



7 November 2008

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Chairman
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Dear Dr Keating

Draft Cost Allocation Guide

Thank you for the opportunity to review and comment on the Tribunal's Draft Cost Allocation Guide to be made under s92 of the Water Industry Competition Act 2006 (WIC Act). Jemena has an interest in the proposed Guide as a potential service provider under the WIC Act.

Jemena supports the making of a Guide, and the scope and general content of the Draft Guide. Jemena has three comments of substance.

1. Declared services not necessarily covered by a price determination

There is a presumption at a number of places in the Draft Guide that the Tribunal will have made a price determination that covers the declared services. Relevant references are in sections 2.4, 2.6, 4.4, and 4.5.

This presumption appears to reflect the fact that certain of Sydney Water's sewerage services are taken to be declared under the WIC Act, and Sydney Water's sewerage services generally are the subject of a price determination by the Tribunal. However, the negotiate/arbitrate framework of the WIC Act provides for a service to be declared without any corresponding access undertaking or price determination. There will not always be a relevant price determination.

Section 2.6 of the Draft Guide also suggests, by way of example, that the service provider may be involved in retailing at prices that are subject to determination. That will not always be the case.

If the Guide is to be generally applicable, it must be able to accommodate situations where the declared services are not the subject of an access undertaking or a price determination by the Tribunal, and where the service provider is a pure infrastructure service provider i.e. it has no retail business.

2. Level of sign-off and scope of statement

The Draft Guide proposes (in section 3) that the cost allocation manual include a statement signed off by “no less than two directors”. In Jemena’s view, sign-off by the CFO and CEO is more appropriate and should be taken as sufficient authorisation for an operational document such as the cost allocation manual. This is especially so given that the document is subject to approval by IPART, and that IPART may require that a manual be amended prior to approval (WIC Act s 42(4)).

Jemena also questions the form of the proposed statement which includes confirmation that the service provider intends to comply with the cost allocation methodology. Section 42(5) of the WIC Act requires the service provider to allocate costs in accordance with the manual as approved by IPART. An assurance that the service provider will comply should be unnecessary. Put another way, why single out this particular statutory requirement for a statement, by directors, of intention to comply?

3. Relationship between the Guide and rules made by the Minister

It is not clear how the proposed Guide will sit in relation to any rules that the Minister may make under section 42(3) of the WIC Act.

Should you have any questions about this submission, please contact Warwick Tudehope on 02 9270 4551.

Yours sincerely



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