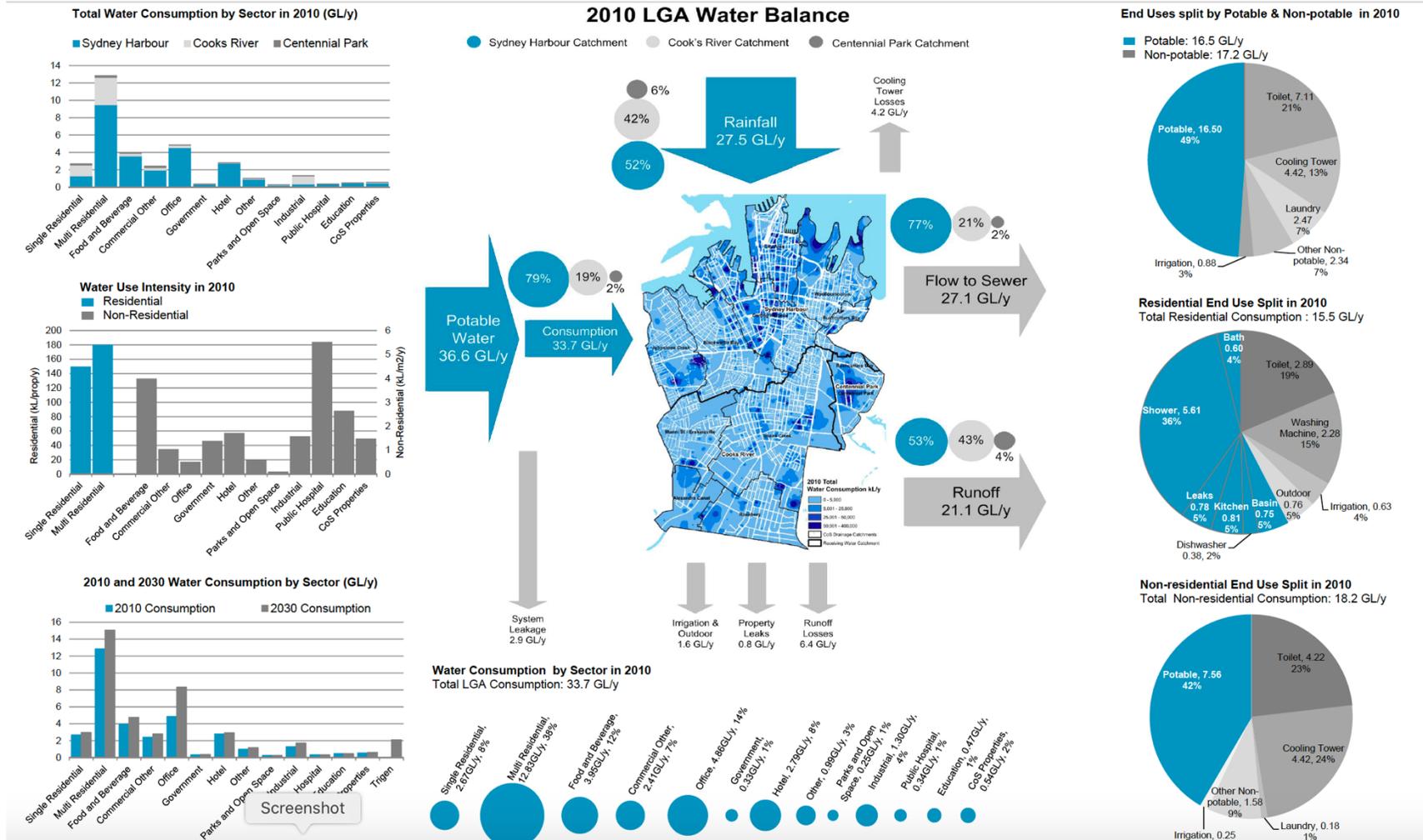




Submission to IPRT 2019 Inquiry into Sydney Water Prices





Submissions

- 1 The pricing of water needs to be based on data showing where all of Sydney's water comes and goes, instead of primarily what is the amount of profit or the cost to an entity which supplies or sells some parts only of that water.

The Tribunal's issues paper has the telescope by the wrong end because it looks primarily at the pricing of water only through the fiscal eyes of Sydney Water – how much water does it sell? There's so much not seen through that narrow lens and key strategic options are lost by looking through it.

The better strategic approach is shown here with the copy on the front cover of this submission of the water budget for the local government area of Sydney in 2010 and prepared for Sydney City Council by GHD. It shows in one page in an easily-understood graphic form far more than money, including:

- Rainfall – how much, where,
- imported or pumped water – how much, where,
- water losses from leaks by the pumping body, Sydney Water, how much, where,
- water used for residential, commercial, and other uses,
- how much of that pumped and rainfall water goes to waste as runoff and sewage to the ocean or leaks

There's no similar, easily-understood bird's eye view of Sydney's water in the IPRT process or its issues paper.

Bureaucratic bungling results from many causes but is more likely when the wrong data is focussed on or, in the case of water, there is no strategic whole of water cycle view of the issues, options and solutions; see, for example, <https://www.smh.com.au/national/nsw/bureaucratic-bungling-delayed-crucial-water-infrastructure-20191027-p534ov.html>

IPRT is specifically tasked by its legislation, as is Sydney Water, to look at and to sustain the whole of the water cycle and neither IPRT's issues paper nor Sydney Water's pricing proposal respect, value or sustain the city's water cycle. There's an obsession about the profit to be made selling dam water, and almost no importance attached to wasted water in the form of rainfall, leaks and sewage discharge to the ocean.

The key player here is the water cycle, not Sydney Water or the Tribunal; if the water cycle is impaired, broken then no Sydney Water, no Tribunal. The maintenance of the water cycle is something we humans all depend on. You wouldn't know that from the Tribunal's issues paper or Sydney Water's business model which read as if the primary resource is money, profits.

If legislation never rises above the level of its administration then current water pricing and services in Sydney show what happens when administration – including pricing of water - goes off course as it has here in Sydney and across the state's other water resources. Otherwise, the dam and supply crisis now unfolding would have been prevented. This submission offers solutions using a much broader lens that seeks to answer the question: where is all Sydney's water and how can it best be used and by whom? How can we keep water cycling through our lives here?



2 Stormwater is vital, under-priced, under-valued and wasted in ways which have broken the water cycle. New pricing is required to end the waste. Mostly, it's also a crime.

Stormwater runoff from land to paths, gutters, roads and waters is a crime under s 48 of the POE Act: see attachments.

The only reason Sydney Water and its directors are exempt from \$1 million dollar fines and jail sentences for their stormwater pollution is they, and local councils, enjoy immunity from prosecution as their pollution is specifically exempted by regulation from prosecution; see attachments.

Tribunal pricing treats stormwater pollution as if it was not a crime, and as trivial because, it seems, Sydney Water and local councils can't imagine how to generate significant income from it. Mostly, they see stormwater as an unavoidable cost. But there is no such thing as waste – ask nature - just a failure of human imagination.

The current pricing by the Tribunal and local councils reflects the way stormwater is treated as a waste product of little value when the science is clear. Water cycles are sustained when water is kept where it falls, vegetation is retained to keep rain falling there, and soils are cooled by the mix of vegetation, water retention and cool air.

For the science about the 'magnetic' relationship between land, soil, water as vapour above the land, water as rainfall see [here](#) and [here](#). The science is clear – no trees or vegetation = no rain.

It's interesting: the Tribunal prices water but seeks little to no science to understand it - and publishes almost no science; nothing on water dynamics, and how to sustain the water cycle. It's almost as though, like most Australians squandering water in Australia, the Tribunal takes water for granted.

Nature always bats last including for Sydney's water 'budget' or water cycle. Australia generally and now even Sydney is seeing what happens when the water cycle is taken for granted.

Pricing by the Tribunal has clearly failed to sustain Sydney's water cycle and the natural water budgets of other entities it sets prices for in Sydney and elsewhere. There may be reasonable prospects of a court agreeing with this assertion, and we may see that prospect played out as the water crisis grows.

3 Examples of the Tribunal's failure to inform customers of their pricing rights to reduce their stormwater and water bills.

The Tribunal oversees and approves bills to Sydney Water customers which provide no advice of pricing options to reduce stormwater charges. Bill reduction options are difficult to find on the Tribunal's and Sydney Water's websites.

Solution: – see example of proposed alert to customers about how to cut stormwater charges in a Sydney Water bill in the attachments. The example alerts customers they may qualify for a bill reduction if they have a rain tank, on site absorption ponds



or similar, devices to divert stormwater runoff to adjoining footpath verges.

4 Failure by IPRT and Sydney Water to integrate stormwater pricing with local government rating charges

Rain falls with no discrimination on roofs, trees, footpaths, parks.

But because different entities control different parts of cities where rain falls the pricing and management of the rain is wasteful, overlapping and inefficient. For example, Sydney City Council imposes a special rate charge for stormwater in Blackwattle Bay catchment that does not relate to and detracts from the potential to reduce stormwater charges by Sydney Water to the same properties in that catchment; see example and solution in attachments.

5 Perverse incentives may exist in performance measures for directors of Sydney Water and senior executives to increase value of assets and to increase water consumption as to do so may increase their salaries or bonuses.

These incentives, if they exist, may provide an incentive for Sydney Water board members and senior executives to, for example:

- Increase their income by building new, avoidable assets such as desalination plants;

- Seek to remove the requirement for the installation and use of rain water tanks from NSW BASIX legislation and, in turn, in force people to obtain all their water from Sydney Water;
- Seek to increase the use of and profit from existing or new desalination plants being proposed by Sydney Water;
- Reduce the security of water supply for Sydney provided by rainwater storage.

Solution: IPRT to publish for comment during this inquiry:

- copies of any performance measures for directors of Sydney Water and senior executives the effect of which is to increase value of assets and to increase water consumption, or to reduce competition through such rainwater storage or demand management
- Copies of any submissions by Sydney Water to IPRT, any government Minister or department the effect of which is to seek to remove the requirement for rain water tanks from the BASIX regulation

6 Failure by IPRT to implement objectives of its legislation in section 15

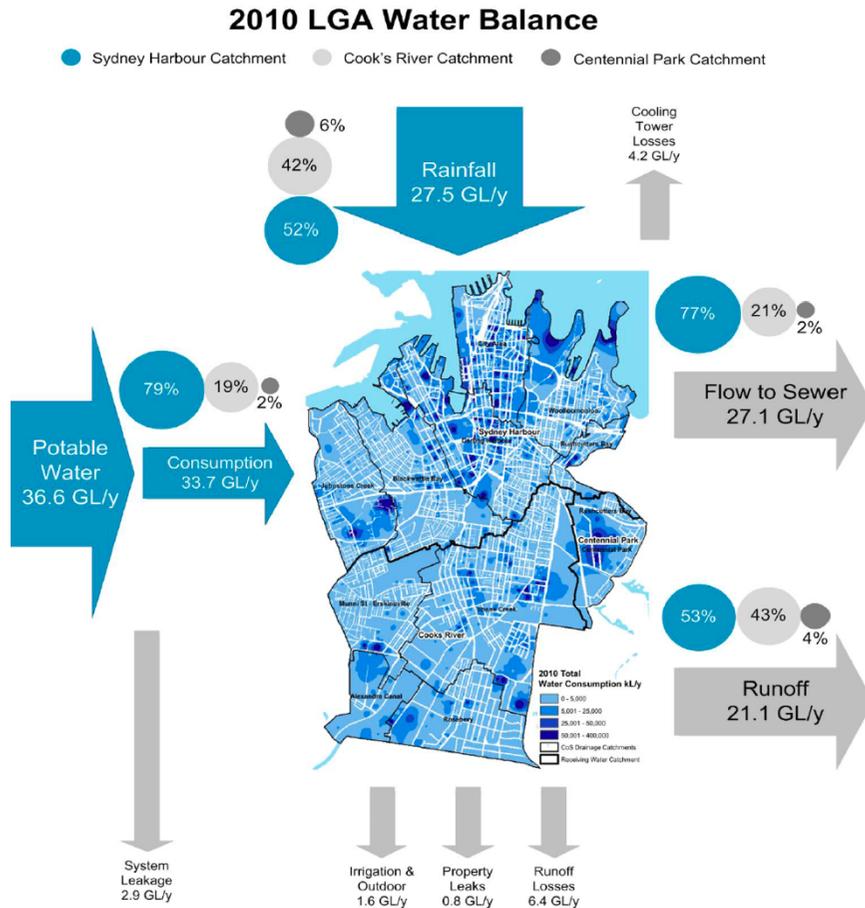
Tribunal decisions are biased according to size of income and profit by Sydney Water, not according to the size of environmental impact or the impact on the resilience of the water cycle.

IPRT says stormwater pricing is a 'minor' charge and so it is; but the existence and management of stormwater has a fundamental impact on and is a vital part of the natural water cycle.



Refer to map of 2010 – 2030 water budget for Sydney City prepared by GHD and attached which shows:

- Almost as much water falls as rain (27.5 GL) and is wasted as is imported and sold by Sydney water (33.7 GL)



7 Abuse of market power by Sydney Water allowed by IPRT without due regard to environmental impact

Sydney Water says in its Annual Reports:

“Pricing

Our services are declared monopoly services under Section 4 of the Independent Pricing and Regulatory Tribunal (IPART) Act. The tribunal sets and regulates our prices to ensure they are fair for customers, while allowing us to cover costs and generate an adequate return on our assets.”

History shows the prospect is remote of the Tribunal setting prices which are also ‘fair’ for the water budget and which sustain the resilience of the water cycle, or of such considerations weighing equally on either the Tribunal’s mind or Sydney Water’s use of water.

The treatment of sewage and stormwater as waste when these vital resources amount to more water than is imported and sold by Sydney Water may be seen by a court as a breach of both the Tribunal’s and the Corporation’s duties under their respective Acts. At least, that’s how it was seen in Premier Nick Greiner’s Second Reading Speech when the Government Pricing Tribunal Act (as it was then called) and the Sydney Water Corporatisation Act was introduced. I know because I was involved in drafting those Bills and discussions about them at the time. I’m very disappointed in how things have played out since the 90s.



Stormwater pollution exemption regulation, 2014



Resource Recovery Exemption under Part 9, Clauses 91 and 92 of the Protection of the Environment Operations (Waste) Regulation 2014

The stormwater exemption 2014

Introduction

This exemption:

- is issued by the Environment Protection Authority (EPA) under clauses 91 and 92 of the Protection of the Environment Operations (Waste) Regulation 2014 (Waste Regulation); and
- exempts a consumer of stormwater from certain requirements under the *Protection of the Environment Operations Act 1997* (POEO Act) and the Waste Regulation in relation to the application of that waste to land, provided the consumer complies with the conditions of this exemption.

This exemption should be read in conjunction with 'the stormwater order 2014'.

1. Waste to which this exemption applies

- 1.1. This exemption applies to stormwater that is, or is intended to be, applied to land.
- 1.2. Stormwater means rainfall that runs off all urban surfaces such as roofs, pavements, carpark, roads, gardens and vegetated open spaces.

2. Persons to whom this exemption applies

- 2.1. This exemption applies to any person who applies, or intends to apply, stormwater to land as set out in 1.1.

3. Duration

- 3.1. This exemption commences on 24 November 2014 and is valid until revoked by the EPA by notice published in the Government Gazette.

4. Premises to which this exemption applies

- 4.1. This exemption applies to the premises at which the consumer's actual or intended application of stormwater is carried out.

www.epa.nsw.gov.au

1



5. Revocation

- 5.1. 'The stormwater exemption 2008' which commenced on 20 June 2008 is revoked from 24 November 2014.

6. Exemption

- 6.1. Subject to the conditions of this exemption, the EPA exempts each consumer from the following provisions of the POEO Act and the Waste Regulation in relation to the consumer's actual or intended application of stormwater to land at the premises:
- section 48 of the POEO Act in respect of the scheduled activities described in clauses 39 and 42 of Schedule 1 of the POEO Act;
 - Part 4 of the Waste Regulation;
 - section 88 of the POEO Act; and
 - clause 109 and 110 of the Waste Regulation
- 6.2. The exemption does not apply in circumstances where stormwater is received at the premises for which the consumer holds a licence under the POEO Act that authorises the carrying out of the scheduled activities on the premises under clause 39 'waste disposal (application to land)' or clause 40 'waste disposal (thermal treatment)' of Schedule 1 of the POEO Act.

7. Conditions of exemption

The exemption is subject to the following conditions:

- 7.1. The stormwater can only be applied to land within the definitions of "application to land".
- 7.2. The consumer must ensure that any application of stormwater to land must occur within a reasonable period of time after its receipt.

8. Definitions

In this exemption:

application or apply to land means applying to land by:

- spraying, spreading or depositing on the land; or
- ploughing, injecting or mixing into the land; or
- filling, raising, reclaiming or contouring the land.

consumer means a person who applies, or intends to apply, stormwater to land.

Manager Waste Strategy and Innovation
Environment Protection Authority
(by delegation)



Notes

The EPA may amend or revoke this exemption at any time. It is the responsibility of the consumer to ensure they comply with all relevant requirements of the most current exemption. The current version of this exemption will be available on www.epa.nsw.gov.au

In gazetting this exemption, the EPA is not in any way endorsing the use of this substance or guaranteeing that the substance will confer benefit.

The conditions set out in this exemption are designed to minimise the risk of potential harm to the environment, human health or agriculture, although neither this exemption nor the accompanying order guarantee that the environment, human health or agriculture will not be harmed.

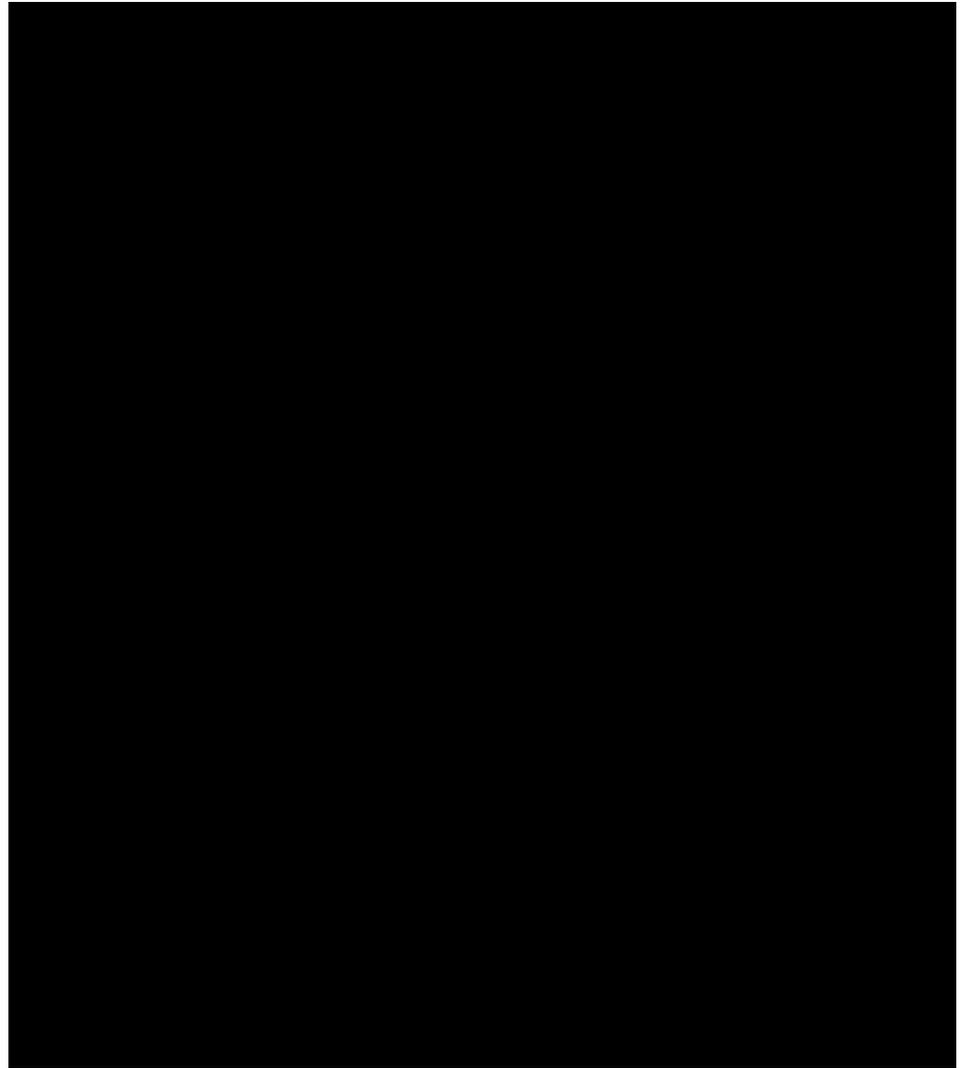
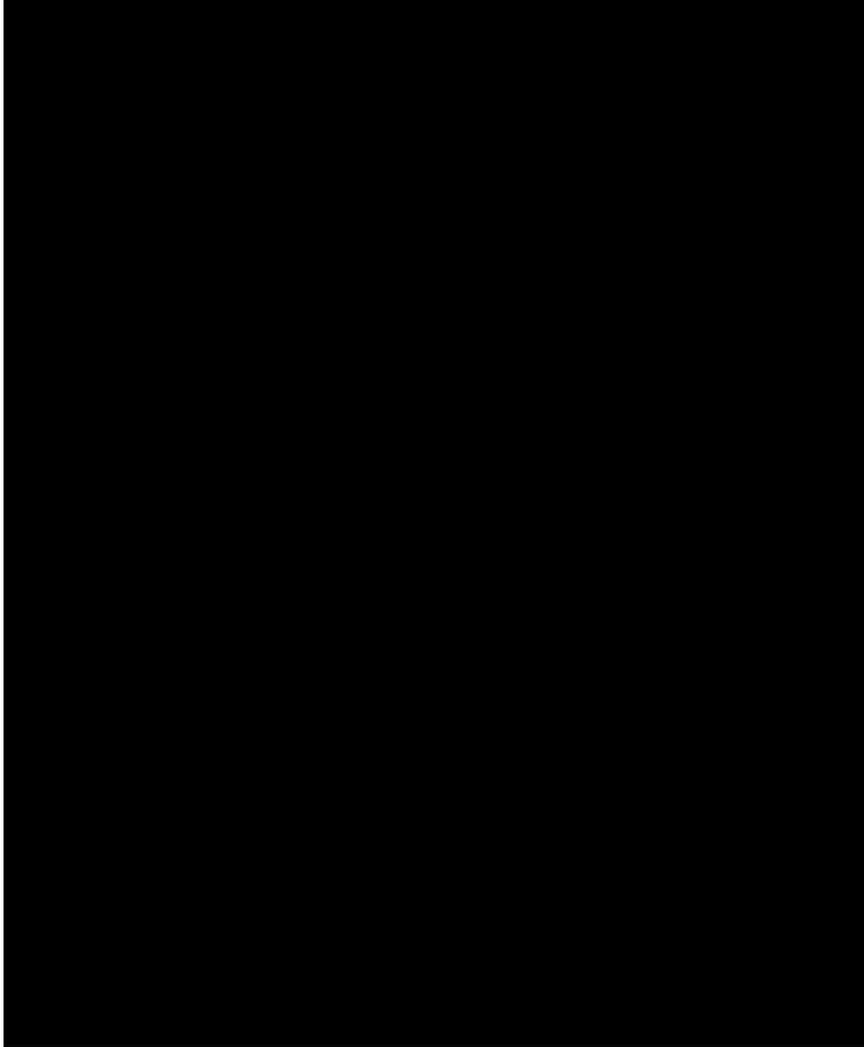
The consumer should assess whether or not the stormwater is fit for the purpose the material is proposed to be used for, and whether this use will cause harm. The consumer may need to seek expert engineering or technical advice.

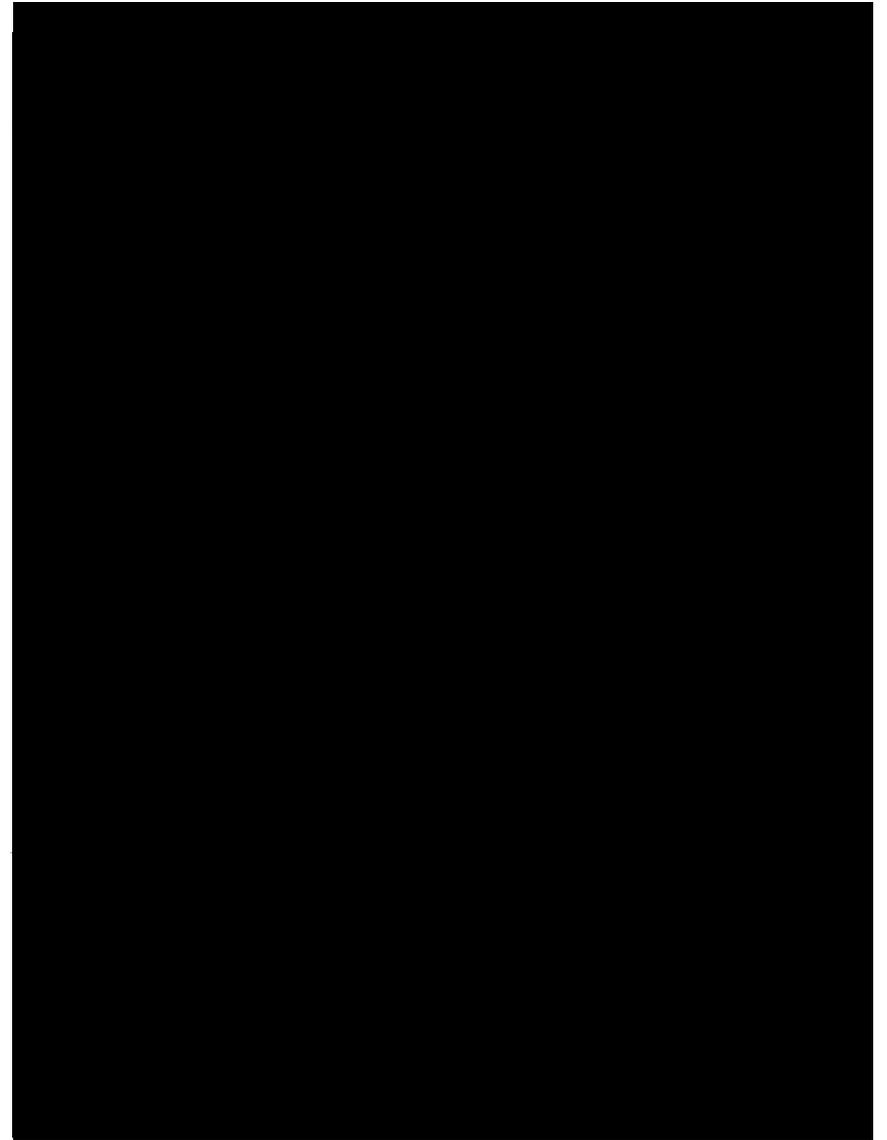
Regardless of any exemption provided by the EPA, the person who causes or permits the application of the substance to land must ensure that the action is lawful and consistent with any other legislative requirements including, if applicable, any development consent(s) for managing operations on the site.

The receipt of stormwater remains subject to other relevant environmental regulations in the POEO Act and Waste Regulation. For example, a person who pollutes land (s. 142A) or water (s. 120), or causes air pollution through the emission of odours (s. 126), or does not meet the special requirements for asbestos waste (Part 7 of the Waste Regulation), regardless of having an exemption, is guilty of an offence and subject to prosecution.

This exemption does not alter the requirements of any other relevant legislation that must be met in utilising this material, including for example, the need to prepare a Safety Data Sheet (SDS).

Failure to comply with the conditions of this exemption constitutes an offence under clause 91 of the Waste Regulation.







PROTECTION OF THE ENVIRONMENT OPERATIONS ACT 1997 - SECT 48

Licensing requirement--scheduled activities (premises-based)

48 Licensing requirement--scheduled activities (premises-based)

(1) Application of section This section applies to [scheduled activities](#) where Schedule 1 indicates that a licence is required for premises at which the activity is carried on.

(2) Offence A person who is the occupier of any premises at which any such scheduled activity is carried on is guilty of an offence, unless the person is, at the time that activity is carried on, the holder of a licence that authorises that activity to be carried on at those premises.

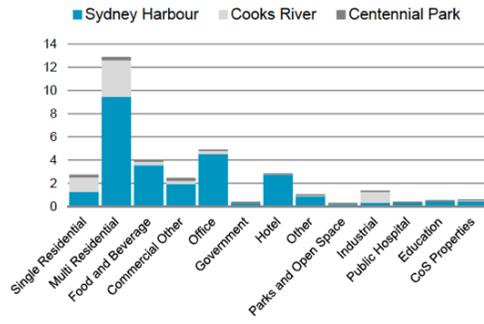
Maximum penalty:

- (a) in the case of a corporation--\$1,000,000 and, in the case of a continuing offence, a further penalty of \$120,000 for each day the offence continues, or
- (b) in the case of an individual--\$250,000 and, in the case of a continuing offence, a further penalty of \$60,000 for each day the offence continues.

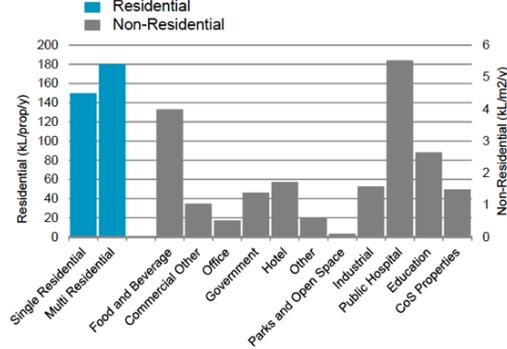
Note : An offence against subsection (2) committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation--see [section 169A](#).



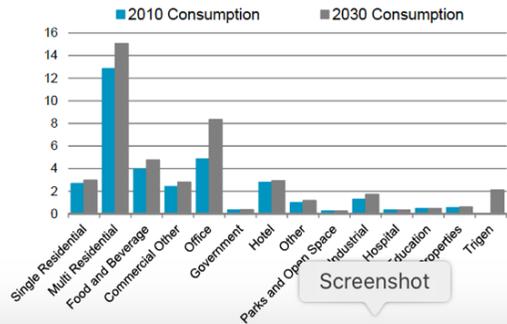
Total Water Consumption by Sector in 2010 (GL/y)



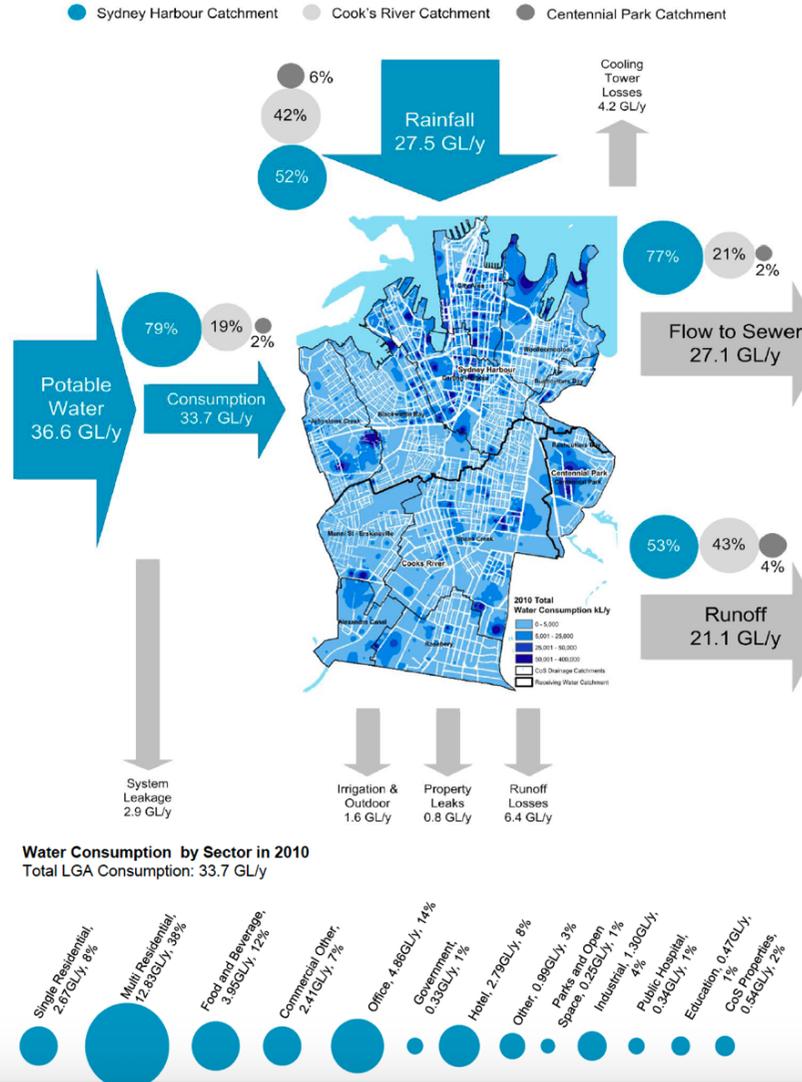
Water Use Intensity in 2010



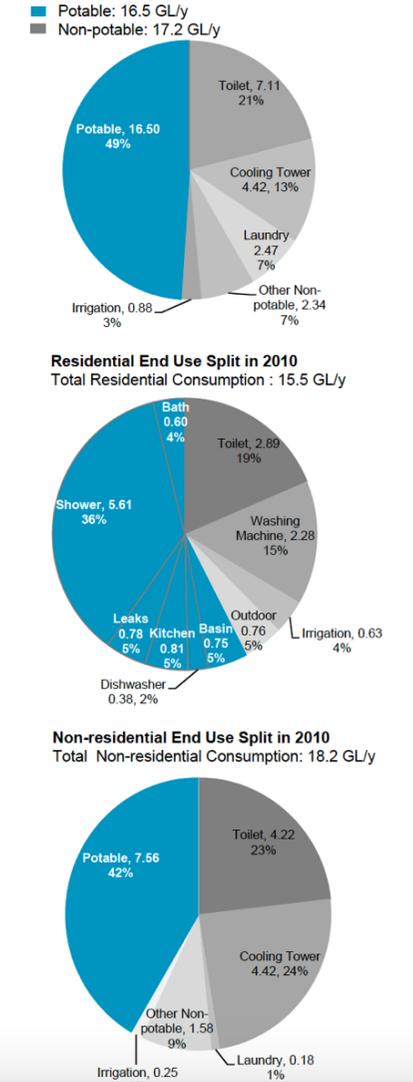
2010 and 2030 Water Consumption by Sector (GL/y)



2010 LGA Water Balance



End Uses split by Potable & Non-potable in 2010



GHD Water Plan for Sydney City Council, Appendix A 2010