


Department of Climate Change, Energy, the Environment and Water

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# Stakeholder consultation report for Water Industry Competition (General) Regulation 2024

February 2024



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The Department Climate Change, Energy, the Environment and Water acknowledges that it stands on Aboriginal land. We acknowledge the Traditional Custodians of the land and we show our respect for Elders past, present and emerging through thoughtful and collaborative approaches to our work, seeking to demonstrate our ongoing commitment to providing places in which Aboriginal people are included socially, culturally and economically.

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Published by NSW Department of Climate Change, Energy,  
the Environment and Water

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Stakeholder consultation report for Water Industry Competition (General)  
Regulation 2024

First published: February 2024

Department reference number: DOC24/37265

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TMP-MC-R-SC-V1.2

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# 1 Introduction

The NSW Government has made the Water Industry Competition (General) Regulation 2024 (Regulation 2024) to replace the Water Industry Competition (General) Regulation 2021 (Regulation 2021).

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## 1.1 Purpose of the Water Industry Competition Regulation

The Regulation 2021 was a remake of the Regulation 2008 with minor changes and was done as an interim measure until the regulation could be fully reviewed. The 2008 and 2021 regulations were made to support the *Water Industry Competition Act 2006* (WIC Act 2006), which introduces innovation and competition into the water market, protects customers and encourages water recycling.

The Regulation 2021 includes scheme licensing rules and exemptions, and provisions to protect consumers, water quality and the environment.

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## 1.2 Water Industry Competition Amendment Act 2021 (WIC Act 2021)

Following a review that began in 2011, major reforms to the WIC Act 2006 were passed by Parliament in October 2021 and received assent on 1 November 2021. The WIC Act 2021's key reforms include:

- narrowing the licensing regime to focus on higher risk schemes
- creating state-wide licences and scheme-specific approvals, which separate the licensing of operators and retailers from the approval of individual schemes
- requiring more rigorous financial viability assessments of proposed schemes
- strengthening customer protection by introducing a standard customer contract deemed to apply to small retail customers and operator of last resort arrangements
- bringing new metropolitan council water recycling schemes under the WIC Act
- providing the regulator, IPART, with greater investigative and enforcement powers.

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## 1.3 Water Industry Competition Regulation 2024

The 2024 Regulation contains many of the provisions of the 2021 Regulation while incorporating new provisions to support the WIC Act 2021 reforms.

The 2024 regulation prescribes:

- which metropolitan council water recycling schemes will require licences and approvals and those that are exempt under the WIC Act 2021
- the standard conditions of licences and approvals
- time limits on the processing of approvals
- the terms and conditions of the new standard customer contract
- requirements for last resort contingency planning to prepare for possible licensee failures
- miscellaneous requirements such as for the granting of certificates of compliance, IPART pricing investigations, water restrictions and transitional arrangements.

# 2 Consultation

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## 2.1 Exhibition process

The then Department of Planning and Environment, now the Department of Climate Change, Energy, the Environment and Water (the department) thanks stakeholders for their feedback on the exhibited draft regulation (Phase 1) and targeted consultation on the requirements and costs for last resort contingency planning (Phase 2). The feedback has helped shape and refine the Regulation 2024.

For Phase 1, a draft regulation was exhibited to the public for 10 weeks from 16 September until 30 November 2022, which included a 6-week extension to the initial exhibition time on the request of several stakeholders to prepare their submissions. Most stakeholders were either neutral or supportive for the extension while understanding that this would delay the finalisation of the regulation.

Public exhibition was advertised through a notice in the NSW Government Gazette, on the department's website and IPART's website, and in emails to key stakeholders, including WIC Act licensees, NSW government agencies, peak local government bodies, state-owned water utilities, the Water Directorate (representing local water utilities), the Public Interest Advocacy Centre (PIAC) and the Energy and Water Ombudsman NSW (EWON). Exhibited documents included:

- an exhibition draft 2024 Regulation, which contained the proposed regulatory provisions
- a Regulatory Impact Statement (RIS), which contained a detailed explanation and cost benefit analysis of the proposed changes
- a fact sheet summarising the key changes.

The department, in conjunction with IPART, offered and held online information sessions on the proposed 2024 Regulation and RIS for stakeholders during the exhibition period. Sessions were held for current WIC Act licensees and licence applicants, the Water Directorate and local water utilities, metropolitan local councils, and Sydney Water, Hunter Water and EWON.

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## 2.2 Phase 1- Overview of submissions

The department reviewed and considered each submission made in relation to the draft Regulation and RIS. Submissions were received from six WIC Act licensees, three NSW Government agencies,

two state-owned corporations, one local council, and EWON. Owing to the specialised nature of the subject matter, no submissions were received from the general public.

Submissions generally supported the proposals in the draft Regulation or suggested improvements to ensure a functional regulation that supported the changes in WIC Act 2021.

The sections below summarise comments received on each part of the draft Regulation 2024. The final Regulation 2024 includes amendments that respond to issues identified during analysis of submissions received. Key amendments are summarised in the 'Response' sections below.

Some other issues raised in the submissions may be addressed through guidance materials to be developed by IPART.

Parts of the Regulation that received no comments and had no policy changes (e.g. penalty notices) have not been included below.

# 3 Coverage of the regulatory regime

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## 3.1 Summary of proposed reform

A summary of the proposed reforms to provisions including or excluding certain infrastructure from requiring licensing under the WIC Act is provided in section 4 of the RIS. Some refinements to these reforms have been made in response to submissions (see 'Response' section below).

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## 3.2 Issues raised in submissions

Feedback was received from one local council, who raised concerns about WIC licences being required for council schemes where recycled stormwater is used for toilet flushing. They believed this would make such schemes very expensive to operate.

During the consultation process, IPART identified that the draft Regulation 2024 would capture larger schemes servicing workers' accommodation and larger 'self-supply' schemes. This would be problematic where such schemes are regulated under other legislation.

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## 3.3 Response

In relation to the council's concerns outlined above, toilet flushing needs to be regulated as there is a significant risk of adverse health impacts through accidental cross-connection of recycled water pipes with drinking water pipes. However, in recognition of the impact that costs associated with upgrading council schemes to meet requirements in the WIC Act and Regulation would have on the viability of such schemes, Regulation 2024 exempts existing or planned council recycling schemes from the WIC Act 2021. For new schemes, councils can avoid regulation under the WIC Act 2021 by not including toilet flushing as one of the end uses.

The grandfathered "onsite" exemption in the Regulation 2021 (s.20) exempts a range of schemes from the WIC Act 2006, including schemes servicing workers' accommodation such as mining villages and construction camps and 'self-supply' schemes. Section 20 of the Regulation 2021 grandfathers cl.19(d) of the Regulation pre-2010 which provides an exemption for:

***19(d) Water or sewerage infrastructure***

- 1. that is wholly situated on premises owned by the one person, whether or not the whole or any part of those premises are leased to, or occupied by, some other person, and*



2. *that is owned or controlled by the person by whom those premises are owned.*

It is not proposed to retain the grandfathered exemption because this site/location-based exemption has proved problematic in the past, creating a range of anomalies depending on where the infrastructure is located. Instead, it is proposed to provide exemptions based on the end users for these schemes.

### 3.3.1 Workers' accommodation schemes

Water and sewerage infrastructure is often installed to service mining villages or construction camps for employees. They may be temporary or permanent. The land and buildings are usually owned by the employer and not separately titled.

Under s.5(1)(c) of the WIC Act 2021, these schemes will require licences and approvals if they are treating more than 750kL/day of sewage, stormwater or recycled water.

An exemption is proposed because workers' accommodation is already regulated by s.19(4) of the *Work Health and Safety Act 2011*.

(4) *If—*

1. *a worker occupies accommodation that is owned by or under the management or control of the person conducting the business or undertaking, and*
2. *the occupancy is necessary for the purposes of the worker's engagement because other accommodation is not reasonably available,*
3. *the person conducting the business or undertaking must, so far as is reasonably practicable, maintain the premises so that the worker occupying the premises is not exposed to risks to health and safety.*

This exemption will not apply if, for example, a mining village were redeveloped and sold as general housing because it would no longer be 'workers' accommodation'. It would be captured by s.5(1)(a) of the WIC Act 2021 if there were 30 or more small retail customers.

### 3.3.2 'Self-supply' schemes

Schedule 1 of the Regulation 2024 was amended to include an exemption based on whether the end user is the same as, or a legally related company of, the scheme owner/operator – and that the water is not on-sold to unrelated third parties but used for self-supply.

Only schemes treating >750kL/day of sewage, stormwater or recycled water will require licences and approvals under the WIC Act 2021 - and most recycling schemes in commercial and retail buildings are below this threshold and would not be regulated under the WIC Act 2021. Most

existing golf courses that sewer mine for irrigation would also be treating below 750kL/day – and would have approvals from their local council under s.68 of the *Local Government Act 1993*.

However, large recycling schemes that further treat recycled water for self-supply such as Eraring Power, BlueScope Steel, or the University of Western Sydney's Hawkesbury Recycled Water Scheme (which receives recycled water from Sydney Water and further treats it together with stormwater from the site) would be captured under the WIC Act 2021 as they are treating >750kL/day. These schemes were previously exempt from licensing under the WIC Act under the grandfathered "on-site" exemption.

It is proposed to continue to exempt these self-supply schemes if there is no supply to unrelated third parties because: a) those supplying themselves can be relied upon to protect themselves, and b) any exposure risk is to employees and other persons visiting the site and they are protected under the *Work Health and Safety Act 2011* and Regulations.

The self-supply exemption would only apply if a self-supply scheme is treating stormwater or recycled water, but not raw sewage. Recycling of raw sewage carries greater public health risks than recycling stormwater or further recycling recycled water and should be regulated under the WIC Act 2021 if treating >750kL/day.

The proposed self-supply exemption would be available to any schemes supplied (as customers) with recycled water by public water utilities or WIC Act licensees and that are not on-selling. It would not apply to large-scale sewer-mining where raw sewage is accessed from sewers for self-supply of recycled water.

# 4 Customer protection

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## 4.1 Summary of proposed reform

A summary of the proposed reforms to provisions about customer protection, including the new standard customer contract, is provided in section 5 of the RIS. Some refinements to these reforms have been made in response to submissions (see ‘Response’ section below).

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## 4.2 Issues raised in submissions

Feedback was provided in most submissions in relation to the deemed customer contract, Schedule 4. Stakeholder concerns mainly focused on clarifying processes and responsibilities for services. Several stakeholders proposed minor amendments to individual clauses of the contract.

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## 4.3 Response

The Regulation 2024 has been amended to align the customer contract more closely with Sydney Water and Hunter Water’s customer contracts, where appropriate, including:

- clarifying that rebates will not be paid to customers in circumstances where service levels are affected by events that are beyond the reasonable control of the operator
- providing information about complaint resolution processes
- expanding the scenarios where a licensee must not disconnect for non-payment
- clarifying that a water meter must show a reading of 4% or more over the actual quantity of water passing through the meter to qualify as “over recording”.

Additionally, amendments were made to the contract to clarify the responsibility for clearing blockages, clarify connection points for scheme infrastructure (which designates the infrastructure that is a licensee’s responsibility versus a customer’s responsibility), and to require licensees to provide a specified minimum level of water pressure to customers.

# 5 Licences and approvals

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## 5.1 Summary of proposed reform

A summary of the proposed provisions about licences and approvals, in Part 2, Division 3 and Schedule 2 of the Regulation 2024, is provided in section 6 of the RIS. Some refinements to these provisions have been made in response to submissions (see 'Response' section below).

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## 5.2 Issues raised in submissions

Feedback was received from Hunter Water, Solo Water and EWON in relation to some of the proposed standard conditions to be imposed in licences and approvals.

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## 5.3 Response

Hunter Water suggested that “customer information” should be defined in clause 11 of Schedule 2 (operator licence condition), as it is for clause 22 of Schedule 2 (retailer licence condition). This discrepancy between the conditions has been addressed and the same definition of “customer information” is now used in both conditions.

Solo Water submitted that the summary of the deemed customer contract required to be provided annually to customers under clause 12 of Schedule 2 should be provided by the State Government. This condition has been amended to require licensees to publish IPART’s summary of the customer contract on the licensee’s website and to provide a copy to small retail customers annually.

EWON argued that licensees should provide information about their customer complaints procedure, payment difficulty process and family violence policy when requested by a customer. Clauses 14, 15 and 16 of Schedule 2 have now been amended to impose this additional requirement on licensees.

# 6 Last resort arrangements

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## 6.1 Summary of proposed reform

A summary of the proposed last resort arrangements in the Regulation 2024 is provided in section 7 of the RIS. Some refinements to these reforms have been made in response to these submissions (see 'Response' section below) and further feedback was sought in phase 2 consultation conducted in April to June 2023.

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## 6.2 Issues raised in submissions

Significant feedback about the proposed contingency planning provisions was provided by major public water utilities, who are likely to be last resort providers for most schemes, and by some WIC Act licensees. The utilities were concerned that the RIS may have underestimated the cost of contingency planning, that relevant contracts held by the licensee with other parties should be listed in the plan, and their involvement in and ability to obtain information under the 'alternative' contingency planning option.

Licensees' concerns included that the cost of contingency planning should be minimised and that timeframes for preparing plans were insufficient. As licensees are responsible for paying the costs of contingency planning which will likely be passed onto customers, high costs could have an adverse impact on both licensees and their customers.

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## 6.3 Response

The Regulation 2024 seeks to balance the need for contingency plans to protect customers by ensuring that essential services continue to be provided if a licensee fails with the need to minimise costs of such plans, given the relatively small scale of WIC Act schemes affects the ability of licensees and their customers to pay for the costs of contingency planning.

It should be noted that a licensee failure is unlikely to occur due to preventative mechanisms in the WIC Act 2021. These mechanisms include requirements that IPART assess the financial viability of each licensee and scheme, undertake regular audits of both, as well as the ability to require licensees to hold insurances.

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As a result of the significant issues raised in submissions, the department contracted an independent consultant, Frontier Economics, to investigate whether contingency planning requirements in the draft Regulation 2024 were adequate having regard to:

- the department's policy intent that contingency plans:
  - enable the timely and orderly transfer of information to the last resort provider to continue the provision of the essential service to customers in the unlikely occurrence of a declared failure
  - are a low-cost, high-level 'directory' referencing existing systems, plans, processes or documents, providing the minimum information necessary to achieve the above objective
- best practice in contingency planning in the water and other sectors in NSW, Australia and other relevant countries
- stakeholder submissions on the proposed arrangements.

Frontier Economics undertook targeted consultation with some WIC Act licensees and public water utilities, as well as auditors of such licensees. Its report found that the general view amongst these stakeholders was that the department's policy intent is reasonable and sensible, and they were generally supportive of the proposed content of the contingency plans. It also found that the proposed provisions in the Regulation 2024 align with the elements of best-practice contingency planning.

Frontier Economics asked stakeholders what resources and costs they thought would be involved in meeting the proposed contingency planning requirements and they provided highly variable cost estimates. Stakeholders provided insights on how the contingency planning guidelines, which will be developed by IPART, could be used to minimise costs while still achieving the department's policy intent. Stakeholders were very supportive of proposed guidelines including a template for contingency plans, which will explain how licensees and last resort providers could comply with the contingency planning requirements in the Regulation 2024, and they were keen to participate in their development.

The report provided the following recommendations:

- **Alternative contingency planning arrangements should be retained.** These allow licensees to elect to prepare a contingency plan themselves to protect commercially sensitive information that may undermine their viability and competitiveness in the market. While last resort providers prefer to obtain as much information as they can up-front to understand the implications of their role, in Frontier's view, the availability of alternative arrangements is a pragmatic way to balance these competing priorities.

- **Guidelines to explain the contingency planning requirements in the regulation should be developed, in consultation with stakeholders.** There are substantial opportunities for these Guidelines to contribute to keeping costs as low as practical, including through:
  - The development of ‘templates’ or similar would greatly assist stakeholders to understand expectations of the content of plans and the level of detail expected. Much of the variation in estimated costs related to different views on what tasks and time would be needed to meet the relevant requirements.
  - Guidance on expectations for annual testing of plans. Frontier Economics agreed with some stakeholders who submitted that undertaking testing as part of an expanded annual audit would likely be the most efficient way to meet this requirement. Further, guidance on the form and extent of testing required would be useful, as the costs are significantly higher to undertake a full simulation exercise compared to a desktop assessment, for example.
  - Guidance on expectations for reviewing plans. The Guidelines would assist stakeholders to understand the expectations around what triggers a review, the scope and scale of a review, and the roles and responsibilities in undertaking the review.
  - Guidance on training or awareness for licensee personnel covering the purpose and intent of such plans. Several stakeholders noted that a key risk is that operations staff at the licensees leave upon a declared failure, leaving the last resort provider without experienced staff. Given the intent is that the last resort provider would ‘step-in’ to existing contracts, including those related to staff, training or making licensee personnel aware of the intent of contingency plans would help to manage this risk. Such training or awareness could take the form of a fact sheet (or similar) developed by IPART which the licensee could elect to periodically distribute to and discuss with its personnel.
- **Contingency plans should include the minimum information necessary to ensure the continued supply of services to customers in the event of a declared failure.** Based on stakeholder advice, the minimum information could include:
  - an overview of the infrastructure, systems and treatment processes required to maintain services, including a process flow diagram of the scheme’s operations and connections with other entities’ water infrastructure
  - a description of the scheme’s customer categories, scale and geographic coverage
  - a directory or map of the information, assets, systems, contracts, procedures and plans required by the last resort provider to maintain services, and information on how these can be accessed and used to maintain services
  - contract conditions that will apply to customers (if the last resort provider is a public water utility), or where this information can be located

- any arrangements under which staff of the licensee may assist the last resort provider, and the licensee’s organisation chart showing key roles/responsibilities and contact information or where this information can be located
- actions required by the licensee, or administrator acting on behalf of the licensee, to facilitate the transfer of customer information to ensure minimal interruption to services
- procedures and requirements for contacting the ombudsman, IPART and any other relevant regulators/agencies on the implementation of the contingency plan, including when customer information has been transferred to the last resort provider
- information to be provided to customers in their next bill (after the failure of the licensee).
- **Contingency Plans should also identify where information can be found on critical and vulnerable customers.** This would assist a last resort provider to prioritise these customers, if required.

The Regulation 2024 has been amended to address many of these recommendations as well as other matters raised in stakeholder submissions. The new provisions in the Regulation 2024 include:

- having a directory of the information the last resort provider requires access to in order to continue supply of the essential service (including contracts), rather than requiring this information in the plan
- requiring the plan to set out how the last resort provider will obtain access to the information and infrastructure of a failed licensee
- setting out in the plan the contract conditions that will apply to customers (if the last resort provider is a public water utility)
- allowing licensees to also request that IPART review the reasonable costs of contingency planning for a particular scheme
- extending timeframes for preparing contingency plans from 4 to 6 months (or longer period if approved by IPART), and
- extending timeframes for a licensee to choose to develop the contingency plan itself from 10 to 15 business days.

IPART, in consultation with the department and key stakeholders, will consider incorporating several of the consultant’s recommendations on minimising costs into the contingency planning guidelines to be developed by IPART, including the level of information required in a plan and the nature of contingency plan testing. Additionally, the draft Regulation 2024 already provided safeguards against ‘gold plating’ of contingency plans by allowing IPART to assess the reasonable costs of such planning and by allowing licensees to choose to prepare the plan themselves.

The department agrees with Frontier Economics’ recommendation that testing of a contingency plan should be a desktop exercise where, for example, the ability to contact persons and access



information materials set out in the plan is checked. IPART plans to integrate plan testing as part of its scheme audits and this will be set out in the contingency planning guidelines. This approach is intended to identify issues with plans while ensuring that costs are minimised.

# 7 Other matters

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## 7.1 Summary of proposed reform

A summary of other significant reforms in the Regulation 2024, including codes of conduct, water restrictions, pricing determinations for monopoly services, and audits, is provided in section 8 of the RIS. Some refinements to these reforms have been made in response to submissions (see 'Response' section below).

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## 7.2 Issues raised in submissions

Regarding audits and compliance matters, the RIS asked whether the Regulation 2024 should prescribe that an assessment of climate change related risks be undertaken when a risk assessment is required to develop an asset management system or plan or water quality management system. Two licensees opposed such a requirement whereas a public water utility supported it.

Public water utilities requested that a requirement be included in the Regulation 2024 for all public (and private) water utilities in NSW to be invited to make submissions in relation to any application for a WIC Act licence. Sydney Water also requested that all operator licensees be required to enter into a code of conduct with all other utilities who operate water infrastructure in their area of operations.

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## 7.3 Response

No express requirement has been added to the proposed Regulation 2024 to assess climate change risks as it was considered unnecessary. A risk assessment must assess all relevant risks, and climate change risks are likely to be relevant. IPART has now included clear guidance in its new approval and licence application forms and guides for applicants and licensees on its expectations regarding considering climate change in risk assessments.

The proposed Regulation 2024 has not been amended to require all water utilities to be invited to make submissions to IPART on new WIC Act licence applications. The licence provides the ability to be able to operate/retail across the whole of NSW and is not that relevant to other water utilities. The Regulation 2024 does however require IPART to notify public water utilities of scheme approval applications in their area of operations.

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In relation to the code of conduct request by Sydney Water, there is capacity for the Minister to impose a licence condition requiring a licensee to enter into an operating protocol or code of conduct with public water utilities within whose areas of operation their schemes are located. This is how the current requirement is imposed – not in the regulation but through a licence condition on the licences. Stakeholders will be consulted on this matter during development of the new transitioned Ministerially imposed licence conditions rather than include this condition in the regulation.

# APPENDIX A – Stakeholder consultation on WIC Regulation and RIS

Table 1. Stakeholders who made submissions on the Water Industry Competition Act Regulation or regulatory impact statement.

STAKEHOLDERS WHO MADE SUBMISSIONS ON THE WIC REGULATION/RIS	
ORGANISATION TYPE	ORGANISATION NAME
WIC Licensee	Altogether Group
WIC Licensee	Solo Water
WIC Licensee	Lendlease
WIC Licensee	CoNEXA
Ombudsman	Energy and Water Ombudsman NSW (EWON)
Metropolitan Council	Ku-ring-gai Council
Public Water Utility	Sydney Water
Public Water Utility	Hunter Water
Government Agency	Environment Protection Agency (EPA)
Government Agency	NSW Department of Communities and Justice

Table 2. Stakeholders who attended information sessions or meetings about the Water Industry Competition Act Regulation and regulatory impact statement.

STAKEHOLDERS WHO ATTENDED INFORMATION SESSIONS / MEETINGS	
ORGANISATION TYPE	ORGANISATION NAME
WIC Licensee	Altogether Group
WIC Licensee	Solo Water
WIC Licensee	Lendlease
WIC Licensee	CoNEXA
WIC Licensee	Aquacell
WIC Licensee	Sydney Desalination Plant
WIC Licensee	Kyeema Wastewater
WIC Licence applicant	True Water
Ombudsman	Energy and Water Ombudsman NSW (EWON)
Metropolitan Council	Hawkesbury City Council
Metropolitan Council	Some metropolitan councils in Sydney Water and Hunter Water's areas of operation (through Local Government NSW)
Peak body	Local Government NSW

STAKEHOLDERS WHO ATTENDED INFORMATION SESSIONS / MEETINGS	
Peak body	Water Directorate
Public Water Utility	Central Coast Council
Public Water Utility	Yass Valley Council
Public Water Utility	Some Local Water Utilities (through the Water Directorate)
Public Water Utility	Sydney Water
Public Water Utility	Hunter Water
Education body	University of Western Sydney
Government Agency	NSW Health