



Level 2, 172 Flinders St
Melbourne VIC 3000
Phone: 03 9639 7600
Fax: 03 9639 8966
ACN 100 188 752

Level 7, 459 Little Collins Street
Melbourne Vic 3000
Phone: 03 9670 5088
Fax: 03 9629 6898
ABN 37 120 056 484 ACN 120 056 484

Level 8, 128 Exhibition Street
Melbourne Vic 3000
Phone: 03 9654 5050
Fax: 03 9654 5749
ABN 005014988

Essential Services Commission
2/35 Spring Street
Melbourne VIC 3000
By email: water@esc.vic.gov.au

INQUIRY INTO AN ACCESS REGIME FOR WATER AND SEWERAGE INFRASTRUCTURE SERVICES – DRAFT REPORT

This submission is put forward by the Consumer Utilities Advocacy Centre Ltd (CUAC), the Consumer Action Law Centre (Consumer Action) and the Victorian Council of Social Service (VCOSS) in response to the *Inquiry into an Access Regime for Water and Sewerage Infrastructure Services – Draft Report* (the Draft Report) released by the Essential Services Commission (the Commission).

CUAC is an independent consumer advocacy organisation which ensures the interests of Victorian electricity, gas and water consumers - especially low-income, disadvantaged, rural and regional and Indigenous consumers - are effectively represented in the policy and regulatory debate.

Consumer Action is an independent, not-for-profit, campaign-focused casework and policy organisation. Consumer Action provides free legal advice and representation to vulnerable and disadvantaged consumers across Victoria, and is the largest specialist consumer legal practice in Australia. Consumer Action is also a nationally-recognised and influential policy and research body, pursuing a law reform agenda across a range of important consumer issues at a governmental level, in the media, and in the community directly.

As the peak independent coordinating body of the social and community services sector, the Victorian Council of Social Service (VCOSS) raises awareness of the existence, causes and effects of poverty and inequality and advocates for the development of a sustainable, fair and equitable society. As well as promoting the wellbeing of those experiencing disadvantage and contributing to initiatives seeking to create a more just society, VCOSS provides a strong, non-political voice for the community sector.

We welcome the opportunity to provide comment to the Commission on the Draft Report. We have comments in relation to the Draft Recommendations as well as broader positions to put forward by the Commission.

Summary

We are deeply concerned that the development of an access regime for Victoria is being undertaken in the absence of a clearly defined policy rationale.

We understand from this Draft Report that the intent of an access regime is to introduce competition to the water industry, and to de-regulate retail water pricing. The Draft Recommendations, along with the Competition Principles Agreement in Appendix D of the Draft Report clearly indicate this.

Although we acknowledge that there may be some merit to this aim, we do not believe that competition is an end in itself. We are concerned that the review has not provided sufficient evidence, from Australia or internationally, that competition in the water sector will result in consumer benefit.

It is essential to recognise that an access regime will not operate in isolation - environmental, political and economic policy setting objectives must be considered in concert. Water policy is unique in that it entails issues of public health, the ongoing viability of networks of water and sewerage systems, and environmental concerns. Further, water is not a 'typical' consumer good. It is a strongly held view in Australia that the provision of clean and safe water, priced as prudently as possible, is a basic right¹.

We are concerned that a number of recommendations in the Draft Report have failed to take such factors into account, and will have negative implications for the water industry far beyond the establishment of an access regime. We are particularly concerned that this has occurred in the absence of informed public debate.

We recommend an approach to policy on innovation and reform which is informed by research, including lessons learnt by other governments in increasing competition in the water industry, and an analysis of the benefits and potential disadvantages of the varying aspects of water reform, including an access regime, to Victorian consumers.

We strongly support reform measures in the water sector that deliver consumer benefits, with adequate consumer protections including health and safety standards, and reliability of supply. We believe that a clear articulation of the evidence and public benefit of competition in the provision of domestic water services in Victoria is required if this reform is to proceed as we understand.

In addition, it is imperative that the Government engage stakeholders in policy development, and that the policy intent is developed with an emphasis on transparency and public consultation, ensuring that broad public interest is adequately represented in the management of this essential natural resource.

Background

The Victorian Competition and Efficiency Commission (VCEC) *Inquiry into Reform of the Metropolitan Retail Water Sector* recommended that water authorities remain in public hands. In relation to competition in water, the VCEC Final Report noted that based on current literature and international experience, in the case of urban water in the short term there was limited evidence for concluding that competition would result in reduced aggregate costs and prices in all circumstances².

We note the Government's response to the VCEC Final Report *Water Ways: Inquiry into Reform of the Metropolitan Retail Water Sector*. Notably, the response from Government states that it is unequivocally committed to public ownership of its water businesses, and that the State's constitution requires that where a public authority was responsible for delivering water services at the time of its enactment, a public authority must continue to have that responsibility³. We would be deeply concerned if the design of a third party access regime was used to undermine this commitment.

¹ Marsden Jacob Associates, p. 46

² Victorian Competition and Efficiency Commission 2008, *Water Ways: Inquiry into Reform of the Metropolitan Retail Water Sector*, final report, February. p. xxx

³ Victorian Government 2008, *Victorian Government Response to the VCEC Final Report, Water Ways: Inquiry into Reform of the Metropolitan Retail Water Sector*, July. p. 4

Overall Recommendations

We acknowledge that the Commission has been tasked with determining how an access regime should be implemented in Victoria. Within this framework, and taking into consideration the significant concerns we have outlined including that we perceive the access regime to be a process to achieve undefined, and unclear policy objectives for competition, we have proceeded to provide a response to this paper. In doing so, we recognise and support the Commission's commitment to minimising the costs of implementing an access regime, while promoting the greatest benefits to the community from access and participation by third parties.⁴

In this context, we provide the following recommendations and principles:

- That the Government develop clear and transparent water reform policy objectives, including the purpose and intent of introducing an access regime;
- The Government should undertake public consultation on what future reforms may entail and how these reforms will impact on consumers and the regulatory process. It is imperative that the Government develop a framework which ensures transparent public debate;
- Within the constraints of current Government policy, we support the adoption of a careful approach by the Commission in developing and implementing an access regime. This careful approach must include a multi staged analysis of the benefits and potential disadvantages to Victorian consumers;
- Benefits of an access regime must outweigh costs to consumers. Specifically, new providers should pay any costs involved in accessing infrastructure, on the basis that they are supplying water on a commercial basis;
- An access regime should not be dominated by single or few providers, or it will fail to result in benefits for consumers. This is critical, as despite making arrangements for an access regime, there is no guarantee that a diversity of third parties will seek access to the network therefore resulting in increased costs;
- There should be an investigation and analysis into the costs and wider implications on the water industry as a whole resulting from the introduction of an access regime. We recommend the Commission explore the potential for innovation within the current system;
- We recommend a thorough assessment of the risks to current service standards in establishing an access regime;
- Proposed amendments to legislation should be subject to full public consultation; and
- The Commission should be required to consider the environmental impacts of the third party access regime.

Responses to the Draft Recommendations

We note that the Commission defines an access regime as a set of arrangements that establish a right for an access seeker to negotiate with an infrastructure operator to share the use of natural monopoly infrastructure⁵. In order for these arrangements to be established an extensive overhaul of the industry has been recommended. On this basis and acknowledging that an access regime has been proposed in the absence of a clearly defined policy rationale, our response to the Draft Recommendations is outlined below:

⁴ ESC, p. 83

⁵ ESC, p. ix

Draft recommendation 3.1

We support the staged implementation of an access regime. We note the Commission's regulatory objective of ensuring users and consumers (including low income or vulnerable customers) benefit from the gains from competition and efficiency. This must be of priority during the development and refinement of an access regime.

Draft Recommendation 4.3

We strongly support the exclusion of retail metering devices from the definition of infrastructure services as covered by the regime.⁶ The introduction of smart meters in the energy sector will result in considerable expense to all consumers, however benefits will not necessarily accrue to all consumers. Similarly we have significant concerns that the introduction of smart water meters will result in costs that far outweigh the benefits. We stress that any investigation into whether smart water meters be installed in Victoria should include a cost benefit analysis with full public consultation.

Draft recommendation 4.4

We strongly recommend further investigation and presentation of evidence by the Commission on the risks and benefits of including large water storages as part of a regime. We share the concerns outlined by Melbourne Water and VicWater in their submissions in response to the Issues Paper on allowing large water storages to become part of an access regime. The Draft Paper notes that in New South Wales dams are not covered under an access regime.

Draft recommendation 4.6

We support the Commission in its position that nominations of infrastructure for access be reviewed and subject to public consultation. Additional infrastructure services which could be proposed by the Commission must also be subject to public consultation. The public consultation process must outline the costs and benefits of allowing third party access to the infrastructure.

Draft recommendations 6.1 & 6.2

We support the retail minus approach for an access regime in the Victorian water industry, including specifically where retail prices are regulated and where services are provided by infrastructure operators within the regulated retail market.

We are concerned by the Commission's recommendation for the cost of service approach and recommend further analysis by the Commission, in particular the consumer impacts or benefits of this approach. We have concerns, as identified by industry, that this approach may result in cherry picking which would have negative impacts on consumers.

Draft recommendation 6.4

We agree that a review of the Water Industry Regulatory Order 2003 (WIRO) is essential to ensure that an access regime is effectively regulated. The Review must involve public consultation on the proposed amendments.

While we agree with the example presented in the Draft Report, that the definition of prescribed services in the WIRO may need to be reviewed,⁷ the pricing principles which are outlined in the WIRO must form the basis of price determinations. We specifically support pricing principles, including: those which allow for cost recovery by regulated entities; ensuring that customer interests, including low income and vulnerable customers, are taken into account; ensuring that regulated entities are provided with incentives to pursue efficiency improvements and promote the sustainable use of Victoria's water resources; and enabling customers or potential customers of the regulated entity to readily understand the prices charged by the prescribed services, or the manner in which such prices are to be calculated or otherwise determined.

⁶ ESC, p. 55

⁷ ESC, p. 86

Draft Recommendation 8.1

We support a full review by government of the legal and regulatory framework. We are not confident that the current framework would cope with the impacts of an access regime, including upstream and downstream competition. Significant issues include water quality, where the water is being sourced and the addition and extraction of varying water sources to dams and other infrastructure. A full review must be completed before the government implements the regime to ensure full customer, health and safety, water quality and environmental protections are in place. We support the extension of existing legislation and regulation to cover new entrants.

Draft Recommendation 8.2

We agree with the recommendation that the Government takes appropriate measures to ensure that new water and sewerage service providers are subject to the *Environment Protection Act 1970*, the *Safe Drinking Water Act 2003*, and the *Occupational Health and Safety Act 2004*. We strongly support the proposal that compliance with the relevant provisions of the EPA Act could also be included as a condition of a water industry licence if it provides an additional safeguard. We strongly support the proposition that compliance with the Safe Drinking Water Act be included as a condition of a water industry licence.

Draft recommendations 10.1 – 10.4

It is essential that further investigation be undertaken to assess the impacts of these far reaching recommendations on consumers, presented to the public and extensive consultation required before these recommendations are considered for adoption.

We also support the Victorian Government's stated position on public ownership of Victoria's water businesses and the constitutional provision which guarantees this. As noted by the Commission, this provision has not prevented a range of commercial relationships involving private provision of water and sewerage services and associated services⁸ and we question the policy intent of Draft Recommendation 10.1.

Draft recommendations 10.5

Further to the Commission's recommendation, we question the notion of accessing sources of 'new' water. We have considerable concerns about the impacts of developing new sources of water on the overall water cycle, particularly the impacts on the water table should access to aquifers be granted. Additionally, should access be granted for private development of desalination projects, we would have concerns about overall cost allocation and consumer benefits.

Should you wish to discuss any matters raised in this submission, please do not hesitate to contact Jo Benvenuti, CUAC on (03) 9639 7600, Janine Rayner, CALC on (03) 9670 5088 or Sarah Toohey VCOSS on (03) 9654 5050.

Yours sincerely



Jo Benvenuti
Executive Officer
CUAC



Catriona Lowe
Co-CEO
Consumer Action



Cath Smith
Chief Executive Officer
VCOSS

⁸ ESC, p. 109