



# JOINT REVIEW OF THE WATER INDUSTRY COMPETITION ACT 2006

and regulatory arrangements for water recycling under the Local Government Act 1993

**SUBMITTED BY: GARY MITCHELL**  
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Ms Emma Dawe  
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Metropolitan Water Directorate  
McKell Building 2-24 Rawson Pl  
Sydney NSW 2000

**Submission to Joint review of the WIC Act and regulatory arrangements for water recycling under the LG Act**

Dear Ms Dawe

The Water Directorate welcomes the opportunity to make a submission to the Metropolitan Water Directorate's joint review of the *Water Industry Competition Act* and regulatory arrangements for water recycling under the *Local Government Act*. The Water Directorate is a membership association that comprises 97 local water utilities from around NSW. The Water Directorate's mission is to provide leadership, advice and support to the local government water supply and sewerage industry in regional NSW.

The Water Directorate membership supports the need for reform of the regulation of recycling. The current regulatory arrangements are inconsistent in application, create confusion regarding roles and responsibilities, and limit the ability of local council owned water utilities to deliver the best outcomes for the community.

The Water Directorate believes that the specific regulatory instrument for recycling is not as important as consistent and efficient regulation. Considering the Better Regulation Principles, local water utilities need legislation which enables them the same operational powers as Sydney Water and Hunter Water as well as private proponents under the WIC Act so we can make the best decisions for their water business, their customers and therefore their community.

The Water Directorate seeks a regulatory model that is robust enough to allow flexibility in structural arrangements of the utilities to best support the services it provides to the community and remove regulatory duplication. The Water Directorate supports a risk based approach within a flexible regulatory framework containing deemed to comply and outcome based provisions.

The Water Directorate overwhelmingly supports the retention of power to order connection to the water supply or sewerage network. The power to order a connection should be maintained on environmental and health basis to support local government's role as an environmental and public health regulator.

The Water Directorate:

- Supports the removal of regulatory duplication and inconsistencies across the recycling sector
- Supports a flexible regulatory framework with both deemed to comply and outcome based provisions
- Supports the retention of power to order connection to the water supply or sewerage network
- Welcomes the opportunity for further discussion on the opportunities to regulate recycling in NSW.

The Water Directorate would like to extend an invitation to meet with the Metropolitan Water Directorate to discuss opportunities and limitations of possible regulatory models for recycling in NSW.

Yours sincerely



Gary Mitchell  
Executive Officer



## ***The Water Directorate***

The Water Directorate is a voluntary member based organisation that represents 95% of all 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:

- invested more than \$3.5 million on developing relevant guidelines and technical documents to support industry best practice
- co-managed an \$8.73 million investment by the Federal Government and members in a water loss management program saving 5.5 billion litres of water annually
- advocated for local water utilities, for example, responding to the Armstrong/Gellatly Review, and a whole series of other Government reviews undertaken by Infrastructure Australia, the National Water Commission, the Productivity Commission, Infrastructure NSW and the Local Government Acts Taskforce
- supported the industry with valuable information through on-line discussion groups, technical workshops and informal mentoring not provided by State Government departments.

This submission was developed through an open invitation workshop to member Councils and an on-line survey focussed on key issues raised in the discussion paper. This submission includes representations from councils from the coast to the outback from a variety of structural models and utility sizes. Our response has been developed with broad comments on each chapter in the discussion paper. Where we address a specific question, the question number is listed in brackets after the comment.

## ***Regulation of Recycling Undertaken by Local Water Utilities***

*Considered in reference to Chapters 4 and 6*

The Water Directorate is seeking reform that will enable council owned water utilities to deliver safe and secure water management services more efficiently to our communities. The current regulatory model creates confusion regarding regulatory roles and responsibilities, and limits the ability of local council owned water utilities to deliver the best outcomes for their community.

We are concerned at the limited scope of the current review considering only recycling within the *Local Government Act* (LG Act) and not also the provision of water and sewerage services. We note the numerous reviews currently underway including Local Government Acts Taskforce and the *Environmental Protection and Assessment Act* (EP&A Act) and the independent local government review panel and seek a consistent outcome from these various reviews.

Considering the Better Regulation Principles, local water utilities (LWUs) need legislation which enables them the same operational powers as Sydney Water and Hunter Water as well as private proponents under the WIC Act so we can make the best decisions for their water business, their customers and therefore their community. The Water Directorate is seeking a regulatory model robust enough to allow flexibility in structural arrangements of the utilities to best support the services it provides to the community and remove regulatory duplication.

Any changes should:

- remove inconsistencies (Q56a)
- deliver a level playing field (Q56a, Q62)
- ensure transparency in decision making (both between LWUs and their customers and regulators and local water utilities)



- ensure clear and consistent regulatory roles and responsibilities that reduce regulatory overlap.

*“Recycling needs to be unhindered by red tape and unnecessary cost, otherwise effluent will simply be released into waterways.”* Member council comment

Our member councils overwhelmingly support a risk based approach to recycling regulation. A common theme that emerged from the comments in the member survey was the difficulty in using recycled water for agricultural irrigation both from an approvals perspective and a compliance monitoring perspective.

*“In rural areas, there are many agricultural irrigation schemes which are safe due to access restrictions to site and it should not take such a long time for approvals to be granted.”* Member council comment

Member councils strongly support having an option for prescriptive regulation (deemed to comply) alongside a risk based approach. Our member councils generally support the regulation of the party responsible for managing the risk. The use of a tiered approach to regulation (Q93b) could be incorporated to address this issue.

### ***Regulatory Instrument***

The Water Directorate believes that the specific regulatory instrument for recycling is not as important as consistent and efficient regulation. Our members have varying views on which instrument should be used (Q55,56,97):

- LG Act or Utility Licence (50% survey respondents)
- *Protection of the Environment (Operations) Act* (POEO Act)(30% survey respondents)
- *Public Health Act* (PH Act) (20% survey respondents)

The Water Directorate members are not attached to being regulated under the *Local Government Act*. We believe that appropriate regulation of water management could be achieved either through a reformed *Local Government Act* or a new specific Act for local water utilities. Regardless of which act local water utilities recycling activities are regulated under, the Water Directorate supports the reduction of red tape and duplication of reporting to, and oversight by, regulatory agencies (Q56).

Some members noted that regulation could be undertaken depending upon the end use. The POEO Act could be used for agricultural reuse while reuse on recreational areas and dual reticulation could be regulated through the PH Act (Q93). Sixty percent of survey respondents thought that NSW Health should have concurrent approval power for recycling schemes (Q59). However, one member respondent noted that *“The regulatory and approvals environment is already difficult and time consuming enough to navigate without further concurrent approval requirements. NSW Health was involved in determining industry specific guidelines. By following the relevant guidelines (either prescriptive or risk based AGWR) NSW Health requirements should be met.”*

### ***Stormwater Harvesting (Q56b)***

Our members unanimously supported the regulation of stormwater reuse for high risk end uses. Stormwater source and scheme viability were also considered important for stormwater regulation. Our members are however, concerned about over regulation of low risk schemes. More members supported regulation through the LG Act (or the Act under which their other water activities are regulated) than through the POEO Act.

### ***Difficulties encountered in Section 60 applications (Q60) and the application of the Australian Guidelines for Water Recycling (Q58)***

Many of our members have encountered difficulties in Section 60 applications and in interpretation of the AGWR. These issues include:

- agreement on pre-validation values
- conflicting opinions on whether recontamination could occur in the storage of treated effluent. This resulted in a new requirement to provide further chlorination which may result in abandonment of the project.
- conflicting positions between state government departments
- process proving requirements that make most schemes uneconomical.

Water Directorate members generally felt that the application of the AGWR was too complicated for low risk re-use schemes. A number of members were concerned that the difficulty in applying the guidelines and the



approval and compliance costs for these schemes were resulting in poor environmental outcomes. Deemed to comply provisions should be available for these schemes.

*"For low risk schemes, the overall objective should be to improve the existing situation (which should be taken into account when determining the most appropriate compliance actions)".* Member council comment

*"The guidelines are an excellent source of relevant information. One additional factor that I haven't seen in the guidelines is the balance between implementing a reuse project, and a "do nothing" outcome. If the worst case result of a reuse system is the same as a "do nothing" outcome, then the project should not be prevented by a complicated approval process."* Member council comment

### ***Verification, Validation and Compliance Monitoring (Q61, 89)***

Nearly half the survey respondents had no experience with the verification and validation of recycled water schemes. Of the people that had experience the majority thought the process was too complicated. Our members generally believe that the current compliance monitoring arrangements are poor and need improvement.

The Water Directorate supports a risk based approach to compliance monitoring of councils and end users. For low risk schemes, a quarter of survey respondents believe that compliance auditing should not be undertaken, a quarter support internal auditing by council and the other half support external audits. There is a similar profile for auditing of the end users.

*"A third party recently decided not to use LWU supplied recycled water for irrigation due to predicted onerous monitoring costs. The irony is that the highly treated and quality controlled recycled water is of consistently higher quality than the water currently used for irrigation which contains runoff from intensive agriculture that is allowed to sit in a shallow open dam prior to use."* Member council comment

There is strong member support for external audits for high risk schemes (e.g. purple pipe schemes and crops that will not be further processed). There is support for an independent auditor or regulator to audit the end users in these schemes.

The Water Directorate strongly supports the development of a standard test plan for 'deemed to comply' schemes. We also support documented state guidance on verification testing and the maintenance by the state government of a list of validated technologies (Q99).

### ***Water Industry Competition Act***

*Considered in reference to Chapter 3*

The current scope of the WIC Act inadvertently covers many minor developments which the original Act was clearly not intended to cover. The aim of the Bill was, as stated in Hon David Campbell MP's second reading of the Bill to the Legislative Assembly, *"improvement of the governance of water systems...which, once enacted, provide for the improved running of water systems, more straight forward decision-making and access arrangements."* (Hansard, p3277)

Unfortunately the WIC Act retrospectively includes many sewer and water arrangements previously approved and regulated by Councils including community water supplies and sewerage schemes, and many agricultural and third party sporting club recycled irrigation schemes. (Q11,12).

State government legislation that considers scheme size is Schedule 3 of the EP&A Regulation. This schedule specifies designated development to be more than 2,500 persons equivalent capacity or 750 kL/day or more than 20 persons equivalent capacity or 6 kL/day for systems located on a flood plain, within a coastal dune field, within a drinking water catchment, within 100 metres of a natural waterbody or wetland, or within 250 metres of a dwelling not associated with the development.

Through Schedule 1 of the POEO Act the State government has determined threshold for Local Government regulation of sewerage is 2,500EP or 750kL/day.

Water supplies regardless of size are regulated under the PH Act.

A major concern and risk for the Water Directorate is the issue of a supplier or service provider of last resort (RoLR and OoLR facilities). Without real guarantees that corporations will continue to provide the services required, our members are very concerned they will have to take on the role as suppliers of last resort. One alternative suggestion is for land in areas serviced by private WIC Act corporations to be encumbered with



conditions making owners of that land the supplier of last resort. This would ensure owners understand the risks up front at the time of land purchase, and that the remaining rate base is not unfairly lumbered with the cost of taking on the responsibilities of a failed private service provider (Q12a,20).

### ***Cross Sectoral Issues***

#### ***Considered in reference to Chapter 5***

The NSW Water Directorate overwhelmingly supports the retention of power to order connection to the water supply or sewerage network (Q86). The compulsion to require property to connect through specific zoning, for example rural residential, has been removed by state government under standardised zoning. The retention of s124 – s125 power connect is required to prevent cumulative impacts of multiple on-site sewage management systems.

The powers to order a connection (s124 LG Act) apply to all councils, not just those operating water supplies and sewerage systems. This is supported by the case law (*Stutchbury v Pittwater Shire Council* [1999] NSWLEC 177). In paragraph 90 of the judgement, Sheehan J held that the "circumstances" listed in the table (distance from sewer and water) are a criterion and that simply satisfying the criterion is insufficient for issuing an order to connect - under section 136 of the Local Government Act an order must contain reasons which clearly indicate consideration of material issues (Para 89). As stated at paragraph 94:

*I am of the view that Mr Stutchbury was entitled to be told **why** he should connect to the Sydney Water sewer, and **whether** his current sewerage arrangements, being a **material consideration**, were taken into account.*

We believe that the power to order a connection should be maintained on environmental and health basis to support local government's role as a regulator. In the case cited above Pittwater Shire Council was ordering connection to a service provider (Sydney Water). If competitive neutrality is a concern then we believe the legislation should be amended to order connection to a service provider.

### ***Water Directorate's comments on the IPART submission***

The licencing model presented by the Independent Pricing and Regulatory Tribunal (IPART) extends beyond the scope of the current review covering water supply and sewerage. The Water Directorate is not opposed to regulation via a Public Water Utility licence if this leads to a reduction of red tape and reduction in the duplication of regulatory oversight and reporting. We also support having the same powers of access as the WIC Act licences and metropolitan water utilities.

The Metropolitan Water Directorate discussion paper and the IPART submission consider competition and the need for a level playing field between public and private proponents. We acknowledge the government's desire for competition within the metropolitan areas.

The WIC Act is being used or considered for developments in regional NSW. The proponent is not specifically interested in competing with council as a water utility. Their focus is returning a profit on their investment. This can result in short term infrastructure planning and poor asset construction. The lack of clarity around OoLR and RoLR provisions within the WIC Act is of great concern to our members and we believe this is not adequately addressed in the IPART submission.

There are a number of sewerage schemes approved under the legislation current at the time without specific requirements for recycled water. Should a utility licence model be adopted, the model and licence will need to be flexible enough to support the breadth of operations of local water utilities. Financial assistance from the state government will be required to support regional communities' access to water services to meet the continually changing guidelines and operating targets.

Some of our member councils operate in areas where distance limits economies of scale and the financial viability of their schemes are marginal due to their small rate base and significant capital infrastructure costs. For example Lachlan Shire Council in central western NSW services an area of approximately 15,000 square kilometres. The LWU operates three potable water treatment plants and provides reticulated water supply to seven townships and villages located in Lachlan Shire, one village in Cobar Shire and one village in Bland Shire. The total number of connected properties is 2,640 with a water supply capital infrastructure replacement value of approximately \$92M.

Lachlan Shire Council has increased its water rates from \$1.40/kL for the first 450 kL/a and \$2.25/kL thereafter (2010/11) to \$1.80/kL for the first 450 kL/a and \$2.75/kL thereafter (2012/13). This resulted in a yearly increase of only \$800,000 to Council. Lachlan Shire Council now has the eighth highest average residential water bill in the state. Other LWUs with similarly high bills all have less than 3,000 properties. We are extremely concerned over the human and financial resourcing impact of regulatory change on these utilities and the communities they serve.

We also note that the IPART submission is silent on who would take on the role of regulator for the non-metropolitan public utilities. Should this model be adopted it is essential that the regulator has sufficient expertise and resources to manage the regional water utilities. We do not believe that IPART or NSW Office of Water (NOW) have the resources to develop and administer licences for NSW LWUs.

## **Conclusions**

The Water Directorate:

- Support the removal of regulatory duplication and inconsistencies across the recycling sector
- Supports a flexible regulatory framework with both deemed to comply and outcome based provisions
- Supports the retention of power to order connection to the water supply or sewerage network
- Welcomes the opportunity for further discussion on the opportunities to regulate recycling in NSW.