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**JOINT SUBMISSION TO THE DISCUSSION PAPER
ON THE ROLE OF THE PRIVATE SECTOR IN THE
SUPPLY OF WATER AND WASTEWATER SERVICES**

The Consumer Utilities Advocacy Centre Ltd (CUAC) and Consumer Law Centre Victoria (CLCV) welcome the opportunity to comment on the Discussion Paper on the Role of the Private Sector in the Supply of Water and Wastewater Services released by the Department of Prime Minister and Cabinet (the **Discussion Paper**).

In line with the operational focus of these organisations, this submission is primarily concerned with the interests of Victorian consumers and, particularly, residential and low-income consumers.

A. Background

Our organisations' advocacy on these issues and interest in water reform is underpinned by the fact that access to water is essential to sustain life and well-being and therefore has characteristics that require particular consideration in the formulation of policy relating to the provision of water.

Water is also vital to the health of the environment and an integral part of the rural and regional economy. The long-term environmental, social and economic sustainability of this sector has therefore rightly become a high priority for Australian governments.

We view access to water as an essential human right¹, underpinned by the following principles:

- Access and affordability: for the individual, a right to water comprises a right to access sufficient clean water at an affordable price in order to meet basic human needs. Governments must therefore institute governance regimes which ensure all citizens, regardless of income or geography, are able to retain supply without undue financial difficulty. For those who do experience hardship, there need to be effective programs in government and in companies to

¹ For a detailed outline of the rationale behind and benefits of thus categorising water, see Consumer Law Centre Victoria and Environment Victoria, *Water: Access, Affordability and Sustainability – Issues Paper*, 2004, available online at <http://www.clcv.net.au/index.aspx?id=191&newsid=14>.

assist those consumers. Access means there must be mechanisms within the regulatory framework that ensure that consumers cannot be disconnected or restricted solely because they cannot pay, or refused connection because they are viewed as unattractive customers.

- Protecting the environment's access to water: a right to water also encompasses an obligation to ensure its sustainable use, particularly in relation to water management that secures ecosystem health.

Public interest in this sector is driven by the need to balance an immediate short-term goal (of access at an affordable price) with the need to ensure long-term sustainability – objectives which have too often been seen as competing. Australia has therefore reached a stage where there is an urgent and broadly understood need to develop a cohesive and coherent policy framework, but a less well-articulated understanding of the objectives and outcomes of reform.

The concept of stewardship as opposed to ownership is crucial to an informed debate on these issues, and we are therefore disappointed that the Discussion Paper has adopted such a limited framework from which to initiate discussion on such an important issue. While recognising the need for action – and for innovation – the Discussion Paper focuses almost entirely on private sector solutions yet provides no evidence that the private sector would be any more efficient at producing outcomes and fails to recognise where there has been significant action driven by government and successfully implemented by publicly owned enterprises.

CLCV and CUAC believe this is an issue of national importance and submit that the public interest must be placed at the centre of all policy development relating to water and wastewater services. We are concerned that the Discussion Paper is focused on ensuring the private sector has a role in the water sector, without determining whether that involvement will contribute to public interest outcomes. These outcomes include the social, environmental and economic implications of water and wastewater provision.

B. Issues facing the water sector and current approaches

The primary issue facing the Australian water sector is the problems caused by the demand for water outstripping supply. Demand is outstripping supply in a range of urban and rural contexts, primarily due to reduction in the availability of water (reduced rainfall) but also increased competition between consumptive uses of water. The resulting water shortages are causing significant environmental problems and are also impacting upon the economic and social productivity of Australia. Population increases and climate change will also impact upon the demand and supply of water into the future.

The Discussion Paper overlooks the work that has been done in Victoria to address these issues. The State Government's White Paper *Our Water Our Future*² provides a good example of a more sophisticated and inclusive approach to the management of public resources, the type of approach that is necessary to effectively balance the public interest issues outlined above. The Victorian policy framework recognises that the government of the day and the water businesses are the stewards – not the owners – of those resources, and on that basis, has been able to construct a longer-term vision for the sector that incorporates the economic, social and environmental imperatives.

Policy responses included in the White Paper, some of which have now been legislated, aim to ensure that both the environment and consumption-based water users have sufficient water. These include:

- the creation of environmental water reserve, which gives the environment a legal right to water;³

² Victorian Government, *Securing Our Water Future Together*, June 2004.

³ *Water Act 1989* (Vic), s 4A and 4B (inserted by *Water (Resource Management) Act 2005* (Vic)).

- long-term assessments of water resources, which contributes to more forward-thinking water resource planning;⁴
- regional sustainable water strategies, which contribute to more integrated water resource management;⁵ and
- infrastructure solutions, including recycling and reducing leakages.

If these policies are implemented and managed appropriately, we believe there is significant scope for them to deal with the problem of demand outstripping supply while contributing to positive environmental outcomes.⁶

The Discussion Paper states that current pricing arrangements operate as a barrier to private sector involvement in the water industry. The underlying implication is that prices must increase. Policies that will result in increased prices, like all policies affecting consumers, should consider the distributional impact of those policies on consumers. Many low-income and vulnerable consumers already struggle to make payments for their water usage, and the consequences of non-payment (restriction and/or disconnection) seriously impact upon public health. If prices are to rise, measures must be in place to address affordability issues. It should also be noted that, as a demand management tool, pricing is a blunt instrument. Any changes in water pricing must be accompanied by an assessment of whether such changes actually contribute to sustainable use.

Other policy tools involving consumers, such as mandatory water restrictions or encouraging reduced water use through retro-fitting households and education about water efficiency may be more equitable and appropriate approaches that can achieve the desired outcome. Indeed, mandatory water restrictions and education have contributed to reduced water use in Melbourne of about 20 per cent per person since the 1990s.⁷ More can be done through promoting and mandating the use of water efficient appliances in domestic households.

C. Private involvement in the water sector

The Discussion Paper implicitly condones an approach that would fundamentally change the way in which water is managed, yet does not acknowledge that political will is necessary for such change. The Victorian Government is committed to the public provision, planning and management of water and wastewater services and the State Constitution mandates that the ownership of water businesses stays with the Victorian Government.⁸ We strongly support this principle. Government ownership of water businesses has the support of the Victorian public, and any modification of this principle should be open to transparent and public debate. Significant re-structure of the Victorian water sector occurred during the 1990s, and this resulted in Victorian water businesses being corporatised.

There is not, however, any current public or political momentum for further privatisation of the primary obligations involved in providing and managing water and wastewater services in Victoria.

We recognise that the Discussion Paper refers to other forms of private sector involvement in the provision of water and wastewater services, including contracting with the private sector and third party access to public infrastructure. These options are discussed further below. However, in our view, any private involvement in the water sector must be based upon a clear and transparent cost benefit analysis.

This analysis must include consideration of all social and environmental costs and benefits, and not just consider economic efficiency outcomes. Moreover, private sector involvement must not impinge upon

⁴ *Water Act 1989* (Vic), Div 1C (inserted by *Water (Resource Management) Act 2005* (Vic)).

⁵ *Water Act 1989* (Vic), Div 1B (inserted by *Water (Resource Management) Act 2005* (Vic)).

⁶ See G Brody (ed), *Water: Access, Affordability and Sustainability*, especially ch 3 and 4, and Appendix (Recommendations for legislative implementation of white paper's proposed reforms).

⁷ Victorian Government, *Draft Central Region Sustainable Water Strategy*, April 2006, p 19.

⁸ *Constitution Act 1975* (Vic), s 97.

the principle that it is the Government-owned businesses' responsibility to provide water and wastewater services in a manner that is efficient, equitable and sustainable.

D. Experience in other sectors

The Discussion Paper considers the impact of National Competition Policy (NCP) on a range of other sectors of Australian industry, including gas, electricity, transport and telecommunications. While we agree that NCP has brought about economic efficiencies and increased welfare for the Australian community, we are concerned about the distributional effects of markets.

The review of NCP by the Productivity Commission admitted that NCP has contributed somewhat to dispersion of household incomes.⁹ Furthermore, the NCP has resulted in smaller regional communities being disadvantaged due to infrastructure changes.¹⁰ This has resulted in “winners” and “losers” of micro-economic reforms. We submit that this has been exacerbated by consumer protection policy and social policy being considered outside the framework of competition policy, rather than as a concomitant part of that framework. It is also our view that in any policy framework which brings about increased private sector participation, consumer protection, social welfare and environmental considerations, must have equal importance with economic growth and efficiency considerations.

The Discussion Paper points to reductions in electricity bills following the introduction of competition in that market as supporting further private sector involvement in essential service provision. It is strange that the Discussion Paper refers to electricity price reductions as a good consumer outcome from privatisation and deregulation, while also suggesting the need to increase the price of water to enable private sector participation in the water sector. We ask where the positive consumer outcome will be in this situation.

It is also important to recognise that the experience of electricity contestability reforms in Victoria demonstrates that although on average there have been price reductions, not all consumers have benefited from the reforms. A joint report of the CLCV and Monash University's Centre for the Study of Privatisation and Public Accountability (CSPPA) concluded that:

“whilst electricity reforms in Victoria have produced some significant benefits over the past decade, many of these benefits have accrued to industry, commercial users and metropolitan consumers. Disappointingly, low-income and disadvantaged consumers have seen mixed impacts from the reforms.”¹¹

In other markets, namely South Australia, consumers experienced significant price rises upon the introduction of competition. In its review of the effectiveness of competition in Victoria, the Essential Services Commission (ESC) found that competition was not yet effective, and that some classes of consumers were not benefiting from the move to a competitive market:

“[there are] limited offers available to specific customer groups — such as low volume users and regional customers — due to the costs of customer acquisition and particularly low margins available for customers with significant off-peak loads.”¹²

It seems that the costs involved in providing water services to many consumers may similarly prevent a commercial return. For the reasons outlined in the Background, it is nevertheless critical that these

⁹ Productivity Commission, *Review of National Competition Policy Reforms*, Inquiry Report, No. 33, February 2005, p. 89.

¹⁰ As above 108-9.

¹¹ CLCV and CSPPA, *Electricity Reform in Victoria: Outcomes for Consumers*, February 2006, p. 87.

¹² Essential Services Commission, *Special Investigation: Review of Effectiveness of Retail Competition and Consumer Safety Net in Gas and Electricity*, Background Report, June 2004, p 64.

consumers have affordable access to water. The Discussion Paper fails to recognise this problem, let alone propose solutions.

Further, we submit that there are significant differences between the provision of electricity and water services which make comparison of private sector involvement between the industries difficult and perhaps unhelpful to the current debate.

E. Third Party Access

The contention put forward in the Discussion Paper, that the establishment of third party access arrangements can create competitive pressures, does not address the complex set of priorities outlined above. This can be contrasted with the Victorian approach. Over the past fifteen years, there has been a level of reform in the water sector, which has ultimately resulted in a robust governance framework that clearly articulates the social, environmental and economic objectives that are to be achieved by Government, regulators and service providers. That overarching policy framework – outlined in the Government’s White Paper – is a much more effective approach to finding solutions to the urgent problems we face, than the simple reliance on the private sector as proposed in the Discussion Paper.

The Victorian water sector is now characterised by a culture of service delivery that emphasises customer service, continuous improvement, collaboration and innovation, resulting in an efficient and effective public sector. This is reinforced by the principle of ‘competition by comparison’ whereby the ESC publicly monitors and reports on the performance of water retailers¹³ in order to encourage businesses to further improve their performance relative to others, and provide incentives for businesses to improve their own performance over time. This leads to a transparency and accountability of a wide variety of aspects of services and service delivery contributing to improvements in options and outcomes for consumers.

Hence, we do not believe that the establishment of third party access arrangements would, as a matter of course, encourage improved management practices and service delivery to customers any more effectively than has already occurred within the public sector. The corporatisation of the water sector in Victoria from the early-1990s, and the economic regulation of water from 2005 has arguably already achieved those efficiency gains.

The Discussion Paper identifies certain other benefits to arise from third party access (Section 3.5) such as reduced tariffs for customers and subsidies for taxpayers. That comment ignores the fact that a common feature of all discussions about water in Australia is the growing likelihood of upward adjustments in price to ensure more sustainable use and encourage conservation. The upward pressure on prices is unlikely to diminish, given declining average annual rainfall levels coupled with burgeoning demand due to population and economic growth. We therefore do not believe that expanded third party access will necessarily translate into lower tariffs or reduced subsidies.

In relation to pricing, we would also strongly echo the concerns put forward by the Public Interest Advocacy Centre that third party access could encourage governments and regulator to pitch prices at a level that would encourage new entrants, but would be neither cost-reflective nor affordable for consumers.¹⁴

While we agree there is a need for research and innovation, particularly around wastewater treatment, and reuse and recycling, again we are not convinced that third party access will necessarily achieve this outcome. There is already private sector involvement in this sector, through public-private partnerships and initiatives such as the Co-operative Research Centres, and we remain sceptical that pursuing national

¹³ See for example Essential Services Commission *Performance Of Urban Water And Sewerage Businesses*, July 2004 – June 2005, March 2006.

¹⁴ Public Interest Advocacy Centre Ltd (NSW), *Submission to Department of the Prime Minister and Cabinet on the Role of the Private Sector in the Supply of Water and Wastewater Services*, October 2006, p 5.

third party access – a very expensive exercise even if it were politically tenable – would add any more to that involvement.

We therefore question what exactly third party access in this sector will further contribute. As indicated earlier in this submission, we do not believe that the private sector would be more efficient at producing outcomes, particularly given that there has been significant long-term reform and sectoral restructuring driven by government in Victoria.

We again emphasise that private involvement in the water sector must be based upon rigorous cost-benefit analysis. This analysis must take account of all social and environmental costs and benefits, not solely economic efficiency outcomes.

F. Implications of international free trade agreements

One aspect of private sector involvement in the water sector that is not raised by the Discussion Paper is the implications of international free trade agreements, such as the General Agreement on Trade in Services (**GATS**) and the Australia-United States Free Trade Agreement (**AUSFTA**). While we note that in Australia's revised offer under GATS, water services relating to water collection, purification and distribution for human use are not included, these services are included in AUSFTA. Furthermore, both GATS and AUSFTA include commitments on wastewater services.

Once opened up to competition and private sector involvement, water and wastewater services may be subject to international competition – Australia must treat foreign service companies as if they were Australian companies under the provisions of free trade agreements. While foreign service providers of course have to comply with Australian laws and regulation, there is still significant uncertainty about a Government's right to regulate in the public interest once international free trade commitments are made.¹⁵ In particular, market access provisions of free trade agreements may prohibit policies which aim to restrict water use to avoid over-exploitation of water resources.¹⁶ We submit that further analysis of the implications for water and wastewater service provision caused by Australia's signing of free trade agreements must be undertaken before any policies relating to further private sector participation in the sector are pursued.

If you wish to discuss any matters raised in this submission, please contact either Gerard Brody, Consumer Law Centre Victoria on telephone (03) 9629 6300 or James Henshall, Consumer Utilities Advocacy Centre (03) 9639 7600.

Yours sincerely

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¹⁵ Jonathan Pickering, *GATS, public services and domestic regulation: current issues and implications for local government in Australia*, 2000.

¹⁶ Center for International Environment Law and WWF International, *GATS, Water and the Environment: Implications of the General Agreement on Trade in Services for Water Resources*, October 2003.