

**Submission
No 13**

DEBT RECOVERY IN NSW

Organisation: Water Directorate Inc
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Position: Executive Officer
Date Received: 16/05/2014



16 May 2014

The Committee Manager
Legal Affairs Committee
Parliament House
Macquarie St
Sydney NSW 2000

Dear Sir/Madam

Submission to the NSW Legislative Assembly, Committee on Legal Affairs

The Water Directorate welcomes the opportunity to make a submission to the Legal Affairs Committee's Inquiry into Debt Recovery in NSW.

The Water Directorate is a membership association that comprises 97 local water utilities (LWUs) from around NSW. The Water Directorate's mission is to provide leadership and support to the local government water supply and sewerage industry in regional NSW.

The Legal Affairs Committee would be aware that the NSW Government is conducting a Review of the *Local Government Act 1993* (LGA). The Water Directorate made a submission to the Local Government Acts Taskforce concerning a number of water industry related matters but made no comment specifically in respect of debt recovery as applicable to the various Sections within that Act. The Water Directorate is of the opinion that no changes are required in respect to the debt recovery provisions as allowed in accordance with the LGA.

In our 2012 submission to the Local Government Acts Taskforce the Water Directorate did make the point that a lack of consistency occurs in respect of penalty units across the state between LWUs operating under the LGA and the Sydney Water and Hunter Water Acts. A copy of our 2012 submission is attached and highlights these inconsistencies (see pages 12 and 13)

The inconsistency results in councils having to take court action to pursue offences which otherwise can be treated by the use of penalty units under the Sydney Water and Hunter Water Acts. Court offences when proved include costs which increases the financial outcome and is inconsistent with offences treated by penalty units.

The pursuance of unpaid debt emanating from court findings is conducted through the State Debt Recovery Office and that process has long term issues regarding accountability, privacy, management and ownership of the debt. The Water Directorate believes that this option should not be restrictive and that recovering the debt through other means should be considered as an alternative. For example, a charge by an LWU for services or actions can in most circumstances be

applied against the property. In such cases the debt remains outstanding against the property account until it is either paid or the property is sold. The outstanding balance also accrues interest charges as legislated. The option for court findings relating to LGA offences being dealt with in this manner, where applicable, would reduce the impact of SDR0 managed debtors.

The Water Directorate would welcome the opportunity to discuss our proposed option of recovering debt through other means as well as the current inconsistencies in penalty units across the state.


Yours sincerely

A solid black rectangular box used to redact the signature of Gary Mitchell.

Gary Mitchell
Executive Officer

A background image of water splashing, with numerous clear, glistening droplets of various sizes falling from the top. A solid blue horizontal band is positioned across the middle of the page, containing the title text.

Submission to Local Government Acts Taskforce

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SUBMITTED BY: STEWART MCLEOD
CHAIR, WATER DIRECTORATE INC.
21 DECEMBER 2012



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INTRODUCTION

The Water Directorate is a membership association that comprises 97 local water utilities (LWUs) from around NSW. Our members supply water to 1.9 million people in non-metropolitan NSW (i.e. excluding Sydney, Wollongong, the Blue Mountains, Gosford and Newcastle and the Hunter region).

Our members provide 89% of reticulated water outside metropolitan NSW and have 3.2 times more customers than Hunter Water.

The Water Directorate's mission is to provide leadership and support to the local government water supply and sewerage industry in regional NSW, particularly on technical issues. Established in 1998, the Water Directorate was initiated by local government water and sewerage practitioners who recognised that the structure and legislative framework for water authorities in NSW was not ideal following the abolition of the Department of Public Works.

By forming an industry specific association it was believed that the lack of coordination between government departments and local authorities as well as the declining level of technical advice could be addressed.

We formed to address the lack of state government co-ordination

Since our establishment the Water Directorate has provided consistent state-wide management tools at a low cost to our members in NSW. As a result we have:

- invested more than \$3.5 million on developing relevant guidelines and technical documents to support industry best practice
- co-managed an \$8.73 million investment by the Federal Government and members in a water loss management program saving 5.5 billion litres of water annually
- advocated for LWUs for example, in responding to the Armstrong/Gellatly Review, and a whole series of other Government reviews undertaken by Infrastructure Australia, the National Water Commission, the Productivity Commission and Infrastructure NSW.
- supported the industry with valuable information through on-line discussion groups, technical workshops and informal mentoring not provided by State Government departments.

As a voluntary association representing 95% of all LWUs from regional NSW, the Water Directorate is pleased to take this opportunity to provide a submission to the Local Government Acts Taskforce.

Our members manage approximately \$23 billion worth of water infrastructure

This submission was developed through an open invitation workshop to member Councils. The workshop attendees represented councils from the coast to the outback from a variety of structural models and utility sizes. A number of our members will also make individual submissions based on the opinions and concerns of their specific LWU.

OUR POSITION

The Water Directorate membership supports the need for reform of the regulation of local government and their utilities.

We believe the current regulatory model is inconsistent in application, creates confusion regarding roles and

responsibilities, and limits the ability of local council owned water utilities to deliver the best outcomes for the community.

We support local government water reform

We support the NSW Government's Better Regulation Principles and support reform that achieves transparent regulation, removes inconsistencies and delivers a level playing field for the operation and delivery of water and sewage services in urban NSW.

ROLE OF COUNCIL OWNED AND OPERATED WATER UTILITIES

In NSW LWUs provide water and sewerage services delivering public health outcomes for regional NSW. The regional local government landscape is diverse. The Water Directorate unanimously supports local government ownership and strongly counsels against the concept that one size fits all.

We need a diversity of models to deliver the best outcomes from the coast to the outback

A single structural model for LWUs cannot deliver the best outcomes from the coast to the outback. One size does not fit all.

POSSIBLE APPROACHES TO LOCAL WATER UTILITY REGULATION

We are not attached to a particular regulatory model for LWUs. However, the regulatory model must be robust enough to allow flexibility in structural arrangements of the utilities to best support the services it provides to the community and remove regulatory duplication.

To achieve this, LWUs need legislation which enables the same operational powers as Sydney Water and Hunter Water to make the best decisions

for their business, their customers and therefore their community. This includes management of waste or misuse of

water; ensuring permanent water restrictions can be implemented as part of a portfolio

Our customers deserve a level playing field

of options; flexibility around billing; access to existing and future easements; and compliance and penalties for system protection. This legislation could either be within the *Local Government Act* or a new specific Act.

In the oversight of regional urban water, there are a number of regulatory and administrative functions that overlap or are not clearly delineated between various state government departments. These include:

1. The Integrated Planning and Reporting Framework administered by the Department of Local Government is currently duplicated for the water business by the requirement of a Strategic Business Plan for Water and Sewer as part of NOW's Best Practice Guidelines.
2. The EPA currently provides outcomes based regulation for water, sewage and recycled water. Separately, the NSW Office of Water has further regulatory functions under Section 60 of the *Local Government Act*
3. NSW Health could have the regulatory oversight for approval, validation and verification of water infrastructure (*S25 Public Health Act 2010* and *C34 Public Health Regulation 2012*), rather than this role being undertaken by NOW.

The Water Directorate would like to extend an invitation to meet with the Local Government Acts Taskforce to discuss opportunities to best deliver water and sewerage services in regional NSW.

PRINCIPLES FOR GOOD REGULATION

Considered in reference to question (i)

The Water Directorate is seeking reform that will enable council owned water utilities to deliver safe and secure water supplies and sewerage services more efficiently to our communities. Regulation should:

- remove inconsistencies
- deliver a level playing field (for example we should have the same powers of system protection and access as public water utilities and private operators licenced under the WIC Act)
- ensure transparency in decision making (both between us and our customers and our regulators and us)
- ensure clear regulatory roles and responsibilities (For example the duplication of strategic business plans and integrated planning requirements).

Regional urban water supplies are not related to primary industries and should not be regulated from within the Department of Primary Industries.

WHAT IS WORKING WELL

Considered in reference to question (ii)

The Water Directorate believes that local government owned utilities are the best model for delivering services to regional NSW. Local government ownership provides:

Local government owned utilities are the best model for delivery of services to regional NSW

- local representation and decision making
- understanding of customer expectations
- knowledge of local issues and priorities
- the ability to integrate all facets of the water cycle (water, sewerage and stormwater) by direct and seamless interaction on a day to day basis with other local government infrastructure including roads, stormwater drains, recreational areas and numerous water-using facilities such as swimming pools, airports, saleyards, community buildings and the like, all within the strategic and statutory landuse planning umbrella administered directly by each local government authority which is what creates and drives the very urban fabric and urban footprint requiring servicing with water supply and sewerage infrastructure

The current flexibility in structural models (alliance, council owned corporation, county councils, region of councils or ROCs and general purpose councils) allows for the breadth of local government diversity. Workshop attendees unanimously agreed that “one size does not fit all”. Each utility needs flexibility in its structural model and must have the ability to determine how to best deliver services including:

One size does not fit all

- procurement (although this is currently limited by the *Local Government Act*)
- resource sharing (both between Councils for example through Alliances and within Councils for example road crews trained to provide back-up to water businesses)
- knowledge sharing (through ROCs and alliances).

POSSIBLE APPROACHES TO LOCAL WATER UTILITY REGULATION

Considered in reference to questions (iii) and (iv)

We are seeking a regulatory model that is robust enough to allow flexibility in structural arrangements of the utilities to best support the services it provides to the community and remove regulatory duplication. Attachment A shows the complexity and duplication of the current operating context for LWUs.

The Water Directorate is not attached to being regulated under the *Local Government Act*. We believe that appropriate regulation could be achieved either through a reformed *Local Government Act* or a new specific Act for LWUs.

Considering the Better Regulation Principles, LWUs need legislation which enables them the same operational powers as Sydney Water and Hunter Water so they can make the best decisions for their water business, their customers and therefore their community.

Current areas of discrepancy that should be addressed include:

- management of waste or misuse of water
- ensuring permanent water conservation measures can be implemented as part of a portfolio of options
- flexibility around billing
- prohibited waste provisions
- access to existing and future easements
- system protection capabilities through compliance powers and penalties.

We seek a regulatory environment that allows us to make the best decisions for our water business, our customers and our community

If the outcome of this review is to revise the *Local Government Act* and Regulations, specific sections which require amendments to allow our LWUs to operate as modern customer driven businesses are listed in Attachments B and C.

Regardless of which Act LWUs are regulated under, the Water Directorate supports the reduction of red tape and duplication of reporting to, and oversight by, regulatory agencies. Specifically we propose the removal of regulatory duplication and red tape brought about through Sections 60 – 63 of the *Local Government Act*.

The current regulatory model creates confusion regarding roles and responsibilities, and limits the ability of local council owned water utilities to deliver the best outcomes for their community.

Further the revising of the *Local Government Act* or creation of a new specific Act would improve our businesses ability to provide services as modern water utilities by levelling the regulatory playing field.

CONCLUSIONS

In conclusion the Water Directorate:

- proposes the reduction in red tape and regulatory duplication through the removal of NSW Office of Water's role in S60-S63 of the *Local Government Act*
- supports the reform of the *Local Government Act* to address regulatory gaps and inconsistencies between LWUs and water utilities regulated through other instruments
- welcomes the opportunity for further discussion on the opportunities to best deliver water and sewerage services in regional NSW
- would like to extend a meeting invitation to Local Government Acts Taskforce to discuss our reform suggestions in more detail.

We want reduced red tape, we support reform and we welcome the opportunity for further discussion

Attachment A - Current Regulatory Environment for Local Water Utilities

Instrument	Jurisdiction	Type	Relevance	Water								Sewerage Services ¹								Recycling															
				Source protection	Dams	System Protection & operation	Levels of service	Pricing	Public Health	Environment protection	Governance	Reporting	Source protection	System Protection & operation	Levels of service	Pricing	Public Health	Environment	Governance	Reporting	Source protection	Dams	System Protection & operation	Levels of service	Pricing	Public Health	Environment	Governance	Reporting						
Competition and Consumer Act 2010	Commonwealth	Statute	Fitness for purpose of water, evaluate capacity for third party access within Council's operations						Y	Y					Y											Y	Y								
Environment Protection and Biodiversity Conservation Act 1999	Commonwealth	Statute	Catchment management in particular for areas of national environmental significance								Y				Y													Y							
Water Act 2007	Commonwealth	Statute	Under Part 7 of the <i>Water Act 2007</i> , the Bureau of Meteorology is required to collect, hold, manage, interpret and disseminate Australia's water information. Section 126 of the Act places an obligation on persons specified in the Regulations to give certain water information to the Bureau																		Y														
Water Regulations 2008	Commonwealth	Regulation	The regulations define who must give specified water information to the Bureau and the time and format in which it must be supplied											Y																					
Catchment Management Authorities Act 2003	NSW	Statute	Catchment management	Y							Y					Y													Y						
Dams Safety Act 1978	NSW	Statute	Set outs requirements for management of dams	Y																	Y						Y							Y	
Environmental Planning and Assessment Act 1979	NSW	Statute	Planning activities which require assessment								Y					Y													Y						
Fair Trading Act 1987	NSW	Statute	Includes provisions for goods (and services) to be fit for purpose. Includes plumbing inspections			Y		Y	Y						Y											Y									
Fisheries Management Act 1994	NSW	Statute	Protection of fish habitats (including threatened and protected species management)	Y							Y					Y										Y			Y						
Food Act 2003	NSW	Statute	Need to maintain water quality and suitable chain of custody use of recycled water in food production								Y																	Y							
Forestry Act 1916	NSW	Statute	Management of state forests	Y																															
Local Government Act 1993	NSW	Statute	Urban water services and management/review of on-site sewage management systems; Governance including tendering, billing and system protection	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y

Instrument	Jurisdiction	Type	Relevance	Water							Sewerage Services ¹						Recycling																
				Source protection	Dams	System Protection & operation	Levels of service	Pricing	Public Health	Environment protection	Governance	Reporting	Source protection	System Protection & operation	Levels of service	Pricing	Public Health	Environment	Governance	Reporting	Source protection	Dams	System Protection & operation	Levels of service	Pricing	Public Health	Environment	Governance	Reporting				
Local Government Amendment (Planning and Reporting) Act 2009	NSW	Statute	Requirement to develop a community strategic plan, long term resourcing strategy that includes long-term financial planning, workforce management planning and asset management planning				Y	Y	Y	Y	Y	Y	Y				Y	Y	Y	Y	Y				Y	Y	Y	Y	Y	Y			
Native Vegetation Act 2003	NSW	Statute	Native vegetation management (in the context of catchment management)	Y																													
Natural Resources Commission Act 2003	NSW	Statute	Catchment management	Y																													
Plantations and Reafforestation Act 1999	NSW	Statute	Regional forest agreements	Y																													
Plumbing and Drainage Act 2011	NSW	Statute	On-site plumbing and drainage work that connects to a water supply or sewerage system		Y									Y																			
Protection of the Environment Operations Act 1997	NSW	Statute	Environment protection including licensed discharges. Protocol for industry notification of pollution incidents. Preparation of pollution incident response management plans						Y	Y					Y	Y												Y					Y
Protection of the Environment Administration Act 1991	NSW	Statute	EPA can direct public authorities to do anything within that authorities power to contribute to environmental protection	Y						Y						Y										Y							
Public Health Act 2010	NSW	Statute	Protection of public health, follow any advice issued from the Chief of Health regarding water quality to the public; sample water in accordance with NSW Health recommendations						Y							Y												Y					
Roads Act 1993	NSW	Statute	Planning of roads (and how they might impact on source waters)	Y																													
Soil Conservation Act 1938	NSW	Statute	Soil management (in the context of catchment management)	Y																													
Threatened Species Conservation Act 1995	NSW	Statute	Catchment management	Y																													
Water Industry Competition Act 2006	NSW	Statute	Could allow a private company to access Council's reticulation systems			Y	Y	Y	Y			Y				Y	Y	Y	Y	Y							Y	Y	Y	Y	Y		
Water Management Act 2000	NSW	Statute	Water management, drainage, water licences, water/river management committees, strategic business planning	Y																													
Wilderness Act 1987	NSW	Statute	Catchment management	Y													Y																Y

Attachment B Local Government Act comments

Section No.	Section title	Recommendation	
55 & 55A	What are the requirements for tendering? &	Reword	<p>Tendering process needs to be modernised. The level of detail in this section is no longer applicable for example the methods of advertising (as called up in the regulation) are not current and need to be modernised.</p> <p>Support changing section to: 'Councils should have an auditable procurement policy'</p> <p>Extended operation of section 55 to council-related entities to allow effective procurement of Alliances and RoCs – currently each Council needs to decided the Tenders individually and under Section 377 are not permitted to delegate to another Council or RoC (see below)</p>
60	Council works for which the approval of the Minister for Land and Water Conservation is required	Remove	<p>Water supply: Covered under public health regulations</p> <p>Sewage and water: Is currently regulated through EPLs</p> <p>Dam: Dam safety</p>
61	Directions of the Minister for Land and Water Conservation concerning certain works	Remove	<p>Water supply: Covered under public health regulations</p> <p>Sewage and water: Is currently regulated through POEO</p> <p>Dam: Dam safety</p>
62	Powers of Minister during emergencies	Remove	<p>Remove section. Emergency response powers are covered by other legislation</p> <p>Superseded by the <i>State Emergency and Rescue Management Act 1989</i> and Section 7 and 8 of the <i>Public Health Act 2010</i> which gives emergency powers to the Minister of Health is there is a risk to public health.</p>
64	Construction of works for developers	Reword	<p>Support developer charges, but not in its current form. There are inconsistencies between developer charges in the <i>Water Management Act</i>, <i>Environmental Planning and Assessment Act</i> and the <i>Local Government Act</i>. These provisions should be in one instrument. The current wording is clumsy because it is unclear whether the power to collect the contributions derives from the <i>Local Government Act</i> or the <i>Water Management Act</i>.</p>
66	Appointment of administrator	Support	<p>Support the entitlement to appoint an administrator.</p>

Section No.	Section title	Recommendation	
68	What activities, generally, require the approval of the council?	Modify	Penalty units inconsistent with <i>Sydney Water Act</i> . Amended legislation should be consistent with the <i>Sydney Water</i> and <i>Hunter Water Acts</i> which are more modern and consistent.
124	Orders	Modify	Support the need for utility authorities to order connection (both public and private).
128	Catchment districts	Support but needs to be strengthened	The principle of this section should be maintained in this Act or elsewhere. A framework for implementing it must be developed.
152	Modification of orders	Modify	This section is ambiguous – for example the definition of premise - does it mean a ‘lot’ or a ‘house’? It should mean ‘lot’ in this clause.
155	Effect of inconsistency between council’s order and Minister’s order	Modify	
156	Minister may revoke or modify a council’s order	Modify	
190	Special provisions relating to land containing minerals	Support	
191	Power of entry	Support	
191A	Power of entry- construction and maintenance of water supply, sewerage and stormwater drainage works	Support	Clarify definition of sewerage work. Ensure intent is maintained and is equivalent to any other public water utility.

Section No.	Section title	Recommendation	
218 / 218CA	Referral of proposal for examination and report and Maintenance of staff numbers in rural centres	Remove	
377	General power of the council to delegate	Support broadening	At the moment utilities cannot delegate the awarding of tenders to another board. This needs to be broadened to support ROC's and alliancing.
501	For what services can a council impose an annual charge?	Modify	There is a lack of clarity and discrepancies in billing cycles and wording of the Act. There is inconsistency between Act and best practice. There is a need to bill as per a modern utility - not exclusive of quarterly billing and access charges
552	What land may be subject to a water supply special rate or charge?	Support	This provision should be maintained or transferred if a new LWUs act is created
551-553A	Special rates and charges relating to water supply, sewerage and drainage	Modify	
575	Reductions for eligible pensioners	Modify	This section needs to be simplified. There is difficulty in calculating pensioner rebates for strata properties resulting in inconsistencies in intent.
636	Tampering with meters and fittings	Strengthen	Strengthen to say customer is responsible for protecting water meter.
637	Waste or misuse of water	Clarify	Needs clarification and better provisions to be consistent with other water utility acts for example <i>Sydney Water Act</i>
638	Discharge of prohibited matter into sewer or drain	Requires prescription in regulation	The local government regulation does not current prescribe prohibited matter

Attachment C Local Government Regulations comments

Regulation No.	Regulation title	Recommendation	
13-24	Division 3 - Approvals relating to water supply, sewerage and stormwater drainage work	Modify	Generally need to be modernised to take into account new technologies (e.g. pressure sewers).
28	Approval to discharge waste into sewers: concurrence required'	Modify	Remove NOW concurrence, trade waste policy covers this.
137 (6)	Water supply may be restricted if there is a shortage of supply	Modify	Need to ensure permanent water conservation measures are available.
158	Testing of meters	Modify	Inconsistent with NMI guidelines. Change to 'Water Meter complies with NMI guidelines'. 158 (5) A water meter that registers less than 3 per cent more or less than the correct quantity is taken to correctly measure the water passing through it Meter reading should be <u>over</u> not <u>under</u> .
18-19 vs 48 (g)	Connection to water or sewerage mains(18) Cutting into sewer main(19) vs Activities authorised by licence under <i>Water Industry Competition Act 2006</i> (48(g))	Modify	Drafting anomaly that requires addressing. A <i>Water Industry Competition Act</i> licence holder connecting to Council's sewer system should not be exempt from clause 18 and 19
163 & 167	Part 7 Tendering	Reword	Requirements for advertising in relevant newspapers (as defined in Clause 163) is archaic and not in accordance with modern best practice, particularly when there are various electronic avenues for advertising. The 150,000 limit for which council must invite tenders is too low, particularly when a council alliance is in place.