

Water Law Review  
Office of Living Victoria  
PO Box 500  
East Melbourne VIC 3002

By email: [waterlaw.review@olv.vic.gov.au](mailto:waterlaw.review@olv.vic.gov.au)

14 February 2014

Dear Madam/Sir

### **Submission on the Water Bill Exposure Draft**

The National Environmental Law Association ('NELA') welcomes this opportunity to comment on the Water Bill Exposure Draft released for comment.

NELA is Australia's leading national environmental law organisation with a membership base that includes legal practitioners, law firms, academics, judges and policy makers.

NELA welcomes the intent of the Water Law Review, to provide a comprehensive review of Victorian water law. This submission focuses on issues raised in a roundtable on Urban Water reform for Leaders in Local Government on 4 December 2013, organized by NELA and hosted by Office of Living Victoria.

### **The place of local councils in urban water reform**

NELA is interested in urban water reform because it is a national policy that impacts on the sustainability of our cities and towns, and their livability in the context of climate change.

Local government is a crucial player in the implementation of the government's *Living Victoria* policy and *Melbourne's Water Future* Strategy. A theme picked up throughout the roundtable conversation was that local councils are 'the owners, makers and managers' of water reform.

Water issues cut across many responsibilities of councils, but every council is different in the way that water affects them.

### **The need for institutional realignment**

NELA believes there are constraints on how well placed local government is to take wider responsibility for water infrastructure. Partnerships between local government, water authorities, researchers and communities have been enormously beneficial to assist councils to take broader responsibility for water, but partnerships alone are not sustainable in the long term.

NELA recommends that the Victorian government should rethink the alignment across all of the institutions with responsibility for water services. A central question is whether water service delivery should be centralised versus decentralized.

NELA believes the state government should provide more coordination of funding for capital works for water infrastructure. Considerable efficiencies could be achieved with centralised planning of infrastructure for storm water and drainage, particularly where there are cross catchment issues.

NELA believes the current funding mechanisms for councils are not aligned to the cost burden of water services infrastructure. Participants at the roundtable indicated that the level of concern among councils about the costs of asset maintenance for storm water infrastructure should not be underestimated.

Rural councils can use drainage Development Contribution Plans (DCP) to fund drainage and storm water infrastructure. In Melbourne, Melbourne Water can impose charges under their regulatory regime. Some metropolitan councils are using a DCP for drainage services to recover the costs of private benefits. But there's no coherent mechanism for councils to recover costs, particularly across council boundaries.

NELA recommends that the state government look at local government water infrastructure funding mechanisms and align them to new infrastructure costs.

### **Quantifying costs and benefits**

An obviously related topic is the way we measure the costs and benefits of Whole of Water Cycle Management (WWCM) in the planning system and in state regulation. NELA believes DCPs are a good start, particularly in greenfield and precinct structure planning areas but they haven't addressed concerns about comparative costs.

NELA also believes the government's policy that the beneficiary pays raises big questions about scale and defining the benefits. The elements of public and private benefits are far from clear, and the cost of some options is prohibitively high. How we allocate the cost burden between public and private interests is another challenging issue.

Research by Kingston Council has found that it's often more cost effective to put in precinct or sub-catchment scale water management such as large tanks on public land rather than individual household tanks.

NELA recommends that the government should examine funding mechanisms for councils to manage water infrastructure at the precinct level and deliver water services to private households.

### **New local council rights to storm water in the Exposure Draft**

The Exposure Draft proposes to extend the licensing regime to include water in local council stormwater works within targeted areas, and confer clear statutory rights on a water corporation or local council to water in its stormwater works. The new rights for local councils would make it clear they can manage water in their stormwater works (public pipes and drains) and, where necessary, enable water from these stormwater works to be brought into the take and use licensing regime. This proposal is supported but it only partly addresses the key issues discussed at the Local Government Leaders roundtable on 4 December.

According to the Explanatory Guide, all rights to water in local council and water corporation stormwater pipes and drains will be vested in the Crown, and statutory rights to take and use that water will be conferred on local councils and water corporations. It says 'The intention is to create clear rights to the use, flow and control of this water, which will encourage greater investment in projects that harvest and use stormwater. These statutory rights would extinguish common law rights that are difficult to understand.'

The provisions are designed so that the Minister will be able to declare a local stormwater area where there is a current or expected demand for stormwater in public pipes and drains. A local stormwater area will be specified in a water resource management order. When a local stormwater area is declared, a take and use licence will be needed to take and use water from local council drains, having regard to existing uses. Outside local stormwater areas, councils will be able to enter agreements to supply stormwater in their works to third parties.

### **Recommendation**

NELA recommends that the Review should take a broader approach that examines the institutions with responsibility for water services and provides coordination of funding and planning for water services infrastructure, including drainage and stormwater.

NELA also recommends that the Review should take a broader view of the funding mechanisms required for local government to deliver precinct scale water services to private households and communities.

**Contact**

If you have any queries about this submission please do not hesitate to contact Amanda Cornwall, President, National Environmental Law Association on 0432 134 936 or [amandacornwall@bigpond.com](mailto:amandacornwall@bigpond.com)