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Ministerial Water and Sewerage Taskforce
Response to Preliminary Position Paper
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PART A – PROPOSED POSITION PAPER - RESPONSE

Thank you for the opportunity to comment on the Part A – Proposed Position Paper on Future Regulation of the Tasmanian Water and Sewerage Industry. Unfortunately the timing of the release of the paper, particularly as it fell shortly before Christmas, has not permitted the paper to be fully considered by the Esk Water Management Board.

Nevertheless, I have prepared a brief submission, a copy of which is attached. Whilst the directors on my Board are aware of the contents of this submission it should be noted that it has not been approved by the Board. It should be seen, therefore, as having been submitted by me and not by my Board.

Yours sincerely,

Barry Cash
CHIEF EXECUTIVE OFFICER

Proposed Regulatory Arrangements
for the
Tasmanian Water and Sewerage Industry

Part A – Proposed Position Paper

Comments

INTRODUCTION

The Part A Paper on Regulatory Reform of the Tasmanian water and sewerage sector was released for comment on 30 November 2007. The Secretary of the Department of Treasury and Finance wrote to stakeholders advising of the paper's release, inviting interested parties to attend a series of workshops between 17 and 19 December and inviting submissions on the paper by 14 January 2008. Particularly as the workshops occurred immediately prior to the Christmas break, there has been limited opportunity for the Esk Water Board to actively consider that paper.

The Secretary's letter also indicated that the more detailed Part B Paper was to be released in early December. However, it was not released until 9 January 2008 which means it was not available in sufficient time to consider prior to compiling this response.

DISCUSSION

The Esk Water Board commented specifically on the need for regulation in Section 6.0 of its submission to the original Discussion Paper. For easy reference that section is reproduced below: -

“6.0 REGULATION

One of the critical factors in driving efficiency is the need for the provision of expert, independent Boards. This has been central to the success of the Victorian regional model and to that of the BWAs. This means that no matter what the structure or the ownership arrangements an appropriate regulatory environment needs to be provided. Even with the Victorian model that has all the utilities in Government ownership, there is very extensive regulation. In fact we are of the view that it is excessive.

Each of the existing BWAs more than satisfies the requirements of the Tasmanian Drinking Water Guidelines. There is also little doubt that Councils would improve infrastructure if they believed they could. There is, therefore, a significant argument that provided utilities are established that have the financial and technical capacity, regulation is unnecessary. However, the Government would want, and indeed need, to have assurances that its required outcomes are met. There, would, therefore, need to be appropriate regulation provided.

We believe that whilst this regulation needs to be robust and enforceable it should not be excessively onerous. The Victorian utilities to whom we spoke are not unhappy with the drinking water and environmental regulation, however, they consider the financial regulation to be grossly excessive. Tasmania already has financial

regulation under the Prices Oversight Act. Therefore, it would only seem necessary to make the drinking water and environmental regulation more robust. There would also need to be arrangements to deal with towns that do not have any infrastructure.”

Clearly, the Esk Water Board is cognisant of the need for improved regulation. However, we remain concerned that this regulation is not unduly heavy handed. In our view the bulk water authorities (BWAs) have demonstrated their ability to deliver on the necessary outcomes without undue regulation.

Drinking water quality is a clear example. As noted in our earlier submission each of the BWAs more than satisfies the requirements of the Tasmanian Drinking Water Guidelines. These Guidelines require the submission of a Drinking Water Quality Management Plan. For Esk Water’s part the preparation of this plan was simply the compilation of existing documents and procedures into a single document. The introduction of the regulatory requirement did not necessitate any changes to our management processes. Perhaps this is best expressed in the terms that we were doing the right things without any regulatory imperative. We have little doubt that the same is true of the other two BWAs.

The BWAs have been subject to pricing regulation for some years. In all the reviews undertaken by the Government Prices Oversight Commission (GPOC) there has not been a single requirement placed on any of the BWAs to limit revenue. In fact GPOC has regularly encouraged and even recommended increased revenues despite the latest review concluding that each of the BWAs is sustainable in the long term. We do accept, of course, that the fact that the Councils have been both owners and customers has been a significant element in price limitation. Removing Councils as customers would undoubtedly release some of this pressure to limit price, but we believe that provided they remain as owners then they would retain the tenet of community good in any price guidance provided to the corporations.

GPOC did of course require Esk Water to move from a fully variable price arrangement to a two part price. In fact all four of our customer councils also moved to two-part pricing at the same time. Interestingly the Terms of Reference for the 2004 GPOC review included a new requirement to examine demand management measures. The previously enforced requirement by GPOC to drastically reduce the variable price charged by Esk Water and to replace it with fixed charges was, in fact, an incentive to increase consumption. This occurred at a time when the majority of water utilities in Australia were moving to increase the proportion of revenue gained through variable charges.

Whilst these matters may be peripheral to the debate we believe they demonstrate that the BWAs have needed no more than very light handed regulation. In fact the following comment is included at the bottom of page 10 of the Part A paper: -

“The proposed regulatory objectives can broadly be thought of as covering key economic, social, public health and environmental aims that might not be achieved in the absences of regulation.”

This is a view with which we agree. In fact the point the above comments try to make is that many of these objectives can and will be achieved without heavy handed regulation.

One might ask why then has the existing system failed the Tasmanian community. The answer is simply that many of the councils involved have not had the financial and technical resources to respond accordingly. The formation of the BWAs has introduced an appropriate

corporate structure with adequate financial capacity and sufficient technical expertise and we believe they have demonstrated substantial advances with limited, if any, regulation in a relatively short period of time. We believe that regional corporations as proposed in our original submission would again deliver those same outcomes without the need for heavy handed regulation.

Part A paper also notes that “*the costs of regulation should not exceed the benefits.*” This is again a view with which we strongly agree.

It is not clear from the paper who will bear the full costs of regulation. These costs would include, but not necessarily be limited to: -

- The costs of establishing and operating the new urban water regulation section within the Department of Primary Industries and Water;
- The increased costs of existing water quality, environmental and economic regulation; and
- The cost of compliance incurred by the new corporations.

The BWAs already are required to fund the regular pricing review by GPOC and we are concerned that this philosophy would be extended to cover the other regulatory costs whether that is directly or through the operating licence.

We understand that the previous pricing review undertaken in Victoria may have cost as much as \$20m. \$5m was the cost of the economic regulator’s review which was paid by the water utilities with the remaining \$15m being the internal compliance costs of the utilities.

It was suggested at the recent regulation workshop in Launceston that the internal compliance costs incurred by Tasmanian corporations would be minimal as they would be preparing the required asset management plans etc in any case. Whilst this claim would seem to have some basis in truth the experience in Victoria is, we understand it, quite different. A Victorian utility recently visited by Esk Water and Cradle Coast executives indicated that their recent substantial increase in staff had largely been to cope with regulation compliance.

We note also the last paragraph on page 15 of the Part A paper which states: -

“It is intended that, if adopted, the recommendations in the table would be implemented in the context of the objectives and principles detailed above. For example, where additional regulation is proposed, the regulatory benefits on any new arrangements are considered to outweigh the costs.”

Again we agree with these views. Our concern, of course, is who would determine that equation and on what basis would that determination be based.

The State Government has indicated a number of times that the cost of overcoming the infrastructure backlog may be as much as a billion dollars. Clearly the priority for the new corporations will be to overcome this backlog as quickly and as economically as is possible. Any unnecessary expenditure on regulation, either by the corporations in compliance costs, or by the regulators, will detract from the ability of the industry to deal with this backlog.

CONCLUSIONS

As set out in our original submission Esk Water remains committed to the need for robust and enforceable regulation. However, we also believe that the history and performance of the existing BWAs has demonstrated that this regulation does not need to be heavy handed. We believe that the formation of regional Council owned corporations would similarly provide the necessary outcomes without the need for substantial increases in regulation. Indeed we are concerned that excessive regulation will impose undue costs on the new corporations particularly at a time when every dollar will be needed to address that agreed infrastructure needs of the community.