

REFORMS TO THE WATER INDUSTRY COMPETITION ACT 2006 AND IMPLICATIONS FOR LOCAL COUNCILS

AWA REGIONAL CONFERENCE, BALLINA, 27 OCTOBER 2015



Katy Brady, Metropolitan Water Directorate, DPI Water



Presentation outline

- Introduction
- Work done to date on WIC Act
- Stakeholder feedback on reform proposals
- The 2014 Amending Act
- Relationship with other Acts
- Last resort arrangements
- Next steps



Introduction – Metro Water Directorate

- MWD = part of DPI Water
- Metro Water Plan & Lower Hunter Water Plan
- Engagement & social research
- Policy responsibility – WIC Act, WELS scheme, input to price determinations, metropolitan water utility regulation, reform processes
- IPART = regulator under the WIC Act
- MWD advises Minister re licence applications & legislative reform

Introduction – WIC Act 2006

- Commenced in 2008
- State wide licensing regime to ensure new entrants have required capacity → protect public health, consumers, environment
 - Administered by Minister for Lands and Water
 - 16 schemes now licensed (most in Sydney)
- Access regime (Part 3 of WIC Act) enables new entrants to access existing infrastructure
 - Administered by Premier, DPC
 - Currently limited to metropolitan areas, coastal STP transport networks declared
 - Recent discussion re wholesale customers & pricing
 - Regime has not been used to date

Central Park, Broadway – Flow Systems



Bingara Gorge – Lend Lease and Veolia



Sydney Desalination Plant



Ongoing development of WIC Act

- Review of last resort arrangements – 2011
- WIC Act amendments – late 2011
- Five yearly review of WIC Act (s104 report) – Nov '12
- Discussion Paper re WIC Act & LG Act 1993 – Nov '12
- Position Paper – February 2014
- WIC Amendment (Review) Act – October 2014
- New WIC regulation provisions re certificates of compliance – March 2015
- Rest of regulation being reviewed now – reforms to commence mid-2016

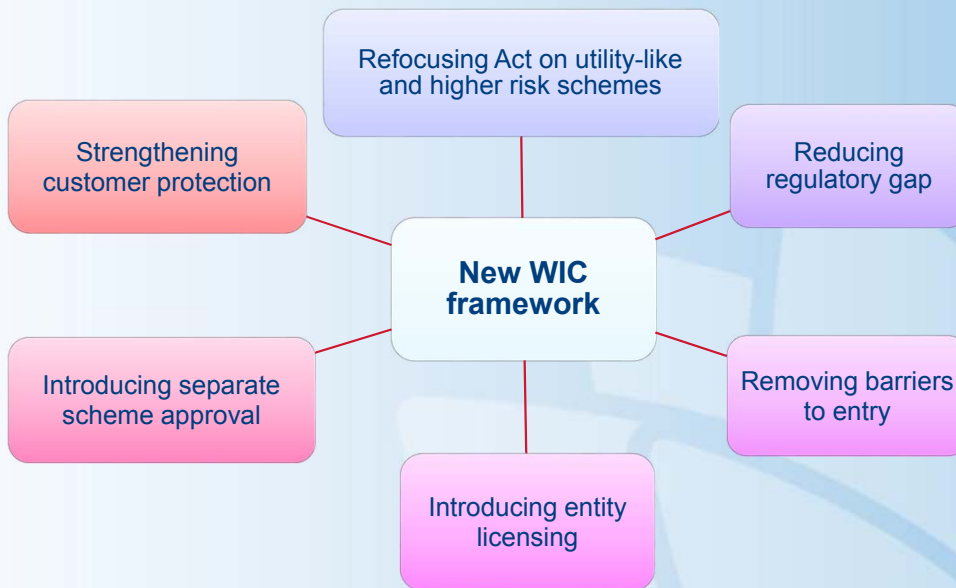
Consultation

- Input from stakeholders has been central
- 3 separate public consultation processes to date
- In lead up to Amending Act:
 - >240 stakeholders participated in 7 public workshops
 - 97 written submissions provided
 - Many meetings and discussions with stakeholders
- Targeted consultation in developing Regulation
- Public consultation on Regulation & RIS in 2016

Stakeholder feedback on 2014 reform proposals

- Wide support for narrowing the scope of the WIC Act
- Separation of licensing and scheme approval
- Unanimous support for financial viability assessment
- Strong support from all stakeholders for new last resort provisions
 - some stakeholders concerned re appointment process
 - mixed views re cost recovery when licensees fail
- Strong support for new WIC framework as a balanced approach to regulating utility-like schemes and higher risk schemes

Outline of the Amending Act



11

Refocusing Act on utility-like and higher risk schemes

Current scope of WIC Act

- Construct, maintain or operate *any water industry infrastructure* (broadly defined)
- Supply water (incl. recycled water) or sewerage service *by means of any water industry infrastructure*

... unless exempt (e.g. dual occupancy and below, public water utilities, councils, Aboriginal communities)



Refocused scope of WIC Act

- Schemes providing water (incl. recycled water) and sewerage services to small retail customers (residential and small commercial)
- Bulk water and sewerage facilities
- Other infrastructure prescribed in regulation: e.g. higher risk recycled water and stormwater harvesting schemes

Includes new private schemes, new and existing metro council schemes

12

Separating licensing and scheme approval

- Licensing & scheme assessment will be separated
- Licence will be entity-wide allowing a licensee to provide services anywhere in NSW
- Minister will remain responsible for entity licensing
- IPART will be responsible for granting scheme approvals
- Local councils outside metro areas are not regulated under the WIC Act – they continue to be regulated under section 60 of the LG Act

Scheme approval thresholds

Applies to any new private scheme or existing / new metro council scheme

Scheme approval required for any one of the following schemes:

Category A schemes – services for 30 or more small retail customer premises

Drinking water facility of more than 500kL/day

Wastewater facility of more than 750kL/day

Infrastructure prescribed in regulation

Two types of scheme approvals

Design approval

- Granted before construction commences
- New instrument to help ensure schemes will meet standards; builds on current voluntary assessments
- Reduce risks and delays
- Ongoing discussion re what information to require

Operational approval

- Granted before commercial operation can commence
- Similar to current requirement for Ministerial approval
- Designed to ensure system is fit for purpose



Department of
Primary Industries
Water

1
5

Two types of company-wide licences

Retailer licence

- Regulates financial relationship between retailers and customers to protect customer interests
- Retail licence only required for Category A schemes
- Licence will apply state-wide

Operator licence

- Focus on capacity to protect public health etc
- Required for 'utility-like' schemes and higher risk water recycling and stormwater harvesting schemes
- Licence will list classes of activities the licensee is authorised to undertake



Department of
Primary Industries
Water

1
6

Customer protection measures

- WIC Act already includes measures to protect consumer interests – consumer rights, community service obligations and monopoly supplier declarations
- Stronger last resort arrangements
- Property purchasers will be informed re whether WIC licensed utilities will service the property
- ‘Deeming’ provisions will apply (as occurs for SWC and HWC) so customer contracts are deemed to exist where a property is connected to a ‘Category A’ scheme
- Deemed customer contract terms will be prescribed

Relationship between WIC Act and other Acts

- Sewerage facility threshold aligns with 2,500EP trigger for EPL under Protection of Environment Operations Act 1997. Drinking water trigger based on same EP.
- New wastewater facilities that do not trigger the WIC thresholds will be regulated by councils under section 68 LG Act. Councils will generally also be appropriate regulatory authority under POEO Act.
- Existing schemes regulated under section 68 LG Act will be exempt from the WIC Act. (Currently, having a section 68 approval does not exempt a scheme from WIC Act.)

Relationship between WIC Act and other Acts

- Section 124 of LG Act amended so power to require connection is competitively neutral
- Section 109J of EP&A Act amended to enable developers to obtain certificates of compliance from WIC licensees prior to seeking a subdivision certificate
- Section 149 certificates (EP&A Act) to state if land will be serviced by a WIC licensed utility

Market model and s10(4)(d)

- Competition is a means to an end: new objects clause
- Full retail contestability not adopted
- Current requirement in s10(4)(d): supply sufficient water 'otherwise than from a public water utility'
 - Does not refer to 'new' water – e.g. could be met through agreement with another private entity
 - Only applies to a licence to supply water services, not sewerage services (so easy to avoid requirement)
- Amending Act states that a retailer can only provide services in connection with a scheme approved under the Act (i.e. must be new infrastructure)... So you cannot just 'on-sell'.
- Economics of the sector → no business case to provide BAU services in competition with incumbents

Reducing the risk of licensee failure

*Suitable corporation & suitable agreement tests
*Strengthening financial viability assessment
*Ability to require security

*Requirement on infrastructure owners to avoid last resort event
*Liability for cost of a last resort event lies first with licensees & infrastructure owners

*Last resort arrangements

The WIC regulatory framework has been strengthened to reduce the risk of licensee failure

New last resort arrangements

- To ensure supply of essential services to customers of failed retailers and operators licensed under the WIC Act
- Last resort providers (LRP) will be designated for “essential” infrastructure, unless licensee has put satisfactory alternative arrangements in place
- Primary consideration given to public water utilities but IPART can recommend the designation of a WIC licensee
- LRP will be required to undertake contingency planning and if necessary use “step in powers” to operate the scheme of a failed licensee
- New provisions to facilitate resolution of a last resort event

Last resort arrangements – recovering costs

- Contingency planning costs recovered from licensee when incurred
- Mechanism to recover LRP costs if a licensee fails and LRP has to step in
- Strike appropriate balance between interests of LRP, new entrants, customers
- IPART role in considering whether costs and expenses of LRP are reasonable
- The industry wide fund is at Minister's discretion and Minister must consult with utilities regarding proposed contributions
- Further consultation in developing regulation



23

Next Steps

- The regulation is being revised before amendments to the WIC Act can commence
- Draft Regulation and Regulatory impact Statement will be released in early 2016 for public consultation

Keep up to date

- Visit www.metrowater.nsw.gov.au/water-industry-reform/wic-amendment-act
- Join the mailing list: urbanwaterreview@dpi.nsw.gov.au