

# Water Industry Competition Act Regulations

Water Industry Competition  
Department of Water and Energy  
GPO Box 3889  
SYDNEY NSW 2001

19th July 2007

Re: Submission on the Regulations Consultation Paper of the Water Industry Competition Act

To whom it may concern,

The Nature Conservation Council of NSW (NCC) would like to comment on the Regulations Consultation Paper (RCP) of the Water Industry Competition Act 2006 (WICA). While we understand that this legislation has the potential consequence to develop significant alternative water supplies and cause reductions in sewage emissions, we have reservations about the proposed regulations, especially in regard to situations where there will be a monopoly water provider. We are presently not assured that the regulations that cover monopoly licensees will be sufficient to continue ecologically sustainable progression or provide adequate protection to customers.

We acknowledge that this legislation is unique and innovative, and believe that this underlies the need for the regulations to be strong enough to avoid problems with the essential service of supplying water.

We would note that these regulations are being drawn up for a potentially large range of uses. As there are few similar existing regulations, there is little opportunity for comparison on alternative schemes. We wish to emphasise the importance of a system of review of the regulations so that they provide sufficient ongoing protection of the environment and customers and enable the efficient and sustainable supply of water and wastewater management. This submission will outline the response to the specific questions of the RCP. We will also outline some additional points that we believe are relevant to the regulations.

## Key Issue 1 – Licence Conditions

We wish to emphasise the importance of not compromising on licence conditions so as to make potential involvement in the sector more attractive. The ‘relaxing’ of license conditions could have the outcome of increased environmental impacts, excessive water use and unchanged or greater sewage emissions. For greater transparency, standard licence conditions should be used for specific types of potential licensees. These licence conditions should be exhibited before being enacted and drawn up for the main predicted types of user.

During the consultation session feedback was sought on whether concessions given to one licensee should be automatically transferred across to all licensees in a similar situation. We do not believe that this should be an automatic process.

One of the principles outlined in the Act (Section 7(1c)) on whether to grant a licence is ensuring the sustainability of water resources. This could be interpreted as either being ecologically sustainable or sustainable in terms of long term reliability. We would consider it important that license be granted only where the water infrastructure meets the principles of ecologically sustainable development (ESD). This would preclude water systems that are overly energy intensive or that would propagate a linear water system that expanded delivery infrastructure and increased centralised sewage emissions.

## Key Issue 2 – Water Quality and Public Health

The Australian Drinking Water Guidelines should be used and referenced within the regulations to set the minimum standard provision for license

holders providing drinking water. It is important that these Australian guidelines be used as they provide a tested, reviewed and agreed standard on which it is necessary for a water provider to meet. These guidelines clearly articulate the requirements of a service provider in regard to drinking water. In terms of water provision for purposes other than drinking we would be supportive of the standards as outlined in the Australian Guidelines for Water Recycling being utilised. These guidelines use a risk management based approach to guidelines and would be applicable to the regulations in this situation. The guidelines have been peer reviewed and would be a good basis to work from.

Phase 2 of these guidelines are still to be finalised and will include some important aspects of water recycling that we believe may have significant benefits if they occur in NSW. This includes stormwater reuse and recycling for drinking purposes - both areas that NCC believes should be significantly expanded. These guidelines are not expected until late 2007 so there may be a time lag before they could be properly integrated into the regulations. This may require an interim measure of standard regulations to be used and determined on a case basis until the phase 2 guidelines are available.

#### Key Issue 3 &ndash; Safe and reliable infrastructure

We believe this is a critical issue and that the regulations need to recognise the importance of a safe/reliable water supply. High design standards need to be achieved and maintained with this being particularly important for potential monopoly operators.

Due to the broad range of possible water users it will be difficult to have a broad based regulation determining asset management obligations of the licensee. Despite this there is still scope for a clear set of overarching regulations that will ensure that water assets will be constructed to a high standard and properly maintained. To achieve this, licensees will need to provide a clear asset management plan, or equivalent framework to demonstrate how they will maintain their infrastructure. This should be done as a licence condition although there may be a number of small-scale situations where this is not necessary.

We also wish to emphasise the importance of strong regulations for potential licensees who will be providing a monopoly water service, be that for household or industrial purposes. This situation could result in significant problems for Department of Water and Energy (DWE), through either supply/equipment failure and also through lack of maintenance towards the end of a contract period.

We are uncertain how compliance with asset management requirements will occur, and if this will be carried out by the DWE as the licence provider. We believe it is necessary for compliance to be a high priority so that the infrastructure that is built or managed is shown to be of the highest design standards. This could be through regular DWE managed performance and risk audits.

#### Key Issue 4 &ndash; Network Planning

These regulations could cover a range of different service provisions. While all these services are vital, some situations will mean that temporary disruption to service is possible without causing major disruption, such as for municipal irrigation. It is important that licences clearly state the varying degrees in which disruption to service is possible, and we would recommend that a hierarchy be drawn up to reflect this. This hierarchy would mean that essential services be listed at the top and this would include uninterrupted drinking water and wastewater provisions to all households and business. Other essential services may include recycled water provision for households for greywater services, and recycled water for industrial users which needs to be assured for safety reasons.

Contingency planning should be mandatory for all cases, especially in the early stages of a licence so that service disruption can be avoided.

#### Key Issue 5 – Sustainable/Reliable Water supplies

The licence conditions of Sydney and Hunter Water presently mean that they be required to implement demand reduction strategies, and also water restrictions when necessary. It is very important that new entrants into the water market continue to do this and this is explicitly stated in the licence requirements.

We are concerned that this will not occur as new entrants seek to maximise their revenue, and thereby undermine efforts at water conservation. There is a conflict of outcomes for a provider selling water and seeking to minimise water use. Regulations must integrate strong water conservation measures into the licences, placing the onus on the licensee to manage water in an ecologically sustainable manner.

We identify present NSW operating licences as being weak on water conservation and inadequately enforced. It is necessary that the new regulations strongly integrate water conservation and wastewater minimisation into all of the new licences.

#### Key Issue 6 – Environmental Protection

Present legislation covering water service provision does not sufficiently enforce the ecologically sustainable use of water. It is vital that the regulations as outlined in the RCP go further than the existing legislation so that new water services and infrastructure are supportive of the principles of ESD. We would be seeking that at a minimum the license requirements that are outlined for HWC and SWC are maintained in the regulations and also that the commitments made by SWC to the principles of ESD are maintained in new entrants to the water market.

We would support the licensee preparing and implementing an environmental management plan that is binding within the licence. This plan should be completed before the licence is granted, and compliance to this plan be closely monitored. It would be necessary that the plan covers the areas of energy and waste minimisation, water conservation and wastewater management.

#### Key Issue 8 – Retailer of last resort

Under ‘Key Issue 4’ we outlined the need for contingency planning for service disruption. This could be extended also to include contingency for total service breakdown for when a licensee exits the market – be this voluntary or otherwise. We have major concerns of a system breakdown for licensees who are providing a monopoly service. There needs to be a contingency plan in place and we would propose that a Government Water Authority be in place as a possible back up.

To support this contingency plan and to ensure minimal disruption of service, the licensee may need to deposit a secure bond to cover costs that occur during the transition of service.

There may be situations where a licensee seeks to discontinue their involvement in the water area which will create a service gap. We request that the regulations include a framework to provide notice to DWE when they are seeking to discontinue a licence.

#### Key Issue 10 – Licensing Exemptions

We believe that it is important to ensure that household scale greywater recycling systems are excluded from this licensing requirement. Our present understanding of WICA is that this is exempt from licensing. It is important that this is carried through to the regulations, and for other systems that promote on-site recycling of water.

We have reservations about giving automatic exemptions to stand alone developments that may result in sewage emissions into the environment, especially in areas that are adjacent to fragile water catchments or

ecosystems. Due to the high cost of evolving sewerage and water systems in new areas there is considerable potential for this to be a large area in licences. We request that exemptions not be granted in these cases and strong environmental protection regulations (as outlined in key issue 5) be included in the licence conditions for these situations.

#### Other Issues

##### Price

We are concerned by the method in which pricing of water services either for the provision of infrastructure or water supplies will occur. IPART, as outlined in the Act will have regard to the pricing structure and responsibility to monitor the cost charged by water providers. We believe there is a need for greater clarity on the issue of price and how price will be integrated into the regulations and subsequently the licence conditions.

There is the potential for monopoly water providers to become licensed and charge for service at a rate lower than, for example, Sydney Water, and afterwards increase the price markedly. This increase may occur with the support of IPART and we are seeking some outline as to how price changes will occur as part of the licences.

Finally, the price of water is a major incentive for water users and wastewater emitters to minimise their usage. It is important that the pricing structure used in the licences is based largely on usage rates and not standard charges. This will increase the ability of economic factors to reduce overall usage and achieve greater environmental benefits. It is important that mechanisms such as subsidies for water efficient appliances and the mandatory installation of water-saving devices are put in place, particularly to assist low-income earners, if the price of water rises.