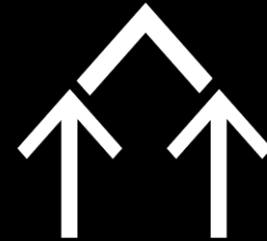


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To whom it may concern,

SUBMISSION: NORTHERN TERRITORY WATER REGULATORY REFORM

We welcome the opportunity to make a submission on the Northern Territory Government’s (NTG) “Northern Territory Water Regulatory Reform: Directions Paper – October 2018” (Directions Paper).

This submission has been written by the [Housing for Health Incubator](#) (Incubator) at the University of Sydney. Incubator research and advocacy is focused on what residents require to enact healthy living practices in their homes. Informed by the work of our Incubator partner [Healthabitat](#), we recognise the central importance of functioning “health hardware” within housing to residents’ health outcomes, and therefore the significance of repair and maintenance programs that attend to housing and other municipal infrastructures. In housing, water is central to residents’ capacities to wash themselves and their children, wash clothes and bedding, dispose of wastewater safely, and improve nutrition. Residents of remote Indigenous communities in particular face disproportionate regulatory, infrastructural, and environmental challenges to accessing water that is sufficient in amount and of a safe standard.

This submission is primarily concerned with “1.2 Protecting future public water supplies”, as described on the “Have Your Say NT” website.

Potable water supply is precarious in most areas of the Northern Territory, and especially for residents of remote Indigenous communities. Under the current legislative framework, there is no right to drinking water in the Northern Territory (NT). The security of drinking water supply is also subject to limited regulatory protections. This is true both as a matter of guaranteeing access to drinking water supply and guaranteeing that drinking water will meet minimum quality standards. We submit that securing public water supply for residents of the NT should be a primary aim of the proposed reforms. In our view, this requires review of not only the *Water Act 1992* (NT) and associated regulatory and policy instruments, but also review

of the principal legislation governing drinking water supply and quality in the Northern Territory: the *Water Supply and Sewerage Supply Act 2000* (NT). As demonstrated below, both these statutes fail to ensure an adequate or safe drinking water supply across the vast majority of the Northern Territory. The NTG should consider ensuring safe and adequate drinking water by specific legislation like that operating in other jurisdictions; for example, the *Safe Drinking Water Act 2011* (SA) implements the Australian Drinking Water Guidelines, including requiring the registration of all drinking water providers across that state (and enshrines processes for monitoring, audit, and inspections of their operations).

Guaranteeing supply

We commend the NTG on preparing the Directions Paper, which outlines a broad suite of proposed reform issues related to the *Water Act 1992* (NT) and *Water Regulations*. The Directions Paper identifies major limitations of the *Water Act*, including “the inability to protect future drinking water supply”, and recognises that given the growth of the NT population and industry “Water users are seeking appropriate security of water entitlements in terms of both quantity and quality” (NTG 2018, 4). The predicted increase in average temperature associated with climate change provides an additional rationale for ensuring greater protection of this important resource.

The *Water Act* provides for statutory-based water licences for certain water extraction activities, the declaration of water control districts (WCDs), and the development of water allocation plans (WAPs) within WCDs. WAPs apply in areas of relatively high population and allocate water between various users. They have been “developed on a priority basis in areas where there are competing demands for human consumptive needs and/or where natural aquatic ecosystems have significant ecological or social values” (Department of Environment and Natural Resources). WAPs include a description of the water resource, current and projected demand, a sustainable yield and allocation to various uses, among other matters. Public water supply is one of many “consumptive uses”, which must compete for an equitable allocation with other users of water (including industry, agriculture, and the environment itself).

However, while the *Water Act* purports to provide a Northern Territory-wide framework for the sustainable management of NT water resources, its geographic application with respect to public drinking water supply is fragmentary. Specifically, public drinking water supply is only protected in areas where a WAP applies (because allocations between various competing beneficial uses – including for public water supply – only occur when a WAP is declared). There is no general power in the *Water Act* to reserve potable water for current and future public water needs, while other users (including mining and petroleum companies and pastoralists) may extract water outside of WAPs in accordance with the requirements of the *Water Act* even when such use might impact drinking water sources. This means that an adequate drinking water supply is not currently guaranteed to residents in the vast majority of the NT’s landmass not covered by WAPs, including in most Indigenous communities in the NT.

We note that the situation of many NT communities could be characterised as involving “competing demands for human consumptive needs”, particularly where water intensive industries, such as mining and agriculture, draw on water systems shared with local residents. The absence of legislative provisions guaranteeing public water supply to NT residents provides the potential for the undersupply of drinking water to residents who live in communities outside of WAPs. Stronger protections are required to reduce the likelihood of potable water scarcity.

We note that the industries that compete for water (notably, mining and petroleum extraction) may also impact the quality of public water supply through their activities (for example, through contamination). There is an ability in section 73 of the *Water Act* for the Administrator to declare the “beneficial uses, quality standards, criteria or objectives” which apply to or in relation to water either generally or for a specific area. This could be used to ensure drinking water is of sufficient quality in the NT. It is unclear, however, whether this statutory power has been used in the past, and there do not appear to be any enforcement, monitoring or compliance mechanisms associated with it. Further, the absence of any general power to reserve adequate water for public water supply across the NT reduces the efficacy of this provision.

Setting minimum standards

Discussion of the *Water Supply and Sewerage Supply Act 2000* (WSSSA) is notably absent from the Directions Paper. There is little interaction between the *Water Act* and the WSSSA, despite the latter regulating the provision of public water supply in the NT. Notably, the WSSSA regulates the provision of public water supply in the NT in the absence of a statutory provision ensuring that adequate and safe water for the public will be allocated for this purpose under the *Water Act*.

Section 13 of the WSSSA empowers the Utilities Commission to grant a license to deliver water supply services in a water supply license area, which are areas declared by the Minister (sections 8 and 9), and which currently include 18 gazetted towns (among them Darwin, Alice Springs, Katherine, and Tennant Creek). “Water supply services” means supplying water to customers and includes retailing water supply services (S4). Section 41(2) imposes a duty upon the licensee to “provide water supply or sewerage services to customers who own land with an authorized connection to the water supply or sewerage services infrastructure of the licensee.” Power and Water Corporation (PAWC) holds the license to supply drinking water within water supply license areas in the NT.

The NT has not set minimum standards for water supply under the WSSSA. This is unlike other Australian jurisdictions where a corporatised entity is licensed to supply drinking water – such as Sydney Water (Jane and Dollery 2007). Under the WSSSA, section 45 empowers the Minister to specify minimum standards that a licensee (PAWC) must meet in providing water supply or sewerage services to customers, which may include water standards, standards of supply (including pressure and flow), and reliability of service. Section 46 governs the quality

of drinking water, specifying that the NT Chief Health Officer may, for the purposes of ensuring minimum standards of drinking water, give directions to a licensee regarding emergency precautions that the licensee must implement in an emergency. In 2016, PAWC published a drinking water quality policy statement that commits it to “work toward achieving compliance with the health and aesthetic guidelines values set in the Australian Drinking Water Guidelines”, but which does not prescribe minimum standards. Neither have minimum standards been set in accordance with section 45 of the WSSSA. Instead, there are weak minimum standards outlined in the Utilities Commission (2009) licensee contract to PAWC, and appended to PAWC’s (2007) Customer contract as “service standards”.

PAWC’s customer contract states it will “aim to provide you with good quality, safe and reliable water ... [and] will supply drinking water, appropriate to the environment in which the community is located, in accordance with parameters set by the Australian Drinking Water Guidelines” (2007, 9). Regarding water quality, the minimum standard specified is to “Monitor the quality of drinking water against a drinking water monitoring program, agreed with the Department of Health and Families and report the results to the Chief Health Officer” (Schedule 2). Similarly, in the “Memorandum of Understanding between the Department of Health and Power and Water Corporation for Drinking Water” (2011), no minimum standards are specified. This MOU describes PAWC as a corporation under the *Government Owned Corporations Act 2001* (NT) with the responsibility to provide a safe drinking water supply through the WSSSA and *Water Act*, and the Department of Health as the regulatory agency for drinking water quality in the NT (2011, iv). With regard to minimum standards and the Australian Drinking Water Guidelines, the MOU states that:

The Department and Corporation accept that pursuant to Section 45 of the *Water Supply and Sewerage Services Act 2000* (NT) no minimum standards for drinking water have been set in licensed areas or in areas not subject to the Act, however, the *ADWG* will be used as the peak reference regarding the quality of drinking water and management of drinking water quality. (2011, S.4)

The MOU provides the potential for the Department to vary the quality criteria drawn from the Australian Drinking Water Guidelines “in specific circumstances, or for identified supplies, as long as public health is not compromised” (2011, S.4). In strict legal terms, no minimum standards are set for drinking water and this document is unenforceable.

Beyond PAWC’s declared license areas (i.e. the 18 gazetted towns in the NT), communities and outstations on Aboriginal land are typically serviced by Indigenous Essential Services Pty Ltd (IES), a not-for-profit subsidiary of PAWC established in 2003. While PAWC is overseen by the Utilities Commission, IES is a private proprietary limited company and its operational structure and legal obligations are relatively opaque. We understand that there is no legislation that mandates particular levels of service or standards for IES operations. That is, the approximately 76 Indigenous communities and 500 Indigenous outstations located on Aboriginal land owned under the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth) and other forms of Indigenous-owned tenure are not water supply licence areas and therefore the WSSSA does not apply there. The standards and duties that do exist within the WSSSA,

licenses, and customer contract do not apply to IES (although the weak and unenforceable MoU between PAWC and the Department of Health regarding water quality applies in communities which IES services).

Recommendations

Across the NT, legal protections for both the supply and quality of drinking water are inconsistent and limited. There is no legal mechanism for reserving or allocating a public water supply under the *Water Act* outside of WAPs, which only capture a minority of the NT. Further, the key legislation regulating the supply, quality, licensing, and regulatory oversight of public water supply in the NT, the *WSSSA*, has fragmented geographic application in urban areas such as Darwin and smaller gazetted towns, excluding remote Indigenous communities on Aboriginal land from its purview. This means that the NT's regulatory framework does not guarantee an adequate water supply or water quality in remote Indigenous communities, and there is little legal recourse available to residents faced with an inadequate or poor quality drinking water.

We offer the following recommendations for the Water Regulatory Reform process.

- 1. Securing a safe and potable public water supply for all residents of the NT should be an explicit and primary aim of the proposed reforms**
- 2. The NTG should legislate for uniform minimum water quality standards and water utility service provision across the NT**

The regulation of public water supply under the *WSSSA* applies only in water supply licence areas, which currently comprise 18 gazetted towns in the NT (including major centres Darwin, Alice Springs, Katherine and Tennant Creek). The approximately 76 Indigenous communities and 500 Indigenous outstations located on Aboriginal land owned under the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth) and other forms of Indigenous-owned tenure are not water supply licence areas and therefore the *WSSSA* does not apply there. The standards and duties that do exist within the *WSSSA*, licenses, and customer contract do not apply to Indigenous Essential Services. The regulation of public water supply should be standardised and uniform across the NT (including by the expansion of water supply licence areas, and the licensing of IES or other appropriate utilities providers by the Utilities Commission). Equivalent licensing, operational and monitoring standards should be set for IES in its designated remote communities. Consideration should be given to ensuring that outstation service providers are similarly licensed or otherwise appropriately supported in ensuring these standards are met.

The unenforceable nature of the minimum standards that do exist under the *WSSSA* in water supply licence areas provide insufficient protections for residents. We recognise the difficulty of determining minimum standards that would apply across the NT, given the variability of

water itself. However, recent instances of water contamination in remote communities, including instances involving the presence of heavy metals at unsafe levels, have been managed according to monitoring programs and standards which are not publicly available. The WSSSA should be amended (or new legislation introduced similar to the *Safe Drinking Water Act 2011* [SA]) to specify minimum standards for water quality across the NT, including acceptable levels of heavy metals and other biological contaminants. Details of monitoring programs undertaken in water supply license areas by PAWC, and the results of this monitoring, should be available to the public.

3. The NTG should amend the *Water Act* to include a power to specifically reserve water for future drinking water supply security and to ensure it is of adequate quality

At the moment, water regulation is differentiated by NT geography, in terms of forms of responsibility, attention, procedure, and intervention. The Directions Paper notes that while there currently exists a risk that a water resource might be allocated to non-domestic consumptive uses in advance of an application being made by the water utility, “this could be addressed by the introduction of a power to specifically reserve water for future water supply security.” We recommend that this power be established under the *Water Act* (whether or not WCDs or WAPS apply), with guidelines established for how and when this power is to be exercised. This power should enable the decision-maker to mandate that reserved water for water supply security is of a sufficient quality for purpose according to objective criteria. We note that there may be other legislative amendments required to prioritise safe and adequate public water supply over other consumptive uses (for example, the removal of exemptions from water licensing requirements for road construction and stock and domestic use).

4. The NTG should legislate for a right to clean and adequate drinking water for all residents

In 2010, the United Nations General Assembly recognised the Human Right to Water and Sanitation. The General Assembly declared that clean drinking water is “essential to the full enjoyment of life and all other human rights.” Unfortunately, Australia abstained from this vote, on grounds related to the “Geneva process” which was ongoing at the time. We recommend that the NT take a progressive approach here and establish a right to clean drinking water. This could be achieved by amending existing legislation, or introducing special “safe drinking water” legislation such as that which applies in South Australia.

Conclusion

In sum, as the reform process proceeds, the central question should be: what will it take to secure sufficient and potable water for homes everywhere in the Northern Territory? While we respect that this is indeed a complex task, strengthening legislative protections for drinking

water is centrally important to the future of the Territory, even if other forms of action are also required.

If you have any questions, please contact sophi.hfhincubator@sydney.edu.au

Yours sincerely,

Handwritten signatures in blue ink. The first signature is 'Liam Grealy' and the second is 'Kirsty Howey'.

Liam Grealy and Kirsty Howey