Competition Policy Review – Submission

In this submission I hope to illustrate the level of will or indeed the lack of will by the NSW Government to actually implement the ideals of Competition let alone commonly held consumer rights or those inherent in the National Competition Policy.

The following is an extract from IPART – Page 133 – Final report , Review of Regulatory Framework of Local Government and I believe illustrates this weakness adequately.

"In contrast, the users of council services that attract a charge or fee can decide not to do so if they are not willing to pay the applicable charge or fee."

In other words the users of Council services simply do not have to pay for services provided by a Council according to this IPART advice given to the NSW State Government. This is of course most implausible advice and the reasons for it being included in this report or written at all should be investigated as I believe it exists to give comfort to those who may at some point be looking to quote it for absolution of ongoing or past misdeeds.

The Competition Policy Review panel will hopefully not put this down as needing to be taken with a grain of salt, for it is I believe a statement meant to back up the impost of over the top charges in certain quarters of Local Government, in our case being the Bathurst Regional Council sanctioned the NSW Office of Water and the Local Government Department since 2004.

http://www.ipart.nsw.gov.au/Home/Industries/Other/Reviews/Local_Government/Review_of_the_Revenue_Framework_for_Local_Government

http://www.ipart.nsw.gov.au/Home/Industries/Other/Reviews/Local_Government/Review_of_the_Revenue_Framework_for_Local_Government/03_Sep_2010_-_Final_Report/Final_Report_-_Revenue_Framework_for_Local_Government_-_December_2009

The case in point is the Sewer Access Charge as has been applied by Bathurst Regional Council since 2004, as documented in my website www.bathurstsewer.com This documentation being a collation of much of the material gathered over ten years and the basis of my ongoing complaints to

1 Bathurst Regional Council, having made numerous submissions to their Management Plans since 2004, including reports I have been encouraged to have done by qualified practicing Hydraulic Engineer consultants.

2 ICAC, who claim that where there is no actual monetary personal gain has occurred they do not investigate. This takes no account of their own creed "a public official improperly uses, or tries to improperly use, the knowledge, power or resources of their position for personal gain **or the advantage of others".** Note that monetary gain is not mentioned as it is obviously just one form of advantage.

3 The NSW Ombudsman where it seems they are taken in by some idea that NSW Councils, having a bit of "autonomous" in their structure can do whatever they like. Two hydraulic engineers have proved the overcharge BRC continues to charge with complete disregard to their own Management Plan where 'load put on the sewer' calculations would ensure that the charge complied with LG Act. S502 , 'charge for actual use" I actually contest that a perversion of natural justice occurs here, especially as the Ombudsman's office refuses to deal with my material except to file it.

4 The Local Government Department since 2004 which fails to understand OR regulate the requirement under s502 of the NSW Local Government Act 1993, that charges are to be made in accordance to "actual usage". What is the purpose of the NSW Local Government Department if not to ensure Councils comply with the Local Government Act. I cannot come to grips with the fact that my complaint, the basis of which is that we are ripped-off for some $40.000 annually does not invoke some action under their own manifest "The Model Code of Conduct is designed to help councils get on with the core business of serving their communities." It is supposed to do this in providing:

- flexibility to resolve less serious matters informally
- fair complaints management
- **strong sanctions to help deter ongoing disruptive behaviour and serious misconduct**.

5 The Department of Primary Industries through Directors General and the Office of Water since 2004 which fails completely in its obligations under S409 of the Local Government Act in actually scrutinising outcomes. ie. The fact that my Hydraulic Engineer calculates the cost to flush the toilet at our worst affected property evokes a stone walling surely should evoke a realistic investigation.

6 NSW Treasury who with the Premiers office I believe are supposed to implement the National Competion Policy and who have not cared to follow through in dealing with my complaints which are really quite plain in information supplied.

As I write this today, missing documentation supporting my claim to ICAC of abuse of competitive power by Bathurst Regional Council is under review by the -

Intake and Review Officer
Information and Privacy Commission NSW
Level 11, 1 Castlereagh
Street, Sydney 2000
(02) 8071 7014 | free call: 1800 472 679 | fax: (02) 8114 3756 www.ipc.nsw.gov.au

The submissions following the IPART extract below are ones I have made to IPART in the hope that some attention might be given to my ongoing complaint of unfair charging by Bathurst Regional Council , a monopoly provider.

IPART page 133 - 11 Revenue Framework for Local Government Final Report

" How can the current arrangements for regulating council revenues be improved?
· Finally,we note that for many councils, particularly those councils with very small populations (ie, less than 10,000 people) providing them with the flexibility to increase rates beyond the rate peg amount may not help to improve their financial position.
· In the longer term the abolition of rate pegging may be possible if Option B is successfully implemented by a significant number of councils. In addition, we consider that it continues to be appropriate for this regulation to apply to rates revenue only. This approach protects ratepayers, while still allowing councils some autonomy in setting user fees and charges. Protection for ratepayers is justified because ratepayers cannot choose not to pay rates if they consider them to be too high. The only discretion they have is to move, or to vote the council out at the next council election. **In contrast, the users of council services that attract a charge or fee can decide not to do so if they are not willing to pay the applicable charge or fee."**

A submission to the IPART - Local Government Compliance and Enforcement Review.

Local Government is the tier of Government in NSW that most people will encounter in their lives.

This review into Local Government Compliance and Enforcement, commissioned by Premier Barry O'Farrell is paramount in ensuring (long overdue) regulatory reforms in streamling, strengthening and simplifying Governance in NSW.

It is also keenly anticipated by the public in NSW that the work of the NSW Local Government Taskforce will result in the development of a modern Act for Local Government in NSW that is streamlined, written in plain language, reduces unnecessary red tape, easy to use and equally importantly, seen to be fair, accessible and enforceable.

It is clear that in NSW, Local Government has come to see itself as an independent third tier of Governance; however the structure of Laws in NSW does not cover that circumstance as evidenced by the following from The Independent Local Government Review Panel which states:- "The Panel has concluded that new directions must be pursued to transform the culture, structures and operations of NSW local government, as well as its relations with the State. This must be done first and foremost so that local government can provide better services, infrastructure and representation for the communities it is intended to serve." The "culture" mentioned that needs changing is headed and fostered by the symbiotic relationships that occur naturally between Mayors and General Managers under the current arrangement.

Much of the governance in NSW as elsewhere relies on case law and precedence. The Local Government Act should be continuously be reviewed and seen as a living document; being a Law that effects people on local and sometimes a very personal level. The concept of "Fairness" for instance, although written into the Code of Conduct and nowhere else in the LG Act, is a subjective thing and defined as such in the Marickville V Marrickville Metro case; should be visited and defined seriously as it is the most contentious issue in governance at a local level.

Misinformation generated by Council staff should also be able to be swiftly dealt with. For instance, a claim by Council staff (Financial Director dismissing all engineering reality and Council's own Engineering Director's assessment) that a city's sewer system has been

designed to cater for all of the water volume theoretically possible from all the city's water meters (sized for fire hose reel usage in fire emergencies; in the case of non-residential properties) because all such water, in their assessment, enters the sewer system and therefore justifies a charge bearing no relationship with usage or load, nor comparable with the residential charge with which it is supposed to be comparable as required by the Guidelines, with which this particular Council perversely claims to abide. This becomes more ridiculous and insurmountable by a ratepayer when indeed sanctioned by the Office of Water.

Council responsibilities are sometimes defined in several sections of the Local Government Act. For instance reference is made to the making of charges for sewer usage along with other services in Sections 611, 502 and 409. However the Local Government Department actively discourages the use of s611 for sewer charges in their Revenue Raising Policy for Councils and suggests s502, the Minister for Water has limited power to enforce the Best Practice Guidelines written under s409 where Councils do not use monies raised under that section for purposes other than those for which the charge was made and s502 which seemingly stipulates that charges be made in accordance with "actual usage", when read in conjunction with previous clauses may as well be non-existent. This must surely be known to the Local Govt Department' which care not to intervene in this particular issue.

The Guidelines written under s409 in 2004 were not Gazetted. The Guidelines rewritten in 2007 were gazetted though are not enforceable by the Office of Water as mentioned above, though that Office claims to oversee Council compliance and touts some 98% compliance of the same. Such ambivalence occurring without intervention by the Government agencies responsible, I put to IPART, destroys business and local community confidence and trust.

S**ubmission 7/11/2014**

IPART review – Discharge factors for non-residential customers.

Toward a Standardised Approach

Sewer Usage Discharge Factors, the subject of this review, arrived at by any means other than physical measurement are by their very nature a subjective assessment, hence they give rise to a subjective charge.

A subjective charge is arbitrary if not scrupulously assessed before application. It is not possible to arrive at a totally accurate sewer discharge factor by estimations which IPART acknowledges is current methodology. Water charges are the result of objective measurement by metering; implemented by (mostly monopoly) suppliers. There is no legal reason, precedent or exception allowing that the same should not similarly occur for sewer discharge. The hodge-podge implementation of sewer charges necessitating this review is clear indication that the initial framework and consequent confusion of **compliance and enforcement** has been instrumental in unfair and unjust practices.

IPART notes in the draft report and introduces the inconsistencies obviously recognised in the irregularities and/ or "anomalies" inherent in the application of SDF's by LWU's. Quote. "*2 The list*

(NOW SDF list) is intended to help the large number of Local Water Utilities in NSW regulated by NOW, by giving guidance as to appropriate discharge factors for different types of businesses."

The NSW Office of Water, Local Government together with other offices such as the Water Directorate take cues from IPART. The only fair and appropriate SDF is one assessed by metering.

That IPART, the NSW Government's preeminent economic advisor, "**estimates** the volume the volume of sewerage discharged" and acknowledges the arbitrary nature of SDF's in stating this. That SDF's are no more than "estimates", is disconcerting and especially so, considering that it is applicable to legally captive customers of monopoly services. IPART, has recognised "anomalies" in the application of SDF's, instigated this review and has now abandoned the concept of standardised SDF's from the NSW office of Water which having (however limited) authority over LWU's would have ultimately standardised SDF's throughout all of NSW including Local Water Utilities.

IPART now proposes formulae that may correct the "anomalies" such as the inclusion of fire-fighting capacity included in a sewer usage charge. The "anomalies" noted may be "minor" in number as noted by IPART but certainly are not minor in application. That NSW Office of Water, the body that supposedly is an arbiter of SDF's, is not able to properly remedy a charge of over $3 to flush a toilet by Bathurst Regional Council, says much about the effectiveness of that office. A lack of uniformity or scrutiny of sewer charging will remain in NSW unless the formulae suggested by IPART are scrupulously effective in correcting "anomalies" and unless lawfully enforceable nothing will likely be achieved in Standardising SDF's in the whole of NSW which surely is desirable.

The "elephant" in the room is S409 of the Local Government Act 1993, (For convenience (S409 (a) and (b) is copied below.) where the Minister -

" (a) **may** , (if he or she chooses) and

*"**if** of the opinion that a council has not substantially complied with the guidelines, direct the council to comply with any particular aspect of the guidelines*" and this would of course occur as this section goes on to say ***" before making any further deduction under subsection (5)."***

In other words Council's that do not make deductions as per S409 are not required to comply with the Guidelines if those deductions are not made see that making such deduction is an option, not a requirement. As I understand the situation, no follow through actions requiring compliance with the Guidelines have ever been taken by either the Local Government Department or the NSW Office of Water whether or not Councils have made such deductions.

Australian Consumer Law requires fair and objective measurement in the sale of goods and services generally and sets legal precedence, hence it is a reasonable expectation for objective and transparent measurement of monopoly services provided by government authorities if indeed charges are to be made and a fair assumption as with the sale of goods and services generally that the provider quantifies what is on offer.

While COAG has an expectation for consistency of charging throughout Australia, this is certainly a reasonable expectation within any given State. Within the State of NSW, Local Councils are governed by the Local Government Act. Section 502 of the LG Act requires charges for water, sewer and drainage to be made in accordance with "**actual use**". The NSW Local Government Department in correspondence quotes the need for Local Councils to comply with the **Best-Practice Management of Water Supply and Sewerage** which in turn includes the need for the State Government need for compliance with the National Competition Policy and the National Water Initiative

The current non standardised application of SDF's is an affront to the business especially in current hard times, which expects nothing less that fairness in the application of all taxes, rates and charges delivering real world outcomes. That the NSW Local Government Department has allowed Bathurst Regional Council to duplicitously disregard its own claim of compliance with the Guidelines and its own Management Plan with the sanction of the NSW Office of Water, is amply demonstrated in a worst case charge of over three dollars to flush a toilet. This speaks volumes about the lack of **compliance and enforcement** in regard to these matter. The NSW Local Government Department has conveniently ignored the need for Local Councils to comply with S502 of the Local Government Act which spells out in the simplest of lawful terms :-

Charges for actual use
502 Charges for actual use
A council may make a charge for a service referred to in section 496 or 501 according to the ***actual use*** *of the service.*

"Actual Use" is of course the very guts of the Guidelines for **Best-Practice Management of Water Supply and Sewerage,** which seems to have escaped the notice of both the NSW Local Government Department and the NSW Office of Water.

From the Guidelines for **Best-Practice Management of Water Supply and Sewerage. Quote "***LWUs which achieve the outcomes required by these guidelines will have effective and sustainable* which includes the need for the State Government need for compliance with the *water supply and sewerage businesses and will have demonstrated best-practice management of these businesses as well as their compliance with National Competition Policy and the National Water Initiative."*

The metering of water by Water Authorities and Councils is taken for granted and is consistent with the requirement for **"actual use"** charging. Resulting from this charging for water by volume; accurately measured through meters, does not give rise to dispute, nor require an arbitrary, (however well informed) introduced factor or formulae for assessment.

The use of Sewer Discharge Factors in NSW can only ever be an inconsistent between the Water Authorities and Local Councils in NSW.

SDF's can never be anything but a subjective assessment unless accompanied by physical measurement by volume, which is a reasonable consumer expectation.

The "anomalies" illustrated by Peter Price, Economic Planning Advocacy submission to IPART, dated 08 Oct 2013 adequately illustrate the need for more stringent scrutiny of the NSW Office of Water role in charging for sewer usage especially when similar is experienced from that Department in its role with NSW Councils. Our personal experience with NOW and Bathurst Regional Council is documented at www.bathurstsewer.com and demonstrates an appalling record. This "anomaly" remains in place because neither the Local Government Department nor the NSW Office of water recognise the true meaning of charging according to "**actual usage**" for sewer services as required in S502. These offices are culpable in this regard as they fully understand the term as applicable to charges for water which is of course by "actual usage" in accordance with S502 of the Act which enables both charges.

IPART has recognised both the difficulties and financial cost of metering sewerage, hence the proposed continuation of Sewer Discharge Factors assessed by the Water Authorities themselves.

Quoting from the IPART Draft report: - "Sewage quantities (volumes) are expensive to measure directly and such measurement is not cost effective for the majority of customers. Therefore, for a

given customer, the volume of sewage discharged is calculated by estimating the percentage of their water usage that is discharged to the sewerage system. This is called a discharge factor."

Given both, that the Minister has chosen to allow charges for sewer usage without any criteria for objective measurement and IPART now prefers not to be involved in standardised SDFs, it is evident that SDFs will remain as before; always open to differing "estimations" and therefore contention.

The Water Management Act 2000 Sect 114 has allowed the Minister to introduce sewer charges but does not refer to the fair distribution of the charge, something the Guidelines were supposed to enforce. IPART attempts to be arbiter of fairness, (this being at least, attempted with the idea of Sewer Discharge Factors in the initial review and maximum charges for sewer discharge use in Water Authority jurisdiction and now a formula) however it appears there is an overarching reluctance in NSW for true compliance with the National Competition Policy and the National Water Initiative.

This review into Sewer Discharge Factors is the result of IPART recognised "anomalies", in regard to the same. In order that there be consistency with sewer charges throughout all of NSW then account should be taken of how fairness is enacted for NSW Councils in the Local Government Act 1993. Section 502 is clear in that charges for sewer services or indeed any services, (S501"any service prescribed by the regulations") are to be made "**according to the actual use of the service**".

"**Actual use**", as per my original submission to this inquiry, is the crux of this matter and the only criteria necessary for making a fair charge having no reference to "estimations".

Where there is no legislated requirement for the fair distribution and/or measurement (ie. metering) that ensures correct SDF'S for the application of sewer charges the following must occur.

In any case of dispute and while ever there is no legislated requirement for the consumer to install sewer discharge metering, the charge payer must have the right to require Sewer Discharge Metering installed by the monopoly provider, ie. The Water Authorities and Local Water Utilities, or agree to an "Actual Usage Assessment" ie. the formulae suggested by IPART in Draft 2.3.3 (when proven to be fair), carried out in accordance with the appropriate Australian Standards by an independent qualified hydraulics engineer and these must become the inalienable legal right of the non-residential charge payer throughout NSW as a whole as is meant by the phrase from the Local Government Act 1993 **",according to the actual use of the service."**

Ray Carter. Bathurst