



# Metropolitan Water Industry Reform: NSW

Water Industry Competition Bill  
2006



# Today's presentation

- What is the background behind the Water Industry Competition Bill 2006?
- What are the licensing and access provisions of the Bill and how will they apply?
- What are some of the issues behind their application?



## Background (2004)

- Demand for water > sustainable supply
- Services Sydney application for declaration Sydney Water's wastewater network for 3<sup>rd</sup> party access
  - ACT decision to declare assets for coverage under TPA Act
- Queries raised over Sydney Water:
  - Too big: diseconomies of scale
  - Existing legislative framework a barrier to competition
  - Claimed benefits of Melbourne model & competition by comparison
  - Need to separate functions of planner, operator and regulator

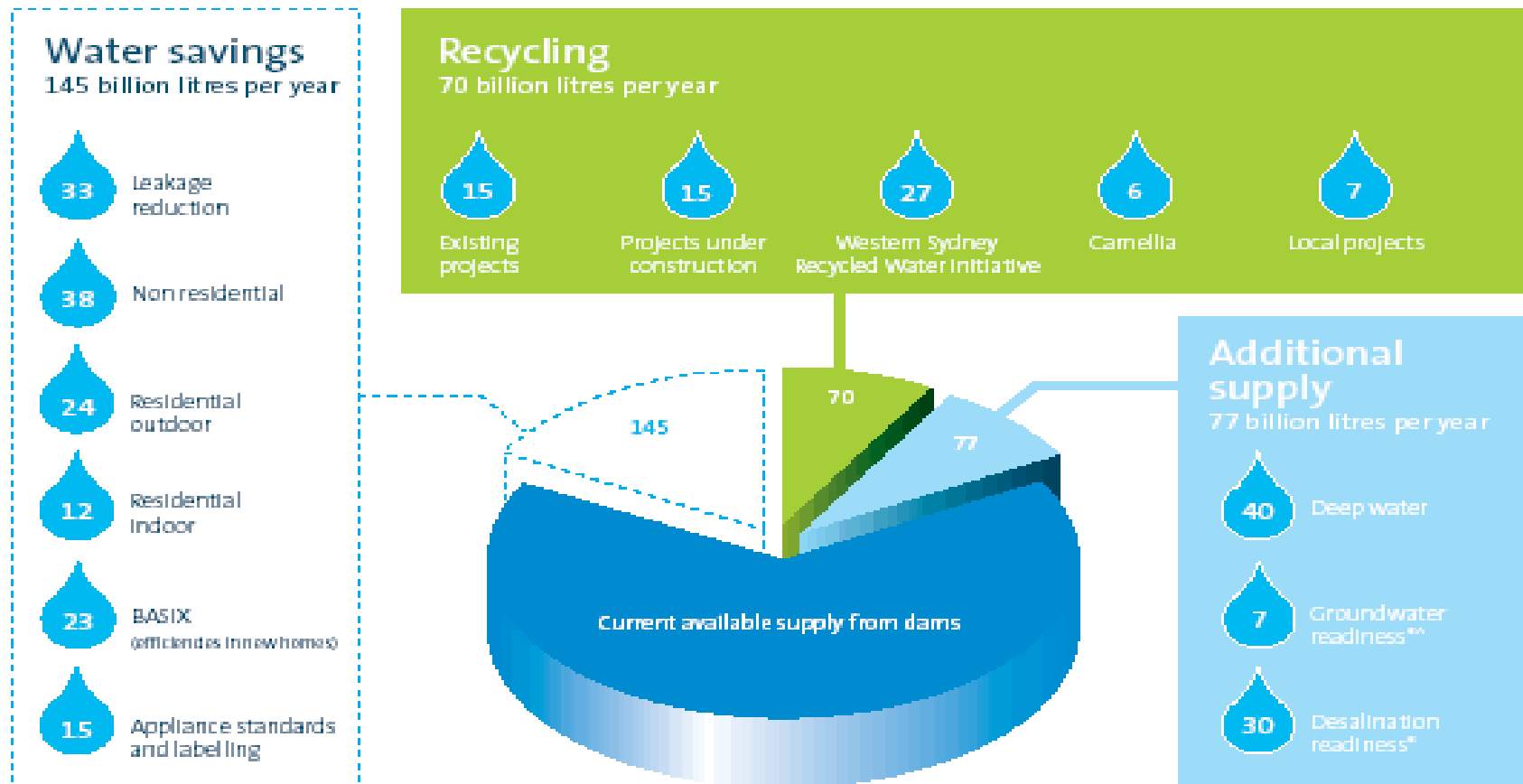


## Government actions

- Create cross-agency central government 'think-tank' to develop a metro water plan which:
  - Identifies future demand
  - Confirms sustainable yield from existing sources after allowing for environmental flows
  - Identifies, costs & prioritises demand/supply options
- Have IPART review industry structure

# Metro water plan

Meeting Sydney's water needs in 2015



The above mix of supply and demand measures are more than sufficient to meet Sydney's growth needs to 2015 and to secure drought needs to 2015 and beyond.

\*By investing in being ready to access groundwater and desalinated seawater in severe and extreme drought - even if such drought does not occur - more water can now be drawn from the dams without affecting the security of supply; for this reason the calculated water availability figure has increased even without accessing these sources.

^ In a severe drought, new bore fields would be constructed to enable access to around 30 billion litres of groundwater a year for about three years for drought needs.



# IPART recommendations

- Increase the scope for competition by:
  - Greater & more effective use of competitive procurement by Sydney Water
- Enable 3<sup>rd</sup> party access to water and wastewater infrastructure
  - Including removing any legal barriers
  - Establish State based access regime
- Do not disaggregate Sydney Water at this time, but keep under review



# Response

- IPART adjusts retail usage price of water to equate to LRMC as per Metro Water Plan
- Government introduces Bill into Parliament to:
  - encourage competition in relation to the supply of water and the provision of sewerage services
  - facilitate the development of infrastructure for the production and reticulation of recycled water; and for other purposes.



# Objectives of Bill

- a) to establish a licensing scheme to provide for private sector involvement in the:
  - i. supply of water
  - ii. provision of sewerage services
- b) to establish an access regime to ensure that certain monopoly infrastructure services are available to persons seeking access to them
- c) to facilitate the resolution of disputes in respect of
  - i. Access
  - ii. Sewer mining
  - iii. Service providers and their customers





## Objectives of Bill Cont.,

- d) to enact provisions to facilitate the construction, maintenance and operation of infrastructure for the supply of water and the provision of sewerage services
- e) to protect private sector involvement in the supply of water and the provision of sewerage services by means of the creation of offences for that purpose



# Licensing

- Need a licence in NSW to:
  - Operate water industry infrastructure
    - Water infrastructure
      - Production, treatment, filtration, storage, conveyance, reticulation
    - Sewerage infrastructure
      - Treatment, filtration, storage, conveyance, reticulation, outfall works (stores or conveys)
  - Supply water (includes stormwater + recycled) or provide sewerage services to retail customers



# Licensing

- **Who can apply?**
  - Can only be made by or on behalf of a corporation
  - Does not apply to a public authority within its area of operations
- **Types of licences?**
  - a network operator's licence (construct, maintain, operate water industry infrastructure)
  - a retail supplier's licence (supply water or provide sewerage services, by means of water industry infrastructure, to persons or classes of person so specified)
  - A network operator does not need a retail licence to supply to a retailer



# Licensing

- **Exclusive Licence?**
  - Licence must specify area of operations & activities
  - More than one licensee may operate in an area
- **Licence period?**
  - A licence remains in force until cancelled
  - Subject to review every 5 years
- **Licence Fee?**
  - To be determined by Minister
- **How to make an application?**
  - Lodged with IPART
  - In a form approved by Minister



# Licensing

- How to make an application cont;
  - IPART must
    - Provide copy of application to Minister
    - Call for submissions from:
      - Public
      - Ministers for Health, Water Management Act
    - Make recommendation to Minister on granting of licence (Minister not bound by IPART recommendation)
    - Give public notification of Minister's decision



# Licensing

- Assessment of licence applications?
  - Cannot be granted to a disqualified corporation
  - Applicant must demonstrate financial, technical & organisational capacity
  - No risk to public health
  - Appropriate insurance arrangements
  - For water supply, sufficient quantities obtained from sources other than from public water utility
  - As prescribed by regulations
  - Public interest matters Minister considers relevant



# Licensing

- **Conditions of a licence?**
  - As specified by Minister, Act and regulations
    - eg related to public health, environment & access to water sources
  - Licence specifies area of operations & activities authorised
  - Minister may impose conditions re:
    - Ongoing financial, technical & organisational capacity
    - Insurance
    - Giving & maintaining security
  - Regulations may:
    - require implementation of Government social programs (which may be funded by Government)
    - impose conditions re quantity of water sourced from a public water utility



# Licensing

- **Enforcement: Minister may do one or more of following:**
  - Impose monetary penalty
  - Require action to be taken
  - Suspend or cancel licence
  - Declare a licensee is a disqualified Corporation
  - Declare persons (directors or management of a licensee, or related parties) disqualified individuals
  - The above actions can also be performed by IPART, but in the case of some only with concurrence of Minister (eg cancel licence)
  - Order emergency action for reasons of public health & safety





# Licensing

- **Monitoring: IPART**
  - Monitors & reports to Minister on compliance
  - Directs licensees to keep records & furnish information
  - Conducts Investigations
  - Provides annual compliance reports (to be lodged before Parliament)
  - Reviews each licence at intervals of not more than 5 years



# Access

- **What is access?**
  - The making available of infrastructure services sourced from one person (service provider) to another person (access seeker)
- **How do I get access?**
  - Negotiate an agreement with service provider or if that fails have IPART make a determination
- **Where will it apply?**
  - Scheduled areas (initially Sydney & Hunter)



# Access

- **To what will it apply?**
  - Infrastructure services (ie storage, conveyance or reticulation of water or sewage) but excluding :
    - Storage of water behind a dam wall
    - Except to the extent to which these are a subsidiary but inseparable aspect of the storage, conveyance or reticulation of water or sewage
      - Filtering, treating or processing of water or sewage
      - Production processes
      - Intellectual property
      - Supply of goods (including water & sewage)




# Access

- **What are the prerequisites to gaining access?**
  - **Step 1:**
    - An infrastructure service must be the subject of a coverage declaration or
    - IPART has approved an access undertaking, lodged by a service provider, setting out arrangements for provision of access
  - **Step 2:**
    - Negotiate the terms of an access agreement with service provider or if agreement cannot be reached
    - Have IPART make a determination



# Access

- **Who can apply for coverage?**
  - Service provider
  - An access seeker who has failed to gain access or wants a change to existing conditions of access
  - Minister (re public authority only)
- **How do I apply for a coverage declaration?**
  - Lodge application with IPART
  - In a form approved by Minister
  - Pay an application fee determined by Minister
  - **IPART must**
    - Provide copy of application to Minister
    - Call for submissions from:
      - Public
      - Parties specified in regulations

- 
- Make recommendation to Minister
    - State whether declaration criteria are met
    - Nominate terms of coverage and period which it has effect
  - Make public notification of Minister's decision
  - **What are the declaration criteria?**
    - Infrastructure is of state significance
    - Not economically feasible to duplicate
    - Necessary to materially promote competition
    - Safe use of infrastructure by access seekers ensured at economically feasible cost
    - Not contrary to public interest



# Access

- What infrastructure services may be exempt from coverage by means of a binding non-coverage application:
  - Subject to acceptance by Minister on advice from IPART
    - Infrastructure that is not currently constructed
    - Existing infrastructure that is not currently being used
    - Existing infrastructure that is currently used otherwise than for production, treatment, filtration, storage, conveyance or reticulation of water or sewage
    - Where currently means at time application is made
  - Does not apply to infrastructure services provided by existing water industry infrastructure



# Access

- What pricing principles apply to an access undertaking or a determination by an arbitrator of a dispute?

The access price:

- must generate sufficient revenue that is at least sufficient to meet efficient cost of providing access (including RoR)
- should allow multi-part pricing and price discrimination when it aids efficiency
- should not allow a vertically integrated service provider to favour its own downstream operations





## The Access Price cont.,

The application of these pricing principles must be consistent with any existing pricing determination including (where applicable) the maintenance of postage stamp pricing

- should provide incentives to reduce costs or otherwise improve productivity



# Other provisions of Bill

- In summary:
  - Requires IPART to maintain a register of infrastructure services that are subject to coverage declarations, binding non coverage declarations & access undertakings
  - Denotes procedures for resolution of disputes between small retail customers & licensed retail suppliers
  - Enables IPART to make pricing determinations when a licensed retail supplier is a monopoly supplier



# Other provisions of Bill

- In summary cont.,:
  - Enables Minister to declare a specified person as a retailer of last resort
  - Enables licensed network operators to carry out work (eg on public roads or reserves) in constructing infrastructure
  - Creates various offences to protect licensed network operators (eg illegal discharges, misappropriation of water)



# Issues – State Vs Federal access regime

- Will there be a national market in urban water?
- Water industry knowledge within Federal regulators?



# Issues – State Vs Federal access regime

- What are the implications of imposing Federal regime for:
  - System planning & management?
  - Retention of postage stamp pricing?
  - Complexity of regulatory environment within the one market?
  - Matters of public health & environment (ie state responsibilities) ?



# Issues continued- pricing methodologies

- Long Run Marginal Cost
- Total Service Long Run Incremental Cost
- Building block (average cost)
- Fully Distributed Cost
- Efficient Component Pricing Rule  
= retail tariff + incremental cost – avoided cost
- Revenue Caps



## Issues continued- pricing access

	LRMC	Average Cost	ECPR
Prevent abuse of market power (* assuming retail price regulation continues)	Yes	Yes*	Yes*
Retain postage stamp pricing	No	?	Yes
Administratively simple	?	Yes	Yes
Promote competition	Yes	Possibly	Possibly
Ensure financial viability of incumbent	No	?	Yes



# Issues Continued

- Attraction to private sector
  - Will entry be profitable?
  - Area franchise Vs 3<sup>rd</sup> party access
  - Opportunities to develop new water sources
  - Government restrictions on use of grey water
  - Sydney Water's inertia to negotiate





# Conclusions

- Limited experience in water industry of 3<sup>rd</sup> party access (eg UK)
- Equity implications
- Supplier of last resort function
- Politics of new water sources
  - Acceptance of indirect potable reuse
  - Desalination
  - Climate change