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Dear Sirs

**Consultation on
Draft Water Industry Competition (General) Regulation 2008**

Thank you for the opportunity to provide comments on the Draft Water Industry Competition (General) Regulation 2008 and associated Regulatory Impact Statement. Alinta's submission is attached. 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

Consultation on Draft Water Industry Competition (General) Regulation 2008

Submission by Alinta LGA Ltd

This submission by Alinta LGA Ltd (Alinta) is made in response to the Draft Water Industry Competition (General) Regulation 2008 (Draft Regulation) and associated Regulatory Impact Statement (RIS) issued for consultation by the Department of Water and Energy in April.

Alinta LGA Ltd is owned by Singapore Power International Pte Ltd (SPI) which, together with Babcock & Brown, purchased the assets of the former Alinta Limited in 2007. Those assets include Alinta Limited's interest in the Rosehill/Camellia Recycled Water Project and other water infrastructure developments. In late 2007, a joint venture of SPI and Babcock & Brown, together with Veolia Water Australia, was selected as the preferred tenderer to build own and operate the Rosehill/Camellia Recycled Water Project. That project is foreshadowed in the Sydney Metropolitan Water Plan and will be a significant contributor to the achievement of the Government's ambitious target of 70 GL/year of recycled water by 2015.

We have reviewed the Draft Regulation and RIS and our general view is that the Water Industry Competition Act 2006 (the WICA) and the Draft Regulation together establish a workable framework for licensing and regulation of new participants in the water industry. However, we have identified a number of provisions in the Draft Regulation where we believe some change is warranted, or that give rise to questions. In particular:

- The annual consumption criterion that defines small retail customers is higher than it need be and should refer to aggregate consumption of water of all qualities.
- Clause 17(1)(b) requires that the Register of Licences include the name of each person (other than the licensee) that is specified in a licence. This is a reference to section 6(1) of the WICA which provides for persons other than the licensee to be specified in a licence as a means of authorising them to do those things authorised by a licence. It is not clear when it would be necessary or appropriate to specify a person in this way given that clause 18 of the Draft Regulation would exempt persons working for or on behalf of a licensee from the requirement to be licensed.

Alinta is concerned that the administrative burden of specifying persons on a licence could be considerable for very little if any practical or public benefit. Moreover, Alinta is not aware of any precedent in the water industry or other infrastructure industries in NSW, for naming persons other than the licensee in a licence, and to do so would result in confusion and uncertainty about accountability for compliance with the licence.

It is important that these matters be clarified so that applicants, as well as IPART, have a clear and common understanding of what, if anything, is required in relation to specifying persons other than the licensee in a licence.

- Given the size, competencies and likely number of licensees (at least initially), it is Alinta's view that an Industry Code of Conduct (Clause 24) is unnecessary. Development of a Code should be deferred until it is clear that one is required.
- Retail suppliers should not be subject to licence obligations that are directed at the protection of small retail customers unless and until they supply such customers. Those obligations include the implementation of government policy with respect to social programs, establishment of translation services, development of codes of practice for customer complaints and debt recovery, and publication of standard form contracts.

Alinta's detailed comments are set out in the attached table.

Draft Water Industry Competition (General) Regulation 2008

Following are Alinta's comments and suggestions, including a number of questions, about specific provisions in the Draft Regulation. The comments do not cover provisions that are specific to sewerage infrastructure and sewerage retailing i.e. clauses 6(2) and 10(2); Schedule 1, Part 3; and Schedule 2, Part 3.

Clause	Summary	Comment
Part 1: Preliminary		
3 & 5	Definitions of Small Retail Customer	<p>In responding to the Regulations Consultation Paper issued in June 2007, Alinta proposed a criterion of 70kL/d aggregate consumption of all water (recycled and potable). As drafted, the criterion is based on the quantity consumed from particular infrastructure. On that basis a large business that consumes more than 25ML/yr of water (potable and non-potable) in aggregate but less than 25ML/yr of non-potable water would be classed as a small retail customer for non-potable water.</p> <p>The objective should be to identify consumers that are large enough to manage their affairs through direct negotiation. Large consumers are also likely to have requirements that differ from those covered in a standard form contract for small consumers. In Alinta's view, the size criterion should be defined in terms of aggregate consumption of all types of water to avoid the situation described above. As to the size criterion itself, Alinta suggests that it should be set to result in about 2,500 consumers being classified as "large". Taking into account the larger customer base for water, this would be comparable to the NSW gas market where some 500 consumers out of approximately 27,000 non-residential consumers exceed the 10TJ per annum consumption threshold for "contract" customers. Alinta understands that for 2,500 water consumers to be classified as "large", the threshold would have to be somewhat lower than 25ML/yr.</p> <p>It is inevitable that, whatever the cut-off quantity, there will be consumers whose consumption varies around the cut-off quantity from year to year. In practice suppliers must have some flexibility as to how they deal with consumers who are on the cusp. In particular a consumer who is on a negotiated contract and consumes less than the cut-off should be bound by the negotiated contract for its term, and a small consumer who has a short term increase in consumption should not have a right to a negotiated contract.</p>

Clause	Summary	Comment
Part 2: Licensing of network operators and retail suppliers		
8	Purpose for which non-potable water may be used	<p>It is possible that a single network operator will choose to deliver more than one quality to meet different consumer requirements in the most economical way by segmenting its network or by establishing parallel sub-networks within its area of operation. Generally speaking, water of a particular quality can be used for all purposes other than those that require water of a higher quality. So, Reverse Osmosis (RO) quality water can be used for irrigation but Micro-filtered (MF) quality water, which might be used for irrigation, cannot be used directly in applications requiring RO quality water. On the other hand, RO quality water, while safe to use for domestic purposes from a health and environment point of view, cannot be used in standard pipe and plumbing systems because of its corrosive properties. RO water would have to be “dosed” to permit reticulation and use in such systems, and a network operator may choose to segment its network to permit such dosing. A network operator whose principal network delivers RO quality water may also choose to develop smaller sub-networks in its area of operations to deliver water of a different quality e.g. a sub-network could be established to deliver MF quality water to irrigation customers close to a plant.</p> <p>From an administrative point of view it is desirable that the system have the flexibility to accommodate all of these options (and perhaps others) within a single licence.</p>
12	Purposes for which water may be supplied under a retail supplier's licence	<p>A retailer may choose to supply water from more than one network in which case the retailer will very likely be supplying water of different qualities. As drafted, this provision implies that a separate retail licence may be required for each type of water supplied and for each network from which water is to be supplied (Clause 17(1)(b)(ii) appears to confirm this). Is this intended? Could a retail licence be left open as to quality and instead impose an obligation on retailers not to supply, or offer to supply, water for use for purposes other than the authorised purposes for which water from the relevant network may be used? (NOTE that clause 12(2) of the Draft Regulation in effect establishes that principle.) Alternatively or additionally, clause 12 could state that a retailer must not present for distribution and a network operator may refuse to accept for distribution in its network, water of a quality that is inconsistent with the authorised purposes specified in the network operator's licence for the relevant network.</p>
17 and 18	Register of Licences and Exemptions from the requirement for a licence	<p>By subclause 17(1)(b), the Register of Licences to be maintained by IPART must include “the name of each person (other than the licensee) who is authorised by the licence to construct operate and maintain the infrastructure ... or to supply water by means of the infrastructure ... as the case may be.” This is a reference to section 6 of the WICA and raises the question, under what circumstances would it be necessary or appropriate to have a person other than the licensee specified in a licence?</p> <p>Alinta notes that section 5 of the WICA stipulates that “a person must not [participate in the water industry] otherwise than under the authority of a licence” and that section 6 provides for a licence to authorise “the licensee, and any other person specified in the licence, to [do the things specified in the licence]”. Clause 18 of the Draft Regulation then provides for certain classes of “infrastructure” to be exempt from the requirement for a licence. One of the classes is “(a) water or sewerage infrastructure that is constructed, maintained or operated for or on behalf of</p>

Clause	Summary	Comment
		<p>a licensee or a public water utility.”</p> <p>It is inevitable that licensees will contract out various – and perhaps substantial – aspects of their operations. Contractors and agents will in turn sub-contract aspects of the work they are contracted to perform. The RIS (pages 76 and 77) presents a strong case for those who work for or on behalf of a licensee to be exempt from licensing. On the face of it, then, the clause 18 exemption would permit contractors working for and on behalf of a licensee to do so without further authority. In that case, the provision in section 6(1)(a) of the WICA (for persons other than the licensee to be specified in the licence) would appear to apply only in circumstances where a licensee wishes to authorise a person who is not exempt, to undertake licence work. It is difficult to conceive what those circumstances might be. The section 6(1)(a) provision would appear to be redundant. In the end it is the licensee that is responsible for complying with the conditions of the licence.</p> <p>The following discussion is written by reference to network operator licensing but applies equally to retail supplier licensing.</p> <p>It may be the intention to require a person who is exempt under clause 18 to be specified in the licence, despite the exemption, in order to construct, maintain or operate the infrastructure. Alinta notes that it is not clear how the WICA and regulation as drafted would achieve this. However, if it were the intention, then Alinta has significant concerns.</p> <p>The meaning of “construct, maintain and operate” becomes critical. If it means the “hands-on” activities of construction, maintenance and operation then the individuals who perform those activities i.e. natural persons including employees, would be the ones specified in the licence. That would be unworkable which suggests that an alternative meaning is intended. The position of sub-contractors is also unclear given that they perform work for or on behalf of a contractor rather than a licensee.</p> <p>The criteria for granting a licence include “that the applicant has, and will continue to have, the capacity (including technical, financial and organisational capacity) to carry out the activities that the licence (if granted) would authorise” (Section 10(4)(a) of the WICA). In the case of a network operator’s licence, those activities are the construction, maintenance and operation of the specified infrastructure in its entirety. The inference to be drawn from this is that the acts of construction, maintenance and operation contemplated by section 6 of the WICA are at a level that is significantly above the “hands-on” activities that would be undertaken by individuals or sub-contractors. Alinta suggests that, in order to satisfy (and continue to satisfy) the Section 10(4)(a) criteria, a licensee must be the “mind and management” of the licensed operation and so, in context, “construct, maintain and operate” refers to those functions as performed by the “mind and management”. Accordingly, there is no scope for other persons to be specified in the licence.</p> <p>Another possibility is that an intending licence applicant may not be able to satisfy all of the section 10(4) criteria on</p>

Clause	Summary	Comment
		<p>its own, in which case it would be ineligible to hold a licence as a sole licensee. Alinta assumes that the licensing scheme could accommodate joint licensees (who, together, satisfy the criteria) in such a case.</p> <p>Finally, it is not clear what purpose would be served by specifying persons other than the licensee in a licence given that all of the standard licence conditions set out in the Draft Regulation are directed at the licensee alone. While section 6(1)(a) of the WICA may mean that a person specified in the licence is authorised to construct, operate and maintain the infrastructure, the legislative scheme does not appear to impose any obligations on such a person. In the end it is the licensee that is responsible for complying with the conditions of the licence. The licensee is therefore accountable for the actions of its contractors. Specifying persons other than the licensee on a licence would result in confusion and uncertainty about accountability for compliance and create risks for the licensees and also for the community.</p> <p>It would also be administratively burdensome to specify persons other than the licensee in a licence. Each addition to or deletion from the list of specified persons would have to be managed as a licence variation. Depending on the criteria for inclusion, such variations could be quite frequent and presumably the process would require the licensee or the person themselves to establish the person's credentials with IPART before the person could be included on the licence.</p> <p>In Alinta's view, specifying persons other than the licensee in a licence will be of no practical or public benefit. Moreover, to Alinta's knowledge, there is no precedent for doing so in the water industry or other comparable industries in NSW. For example, in the case of Sydney Water, and in the Gas and Electricity industries and under the Pipelines Act, it is only the licensee that is specified in authorisations/licences. In all those industries, licensees contract out their operations to some degree.</p> <p>On the view outlined above, the provision in section 6(1) of the WICA to specify persons other than the licensee in a licence is unnecessary and redundant and should be removed. If the alternative view is taken that the provision must be retained and given some work, then the interpretation of "construct, maintain and operate" becomes critical in determining what classes of person will be specified. However, in view of the clause 18 exemption, the circumstances under which it would be necessary or appropriate to specify a person other than the licensee in a licence remain unclear.</p> <p>Similar issues arise for retail suppliers' licences where "supply", rather than "construct, maintain and operate", is the operative term.</p> <p>It is important that these matters be clarified so that applicants, as well as IPART, have a clear and common understanding of what, if anything, is required in relation to specifying persons other than the licensee in a licence.</p>

Clause	Summary	Comment
Part 3: Retailer of last resort		
20	Declaration of supply failure	<p>By subclause 20(d) a supply failure may be declared where the licensee is unable, or the Minister is satisfied that it is imminently likely to become unable, to supply water or provide sewerage services to its customers in the whole or any part of its area of operations.</p> <p>Alinta expects that some consumers will be supplied with non-potable water on a contractually-agreed interruptible basis. A negotiated agreement may also provide for the agreement to be terminated for debt. It should not be possible for interruption and/or termination as provided in a contract to give rise to declaration of a supply failure. (Alinta notes that it is a discretionary matter for the Minister to declare a supply failure.)</p>
Part 4: General		
24(1), (2) and (3)	Establishment of water industry code of conduct	<p>It is important that the Code should not be able to affect liabilities to consumers or make a participant liable to anyone other than those bound by the Code. The Code should not vary common law rights to damages or contain indemnities.</p> <p>Alinta interprets the effect of clause 24 to be that, where a negotiated agreement deals with a matter covered in the Code, the agreement prevails. It is only where an agreement is silent on a matter covered in the Code that the Code would apply. In effect parties may “contract out” of the Code. If that were not the case then Alinta would have serious concerns.</p> <p>If a Code is established, there will be some agreements that pre-date the Code. Those agreements must stand. A Code, once established, will also form the backdrop to any negotiations in which case any agreement that is inconsistent with the Code will be entered into knowingly. It should not be possible for such an agreement to be overridden or, in effect, prohibited by the Code.</p> <p>Having said that, Alinta questions whether a Code is necessary. A licensee must be a substantial and commercially competent business in order to obtain a licence, and Public Water Utilities are clearly substantial businesses. Such businesses should be able to negotiate arrangements that deal with the matters contemplated for the Code between themselves. At the very least the development of a Code could be deferred until it is clear that one is required. This will be determined in part by the level of new activity in the industry, including the demand for licences.</p>
27	Water restrictions	In the interests of competitive neutrality, it should be stated that, if restrictions are imposed on one non-PWU supplier that draws from a particular source then they should be applied in like manner to all suppliers that draw from that source (and not to those who draw supply from different, unconstrained, sources).
29	Approved ombudsman scheme	The ombudsman scheme should be available only for disputes relating to small retail customers or where a negotiated contract specifies the ombudsman scheme as the mechanism for resolution of disputes.

Clause	Summary	Comment
Schedule 1, Part 1: Licence conditions of all network operators' licences		
1(1)	Provision of information	<p>Subclause 1(1) requires the provision of information to the Minister or IPART as directed from time to time and within the time directed.</p> <p>The purposes for which information can be required should be specified e.g. assess or monitor compliance (cf Gas Supply Act s11(2)(f) and 33(1)) and Condition 8 of the standard Gas Reticulator's Authorisation which requires that reasons be given for an information request.) (In the latter case, DWE has established standard reporting requirements.) Information requirements for water licensees should be standardised and channelled through one or two agencies at the most. Standardisation will also ensure that information obtained by agencies from different licensees is comparable.</p>
2	Commissioning of water or sewerage infrastructure	<p>The Minister's prior written approval is required to bring "any new ... infrastructure" into commercial operation. The approval is subject to an audit report (in the manner and form directed) that the infrastructure complies with the regulations and licence conditions and is capable of operating safely in accordance with the Infrastructure Operating Plan and Water Quality Plan.</p> <p>While there is an equivalent requirement for approval before operations commence in the section 25 Pipelines Act 1967, there is no such requirement in either the Gas Supply Act 1996 or the Electricity Supply Act 1995. The distinguishing feature of the Pipelines regime is that, by section 25 of the Pipelines Regulation 2005, a Safety and Operating Plan need not be submitted until six months after the commencement of pipeline operations. By contrast, in the present case, it is proposed that the Infrastructure Operating Plan and Water Quality Plan be submitted prior to the commencement of operations. Following the examples of the Gas Supply Act and Electricity Act, Ministerial approval in the manner proposed should be unnecessary.</p> <p>If the decision is made to proceed as proposed, then Alinta makes the following observations:</p> <ul style="list-style-type: none"> • There should be a timetable for the process of obtaining Ministerial approval to ensure that the process does not hold up commencement of operations. • As drafted, the audit requirement is very broad – a more detailed specification is desirable if audits are to be effective and consistent between licensees. • The reference to "any new ... infrastructure" could be read very widely to include small additions to a plant or network. A requirement for Ministerial approval of every small addition would be a significant and unnecessary burden on both the licensee and the Minister. <p>Alinta assumes that the condition is aimed primarily at ensuring that processes or equipment that involve novel technologies are not brought into commercial operation without adequate assurance as to their safety and reliability. Could the condition be written so that Ministerial approval is NOT required for "any new ... infrastructure that is an extension or expansion of existing infrastructure and that involves technology that is already operated by the licensee</p>

Clause	Summary	Comment
		under the licence or that is of a generally approved type.” (The presumption here is that there could be a system of “type” approval.)
Schedule 1, Part 2: Additional conditions for water infrastructure		
6(1)	Infrastructure operating plans	<p>In Alinta’s view the specification of the Infrastructure Operation Plan (IOP) is too general both from the point of view of the licensee preparing the plan and that of an auditor who must audit the plan’s compliance with the Regulation. The result is likely to be plans of variable quality. Section 10 and Schedule 1 of the Gas Supply (Safety Management) Regulation 2002 and Section 6 and Schedule 1 of the Electricity Supply (Safety and Network Management) Regulation 2002 provide models that could be considered for the current regulation. A more detailed specification for the IOP will also assist in auditing.</p> <p>Subclause 6(1)(e) refers to “arrangements for ... reporting of standards of service”. Once again, Alinta believes that reporting requirements should be standardised (see comment against Clause 1(1) above).</p>
6(2)	Infrastructure operating plans - amendment	Subclause 6(2) provides for the Minister to direct that an IOP be amended. It could also be reasonable to include a requirement that the licensee review and amend the IOP periodically and in specified circumstances to ensure its currency c.f. clause 9 of the Gas Supply (Safety Management) Regulation 2002.
6(3)	Infrastructure operating plans - auditing	<p>Alinta is concerned that there is no limitation on the frequency of audits. They should occur no more frequently than once in any 12 month period.</p> <p>It may be preferable to specify a frequency. For example, the Gas Supply (Safety Management) Regulation and Pipelines Regulation both require an annual audit and review of safety and operating plans.</p>
7(1)(d)	Water quality plans	It is not clear how the “purposes for which the water [may and may not] be used” here relates to the “authorised purposes” for the network. It could be better to require that a Water Quality Plan (WQP) be directed at producing water suitable for the authorised purposes.
7(4)	Water quality plans	Subclause 7(4) provides for the Minister to direct that a WQP be amended. As noted above in relation to the IOP, it could also be reasonable to include a requirement that the licensee review and amend the WQP periodically and in specified circumstances to ensure its currency c.f. clause 9 of the Gas Supply (Safety Management) Regulation 2002.
7(5)	Water quality plans - auditing	<p>Alinta is concerned that there is no limitation on the frequency of audits. They should occur no more frequently than once in any 12 month period.</p> <p>It may be preferable to specify a frequency. For example, the Gas Supply (Safety Management) Regulation and Pipelines Regulation require and annual audit and review of safety and operating plans.</p>

Clause	Summary	Comment
9	Drinking water	Alinta questions whether this provision is necessary given the requirements to establish and implement a WQP that conforms to Australian Drinking Water Guidelines in 7(1), 7(2), and 7(4); and the fact that the conditions of the licence and the Public Health Act 1991 are obligations in their own right and don't require reinforcement.
10	Non-potable water	<p>Alinta questions whether this provision is necessary given the requirements to establish and implement a WQP that conforms to Australian Guidelines for Water Recycling in 7(1), 7(3), and 7(4), and (particularly in relation to 10(b)) the fact that the conditions of the licence are obligations in their own right and do not require reinforcement.</p> <p>If it is decided that this type of provision is required, then it could be better stated that "the licensee must not supply water that is not fit for an authorised purpose or that fails to comply with any licence condition" (compare with condition 9(1)(b) of the Retail licence). In any event, Alinta suggests that the provision would be better written in terms of "authorised purposes".</p>
11	Customer connection	It would be helpful if there could be a statement that, for purposes of the regulation, the licensee can rely on a certificate of compliance produced by the consumer or the consumer's retailer. There is also the related issue of continuing compliance of the consumer's installation. In that case, Alinta is strongly of the view that the onus must be on the consumer.
Schedule 2, Part 1: Licence conditions of all retail suppliers' licences		
General observation		<p>The basic licence conditions in Schedule 2 apply to all retail licensees regardless of what classes of customer they supply. For example, a retailer that supplies only large customers (i.e. no small retail customers) would still have to be prepared to implement government policy with respect to social programs and provide quarterly reports (clause 2, subject to clause 2(2)); establish and maintain codes of practice for Customer Complaints (clause 4) and debt recovery (clause 5); and draw up and maintain a standard water supply contract for supply to small retail customers (clause 13). These obligations are directed at managing and protecting small retail customers.</p> <p>It is conceivable that a licensee will choose to supply only customers that are not small retail customers (or other retailers on a wholesale basis). Alternatively a retailer's business plan may involve selling only to large retail customers for a period of time before commencing sales to small retail customers. In either case, the licensee should not be required to comply with those obligations that relate to the management and protection of small retail customer unless (or until) they actually supply small retail customers. This could be accomplished by establishing a sub-category of retail supplier's licence that is for retailers who intend to supply only customers who are not small retail customers (or other retailers on a wholesale basis). Such a licence would be exempt from Schedule 2 licence conditions 2, 3, 4, 5, 13 (in relation to standard contract, complaints management and debt recovery codes, and government policy with respect to social programs) and 14. Alternatively, the regulation could provide for those conditions to apply to a licensee only if the licensee actually supplies one or more small retail customers.</p>

Clause	Summary	Comment
1(1)	Provision of information	<p>Subclause 1(1) requires the provision of information to the Minister or IPART as directed from time to time and within the time directed.</p> <p>The purposes for which information can be required should be specified e.g. assess or monitor compliance (cf Gas Supply Act s11(2)(f) and 33(1)) and Condition 8 of the standard Gas Reticulator's Authorisation which requires that reasons be given for an information request.) (In the latter case, DWE has established standard reporting requirements.) Information requirements for water licensees should be standardised and channelled through one or two agencies at the most. Standardisation will also ensure that information obtained by agencies from different licensees is comparable.</p>
2	Implementation of government policy with respect to social programs	<p>See General Comments above re exemptions for retailers that do not supply small retail customers.</p> <p>The regulation should provide for reimbursement of the licensee's efficient costs of implementing and administering social programs (s13(3)(b) of the WICA makes provision for this). The RIS states that "Arrangements for the reimbursement of the efficient costs to the licensee of the Government's Social Policy are to be included in that Policy." (p55) In Alinta's view a Policy statement is not an adequate assurance.</p>
3	Customers to be notified of translation services	See General Comments above re exemptions for retailers who do not supply small retail customers.
4	Code of practice for customer complaints	See General Comments above re exemptions for retailers who do not supply small retail customers.
5	Code of practice for debt recovery	See General Comments above re exemptions for retailers who do not supply small retail customers.
Schedule 2, Part 2: Additional conditions for licences for water supply		
8(2)	Retail Supply Management Plans (RSMP) - amendment	Subclause 8(2) provides for the Minister to direct that a RSMP be amended. It could also be reasonable to include a requirement that the licensee review and amend the RSMP periodically and in specified circumstances to ensure its currency c.f. section 9 of the Gas Supply (Safety Management) Regulation 2002.
8(3)	Retail Supply Management Plans - auditing	<p>Alinta is concerned that there is no limitation on the frequency of audits. They should occur no more frequently than once in any 12 month period.</p> <p>It may be preferable to specify a frequency. For example, the Gas Supply (Safety Management) Regulation and Pipelines Regulation require an annual audit and review of safety and operating plans.</p>

Clause	Summary	Comment
9	Non-potable water to match customer's needs	It would be helpful if there could be a statement that for, purposes of the regulation, the licensee can rely on a consumer's assurance as to use(s). There is also the related issue of continuing compliance of the consumer's use(s). In that case, Alinta is strongly of the view that the onus must be on the consumer.
10(1)	Obligation not to over-commit	Alinta questions whether the obligation not to over-commit is necessary given s52 (and others e.g. s58 – accepting payment without intending or being able to supply) of the Trade Practices Act dealing with misleading or deceptive conduct, and also the NSW Fair Trading Act.
11	Notice of intended termination of supply	It is not clear whether this requirement to notify the Minister and IPART of impending supply termination is intended to cover "inability to supply" circumstances (e.g. because of insolvency) or contractually-permitted termination/interruption or both. The requirement to notify should not apply to disconnections/interruptions (including for debt) that are provided for in a contract, or where the affected customer(s) have a pre-existing contractual right to an alternative supply e.g. of potable water, where the retailer proposes to terminate a supply of non-potable water.
13	Matter to be contained on licensee's website	The list of items to be contained on the website includes the retailer's standard water supply contract for supply to small retail customers (clause 13(1)(a)) and any relevant government policy with respect to social programs (clause 13(1)(e)). See General Comments above re exemptions for retailers who do not supply small retail customers. In particular, a retailer that does not supply small retail customers should not be required to prepare and publish a standard contract for supply to such customers.
14(3)	Disconnection [of small retail customers] for debt prohibited	It should be permissible to disconnect for debt if a small consumer has contractual access to alternative supply (e.g. disconnection of a non-potable supply should be permissible when the consumer has a potable connection).
Table (under 14)	Matters to be covered in a supply contract	The list includes "The water source from which the water is to be supplied." A particular retailer (A) may derive supply from more than one source. In a network, the water actually delivered will be a mixture of water from all sources supplying into the network. Where there are multiple retailers, some of those sources are likely to be different from the source(s) from which A derives supply. It may be better to say "The water source(s) from which the retailer derives supply." – or omit the item.