

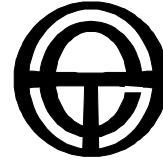
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21 May 2008

Metropolitan Water
Department of Water and Energy
GPO Box 3889
Sydney NSW 2001

Dear Sir/Madam

Draft Water Industry Competition (General) Regulation 2008

Total Environment Centre (TEC) welcomes the opportunity to comment on the draft Water Industry Competition (General) Regulation 2008. TEC supported the introduction of competition through the Water Industry Competition Act in order to promote investment in water recycling and other sustainable water supply alternatives. The Regulation will be a key element in achieving this objective.

In general, TEC believes that private sector operators should be subject to similar regulatory regimes and an equivalent level of accountability to public water utilities such as Sydney Water Corporation (SWC) and Hunter Water Corporation (HWC). While there will obviously be differences in the exact nature of regulatory arrangements required for each operator, there will also be general principles and specific requirements that will apply across the industry. Detailed comments on the draft Regulation are provided below.

The Licensing regime

TEC strongly believes that the operating licence framework applied to public water utilities provides an excellent model for regulation of private sector water industry operators. It is essential that licences act as an overarching and binding instrument. This ensures the accountability of water utilities provides a high degree of transparency in regulation and ensures that operational audits are able to provide a comprehensive picture of performance.

TEC supports the general approach followed in the draft Regulation of using a mix of prescribed standard regulations and individual conditions specific to each operator. We note that in addition to standard minimum obligations imposed by the regulation it is proposed that individual licence conditions be imposed by:

- Ministerially imposed licence conditions to be imposed if necessary for individual licences;
- obligations imposed by subsidiary instruments (codes) developed by the Minister; and

- obligations imposed as licence conditions via instruments such as plans to be developed by licensees.

TEC strongly believes that licence conditions and codes should be developed via Independent Pricing and Regulatory Tribunal (IPART) review equivalent to the process used for setting licence conditions for public water utilities. This would ensure transparency and opportunity for public comment in the setting of licence conditions. The regulation should require the Tribunal provide recommendations to the Minister on licence conditions for private water operators.

TEC acknowledges that at this early stage of the process it is difficult to know precisely what form a competitive water industry will take, given the large variety of schemes that are possible.

In view of this TEC accepts that in the early stages of a competitive regime there may need to be a greater reliance on individual licence conditions. In the longer term, as the industry matures the number of conditions that are standardised should be increased.

TEC believes that standard licence conditions prescribed in the regulations should reference obligations imposed by other regulatory instruments. This is essential to ensure that performance against these requirements can be considered in the audit process.

Obligations relating to water quality and public health

The draft regulation proposes that obligations relating to water quality and public health be imposed by a mix of standard licence conditions combined with individual conditions imposed by a variety of mechanisms.

We again stress that these mechanisms for imposing individual conditions should be subject to IPART review processes to allow public comment and ensure transparency.

We note that it is proposed that IPART will audit compliance with these requirements at least every five years. TEC believes that five year audit intervals are excessive given the importance of meeting water quality and public health obligations. New water industry operators will not have the demonstrated history of high compliance that allows public water utilities to be given “audit holidays” where some obligations are not audited annually. In view of this TEC believes that IPART audits of private water industry operators should occur at least every two years.

Obligations relating to safety, reliability, continuity and standards of service

TEC notes the proposal that the Regulation impose a range of obligations relating to safety, reliability, continuity and standards of service. This will include requirements for licence applicants to provide detailed information on events that could adversely affect their ability to provide services, risk management procedures to minimise these risks, minimum standard licence conditions, requirements to develop an Infrastructure Operating Plan, establishment of an industry code of conduct and audit of all new infrastructure.

TEC supports these measures; however, we believe that the proposed five year audit interval is excessively long. As detailed above we believe that audits should be conducted at least every two years.

Obligations relating to the environment and sustainability of the resource

Development and operation of water supply systems have the potential to produce serious environmental impacts unless appropriate management systems are put in place. The operating licences for Sydney and Hunter Water require the corporations to develop environmental management systems and to report against a range of environmental indicators. TEC believes that private sector operators should be required to meet similar requirements. General requirements should be included in the regulations as standard licence conditions while matters specific to individual operators should be dealt with via individual operating licences.

In view of this we support the proposed approach of including obligations with respect to protection of the environment and sustainability of the resource in the Regulation.

We welcome provisions to require that the Minister be satisfied before granting a licence, that that applicant has the ability to carry out activities in a manner that does not present a significant risk of harm to the environment. We also welcome requirements for licensees to develop plans, such as a Sewage Management Plan, and comply with the requirements of environmental regulation.

This approach allows environmental performance to be considered in compliance audits. As noted above, however, we strongly believe that the audit interval should be reduced from five years to two.

The introduction of competition in the water sector provides an important demand management function in that development of alternative supplies such as recycling or stormwater harvesting will ease the burden on current water supplies. While the provisions of the Act ensure that suppliers must obtain sufficient quantities of water from sources other than from a public utility it is important that water from alternative supplies also be used efficiently. Recycled water (for instance) should also be viewed as a valuable resource. Ensuring that it is used efficiently will maximise benefits by allowing more customers to gain access and thus further reduce the burden on potable supplies. Furthermore profligate use of recycled water may exhaust supplies and require top up from potable supplies. This has occurred at times in the Rouse Hill schemes due to underpricing and has reduced the potable demand management benefit of the scheme.

In view of this TEC believes that demand management requirements are appropriate for private sector operators. We support the provision allowing the Minister to impose restrictions on customers of a retail supplier if the water source from which the network operator takes the supply is also a water source for a public water utility. We also welcome the requirement that retail licensees must not over commit their available water source.

TEC also believes that stringent leakage control requirements should be set in place along with requirements to assist customers in the efficient use of water.

Licence administration

TEC believes that the licence administration framework should be consistent with that which applies to the public utilities. It is difficult to see why rules for licence application, development of licence conditions, monitoring and auditing of compliance, record keeping and enforcement in cases of non-compliance would need to vary from one operator to another. In view of this it is logical that these matters should be dealt with through standard licence conditions, detailed in the regulations. TEC thus supports the proposed role of IPART in licence administration and obligations for licensees to provide and permit publication of information relating to their licences.

Licence applications and development of licence conditions should be dealt with in an open public process equivalent to the process used for public utility operating licence reviews. Equally, licence audits should be conducted by an equivalent process and the results of the audit made publicly available.

Licence exemptions

There are clear benefits in requiring operators who are developing significant infrastructure and have relationships with customers to be subject to an operating licence regime. There is, however, a distinction to be drawn between water industry operators and small scale, on site schemes such as those in place at Taronga Zoo and in some commercial and residential developments. Requiring the licensing of such schemes may, in fact, act as a disincentive to their development and have the perverse effect of undermining the objectives of the Act to reduce pressure on current potable supplies.

Schemes which are essentially self contained and do not involve any supplier-customer relationships should be exempt from requirements to hold a licence. Issues of public health and protection of the environment are already dealt with by relevant health, environmental and planning legislation.

TEC therefore sees merit in the proposed approach of providing licence exemptions for certain types of infrastructure such as those constructed, maintained or operated for or on behalf of a licensee or a public water utility and infrastructure that is wholly situated on premises owned by the one person or body and owned or controlled by the person or body by whom those premises are owned.

Yours sincerely

Leigh Martin
Urban Campaigner