



City West Water

Response to Essential Services Commission on

Issues Paper: **Inquiry into an Access Regime for Water
and Sewerage Infrastructure Services**



City West Water
LIMITED

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1. Introduction

The Issues Paper nicely encapsulates many of the issues that will need to be addressed in designing a State-based access regime.

City West Water (CWW) is comfortable with the concept of third party access where it is financially beneficial to CWW and CWW is in control of its own destiny. For example, CWW may invite access where it has spare capacity that is temporarily or temporarily available. In the event of other sorts of access, the onus is on CWW to be efficient, innovative and flexible enough in its own operations to make un-invited access unappealing to potential entrants.

CWW believes significant changes may be required to water policies and regulatory approaches to make them equally applicable to new entrants as well as incumbents. The remainder of this submission elaborates on these changes.

This submission should be read in addition to the VicWater response, to which CWW was a contributor.

2. Regulatory regime

A common regulatory regime should apply to new entrants and incumbents alike.

The Customer Code, administration of Community Service Obligations and the Statement of Obligations, to name just three, should be reviewed and/or redrafted so as to apply to all providers. This will need to cover all instruments like legislation, regulations, orders and codes.

Financial obligations such as licence fees, environmental contributions, Our Water Our Future contributions and contributions to the Smart Water Fund should apply to all.

Requirements for Health and Environment Management Plans should also fall upon any entrant supplying recycled water.

Regulators should deal directly with new entrants. CWW recommends against regulators requiring the incumbent to be responsible unless proven otherwise, thereby relying on the “terms and conditions” agreement between the incumbent and entrant to be a pseudo regulatory instrument.

3. Provider of last resort

Consideration needs to be given to “legacy costs” arising from the activation of the provider-of-last-resort.

Legacy costs could arise from substandard infrastructure that was installed below standard or was allowed to significantly deteriorate. Also, legacy costs might be created if an entrant establishes a regime in which profits are returned in the early stages (say for example capital gains) and later on-going operating losses are avoided by exiting and passing the non-profitable operations to the provider of last resort.

Bank guarantees, Government underwriting or other such methods should ensure that customers of the incumbent do not bear this risk.

4. Pricing policy

While the Issues Paper discusses how prices for access might be determined, a missing issue is Government policy on customer charges.

The policy currently aims for largely uniform pricing across Melbourne. If this same requirement is placed on new entrants, the entrant will profit in situations where this uniform price is greater than that which it would have otherwise charged. It also alters the current economic regulatory regime in which efficiencies are shared with or passed back to customers in the new regulatory period.

If new entrants are to be allowed to charge differently, it could be seen to be allowing a piece-wise dismantling of a policy position recently adopted by Government.

Government needs to affirm its policy position and CWW believes this should apply to all parties.

5. Policy on private sector participation

Third party access could result in private sector operators directly managing customer interfaces.

While Government policy is not to privatise the water authorities, it aims to harness some of the strengths of the private sector through its Public Private Partnerships policy. While involving the private sector, it keeps the private sector one-step removed from the customer interface.

Again, new entrants could lead to a piece-wise dismantling of this policy, so CWW recommends a clear policy be developed to apply to all parties.

6. Water conservation

Government's policy on water conservation may be weakened by new entrants.

A somewhat unique feature of water authorities is that they attempt to convince their customers to use less of their product or services. A regulatory regime for water conservation and cleaner production will need to be applied to new entrants to ensure they do not rely upon greater sales per customer to improve their returns.

7. Water restrictions

New entrants could lead to non-uniform water restrictions across Melbourne.

An entrant could be an existing customer who purchases water from an irrigation district and pays for it to be stored, treated and transferred to themselves during periods when they might otherwise have been restricted.

The current clause in the Statement of Obligations that requires authorities to apply uniform restrictions across Melbourne will need to be reviewed or it will need to apply to new entrants.

8. Terms and conditions

Incumbent water authorities will need to develop a concept for an agreement that would exist between an incumbent and an entrant.

Issues to consider could include:

- Spare capacity to service growth could be used in the short-term, but it needs to be clear what happens when that capacity is required by the incumbent. Is the entrant removed? Does the entrant pay for the augmentation, or do all parties?
- Monitoring needs to be established and paid-for in order to assign accountability if there is a detrimental impact on service standards of the incumbent
- Payment for calls or call-outs and subsequent referrals for issues that relate to the entrant rather than the incumbent.

9. Arbitration

If Government policy and regulatory regimes are confirmed and clearly communicated, disputes may be minimised. Equally, if the ESC can establish early the guidelines for pricing access, new entrants and incumbents will be negotiating from a common platform and disputes could be less than otherwise might have occurred.

CWW prefers an escalating process of dispute resolution. Given that the ESC is also the economic regulator, CWW believes an additional, independent review by VCAT should apply before referral to the court system. The escalating process could be:

- negotiation
- internal escalation of disputes
- ESC arbitration
- referral to VCAT
- court action/national regulators

10. Benefit-cost of access regime

Given the lack of uptake of access in the water sector elsewhere in Australia and internationally, CWW recommends a simple, least-cost access regime is warranted in Victoria. One that is sufficient to prevent monopolistic behaviour developing (although as economic regulator, the ESC should not allow this to occur in the pricing sense).