Local Government Association of South Australia

The Voice of Local Government

ECONOMIC REGULATION OF THE SA WATER INDUSTRY CONSUMER PROTECTION FRAMEWORK FOR THE SA WATER INDUSTRY

SUBMISSION TO THE ESSENTIAL SERVICES COMMISSION

January 2012

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NOTE: This document was endorsed by the LGA State Executive Committee meeting on 19 January 2012.

INTRODUCTION

The Local Government Association of SA (LGA) is a membership organisation for all Councils in South Australia and is the voice of the Local Government in this State. It is endorsed by the South Australian Parliament through the South Australian Local Government Act 1999 and is recognised in 29 other South Australian Acts.

All 68 Councils are members of the Association, as is Anangu Pitjantjatjara Yankunytjatjara. The LGA provides representation and leadership relevant to the needs of member Councils and has a formal State/Local Government Relations Agreement with the Premier of the State, and is a constituent member of the Australian Local Government Association.

RECOMMENDATION

It is recommended that an ongoing reference group between ESCOSA and Councils (through the LGA) be established to guide implementation of the new regulatory regime(Water Industry) where it relates to Local Government.

The LGA requests further consultation with ESCOSA in this regard, particularly developing suitable frameworks that can be applied to the specific sector of CWMS (including treated CWMS effluent) and storm water systems operated by Councils. This should include consideration of the current legislative frameworks and service standards that Local Government is currently operating under.

BACKGROUND

The Local Government Association of South Australia (LGA) has maintained keen interest in passage of *Water Industry Bill 2010* and any proposed role of ESCOSA as the independent economic regulator of the water industry in South Australia.

The LGA notes the *Commissions proposed regulatory framework for SA Waters drinking water and sewerage services is relatively heavy-handed. The Commission proposes relatively light handed regulation of other entities and services* (Economic Regulation of the SA Water Industry Overview).

It is noted that the Bill has passed the South Australian House of Assembly and will recommence in Committee in the Legislative Council when Parliament resumes in 2012

The LGA has maintained through out the passage of the Bill that most CWMS should either be:

- exempted from the classification of *retail service* by regulation; and/or
- recognised as a *water industry entity* under Part 4 of the Bill without the need for a license.

If some CWMS warrant regulation then the level of regulation should be commensurate with the scale of operation of CWMS within a Council. In the LGA's view, Councils with collective CWMS schemes of 1600 connections or less should be exempted. i.e. total/collective scheme connections within a Council, regardless of the number of small individual schemes within the Council area should be 1600 connections or less.

Imposition of the regulatory regime contemplated by ESCOSA through the regulatory framework consultation papers will make it very difficult for Councils to manage small CWMS systems.

It should be noted that the State Government's water security plan, 'Water for Good', sets ambitious targets for the harvesting and recycling of stormwater in the Greater Adelaide and regional areas. The vast majority of stormwater harvesting is undertaken by Councils and it would be a perverse policy outcome if Councils were confronted with a regulatory regime which created disincentives for harvesting, recycling and sale of stormwater resources. Care should be taken to ensure that that where Councils are involved in significant stormwater harvesting and recycling projects which include the sale of water resources that any regulation by ESCOSA is commensurate with the scale of the scheme(s).
This submission promotes the following key issues:

1. the vast majority of Council Wastewater (CWMS) and Stormwater Harvesting Schemes are essential 'public services' rather than commercial operations and therefore should either be exempted from the provisions of the *Water Industry Act 2010* and/or be subject to no or minimal regulation by ESCOSA;
2. where Councils are involved in genuinely commercial supply of water or wastewater services any regulation should be commensurate with the economic scale of the 'business';
3. the powers for Councils to levy service rate or charges against the land (currently pursuant to Section 155 of the *Local Government Act 1999*) should be retained;
4. technical regulation of on-site wastewater treatment systems in regional areas should remain the responsibility of Councils and should not require multiple approvals;
5. the legislative framework should not have the unintended consequence of discouraging Councils and other bodies undertaking water recycling projects; and
6. Transitional arrangements should reflect that Councils have long term contractual arrangements for the supply of treated wastewater and stormwater.

ECONOMIC REGULATION OF THE SA WATER INDUSTRY

Licensing framework

The licensing framework indicates the Commission will consider exempting individual entities from the requirement to obtain a licence (or from specific licence requirements) on a case by case basis.

39 Councils currently manage 170 separate CWMS throughout regional SA. Of the 170 systems operated 153 of these services have less than 1000 connections. The majority of systems are very small, for example Bute has 100 connections, Swan Reach 33 , Wudinna 319 and Pinnaroo 160 to name a few.

It is submitted that it would be preferable to establish an agreed set of criteria to assign classes to CWMS where the lowest or smallest class would be exempt or not require a licence, through to light – handed regulation for larger schemes.

Establishment of criteria will provide efficiency of scale to small systems

License conditions

Issues to be considered in assessment of an application include:

- whether the applicant is of good character and honest in its dealings;
- whether it has access to appropriate financial technical and human resources;
- honesty of its shareholders officers; and
- other matters as may be prescribed by regulation.

These issues on the whole are directed to the private sector, and do not appropriately reflect that Councils (Local Government) are a sphere of Government.

Councils are established by State Government legislation pursuant to the *Local Government Act 1999* (LG Act). The Act amongst other things sets out principle roles, functions and objectives of a Council A key function of a Council *is to provide services and facilities that benefit its area, its ratepayers and residents and visitors to its area (including general public services or facilities(including electricity, gas and water services and waste collection*.

Given Councils are not private citizens or private sector operations what is the point of requiring a Council to make application and pay the application and on going licence fees? The Council will need to recover the costs of these fees from either its household customers or rate payers generally.

Standard form customer contracts
It is unclear how this will apply to a CWMS scheme where there is no offer or acceptance, rather the Council has the statutory right, pursuant to section 155 of the *Local Government Act 1999* to impose on a property owner a charge in the form of a rate which the owner has no right not to pay and irrespective of whether he or she chooses to use the service provided or not.

Councils have previously entered into many and varied contracts with third parties in relation to the design construction and ongoing management of water infrastructure, the disposal of trade waste, the supply of reclaimed water to name a few. These legally binding contractual arrangements are rarely on similar terms. Rather they were negotiated on a case by case basis to take into account the circumstances relevant to the applicable infrastructure. Many of the contracts are for significant terms as they were to be relied upon to underpin long term investment.

There are numerous agreements for the supply of reclaimed water that run for many years with a fixed fee to be adjusted from time to time in accordance with a formula or mechanism set out in the agreement.

Service standards and Performance Monitoring Framework
A Council's performance in providing the CWMS service is already subject to monitoring by a number of agencies. The performance of the scheme itself is monitored by the Department of Health and, depending on the size of the scheme, the EPA. Just like any other Council matter or issue, procedures for complaints grievances and external review are set out in the LG Act. The Ombudsman has the right to investigate and review (Chapter 6 Part 7). External auditors also review expenditure and provisions for future capital works etc (Chapter 8 Part 4 Division 3). There are requirements for Codes of Conduct for staff (Chapter 7 Part 4 Division 1). The relevant Minister for Local Government also has certain powers to investigate should issues arise (Chapter 13).

It is unclear how the proposed ESCOSA regulatory frame work will apply to Councils. Will the regulatory regime supersede existing legislative obligations of Local Government or will it add another level of regulatory process.

Compliance Framework
In regional areas, Council Environmental Health Officers (EHOs) are currently delegated to inspect and approve on-site wastewater systems. Removal of the delegation to EHOs would reduce the viability and current level of service being provided by these specialist positions in regional Councils.

Technical regulation of on-site wastewater treatment systems in regional areas should remain the responsibility of Councils and should not require multiple approvals.

What transitional considerations in the proposed regulatory regime will be given to all existing contractual arrangements in existence at the date of commencement of the Water Industry Act?

Price regulation of SA Drinking Water and Sewerage

The vast majority of SA Councils are not involved in the provision of potable water supply but there are some exceptions including the District Council of Coober Pedy and Roxby Downs Municipal Council that manage 'town water' and sewerage supplies. The District Council of Ceduna also on-sells potable water to small communities west of Ceduna.

It is suggested that these be considered as 'special cases' on their merits similar to the regulation of electricity supply.

Other Councils are involved in what might be best described as 'supplementary supply' of potable water for isolated communities where the normal SA Water potable supply service is not adequate or not available. These small scale schemes are developed in response to community need.

The powers for Councils to levy service rate or charges against the land (currently pursuant to Section 155 of the *Local Government Act 1999*) should be retained.