

National Competition Council

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Office of
Council President

Ref:JCL271A

8 September 2009

The Hon Nathan Rees MP
Premier of New South Wales
Level 39, Governor Macquarie Tower
1 Farrer Place
Sydney NSW 2000

Dear Premier

Revocation of the declaration in *Re Services Sydney Pty Ltd [2005] ACompT7*

I refer to my letter to you dated 17 August 2009 in which I provided the National Competition Council's final recommendation on the NSW Government's application for the certification of the state's water industry infrastructure access regime. I advised in that letter that the Council would, following the expiry of the period for lodging applications for review of the Commonwealth Minister's decision to certify the NSW regime as effective and provided there were no such applications, make a recommendation that you as the designated Minister revoke the declaration made in *Re Services Sydney Pty Ltd [2005] ACompT 7*.

Following the expiry of the period for making an application for review of the Commonwealth Minister's decision to certify the NSW regime as effective without any such applications, the Council now recommends that you revoke the declaration made in *Re Services Sydney*. The Council makes this recommendation, having had regard to the objects of Part IIIA of the *Trade Practices Act 1974* (TPA), because it considers that the criterion for declaration in subsection 44H(4)(e) of the TPA is no longer met. This criterion is that access to the services is not the subject of an effective access regime. The Commonwealth Minister's decision to certify as effective the NSW water industry infrastructure access regime means that the services that are the subject of the declaration in *Re Services Sydney* are subject to an effective regime.

The Council is satisfied that it fully considered the recommendation to revoke the declaration as part of its assessment of the NSW Government's application for certification of the state's water industry infrastructure access regime (having addressed the matter in both its draft and final recommendations) such that no further inquiry is warranted. In assessing the NSW Government's application, the Council canvassed the potential

revocation at two stages: first in inviting submissions on the NSW Government's application and second in seeking submissions on the Council's draft recommendation released on 2 April 2009 (which stated that the Council intended to recommend that the declaration be revoked in the event that the Commonwealth Minister made a decision to certify the NSW regime). Of the interested party submissions received through the Council's public consultation process, none addressed any difficulty were the declaration in *Re Services Sydney* revoked. The Council considers that there was appropriate opportunity for parties potentially affected by revocation of the declaration to raise any concerns.

Section 44J of the TPA specifies that on receiving this recommendation you must either revoke the declaration or decide not to revoke the declaration, and publish your decision to revoke or not to revoke. If you decide not to revoke the declaration then you must give reasons for this decision to the provider of the declared services, in this case the Sydney Water Corporation, at the time that you publish your decision. Section 44JA(1) of the TPA requires that you use your best endeavours to make your decision within a period of 60 days from the date you receive the Council's recommendation, though you may extend this period.

If you have any queries your officers are welcome to contact the Council's Executive Director John Feil (03 9285 7499) or Jessamine Lumley (03 9285 7495).

Yours sincerely

A handwritten signature in cursive script, appearing to read 'David Crawford'.

David Crawford
President