

BLAKE DAWSON WALDRON

L A W Y E R S

Level 39
101 Collins Street
Melbourne VIC 3000

www.bdw.com

Tel + 61 3 9679 3000

Fax + 61 3 9679 3111

DX 187 Melbourne

GPO Box 4958
Melbourne VIC 3001
Australia

Partner

Daniel Preston

Telephone (03) 9679 3578

FILE No:

DOC:

MARS/PRISM

BY COURIER

Australian Competition & Consumer Commission
Level 35, The Tower
360 Elizabeth Street
MELBOURNE VIC 3000

Our reference
03 1403 3560

30 October 2006

Dear Sir/Madam

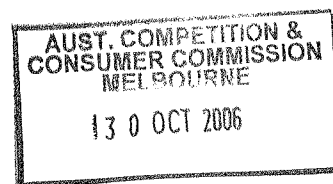
Notification under section 93 of the *Trade Practices Act 1974* (TPA)

We act on behalf of City West Water Limited and enclose the following on behalf of our client:

1. Notification of Exclusive Dealing (Form G);
2. Submission in support of the notification under s 93(1) of the TPA; and
3. Our cheque for \$1,000 in respect of the filing fee for the third line forcing notification.

In the meantime, please contact Daniel Preston if you have any queries in relation to the attached notification.

Yours faithfully



MELBOURNE
SYDNEY
BRISBANE
PERTH
CANBERRA
PORT MORESBY
SHANGHAI

Associated Office
JAKARTA

201283743_3

FORM G

Regulation 9

COMMONWEALTH OF AUSTRALIA

*Trade Practices Act 1974 - subsection 93 (1)***EXCLUSIVE DEALING: NOTIFICATION**

To the Australian Competition and Consumer Commission:

Notice is hereby given, in accordance with sub-section 93 (1) of the *Trade Practices Act 1974*, of particulars of conduct or of proposed conduct of a kind referred to in subsection 47 (2), (3), (4), (5), (6) or (7), or paragraph 47 (8) (a), (b) or (c) or (9) (a), (b), (c) or (d), of that Act in which the person giving notice engages or proposes to engage.

1. (a) Name of person giving notice:

City West Water Limited (CWW)

ACN 066 902 467

(b) Short description of business carried on by that person:

CWW is a water and sewerage utility that is owned by the Victorian Government. CWW provides drinking water, sewerage, trade waste and recycled water services to approximately 276,000 residential and 31,300 non-residential (industrial and commercial) customers in Melbourne's Central Business District and inner and western suburbs. CWW's boundaries contain the local government areas of Brimbank, Hobsons Bay, Maribyrnong, Melbourne (north of the Yarra River), Moonee Valley, Wyndham, Yarra and parts of Melton and Hume.

(c) Address in Australia for service of documents on that person:

247 – 251 St Albans Road, Sunshine, Victoria, 3020

2. (a) Description of the goods or services in relation to the supply or acquisition of which this notice relates:

Pipes, fittings and associated infrastructure used in potable water and non-drinking water reticulation systems, and in gravity sewer and pressure sewer reticulation systems, including hydrants, hydrant installation fittings, valves, maintenance structures, access chamber fittings, tanks, pumps and electrical controls.

(b) Description of the conduct or proposed conduct:

CWW will require all contractors including those completing works for land developers, and those undertaking capital works projects and operations & maintenance activities for CWW, to use only those products and materials approved by CWW for use in its water supply, recycled water supply, and sewerage systems.

CWW will maintain a list of products and materials that may be used in its asset systems in the

form of a Product Catalogue. Only products or materials listed in the Product Catalogue may be used in CWW's asset systems, with the exception that a new product may be trialled with the approval of CWW.

3. (a) Class or classes of persons to which the conduct relates:

Designers, manufacturers and suppliers of the pipes, fittings and associated infrastructure to which this notice relates; contractors responsible for the supply and/or installation of water supply or sewerage assets.

(b) Number of those persons –

(i) At present time

>200

(ii) Estimated within the next year

>200

(c) Where number of persons stated in item 3 (b)(i) is less than 50, their names and addresses:

N/A

4. Name and address of person authorised by the person giving this notice to provide additional information in relation to this notice:

Daniel Preston
Partner
Blake Dawson Waldron
Level 39, 101 Collins Street
Melbourne, Victoria 3000
Telephone: 03 9679 3578
Facsimile: 03 9679 3111
E-mail: daniel.preston@bdw.com

Dated 30 October 2006

Signed ~~by~~ on behalf of the person giving this notice



Signature

DANIEL PRESTON

Full Name

PARTNER, BLAKE DAWSON WALDRON

Description



DIRECTIONS

1. If there is insufficient space on this form for the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the person giving the notice.
2. If the notice is given by or on behalf of a corporation, the name of the corporation is to be inserted in item 1 (a), not the name of the person signing the notice, and the notice is to be signed by a person authorised by the corporation to do so.
3. In item 1 (b), describe that part of the business of the person giving the notice in the course of which the conduct is engaged in.
4. If particulars of a condition or of a reason of the type referred to in subsection 47 (2), (3), (4), (5), (6), (7), (8) or (9) of the *Trade Practices Act 1974* have been reduced in whole or in part to writing, a copy of the writing is to be provided with the notice.
5. In item 3 (a), describe the nature of the business carried on by the persons referred to in that item.
6. In item 3 (b) (ii), state an estimate of the highest number of persons with whom the person giving the notice is likely to deal in the course of engaging in the conduct at any time during the next year.

NOTICE

If this notification is in respect of conduct of a kind referred to in subsection 47 (6) or (7), or paragraph 47 (8) (c) or (9) (d), of the *Trade Practices Act 1974* ("the Act"), it comes into force at the end of the period prescribed for the purposes of subsection 93 (7A) of the Act ("the prescribed period") unless the Commission gives a notice under subsection 93A (2) of the Act within the prescribed period, or this notification is withdrawn.

The prescribed period is 21 days (if this notification is given on or before 30 June 1996) or 14 days (if this notification is given after 30 June 1996), starting on the day when this notification is given.

If the Commission gives a notice under subsection 93A (2) of the Act within the prescribed period, this notification will not come into force unless the Commission, after completing the procedures in section 93A of the Act, decides not to give a notice under subsection 93 (3A) of the Act. The notification comes into force when that decision is made.

If this notification is in respect of conduct of a kind referred to in subsection 47 (2), (3), (4) or (5), or paragraph 47 (8) (a) or (b) or (9) (a), (b) or (c), of the Act, it comes into force when it is given.

**SUBMISSION TO AUSTRALIAN COMPETITION AND CONSUMER COMMISSION
IN SUPPORT OF NOTIFICATION UNDER SECTION 93(1) OF THE *TRADE
PRACTICES ACT 1974 (CTH)***

1. INTRODUCTION

This submission is in support of the notification lodged by City West Water Limited (CWW) under section 93(1) of the *Trade Practices Act 1974* (the **Act**) in relation to conduct potentially falling within section 47(6) or section 47(7) of the Act.

Accordingly, the relevant test to be applied by the Commission is set out in section 93(3A) of the Act, whereby the Commission assesses whether the public benefits associated with the relevant conduct outweigh any likely public detriment.

2. BACKGROUND

2.1 CWW

CWW is a water and sewerage utility which is owned by the Victorian Government. CWW provides drinking water, sewerage, trade waste and recycled water services to approximately 276,000 residential and 31,300 non-residential (industrial and commercial) customers in Melbourne's Central Business District and inner and western suburbs.

CWW was created in 1995 when Melbourne Water was split into three metropolitan retailers (CWW, South East Water and Yarra Valley Water) and a wholesale entity (Melbourne Water).

CWW's service boundaries contain the local government areas of Brimbank, Hobsons Bay, Maribyrnong, Melbourne (north of the Yarra River), Moonee Valley, Wyndham, Yarra and parts of Melton and Hume.

2.2 Asset Creation

Over the past twenty years, the majority of new water and sewerage asset creation (ie. the design and construction of assets) for CWW and its predecessor, Melbourne Water, has been undertaken by external contractors. The water and sewerage assets in question include water and sewer pipelines, fixtures, pump stations and tanks.

Approximately half (by value) of the assets created today are created by land developers and, upon the satisfactory completion of the assets, they are gifted to CWW. CWW is then responsible for the operation and maintenance of the assets over their operating life, and for their subsequent replacement.

In the case of asset creation initiated by CWW, assets are usually designed, and always constructed, by external contractors.

These circumstances require CWW to be vigilant in ensuring that it is gaining assets that are fit for their purpose and can be maintained at a reasonable cost in the long term.

CWW's experience is that the quality of design, pipe material, construction practice and fittings all contribute to the long term performance of assets. If asset failure rates escalate,

CWW will struggle to meet, among other things, its customer service and environmental obligations at current funding levels.

2.3 **Current “Products Catalogues”**

CWW currently maintains the following Products Catalogues:

- Water Reticulation Products Catalogue
- Gravity Sewer Reticulation Products Catalogue
- Non-Drinking Water Reticulation Products Catalogue
- Pressure Sewer System Products Catalogue

These catalogues list the products that have been accepted by CWW for use in the respective systems. At present, CWW will include a new product in the catalogues when it can be shown that it meets the relevant standards and specifications (for example, applicable Australian Standards and Water Supply Association of Australia specifications).

2.4 **Product Range**

Over the last ten years, CWW has added approximately 30% by length to its water network and 24% by length to its sewer network, reflecting the large growth in land development being experienced in the western suburbs.

At the same time, an increasing number of new products, including products made from an increasing range of materials (mostly plastics) are becoming available for use in conjunction with water and sewer schemes. In addition to obvious quality assurance issues, the adoption of all new materials and methods increases the need to stock spare parts and the know-how to use and repair them, which in turn increases complexity, repair times and the costs associated with the maintenance process, costs that are in turn ultimately passed on to CWW's customers.

In light of the above, CWW wishes to implement a new asset creation policy to help manage the above issues.

3. **DESCRIPTION OF THE RELEVANT CONDUCT**

3.1 **The Relevant Policy**

CWW wishes to introduce a new Asset Creation Policy (Products & Materials) (**the Policy**). The Policy covers the products and materials used in all CWW drinking water, recycled water, and sewerage asset systems, including those created by CWW and the land development industry.

Under the Policy, CWW will create and maintain a list of approved products and materials that may be used in its asset systems in the form of a revised and consolidated **Product Catalogue**. Only products or materials listed in the Product Catalogue may be used in CWW's asset systems. The authority to:

- approve the products and materials for inclusion in the initial Product Catalogue;

- approve the inclusion of new products and materials in, and deletion of products and materials from, the Product Catalogue; and
- trial a new product or material not currently listed as approved in the Product Catalogue,

will rest with CWW's Asset Management Committee, an executive committee of CWW comprising the Managing Director, General Manager Engineering, General Manager Finance & Administration, General Manager Recycling & Development, General Manager Service Sustainability, and Manager Operations & Maintenance.

3.2 **The application of the Policy**

Land development works

Under local planning laws, a land developer is typically required to obtain a planning permit from the local Municipal Council before it can proceed with a development subdivision. When the planning permit application pertains to a development within CWW's service area (see above), the Council will refer the application to CWW for consideration as a referral authority under the relevant planning laws.

In the ordinary course, CWW will recommend the inclusion of a condition requiring that water and sewer infrastructure, designed and constructed to the satisfaction of CWW, is installed to service the subdivision. The Council will then include this condition on the planning permit. The effect of this condition is that the Council cannot certify the subdivision and release the subdivided lots for sale until the conditions are satisfied and CWW has issued a compliance certificate.

CWW wishes to limit the circumstances in which it will issue a compliance certificate to situations where the water, recycled water and sewer assets installed on behalf of the developer incorporate only products or materials from the Product Catalogue.

CWW works

When it is necessary for CWW to arrange works for the upgrade of its existing water and sewer assets (eg the replacement of an ageing water main in a residential street), or the construction of new water and sewer assets (eg the construction of a new trunk sewer main designed to handle increased flows in a residential growth corridor), the design of the works may, and the construction of the works will, be undertaken by a third party consultant or contractor.

In these circumstances, CWW wishes to include as a condition of the contract for the design/construction works a requirement that the new water and sewer assets to be constructed incorporate only products or materials from the Products Catalogue.

3.3 **Product Selection**

The products and materials contemplated by the Policy and included in the Product Catalogue can be classified into the following broad categories: pressure and non-pressure pipes & associated fittings, valves, hydrants, surface fittings, ancillary products, construction materials, tanks, pumps, electrical controls, cabinets, circuitry, telemetry and all other products and materials that may be required in the installation of any water supply or sewerage asset.

Any supplier may apply to CWW to have its product or material included in the Product Catalogue. CWW will give due consideration to the application, and assess the merits of the product or material according to the following criteria:

- service life of the product or material;
- compatibility of the product or material with existing CWW asset systems;
- impact of the product or material on CWW's operations and maintenance activities, including the availability of compatible fittings;
- impact of the product or material on CWW's occupational health and safety obligations;
- impact of continued use of the product or material on CWW's environmental obligations;
- capacity of CWW and/or its contractors to install, operate and/or maintain the product or material
- availability of spare parts (where applicable) for the product or material;
- in-service performance history of the product or material; and
- specific applications of the product or material.

It is anticipated that the number of products or materials included in the Product Catalogue will be limited in order to control future maintenance and replacement costs.

3.4 **Rationale for the Policy**

As noted above, the purpose of the Policy is to ensure the efficient operation and maintenance of CWW's water supply and sewerage assets by ensuring that:

- the products and materials used in its asset systems are manufactured to a suitable standard; and
- the variety of products and materials used is limited to what can reasonably be stocked and/or made readily available to maintenance personnel to effect repairs.

4. **PUBLIC BENEFITS**

4.1 **Quality assurance**

There are obvious public benefits in ensuring that the products and materials used in water and sewerage systems are of high quality. The use of low quality products and materials can lead to a number of problems, such as:

- increased interruptions to water and sewerage services while problems are being investigated and repairs undertaken;

- shorter asset life cycle, meaning that products and materials have to be replaced more frequently, with a corresponding increase in cost to customers;
- risk of water leakage - leading to the wastage of a precious community and environmental resource - and sewer infiltration (the unintended passage of rainwater and groundwater into the sewerage system) – which places capacity pressures on the sewerage system and can lead to spills;
- the need for costly and unsightly repairs in the road reserve (a particular concern in heavily landscaped streets in new subdivisions); and
- customer frustration and dissatisfaction with the quality of water and sewerage services for which they are paying.

4.2 **Maintenance efficiencies**

As noted above, there is a growing number of products becoming available for water and sewerage schemes. Unless CWW is able to limit the number of products and materials which can be used in asset creation, the cost and complexity of its maintenance operations is likely to increase substantially. From both a logistical and cost perspective, it is impractical for CWW to stock an entire range of accessories and spare parts for every product and material available in the market. If it was forced to do so, the cost of such measures would ultimately be passed on to CWW customers. Accordingly, CWW's proposal to limit approved products and materials to a reasonable (and serviceable) number will ensure that it can continue to provide efficient and cost-effective maintenance services.

5. **NO PUBLIC DETRIMENT**

The proposed conduct will not result in any public detriment. It will have no appreciable negative effect on competition in the supply of water and sewerage services or assets or any other relevant market.

CWW will have no exclusive arrangement with the relevant product suppliers. Those suppliers are able to continue to offer their products for sale to other customers, including other water companies.

Those product suppliers whose products are not included in the initial Product Catalogue by CWW are not foreclosed from the market for the following reasons:

- There is a large number of other customers to whom such suppliers can market and sell their products – ie:
 - other major metropolitan water authorities: Melbourne Water, Yarra Valley Water and South East Water;
 - numerous Victorian regional water authorities: Barwon Water, Central Highlands Water, Coliban Water, East Gippsland Water, Gippsland Water, Goulburn Valley Water, Lower Murray Water, North East Water, South Gippsland Water, Wannon Water, Western Water and Westernport Water, Wimmera-Mallee Water; and

- "non-water authority" customers including farmers, irrigators and operators of parks & gardens, golf courses, race courses and the like.
- CWW will review the Product Catalogue at least annually. In addition, any supplier may apply at any time to have its product (s) included in CWW's Product Catalogue. Accordingly, suppliers will have on-going opportunities to have their products selected and included in the Product Catalogue.

Further, if a supplier is denied approval for inclusion of its products in the Product Catalogue by the Asset Management Committee, it will be entitled to seek a review of the decision by a review panel comprising two executive managers at City West Water, the Company Secretary & General Counsel and General Manager External Affairs. The review panel will review the application and make a fresh decision on the application.

6. **CONCLUSION**

For the reasons set out above, the proposed policy is likely to result in substantial public benefits over the medium to long term that will outweigh any possible public detriment.