



Council of Social Service of New South Wales

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Water Industry Competition
Department of Water and Energy
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NCOSS Submission to Water Industry Competition Act 2006 Regulations

The Council of Social Service of NSW (NCOSS) is the peak body for the social and community services sector in New South Wales. NCOSS works with its members on behalf of disadvantaged people and communities towards achieving social justice in NSW.

NCOSS provides an independent voice on welfare policy issues and social and economic reforms and is the major co-ordinator for non-government social and community services in NSW.

NCOSS welcomes the opportunity to provide comment on proposed regulations for the *Water Industry Competition Act 2006* (the "Water Act"). The comments below reflect NCOSS's concern for maintaining continuity of supply for residential users of water in NSW, particularly those who face vulnerability within a competitive market as a result of limited capacity to pay.

General

Water and sewerage provision to households is a core essential service that enables basic living functions for residents of NSW. Any introduction of contestability in the provision of water and sewage services, whether at the storage and delivery, maintenance or retail spheres of operation, must ensure continuity of supply in order to meet fundamental social priorities.

NSW is one of the few jurisdictions internationally to substantially consider the application of competition principles to water infrastructure and retail industries. Although the benefits of competition are arguably tangible for the supply of non potable and recycled water to the business and industrial sectors, NCOSS does not believe that the potential benefits of retail competition for residential premises outweigh the potential costs of market failure in this area. For this reason NCOSS suggests the NSW Government adopts a conservative approach to competition for potable water and sewage services to residential premises.

Common Obligations.

NCOSS supports strong obligations for water industry participants who have a role in the supply of potable water or sewage services to residential households. In particular NCOSS supports the following:

- An obligation to supply to residential premises;
- Uniform public health standards to apply to potable water, with no capacity to vary quality for this service type;
- Hardship policies, including payment plans and a no disconnect / restrict policy for residential consumers who have difficulty meeting charges;
- Retailer of Last Resort provisions clearly articulated to ensure continuity of supply.

NCOSS notes that the NSW Government has expressed an intention to promote maximum flexibility in regulations for water competition, in order to minimise potential impediments to new market entrants. As stated above there are strong reasons for the NSW government to ensure a conservative regulatory framework for potable water and sewage services to residential households.

Water Quality and Public Health

Water quality standards pertaining to specified services should be included in the regulations and not be subject to a case by case assessment. NCOSS supports consistency in potable water supply, with no capacity for retailers to vary drinking water quality for residential households (for example by offering 'better quality' drinking water within the context of a competitive market).

NCOSS supports equivalent standards, monitoring, planning, reporting and incident management regulation for drinking water to residential households as currently apply to Sydney Water for new market entrants.

NCOSS is aware that a complication for the NSW Government in the design of the *Water Competition Act 2006* regulations is the distinction between drinking water and recycled water / water for other purposes. In most cases it is foreseeable that non-drinking water will not require the same level of regulation, but there may be a case for a tighter regulatory framework where non drinking water is supplied to a residential premises for non drinking purposes (eg watering, toilet flushing), but there are public health risks associated with either contamination or misuse of drinking water supply. NCOSS asks the NSW Government to consider appropriate regulation of the supply of residential recycled water for non drinking purposes to ensure public health priorities are maintained.

Construction, Operation and Maintenance of Infrastructure Provisions

NCOSS supports robust regulation of design and construction to ensure that residential drinking water and sewage services are maintained to meet social objectives.

NCOSS urges the NSW Government to develop strong provisions in order to prevent or limit the impact of physical supply failures, particularly for residential potable water supply and sewage services. As stated above, maintaining continuity of supply to residential users should be a core objective of the regulations. Competition may introduce significant complexity in relation to responsibilities for water supply, and with this complexity, potential for supply

disruption as a result of poor regulation or inadequate coordination (or a combination of both). NCOSS would prefer a conservative approach to regulation for new market entrants who construct, operate and maintain water and sewage infrastructure, which aims in the first instance to prevent supply failures, and secondly, to ensure that should failure occur, that services are returned as quickly as possible.

NCOSS supports equivalence in customer service standards between standard and new market retailers, either determined by the regulations or as part of standardised service contracts. As in the contracting arrangements for the NSW metropolitan bus industry, there is a strong case for ensuring public accountability by making publicly available the commercially non-sensitive sections of any new contracts. There is further a need for independent review of performance by an independent regulator such as IPART, as a license condition.

Consumer Protection

NCOSS requests the NSW Government consider the following consumer protections:

a) No Disconnection / Restrictions Policy

Water retailers currently reserve the right to disconnect or restrict customers from water if they have not paid their water bills. Disconnections from water are usually rare; in most cases retailers use water flow restrictions, by placing a device in water supply that restricts the supply of water to the household. In 2004/05 there were 2499 water restrictions and 32 water disconnections as a result of non payment for Hunter and Sydney water combined.

Water restrictions and disconnections are extremely stressful, severely limiting the ability of households to perform basic functions such as bathing and meal preparation. There are substantial health implications for households that experience disconnection or restriction of their water supply.

There are strong reasons to remove water disconnection / restriction of residential households as a last resort for inability to pay:

1. There are public health benefits in ensuring a consistent supply of good quality drinking water to all residential households in NSW regardless of capacity to pay.
2. If water retailers did not have disconnection / restriction as an option, then there would remain other means to pursue non payment of water bills, including the use of payment plans (where customers can arrange either to pay back a debt over a period of time or arrange water payments in smaller more regular amounts), or through legal action for debt recovery. Removing disconnection / restriction as an option may encourage retailers to work more closely with customers facing financial difficulty to resolve debt. Legal action would be a last resort.
3. Water restrictions / disconnections are relatively expensive for retailers in comparison to the revenue forgone in unpaid water usage charges. The immediate impact on water retailers of losing the capacity to disconnect / restrict supply is likely to be minimal.
4. In NSW, there is a relatively low rate of disconnection / restriction in the water area in comparison to energy (there were 24,000 energy disconnections in 2005/06 as a result

of non payment). As stated above, the financial impact for water retailers of removing the sanction of a restriction / disconnection is likely to be small.

5. A longstanding issue in NSW is that tenants may be disconnected / restricted if their landlord has neglected to pay water rates. A non disconnection / restriction policy would safeguard against this.

NCOSS recommends that the NSW Government removes disconnection or restriction as an option for residential households with unpaid water charges. This would entail not only drafting appropriate regulations for the new market entrants under the *Water Industry Competition Act 2006*, but also amending the existing *Water Management (Water Supply Authorities) Regulation 2004* (Part 7 Division 4).

b) Payment Plans

NCOSS supports making the proposed consumer protection regulations for the *Water Industry Competition Act 2006* consistent with the recent *Electricity Supply (General) Amendment Regulation 2007* (the “*Electricity Regulations*”) and the *Gas Supply (Natural Gas Retail Competition) Amendment Regulation 2007* (the “*Gas Regulations*”), as it would make the most of the work that was done by both the DEUS Disconnections Review Working Group and the Move In-Move Out Working Group and ensure that consumer protections are consistent across energy and water markets.

Further, it would be appropriate to amend the relevant sections of the *Water Management (Water Supply Authorities) Regulation 2004* to ensure that regulations pertaining to consumer policies are consistent across both monopoly providers and new market entrants.

NCOSS strongly recommends the following requirements be included in the *Water Act* regulations:

1. That customer supply and customer connection contracts prohibit network operators and retailers commencing legal action for debt recovery against a residential customer for unpaid fees and charges through lack of sufficient income of the customer, unless the customer has failed to accept an offer of a payment plan or failed to comply with the terms of a payment plan.
2. That a supplier must use its *best endeavours* to deal with the customer outside of business hours, where all other attempts to deal with the customer have been unsuccessful prior to commencing legal action for debt recovery.
3. That a payment plan is to be operated by all retail suppliers in NSW for customers and is:
 - to include an offer for the customer to pay for their water consumption (in advance or arrears) by instalment payments;
 - to be established having regard to:
 - the customer’s capacity to pay;
 - the customer’s arrears; and
 - the customer’s expected consumption needs over the following twelve month period;
 - to inform the customer of:
 - the period or periods of the plan;

- the amount of each instalment and the frequency of instalments;
- if the customer is in arrears, the number of instalments to pay the arrears;
- if the customer is to pay in advance, the basis on which instalments are calculated and adjusted according to actual usage; and
- to provide fair and reasonable procedures for dealing with payment difficulties that the customer may experience under the plan.

c) Information on Water Supply Contracts and Cooling Off Period

As stated above, the draft *Electricity Regulations* and *Gas Regulations* provide some useful principles to improve information and protections for consumers who agree to a change of water supplier.

NCOSS recommends the following be included in the *Water Bill* regulations:

1. A written disclosure notice including key information about the contract should be provided to customers. The notice should be sent to a customer within 2 business days of contract formation unless the retailer has already provided the written disclosure notice.
2. A copy of the customer supply contract should be sent to a customer within 2 business days of contract formation unless the retailer has already provided the contract.
3. Customers should have the right to terminate a contract during a period commencing on the date the contract is entered into and ending on a date 10 business days after the contract is entered into. If, on investigation of a complaint, it is found that the supplier failed to send or otherwise provide the customer with a disclosure notice or contract within the required 2 business days, the cooling-off period should commence from the date the customer receives these documents.
4. Customers should be able to exercise their cooling-off rights either in writing or verbally.
5. Suppliers should be required to keep a record of customers' termination of negotiated contracts during the cooling-off period, appropriate to the manner in which notice was given to the supplier. For terminations notified to the supplier verbally, this could involve recording of the conversation or providing the customer with a unique identifier, similar to a receipt number, for the termination transaction.

d) Billing

Bills represent the most frequent form of contact between consumers and retailers. They provide an opportunity for consumers to see their level of consumption, both current and comparatively, the rate that they were charged, and the way in which the charge must be paid.

NCOSS supports regulations providing basic criteria that Retailers must follow when issuing bills for water consumption. Doing so would provide an industry consistent billing format, making it easier for customers to understand their bill. It would also enable retailers to rely on their compliance with the regulations if a customer is unhappy with the bill. Part 3, Division 4,

of the *Electricity Regulations* provides useful principles to improve information delivery and protections for consumers who agree to a change of water supplier.

e) Complaints Handling

NCOSS supports ensuring complaints handling processes – both internal and external – for retailers who supply water or sewage services to residential premises are consistent with the operating conditions applicable to Sydney Water and Hunter Water.

f) Retailer of Last Resort

As stated above, NCOSS supports strong regulation to ensure continuity of supply for residential water and sewage services. This entails adequate retailer of last resort provisions, including, where appropriate, allocating step in rights to ensure essential services are maintained.

NCOSS further urges the NSW Government to ensure that there are adequate disincentives for retailers exiting the market as a result of financial expediency rather than as a result of genuine financial distress. There is a risk that competition will attract market entrants who are looking to either test the market, or enter for short term gains. A large number of entrants with a short term commitment to the market may be damaging in the long term to social and environmental sustainability objectives. Ideally the regulations should ensure that entrants that will facilitate continuity of supply in the long term, particularly for residential drinking water and sewage services.

e) Rebates and Concessions

NCOSS supports potential customers of new retailers being able to access NSW Government rebates and concessions. Rebate schemes are a powerful way to deliver targeted relief to vulnerable or disadvantaged consumers who are experiencing hardship. It is appropriate for the NSW Government to utilise such schemes to ensure that all consumers have equitable access to the essential service of water. We consider that this subsection would adequately accommodate the necessary amendment.

NCOSS supports reform by the NSW Government in this area to improve the effectiveness of the existing rebate system. The NSW Government currently supports a system of pensioner rebates through water suppliers, but this is inconsistent across different water suppliers, with more generous rebates available to residents served by Sydney and Hunter Water. Aside from addressing geographic inequities in the availability of rebates, there is also a strong case for devising a mechanism with water suppliers for the extension of appropriate rebates to tenants, and for extending rebates to Health Care Card holders in order to provide relief for low-paid working households.

Exemptions

The social impact of exemptions granted to water industry participants should be adequately assessed to ensure there are no flow on effects in relation to consumer protection, public health or affordability for residential users. NCOSS is concerned, for example, that exemptions granted for caravan parks or isolated residential developments may remove the consumer protections that would otherwise apply to residents who are supplied by regulated retailers.

Conclusion

NCOSS supports strong regulation of water and sewage infrastructure supplying residential premises in NSW, to ensure continuity of supply, continued affordability and maintenance of public health objectives.

Yours sincerely

Linda Frow
A/Director