

JOINT SELECT COMMITTEE ON PROTECTING LOCAL WATER UTILITIES FROM PRIVATISATION OCTOBER 2023



CENTRAL NSW JOINT ORGANISATION

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Blayney
Cabonne
Cowra
Forbes
Lachlan
Lithgow
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Parkes
Weddin

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Chair Cr Kevin Beatty, Mayor, Cabonne Council

23 October 2023

Reference: jb:mm 231023
Enquiries: Ms J Bennett: 0428 690 935

The Hon. Stephen Lawrence, MLC
Chair, Joint Select Committee on Protecting Local Water Utilities from Privatisation
Parliament House
6 Macquarie Street
Sydney NSW 2000

Email: waterutilities@parliament.nsw.gov.au

Dear Mr Lawrence,

Re: Inquiry into Protecting Local Water Utilities from Privatisation

Central NSW Joint Organisation (CNSWJO) speaks with a unified voice for its collective priorities. This region has a proud history of working collaboratively, representing over 180,000 people covering an area of more than 53,000sq kms comprising the local government areas of its membership - Bathurst, Blayney, Cabonne, Cowra, Forbes, Lachlan, Lithgow, Oberon, Orange, Parkes, Weddin.

Tasked with intergovernmental cooperation, leadership and prioritisation, the CNSWJO has consulted with its stakeholders to identify key strategic regional priorities. The CNSWJO Strategic Plan can be found here - www.centraljo.nsw.gov.au.

CNSWJO member councils all operate local water utilities (LWUs), so the security, availability and affordability of town water supplies for the communities in Central NSW is core business for the councils in this region.

Where our member councils may provide separate submissions, this response is informed by policy developed in region and endorsed by the CNSWJO Board.

Firstly, we thank you for the opportunity to provide input to this inquiry into how the Government can prevent and stop privatisation of local water utilities with reference to:

- (a) How local water utilities and their assets can be best protected against privatisation, forced amalgamations and sell-offs;
- (b) Reviewing governance and other legislation relating to the potential privatisation of local water utilities; and
- (c) Any other related matters.

Background

In NSW there are 92 NSW local government owned water utilities. This includes 380 water supply schemes and 300 sewerage schemes serving 1.9 million people in regional NSW communities. In 2019, local government water and sewerage assets were valued at \$30 Billion with 312 GL/annum water supplied to customers and 160 GL/annum sewage treated.¹

¹ 2019 DPE Performance Monitoring Database

Further Local Government NSW reports that local government in NSW spends more than \$2.2 billion each year on caring for the environment, including recycling and waste management, stormwater management and preserving and protecting native flora and fauna.²

Local communities having control over their water security and quality has been under threat for over 20 years. The 1990s asset strip of electricity infrastructure from communities and ultimate sale paved the way for successive governments at all levels to explore the potential of selling water utilities to the private sector, or at the very least, aggregating them into bigger regional entities. Various reports and processes including by Armstrong and Gellatly³, Infrastructure Australia⁴ Infrastructure NSW,⁵ the Productivity Commission⁶ and through the 2013 Local Government Reform period in NSW⁷ have continued to question community ownership of water utilities.

This thinking continues to this day, with the increasing pressures on councils from climate change including the impact of successive natural disasters on local infrastructure, disruptions to supply chains, increased costs, an 'ageing infrastructure cliff', ever increasing regulatory standards, workforce shortages, conflicting priorities and unfunded mandates impacting on the capacity of some councils, particularly in the more remote areas of regional NSW to manage town water supplies under such challenging conditions.

Previous reports to government that recommend the aggregation or privatisation of non-metropolitan LWU in regional NSW in response to such challenges have since been discredited including by the Productivity Commission and fly in the face of a global trend towards the municipalisation of water supply and wastewater services.

Research by the Public Services International Research Unit published by the University of Greenwich in 2015 details at least 180 cases across 35 countries including in Europe, the Americas, Asia and Africa where the privatisation of water supply and sewerage services has been reversed over the last 15 years.⁸

Central NSW Joint Organisation Board Position

The CNSWJO Board support institutional arrangements that maintain local government responsibility for the operation and management of water supply and sewerage services and infrastructure in regional NSW. It opposes the transfer of council provided water supply and sewerage services to state owned water corporations or their privatisation.

Further, any recommendations to aggregate non-metropolitan LWUs are opposed noting that a 'one-size-fits all' solution to providing LWU services in regional NSW is impractical because of the great diversity in geographical and socio-economic conditions across regional NSW.

Local government LWUs ensure an integrated and locally appropriate approach to water supply and sewerage management and optimal whole-of-community outcomes for their communities. Notably,

² LGNSW Advocacy Priorities

³ Independent Inquiry into Secure and Sustainable Urban Water Supply and Sewerage Services for Non-Metropolitan NSW Armstrong-Gellatly, December 2008

⁴ 'Reforming Urban Water' 2017

⁵ Infrastructure NSW State Infrastructure Strategy 2012-2032, October 2012

⁶ Productivity Commission, National Water Reform Inquiry, March 2017

⁷ Revitalising Local Government (Samson G et al 2013)

⁸ <http://www.psir.org/sites/default/files/2015-04-W-OurPublicWaterFutureFINAL.pdf>

lower prices in LWUs reflect greater efficiency of operation due to economies of scope achieved within the local government environment.

The integration of the water supply and sewerage function and other general-purpose functions allows councils to capture “economies of scope”; i.e., technical and managerial synergies arising from the integration of engineering, asset management and corporate planning systems for water supply and sewerage, roads and transport, communication, waste management, or recreational services. Water supply and sewerage services are a major part of most regional councils’ operations.

The removal of water supply and sewerage functions from councils would have significant impacts on the financial sustainability of councils and on local and regional economies and employment. They contribute to a critical mass of responsibilities that make councils financially viable and attractive for skilled professionals. Loss of operations and staff in councils would also have serious direct and flow-on effects on small communities and the affected families, particularly in rural areas where councils are often the largest employer.

The missing piece

The CNSWJO Board maintains that the question that should be asked is not about the institutional or structural arrangements for LG LWUs in regional NSW but rather how water is managed strategically between the State, Federal and Local Government. This is where the greatest gains can be made in the delivery of LWU services.

This region continues to advocate for what it refers to as the ‘missing piece’ being effective inter-governmental collaboration at the regional level in strategic water planning and management.

In line with the findings of the Productivity Commission and NSW Auditor General (report Sept 2020) future reform should ensure effective collaboration on water management at the regional level between multiple government agencies, Councils and Joint Organisations, Local Water Utilities and local and regional stakeholders, including in water reliant industries.

The development of Regional Water Strategies and the State Water Strategy by the NSW Government is the ideal time to seek to have governance arrangements in place for both the implementation of these plans, but to deliver a range of significant benefits afforded by intergovernmental collaboration through a new approach leveraging the Joint Organisations.

Whether this be through the formation of Strategic Regional Water Committees or some other protocol, the opportunity exists to codesign a fit-for-purpose arrangement that will see an improved means of managing water for critical human need, particularly in times of shortages and for flood management. With predictions of a future with more frequent climate extremes, the sharing of data, the management of water quality issues, improved water efficiencies and the initiation of forums for better communication and collaboration, the better prepared we will be for managing the challenges ahead for regional communities.

We see mutually beneficial outcomes for all levels of government but most importantly the people of regional NSW from a more collaborative working partnership.

Alternate funding models

Local water utilities in regional NSW have a responsibility to cover all costs and provide a positive return on investment to their local council owner. The CNSWJO Board policy is that councils can

determine their own rates. The bigger problem is pricing and affordability for communities to pay for services.

The replacement and upgrade of pipelines and other water infrastructure is critical to the water security of the towns and villages. While the responsibility for asset replacement is the asset owner, this is not always practical for small rural councils. Recognition must be given for the economic contribution of rural areas to state revenue. While the revenue is mostly generated by agriculture, it is the small towns and villages that support the agriculture industry.

Many of these small rural communities have relatively low socio-economic populations with a higher percentage of indigenous residents. To provide treated water to these communities, extensive reticulation networks are required for relatively few connections. Therefore, the cost per connection is much higher in small towns and villages than it is in larger population centres. For this reason water charges are often high and usually only just cover the operational cost of producing treated water, without building sufficient revenue reserves for asset replacement.

Without recognition that the “user pays” principle does not work in small rural councils /communities, and that the state economic benefit produced by these areas justifies state subsidisation for infrastructure, we will likely experience ongoing population decline as residents leave these centres to access basic services. This results in the further loss of services in rural towns, e.g., medical, education, policing, sporting and entertainment which further reduces the liveability of the areas in general.

There are significant infrastructure maintenance challenges for regional LWU’s. The trend will be for increased asset development to address water security, water safety, environmental performance and integrated water management. When combined with the cost of borrowings and increasing operational cost this will create issues with financial sustainability.

Financial sustainability is unlikely to be addressed with structural reform of LWUs. Bigger LWUs spread over large areas of regional NSW will not automatically lead to increases in efficiency and effectiveness.

An explicit Community Service Obligation (CSO) should be developed as recommended by the Commonwealth Productivity Commission. Whilst capital subsidy would be almost impossible to remove entirely, funding could also be directed to capability development of LWUs which includes professional development, certification of operator training and further development of water utility business management systems. The CSO could also be extended to address infrastructure backlogs for LWUs.

A needs-based funding framework co-designed with LWUs in regional NSW that recognises that quality secure water is a basic human right and that looks at funding for infrastructure and planning through a regional lens is supported.

Where a Benefit Cost Ratio approach is problematic in the context of water for human needs, we support investigation of a CSO that recognises that the “user pays” principle does not work in small rural councils /communities, and that the state economic benefit produced by these areas justifies state subsidisation for infrastructure and planning.

The funding approach needs to look at the optimal, most efficient cost-effective ways to achieve the provision of LWU services for regional communities leveraging a regional approach where appropriate that is incentivised.

Removal of barriers to resource and skills sharing

In most cases, local systems are the most appropriate and cost-effective solution for regional communities. There are, however, great opportunities for resource and skills sharing amongst geographically closely linked water utilities that are yet to be optimised with the major barrier being the strategic framework and lack of inter-governmental collaboration that includes local government as a partner with a seat at the table in the development of strategy and policy in the water space.

Local government management of water utilities in Central NSW is being undertaken on a solid basis through the Central NSW Joint Organisation's Water Utilities Alliance (the Alliance) with demonstrable cost savings and efficiencies being achieved since its inception in 2009.

The CNSWJO Water Utilities Alliance is a voluntary collaboration between eleven councils and one water county council including the Local Government Areas of Bathurst, Blayney, Cabonne, Cowra, Forbes, Lachlan, Lithgow, Oberon, Orange, Parkes, Weddin and Central Tablelands Water. It represents a population of over 180,000 people covering an area of more than 53,000sq kms with 72,314 water connections and 14 water treatment plants across the region.

The aim of the Alliance is for local government to be recognised as national leaders in the delivery of secure and quality water supplies and sewerage services to grow Central NSW to 2059 and beyond.

The defining principle that guides the Alliance model is that it is critical for the resilience of regional communities that ownership and control over utilities such as water remain firmly in the public's hands through their local governments.

The collaborative Water Utilities Alliance model has been recognised by the Productivity Commission, the Independent Local Government Review Panel and IPART as a model for the delivery of LWUs in regional NSW.

The Independent Local Government Review Panel's report states:

"In addition to the five existing County Councils that operate water utilities, there are several emerging regional alliances promoting closer cooperation between member councils. The Panel sees an opportunity for new Joint Organisations (JOs) to build on these foundations by incorporating functions such as strategic business and network planning, regional water cycle management, high-level technical support to smaller councils, and – where agreed – joint infrastructure and service delivery. Making existing County Councils and regional water alliances subsidiaries of the new JOs would help achieve those objectives. It would also ensure that rural water supply and sewerage assets and operations remain firmly in local government hands."
(Page 80).

For smaller and more remote LWUs, regional solutions facilitate resource sharing and provide skills and knowledge to assist utilities in the coordination of service planning and delivery to satisfy regulatory requirements.

Regional alliances capture the benefits of regional solutions without having the disadvantages of institutional settings where water supply and sewerage functions are removed from councils. The ability for better resourced Alliance members to mentor less well-resourced Alliance partners is benefitting all communities in the Alliance area of operation.

The Alliance model has been gaining worldwide acknowledgement particularly throughout Europe

which, in the last decade, has seen an emerging trend towards new governance structures such as municipalities seeking to wrestle back control of their water supplies from the private sector.

The preparedness to respond to climate variability, changes to drinking water requirements, drinking water management plans, Health Based Targets, increasing effluent quality requirements and more will be more easily achieved for water utilities that are part of locally owned and operated Alliances.

While there is no 'one size fits all', there is a strong case for the flexibility and agility provided in a local government owned and operated local water utility sector, built around strong collegiate Alliances.

There is an opportunity through the Joint Organisation model to further embed intergovernmental collaboration both within Alliances and then with other levels of government.

A paper presented by the Alliance to the annual Australian Water Association OzWater Conference in 2017 titled 'Water in Public Hands - Councils Collaborating to Deliver Local Water' provides an overview of various LWU delivery models and examines the factors that influence the most appropriate delivery model for communities, both large and small. It cites national and international examples. A copy can be found at the following link:

https://www.pc.gov.au/_data/assets/pdf_file/0005/217328/sub070-water-reform-attachment4.pdf

The regulatory framework

LG LWUs are governed by councils empowered by the NSW Local Government Act 1993 and the NSW Water Management Act 2000.

The Minister for Water issues guidelines for managing the provision of water supply and sewerage services by councils under [Section 409\(6\)](#) of the Local Government Act. These guidelines were recently reviewed and approved effective from July 2022 in a [Regulatory and assurance framework](#).

Apart from their powers and duties under the above two Acts, LWU's also have additional regulatory responsibilities under the:

- **Public Health Act 2010** with regard to maintaining a Drinking Water Management System for safe drinking water;
- **Protection of the Environment Operations Act 1997** with regard to holding Environmental Protection Licences Pollution Incident Response Plans (PIRMP's);
- **Environmental Planning and Assessment Act 1979** with regard to determining approvals to construct water and sewerage infrastructure and ensure appropriate servicing plans for land.
- **Dams Safety Act 2015** – to ensure that any risks from dams owned by councils are managed to an acceptable level;
- **Work Health and Safety Act 2011** – to ensure the safety of water and sewerage workers; and
- **Water Act 2007 (Commonwealth)** – with regard to national performance reporting requirements for water utilities

These are only some of the Acts that impact on LG LWUs. All have supporting Regulations that are complex and inter-woven and, in some cases, do not assist LWUs to manage their operational risks. On the contrary they contribute to them by adding yet another layer of onerous and often unhelpful reporting that stretch already constrained resourcing.

Through the Town Water Risk Reduction Program (TWRRP) LWUs sought a less paternalistic approach that meets their needs in managing their businesses, avoids duplication and onerous reporting and meets the Government's regulatory requirements. The success of advocacy by the sector on the new Regulatory and Assurance Framework remains to be seen with the key challenge being its implementation. Added to this is ever increasing regulatory requirements particularly in drinking water and dam safety management.

Notable through the TWRRP work on LWU Strategic Planning was recognition that the Department of Planning and the Environment (DPE) Water does not have a legislated regulatory role in relation to LWU strategic planning.

Many council-owned water utilities have expressed interest in using the Integrated Planning and Reporting (IP&R) framework of the *Local Government Act 1993* as a vehicle for LWU strategic planning. The value of the IP&R framework as a standardised and well understood approach to strategic planning and reporting is widely recognised by the local government sector. CNSWJO is of the view that the IP&R framework should be central to any future regulation of LWU strategic planning.

In its 2016 report *Water Governance in Cities*, the Organisation for Economic Cooperation and Development (OECD 2016) examined a wide range of issues in relation to the delivery of water supply in a number of its member countries. Of particular interest is chapter 3, mapping who does what in urban water governance.⁹

Irrespective of community size, the allocation of roles and responsibilities across various levels of government is widely discussed, with the role of central or sub-national governments being policy and regulatory setting. The role of monitoring, implementation of policy requirements and service delivery is widely allocated to Local Government or multi-Local Government organisations.

The OECD raises significant issues relating to inter-dependencies across all levels of government and the impacts of over-lapping roles and gaps in governance roles. In recent years in New South Wales, changes to legislative roles and responsibilities across a number of State Government agencies has undermined local government's confidence in any long-term policy direction.

While the need for regulation and direction from central government in relation to policy settings and legislative requirements is recognised and understood, local government needs such policy and regulation to be consistent and stable over extended timeframes.

There are always changes in regulations and requirements, some minor, some not so. There is also a need to recognise Integrated Planning and Reporting and to optimise its fit with LWU strategic planning as opposed to introducing yet another layer of regulation through DPE Water.

We are not saying that regulation isn't important, just that the current framework is not supporting LG LWUs to address their many challenges and real risks.

Conclusion

LG LWUs operate under a comprehensive regime of health, environment and economic regulation within a stringent performance measurement framework managed by DPE Water. Over the past 20

⁹ OECD (2016). *Water Governance in Cities*, OECD Studies on Water, OECD Publishing, Paris.
<https://www.oecd.org/governance/water-governance-in-cities-9789264251090-en.htm>

years, LWUs across regional NSW have developed and matured to a point where, now, they represent world-class service delivery organisations, serving their communities, from within the communities.

They have adapted to changes along the way, endured prolonged droughts, managed floods, storms and bushfires for the most part delivering services in a safe, secure, efficient, and affordable manner while demonstrating their ability to identify challenges and implement necessary reform.

Councils in regional NSW have made significant progress towards achieving the National Water Initiative's objectives of efficient and sustainable urban water services performing well in terms of national standards.

In summary, councils in regional NSW are best placed to ensure an integrated and locally appropriate approach to water supply and sewerage management and optimal whole-of-community outcomes for their communities. There are no compelling arguments that support privatisation, amalgamation or any sell-off of LWU assets, particularly where the private sector needs to make a profit.

In answer to the question of *how* LWUs and their assets can be best protected against privatisation, forced amalgamations and sell-offs, the response is to support legislation that enshrines this protection providing there are no perverse consequences with outsourcing to the private sector. Any legislative change must be done in a true co-design manner with the sector to ensure a fit-for-purpose outcome.

It is acknowledged that some LWUs in regional NSW don't have the scale to specialise in all water related functions. A degree of outsourcing to the private sector is common to all current publicly owned water utility models within Australia and overseas, metropolitan or regional/remote.

LWU's also have the additional challenge where short term staff shortages have led to engaging the private sector to maintain minimum staff levels. The ability to bring in short term contract employees is imperative to keep critical and essential water and sewerage services available in regional NSW.¹⁰

Having said this, the question that really needs to be asked is not about structural arrangements but rather how LG LWUs can be supported and enabled to deliver local services and respond to the ever-increasing risks to their communities.

Privatisation is not the solution to under-investment in water and sewerage infrastructure. Under-investment is largely a condition of a community's ability to pay for water and sewerage services.¹¹

The solutions lie in the need for increased government funding in the form of a community service obligation and technical support. Service levels need to be identified with community participation and to identify the capital and operating investment required to achieve the service level. A particular focus on risk reduction through non-capital solutions such as digital technology and water operator training is essential to make the best use of existing assets.¹²

The CNSWJO Board supports the NSW Water Directorate call for all water related agencies to collaborate and invest in water utility resilience for regional water providers through capacity building, improved water utility risk management and non-asset solutions such as digital technology

¹⁰ Submission by NSW Water Directorate to Joint Select Committee on Protecting Local Water Utilities from Privatisation

¹¹ *ibid*

¹² *ibid*

and improved access to water operator training in regional NSW. While capital projects have an important part to play, these are invariably long-term solutions. Short term non-asset solutions are required to monitor, predict, and mitigate risk.¹³

Most critical is the need for the ‘missing piece’ to be addressed. This was no more clearly seen than through the last drought, where LG LWUs in regional NSW saw the need for a Critical Water Supply Act to be enacted and the redeployment of the Cross Border Commissioner to the role of Town Water Supply Coordinator. This served to highlight just how poorly neglected the concept of water for critical human need has been in regional NSW.

Compounding this is the ongoing assumptions made about the true value of town water in regional NSW. This is no more apparent than in the Regional Water Strategies and Wyangala Dam wall raising final business case that are based on the concept that *no town will run out of water*. This is certainly not the lived experience in regional cities that came dangerously close to day-zero scenarios. Bathurst Regional Council completed a study through the Western Research Institute that found that a 50% reduction in water equated to a 50% downturn in economic output. It is understood that NSW Treasury also completed a similar study for the city of Orange although this has not been made publicly available.¹⁴

With respect to reviewing governance and other legislation relating to the potential privatisation of local water utilities, the CNSWJO Board position is that rather than reviewing these as they relate to potential privatisation, there needs to be a review to streamline and coordinate the current strategic regulatory framework that LWUs operate under. Despite the work of the TWRRP phase one there remains much work still to be done with significant regulatory hurdles that need to be streamlined and coordinated through a strategic regulatory approach.

The CNSWJO Board strongly advocate for an integrated whole of government approach to strategic planning, management and support for water services provision in regional NSW enabled in the region with local government with a seat at the table.

A needs-based funding framework co-designed with LWUs in regional NSW that recognises that quality secure water is a basic human right and that looks at funding for infrastructure and planning through a regional lens is needed.

Developing a new alternative funding model for regional LWUs would represent a transformational opportunity for regional communities in NSW. The benefits from state investment in budget support for water and sewerage services to complement capital project subsidies will not only assist regional communities but will ultimately flow back to the state through improved economic development.¹⁵

Finally, there are great opportunities for resource and skills sharing amongst geographically closely linked water utilities that are yet to be optimised with the major barrier being the strategic framework and lack of inter-governmental collaboration that includes local government as a partner with a seat at the table in the development of strategy and policy in the water space.

¹³ NSW Water Directorate Submission to the Joint Select Committee on Protecting Local Water Utilities from Privatisation

¹⁴ Western Research Institute’s Economic Business Case for Bathurst’s Water Security

¹⁵ NSW Water Directorate Submission to the Joint Select Committee on Protecting Local Water Utilities from Privatisation

The CNSWJO Board supports the NSW Water Directorate recommendation that the NSW government consider delivering permanent ongoing funding for regional water alliances of councils to assist them with delivering efficient water and sewerage services. In 2021 the Queensland government approved \$2 million per year on a permanent basis for the state's Q-WRAP program^{16,17}.

The CNSWJO Board thanks you for the opportunity to make comment on the matters raised in this inquiry. We would welcome the opportunity to provide further feedback on the points raised in this submission.

If you require further information or clarification on comments in this submission, please do not hesitate to contact Ms Jenny Bennett, Executive Officer on 0428 690 935.

Yours sincerely,



Cr Kevin Beatty

Chair

Central NSW Joint Organisation (CNSWJO)

¹⁶ Queensland Government (2021) *Water funding for regional councils extended permanently*: <https://statements.qld.gov.au/statements/94120>

¹⁷ More information on Q-WRAP available at: <https://qldwater.com.au/qwrap>