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Dear Sirs

Inquiry into an Access Regime for Water and Sewerage Infrastructure Services

Thank you for the opportunity to comment on the Commission's Draft Report on its Inquiry into an Access Regime for Water and Sewerage Infrastructure Services. Jemena has previously made a submission in response to the Commission's Issues Paper.

Jemena generally supports the Commission's proposed recommendations. There are two matters on which we would like to comment in detail. They are:

- the importance of a licensing regime that provides for private sector participation in all facets of the industry including the provision of infrastructure services and
- the potential burden that would be placed on water businesses by requiring them to make "access commitments".

Private sector participation in the provision of infrastructure services.

The focus of the Commission's terms of reference and consultation is on access as a means of facilitating entry to the retail markets for water and sewerage services. At the same time, the terms of reference direct the Commission to "have regard to the *Constitution Act 1975*, which outlines the Victorian Government commitment to public ownership of water businesses."

Water industry reform has potential to facilitate the development of new sources of water, and innovation in the delivery of infrastructure services. Jemena's Rosehill recycled water scheme in Sydney is an example of what is possible. If Victoria is to realise that potential then, in Jemena's view, the licensing regime that is to be developed in parallel with the access regime should provide for new entrants to participate directly in all facets of the water and sewerage industries.

The Commission provides a number of examples in Section 1.2.3 and Appendix C of the Draft Report that clearly illustrate the sorts of schemes that could become

possible if all sectors of the water industry were opened to private sector participation. A significant proportion could proceed without an access regime. All that those schemes need is an appropriate legislative and licensing regime to support and authorise them. It is arguable that a licensing regime alone could open up a range of opportunities that would be of benefit to Victoria.

We note the Commission's discussion of the possible restrictions in the *Constitution Act* on the provision of water and sewerage services and support the proposed recommendation (10.1) that the Government should review the Constitutional position. We also support the Commission's proposed recommendation (8.3) that the Government should establish a functional licensing system for new water and sewerage service providers.

In section 8.3.2 and Appendix C of the Draft Report the Commission apparently envisages that the licensing regime would extend to direct private sector participation in the provision of infrastructure services as well as retail services. However, that sense is not carried through clearly to the recommendations 8.3 and 10.1.

The reference to the *Constitution Act* in the terms of reference suggests that the Government may be inclined to maintain public ownership of [all] water businesses, or to limit private sector participation to certain sectors of the industry. It would therefore be helpful if the discussion of the scope of the proposed licensing regime and recommendations 8.3 and 10.1 could be expressed explicitly to encompass direct private sector participation in all facets of the water industry including the provision of infrastructure services, assuming that is the Commission's intention. We note that Victoria already has working models for private sector provision of essential services (and access) in gas and electricity.

The proposal to require that water businesses make “access commitments”

Jemena supports the Commission's proposal to adopt a staged approach to implementing access. It is therefore surprising that the Commission proposes that all water business should be required to establish access commitments from the outset. Even though the proposal is that commitments should be developed “on a step-by-step basis”, the initial burden on existing businesses is likely to be significant given that the process would involve public consultation on the businesses' proposals and the possibility of a second round of submissions where a business is required to include additional services. Much will depend on the scope and detail specified for access commitments and the nature of the services caught by the declaration criteria.

The Commission suggests that the current lack of certainty about the processes, costs and timeframe for obtaining access, and possible terms of access, may “deter broader participation in activities involving access”, so that “much of the prospective demand for access remains latent”. Some attempt should be made to establish the extent of that latent demand before committing the industry at large to the process and cost of developing access commitments.

Experience in NSW is that there has been very little demand for access under either the National Access Regime or the Water Industry Competition Act. The examples provided by the Commission in Section 1.2.3 and Appendix C of the Draft Report reinforce the point that a proportion of possible schemes would not require access.

In Jemena's view the better approach, consistent with the overall proposal for staged implementation, would be to follow the model of the National Access Regime. That is, to start with no declared services, with provision for a declaration application to be made where initial negotiations have failed (or for the service provider to submit a voluntary access commitment/undertaking). The Commission could consult on and publish the access pricing guidelines, negotiation protocols, and arbitration guidelines that would apply if a service was declared. Those documents would provide guidance to the parties in their initial pre-declaration negotiations. The prospect of declaration and all that it entails can be expected to provide a significant incentive for the parties to negotiate in good faith.

Should you wish to discuss the submission, please contact Warwick Tudehope on 02 9270 4551.

Yours sincerely

A handwritten signature in cursive script that reads "Sandra Gamble".

Sandra Gamble
Group Manager Regulatory