water services infrastructure provider (whether or not it is a regulated water services provider or a designated water service entity). Alternatively- it could reference the definition in the Water Services Entity Act, which then references clause 10 of that Act. This would avoid any confusion with what others may perceive as a water service provider.

Summary of key submission points – Part 1

Hamilton City Council:

- **supports the scope of regulation, and the functions and obligations of the Commission in this respect**
- **notes the regulatory framework should apply to whatever governance structure the Government chooses to implement for Three Waters**
- **requires the regulation connects with and supports the water services entities statutory objectives**
- **note that the Commission will need to develop its knowledge of Three Waters to meet its legislated mandate**
- **seeks consistency of definitions with the Water Services Entities Act and Waters Services Legislation Bill.**

Part 2 - Price and quality regulation

40. The Section 12 purpose of economic regulation is the same as the purpose statement applied to other regulated utility services in New Zealand. While Council understands that consistency across regulatory regimes may help achieve contestable market outcomes, such as certainty for investment, Council continues to support tailoring the purpose statement for Three Waters to better reflect outcomes which are more appropriate for this sector. As Council submitted in our response to MBIE's Discussion Paper on regulatory options, Council submits that the purpose statement should focus on supporting the water services entities Objectives by:

- a) meeting appropriate service levels and demand for water services in the context of the water services entities objectives
 - b) supporting prudent and efficient expenditure
 - c) affordability
 - d) finance-ability.
 - e) Finding the appropriate balance across community wellbeings.
41. Subpart 2 prescribes a staged approach to the implementation of economic regulation, with the potential for accelerated implementation of price-quality regulation for the Auckland and Northland areas. Council supports implementation of information disclosure regulation before quality and price-quality regulation.
 42. Council supports the proposal for a three-year term for the first regulatory period, during which information disclosure regulation will apply, with price-quality regulation to apply from the second regulatory period. From the second regulatory period the maximum term is six years. Council supports some discretion for the terms of future regulatory periods at this early stage of the regulatory regime. Council also support longer terms which are more consistent with the purpose statement and to manage regulatory costs.
 43. Council notes that the proposed implementation date of 1 July 2027 provides the Commission with at least three years to establish the regulatory regime. There are provisions for deferral, but it will be critical for the regulation to be implemented as quickly as possible to ensure that there is appropriate oversight and regulatory guidance for water service entities. Obtaining consistent information through information disclosure is critical to the future development of regulation and the benefits to consumers this is expected to deliver.
 44. In addition, the Commission will be able to use the input methodology and information disclosure precedents that it has determined for other sectors to help with the initial development tasks to be achieved before implementation date. For this reason, Council does not support deferral of the first regulatory period beyond 1 July 2027 for the purpose of accommodating the Commission's work programme.
 45. Council is cautious about accelerating implementation for the northern-based entities because there is a risk that the approach adopted sets a precedent which may not be appropriate for other entities, and which may be heavily influenced by the northern-based entities. Our preference is therefore that price-quality regulation is implemented concurrently across the major water service entities providing the regulated service. This should apply whatever governance structure is determined for Three Waters.
 46. Subpart 3 sets out the provisions for input methodologies. Council supports the purpose of the input methodologies which is to assist with regulatory certainty, and the scope of the input methodologies which may be determined for each form of regulation. Council supports consideration of whether input methodologies are required for quality regulation as per Section 25.
 47. Subpart 4 includes the provisions for information disclosure regulation. Council supports the purpose of information disclosure and the requirement for the Commission to publish summary and analysis of information disclosure information as per Section 33.
 48. Council submits that clause 33(2)(a) should be altered to require the Commission to monitor and analyse information disclosure information, because this is more consistent with Part 1, Section 4 which requires the Commission to monitor the outcomes in regulated markets against the purpose of regulation. Council do not consider it is appropriate for the Commission to choose not to monitor and analyse information disclosure information. The purpose of the information disclosure information is to support assessment of regulated service outcomes.

49. Council supports the potential scope of information disclosure information as specified in Section 34, and in particular the inclusion of efficiency improvements, pricing, asset management plans and financing arrangements. Council agrees that commercially sensitive information should not be made publicly available.
50. Subpart 5 includes the provisions for quality regulation. Quality regulation may be introduced prior to price-quality regulation, to supplement information disclosure regulation. Quality regulation is to be in the form of minimum quality standards and may include incentives and performance requirements, with options listed in Section 39(3).
51. Council does not support the range of measures included in this clause because:
- a) a number of these measures are better suited to information disclosure regulation
 - b) some of the proposed measures are not consistent with quality and performance standards because they reflect processes not outcomes. Therefore, they are not consistent with Section 39(6) which indicates the intent that quality standards reflect outcomes specified as targets, bands, formulas, or timetables for responsiveness to consumers
 - c) there is potential for the Commission's regulatory reach to extend into the routine management decisions of the water services entity, which is inconsistent with good regulatory practice.
52. Accordingly, Council submits that Section 39 is amended to remove requirements relating to reporting, risk management, types of investment, provision of information, asset management policies and practices, ring fencing revenue for investment, and pre-approval of investment. These matters are more appropriately addressed in information disclosure regulation, the Commission's review of Funding and Pricing Plans (FFPs) and the service code.
53. In addition, there is potential for conflict between quality and price-quality regulation of quality and there is no requirement in the legislation to align them and ensure that only one form of quality regulation applies to a water service entity and regulated service within a regulatory period. This is an omission which needs to be rectified.
54. Subpart 6 includes the requirements for price-quality regulation. Like our comments above, Council does not support quality regulation which focuses on processes not outcomes, or which extends into the routine management decisions of a water services entity. Therefore, our comments above on the scope of quality regulation also apply to Section 42(3)(b) in respect of price-quality regulation.
55. Council supports the provisions in Subpart 6 for a revenue or price cap, with wash-ups and smoothing to address finance-ability or consumer price impacts. Council note that these provisions are consistent with the revenue cap arrangements for the Part 4 regulation of the energy networks in the Commerce Act.
56. Subpart 7 allows for the Commission and/or the Minister to review the form of regulation applying to each water service, and whether certain services or geographies may become unregulated. This must be in the long-term interests of consumers. Council supports this provision.
57. There is to be a specific requirement for the Commission to review the Funding and Pricing Plans of water service entities, as per Subpart 8. This is to be with reference to any legislated charging principles.
58. The Commission may direct water service entities to reconsider their Funding and Pricing Plans where they are inconsistent with the charging principles. Water service entities must comply with any such direction from the Commission.
59. The Bill must ensure that potential subsidiaries are also subject to this regulation.

60. Council supports independent assessment of the consistency between legislated charging principles and Funding and Pricing Plans. Council agrees that the Commission should undertake this independent assessment because it complements the Commission's regulatory mandate and will leverage the knowledge of water service entities which the Commission establishes under the regulatory framework.

Summary of key submission points – Part 2

- **Hamilton City Council submits that the Section 12 purpose of economic regulation should focus on promoting prudent and efficient expenditure, meeting appropriate service levels and demand for water services including sustainability of water resources for communities, affordability and finance-ability.**
- **Council supports the phased implementation of information disclosure and quality regulation followed by price-quality regulation.**
- **Council does not support accelerated implementation of price-quality regulation for the northern based entities, as the design of price-quality regulation may be unduly influenced by the characteristics of one region.**
- **Council supports an implementation date of 1 July 2027, but does not support deferral of the implementation date to accommodate the Commission's work programme, given the precedents available to them.**
- **Council supports the purpose of each form of regulation. But Council submits that the Commission must be required to monitor and analyse water service entity performance as part of its role in information disclosure regulation.**
- **Council does not support the proposed scope of quality regulation which reflects business processes not outcomes. Processes are not well suited to regulated standards, and there is a risk that regulatory oversight will reach into routine management decisions. As drafted, the scope of quality regulation unnecessarily duplicates information disclosure, FPP and service code provisions.**
- **Only one form of quality regulation should apply to a regulated water service entity and regulated service within a regulated period.**
- **Council supports the Commission providing independent review of the FPPs of water service entities, which will leverage the Commission's knowledge of the entities, their plans and performance.**

Part 3 – Consumer protection

61. Section 60 sets out the overarching purpose of the consumer protection regulation which is to provide for consumer protection and improvements in the quality of service provided to consumers.
62. Council supports the inclusion of a purpose statement, and for the purpose statement to include both consumer protection and quality of service objectives.
63. However, Council, Council does not believe the purpose of this regulation should be to seek continual improvements in quality of service, as this may result in service levels which exceed consumer demands, are not affordable for consumers, or finance-able for water service entities.
64. Council therefore submits that the purpose statement should include the phrase 'reflect consumer demands' when referring to quality of service. This is consistent with the purpose of economic regulation set out in Section 12.
65. Subpart 2 requires the Commission to determine a service code by the implementation date. There is a very high-level purpose for this code which refers to the Section 60 purpose statement.

This is inconsistent with the other regulatory mechanisms where there is more guidance for the Commission and stakeholders about the scope, design and intended role of each in the legislation.

66. Council therefore submits that Subpart 2 is amended to include a purpose for the code, matters to be covered, what must be specified in the code and examples of the topics that should be covered by the code.
67. The code is likely to include service wide minimum service levels. These will require significant investigation and consideration before they can be adopted as regulated standards, particularly given they are to be mandatory. The Commission will therefore need to undertake widespread consultation during the development of the code across a broad group of stakeholders. Stakeholder input will be critical in achieving a code which is meaningful and appropriate.
68. Accordingly, Council submits that the consultation period must be extended beyond the 30 working days provided for in Section 72, to a minimum of 50 working days. The Section 72 obligation for the Commission to consult on the code should also be amended to require meaningful consultation with consumers and consumer representatives.
69. Subpart 3 introduces a consumer complaints process and compulsory dispute resolution service for Three Waters. The consumer complaints function is the responsibility of the water service entities, including obligations to communicate about the process to consumers, and to report annually to the Commission.
70. The disputes resolution service is similar to the Utilities Disputes scheme which operates for other utilities on a voluntary basis. The Commission has monitoring and review roles and the Minister is to appoint the dispute resolution service provider, following candidate applications.
71. Council supports the provisions for regulating consumer complaints and dispute resolution processes.

Summary of key submission points – Part 3

- **The purpose of consumer protection regulation should be amended to reflect consumer demands when referring to quality of service. Continuous service quality improvement may not be affordable, finance-able or consistent with what consumers want.**
- **The legislation should include a specific purpose for the service code, matters to be covered, what must be specified in the code and examples of the topics that should be covered by the code. This is consistent with the level of guidance provided for the other regulatory mechanisms.**
- **The consultation period for the service code should be extended to a minimum of 50 working days to accommodate widespread stakeholder input on the mandatory minimum service standards. In addition, consultation on the service code must include meaningful consultation with consumers and consumer representatives.**
- **Council supports the provisions for regulating consumer complaints and dispute resolution processes.**

Part 4 – Enforcement, monitoring and appeals

72. Subpart 4 excludes information disclosure and quality determinations from the right to appeal but allows for appeals on any other regulatory determination.
73. Appeals on input methodologies are limited to parties with significant interest, must be brought within 20 working days after the publication of the input methodologies, and are limited to a rehearing of evidence before the Commission when it made its determination.
74. Council does not support the carve out of information disclosure and quality determinations from the appeals process. There will be little or no recourse for interested parties for those

determinations, an approach which is inconsistent with other forms of regulation including price-quality regulation. The input methodology appeal rights are insufficient as there is only limited overlap between the scope of the input methodologies and the scope of information disclosure and quality regulation.

75. Accordingly, Council submits that information disclosure and quality regulation are assigned the same rights of appeal as proposed for price-quality regulation. As price-quality regulation will not become effective until the second regulatory period, it is important that the appeal rights are extended to the forms of regulation which will apply in the first regulatory period.
76. A right of appeal is consistent with good regulatory practice as it provides incentives for robust, evidence based regulatory decisions, and an option for recourse where regulatory decisions are poorly targeted.

Summary of key submission points – Part 4

- **Council submits that information disclosure and quality regulation are assigned the same rights of appeal as proposed for price-quality regulation.**
- **A right of appeal is consistent with good regulatory practice as it provides incentives for robust, evidence based regulatory decisions, and an option for recourse where regulatory decisions are poorly targeted.**

Part 5 - Miscellaneous

77. Council supports the Section 127 requirement for the Commission to assign a Water Services Commissioner to undertake the Commission's duties under the Act. Council also supports the Section 130 provision for the Water Services Commissioner to work with two or more Commission members, and for the Commission Chair to determine which members will assist the Water Services Commissioner.
78. Council have previously submitted that the Commission will need to build its sector capability to be able to execute its water sector regulatory duties effectively, and these provisions will assist with that task.
79. Council acknowledges the Subpart 3 provisions for regulatory levies to be established for economic and consumer protection regulation including the consumer dispute resolution service. These levies are to fund the costs of the regulation and charged to the regulated water service entities. Ultimately, they will be borne by water service customers.
80. Council anticipates there will be significant costs incurred in establishing the new regulatory regime for Three Waters. There are useful precedents from other regulated utilities in New Zealand, and international regimes, which can be leveraged. However, it is important that the regime is well suited to New Zealand water services.
81. Council encourages the Commission to focus its efforts on adapting existing models where appropriate and customising bespoke provisions where these will better meet the regulatory purpose statements.
82. As water consumers will ultimately fund the regime, it is important that the costs of regulation do not outweigh the benefits to consumers. The levy setting provisions must ensure there are incentives for prudent cost management for the Commission and minimising the regulatory compliance burden on water service entities.

Summary of key submission points – Part 5

- **The Commission will need to build its sector capability to be able to execute its water sector regulatory duties effectively, and the provisions for a Water Services Commissioner will assist in this regard.**

- It is important that regulation is well suited to New Zealand water services, and Council encourages the Commission to focus its efforts on adapting and customising existing models where appropriate to meet the regulatory purpose statements.
- As water consumers will ultimately fund the regime, it is important that the costs of regulation do not outweigh the benefits to consumers.

Further information and opportunity to discuss our submission

83. Should the Parliament's Finance and Expenditure Committee require clarification of the submission from Hamilton City Council, or additional information, please contact Andrew Parsons (Executive Director – Strategic Infrastructure) on 07 838 6896 or 021 791 612, email andrew.parsons@hcc.govt.nz in the first instance.
84. Hamilton City Council does wish to speak to Parliament's Finance and Expenditure Committee at the hearings in support of its submission on the Water Services Economic Efficiency and Consumer Protection Bill.

Yours faithfully

A handwritten signature in blue ink, appearing to read 'LVA', is positioned below the closing text.

Lance Vervoort

CHIEF EXECUTIVE

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