



CHAMBER OF COMMERCE AND INDUSTRY
WESTERN AUSTRALIA

29 February 2008

Mr Lyndon Rowe
Chair
Economic Regulation Authority
Level 6, Governor Stirling Tower
197 St Georges Tce
PERTH WA 6000

Dear Mr Rowe,

Supplementary Submission on the Independent Procurement Entity Proposal

CCI is pleased to provide this submission to the Authority's Inquiry into Competition in the Water and Waste Water Industry. This submission addresses issues surrounding Recommendation Two:
An Independent Procurement Entity should be established with responsibility for ensuring least expected cost of balancing supply and demand subject to the constraint of maintaining security of supply at a level set by government.

CCI's submission on the Authority's original issues paper emphasized the need for streamlined water industry legislation, recognizing that regulatory complexity and administrative burden constituted significant barriers to entry for companies wishing to participate in the market. We also discussed inappropriate institutional overlap, highlighting the need for clear delineation between the functions of the various government agencies currently regulating water.

CCI believes that companies must be able to clearly determine which conditions they must meet in order to participate in the market. Companies must also be able to identify relevant agency's responsibilities for approval processes. Procurement processes must be transparent and conducted independently, with all sources and proponents considered on equal terms.

CCI has suggested that there may be scope for some form of capacity market to be developed, analogous to the capacity market for electricity, whereby forward projections for water demand are made either via or by the Department of Water. A transparent independent procurement process should then be conducted to ensure sufficient supply.

CCI believes that, providing clear rules are set, the market will determine the most innovative, cost-effective solutions to provide water. Companies should be able to bid their solutions into an independent, impartial procurement process, with financial viability and economic efficiency determining which service should be selected.

CCI's recommendations are underpinned by the premise that the water market should be fair, accessible, transparent and efficient.

In its draft report, the Authority has provisionally recommended the creation of an agency to manage the water source procurement process: the Independent Procurement Entity (IPE). The IPE would determine the portfolio of source options available to meet a water security standard set by Government. All sources, including those owned by Water Corporation, would be assessed independently. The Water Corporation would provide advice to the IPE on source development timeframes. The IPE would approve the Water Corporation's annual source management strategy.

Whilst in principle CCI fully supports the creation of independent source procurement processes, we consider that more detail is required concerning the structure, interactions, and day-to-day operation of the IPE before full support can be given to this particular model. CCI would welcome a more detailed discussion of whether the underpinning objective to impart more independence into the water market could be achieved by amending current institutions, process and industry structures, especially given the current level of market maturity and number of potential participants.

As outlined in our previous submission to this inquiry, businesses attempting to enter the water market encounter a lack of regulatory clarity. Businesses are often unsure (and indeed sometimes government agencies also seem unsure) of where responsibility for approvals rests.

CCI is concerned, however that the introduction of another regulatory agency will compound this problem, adding another layer of administrative complexity and additional costs. We would welcome further detailed discussion regarding where the IPE's responsibilities and processes would sit in relation to the other water service planning, licencing and approval processes currently operated by the Water Corporation, Department of Water, Department of Health, Department of Environment and Conservation, Department of Planning and Infrastructure, the ERA and other agencies (including local governments).

The Authority should consider alternative means through which the requisite level of independence and impartiality can be incorporated into current institutional structures. CCI recommends that a comparative analysis with the IPE model should be undertaken.

Should this analysis support the establishment of the IPE, then we consider the current numerous complex pathways to procurement and source development must be simplified and the various roles of government agencies clearly stipulated to avoid duplication. Given the current water legislation reform programme, we strongly recommend that the IPE's envisaged role vis-à-vis the Department of Water in particular should be outlined in more detail.

CCI is not aware of any other jurisdiction that has adopted a similar procurement process or established a similar agency. Whilst conceptually the IPE model would seem to offer the possibility of greater independence and transparency, more detail would be welcomed on its envisaged practical and day-to-day operations.

We consider that to function effectively, an IPE must be well-resourced and staffed by suitably expert personnel capable of assessing the merits of various water source proposals. The IPE must be able to consider (or access sufficient external expertise to assist it to assess) the economic, environmental and social impacts of different sources. In the current WA labour market, this may prove problematic.

CCI recommends that the potential rules governing the operation of the IPE should be considered in a more detailed study. To be effective, the IPE must possess the necessary authority to access or compel the production of planning and costing information. Possible mechanisms to facilitate this should be outlined. A proposed model for the decision-making process should be provided, giving further information on how the IPE would identify the need for new sources (and how this would interact with the Department of Water's planning activities). Possible processes for 'proving up' and 'bidding in' sources should also be discussed.

CCI notes that utility market rules can be quite complex. Given WA's immature water market (heavily dominated by one state-owned provider) care must be taken to ensure that any market rules or IPE processes do not in themselves constitute barriers to market entry. Small providers must be able to easily participate so that the objective of achieving more flexible and responsive supply solutions can be achieved.

CCI considers that a detailed cost-benefit analysis should be undertaken, identifying:

- The potential costs of creating another regulatory agency (or incorporating the IPE into a pre-existing agency such as the Independent Market Operator);
- Potential costs of reforming and/or utilising current institutional structures;
- Models for enhanced impartiality and independence in current or potential procurement processes;
- The costs and complexities surrounding market rule design;
- Potential business compliance costs with any new market rules;
- Potential regulatory impact – the types of changes required and the regulations/administrative overlaps that would be removed upon establishment of the IPE;
- The IPE's relationship with other entities, particularly the reconstituted Department of Water; and
- The maturity of the WA water market and its ability to support the introduction of an IPE;

CCI strongly believes that the ultimate aim of any reform process must be to establish the most accountable, transparent, administratively simple, economically efficient and sustainable water supply possible. The ground rules for market participation, roles of decision makers and processes and critical decision points must be understood by all participants.

We consider that should the proposed detailed study reveal that current structures cannot be amended to remove complex, blurred decision-making and improve accountability then the IPE proposal should be supported.

CCI's Senior Adviser, Industry Policy, Jessica Shaw, is available to provide further detail on this submission and can be contacted on 08 9365 7498 or Jessica.Shaw@cciwa.com.

Yours Faithfully,

Trevor Lovelle
Director – Industry Policy