RESPONSE TO
INDEPENDENT LOCAL GOVERNMENT
REVIEW PANEL FINAL REPORT

SUBMITTED BY:
JEFF SHARP
CHAIR, WATER DIRECTORATE
4 APRIL 2014
Dear Professor Sansom

Response to the Independent Local Government Review Panel Final Report

The Water Directorate welcomes the opportunity to make a submission to the Local Government Acts Taskforce. In NSW, local government owned water utilities provide water and sewerage services delivering public health outcomes for regional NSW. As the regional local government landscape is diverse, the Water Directorate unanimously supports local government ownership and strongly counsels against the concept that one-size-fits-all. A single structural model for local water utilities cannot deliver the best outcomes from the coast to the outback.

The Water Directorate has always advocated that diversity is required to allow local water utilities to deliver the best outcomes across varying physical demographic and economic situations from the coast to the outback, and that diversity of itself is a strength because it allows continuous improvement initiatives of value to the wider industry to develop and evolve in a range of different operational environments. A single structural model for local water utilities cannot deliver the best outcomes in NSW.

The diversity of our members means that they will have specific responses to ILGRP Final Report. Our response presents the overarching views of our membership base and addresses the following points:

- Local Government ownership
- State and Local Government relations
- Regional Water Alliances
- Western Regional Authority

The Water Directorate supports:

- the Final Report finding that Local Government should retain its current responsibilities for water supply and sewerage and that Local Government water utilities are performing very well following the introduction of Best Practice Management Guidelines
- the recommendation for state and local government relations:
  - Use the State-Local Agreement as the basis and framework for a range of actions to build a lasting partnership, and negotiate supplementary agreements as appropriate (Recommendation 56)
  - Introduce new arrangements for collaborative, whole-of-government strategic planning at a regional level (Recommendation 57)
  - Amend the State Constitution to strengthen recognition of elected local government (Recommendation 58)
the negotiation of more detailed MOUs under the *Intergovernmental Agreement to Guide NSW State-Local Government Relations on Strategic Partnerships* to foster joint initiatives and collaborative strategic planning.

The Water Directorate recommends:

- the establishment of a MoU between state agencies and the Water Directorate as the peak industry body representing local water utilities.
- inclusion of the Water Directorate as a key stakeholder in all aspects of water management and seeks engagement with the MAG throughout its establishment, for example through participation in roundtables and forums.
- pilot programs with clear evaluation criteria established at the outset should joint organisations be implemented.

The Water Directorate is concerned:

- about the State Government's capability to commit to a "*whole of government*" approach to "*strategic planning at a regional level*"
- by the continuing reduction of technical water industry capacity within the NSW State Government
- about the workability of the JO model as the ILGRP Final Report has not addressed the following:
  - the legal status of the Statement of Intent
  - reporting relationships between the bodies (for example member councils and the Regional Water Alliance)
  - the linkage between regional strategic planning and the Regional Water Alliance?
  - differences in authority and responsibility between a "subsidiary" and Secretariat functions
  - reporting relationships and accountabilities between the different bodies
- that the formation of the Western Region Authority will remove access to regional expertise currently available to shire councils through the Lower Macquarie Water Utilities Alliance, and inhibit rather than enhance the ability of those WRA councils (Bourke, Brewarrina and Walgett) to continue to work with the LMWUA as at present.

The Water Directorate would welcome the opportunity to meet with the Panel, Ministerial Advisory Group or other State Government working groups to ensure the concerns raised above can be addressed to ensure effective provision of water and sewerage services to benefit the public health of our community.

*Real partnership between the state agencies and the Water Directorate will deliver significant public health, environmental and social benefits to NSW communities.*

Yours sincerely

Gary Mitchell
Executive Officer
The Water Directorate

The Water Directorate is a membership association that comprises 97 local water utilities from around NSW or 95% of all eligible NSW local water utilities. Its mission is to provide leadership and advice to local water utilities. Our members:

- provide 89% of reticulated water outside metropolitan NSW
- manage $23 billion in assets
- have 3.2 times more customers than Hunter Water

The Water Directorate was initiated by local government water and sewerage practitioners in 1998. Our founding members recognised that the structure and legislative framework for water authorities in NSW was not ideal following the abolition of the Department of Public Works which had previously acted as the overall co-ordinating agency and mentor for regional NSW. An industry specific association was formed to address the lack of coordination between government departments and local authorities as well as the declining level of technical advice provided by the state agencies.

Since our establishment the Water Directorate has provided consistent state-wide management tools at a low cost to our members. As a result we have:

- advocated for local water utilities at the State and Federal level
- responded to the Metropolitan Water Directorate Urban Water Review, Local Government Act Taskforce, Armstrong-Gellatly Review, and a whole series of other Government reviews undertaken by Infrastructure Australia, the National Water Commission, the Productivity Commission and Infrastructure NSW
- supported the industry with valuable information through on-line discussion groups, technical workshops and informal mentoring not provided by State Government departments.

Water Directorate’s Response

Different members will have specific responses to components of the panel report. Our response presents the overarching views of our membership base under the following points:

- Local Government ownership
- State and Local Government relations
- Regional Water Alliance
- Western Regional Authority

Local Government Ownership

The Water Directorate supports the finding of the panel that “local government should retain its current responsibilities for water supply and sewerage, not only because it is delivering those services efficiently and effectively, but also because those services give rural local government critical financial mass and the capacity to recruit and retain professional staff”
State and Local Government Relations

The Water Directorate supports the recommendation for state and local government relations:

- **Use the State-Local Agreement as the basis and framework for a range of actions to build a lasting partnership, and negotiate supplementary agreements as appropriate** (Recommendation 56)
- **Introduce new arrangements for collaborative, whole-of-government strategic planning at a regional level** (Recommendation 57)
- **Amend the State Constitution to strengthen recognition of elected local government** (Recommendation 58)

The Water Directorate is very concerned about the State Government’s capability to commit to a “whole of government” approach to “strategic planning at a regional level” (Recommendation 57) as we lack evidence to be confident that this can be implemented. Recently there have been three overlapping reviews affecting the regulation of local water utilities, The Metropolitan Water Directorate’s Joint Review of the Water Industry Competition Act 2006 and regulatory arrangements for water recycling under the Local Government Act 1993, the Local Government Act Taskforce and this Independent Local Government Review Panel.

These concurrent reviews provided an opportunity to modernize the local water utility regulatory environment and provide a level playing field between local water utilities, private water utilities and public water utilities. A great opportunity to improve the regulation of local water utilities appears to have been lost however, when the Local Government Act Taskforce in their report (p48) refers, presumably, to the consolidated framework in the Metropolitan Water Directorate’s Position Paper while the Metropolitan Water Directorate’s Position Paper noted (p7) that “given the number of concurrent reviews that are currently underway, it is not feasible at this point in time to implement a consolidated framework that requires co-ordination across several government agencies.”

The Water Directorate supports the NSW State Government’s commitment to reduce red tape through the removal of obsolete or overlapping regulation and, regulations where the costs outweigh the benefits. However, the government’s inability to commit to a consolidated framework requiring co-ordination between state government agencies in this one fairly narrow area does not bode well for the implementation of the ILGRP Recommendations 56-58. The Water Directorate is very concerned by the continuing reduction of technical capacity within the NSW State Government.

The Water Directorate supports the negotiation of more detailed MOUs under the *Intergovernmental Agreement to Guide NSW State-Local Government Relations on Strategic Partnerships* to foster joint initiatives and collaborative strategic planning.

We recommend the establishment of a MoU between state agencies and the Water Directorate as the peak industry body representing local water utilities.

The Water Directorate has already demonstrated its capabilities to deliver in this space through:

- Investing more than $3.5 million on developing relevant guidelines and technical documents to support industry best practice
Regional Water Alliances

This section addresses Recommendation 35 dot points two and four in the ILGRP final report (p87).

- “Enter into discussions with 2-3 regions to establish ‘pilot’ JOs”
- “Establish Regional Water Alliances in each JO along the lines proposed in the 2009 Armstrong-Gellatly report”


The Water Directorate seeks to clarify the references in the ILGRP final report to the 2009 Armstrong-Gellatly Report. In our response we have assumed the Panel’s reference to the 2009 report is a reference to its release date. The report we are aware of is dated December 2008 and it is this report contained the in the Panel report’s reference list and web link. Our responses are based on the 2008 report.

Water Industry’s Response to Armstrong-Gellatly

The regional water landscape has progressed in the five years since the Armstrong-Gellatly report. Some examples include:

- MidCoast Water adopted the recommendation to take on Gloucester Shire Council’s water and sewerage responsibilities
- The Lower Macquarie Water Utilities Alliance (which was formed in July 2008) has expanded the number of councils within the alliance and has completed a strategic business plan for the alliance
- Centroc formed the Centroc Water Utilities Alliance in 2009 and has a rolling review process for its strategic plan.

Other aspects mentioned in the Armstrong-Gellatly Report have since become mandatory, for example the preparation of drinking water management plans is now required under the Public Health Act 2010.

Regional Water Alliances as proposed in Armstrong-Gellatly

The Water Directorate has some concerns regarding the implementation of Regional Water Alliance “along the lines of those proposed in the 2009 Armstrong-Gellatly report” (ILGRP Final Report p87). Our members will have individual submissions regarding these regional water alliances, boundaries, joint organisations and county councils.

Armstrong-Gellatly (2008, p3) proposed the establishment of a binding alliance model where the Alliance Entity has “responsibility for the strategic and financial planning function of member councils”
and for providing specialist technical skills to the member councils. Assets and the responsibility for service delivery are retained by member councils. However, asset management is directed by the Alliance Entity and service delivery is provided by the member councils in accordance with the asset management plan developed by the Alliance Entity. Service levels are agreed to between the Alliance Entity and member councils. Member councils are compelled to remain members of the alliance and implement the directions of the Alliance Entity.”

The implementation of this model, where the Alliance Entity undertakes strategic and financial planning (presumably including setting the price path) appears to conflict with the Panel’s position that local government should retain its current responsibilities for water and sewerage (as referenced above).

The risk allocation in the Armstrong-Gellatly model appears flawed. The Alliance Entity is responsible for planning and directing asset management, however the individual councils wear the legal risk in delivering those services. For example, poor strategic or financial planning by the Alliance Entity may result in a Council having insufficient funds to upgrade their STP to meet their EPA licence obligations. The entity bearing the regulatory risk should be responsible for planning for it. There are service delivery examples in regional NSW. For example, Bega Valley Shire Council and Wagga Wagga City Council have agreements with the private sector for service delivery. However, Bega Valley Shire Council and Wagga Wagga City Council are responsible for strategic planning and setting the price path, meeting the obligations under the Public Health Act 2010 and requirements of Environmental Protection Licences under the Protection of the Environment Operations Act 1997.

Both the Centroc Water Utilities Alliance and Lower Macquarie Water Utilities Alliance have undertaken strategic business planning for their Alliances. These plans complement the individual member council’s strategic business plans rather than supplanting them. These plans do not set price paths for each member council or direct spending at the council asset level. If Regional Water Alliances are established, the Water Directorate supports the preparation of regional strategic plans to direct the activities of the alliances and support the business planning of member councils. However the Water Directorate has concerns over the mandatory nature of the plans’ implementation. It is a basic project management principle that risk should be managed by those best placed to do so. Outstanding questions include:

- How will compliance be enforced?
- Who wears the risk if one organisation does not comply?
- What appeal mechanisms exist to allow aggrieved Alliance members redress from decisions imposed on member councils with which they disagree?

These questions go to the nature of “mandatory” or “binding” alliances as originally envisaged by the NSW LGSA and Water Directorate back in 2007 when they were first envisaged, and further negotiations with Government are essential in the medium term to ensure that suitable legislative or administrative provisions are made to properly create the necessary “bindingness” in these alliances into the long term.

In general the governance arrangements between the Alliance Entity and the councils is not clear from the report. This is discussed in the following section.
Regional Water Alliances as subsidiaries of Joint Organisations

The proposed framework for the establishment and operation of the regional water alliances (adapted from Box 30 of the panel report) is that they would:

- be subsidiaries of the Joint Organisation
- have their own boards, which would be skills-based, and could include senior council staff and people with relevant expertise drawn from outside local government
- be required to agree an annual Statement of Intent with the governing body to ensure that their activities and priorities align with those of the JO and its member councils.

However, the relationship between the Regional Water Alliance, member councils, Joint Organisation governing body, and secretariat are unclear. A model structure was provided in the ILGRP Final Report (Figure 7)

The Water Directorate is concerned about the workability of this model as the ILGRP Final Report has not addressed the following:

- What is the legal status of the Statement of Intent? Is it enforceable? If so by what mechanism?
- How will appeal and sanction provisions be enacted, both in practice and in theory?
• What are the reporting relationships between the bodies? Figure 7 shows no direct linkages between member councils and the Regional Water Alliance.

• How does regional strategic planning link to the Regional Water Alliance?

• What is the difference in authority and responsibility between a “subsidiary” and the functions in the orange boxes below the Secretariat?

• What are the reporting relationships and accountabilities between the different bodies?

• What if the natural working boundaries of water alliances in different parts of the State are found to NOT co-incide with the adopted boundaries of the JO for other administrative or functional purposes? This potential problem goes to the issue that a single JO boundary may not necessarily co-incide with the natural boundaries of all of the many functions which councils undertake in regional NSW. For example, there may be one set of councils effectively working together for water and sewerage, while different council groupings are working in the areas of solid waste management, town planning, shared resourcing of accounting or IT services, shared library services, roads management, weeds management, emergency management – the list goes on.

Care must be taken to not “squeeze” a fixed number of local water utilities into a pre-determined JO just because the boundaries of that particular JO have been determined to be suitable for other purposes, but not necessarily for management of water supply and sewerage.

Piloting of Joint Organisations

Our members will have individual submissions on joint organisations and their boundaries.

If joint organisations are implemented we support the piloting of Regional Water Alliances in two or three pilot regions. These pilot programs must have clear evaluation criteria established at the outset to allow the industry to understand what has worked within the pilots and what needs improving, prior to a State-wide roll out. The evaluation criteria need to take into account the diversity of the regional water industry. These pilots should consider how different organisation models contributed to the JO’s effectiveness (e.g. LMWUA: contracted project officer; Centroc: in-house staffing). It would be best if the pilot JO’s were permitted to suggest and devise their own structures to begin with, in consultation with Government, as those on the ground have a much clearer understanding of what “works” in their particular area and what is likely not to.

Well-structured evaluation criteria will enable learnings from the pilots to be adapted for those alliances following to understanding the factors leading to success and improvements that may be required. The resourcing and effectiveness of State and Local Government interactions must be part of the review.

The Water Directorate notes the proposal to establish a Ministerial Advisory Group (MAG) to oversee the early stage of implementation. The Water Directorate requests to be considered as a key stakeholder in all aspects of water management and seeks engagement with the MAG throughout its establishment, for example through participation in roundtables and forums.
Western Region Authority

Water Directorate re-iterates its previous concern that formation of the Western Region Authority (WRA) will remove access to regional expertise currently available to shire councils through the Lower Macquarie Water Utilities Alliance. The experience of the Lower Macquarie Water Utilities Alliance (LMWUA), of which Bourke, Brewarrina and Walgett Shires are members, is that these prospective members of the Western Region Authority would be severely Disadvantaged were their membership of the LMWUA to be restricted by their membership concurrently of the WRA.

Summary

The Water Directorate thank the ILGRP for the opportunity to comment on the Final Report.

The Water Directorate supports:

- the Final Report finding that Local Government should retain its current responsibilities for water supply and sewerage and that Local Government water utilities are performing very well following the introduction of Best Practice Management Guidelines.
- the recommendation for state and local government relations:
  - Use the State-Local Agreement as the basis and framework for a range of actions to build a lasting partnership, and negotiate supplementary agreements as appropriate (Recommendation 56)
  - Introduce new arrangements for collaborative, whole-of-government strategic planning at a regional level (Recommendation 57)
  - Amend the State Constitution to strengthen recognition of elected local government (Recommendation 58)
- the negotiation of more detailed MOUs under the Intergovernmental Agreement to Guide NSW State-Local Government Relations on Strategic Partnerships to foster joint initiatives and collaborative strategic planning.

The Water Directorate recommends:

- the establishment of a MoU between state agencies and the Water Directorate as the peak industry body representing local water utilities.
- inclusion of the Water Directorate as a key stakeholder in all aspects of water management and seeks engagement with the MAG throughout its establishment, for example through participation in roundtables and forums.
- pilot programs with clear evaluation criteria established at the outset should joint organisations be implemented.

The Water Directorate is concerned:

- about the State Government’s capability to commit to a “whole of government” approach to “strategic planning at a regional level”
- by the continuing reduction of technical capacity within the NSW State Government from a water industry perspective.
about the workability of the JO model as the ILGRP Final Report has not addressed the following:
- the legal status of the Statement of Intent
- reporting relationships between the bodies (for example member councils and the Regional Water Alliance)
- the linkage between regional strategic planning and the Regional Water Alliance?
- differences in authority and responsibility between a “subsidiary” and Secretariat functions
- reporting relationships and accountabilities between the different bodies

that the formation of the Western Region Authority will remove access to regional expertise currently available to shire councils through the Lower Macquarie Water Utilities Alliance.

The Water Directorate would welcome the opportunity to meet with the Panel, Ministerial Advisory Group or other State Government working groups to ensure the concerns raised above can be addressed to ensure effective provision of water and sewerage services to benefit the public health of our community.