



Independent Pricing and Regulatory Tribunal
New South Wales

Review of the Sydney Water Corporation Operating Licence

Issues Paper

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Invitation for submissions

IPART invites written comment on this document and encourages all interested parties to provide submissions addressing the matters discussed.

The submission from Sydney Water Corporation is due by 6 August 2018. All other submissions are due by 20 August 2018.

We would prefer to receive them electronically via our online submission form <www.ipart.nsw.gov.au/Home/Consumer_Information/Lodge_a_submission>.

You can also send comments by mail to:

Review of the Sydney Water Corporation Operating Licence

Independent Pricing and Regulatory Tribunal

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Late submissions may not be accepted at the discretion of the Tribunal. Our normal practice is to make submissions publicly available on our website <www.ipart.nsw.gov.au> as soon as possible after the closing date for submissions. If you wish to view copies of submissions but do not have access to the website, you can make alternative arrangements by telephoning one of the staff members listed on the previous page.

We may choose not to publish a submission - for example, if it contains confidential or commercially sensitive information. If your submission contains information that you do not wish to be publicly disclosed, please indicate this clearly at the time of making the submission. However, it could be disclosed under the *Government Information (Public Access) Act 2009* (NSW) or the *Independent Pricing and Regulatory Tribunal Act 1992* (NSW), or where otherwise required by law.

If you would like further information on making a submission, IPART's submission policy is available on our website.

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1 Introduction

The Independent Pricing and Regulatory Tribunal of NSW (IPART) is undertaking an end-of-term review of the Sydney Water Corporation (Sydney Water) Operating Licence 2015-2020 (the existing licence). The term of existing licence does not end until 2020, but we have brought this review forward by one year at Sydney Water's request, to avoid it coinciding with our review of Sydney Water's prices in 2019-20.¹ We expect the amended licence to apply from 1 July 2019.

This paper explains the purpose of the review and the approach we will take, sets out our preliminary views where we have them, and discusses the key issues we will consider. We invite all interested parties to make submissions in response to this paper.

1.1 Why does Sydney Water have an operating licence and what does it cover?

Sydney Water provides water and wastewater services to over five million people in the Sydney, Illawarra and Blue Mountains regions. It also provides recycled water and stormwater drainage services in certain areas.

The Governor may grant an operating licence (the licence) to enable Sydney Water to provide certain systems and services (see further details in section 2.1) in its area of operations under the *Sydney Water Act 1994* (the Act). There are certain things that the licence must contain (see further details in section 2.2), including terms and conditions that require Sydney Water to:

- ▼ supply water
- ▼ provide sewerage services
- ▼ dispose of waste water
- ▼ provide stormwater drainage systems
- ▼ meet specified quality and performance standards, and
- ▼ compile environmental indicators.

¹ We supported this request, and the Minister of Energy and Utilities had no objection; Letter to IPART, The Hon. Don Harwin, MLC, Minister for Energy and Utilities, 22 February 2018.

The licence must also contain requirements for:

- ▼ quality and performance standards on
 - water quality
 - service interruptions, including system performance standards
 - pricing
- ▼ environmental indicators and reporting
- ▼ area of its operations
- ▼ preparation of an operational audit
- ▼ establishment and consultation with Customer Councils
- ▼ memoranda of understanding (MOU) with specified agencies, and
- ▼ customer contracts.

Further, IPART can recommend other requirements for the licence, for example in relation to water conservation and an asset management system.

The licence also includes Sydney Water's Customer Contract. This is the contract between Sydney Water and its customers (property owners) that automatically applies when Sydney Water supplies services to its customers. It sets out the terms and conditions including on services that Sydney Water provides, what customers pay, billing arrangements, complaints handling and customer protection.

1.2 What is the purpose of this review?

The purpose of this review is to determine whether the existing licence remains appropriate. We will assess whether it is fulfilling its objectives, and will investigate any issues which have arisen during its term that may reduce its effectiveness going forward.

The licence is not the only regulatory instrument that applies to Sydney Water. Because of the essential nature of the services that Sydney Water provides and their potential health and environmental impacts, there are a number of regulatory instruments that apply to Sydney Water and its operations, administered by a range of other departments and agencies, including NSW Health and the Environment Protection Authority (see further details in section 2.3). In undertaking this review, we will have regard to the other obligations imposed on Sydney Water to ensure that we are not duplicating requirements. We work closely with the other departments and agencies and will liaise with them throughout this process.

1.3 Who will this review affect?

As this review may result in amendments to the existing licence, it may directly affect the operation of Sydney Water. The following stakeholders would also be affected by this review because they have direct relationships with Sydney Water under the existing licence:

- ▼ all customers and consumers of Sydney Water's water, sewerage, stormwater and recycled water services
- ▼ licensees under the *Water Industry Competition Act 2006* (WIC Act)
- ▼ NSW Government agencies that Sydney Water is required to enter into separate MOU with (NSW Health, Environment Protection Authority and Water Administration Ministerial Corporation), and
- ▼ NSW Government agencies that Sydney Water must use its best endeavours to establish cooperative relationships with (a Roles and Responsibilities Protocol with the Department of Planning and Environment and an MOU with Fire and Rescue NSW).

1.4 What is our proposed approach for this review?

For this review, we propose to use an approach that applies the Best Practice Licensing Framework (see further details in section 2.4), which includes the following four questions:

1. Is licensing appropriate?
2. Is the licence well designed?
3. Is the licence administered effectively and efficiently?
4. Is licensing the best response?²

We will undertake this review using a consultative process, which commences with publishing this Issues Paper.

Because we are reviewing the existing Sydney Water licence against which we monitor compliance, we are well placed to form preliminary views on certain issues at this early stage in our process. This paper sets out those preliminary views and our underlying reasoning to enable stakeholders to respond.

In particular, in this paper we have:

1. Considered the structure of the existing licence and formed a preliminary view on the appropriate structure to promote transparency of Sydney Water's operational activities and ease of use.
2. Considered the existing licence clauses and:
 - a) Assessed those that impose auditable obligations on Sydney Water by applying the first three stages of the Best Practice Licensing Framework and formed our preliminary views on the appropriate obligations. This framework goes back to the fundamental rationale for licensing, as well as its design and administration.³

² IPART, *A best practice approach to designing and reviewing licensing schemes*, prepared by PricewaterhouseCoopers, March 2013.

³ IPART, *A best practice approach to designing and reviewing licensing schemes*, prepared by PricewaterhouseCoopers, March 2013.

- b) Reviewed those that provide authorisation or information or general context to the licence and require no or minimal compliance monitoring, for their ability to meet the regulatory outcome intended to be delivered by the individual clause, as well as currency, and consistency.

We will consider all the feedback that we receive on this Issues Paper to develop a series of options for retaining, amending or removing existing obligations and adding new obligations. We will then undertake the fourth stage of our Best Practice Licensing Framework before preparing a draft licence package that comprises a draft licence, customer contract, reporting manual, cost-benefit analysis and draft report. We will consult stakeholders on the draft package.

After we consider all the feedback on the draft package, and undertake any further analysis required, we will provide to the Minister our final recommended licence package.

1.5 How can you provide input to this review?

This Issues Paper is the first step in our consultation process. As noted above, the paper sets out our preliminary findings and views on the structure and obligations for Sydney Water's Operating Licence 2019-2024. It also discusses the issues we will consider in this review, and lists questions on which we particularly seek stakeholder comment.

We invite all stakeholders to make a submission to this review, including Sydney Water, its customers and consumers, other water utilities, regulators, government stakeholders, and community, industry and environment groups. We request that Sydney Water make its submission by 6 August 2018, and we intend to publish this submission on our website. We invite other interested parties to provide their submissions by 20 August 2018. This timing will allow other interested parties to consider Sydney Water's submission in formulating their own submissions. For more information on how to make a submission and our submission policy, see page iii at the front of this paper.

We will release the draft licence package in December 2018 for further stakeholder consultation. We also intend to hold a public workshop in the Sydney CBD in early February 2019 to hear stakeholders' views and allow relevant stakeholders to respond to those views. We will publicise arrangements for this workshop closer to the date. Submissions on the draft licence package will close in mid-February 2019 following the workshop. Any stakeholder can make a written submission, whether they attended the workshop or not.

Once we have considered all stakeholder input on our draft package, we will finalise our recommendations, including the recommended licence and associated documents, and provide them to the Minister, who will make the final decisions.

Table 1.1 provides an indicative timetable for this review.

Table 1.1 Indicative timetable for the Sydney Water licence review

Date	Major milestones
25 June 2018	IPART releases Issues Paper and invites submissions
6 August 2018	Sydney Water's submission on Issues Paper due
20 August 2018	Other stakeholders' submissions on Issues Paper due
December 2018	IPART releases the draft licence package for stakeholder consultation
Early February 2019	Public workshop
Mid-February 2019	All stakeholders' submissions on draft licence package due
April 2019	IPART provides the Minister with final recommendations and associated licence
1 July 2019	Amended licence is due to commence IPART publishes amended licence and reporting manual

1.6 How is this paper structured?

The rest of this paper provides more information about this review, and then discusses the issues we will consider, including our preliminary views:

- ▼ Chapter 2 explains the context for the review in more detail, including how we are applying the *Best Practice Licensing Framework* as part of our approach for this review.
- ▼ Chapter 3 sets out our proposed new structure for the amended licence.
- ▼ Chapters 4 to 9 discuss our preliminary assessment and preliminary views, where we have them, on the obligations that may be included in each part of the amended licence structure. These parts are:
 - licence context and authorisation
 - water conservation
 - supply services and performance standards
 - organisational systems management
 - customer and stakeholder relations, and
 - performance monitoring and reporting.

1.7 List of preliminary views and questions in this paper

For your convenience, a complete list of our preliminary views and questions for stakeholder comment is provided below. You are welcome to respond to any or all of these questions. We also encourage you to raise any additional issues you think we should consider as part of this review.

Licence review framework

- | | | |
|---|---|----|
| 1 | What are your views on whether we have applied the Best Practice Licensing Framework appropriately for this review? | 23 |
| 2 | Do you have any suggestions for how we can improve our effectiveness and efficiency in administering the licence? | 23 |

Licence structure

Our preliminary view is that we should modify the existing licence structure to promote transparency of Sydney Water's operational activities and ease of use.

- 3 Do you agree with our proposed amended licence structure? 25

Licence context and authorisation

Our preliminary view is that we should modify the existing licence objective to also reflect the intended outcomes of the licence.

- 4 Do you agree with our preliminary view to modify the existing licence objective to also reflect the intended outcomes of the licence? Do you support our proposed objective? 28

Our preliminary view is that we should make minor drafting amendments to the existing clauses to clearly differentiate between the 'required' and the 'permitted' functions of Sydney Water relating to stormwater drainage systems.

- 5 Do you agree with our preliminary view that the substance of, and intention behind, the licence authorisation clauses are sound? Do you agree that the existing drafting should make clearer that Sydney Water is authorised, but not required, to construct stormwater drainage systems? 30

Our preliminary view is that we should amend Schedule 1 to update the local government areas included in Sydney Water's area of operations and add a map clearly showing the boundaries of the area of operations.

- 6 Do you agree with our preliminary view to update the local government areas included in the area of operations and add a map to the licence? 31

Our preliminary view is that we should recommend a 5-year licence term for the amended licence.

- 7 Do you agree with our preliminary view for a 5-year licence term? Do you have any views regarding the sequencing of licence and price review cycles? 32

Our preliminary view is that we should amend the existing clauses on the end of term review of the licence to specify IPART as the person who will undertake this review.

- 8 Do you agree with our preliminary view to specify IPART as the person to undertake the end of term licence review? 32

Our preliminary view is that we should retain the existing licence clause that clarifies that the licence does not prohibit any other person from providing services in Sydney Water's area of operations (the non-exclusive licence clause), and also retain the existing licence clause that require Sydney Water to make a copy of its licence available to any person free of charge (the availability of licence clause).

- 9 Do you agree with our preliminary view to retain the existing licence clause that clarifies that the licence does not prohibit any other person from providing services in Sydney Water's area of operations (the non-exclusive licence clause), and also retain the

existing licence clause that require Sydney Water to make a copy of its licence available to any person free of charge (the availability of licence clause)? 33

On services to WIC Act licensees

- 10 Should Sydney Water be obliged to provide water and sewerage services to WIC Act licensees? What would be the long-term benefits to end-use customers? 43
- 11 What are your views on imposing licence obligations on Sydney Water to service WIC Act licensees or potential competitors, such as specifying minimum service standards, prescribing a negotiation process with or without a dispute resolution process, and requiring Sydney Water to disclose certain information? What are the long-term benefits to end-use customers? 43
- 12 What are your views on the four options presented in the Issues Paper to include a new obligation on Sydney Water to provide services to WIC Act licensees and the evaluation criteria to assess these options? Do you have any inputs relevant to our evaluation of options for licence obligations? 43

Our preliminary view is that we should maintain the existing pricing obligation in the licence, which requires Sydney Water to set prices subject to the terms of the licence, the Sydney Water Act and IPART's price determinations.

- 13 Do you agree with our preliminary view to maintain the existing pricing obligation? 45

Water conservation

Our preliminary view is that we should maintain the requirements to implement the Economic Level of Water Conservation (ELWC) method and report on the water conservation program, but to:

- remove the obligations requiring Sydney Water to develop the ELWC method and transition from fixed targets for water usage and water leakage as these obligations have been completed
 - remove the obligations for Sydney Water to notify IPART of any significant changes that it proposes to make to the method and to obtain IPART's prior approval of such changes, as the requirement for prior approval may impose unnecessary administration burden, and replace with an obligation for Sydney Water to review the ELWC method during the next licence term and notify IPART of any changes to the method made as a result of the review.
- 14 Do you agree with our preliminary view to maintain the requirements to implement and report on water conservation program consistent with its economic level of water conservation in accordance with the ELWC method, but to remove fixed targets for water usage and water leakage (which were phased out in the existing licence term) and remove the obligation for Sydney Water to notify and obtain IPART's approval of any proposed significant change to the ELWC method? Should the licence contain any additional obligations relating to water conservation activities? 49

Supply services and performance standards

Our preliminary view is that we should maintain the existing obligations on drinking water quality but consolidate obligations to avoid duplication:

- remove the obligation that Sydney Water “obtain NSW Health’s approval for any significant changes” it proposes to make to its drinking water quality management systems as this is covered by the obligation to fully implement this system “to the satisfaction of NSW Health”
- remove the obligation that Sydney Water notify IPART and NSW Health of any significant changes it proposes to make to its drinking water quality management systems as this is covered in the Reporting Manual, and
- remove the obligation that Sydney Water complete a review of its public reporting on water quality as this task was completed in 2016.

Our preliminary view is that we should move the requirements in the existing Appendix F (Health and aesthetic water characteristics and raw water operational characteristic) from the Reporting Manual to a reporting schedule under the Drinking Water Quality Management System required by the licence.

- | | | |
|----|--|----|
| 15 | Do you agree with our preliminary views to: | 54 |
| | – maintain the existing obligations for drinking water quality but remove duplication in the obligations? | 54 |
| | – move the requirements in Appendix F (Health and aesthetic water characteristics and raw water operational characteristic) from the existing Reporting Manual to a reporting schedule under the Drinking Water Quality Management System required by the licence? | 54 |

Our preliminary view is that we should maintain the existing obligations on recycled water quality but consolidate the obligations to avoid duplication:

- remove the obligation that Sydney Water “obtain NSW Health’s approval for any significant changes” it proposes to make to its recycled water quality management systems as this is covered by the obligation in the licence to fully implement this system “to the satisfaction of NSW Health”, and
- remove the obligation that Sydney Water notify IPART and NSW Health of any significant changes it proposes to make to its recycled water quality management systems as this is covered in the existing Reporting Manual.

- | | | |
|----|---|----|
| 16 | Do you agree with our preliminary view to maintain the existing obligations for recycled water quality but remove duplication in the obligations? | 56 |
|----|---|----|

On drinking water fluoridation

- | | | |
|----|---|----|
| 17 | Given that the <i>Fluoridation of Public Water Supplies Act 1957</i> and the <i>Fluoridation of Public Water Supplies Regulation 2017</i> requires Sydney Water to fluoridate drinking water, what are your views on maintaining or removing fluoridation obligations in the licence? | 57 |
|----|---|----|

Our preliminary view is that we should revise the System Performance Standards in the amended licence to reflect customers' preferences and the value they place on the service outcomes Sydney Water provides, and balance these against the cost of service provision.

- 18 Do the existing System Performance Standards measure the most appropriate and relevant service outcomes? Are they specified in the best way to provide cost-effective service outcomes? 62
- 19 Do you agree with our preliminary view that we should use an economic approach to setting System Performance Standards that takes account of the value that customers place on the level of services? 62

On response times for water main breaks

- 20 Given the obligation to report on response times on water main breaks and leaks appears in two separate parts of the existing licence, what are your views on removing licence clause 4.3.1 and consolidating the reporting requirement in clause 8.2.1 of the licence? What are your views on the usefulness of collecting information on response times for water main breaks and leaks? 63

On the Priority Sewerage Program

- 21 What are your views on maintaining or removing the existing obligations on Sydney Water regarding the Priority Sewerage Program? 64

On the critical infrastructure

- 22 Given that the *Security of Critical Infrastructure Act 2018* (Cth) regulates critical infrastructure, what are your views on including or not including critical infrastructure obligations in the licence? 66

Organisational systems management

Our preliminary view is that we should maintain the existing obligations on Asset Management System (AMS) but:

- replace the International Standard with the current Australian Standard
- remove the obligation that Sydney Water certifies and maintains certification of its AMS as it is overly prescriptive
- remove the obligation that Sydney Water notifies IPART of proposed significant changes to its AMS and replace it with annual reporting of significant changes made as this would reduce reporting burden while keeping IPART informed of changes
- remove the obligation to transition Sydney Water from the previous licence requirement to the existing licence requirement as the transition should be complete before the commencement of the amended licence (we will continue to monitor compliance) and is therefore no longer required, and
- remove the reporting requirement in the Reporting Manual that Sydney Water provides State of the Assets Reports to IPART and replace it with a one-off requirement to provide its Strategic Asset Management Plan to IPART as this should reduce reporting burden.

- 23 Do you agree with our preliminary view to maintain the obligation to have an Asset Management System but replace the International Standard with the Australian Standard and replace the reporting requirement on biennial State of the Assets Reports with a one-off Strategic Asset Management Plan? In addition, do you agree with our preliminary view to remove the certification requirement, the notification of proposed significant changes requirement and the completed transitional clauses? 71

On Environmental Management System

- 24 Given there are other environmental regulatory instruments and policies in place to manage Sydney Water's environmental performance, what are your views on maintaining or removing an EMS obligation in the amended licence? If the EMS obligations are retained, what are your views on removing the EMS certification and the requirement to notify IPART of any significant changes that Sydney Water proposes, and updating the clause to specify the most current standard? Do you or your organisation depend on Sydney Water having an EMS to achieve certain performance outcomes or mitigate certain risks? 73

On Quality Management System

- 25 Given there are other obligations already in the licence to ensure Sydney Water delivers quality products and services, what are your views on maintaining or removing a QMS in the amended licence? If the QMS obligations are retained, what are your views on removing the QMS certification and the requirement to notify IPART of significant changes that Sydney Water proposes, and updating the clause to specify the most current standard? Do you or your organisation depend on Sydney Water having a QMS to achieve certain performance outcomes or mitigate certain risks? 75

Customer and stakeholder relations

Our preliminary view is that we should update the existing customer protection obligations in the licence clauses by requiring Sydney Water to publish information on its website and to provide information directly to each customers through the medium that the customer has selected for receiving bills (paper or electronic).

- 26 Do you agree with our preliminary view to update the existing obligations for customer protection on the ways Sydney Water communicates with customers? 81
- 27 What are your views on Sydney Water's proposed Customer Contract that will be attached to its submission to this Issues Paper? 81

Our preliminary view is that the licence obligations for the Customer Council should enable Sydney Water to effectively engage with its customers in ways that are relevant, representative, proportionate, objective, clearly communicated and accurate.

Our preliminary view is that we should amend existing obligations on the composition of the Customer Council to require experts in customer engagement to enable Sydney Water to engage in a way that is representative of its entire customer base including groups or individuals representing diverse views.

Our preliminary view is that we should amend existing obligations on the role of the Customer Council to include both:

- obtaining advice on and representing the interests of Sydney Water’s customers on key issues related to Sydney Water’s planning and operations (similar to existing clause 5.5.2), and
- providing advice to Sydney Water on its customer engagement strategies and the use of those strategies in making level of service and business planning decisions.

28	What are your views on the effectiveness of the existing Customer Council?	86
29	Do you agree with our preliminary view on the composition and role of the Customer Council?	86
30	Do you agree with our preliminary view to remove prescriptive obligations and replace them with outcome-based obligations?	86

Our preliminary view is that we should:

- Maintain existing obligations on Sydney Water to maintain memorandums of understanding (MOUs) with NSW Health, the Environment Protection Authority (EPA) and the Water Administration Ministerial Corporation (WAMC).
- Maintain and update the existing obligation to maintain an MOU with Fire and Rescue NSW (FRNSW).
- Remove the existing obligation for Sydney Water to maintain a Roles and Responsibilities Protocol with the Department of Planning and Environment (DPE) because Sydney Water has formed a cooperative relationship with the DPE in the absence of a signed protocol, making this obligation unnecessary.

31	Do you agree with our preliminary view to:	91
	- Maintain the obligation for Sydney Water to maintain cooperative relationships with NSW Health, the Environment Protection Authority (EPA) and the Water Administration Ministerial Corporation (WAMC)?	91
	- Maintain and update the obligation for Sydney Water to maintain a cooperative relationship with Fire and Rescue NSW (FRNSW)?	92
	- Remove the obligation for Sydney Water to maintain a cooperative relationship with the Department of Planning and Environment (DPE)?	92

Performance monitoring and reporting

Our preliminary view is that we should maintain the existing obligations for Sydney Water to provide timely information for the operational audits and cooperate with us and the auditors to facilitate the operational audits.

- 32 Do you agree with our preliminary view to maintain the existing obligations for operational audits? 95

Our preliminary view is that we should maintain the existing obligations on reporting but consolidate these obligations in the amended licence.

- 33 Do you agree with our preliminary view to maintain the existing obligations on reporting but consolidate these obligations in the amended licence? 97

Our preliminary view is that we should maintain the existing obligations on environmental indicators but remove the requirement to report on them in compliance with the Reporting Manual as it duplicates the existing reporting obligations.

- 34 Do you agree with our preliminary view to maintain the existing environmental indicator obligations and remove duplication with the existing reporting obligation? 98
- 35 Do you have a view on what would be the most useful environmental indicators for Sydney Water to report on? 98

2 Review context

To help stakeholders understand the context to this review and the approach we will take to make our decisions and recommendations, the following sections discuss:

- ▼ Sydney Water's role
- ▼ Sydney Water's licence
- ▼ Sydney Water's broader regulatory environment
- ▼ our application of the Best Practice Licensing Framework as part of our approach for this review, and
- ▼ our expectations for Sydney Water's customer engagement for this review.

2.1 Sydney Water's role

Sydney Water is a public water utility, which services a population of over five million in the Sydney, Illawarra and the Blue Mountains regions. It does not manage bulk water supply or the catchment areas. It sources its water from WaterNSW, and when required, from the Sydney Desalination Plant Pty Ltd.

Sydney Water is a statutory State Owned Corporation, wholly owned by the NSW Government. Its principal functions are to provide, construct, operate, manage or maintain systems or services for:

- ▼ storing or supplying water
- ▼ providing sewerage services
- ▼ providing stormwater drainage systems, or
- ▼ disposing of waste water.⁴

⁴ *Sydney Water Act 1994*, s 12.

The *State Owned Corporations Act 1989* and the *Sydney Water Act 1994* (the Act) prescribe Sydney Water's principal objectives. These are:

- ▼ to be a successful business, and to this end:
 - to operate at least as efficiently as any comparable businesses, and
 - to maximise the net worth of the State's investment in the Corporation, and
 - to exhibit a sense of social responsibility by having regard to the interests of the community in which it operates,
- ▼ to protect the environment by conducting its operations in compliance with the principles of ecologically sustainable development contained in section 6(2) the *Protection of the Environment Administration Act 1991*, and
- ▼ to protect public health by supplying safe drinking water to its customers and other members of the public in compliance with the requirements of any operating licence.⁵

In implementing these objectives, Sydney Water has the following special objectives:

- ▼ to reduce risks to human health, and
- ▼ to prevent the degradation of the environment.⁶

2.2 Sydney Water's licence

The Act establishes Sydney Water as a water utility. It specifies that Sydney Water can only carry out certain functions under the authority of, and in accordance with, an operating licence. A licence is a regulatory instrument which authorises and/or requires a water utility to carry out its functions.

The Act also specifies that the licence must include terms and conditions under which Sydney Water is required to:

- ▼ provide, construct, operate, manage and maintain efficient, co-ordinated and commercial viable systems and services for supplying water, providing sewerage services and disposing of waste water
- ▼ provide, operate, manage and maintain a stormwater drainage system
- ▼ ensure that the systems and services meet the quality and performance standards specified in the licence on water quality, service interruptions, pricing and other matters determined by the Governor and set out in the licence, and
- ▼ compile indicators of the direct impact on the environment of Sydney Water's activities:
 - to enable preparation of an annual report on Sydney Water's performance, and
 - to provide information for a year to year comparison on Sydney Water's performance in this area.⁷

The licence must also provide for a schedule that details the area of operations, the preparation of an operational audit, establishment and consultation with Customer

⁵ *Sydney Water Act 1994*, s 21(1).

⁶ *Sydney Water Act 1994*, s 22(1).

⁷ *Sydney Water Act 1994*, s 14(1).

Councils, reference to memoranda of understanding and terms and conditions of customer contracts.⁸

IPART issues a reporting manual that contains reporting requirements, such as details of report content, due dates and recipients of the reports. The licence requires Sydney Water to comply with its reporting obligations in the reporting manual.⁹ This means that a non-compliance with an obligation in the reporting manual is a non-compliance with a licence condition.

A licence is an enforceable instrument, and is subject to a compliance monitoring regime, with penalties applicable for contravention. A licence is a more flexible regulatory instrument than legislation, and allows for regular reviews. Regular reviews can ensure the licence maintains currency and reflects changes in public expectations, best practice and changing circumstances.

IPART is responsible for this licence review. We intend to make recommendations to the Minister at the end of this review to amend the licence. The Minister may accept or reject our recommendations. The Minister may endorse the amended licence for approval by the Governor of NSW.

2.3 Sydney Water's regulatory environment

It is important to understand Sydney Water's broader regulatory environment, so we can identify potential regulatory duplications or gaps in the licence. For example, the licence may not need to address a particular issue if another regulatory mechanism already does so. However, it may need to include obligations to address an issue if there is a regulatory gap.

Sydney Water is governed principally by the Act and the *State Owned Corporations Act 1989*. It has additional obligations under various NSW and Commonwealth legislation and guidelines, including obligations relating to public health, environment and planning, competition and consumer protection and critical infrastructure.

IPART regulates Sydney Water's compliance with its licence and sets maximum prices that Sydney Water may charge for its monopoly services. IPART is one of Sydney Water's regulators in NSW. Other NSW regulators, to name a few, include:

- ▼ NSW Health
- ▼ Environment Protection Authority (EPA)
- ▼ Department of Industry - Water (DoI Water)
- ▼ Department of Planning and Environment (DPE), and
- ▼ Office of Environment & Heritage (OEH).

The Australian Competition and Consumer Commission (ACCC) is an independent Commonwealth statutory authority whose role is to enforce the *Competition and Consumer Act 2010* (Cth) (Australian Consumer Law) and promote competition, fair trading and regulating national infrastructure for the benefit of all Australians. The Australian

⁸ *Sydney Water Act 1994*, ss 10(1), 14(2), 15(1), 34, 35, 54(1) and 54(3).

⁹ Sydney Water Corporation Operating Licence 2015-2020, Cl. 8.2.1

Consumer Law (in Schedule 2 of the *Competition and Consumer Act 2010* (Cth)) provides protections for consumers which apply across most sectors of the economy, including on the services supplied by Sydney Water.

2.4 Our application of the Best Practice Licensing Framework for this review

As Chapter 1 discussed, our approach for this review involves applying the Best Practice Licensing Framework.¹⁰ These stages are:

1. Considering whether licensing is appropriate.
2. Assessing whether the existing licence is well designed.
3. Assessing whether the existing licence is administered effectively and efficiently.
4. Confirming that licensing is the best response when comparing its costs and benefits against other options.

2.4.1 Stage 1 – considering whether licensing is appropriate

We applied Stage 1 to both the existing and potential obligations, using a pragmatic approach. Where an existing obligation *must be* included in the licence due to a legislative requirement, we found that it is required and moved on to Stage 2. Where an existing or potential obligation *may be* included or is *not required* to be included under legislation, we considered whether a licence obligation is necessary and appropriate to address the specific problem or risk. One of the key questions we asked was whether the same outcome would be achieved in the absence of a licence obligation.

2.4.2 Stage 2 – considering whether the licence is well designed

We applied Stage 2 to existing obligations only. In doing so, we considered whether the obligation meets the principles of a well-designed licence, including whether it:

- ▼ is outcome-focused rather than prescriptive
- ▼ is proportionate to the problem or risk being addressed
- ▼ does not duplicate other existing regulatory requirements
- ▼ requires only the minimum necessary reporting.

¹⁰ IPART, *A best practice approach to designing and reviewing licensing schemes*, prepared by PricewaterhouseCoopers, March 2013.

We also considered information from:

- ▼ previous operational audits of Sydney Water, including its compliance with its existing licence obligations
- ▼ information from other recent licence reviews, including our 2017 reviews of the Hunter Water and WaterNSW licences, and
- ▼ where relevant, examples of current good or best practice in the regulation and operation of utilities, in Australia and other countries.

2.4.3 Stage 3 – considering whether the licence can be administered effectively and efficiently

At this stage we have applied Stage 3 to the existing obligations only. This involved considering whether we can effectively monitor compliance against the obligation using a risk-based approach.

We consider all the existing licence obligations can be, and are, administered effectively and efficiently because we apply our risk-based compliance monitoring approach.¹¹ In general, we audit those licence clauses that are high risk with low level of compliance more frequently (for example audit every year) than licence clauses that are low risk with high level of compliance (audit once in the term of the licence). We also rely on Sydney Water's annual statement of compliance to determine whether we undertake an audit of some of the clauses.

When we audit a management system, such as an EMS that has been certified by a third party, we generally accept surveillance/certification reports from EMS-specialist auditors rather than including an audit of the EMS in our audit scope. This allows us to minimise duplication and the burden on Sydney Water.¹²

Where the licence obligations require Sydney Water to cooperate with certain government agencies, we monitor compliance through direct annual contact with NSW Health, EPA and WAMC¹³ to provide feedback on Sydney Water's performance.

We implement continuous improvement based on our internal reviews and by seeking feedback from Sydney Water and our independent auditors at the end of each audit. We also have our *Audit Guideline – Public Water Utilities* which sets our expectations regarding the conduct of operational audits, and we update it regularly.

We applied Stage 3 to the licence as a whole and therefore do not discuss our analysis of Stage 3 separately in the following chapters.

¹¹ Our approach to compliance is detailed in our Compliance and Enforcement Policy, December 2017.

¹² IPART, *Audit Guideline – Public Water Utilities*, June 2018.

¹³ We contact the Department of Industry – Water, which undertakes water resource management activities on behalf of WAMC.

2.4.4 Stage 4 – confirming that licensing is the best response

We will apply Stage 4 of the framework after we have considered all feedback in response to this Issues Paper and used that feedback to develop a set of options for the obligations in the 2019-2024 licence. This stage involves conducting a cost-benefit analysis of the options to confirm licensing is the best response and to select the best option.

We will consider different options to address a problem or risk once we have established that licensing is appropriate. In generating options we will consider a range of realistic and feasible options and analyse each option to determine a short-list. The process of determining a short-list may include reiteration or repeat analysis, and/or the development and refinement of already considered options. The options may range from specifying the required outcomes, the required standards or the processes to achieve the outcomes. Other more light-handed approaches could include:

- ▼ establishing co-operative relationships with stakeholders without specifying the outcomes, or
- ▼ reporting on certain information to increase transparency and increase stakeholder confidence.

We will undertake a detailed cost-benefit analysis after we have short-listed the options. The preferred option will be determined using that analysis.¹⁴

IPART seeks comments on the following

- 1 What are your views on whether we have applied the Best Practice Licensing Framework appropriately for this review?
- 2 Do you have any suggestions for how we can improve our effectiveness and efficiency in administering the licence?

2.5 Customer engagement should inform Sydney Water's views

We expect Sydney Water should have a strong and up-to-date understanding of its customers' preferences. Sydney Water is responsible for engaging with its customers to understand their views, priorities and needs, which should inform its decision-making and its submissions to this licence review.

Sydney Water could use its customer engagement to argue for proposals such as changes to service standards. Customers' willingness to pay would be a key consideration in reviewing the System Performance Standards.

Such customer engagement should be consistent with the following principles:

- ▼ **Relevant** – the utility targets its engagement at the issues it is seeking input on and makes the engagement relevant to the circumstances of the utility and its customers.
- ▼ **Representative** – a representative sample of customers potentially affected by the proposal is given a meaningful opportunity to participate and sufficient time to provide their views.

¹⁴ This is consistent with the approach in NSW Treasury, TPP 17-03, NSW Government Guide to Cost-Benefit Analysis, March 2017, p 10.

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- ▼ **Proportionate** – the utility conducts engagement that is proportionate to the potential impact on service and/or price and does not place an undue burden on participants.
 - ▼ **Objective** – the utility’s engagement is objective and not biased towards a particular outcome.
 - ▼ **Clearly communicated and accurate** – the utility provides clear and accurate information to customers during the engagement process. The utility presents information in a form that makes clear what the purpose of the engagement is; how the utility will use the results; any potential trade-offs between service and price; and the impacts (including cumulative impacts on services and/or bills) of the options being considered. Customers are provided with feedback on how the results of the customer engagement have informed the utilities’ position.¹⁵

¹⁵ These principles are also provided in IPART’s Guidelines for Water Agency Pricing Submissions, April 2018.

3 Licence structure

As the first step of our approach for this review, we considered the structure of the existing licence, to see whether it promotes transparency of Sydney Water's operations and ease of use.

We found that the existing licence structure does not provide stakeholders with a clear view of the scope of Sydney Water's operational activities, or logically group and sequence the existing clauses.

Our preliminary view is to change the structure of the amended licence so it better aligns with Sydney Water's operational activities, and group and sequence licence clauses in a more logical structure. Table 3.1 outlines our proposed amended structure, and indicates where the existing licence clauses would fit within this structure (assuming the amended licence retains the existing clauses).

We consider this proposed licence structure has the following benefits:

- ▼ makes it easier for stakeholders to understand Sydney Water's operations, identify their areas of interest, and locate the relevant licence clauses, and
- ▼ improves the efficiency and effectiveness of compliance and compliance monitoring for Sydney Water and IPART.

Our 2017 reviews of the Hunter Water and Water NSW licences led to changes in the licence structures for these large water utilities to better reflect the utilities' operational activities. As we are proposing a similar structure for Sydney Water's licence in this review, the adoption of this structure would result in a common licence structure for all large NSW public water utilities.

[Our preliminary view is that we should modify the existing licence structure to promote transparency of Sydney Water's operational activities and ease of use.](#)

IPART seeks comments on the following

- 3 Do you agree with our proposed amended licence structure?

Table 3.1 Proposed structure for Sydney Water’s amended licence (2019-2024)

Proposed new parts in the amended licence		Corresponding existing licence clauses (2015-2020)	
1 Licence context and authorisation	1.1 Objective of this Licence	1.7 Non-exclusive Licence	
	1.2 Licence authorisation	1.8 Availability of Licence	
	1.3 Stormwater Drainage System	1.9 Pricing	
	1.4 Term of this licence	10.1 End of Term Review	
	1.5 Licence amendment	11 Notices	
	1.6 Connection of Services		
2 Water conservation	3.2 Economic level of water conservation		
3 Supply services and performance standard	2.1 Drinking Water	4.2 System Performance Standards	
	2.2 Recycled Water	4.3 Response time for water main breaks	
	2.3 Fluoridation Code	4.4 Priority Sewerage Program	
4 Organisational systems management	4.1 Asset Management System	7.1 Quality Management System	
	6.1 Environment management		
5 Customer and stakeholder relations	3.1 Roles and Responsibilities Protocol	5.7 External dispute resolution scheme	
	5.1 Customer Contract	5.8 Code of conduct	
	5.2 Providing information	9.1 NSW Health	
	5.3 Consumers	9.2 Environment Protection Authority	
	5.4 Assistance Options for Payment Difficulties and Actions for Non-Payment	9.3 Water Administration Ministerial Corporation	
	5.5 Customer Council and Customer Council Charter	9.4 Fire and Rescue NSW	
6 Performance monitoring and reporting	6.2 Environmental indicators	8.3 Provision of information	
	8.1 Operational audits	8.4 Performance indicators and system performance standards	
	8.2 Reporting		
7 Definitions and interpretation	12.1 Definitions	12.2 interpretation	
Schedules	Schedule 1 Area of Operations	Schedule 3 Priority Sewerage Program	
	Schedule 2 Asset Management Framework	Schedule 4 Customer Contract	

Note: This table assumes that we will retain all the existing licence clauses for the purpose of demonstrating the potential transition to a new licence structure.

4 Licence context and authorisation

Licence context and authorisation is the first part of our proposed structure for the amended licence. This part of the licence acts as an introduction to the licence, setting out its broad purpose and scope. It includes clauses related to the following eight areas:

1. licence objectives
2. licence authorisation and stormwater drainage system
3. area of operations
4. term of this licence
5. end of term review
6. non-exclusive licence and availability of licence
7. supplying services to *Water Industry Competition Act 2006* (WIC Act) licensees, and
8. pricing.

These general clauses (with the exception of the clauses on the code of conduct with WIC Act licensees and pricing) provide authorisation or information or general context to the licence and require no or minimal compliance monitoring. As such we have reviewed these for their ability to meet the regulatory outcome intended to be delivered by the individual clause, as well as reviewing for currency and consistency. We have assessed the code of conduct with WIC Act licensee clause and the pricing clause using the approach set out in section 2.4. Our preliminary views and findings, where we have them, on each area are set out below.

4.1 Licence objectives

Any licence (or other regulatory instrument) should clearly set out its objectives. Ideally, the objectives should describe the outcomes the licence is intended to achieve. This would help stakeholders understand why specific obligations have been included in the licence. Sydney Water's existing licence includes one clause setting out its objective, which is shown in Box 4.1.

Box 4.1 Objective of the existing Licence

1.1.1 The objective of this Licence is to enable and require Sydney Water to provide the Services within its Area of Operations. Consistent with this objective, this Licence requires Sydney Water to:

- a) meet the objectives and other requirements imposed on it in the Act and other applicable laws;
- b) comply with the quality and performance standards specified in this Licence;
- c) recognise the rights given to Customers and Consumers; and
- d) be subject to Operational Audits.

Source: *Sydney Water Corporation Operating Licence 2015-2020.*

Our preliminary view is that this clause should be modified. We consider that this clause only describes why Sydney Water needs to have a licence (ie, to meet legislative requirements), and does not include what outcomes the licence is intended to achieve. We propose to modify the existing objective:

The objective of the licence is to authorise and require Sydney Water, within its area of operations, to supply water, provide sewerage services and stormwater drainage systems, and dispose of waste water, and to set efficient and effective terms and conditions, including quality and performance standards, balancing the requirements to protect public health, provide services to customers and meet the needs of the community as a whole.

[Our preliminary view is that we should modify the existing licence objective to also reflect the intended outcomes of the licence.](#)

IPART seeks comments on the following

- 4 Do you agree with our preliminary view to modify the existing licence objective to also reflect the intended outcomes of the licence? Do you support our proposed objective?

4.2 Licence authorisation and stormwater drainage clauses

The licence needs to authorise Sydney Water to carry out certain functions in connection with water, sewerage, stormwater and waste water.¹⁶ Sydney Water's existing licence includes one authorisation clause that "enable[s] and require[s]" Sydney Water to provide a range of "Services". That clause and the related definition of "Services" are shown in Box 4.2. "Services" is defined to include providing stormwater drainage systems, in respect of which the separate existing licence clauses shown in Box 4.3 are also relevant.

¹⁶ *Sydney Water Act 1994*, ss 5(2) and 12(1).

Box 4.2 Existing licence authorisation and definition of ‘services’

1.2.1 This Licence is granted to enable and require Sydney Water to provide, construct, operate, manage and maintain efficient, co-ordinated and commercially viable systems for providing the Services within the Area of Operations.

12.1 Definitions

Services means, subject to this Licence, any applicable law and any order made by the Governor under section 10(2) of the Act, the provision, construction, operation, management and maintenance by Sydney Water of systems and services for:

- a) storing and supplying water (including Recycled Water and Drinking Water);
- b) providing sewerage services;
- c) providing stormwater drainage systems; and
- d) disposing of wastewater.

Source: *Sydney Water Corporation Operating Licence 2015-2020.*

Box 4.3 Existing Stormwater Drainage System obligations

Stormwater Drainage System

1.3.1 Sydney Water must provide, operate, manage and maintain a Stormwater Drainage System as described in section 14(1)(b) of the Act, except to the extent that the Minister is satisfied under sections 14(4) and 14(5) of the Act that satisfactory arrangements have been made for the applicable Service to be provided by another appropriate body, including a council (within the meaning of the Local Government Act 1993 (NSW)).

1.3.2 Sydney Water may provide, construct, operate, manage and maintain efficient, co-ordinated and commercially viable Stormwater Drainage Systems and Services within the Area of Operations including for the purpose of increasing the capacity of the Stormwater Drainage System included in the business undertaking (referred to in Part 3 of the Act) transferred under Part 3 of the Act from the Water Board to Sydney Water as at the date of the transfer of the business undertaking.

Source: *Sydney Water Corporation Operating Licence 2015-2020.*

Our preliminary view is that the substance of, and intention behind, these clauses are sound. However, we are considering whether the drafting of these existing clauses could be made clearer. In particular, it may be possible to refine the existing drafting to make clearer that Sydney Water is **authorised**, but not **required**, to construct stormwater drainage systems.

Our preliminary view is that we should make minor drafting amendments to the existing clauses to clearly differentiate between the ‘required’ and the ‘permitted’ functions of Sydney Water relating to stormwater drainage systems.

IPART seeks comments on the following

- 5 Do you agree with our preliminary view that the substance of, and intention behind, the licence authorisation clauses are sound? Do you agree that the existing drafting should make clearer that Sydney Water is authorised, but not required, to construct stormwater drainage systems?

4.3 Area of operations

The existing licence authorisation refers to Sydney Water’s area of operations. To define the area of operations, Schedule 1 of the existing licence lists the local government areas included in Sydney Water’s area of operations (Box 4.4). The information in this schedule is out-of-date, as several of the listed councils have merged to form new local government areas since the licence was drafted. In addition, further clarification may be needed, as in some cases only part of the local government area is included in the area of operations.

Box 4.4 Existing area of operations

Local government areas

▼ Ashfield	▼ Ku-ring-gai	▼ Strathfield (Municipal)
▼ Auburn (City)	▼ Lane Cove (Municipal)	▼ Sutherland (Shire)
▼ Bankstown (City)	▼ Leichhardt (Municipal)	▼ Sydney (City)
▼ Blue Mountains (City)	▼ Liverpool (City)	▼ The Council of the City of Canada Bay
▼ Burwood	▼ Manly	▼ The Council of the City of Botany Bay
▼ Camden	▼ Marrickville	▼ The Council of the Municipality of Hunter’s Hill
▼ Campbelltown (City)	▼ Mosman (Municipal)	▼ The Council of the Shire of Hornsby
▼ Canterbury (City)	▼ Municipality of Kiama	▼ The Hills (Shire)
▼ Council of the City of Ryde	▼ North Sydney	▼ Warringah
▼ Fairfield (City)	▼ Parramatta (City)	▼ Waverley
▼ Hawkesbury (City)	▼ Penrith (City)	▼ Willoughby (City)
▼ Holroyd (City)	▼ Pittwater	▼ Wingecarribee (Shire) (Part)
▼ Hurstville (City)	▼ Randwick	▼ Wollondilly (Shire)
▼ Kogarah (City)	▼ Rockdale (City)	▼ Wollongong (City)
	▼ Shellharbour (City)	▼ Woollahra (Municipal)

Source: Sydney Water Corporation Operating Licence 2015-2020, Schedule 1 (part of).

Our preliminary view is that Schedule 1 of the amended licence should include an updated list of local government areas, as well as a map that clearly shows the boundaries of Sydney

Water's area of operations. This will make it easier for stakeholders to identify what localities are included in this area.

Our preliminary view is that we should amend Schedule 1 to update the local government areas included in Sydney Water's area of operations and add a map clearly showing the boundaries of the area of operations.

IPART seeks comments on the following

- 6 Do you agree with our preliminary view to update the local government areas included in the area of operations and add a map to the licence?

4.4 Term of the licence

IPART typically undertakes Sydney Water's end of term licence review every five years and its price review every four years. The maximum duration of the licence is five years.¹⁷ The existing licence includes one clause setting out the term of the licence, shown in Box 4.5.

Box 4.5 Existing term of the licence

1.4.1 The term of this Licence is five years from the Commencement Date.

Source: Sydney Water Corporation Operating Licence 2015-2020.

Our preliminary view is that the licence term of the amended licence should be five years because that is the maximum allowable duration.¹⁸ We will consider different price determination durations in our next Sydney Water price review, including options to avoid concurrent reviews in 2023-24.¹⁹

A price determination duration could be set between one and five years, depending on the circumstances. We seek stakeholder views on how to best sequence the licence and price reviews, and costs and benefits for shortening or lengthening the licence and/or determination periods. In making our decision, we would typically consider the following issues:

- ▼ confidence we can place in the utility's forecasts
- ▼ risk of structural changes in the industry
- ▼ need for price flexibility and incentives to increase efficiency
- ▼ need for regulatory certainty and financial stability, and
- ▼ benefits of aligning the determination period with the term of the licence.

¹⁷ *Sydney Water Act 1994*, s 17.

¹⁸ The *Best practice Licensing Framework* considers that the duration of a licence should be the maximum possible.

¹⁹ We expect to commence our next review of Sydney Water's prices in mid-2019, with new prices to be determined and commenced on 1 July 2020.

Our preliminary view is that we should recommend a 5-year licence term for the amended licence.

IPART seeks comments on the following

- 7 Do you agree with our preliminary view for a 5-year licence term? Do you have any views regarding the sequencing of licence and price review cycles?

4.5 End of term review

The existing licence provision does not specify who should undertake the end of term review of the licence. IPART has been undertaking the end of term reviews since 2000²⁰ and has the function of making recommendations²¹ to the Minister about licence amendment, which is generally required as a result of an end of term review.

The existing licence includes two clauses setting out the end of term review obligations for the person undertaking the review and for Sydney Water, shown in Box 4.6.

Box 4.6 Existing end of term review clauses

10.1.1 It is anticipated that a review of this Licence will commence in the first quarter of 2019 to investigate:

- a) whether this Licence is fulfilling its objectives; and
- b) any issues which have arisen during the term of this Licence, which may affect the effectiveness of this Licence;

(the End of Term Review).

10.1.2 Sydney Water must provide the person undertaking the End of Term Review with such information as is reasonably required to enable the person to undertake the End of Term Review. Sydney Water must provide that person with such information as the person requests within a reasonable time period of receiving that request.

Source: Sydney Water Corporation Operating Licence 2015-2020.

Our preliminary view is that the amended licence should specify IPART as the person who will undertake the end of term review of the licence. This would provide additional transparency in the review process, and be in line with IPART's function of making recommendations to the Minister for licence amendments.

Our preliminary view is that we should amend the existing clauses on the end of term review of the licence to specify IPART as the person who will undertake this review.

IPART seeks comments on the following

- 8 Do you agree with our preliminary view to specify IPART as the person to undertake the end of term licence review?

²⁰ IPART, *Review of the Operating Licences for Sydney Water Corporation and the Sydney Catchment Authority, Issues Paper*, June 1999.

²¹ Sydney Water Act 1994, s 28(1)(a).

4.6 Non-exclusive licence and availability of licence

The existing licence includes one clause on the non-exclusive licence requirement and another clause on the availability of licence, shown in Box 4.7.

We have identified no issues with these clauses. Although the Act does not specifically require these clauses to be included in the licence, we consider they give context to the licence as they describe the scope of Sydney Water's operation and how any person can get a copy of the licence. Therefore, our preliminary view is that they should be retained. We may make editorial changes to these clauses when we draft the proposed licence.

Box 4.7 Existing non-exclusive licence and availability of licence clauses

Non-exclusive Licence

1.7.1 This Licence does not prohibit any other person from providing Services in the Area of Operations that are the same as, or similar to, the Services, if the person is lawfully entitled to do so.

Availability of Licence

1.8.1 Sydney Water must make a copy of this Licence available to any person, free of charge:

- a) on its website for downloading; and
- b) upon request made to the Contact Centre.

Source: Sydney Water Corporation Operating Licence 2015-2020.

Our preliminary view is that we should retain the existing licence clause that clarifies that the licence does not prohibit any other person from providing services in Sydney Water's area of operations (the non-exclusive licence clause), and also retain the existing licence clause that require Sydney Water to make a copy of its licence available to any person free of charge (the availability of licence clause).

IPART seeks comments on the following

- 9 Do you agree with our preliminary view to retain the existing licence clause that clarifies that the licence does not prohibit any other person from providing services in Sydney Water's area of operations (the non-exclusive licence clause), and also retain the existing licence clause that require Sydney Water to make a copy of its licence available to any person free of charge (the availability of licence clause)?

4.7 Providing services to WIC Act licensees

Around a decade ago, the *Water Industry Competition Act 2006* (WIC Act) and *Water Industry Competition (General) Regulation 2008* (WIC Regulation) were introduced to encourage private sector participation and competition in the supply of water and provision of sewerage services in NSW. This regulatory framework enabled a new type of water customer to emerge: WIC Act licensees. WIC Act licensees are private water utilities that can provide

drinking water, recycled water and/or sewerage services to end-use (or 'retail') customers within their defined areas of operations.

The WIC Act and WIC Regulation establish an access regime (WIC Act Access Regime). Outside any obligation under the WIC Act Access Regime,²² Sydney Water currently has no obligation to provide any services to WIC Act licensees (unless they own the property to be serviced by Sydney Water),²³ even though some rely solely on Sydney Water's drinking water or sewerage services to provide services to their end-use customers. WIC Act licensees have not pursued access under the WIC Act Access Regime to date. This could be because, in most cases, the regime would not apply to the supply of water and sewerage services (Box 4.8).

Box 4.8 WIC Act Access Regime

The WIC Act Access Regime has the objective of promoting the economically efficient use, operation of, and investment in, significant water industry infrastructure, thereby promoting effective competition in upstream or downstream markets.^a The WIC Act Access Regime requires service providers of certain defined infrastructure services to provide access to third parties, including WIC Act licensees.

The regime applies to infrastructure services that are within a scheduled area (including Sydney Water's area of operations) and are the subject of either a coverage declaration or an access undertaking under the regime.^b In most cases, the supply of water and sewerage services would not fall within the WIC Act Access Regime. This is because 'infrastructure service' is defined to exclude the supply of goods (including the supply of water or sewerage), except to the extent to which it is 'a subsidiary but inseparable aspect of the storage, conveyance or reticulation of water or sewage.'^c

a Section 21, WIC Act.

b Part 3, WIC Act.

c Section 3 and Dictionary, WIC Act.

Sydney Water's existing licence does not specify any service standards or customer protection measures, or impose any requirements to provide information for WIC Act licensees (Box 4.9) who do not own the property to be serviced by Sydney Water.

²² There are two ways in which the terms and conditions for access to a declared service may be set under the WIC Act Access Regime: First, service providers, such as Sydney Water, may give voluntary access undertakings setting out the terms and conditions on which they will provide access to declared services. Alternatively, the service provider and access seeker may negotiate an agreement setting out the terms of access; if no such agreement can be reached, the terms are determined by IPART following arbitration.

²³ We recognise that most WIC Act licensees do not own the properties on which they provide services.

Box 4.9 Existing licence obligations to provide services exclude WIC Act licensees

As the clauses below indicate, the existing licence requires Sydney Water to provide drinking water and sewerage services to properties only. This means the obligation covers property owners, but not WIC Act licensees (unless they own the property to be serviced by Sydney Water). In addition, whereas property owners are protected by provisions in the deemed Customer Contract, there are no specified service standards, customer protection measures or requirement to provide information for WIC Act licensees.

1.6 Connection of Services

1.6.1 Subject to any applicable laws, Sydney Water must ensure that Drinking Water and Wastewater Services are available on request for connection to any Property situated in the Area of Operations.

1.6.2 Connection to Sydney Water's systems for the supply of Services relating to Drinking Water and Wastewater Services is subject to any conditions that Sydney Water may lawfully determine to ensure that safe, reliable and financially viable supply of its Drinking Water and Wastewater Services to Properties situated in the Area of Operations in accordance with this Licence.

Source: IPART; Sydney Water Corporation Operating Licence 2015-2020.

The existing licence includes one relevant clause (Box 4.10), which requires Sydney Water to cooperate with WIC Act licensees seeking to establish a code of conduct dealing with the division of responsibilities between WIC Act licensees and Sydney Water.

Box 4.10 Existing code of conduct obligation

5.8 Code of conduct

Sydney Water must use its best endeavours to co-operate with each Licensed Network Operator and Licensed Retail Supplier within the Area of Operations that seeks to establish with Sydney Water a code of conduct of the kind referred to in clause 25 of the WIC Regulation.²⁴

Source: Sydney Water Corporation Operating Licence 2015-2020.

To the extent that WIC Act licensees compete with Sydney Water to provide services to end-use customers, there is a risk that Sydney Water may refuse to provide services to WIC Act licensees or provide services in a way that may not be optimum for the WIC Act licensee's operations. This risk may act as a barrier discouraging potential competitors from entering the market to supply water or sewerage services and/or reduce the ability of WIC Act licensees (or potential competitors) to effectively compete with Sydney Water.

²⁴ Cl. 25 of the WIC Regulation provides for the Minister to establish a code of conduct in relation to the respective responsibilities of licensed network operators, licensed retail suppliers, and public water utilities (such as Sydney Water). The code may provide for matters including responsibility for water quality, liability in the event of infrastructure failure, and responsibility for handling customer complaints. To date, the Minister has not established such a code of conduct.

As part of this review, we are considering whether it is necessary to include further obligations in Sydney Water’s amended licence to reduce barriers to entry and further enable competition.

4.7.1 Licence obligation to provide services to WIC Act licensees may be necessary and existing measures may not be sufficient

The existing licence requires Sydney Water to provide drinking water and sewerage services to **properties only** (Box 4.9). This means that Sydney Water is required to provide those services to property owners, but not WIC Act licensees who do not own property that they service.

WIC Act licensees are required, under their licences, to establish a code of conduct with the public water utility that supplies them with the water or sewerage services where there are connections with the public water utility’s infrastructure. The existing code of conduct obligation (clause 5.8) in Sydney Water’s licence (Box 4.10) aims to facilitate this, by ensuring that Sydney Water is required to cooperate with the WIC Act licensees in establishing a code of conduct. However, it does not impose any obligation on Sydney Water to provide water or sewerage services to WIC Act licensees. Therefore, if the parties fail to negotiate a mutually satisfactory code of conduct, there is a risk that Sydney Water will not provide those services to a WIC Act licensee, or will provide services that are suboptimal for a WIC Act licensee’s operations.

In its submission to our 2017 Hunter Water licence review, Sydney Water said that a licence obligation requiring Hunter Water to service WIC Act licensees is not necessary because other legislation already addresses this risk. In particular, it argued that “the *Competition and Consumer Act 2010* (Cth) is already sufficient to facilitate competition and avoid a refusal by the public utility to supply wholesale services”. It claimed that it “has never refused service to WIC Act licensees” and that Hunter Water “similarly has no history of refusing services”. It further argued that “duplicating obligations in an operating licence is not optimal nor regulatory best practice”.²⁵

Our recent audit confirms that Sydney Water has established codes of conduct with WIC Act licensees on request.²⁶

There are two potentially relevant legislative protections for WIC Act licensees seeking to negotiate with Sydney Water:

- ▼ **Misuse of market power prohibition:** Section 46 of the Competition and Consumer Act provides that a corporation with a substantial degree of power in a market must not engage in conduct that has the purpose or effect of substantially lessening competition in that or any other market in which it supplies or acquires goods or services.²⁷

²⁵ Sydney Water submission to IPART Draft Hunter Water Operating Licence 2017-2022, March 2017, p 4.

²⁶ IPART, *Sydney Water Corporation Operational Audit 2016-17*, December 2017.

²⁷ This section of the Competition and Consumer Act was recently significantly amended by the *Competition and Consumer Amendment (Misuse of Market Power) Act 2017*, with changes taking effect from November 2017. A key change was removing the old ‘proscribed purposes’ to replace it with the new formulation which targets conduct that has the purpose or effect of substantially lessening competition. The new s. 46 is untested in its current form.

- ▼ **WIC Act Access Regime:** In 1993, the Hilmer Committee²⁸ recommended the creation of a special legislative framework for the purposes of enabling third party access to ‘essential facilities’. Hilmer considered that a special framework provides greater certainty and timeliness of outcome than section 46 for parties wanting to connect to an incumbent firm’s network and to use services provided by it for sales into a downstream (or upstream) market. The national access regime for significant infrastructure facilities is now Part IIIA of the Competition and Consumer Act. There are also industry-specific third party access regimes, including the WIC Act Access Regime (Box 4.8). The WIC Act Access Regime has been certified as effective under the Competition and Consumer Act for 10 years until August 2019.²⁹

These protections may not be sufficient to overcome the barriers to entry that WIC Act licensees face or provide the practical assistance that they may need to compete. For example:

- ▼ As Hilmer recognised, the misuse of market power prohibition may not be the most appropriate protection against a denial of access. Success in a s. 46 action does not generally result in an enforceable obligation to provide services. Further, those affected by a corporation’s market power may lack the resources to pursue an action under s. 46, which can be very time-consuming and resource-intensive. We understand that WIC Act licensees seeking to compete with Sydney Water often have very short timeframes for responding to tenders, whereas it may take years to resolve a s. 46 action.
- ▼ In many cases, the services to which WIC Act licensees require access are not covered by the WIC Act Access Regime, which is limited to infrastructure services and does not generally extend to water and sewerage services (Box 4.8). For WIC Act licensees, the expense of pursuing access under the WIC Act Access Regime may be prohibitive; access disputes are often very lengthy and resource-intensive.

In this context, there may be a need to implement transitional measures, beyond these existing legislative protections, to assist WIC Act licensees to enter the market and compete.

Our 2017 Hunter Water licence review led to the addition of an obligation on Hunter Water to provide water and sewerage services to WIC Act licensees within its area of operations.³⁰ Hunter Water retains the power to impose any lawful conditions it sees fit on making available of services for WIC Act licensees to ensure the safe, reliable and financially viable supply of the services.³¹ This obligation removes the risk of Hunter Water refusing to deal with WIC Act licensees.

We seek feedback on whether it is appropriate to include a similar obligation in Sydney Water’s amended licence to provide water and sewerage services to WIC Act licensees within its area of operations. This option is discussed further in section 4.7.4 as ‘Option 1’.

²⁸ Hilmer, F., Rayner, M., Taperell, G., *National Competition Policy*, Commonwealth Government Printer, 1993, pp 242-243.

²⁹ Minister for Competition Policy and Consumer Affairs, Decision on Effectiveness of Access Regime under section 44N dated 13 August 2009. During the period of certification, the services to which it applies cannot be declared under Part IIIA or made subject to an access undertaking under Part IIIA: Sections 44F(1)(a) and 44ZZA(3AA), Competition and Consumer Act.

³⁰ Clause 1.5.2 of Hunter Water’s operating licence requires it to provide ‘Services’, as defined to mean supplying water, providing sewerage services, and disposing of wastewater by Hunter Water (clause 7).

³¹ Clause 1.5.3, Hunter Water operating licence.

4.7.2 Experience in other countries and industries is that obligations to negotiate in good faith have not been sufficient

The United Kingdom has legislation similar to the WIC Act to facilitate the entry of wholesale customers³² to the England and Wales water market, and thus aims to promote competition in the market. In the early 1990s the UK introduced legislation to facilitate the efficient entry of new water and sewerage service providers, referred to as ‘Appointments’. The New Appointments and Variation (“NAV”) regime represent competition ‘for the market’, that is a private firm replaces the incumbent service provider, on a site-specific basis, for delivering onsite services (and sometimes for the entire value chain providing water and/or sewerage services). It has typically emerged as an option for providing new infrastructure and services for new housing and mixed developments. Similar to the obligation to use its best endeavours to cooperate with WIC Act licensees (the code of conduct clause) in Sydney Water’s existing licence, the incumbent utilities in this market are required only to negotiate bulk supply agreements ‘in good faith’ with potential new entrants.

A recent review by the UK water regulator, Ofwat, suggests this obligation has not been sufficient to prevent strategic behaviour by incumbents that creates barriers to entry for potential competitors (Box 4.11). Regulators of other Australian network utility industries, including the electricity network and telecommunications industries, have made similar findings.^{33,34}

³² We define wholesale customer as any person who purchase a service from incumbent water utility to provide its end-use customers the same service or a close substitute to one provided by the incumbent water utility.

³³ The Australian Energy Market Commission (AEMC) found that the previous National Electricity Rules did not provide connecting parties with sufficient bargaining power to negotiate a better connection process or outcome than what is offered by the incumbent Transmission Network Service Providers. AEMC, *National Electricity Amendment (Transmission Connection and Planning Arrangements) Rule 2017*, Rule Determination, 23 May 2017, p ii.

³⁴ The Productivity Commission (PC) observed that the telecommunications industry was dominated by horizontally and vertically integrated incumbents and there was considerable scope for incumbents to engage in anti-competitive conduct because competitors in downstream markets depend on access to networks or facilities controlled by the incumbents. Furthermore, the possibility of anti-competitive cross-subsidies by incumbents from non-competitive markets to markets in which competition exists or is emerging is a particular threat to the establishment of a competitive environment. PC, *Telecommunications Competition Regulation, Inquiry Report*, Report No.16, 20 September 2001, p 163.

Box 4.11 Ofwat's review of the New Appointments and Variation regime

In a study for Ofwat's review of New Appointments and Variation (NAV) regime, Frontier Economics found that a major reason for limited growth of the NAV sector was the strategic behaviour of incumbents, which appear to have imposed barriers to entry through non-price and pricing approaches. Frontier cited the following examples of non-price barriers:

- ▼ difficulties by NAVs (prior to and during the application process) obtaining effective, efficient, fair, timely, transparent information of input services that they require
- ▼ difficulties in obtaining from an incumbent timely point of connection information and connection and reinforcement cost information
- ▼ time-consuming and unnecessary negotiations of individual bulk supply agreements, and
- ▼ strategic barriers due to the nature of the vertical relationship that gives rise to incentives for incumbents to 'foreclose' on new entrants.

Ofwat's response to the review findings was to give incumbent utilities an opportunity to 'step-up' and take action to address these concerns before resorting to formal regulatory tools.

Source: Frontier Economics, *Study of the NAV Market, Final report prepared for Ofwat*, 26 May 2017; Ofwat, *Study of the market for new appointments and variations – summary of findings and next steps*, 10 October 2017.

4.7.3 Examples of potential non-price barriers to competition

Our 2017 review of wholesale water and sewerage prices for Sydney Water and Hunter Water developed a framework for regulating the wholesale prices these utilities charge wholesale customers, which include some WIC Act licensees. We identified that to support effective competition, there is a need to consider whether factors other than prices (ie, non-price terms and conditions) need to be regulated.

Examples of potential non-price barriers to competition may include a lack of specified minimum service standards, lack of customer protection measures once a services agreement is established, and lack of information provision.

Lack of specified minimum service standards

The lack of specified minimum service standards could create uncertainty in the cost of servicing retail customers. WIC Act licensees (or potential competitors) need to negotiate service standards with Sydney Water for each of their schemes to determine the cost of servicing. There are no timing requirements or prescribed procedures for the negotiation process. This may increase the time and cost for WIC Act licensees to deliver services to prospective retail customers. Water service standards could be defined by parameters such as water flow rate, pressure, quality, reliability, continuity and availability of water at a particular time. Sewerage service standards could be defined by parameters such as discharge rate and quality of treated sewage.

Lack of customer protection measures

Once a WIC Act licensee becomes Sydney Water's customer through the establishment of a code of conduct, usually in the form of a utility services agreement, a WIC Act licensee may benefit from specific protections such as complaints handling procedures, dispute resolution process, payment terms or other measures to manage its business relationship with Sydney

Water. The WIC Act licensee may not have the same customer protection as a large commercial customer because the utility services agreement is not a standard-form contract and is individually negotiated between the two parties.

Lack of information provision

Sydney Water has vastly greater information about the network, cost to serve and other technical matters than the potential competitors. This may affect both WIC Act licensees and any other potential competitors seeking to enter the market. For example,

- ▼ Lack of adequate information may impede potential competitors from being able to evaluate their business model and technical feasibility of their proposed scheme.
- ▼ Insufficient information could frustrate and impede the capacity of existing WIC Act licensees in their endeavours to explore new service options, or to expand their existing operations.
- ▼ Information asymmetry could constrain new competitors who wish to negotiate a supply agreement, or existing WIC Act licensees who are renegotiating an agreement, to perform their negotiations with sufficient confidence and certainty.

Information that could enable a WIC Act licensee or a potential competitor to make efficient decisions may include:

- ▼ Sydney Water's growth servicing plans
- ▼ Sydney Water's long run marginal cost of water and sewerage supply, by supply system, to inform potential negotiations relating to avoided costs arising to Sydney Water from a WIC Act licensee's recycled water plant, and
- ▼ information about the works required to make a connection to Sydney Water's assets.

4.7.4 Potential licensing options for stakeholder consideration

The amended licence could include a new obligation on Sydney Water to provide services to WIC Act licensees. We may also consider whether the amended licence should include minimum service standards, customer protection measures, and/or obligations to provide information to support the development of competition.

We seek stakeholder comment on four possible options for new obligations:

- ▼ Option 1: Obligation to provide services without specifying service standards
- ▼ Option 2: Obligation to provide services at minimum service standards
- ▼ Option 3: Obligation to negotiate services, supported by dispute resolution if negotiations fail
- ▼ Option 4: Obligation to provide services at minimum service standards and an obligation to negotiate

A range of regulatory instruments may be available if we proceed with any of the options outlined above, including a new licence authorisation, a new deemed customer contract for WIC Act licensees or an industry-wide code of conduct.

In addition, we have identified potential criteria we could use to evaluate the four options and determine the best response. Lastly, we have identified the need for information from stakeholders to assist us in further considering obligations on WIC Act licensees. Each of these options and other matters are discussed further below.

Option 1: Obligation to provide services without specifying service standards

The first option that we could consider is to extend the licence authorisation to include an obligation to provide water and sewerage services to WIC Act licensees, similar to the obligation in the Hunter Water licence.³⁵ For example:

- ▼ Subject to Sydney Water continuing to comply with any applicable law, Sydney Water must provide the Services on request to any WIC Act licensee for ultimate end-use within the Area of Operations, where that WIC Act licensee is connected to, or where a connection is available in respect of that WIC Act licensee to:
 - in the case of supply water, the Water Supply System, and
 - in the case of providing sewerage services and/or disposing of Wastewater, the Sewerage System.
- ▼ Sydney Water may impose any lawful conditions it sees fit on the making available of Services under this clause, to ensure the safe, reliable and financially viable supply of the Services in accordance with this Licence.

The inclusion of clauses like these, together with retaining the existing obligation on Sydney Water to use best endeavours to cooperate with each WIC Act licensee that seeks to establish a code of conduct with it, could ensure Sydney Water negotiates suitable service standards with WIC Act licensees. This option could also protect Sydney Water's interests, as it would be able to deny services to a WIC Act licensee if it was not financially viable to deliver the services.

Option 2: Obligation to provide services at minimum service standards

The second option that we could consider is to include new obligations on Sydney Water to provide water and sewerage services to WIC Act licensees or potential competitors and to meet specified minimum service standards for these customers.

One benefit of this option may be that it would eliminate the need for WIC Act licensees or potential competitors to negotiate with Sydney Water for a minimum service standard. Disadvantages may include that this is a 'take it or leave it' option where the opportunity for negotiation is limited. Alternatively, WIC Act licensees may not see value in having minimum service standards and may prefer to negotiate.

Option 3: Obligation to negotiate services, supported by a dispute resolution process if negotiations fail

A third option that we could consider is to prescribe the processes Sydney Water must follow and the information it must provide in negotiating to supply water and sewerage services to a WIC Act licensee or a potential competitor, without imposing an obligation to those services. This option could be supported by a dispute resolution process, such as arbitration, if the parties were unable to agree on conditions of service.

³⁵ See Hunter Water Operating Licence, cl. 1.5.2 and cl. 1.5.3.

The benefits of this option could be that Sydney Water and WIC Act licensees or potential competitor would have the flexibility to negotiate and agree on commercial terms. The two parties could negotiate the service level requirements, customer protection measures and pricing.

Option 4: Obligations to provide services at minimum service standards and to negotiate

We could consider including both an obligation on Sydney Water to provide water and sewerage services at minimum service standards and an obligation to negotiate using prescribed processes if the WIC Act licensee or potential WIC Act licensee seeks higher service standards from Sydney Water.

The benefits of this option may be that it would provide WIC Act licensees or potential competitors with confidence that they would receive services set at the minimum level specified, and that they could rely on prescribed processes of negotiation for a higher service standard if required.

Option evaluation criteria

In evaluating the options, our preliminary view is that we would assess the extent to which they promote the long-term interests of end-users of water and sewerage services.

In doing so, we would have regard to the extent to which each option meets the objectives of:

- ▼ **Promoting competition in markets for the services, or services provided by means of those services.** Including reducing barriers to entry and promoting standards of quality, reliability and safety of the services.
- ▼ **Encouraging the economically efficient use of, and economically efficient investment in, infrastructure by which the services are supplied.** This may include improving transactional efficiency (reducing cost of negotiation, information search, developing contracts or other aspects) and regulatory efficiency (reducing the costs for regulation).³⁶

We anticipate that we would have to make trade-offs between some of these objectives in promoting the long-term interests of end-users in selecting the preferred regulatory response.

We would also need to ensure the regulatory response is proportionate to the size of the identified problem and does not have any unintended, negative consequences. We would consider addressing the greatest barriers to entry to maximise the beneficial outcomes.

Input we need from stakeholders

We need stakeholder inputs to inform our next steps in considering the appropriate obligations on Sydney Water to provide water and sewerage services to WIC Act licensees or potential competitors. These steps are to:

- ▼ assess whether licence changes are required to remove barriers to competition

³⁶ Objectives adapted from telecommunications access regime in section 152AB of the Part XIC of the Competition and Consumer Act.

- ▼ if so, carefully consider the design and administration of the appropriate licence conditions, and
- ▼ confirm that licensing is the best response by assessing the costs and benefits of various regulatory and non-regulatory options.

We particularly seek the following information from stakeholders, especially from WIC Act licensees and potential competitors with experience in negotiating services provision with Sydney Water.

Input we need from stakeholders for option evaluation

1. Costs and/or benefits (quantitative and qualitative) in negotiating a services agreement with Sydney Water. Is there any evidence of Sydney Water exercising market power to deter potential competitors?
2. Number of services agreements that WIC Act licensees and Sydney Water have negotiated to date. How many services agreements might be required in the next five years?
3. Costs and/or benefits (quantitative and qualitative) in applying prescribed negotiation processes to negotiating a service agreement. Would prescribed processes be of benefit or hindrance? What are your experiences in the water or other comparable industries?
4. Costs and/or benefits (quantitative and qualitative) in applying minimum service standards similar to the existing standards in the Customer Contract for property owners. What are the situations where a WIC Act licensee or a potential competitor may need higher or lower service standards from Sydney Water?
5. Costs and/or benefits (quantitative and qualitative) in Sydney Water providing relevant information to WIC Act licensees or potential competitors. What kind of information would WIC Act licensees or potential competitors require to assess the technical feasibility and cost of servicing their end-use customers? From your experiences, are you able to obtain the required information from Sydney Water in a timely manner?
6. Are there any other barriers for potential competitors to enter the market? What are the extent of such barriers, in stakeholders' experience?

IPART seeks comments on the following

- 10 Should Sydney Water be obliged to provide water and sewerage services to WIC Act licensees? What would be the long-term benefits to end-use customers?
- 11 What are your views on imposing licence obligations on Sydney Water to service WIC Act licensees or potential competitors, such as specifying minimum service standards, prescribing a negotiation process with or without a dispute resolution process, and requiring Sydney Water to disclose certain information? What are the long-term benefits to end-use customers?
- 12 What are your views on the four options presented in the Issues Paper to include a new obligation on Sydney Water to provide services to WIC Act licensees and the evaluation criteria to assess these options? Do you have any inputs relevant to our evaluation of options for licence obligations?

4.8 Pricing

The existing licence includes one clause which sets out Sydney Water's obligations to set prices subject to the terms of the licence, the Act and IPART's price determinations, shown in Box 4.12. Our preliminary view is that we should maintain the existing pricing obligations. This reflects our preliminary findings that:

- ▼ the Act requires licence obligations on pricing, and
- ▼ the existing pricing obligation is well designed.

Box 4.12 Existing Pricing obligation

1.9.1 Sydney Water must set the level of fees, charges and other amounts payable for its Services subject to the terms of this Licence, the Act and the maximum prices and methodologies for fixing maximum prices determined from time to time by IPART under the IPART Act.

Source: *Sydney Water Corporation Operating Licence 2015-2020*.

4.8.1 The Act requires licence obligations on pricing

The Act states that Sydney Water's licence is to include terms and conditions to ensure that Sydney Water's systems and services meet quality and performance standards specified in the licence on pricing.³⁷ Therefore the amended licence must include pricing clauses.

4.8.2 Existing pricing obligation is well designed

The existing pricing obligation – which requires Sydney Water to set prices subject to the terms of the licence, the Act and IPART's price determinations is well designed. The obligation is clear, and is aligned to the Act and IPART's price determinations.

In recent years, Sydney Water has self-reported a number of pricing non-compliances. The impact of the pricing non-compliances has been minor and was adequately addressed through our operational audits. For example, in 2016-17 Sydney Water:³⁸

- ▼ undercharged the substance charges for commercial trade waste customers because these customers were charged to two decimal places instead of three
- ▼ overcharged 43 customers who requested asset construction details by 60 cents per plan
- ▼ collected developer charges without a registered Development Servicing Plan (DSP) in place and without Treasury approval to charge a price less than the maximum price under the relevant method for the Hoxton Park recycled water scheme, and
- ▼ collected developer charges without a registered DSP in place and without seeking Treasury approval to charge a price less than the maximum price under the relevant method for the Oran Park/Turner Road recycled water scheme.

³⁷ *Sydney Water Act 1994*, s 14(1)(c).

³⁸ Sydney Water declared a non-compliance in relation to clause 1.9.1 prior to our 2017 operational audit in its Statement of Compliance, 24 August 2017.

Sydney Water has rectified all of the non-compliances it self-identified in 2016-17, and is making progress towards addressing our audit recommendation to develop auditable processes for the annual updating of prices where these currently do not exist. ³⁹

Our preliminary view is that we should maintain the existing pricing obligation in the licence, which requires Sydney Water to set prices subject to the terms of the licence, the Sydney Water Act and IPART's price determinations.

IPART seeks comments on the following

13 Do you agree with our preliminary view to maintain the existing pricing obligation?

³⁹ Sydney Water, *Progress report on implementation of recommendations from 2016-17 Operational Audit Report*, provided to IPART on 29 March 2018.

5 Water conservation

Water conservation is the second part of our proposed structure for the amended licence. Sydney Water supplies over 1.4 billion litres of water to its customers every day.⁴⁰ Obligations on water conservation are intended to address the risk that if Sydney's water supply and demand balance is not managed effectively, customers might have to pay for more supply augmentation projects or face water restrictions.

The existing licence includes seven clauses that set out Sydney Water's obligations related to water conservation. These include meeting prescribed water usage and water leakage targets until such time as it has developed an approved method for determining its economic level of water conservation (ELWC method), and used this method to develop a water conservation program, plus associated reporting obligations. The existing licence specifies that when this program is in place, it will replace the prescriptive targets (Box 5.1).⁴¹

We have assessed these obligations, using the approach set out in section 2.4. Our preliminary view is that we should maintain the obligations requiring Sydney Water to use the ELWC method to develop a water conservation program and report to us on the program, as well as add new obligations to review the ELWC method and report to us any changes to the method and their implications. We also consider the obligations to develop an ELWC method and meet prescriptive targets should be removed as they are no longer necessary.

This view is based on our preliminary findings that:

- ▼ although the Act does not specifically require licence obligations on water conservation, licence obligations on Sydney Water to undertake an economic approach to water conservation are necessary to ensure that Sydney Water's efficient water conservation activities help achieve the policy objectives of the Metropolitan Water Plan.
- ▼ the existing ELWC method obligations are mostly well designed, but contain some obligations that are completed and so should be removed.

⁴⁰ Sydney Water, Water Supply Service Updates, [online] Available: <https://www.sydneywater.com.au/SW/water-the-environment/how-we-manage-sydney-s-water/water-supply-service-updates/index.htm>, accessed on 28 May 2018.

⁴¹ Section 3 of the *Sydney Water Corporation Operating Licence 2015-2020* is titled 'Water Quantity', which we propose to refer to as 'Water conservation' in the amended licence.

Box 5.1 Existing water conservation obligations

- 3.2.1 By 1 November 2015, Sydney Water must submit to IPART (for IPART's approval) a report outlining Sydney Water's approach to, and principles for, developing a methodology for determining its economic level of water conservation, including (at a minimum) each of the following elements of water conservation:
- a) water leakage;
 - b) water recycling; and
 - c) water efficiency (including demand management).
- 3.2.2 Once the approach and principles referred to in clause 3.2.1 are approved by IPART, Sydney Water must develop a methodology (Methodology) in accordance with the approach and principles.
- 3.2.3 By 31 December 2016, Sydney Water must obtain IPART's approval for the Methodology.
- 3.2.4 Once the Methodology is approved by IPART, Sydney Water must, from the date that such approval is given:
- a) notify IPART, in accordance with the Reporting Manual, of any significant changes that it proposes to make to the Methodology; and
 - b) obtain IPART's written consent to make any significant changes to the Methodology prior to making such changes.
- 3.2.5 Until Sydney Water has developed and obtained IPART's approval for the Methodology (in accordance with clauses 3.2.2 and 3.2.3), Sydney Water must:
- a) maintain the weather corrected quantity of Drinking Water that it draws from all sources to a level of water usage equal to, or less than, 329 litres per person per day (the Water Usage Level). In calculating water usage for the purpose of the Water Usage Level, Sydney Water may make reasonable adjustments to account for the effects of weather on water usage, using a methodology approved by IPART;
 - b) ensure that the level of water leakage from its Drinking Water supply system (the Water Leakage Level) does not exceed 121 megalitres per day; and
 - c) promote, foster and encourage the efficient use of water and the production and use of Recycled Water, where financially viable.
- 3.2.6 By 1 September 2017, Sydney Water must develop a water conservation program consistent with its economic level of water conservation and in accordance with the methodology approved by IPART under clause 3.2.3
- 3.2.7 Sydney Water must report to IPART, in accordance with the Reporting Manual, on water conservation.

Source: *Sydney Water Corporation Operating Licence 2015-2020.*

5.1 Licence obligations to ensure water conservation are necessary

Sydney Water's licence has obligations relating to water conservation since a licence was first granted in 1995. However, it is not a specific requirement of the Act. The primary objectives of including water conservation obligations in the existing licence are to ensure that Sydney Water:

- ▼ contributes sufficiently to meeting the policy objectives of the Metropolitan Water Plan, and
- ▼ manages its water supply and demand balance effectively and efficiently.

The NSW Government outlines its approach to water planning in the 2017 Metropolitan Water Plan (the Plan). The aim of the Plan is to ensure there is sufficient water to meet the needs of the people and environment of the Greater Sydney region, now and for the future. While the Plan is a policy document and does not impose legislative obligations on Sydney Water, the Plan acknowledges the key role of Sydney Water in leading water conservation initiatives through the ELWC method in the existing licence. Licensing is therefore appropriate to ensure Sydney Water applies an economic approach to decision-making regarding water conservation activities.

5.2 Completed water conservation obligations should be removed

We consider the existing water conservation obligations are mostly well designed because they transition from prescriptive target-based obligations to outcome-based obligations. However, the obligations to develop an approved ELWC method (clauses 3.2.1, 3.2.2 and 3.2.3) are completed, and the obligation to meet targets until the ELWC method is approved (clause 3.2.5) is no longer relevant. Therefore, these clauses and the associated reporting requirements⁴² should be removed.⁴³

We consider amending the remaining obligations so they require Sydney Water to:

- ▼ continue to implement a water conservation program consistent with its economic level of water conservation in accordance with the ELWC method (similar to existing clause 3.2.6)
- ▼ review the ELWC method during the next licence term and notify IPART of any changes to the method made as a result of the review (similar to existing clause 3.2.4), and
- ▼ report to IPART on water conservation in accordance with the Reporting Manual (similar to existing clause 3.2.7).

IPART's approval of any significant change is not necessary because we have already approved the approach and principles when Sydney Water developed the ELWC method.

We consider Sydney Water should continue to implement the ELWC method because it is the appropriate framework to determine the level of water conservation. The method provides an outcome-based approach and is not based on prescriptive targets that do not vary with the value of water available at varying dam levels. Sydney Water undertook

⁴² Part of section 3.2.1 of the existing Reporting Manual.

⁴³ The existing licence included an 18-month transition period for Sydney Water to develop the ELWC method for implementation to phase out the water usage and water leakage targets in place over the transition period (see clause 3.2.5).

public consultation during the development of the method and received feedback from stakeholders, including business groups and associations, and specialist research organisations. Stakeholder views during the consultation stages supported the concept of the ELWC method to assess projects and were in favour of Sydney Water allocating appropriate resources to water conservation activities.

In addition, we consider the existing reporting requirement is appropriate because it provides transparency to stakeholders regarding Sydney Water's water conservation activities and is outcome-based.

Our preliminary view is that we should maintain the requirements to implement the Economic Level of Water Conservation (ELWC) method and report on the water conservation program, but to:

- remove the obligations requiring Sydney Water to develop the ELWC method and transition from fixed targets for water usage and water leakage as these obligations have been completed
- remove the obligations for Sydney Water to notify IPART of any significant changes that it proposes to make to the method and to obtain IPART's prior approval of such changes, as the requirement for prior approval may impose unnecessary administration burden, and replace with an obligation for Sydney Water to review the ELWC method during the next licence term and notify IPART of any changes to the method made as a result of the review.

IPART seeks comments on the following

- 14 Do you agree with our preliminary view to maintain the requirements to implement and report on water conservation program consistent with its economic level of water conservation in accordance with the ELWC method, but to remove fixed targets for water usage and water leakage (which were phased out in the existing licence term) and remove the obligation for Sydney Water to notify and obtain IPART's approval of any proposed significant change to the ELWC method? Should the licence contain any additional obligations relating to water conservation activities?

6 Supply services and performance standards

Supply services and performance standards is the third part of our proposed structure for the amended licence. This part sets out Sydney Water's obligations related to five areas:

1. water quality
2. system performance standards
3. response time for main water breaks
4. priority sewerage program, and
5. critical infrastructure.

We have assessed these obligations, using the approach set out in section 2.4. Our preliminary views and findings, where we have them, on each area are set out below.

The provision of water for firefighting is addressed in our current review of developer charges and backlog sewerage charges for metropolitan water agencies, and in our discussion on the MOU with Fire and Rescue NSW in section 8.3.2 of this paper.

6.1 Water quality

Safe water is essential to protect public health, so it is important that all water supplied by water utilities meets an appropriate quality standard. Sydney Water's existing licence includes a range of obligations it must meet to ensure that the drinking water and recycled water it supplies meet defined quality standards, and an obligation to comply with the *Fluoridation Code*. Our preliminary findings are that:

- ▼ we should maintain and consolidate the existing drinking water obligations
- ▼ we should maintain and consolidate the existing recycled water obligations, and
- ▼ the existing obligation to comply with the *Fluoridation Code* duplicates other legislation.

6.1.1 Maintain and consolidate existing drinking water obligations

The existing licence includes five clauses that set out Sydney Water's obligations related to drinking water quality, shown in Box 6.1.

Box 6.1 Existing drinking water quality obligations

- 2.1.1 Sydney Water must maintain a Management System that is consistent with the *Australian Drinking Water Guidelines*, except to the extent that NSW Health specifies otherwise (the Drinking Water Quality Management System).
- 2.1.2 Sydney Water must ensure that the Drinking Water Quality Management System is fully implemented and that all relevant activities are carried out in accordance with the Drinking Water Quality Management System, and to the satisfaction of NSW Health.
- 2.1.3 Sydney Water must notify IPART and NSW Health, in accordance with the Reporting Manual, of any significant changes that it proposes to make to the Drinking Water Quality Management System.
- 2.1.4 Sydney Water must obtain NSW Health's approval for any significant changes that it proposes to make to the Drinking Water Quality Management System before implementing, or carrying out its activities in accordance with, such changes.
- 2.1.5 By 31 December 2016, Sydney Water must:
- a) in consultation with its Customer Council and NSW Health, complete a review of its public reporting on water quality. The review must address (at a minimum) the frequency of Sydney Water's public reporting and the key parameters reported on water quality, and
 - b) provide IPART with a report detailing the outcomes of the review referred to in clause 2.1.5(a).

Source: *Sydney Water Corporation Operating Licence 2015-2020*.

Our preliminary view is that the amended licence should maintain the drinking water quality management system obligations, but consolidate them into two obligations to remove duplication, and remove the water quality parameters review requirement as the task is complete. In addition, our preliminary view is that the amended Reporting Manual should remove Appendix F (Health and aesthetic water characteristics and raw water operational characteristic) to reduce administrative burden. This view reflects our preliminary findings that:

- ▼ the Act requires licence obligations on water quality, and
- ▼ the existing drinking water obligations are mostly well designed, but contain some duplications and completed requirements that can be removed.

The Act requires licence obligations on water quality

The Act states that the licence must include terms or conditions to ensure Sydney Water's systems and services meet specified quality and performance standards on water quality.⁴⁴ Therefore, the licence must have obligations to ensure safe drinking water quality.

Existing drinking water obligations are mostly well designed but contain duplication

We consider the existing drinking water obligations are mostly well designed but contain some duplications that should be removed.

⁴⁴ *Sydney Water Act 1994*, s 14(1).

The obligation for Sydney Water to obtain “NSW Health’s approval for any significant changes” (clause 2.1.4) to its drinking water management system duplicates the obligation to fully implement the management system “to the satisfaction of NSW Health” (clause 2.1.2). Managing changes to the management system, whether those are significant changes or not, is part of fully implementing the management system. In addition, in our 2017 review of Hunter Water’s licence, NSW Health told us that it generally has no approval processes for changes to utilities’ drinking water quality management systems,⁴⁵ and recommended that the licence require implementation to the satisfaction of NSW Health. The obligation is an unnecessary regulatory burden.

We also consider that the obligation for Sydney Water to notify IPART and NSW Health of any significant changes that it proposes (clause 2.1.3) duplicates the existing obligations set out in the Reporting Manual (section 2.3.2) and is therefore unnecessary.

We consider the obligation for Sydney Water to review its public reporting on water quality in consultation with its Customer Council and NSW Health (clause 2.1.5) is complete, and should therefore be removed. In the 2015 Sydney Water licence review, we recommended the public reporting of water quality monitoring could be simplified to make it more meaningful to the general public.⁴⁶

In addition, we assessed the potential overlap between the existing licence obligations and the requirements in the *Public Health Act 2010* (NSW), and found no duplication (Box 6.2).

The obligation to maintain a drinking water management system that “is consistent with the *Australian Drinking Water Guidelines*” (ADWG) is outcome-focused and therefore is well designed. The ADWG is the appropriate reference because they are national, provide an authoritative definition of safe, good quality water, and are regularly reviewed and revised as necessary.

In assessing whether we have the minimum necessary reporting requirements in the existing Reporting Manual, we consider that moving the list of drinking water monitoring characteristics from the Reporting Manual to the Drinking Water Quality Management System could reduce Sydney Water’s administrative burden. Sydney Water provided us with a report detailing the outcomes of the water quality reporting review in December 2016 as required under existing licence clause 2.1.5.⁴⁷ In this report, it proposed an updated format for its public reporting, including:

- ▼ publishing a new daily drinking water quality report on its website, to report on the performance of critical control points in drinking water system, specific to the customer’s address
- ▼ maintaining the *Quarterly Drinking Water Quality Report*⁴⁸ but introducing changes in:
 - converting the report from a PDF format to a web-based interface where customer can search and obtain water quality information specific to the customer’s address

⁴⁵ NSW Health submission to IPART Issues Paper, 26 July 2016, p 2.

⁴⁶ IPART, *Sydney Water Corporation Operating Licence End of Term Review, Report to the Minister*, May 2015, p 22.

⁴⁷ Sydney Water, *Review of Sydney Water’s Public Reporting on Drinking Water Quality*, December 2016.

⁴⁸ The *Quarterly Drinking Water Quality Report* is Sydney Water’s consumer confidence report, which is a reporting requirement under s 101(3) of the *Sydney Water Act 1994* on the quality of the water it has available for supply to its customers.

- updating the water quality information that is of high interest to customers each quarter, and
 - updating the water quality information that is of lower interest to customers each year, and
- ▼ moving the list of drinking water monitoring characteristics from Appendix F (Health and aesthetic water characteristics and raw water operational characteristic) of the existing Reporting Manual to a schedule of reporting under its Drinking Water Quality Management System.

We are interested in other stakeholders' views on the proposed public reporting approach and change to the existing Reporting Manual.

Box 6.2 Assessment of potential overlap between drinking water obligations and requirements of Public Health Act

The *Public Health Act 2010* (NSW) (Public Health Act) requires that a person must not, by means of a reticulated water system, supply any other person with drinking water that is not fit for human consumption.^a The Minister has power to take action or give directions with respect to unsafe water.^b However, there is no direct enforcement mechanism in the Public Health Act to ensure compliance with drinking water quality management programs, such as penalties for failure to establish to these programs.

The Public Health Act also requires that a supplier of drinking water must have a quality assurance program.^c The Chief Health Officer may, by notice in writing, exempt a supplier of drinking water from a quality assurance program if the Chief Health Officer is satisfied that the supplier, is subject to other appropriate licensing or other regulatory requirements.^d Sydney Water is currently exempt from this requirement as the quality assurance program, equivalent to the concept of the Drinking Water Quality Management System, is in place under the existing licence.^e There is no duplication of obligations.

^a *Public Health Act 2010*, s 15.

^a *Public Health Act 2010*, s 16.

^b *Public Health Act 2010*, s 25(1).

^c *Public Health Act 2010*, s 25(3).

^d Sydney Water, *Drinking Water Management Manual*, 2015, p 12.

Source: IPART

Our preliminary view is that we should maintain the existing obligations on drinking water quality but consolidate to avoid duplication:

- remove the obligation that Sydney Water “obtain NSW Health’s approval for any significant changes” it proposes to make to its drinking water quality management systems as this is covered by the obligation to fully implement this system “to the satisfaction of NSW Health”
- remove the obligation that Sydney Water notify IPART and NSW Health of any significant changes it proposes to make to its drinking water quality management systems as this is covered in the Reporting Manual, and
- remove the obligation that Sydney Water complete a review of its public reporting on water quality as this task was completed in 2016.

Our preliminary view is that we should move the requirements in the existing Appendix F (Health and aesthetic water characteristics and raw water operational characteristic) from the Reporting Manual to a reporting schedule under the Drinking Water Quality Management System required by the licence.

IPART seeks comments on the following

15 Do you agree with our preliminary views to:

- maintain the existing obligations for drinking water quality but remove duplication in the obligations?
- move the requirements in Appendix F (Health and aesthetic water characteristics and raw water operational characteristic) from the existing Reporting Manual to a reporting schedule under the Drinking Water Quality Management System required by the licence?

6.1.2 Maintain and consolidate the existing recycled water obligations

Recycled water is not used for drinking purposes in the Sydney Water area of operations, and is only available to a small portion of Sydney Water’s customers. Recycled water is used for multiple purposes, including toilet flushing, car washing, irrigation and industrial process water. Human contact with recycled water is possible, so it could pose a risk to public health if its quality is not managed appropriately.

The existing licence includes four clauses that set out Sydney Water’s obligations for recycled water quality, shown in Box 6.3.

Box 6.3 Existing recycled water obligations

- 2.2.1 Sydney Water must maintain a Management System that is consistent with the *Australian Guidelines for Water Recycling*, except to the extent that NSW Health specifies otherwise (the Recycled Water Quality Management System).
- 2.2.2 Sydney Water must ensure that the Recycled Water Quality Management System is fully implemented and that all relevant activities are carried out in accordance with the Recycled Water Quality Management System, and to the satisfaction of NSW Health.
- 2.2.3 Sydney Water must notify IPART and NSW Health, in accordance with the Reporting Manual, of any significant changes that it proposes to make to the Recycled Water Quality Management System.
- 2.2.4 Sydney Water must obtain NSW Health’s approval for any significant changes that it proposes to make to the Recycled Water Quality Management System before implementing, or carrying out its activities in accordance with, such changes.

Source: Sydney Water Corporation Operating Licence 2015-2020.

These obligations are very similar to those for drinking water quality, and as for drinking water quality, our preliminary view is that the amended licence should maintain and consolidate these obligations to remove duplication. This view reflects our preliminary findings that:

- ▼ the Act requires licence obligations on water quality, and

- ▼ the existing recycled water obligations are mostly well designed, but contain some duplications that can be removed.

The Act requires licence obligations on water quality

The Act states that the licence must include terms or conditions to ensure that Sydney Water's systems and services meet specified quality and performance standards on water quality.⁴⁹ Therefore, the licence must have obligations to ensure safe recycled water quality.

Existing recycled water obligations are mostly well designed but contain duplications

Existing recycled water obligations are mostly well designed but contain some duplications that should be removed. In particular, the obligations for Sydney Water to obtain "NSW Health's approval for any significant changes" to its recycled water management system and to notify IPART and NSW Health of any such changes are duplicative. Our reasons for this view are the same as those for drinking water quality, outlined above in section 6.1.1.

We assessed the potential for overlap between these obligations and the requirements in other legislation, and found no duplication currently exist (Box 6.4).

The obligation to maintain a recycled water management system that "is consistent with the *Australian Guidelines for Water Recycling*" (AGWR) is outcome-focused and therefore it is well designed. The AGWR is the appropriate reference because these guidelines are national, authoritative, and regularly reviewed and revised as necessary.

Box 6.4 Assessment of potential overlap between recycled water obligations and requirements in other legislation

We have identified three other laws which are relevant to Sydney Water's recycled water obligations.

- ▼ Under the Public Health Act, the Minister for Health has the power to take action and give directions with respect to drinking water and 'any other water' that the Minister suspects is, or is likely to be, a risk to public health.^a However, this Act does not require water utilities to provide recycled water of a defined quality standard.
- ▼ The *Protection of the Environment Operations Act 1997* requires an Environment Protection Licence for large sewage treatment plants,^b but this does not address recycled water quality.
- ▼ The WIC Act and *Water Industry Competition (General) Regulation 2008* (WIC Regulation) require network operators to address the framework for management of recycled water quality based on the *Australian Guidelines for Water Recycling*.^c However, the WIC Act and WIC Regulation do not apply to Sydney Water.

In our view, the existing obligations do not duplicate any of the above legislative obligations.

^a *Public Health Act 2010*, s 16.

^b *Protection of the Environment Operations Act 1997*, s 48 and Sch 1, cl36. Sewage treatment is a scheduled activity where it exceeds 2500 persons equivalent or 750 kilolitres per day in sewage processing capacity.

^c *Water Industry Competition (General) Regulation 2008*, cl 6(1)(d).

Source: IPART

⁴⁹ *Sydney Water Act 1994*, s 14(1).

Our preliminary view is that we should maintain the existing obligations on recycled water quality but consolidate to avoid duplication:

- remove the obligation that Sydney Water “obtain NSW Health’s approval for any significant changes” it proposes to make to its recycled water quality management systems as this is covered by the obligation in the licence to fully implement this system “to the satisfaction of NSW Health”, and
- remove the obligation that Sydney Water notify IPART and NSW Health of any significant changes it proposes to make to its recycled water quality management systems as this is covered in the existing Reporting Manual.

IPART seeks comments on the following

- 16 Do you agree with our preliminary view to maintain the existing obligations for recycled water quality but remove duplication in the obligations?

6.1.3 Fluoridation is an existing legislative requirement, and the licence obligation duplicates that requirement

The existing licence includes one clause that sets out Sydney Water’s obligation in relation to water fluoridation (Box 6.5).

Box 6.5 Existing water fluoridation obligation

2.3.1 Sydney Water must comply with the Fluoridation Code.

Source: Sydney Water Corporation Operating Licence 2015-2020.

The licence obligation duplicates the functions of other regulatory instruments. This is based on our preliminary findings that:

- ▼ the fluoridation obligation duplicates requirements of the *Fluoridation of Public Water Supplies Act 1957* and the *Fluoridation of Public Water Supplies Regulation 2017*, and
- ▼ the existing fluoridation obligation may not be well designed as it may be redundant.

Fluoridation licence obligation duplicates other legislation

There is an existing regulatory framework for the fluoridation of drinking water supplies. Sydney Water is required under the *Fluoridation of Public Water Supplies Act 1957* (Fluoridation Act) to fluoridate drinking water in compliance with the *Fluoridation of Public Water Supplies Regulation 2017* (Fluoridation Regulation).⁵⁰ The Fluoridation Regulation requires Sydney Water to undertake fluoridation in accordance with the *Fluoridation Code*⁵¹ – including design of equipment used for fluoridation, collection and analysis of fluoridated water samples, record keeping, and specifies penalties for non-compliance.

The *Fluoridation Code* includes generally technical material not specified in the Fluoridation Act or the Fluoridation Regulation. Its aim is to achieve best practice in the establishment

⁵⁰ In particular, s. 6 of the Fluoridation Act requires water supply authorities to add fluorine to public water supplies, subject to the Fluoridation Act and Regulations, if directed to do so by the Secretary of the Department of Health.

⁵¹ NSW Department of Health, *New South Wales Codes of Practice for Fluoridation of Public Water Supplies*, March 2011.

and operation of fluoridation plants in NSW⁵², and thus meet the technical, occupational health and safety and environmental requirements of the relevant legislation. It applies to all new and existing drinking water treatment plants in NSW and it is the responsibility of all water utilities that fluoridate to ensure that they comply with the *Fluoridation Code*. Section 14 of the *Fluoridation Code* specifies the quality assurance and auditing requirements, including internal and external audit requirements. NSW Health may from time to time carry out an independent audit of the water utility's compliance.

In our 2014 review of Sydney Water's licence, NSW Health supported the retention of obligations relating to fluoridation in the licence. NSW Health considered the licence to be the most appropriate mechanism to set out key Government requirements of public interest, including fluoridation, in a succinct and accessible form.

Existing fluoridation obligation may not be well designed

The existing licence obligation may be redundant as it simply requires Sydney Water to comply with the *Fluoridation Code*, which it is already required to do separately. If the obligation is retained, it could be improved by broadening the obligation to comply with the *Fluoridation Code* except to the extent that NSW Health specifies otherwise.

IPART seeks comments on the following

- 17 Given that the *Fluoridation of Public Water Supplies Act 1957* and the *Fluoridation of Public Water Supplies Regulation 2017* requires Sydney Water to fluoridate drinking water, what are your views on maintaining or removing fluoridation obligations in the licence?

6.2 System Performance Standards

System Performance Standards are important for monopoly service providers like Sydney Water because without them, utilities may try to increase profitability by providing lower levels of service to customers.

System Performance Standards are minimum levels of performance that a utility must meet to satisfy a regulatory or other requirement. They generally focus on one or more aspects of the service customers receive from the utility, and define a minimum standard or level of service the utility must provide. For example, a standard could be expressed as a minimum or maximum target or limit.

Sydney Water's existing licence contains System Performance Standards related to water pressure, water continuity and wastewater overflow, shown in Box 6.6.

⁵² NSW Department of Health, *New South Wales Codes of Practice for Fluoridation of Public Water Supplies*, March 2011, p3.

Box 6.6 Existing System Performance Standards

- ▼ **Water Pressure Standard** - no more than 6,000 properties experience a water pressure failure in a financial year in Sydney Water's drinking water supply systems. The licence also defines when a water pressure failure is taken to have occurred and the definition of a water pressure failure.
- ▼ **Water Continuity Standard** - comprised of two measures. In a financial year:
 - no more than 40,000 properties experience an unplanned water supply interruption that lasts for more than five hours, and
 - no more than 14,000 properties experience three or more unplanned water supply interruptions that each lasts more than one hour.
- ▼ **Wastewater Overflow Standard** - comprised of two measures. In a financial year:
 - no more than 14,000 properties (other than public properties) experience an uncontrolled Wastewater overflow in dry weather, and
 - no more than 175 properties (other than public properties) experience three or more uncontrolled wastewater overflows in dry weather.

Source: Summarised from *Sydney Water Corporation Operating Licence 2015-2020*, cl 4.2.1. to cl 4.2.3.

Our preliminary view is that we should review the existing System Performance Standards to ensure they reflect Sydney Water's customers' preferences and the value they place on the service standards it provides. This view is based on our preliminary findings that:

- ▼ the Act requires licence obligations to specify performance standards on service interruptions, and
- ▼ the existing System Performance Standards do not appear to be well designed as they should be set with reference to customer preferences and willingness to pay.

6.2.1 The Act requires licence obligations to specify performance standards on service interruptions

The Act requires the licence to include terms or conditions to ensure Sydney Water's services and systems meet specified performance standards.⁵³ The licence is therefore required to include System Performance Standards clauses.

6.2.2 Existing System Performance Standards do not appear to be well designed

The existing System Performance Standards do not appear to be well designed as:

- ▼ there is no evidence to show that they reflect customer preferences and willingness to pay for certain service levels
- ▼ historically, Sydney Water has performed better than the existing standards by a substantial margin (Table 6.1). This may suggest that standards are too relaxed, and so may have little or no actual impact on Sydney Water's system performance. Alternatively, it may suggest that Sydney Water spends more than necessary on the operational parameters that the standards measure.

⁵³ *Sydney Water Act 1994*, s 14(c).

Table 6.1 Sydney Water’s performance against standards (number of properties, 2008-09 to 2016-17)

Performance standard	Standard limit	Low (year)	High (year)	Average (all years)	Median (year)
Low water pressure	≤6,000	36	1,280	535	572
Unplanned interruption (more than five hours) ^a	≤40,000	26,205	37,189	30,045	28,386
Repeated unplanned interruptions (more than one hour) ^a	≤14,000	4,171	8,005	5,756	5,305
Wastewater overflows	≤14,000	6,908	10,118	8,755	8,874
Repeated wastewater overflows ^a	≤175	30	80	51	43

a Data not available for 2008-09 and 2009-10.

Note: Extreme weather events caused unusually high numbers of properties to experience system performance issues in 2014-15.

Source: Sydney Water, *Annual Report 2013*, October 2013, p 30; Sydney Water, *Annual Report 2014-15*, 2015, p 42; Sydney Water, *Annual Report 2016-17*, 2017, pp 28-29 and IPART calculations.

System Performance Standards should be set with reference to customer preferences

We conducted a brief desktop review of current regulatory approaches to performance standards used in Australia and other countries. This review suggests that current good practice is to set System Performance Standards based on:

- ▼ what customers want and are willing to pay for, and
- ▼ an economic approach that values and balances the benefit to the customer of a certain level of service and the cost to the utility of maintaining that level of service.

The experience of regulators and water utilities in other jurisdictions indicate using customer engagement and research to inform System Performance Standards encourages an efficient level of service. Recent examples of customer engagement in the water industry have used ‘stated preference survey techniques’ to measure and quantify the factors that influence water utility customer satisfaction and, at the same time, determine how much customers are willing to pay to gain service enhancement, or to avoid service reductions.⁵⁴

Stated preference survey techniques ask people to select from a set of options where each option is a service quality outcome coupled with the price they would have to pay to achieve it. By presenting the options in this way, the survey can be used to determine how much the customers would be willing to pay for particular outcomes.⁵⁵ (See Box 6.7 for a specific example.)

⁵⁴ Ofwat, *Towards Water 2020 – policy issues: customer engagement and outcomes*, July 2015, p 10.

⁵⁵ Ofwat, *Towards Water 2020 – policy issues: customer engagement and outcomes*, July 2015, p 10.

Box 6.7 Customer preference research in the Australian Capital Territory

Between November 2015 and July 2016, Icon Water and the University of Waikato undertook extensive customer stated preference research using discrete choice methods and co-joint analysis techniques, to determine Icon Water's customers' willingness to pay for improved service and/or willingness to accept a service degradation for a specified reduction in bills. The levels of service were measured by the following attributes:

- ▼ frequency of water supply interruptions
- ▼ duration of water supply interruptions
- ▼ advance warning of water supply interruptions
- ▼ frequency of sewer overflows, and
- ▼ duration of sewer overflows.

The results of the research provided quantitative estimates of the value placed by customers on changes in water and sewerage network reliability. Icon Water used these estimates in its cost-benefit analysis and when balancing cost, risk and performance for its asset management plans (consistent with ISO 55000 international asset management standards).

Source: Icon Water and University of Waikato, *Willingness to pay, customer preferences for balancing cost with risks of water supply interruptions and sewer overflows*, 2016, pp 6-7 and 32.

System Performance Standards should be set to promote socially efficient outcomes

Our own experience in other industries indicates that using an economic approach that values and balances the benefit to the customer of a certain level of service with the cost to the utility of maintaining that level of service promotes socially efficient outcomes. This approach involves measuring and placing a value on:

- ▼ the benefit customers receive from the level of service (eg, continuous water supply), ie, their 'willingness to pay', and/or
- ▼ the inconvenience customers suffer due to loss of the service (eg, unplanned interruptions to water supply) ie, their 'willingness to accept' loss of service in return for a bill reduction.

These values reveal customer preferences and the point at which a minimum performance standard should be set if we wish to balance the benefit of the service to customers against the amount a utility would need to spend to ensure a level of service.

Our recent work on reliability standards in the electricity transmission sector is a good example of how we could use customer valuations in setting water and sewerage system performance standards.⁵⁶ This work involved determining the optimal electricity transmission reliability standards by testing a range of possible service delivery approaches (including equipment redundancy levels, staffing levels, and automation investments). For each of these approaches we calculated the network costs, and the expected level of demand that would not be served due to unreliability of the system. There was a quantified inconvenience cost to customers associated with that level of unreliability. By adding the

⁵⁶ IPART, *Electricity transmission reliability standards, Unserved energy allowances for Inner Sydney and Broken Hill, Molong, Mudgee, Mungyang and Wellington Town*, November 2016.

network cost to the customer inconvenience cost, we deduced a total social cost for each approach.⁵⁷

We selected the approach that led to the minimum total social cost. However, rather than prescribe that service delivery approach, we set the reliability standard equal to the expected level of 'unserved demand' that would result if that approach was taken. This allows the service provider flexibility to find and adopt a lower cost method of meeting the standard (ie, lower than the cost we anticipated) if they so choose.

To apply this type of approach in improving Sydney Water's System Performance Standards, we would need to develop reasonable estimates for:

- ▼ the value customers place on unserved demand for water or sewerage service (eg, per property experiencing a service interruption or sewer overflow each year), and
- ▼ the network cost and expected unserved demand associated with each of a range of plausible service delivery options for Sydney Water.⁵⁸

Box 6.8 describes a practical application of this approach to setting a performance target for a public water utility.

Box 6.8 Applying an economic approach to set a water utility system performance target

A water utility can choose one of two (or more) different levels for a water or sewerage service:

1. high reliability and high cost (eg, a combination of newer pipes and rapid fault response teams), or
2. low reliability and low cost (eg, older pipes, fewer response teams and slower average response).

Both these alternatives must sit on the efficient production frontier for a water utility, so:

- ▼ The high reliability option would lead to an expected average number of households (hhH) suffering a water supply interruption or a sewer overflow at a cost to the utility of CH.
- ▼ The low reliability option would lead to an expected number of affected households (hhL) at a cost to the utility of CL.

If the customers' value of lost supply is VC per household, then:

- ▼ The total social cost of the High scenario is $TSCH = VC \cdot hhH + CH$.
- ▼ The total social cost of the Low scenario is $TSCL = VC \cdot hhL + CL$.

To minimise total social cost, the utility should choose the least cost of TSCH and TSCL:

- ▼ If TSCH is lower than TSCL, then the standard is that a maximum of hhH households suffer service interruption or sewer overflow per year.
- ▼ If TSCL is lower than TSCH, then the standard is hhL households suffer service interruption or sewer overflow per year.

Source: IPART.

⁵⁷ IPART, *Electricity transmission reliability standards, Unserved energy allowances for Inner Sydney and Broken Hill, Molong, Mudgee, Mungah and Wellington Town*, November 2016, pp 8-9, 12.

⁵⁸ IPART, *Electricity transmission reliability standards, Unserved energy allowances for Inner Sydney and Broken Hill, Molong, Mudgee, Mungah and Wellington Town*, November 2016, pp 8-9, 12.

Overall, we consider that System Performance Standards can be improved so that they inform Sydney Water's decision-making about the level of service it provides to customers. In addition, we consider that to promote the most socially efficient outcomes, these standards should be calibrated so that they reflect customers' preferences and the value they place on the service outcomes Sydney Water provides, and balance these against the cost of service provision.

If we were to reset the System Performance Standards in the amended licence, there may be implications for Sydney Water's prices. Bringing forward the licence review by one year (as we are doing) will allow Sydney Water to address these implications in its 2019 price proposal.

[Our preliminary view is that we should revise the System Performance Standards in the amended licence to reflect customers' preferences and the value they place on the service outcomes Sydney Water provides, and balance these against the cost of service provision.](#)

IPART seeks comments on the following

- 18 Do the existing System Performance Standards measure the most appropriate and relevant service outcomes? Are they specified in the best way to provide cost-effective service outcomes?
- 19 Do you agree with our preliminary view that we should use an economic approach to setting System Performance Standards that takes account of the value that customers place on the level of services?

6.3 Response times for water main breaks

Response times for water main breaks may be a useful indicator of a water utility's performance, as generally the longer the response time, the greater the volume of water lost and the impact on customer service levels. The existing licence includes a clause setting out Sydney Water's obligation to report on its response time for water main breaks in accordance with the Reporting Manual (Box 6.9). The existing Reporting Manual sets out the specific reporting requirements (Box 6.10).

Box 6.9 Existing obligation on response times for water main breaks

4.3.1 Sydney Water must report, in accordance with the Reporting Manual, on response times for water main breaks and leaks.

Source: *Sydney Water Corporation Operating Licence 2015-2020.*

Box 6.10 Existing reporting requirements on response times for water main breaks

4.2.2 Response time to breaks and leaks

Sydney Water must prepare a report, for each financial year, with respect to its performance against the response time indicators I9 to I12, which are set out in Appendix C of this Reporting Manual. Sydney Water must submit the report by 1 September following the end of the relevant financial year, or by a later date agreed to by IPART.

Appendix C IPART performance indicators - infrastructure

- ▼ I9 – Percentage of priority 6 breaks/leaks in drinking water mains that Sydney Water responded to within 3 hours
- ▼ I10 - Percentage of priority 5 breaks/leaks in drinking water mains that Sydney Water responded to within 6 hours
- ▼ I11 - Percentage of priority 5 breaks/leaks in drinking water mains that Sydney Water responded to within 24 hours
- ▼ I12 - Percentage of priority 4 breaks/leaks in drinking water mains that Sydney Water responded to within 5 days

Source: IPART, *Sydney Water Reporting Manual, Operating Licence 2015-2020*, August 2017, pp 15 and 35.

The obligation to report on response times appears in two separate parts of the existing licence, in clause 4.3.1 (Box 6.9) and in clause 8.2.1 (Box 9.2).

As discussed above in section 6.2, we are considering revising the existing System Performance Standards. Once we have a position on the appropriate System Performance Standards, we will consider the usefulness of retaining the response times indicators and associated reporting requirements. We propose to retain the water main breaks and leaks indicators in the reporting manual.

IPART seeks comments on the following

- 20 Given the obligation to report on response times on water main breaks and leaks appears in two separate parts of the existing licence, what are your views on removing licence clause 4.3.1 and consolidating the reporting requirement in clause 8.2.1 of the licence? What are your views on the usefulness of collecting information on response times for water main breaks and leaks?

6.4 Priority Sewerage Program

The Priority Sewerage Program (PSP) is a government program that commenced in 1997 to service unsewered areas. The existing licence includes two obligations related to Government reviews of the PSP, and Schedule 3 of the licence lists the priority areas (Box 6.11). There is no associated reporting requirement in the existing Reporting Manual.

Box 6.11 Existing Priority Sewerage Program obligations

4.4.1 Sydney Water must co-operate with, and participate in, any Government review of the Priority Sewerage Program.

4.4.2 If required by the Minister, Sydney Water must implement and comply with any outcomes (including timeframes) of a Government review of the Priority Sewerage Program.

Notes in this licence clause are not shown.

Licence Schedule 3, Table 1 Priority Sewerage Program – Sydney Water Area of Operations

Stage 2 Area	Estimated number of lots
Yanderra	220
Austral	50
Nattai	30
Scotland Island	350
Menangle, Menangle Park	220
	Total
	870

Source: Sydney Water Corporation Operating Licence 2015-2020.

The Act does not require the licence to include terms and conditions for the PSP.

As noted in our 2015 review of Sydney Water’s licence, we are not sure of the policy intent or origin of the PSP obligations in the licence. In addition, if Sydney Water is required to undertake works to “implement and comply with any outcomes” of a government review of the PSP, it is not clear who would pay for the work – taxpayers, the whole of Sydney Water’s customer base, or just the beneficiaries of the schemes.⁵⁹ It is also not clear how the PSP areas listed in Schedule 3 were prioritised.

We also consider inclusion of Schedule 3, without delivery deadlines, creates the perception that Sydney Water is still responsible for delivering the now 20-year-old PSP, when better options for servicing unsewered areas may be available now. In turn, this perception appears to be leading some residents to defer maintenance and upgrades to their onsite systems because they believe that a centralised sewerage service will shortly be provided by Sydney Water.⁶⁰

In our 2015 review of Sydney Water’s licence, we recommended:

That the Government undertake a review of the PSP to determine if remaining schemes are still a priority and if so, the timing, the form of delivery and funding for such schemes.⁶¹

To date a review has not been undertaken.

IPART seeks comments on the following

21 What are your views on maintaining or removing the existing obligations on Sydney Water regarding the Priority Sewerage Program?

⁵⁹ IPART, *Sydney Water Corporation Operating Licence End of Term Review, Water Licensing – Report to the Minister*, May 2015, section 3.1.2.

⁶⁰ Ibid.

⁶¹ Ibid.

6.5 Critical infrastructure

A disruption to water supply or water and/or sewage treatment in the Sydney region could have major health consequences for the general public, and could adversely affect a diverse range of businesses that rely on water and sewerage services. However, Sydney Water's existing licence does not include any obligations on critical water infrastructure.

In our 2017 reviews of the Hunter Water and Water NSW licences, the Critical Infrastructure Centre (CIC) raised concerns regarding national security risks of sabotage, espionage and coercion to critical water infrastructure, particularly in regard to outsourcing of core services such as maintenance, design and construction of new facilities and equipment, and operational activities.⁶²

Our preliminary view is that we should not include obligations in Sydney Water's licence regarding national security and critical infrastructure issues. This is based on our preliminary findings that such obligations should be covered under the *Security of Critical Infrastructure Act 2018* (Cth) (SCI Act).

Since the CIC raised these concerns in our 2017 reviews, the SCI Act has been passed⁶³ with the aim of providing a 'risk-based regulatory framework to manage national security risks from foreign involvement in Australia's critical infrastructure'⁶⁴. The SCI Act creates a framework for:⁶⁵

- ▼ keeping of a register of information in relation to critical infrastructure assets (the register will not be made public)
- ▼ requiring certain entities relating to a critical infrastructure asset to provide information in relation to that asset, and to notify if certain events occur in relation to the asset
- ▼ allowing the Minister to require certain entities relating to a critical infrastructure asset to do, or refrain from doing, an act or thing if the Minister is satisfied that there is a risk of an act or omission that would be prejudicial to security
- ▼ allowing the Secretary to require certain entities relating to a critical infrastructure asset to provide certain information or documents, and
- ▼ allowing the Secretary to undertake an assessment of a critical infrastructure asset to determine if there is a risk to national security relating to the asset.

Sydney Water is a responsible entity under the SCI Act and will be regulated under the SCI Act when it commences.⁶⁶

⁶² CIC, Submission to the review of Hunter Water's operating licence 2012-2017, 3 March 2017, p3; CIC, Submission to the review of Water NSW's operating licences, 10 April 2017, p2.

⁶³ The SCI Act 2018 is expected to commence on 11 July 2018.

⁶⁴ Explanatory Memorandum, Security of Critical Infrastructure Bill 2017.

⁶⁵ Section 4, SCI Act.

⁶⁶ Section 5 of the SCI Act defines a 'responsible entity' for a critical water asset as the water utility that holds the licence, approval or authorisation (however described), under a law of the Commonwealth, a State or Territory, to provide the service to be delivered by the asset. A 'critical water asset' is defined to mean one or more water or sewerage systems or networks that: (a) are managed by a single water utility; and (b) ultimately deliver services to at least 100,000 water connections or 100,000 sewerage connections. However, the Minister may make rules which prescribe that a specified critical water asset is not a critical infrastructure asset (section 9, SCI Act).

Our 2017 reviews of the Hunter Water and Water NSW licences led to no new licence conditions related to national security and critical infrastructure issues in the licences.⁶⁷

IPART seeks comments on the following

- 22 Given that the *Security of Critical Infrastructure Act 2018* (Cth) regulates critical infrastructure, what are your views on including or not including critical infrastructure obligations in the licence?

⁶⁷ IPART, Review of the Hunter Water Corporation Operating Licence – Final Report, pp85-88; IPART, Water NSW operating licences review – Final Report, pp129-132.

7 Organisational systems management

Organisation systems management is the fourth part of our proposed structure for the amended licence. This part sets out Sydney Water's obligations related to three areas:

1. asset management system (AMS)
2. environment management system (EMS), and
3. quality management system (QMS).

We have assessed these obligations, using the approach set out in section 2.4. Our preliminary views and findings, where we have them, on each area are set out below.

7.1 Asset management system

A robust AMS would ensure Sydney Water meets its asset management objectives. These include the System Performance Standards specified in the licence which, as section 6.2 discussed, are currently measured in terms of water pressure, water continuity and wastewater overflow. Sydney Water's asset performance determines its system performance.

The existing licence includes five clauses on Sydney Water's obligation to develop, certify and implement an AMS and transition from the previous asset management framework (Box 7.1). The existing Reporting Manual sets out the specific reporting requirements on the AMS (Box 7.2).

Our preliminary view is that we should maintain in the amended licence an obligation on Sydney Water to implement a robust AMS that is consistent with the appropriate Standard, but remove the certification obligation, the reporting on proposed significant change obligation, and the requirements to transition the previous asset management framework to the Standard. We should also remove from the amended Reporting Manual the requirement to report on the State of the Assets Report, and include a one-off requirement to provide us with a copy of the Strategic Asset Management Plan. These views are based on our preliminary findings that:

- ▼ although the Act does not require licence obligations on having an AMS, licence obligations to ensure Sydney Water implements a robust AMS are necessary, and
- ▼ the existing AMS obligations in the licence are mostly well designed, but there are opportunities to improve them by removing prescriptive and transitional requirements and unnecessary reporting burden.

Box 7.1 Existing Asset Management System obligations

- 4.1.1 By 30 June 2018, Sydney Water must develop a Management System that is consistent with the *International Standard ISO 55001:2014 Asset Management System - Requirements* (the Asset Management System).
- 4.1.2 Sydney Water must ensure that:
- a) by 30 June 2019, the Asset Management System is certified by an appropriately qualified person to be consistent with the *International Standard ISO 55001:2014 Asset Management System – Requirements*; and
 - b) once the Asset Management System is certified, the certification is maintained during the remaining term of this Licence.
- 4.1.3 Once the Asset Management System has been certified in accordance with clause 4.1.2(a), Sydney Water must notify IPART, in accordance with the Reporting Manual, of any significant changes that it proposes to make to the Asset Management System.
- 4.1.4 By 30 June 2019, Sydney Water must ensure that the Asset Management System is fully implemented and that all relevant activities are carried out in accordance with the Asset Management System.
- 4.1.5 Until the Asset Management System has been developed in accordance with clause 4.1.1, certified in accordance with clause 4.1.2(a) and implemented in accordance with clause 4.1.4:
- a) Sydney Water must continue to maintain and implement the asset management framework that was required to be maintained and implemented by Sydney Water under the licence that was the immediate predecessor to this Licence (the Asset Management Framework), as set out in Schedule 2 of this Licence;
 - b) to avoid doubt, until the Asset Management System has been developed in accordance with clause 4.1.1, Sydney Water may only make changes to the Asset Management Framework that will assist in the transition of the Asset Management Framework to the Asset Management System; and
 - c) Sydney Water must notify IPART, in accordance with the Reporting Manual, of any significant changes that it proposes to make to the Asset Management Framework.

Source: Sydney Water Corporation Operating Licence 2015-2020.

Box 7.2 Existing Reporting Manual requirement for Asset Management System

4.3.1 State of the Assets Report

Sydney Water must prepare, for the financial year ending 30 June 2015, 30 June 2017 and 30 June 2019, a report on the state of each group of Assets managed by Sydney Water.

Sydney Water must submit the report to IPART by 1 September following the end of the relevant financial year, or by a later date agreed to by IPART.

The report must include the following matters as at 1 July of the financial year:

- ▼ a description of each group of Assets managed by Sydney Water
- ▼ Sydney Water's assessment of the expected capability of the Assets to deliver the Services and to meet the existing obligations consistent with the Licence, the Customer Contract, and all applicable laws with which Sydney Water must comply
- ▼ Sydney Water's assessment of the major issues or constraints on current and future performance of the Assets
- ▼ the strategies and expected costs of future investment in Assets, and
- ▼ such other matters reasonably required by IPART.

4.3.2 Notification of significant changes to Asset Management Framework

Until the Asset Management System is certified and implemented in accordance with clauses 4.1.2(a) and 4.1.4 of the Licence, Sydney Water must notify IPART of any significant changes that it proposes to make to the Asset Management Framework prior to implementing the changes. This obligation does not apply to changes to the Asset Management Framework that will assist in the transition of the Asset Management Framework to an Asset Management System.

4.3.3 Modification of significant changes to the Asset Management System

Once the Asset Management System is certified and implemented in accordance with clauses 4.1.2 and 4.1.4 of the Licence, Sydney Water must notify IPART of any significant changes that it proposes to make to the Asset Management System prior to implementing the changes.

Source: IPART, *Sydney Water Reporting Manual, Operating Licence 2015-2020*, August 2017.

7.1.1 Licence obligations to ensure Sydney Water implements a robust AMS are necessary

The AMS is not a performance standard under the existing licence, but it is a key organisational management system that could support Sydney Water to meet its system performance standards that are measured based on its asset performance. Without a robust AMS, if Sydney Water's assets are performing poorly when compared with the standard specified in the licence, there could be limited transparency in identifying how or why this occurred. With a robust AMS in place, we would be able to examine the documented processes and controls to identify the causes for poor asset performance that could contribute to poor system performance and prevent reoccurrence.⁶⁸ The AMS could also

⁶⁸ For example, we audited Hunter Water's implementation of the AMS to investigate the potential causes of a non-compliance in the water continuity standard in 2017. We identified the causes of the breach through our audit of the AMS and recommended some actions for Hunter Water to undertake to prevent reoccurrence.

provide assurance to stakeholders, including regulators, that Sydney Water's asset management practices and decisions are consistent with nationally recognised standard to ensure that it meets its organisational objectives.

7.1.2 Existing AMS obligations are mostly well designed with opportunities to improve

While the existing AMS obligations to develop and implement an AMS consistent with the *International Standard ISO 55001* are mostly well designed, we consider there are four opportunities for improvement:

1. Replacing the references to the International Standard with the *Australian Standard AS ISO 55001* (clause 4.1.1)⁶⁹. The Australian Standard was released in 2014 and is identical to the International Standard for the AMS. We consider it is the appropriate standard because it (and its supporting standard *AS ISO 55002*⁷⁰) require the utility to drive its assets to deliver customer needs.
2. Removing the overly prescriptive certification obligation (clause 4.1.2). The issue of whether or not certification is the most effective way to demonstrate consistency with the Australian Standard is a business decision, not one that should be prescribed in the licence.⁷¹
3. Removing the obligations related to continuing to use the asset management framework until transitioning to the AMS (clause 4.1.5). We will continue to monitor Sydney Water's compliance during the transition.
4. Replacing the obligation to notify us of any proposed significant changes to the AMS with one to report annually on significant changes made to the AMS. We consider annual reporting is sufficient to enable us to monitor changes to Sydney Water's AMS and identify operational audit priorities. It is also more efficient for Sydney Water as it already prepares an annual performance and compliance report to IPART on other licence obligations.

The Reporting Manual requirements impose an unnecessary reporting burden on Sydney Water. We consider the requirement to prepare and provide us with an annual State of the Assets Report should be removed. When we included this requirement, we envisaged these reports would be useful to inform our audits and pricing reviews. However, we have found that they are not necessary, as we obtain the same information from other information requests. Instead, we consider the amended Reporting Manual should include a one-off requirement for Sydney Water to provide us with a copy of its Strategic Asset Management Plan. Sydney Water is required to prepare this plan under *Australian Standard AS ISO 55001*, so this would not create an additional burden. Access to the plan would assist us in understanding Sydney Water's overall commitment and direction in asset management.

Our preliminary view is that we should maintain the existing obligations on Asset Management System (AMS) but:

- replace the International Standard with the current Australian Standard

⁶⁹ Standards Australia, *AS ISO 55001: 2014: Asset management – Management systems: Requirements*.

⁷⁰ Standards Australia, *AS ISO 55002: 2014: Asset management – Management systems: Guidelines for the application of ISO 55001*

⁷¹ IPART, *Review of the Hunter Water Corporation Operating Licence 2017-2022, Final Report*, May 2017.

- remove the obligation that Sydney Water certifies and maintains certification of its AMS as it is overly prescriptive
- remove the obligation that Sydney Water notifies IPART of proposed significant changes to its AMS and replace it with annual reporting of significant changes made as this would reduce reporting burden while keeping IPART informed of changes
- remove the obligation to transition Sydney Water from the previous licence requirement to the existing licence requirement as the transition should be complete before the commencement of the amended licence (we will continue to monitor compliance) and is therefore no longer required, and
- remove the reporting requirement in the Reporting Manual that Sydney Water provides State of the Assets Reports to IPART and replace it with a one-off requirement to provide its Strategic Asset Management Plan to IPART as this should reduce reporting burden.

IPART seeks comments on the following

- 23 Do you agree with our preliminary view to maintain the obligation to have an Asset Management System but replace the International Standard with the Australian Standard and replace the reporting requirement on biennial State of the Assets Reports with a one-off Strategic Asset Management Plan? In addition, do you agree with our preliminary view to remove the certification requirement, the notification of proposed significant changes requirement and the completed transitional clauses?

7.2 Environmental Management System

Sydney Water's principle objectives include protecting the environment by conducting its operations in compliance with principles of ecologically sustainable development and preventing the degradation of the environment (see section 2.1). A range of NSW laws and regulatory instruments set out more specific environmental performance requirements. A robust EMS should enhance Sydney Water's ability to meet these requirements.

The existing licence includes four clauses that oblige Sydney Water to maintain, implement, notify changes and report on its EMS (Box 7.3).

Box 7.3 Existing environment management obligations

- 6.1.1 Sydney Water must maintain a Management System certified to *Australian Standard AS/NZS ISO 14001:2004: Environmental Management Systems – Requirements with guidance for use* (the Environmental Management System).
- 6.1.2 Sydney Water must fully implement, and carry out all relevant activities in accordance with, the Environmental Management System.
- 6.1.3 Sydney Water must notify IPART, in accordance with the Reporting Manual, of any significant changes that it proposes to make to the Environmental Management System.
- 6.1.4 Sydney Water must provide IPART, in accordance with the Reporting Manual, with a report on the outputs of the Environmental Management System.

Source: Sydney Water Corporation Operating Licence 2015-2020.

The licence obligations duplicate the functions of other regulatory instruments. This is based on our preliminary findings that:

- ▼ the Act does not require licence obligations on having an EMS, and a licence obligation is not necessary because it duplicates functions of other environmental regulators, and
- ▼ the existing EMS obligations may not be well designed as they contain some prescriptive requirements and refer to an out-of-date standard.

7.2.1 Environmental performance is important, but licence obligations on EMS are not necessary

The Act does not specifically require that a licence condition contain an obligation to have an EMS. We continue to consider that an EMS is important as a means to continue to enable Sydney Water to meet the required environmental performance determined by other laws and regulations. However, we do not consider the licence is the best place to require environmental performance.

Without the EMS obligation in the licence, there are other environmental regulatory instruments and policies in place to manage Sydney Water's environmental performance, such as the Environment Protection Licences with the EPA, the environmental impact assessment and approval processes under the *Environmental Planning and Assessment Act 1979*, and the NSW Climate Change Policy Framework with OEHL. Environmental regulators such as the EPA, DPE and OEHL are responsible for ensuring Sydney Water meets its required environmental performance and are in better positions to prescribe obligations on Sydney Water, if necessary through their respective regulatory instruments.

In addition, Sydney Water could still proceed with maintaining and certifying the EMS without the licence obligation. We note that Sydney Water's existing Environment Policy includes a commitment to "strive to continually improve our environmental performance through the Sydney Water Environmental Management System (EMS) and independently certify it against the ISO 14001 standard".⁷²

⁷² Sydney Water, *Environment Policy*, Version 9, 23 November 2017.

7.2.2 Existing EMS obligations may not be well designed

We consider the existing licence obligation may not be well designed as it contains some prescriptive obligations. If the licence obligations are retained, we would consider removing the EMS certification requirement and the requirement to notify IPART of any significant changes Sydney Water proposes to make (similar to the AMS obligations discussed in section 7.1).

Further, if the licence obligations are retained, we would replace the out-of-date standard specified in the licence with the more recent *Australian/ New Zealand Standard AS/NZS ISO 14001:2016* or other standard approved by IPART.

IPART seeks comments on the following

- 24 Given there are other environmental regulatory instruments and policies in place to manage Sydney Water's environmental performance, what are your views on maintaining or removing an EMS obligation in the amended licence? If the EMS obligations are retained, what are your views on removing the EMS certification and the requirement to notify IPART of any significant changes that Sydney Water proposes, and updating the clause to specify the most current standard? Do you or your organisation depend on Sydney Water having an EMS to achieve certain performance outcomes or mitigate certain risks?

7.3 Quality Management System

A QMS could ensure Sydney Water delivers quality products and services. In our 2015 review of Sydney Water's licence we introduced the QMS requirements. We made this recommendation with the intention of ensuring that Sydney Water effectively manages its systems and assets to deliver and maintain a suitable level of service.⁷³

The existing licence includes four clauses setting out Sydney Water's obligation to develop, certify, implement and notify changes on the QMS (Box 7.4).

⁷³ IPART, Sydney Water Corporation Operating Licence End of Term Review, Water Licensing – Report to the Minister, May 2015, section 7.1

Box 7.4 Existing quality management system obligations

7.1.1 By 30 June 2017, Sydney Water must develop a Management System that is consistent with the *Australian Standard AS/NZS ISO 9001:2008: Quality Management Systems – Requirements* (the Quality Management System).

7.1.2 Sydney Water must ensure that:

- a) by 30 June 2018, the Quality Management System is certified by an appropriately qualified person to be consistent with the *Australian Standard AS/NZS ISO 9001:2008: Quality Management Systems – Requirements*; and
- b) once the Quality Management System is certified under clause 7.1.2(a), the certification is maintained during the remaining term of this Licence.

7.1.3 By 30 June 2018, Sydney Water must ensure that the Quality Management System is fully implemented and that all relevant activities are carried out in accordance with the Quality Management System.

7.1.4 Sydney Water must notify IPART, in accordance with the Reporting Manual, of any significant changes that it proposes to make to the Quality Management System.

Source: Sydney Water Corporation Operating Licence 2015-2020.

The licence obligations duplicate the functions of other clauses in the licence to achieve the same outcomes of delivering quality products and services to its customers. Our preliminary findings show that:

- ▼ the Act does not require licence obligations on having a QMS, and the existing QMS obligations are not necessary to ensure Sydney Water delivers quality products and services, and
- ▼ existing QMS obligations may not be well designed as they contain some prescriptive requirements and refer to an out-of-date standard.

7.3.1 Delivering quality products and services is important, but licence obligations for QMS are not necessary

The QMS is not a performance standard and therefore the Act does not require that the licence impose an obligation to have a QMS. The existing licence already has water quality performance standards in the form of a Drinking Water QMS and Recycled Water QMS; System Performance Standards measured by asset performance supported by an AMS; and customer service obligations specified in a Customer Contract and supported by customer protection measures in the licence.

In the absence of the QMS obligations, these other performance standards should ensure quality products and services. Sydney Water could also make a business decision to continue maintaining and implementing a certified QMS if it considered this was sufficiently valuable.

7.3.2 Existing QMS obligations may not be well designed

The existing QMS obligations may not be well designed. Like the EMS obligations, they contain some prescriptive requirements. If the licence obligations are retained, we would consider removing the QMS certification requirement and the requirement to notify IPART of any significant changes Sydney Water proposes to make to the system.

Further, if the licence obligations are retained, we would replace the out-of-date standard specified in the licence with the more recent *Australian/ New Zealand Standard AS/NZS ISO 9001:2016* or other standard approved by IPART.

IPART seeks comments on the following

- 25 Given there are other obligations already in the licence to ensure Sydney Water delivers quality products and services, what are your views on maintaining or removing a QMS in the amended licence? If the QMS obligations are retained, what are your views on removing the QMS certification and the requirement to notify IPART of significant changes that Sydney Water proposes, and updating the clause to specify the most current standard? Do you or your organisation depend on Sydney Water having a QMS to achieve certain performance outcomes or mitigate certain risks?

8 Customer and stakeholder relations

Customer and stakeholder relations is the fifth part of our proposed structure for the amended licence. This part sets out Sydney Water's obligations related to three areas:

1. customer protection
2. customer engagement, and
3. cooperative relationships with stakeholders.

We have assessed these obligations, using the approach set out in section 2.4. Our preliminary views and findings, where we have them, on each area are set out below.

We note that the existing licence includes obligations related to cooperating with WIC Act licensees within Part 5 (Customer and consumers) of the licence. We have already considered these obligations in section 4.7 of this paper.

8.1 Customer protection

Sydney Water provides services to almost two million customers. In the absence of adequate customer protection measures, Sydney Water could potentially abuse its monopoly power, impacting on the efficient delivery of essential water and sewerage services. Sydney Water's existing licence includes a range of obligations it must meet to protect customers, including obligations related to:

- ▼ having a customer contract
- ▼ providing customer information
- ▼ extending customer protection measures to consumers
- ▼ having hardship policies, including customer assistance and non-payment options
- ▼ having internal complaints handling procedures, and
- ▼ facilitating external dispute resolution (shown in Boxes 8.1 to 8.6, below).

It also includes the existing Customer Contract, as Schedule 4 of the licence.

Our preliminary view is that we should update and modernise the existing customer protection obligations. This view reflects our preliminary findings that:

- ▼ the Act requires licence obligations on customer protection, and
- ▼ the existing customer protection obligations are mostly well designed, but contain obligations that are outdated such as requirements for traditional communication methods where these methods are not stipulated by the Act and where customers may prefer electronic communication.

We have requested Sydney Water propose a revised Customer Contract as part of its submission to this Issues Paper by 6 August 2018.

Box 8.1 Existing customer contract obligations

5.1 Customer Contract

- 5.1.1 The Customer Contract sets out the rights and obligations of Customers and Sydney Water in relation to the Services provided in accordance with this Licence.
- 5.1.2 Sydney Water must make a copy of the Customer Contract available to any person, free of charge:
- a) on its website for downloading; and
 - b) upon request made to the Contact Centre.

Source: *Sydney Water Corporation Operating Licence 2015-2020.*

Box 8.2 Existing customer information obligations

5.2 Providing information

- 5.2.1 Sydney Water must prepare a pamphlet that:
- a) provides a brief explanation of the Customer Contract;
 - b) summarises the key rights and obligations of Customers under the Customer Contract;
 - c) refers to the types of account relief available for Customers experiencing financial hardship;
 - d) outlines the rights of Customers to claim a rebate and the conditions that apply to those rights;
 - e) contains information regarding how to contact Sydney Water by telephone, email or post; and
 - f) contains information regarding the ability for a Customer to enter into agreements with Sydney Water (separate to the Customer Contract) for the provision by Sydney Water of Services to the Customer.
- 5.2.2 Sydney Water must update the pamphlet prepared under clause 5.2.1 to reflect any variations made to the Customer Contract.
- 5.2.3 Sydney Water must:
- a) provide the pamphlet prepared under clause 5.2.1 and pamphlet updates made under clause 5.2.2, free of charge to:
 - i) Customers at least annually with their Bills; and
 - ii) any person upon request made to the Contact Centre; and
 - b) make the pamphlet prepared under clause 5.2.1 and pamphlet updates made under clause 5.2.2 available on its website for downloading by any person, free of charge, within 60 days of the commencement of the Customer Contract or pamphlet update as the case may be.
- 5.2.4 Sydney Water must advertise in a Sydney-based newspaper at least annually on:
- a) the types of account relief available for Customers experiencing financial hardship; and
 - b) rights of Customers to claim rebates and the conditions that apply to those rights.

Source: *Sydney Water Corporation Operating Licence 2015-2020.*

Box 8.3 Existing consumer obligations

5.3 Consumers

5.3.1 Sydney Water's obligations under the Customer Contract relating to Complaint handling and Complaint resolution procedures are extended to Consumers as if Consumers were parties to the Customer Contract.

Source: *Sydney Water Corporation Operating Licence 2015-2020.*

Box 8.4 Existing financial hardship and non-payment obligations

5.4 Assistance Options for Payment Difficulties and Actions for Non-Payment

5.4.1 Sydney Water must maintain and fully implement:

- a) a financial hardship policy that assists residential Customers experiencing financial hardship to better manage their current and future Bills;
- b) procedures relating to a payment plan for residential Customers who are responsible for paying their Bills and who are, in Sydney Water's reasonable opinion, experiencing financial hardship;
- c) procedures for identifying the circumstances under which Sydney Water may disconnect or restrict the supply of water to a Customer's Property; and
- d) provisions for self-identification, identification by community welfare organisations and identification by Sydney Water of residential Customers experiencing financial hardship, (the Assistance Options for Payment Difficulties and Actions for Non-Payment).

5.4.2 Sydney Water must set out, in the Customer Contract:

- a) the Assistance Options for Payment Difficulties and Actions for Non-Payment; and
- b) the options under the Assistance Options for Payment Difficulties and Actions for Non-Payment that are available to Private Residential Tenants who pay usage charges to Sydney Water.

5.4.3 Sydney Water must provide, free of charge, an explanation of the Assistance Options for Payment Difficulties and Actions for Non-Payment to:

- a) residential Customers, at least annually with their Bills;
- b) residential Customers who Sydney Water identifies as experiencing financial hardship on the date that Sydney Water first identifies that the Customer is experiencing financial hardship; and
- c) any other person upon request made to the Contact Centre.

5.4.4 Sydney Water must make the explanation of the Assistance Options for Payment Difficulties and Actions for Non-Payment referred to in clause 5.4.3 available on its website for downloading by any person, free of charge.

Source: *Sydney Water Corporation Operating Licence 2015-2020.*

Box 8.5 Existing internal complaints handling obligations

5.6 Internal complaints handling

- 5.6.1 Sydney Water must maintain a procedure for receiving, responding to and resolving Complaints, which is consistent with the *Australian Standard AS/NZS 10002:2014 – Guidelines for complaint handling in organisations (AS/NZS 10002:2014)* (the Internal Complaints Handling Procedure).
- 5.6.2 Sydney Water must ensure that the Internal Complaints Handling Procedure is fully implemented and that all relevant activities are carried out in accordance with the Internal Complaints Handling Procedure.
- 5.6.3 Sydney Water must provide to Customers, at least annually with their Bills, information concerning internal complaints handling, which explains how to make a Complaint and how Sydney Water will receive, respond to and resolve Complaints.
- 5.6.4 Sydney Water must make the information concerning internal complaints handling referred to in clause 5.6.3 available to any person, free of charge:
- a) on its website for downloading; and
 - b) upon request made to the Contact Centre.

Source: *Sydney Water Corporation Operating Licence 2015-2020.*

Box 8.6 Existing external dispute resolution scheme obligations

5.7 External dispute resolution scheme

- 5.7.1 Sydney Water must be a member of the Energy and Water Ombudsman NSW to facilitate the resolution, by a dispute resolution body, of disputes between Sydney Water and its Customers and Consumers.
- 5.7.2 Sydney Water must:
- a) prepare a pamphlet that explains the operation of the dispute resolution service provided by the Energy and Water Ombudsman NSW, including any right to have a Complaint or dispute referred to the Energy and Water Ombudsman NSW and how such a Complaint or dispute can be assessed;
 - b) provide a copy of the pamphlet prepared under clause 5.7.2(a), free of charge to Customers at least once a year with their Bills; and
 - c) make a copy of the pamphlet prepared under clause 5.7.2(a) available to any person, free of charge:
 - i) on its website for downloading; and
 - ii) upon request made to the Contact Centre.

Source: *Sydney Water Corporation Operating Licence 2015-2020.*

8.1.1 The Act requires licence obligations on customer protection

The Act states that one of the principal objectives of Sydney Water is to “exhibit a sense of social responsibility by having regard to the interests of the community in which it operates”. The Act requires that the licence contain provisions to ensure customer protection. In particular, the Act states that the licence must set out the terms and conditions of a Customer Contract on Sydney Water’s provision of water supply or sewerage services.⁷⁴ In addition, it states that the terms and conditions must include particulars of the contract charges, or of the manner in which the contract charges are to be calculated or determined, on the provision of water or sewerage services to customers by Sydney Water.⁷⁵

8.1.2 Existing customer protection obligations are mostly well designed, but contain requirements that are outdated

While mostly well designed, we consider the existing customer protection obligations should be amended to remove outdated obligations, particularly those that require traditional communication methods, unless these are required under the Act. This would enable digital communication and transactions between Sydney Water and its customers, where the customers opt in to those methods. In addition, we consider the Customer Contract should be revised for consistency, readability and to clarify the responsibilities of Sydney Water and the customer.

Updating the licence obligations

The existing licence requires Sydney Water to:

- ▼ Advertise in a Sydney-based newspaper at least annually on the types of account relief available to customers experiencing financial hardship, and the rights of customers to claim rebates and the conditions that apply to those rights.
- ▼ Prepare pamphlets and other inserts to include in customers’ bills regarding the customer contract, assistance options for financial hardship, internal complaints handling and the external dispute resolution service. This information must also be available for downloading from Sydney Water’s website.

We consider these traditional communication measures are outdated and could be replaced with requirements to provide information to customers through the medium that the customer has selected for receiving bills (paper or electronic). We are aware that Sydney Water already provides information that is required to be included in customers’ bills in the format of that bill (ie, a paper insert if a paper bill is provided, or an electronic attachment if an electronic bill is provided). Information could also be provided to customers on Sydney Water’s website and through other electronic means, such as email or social media.

We identified no systemic customer issues for Sydney Water by reviewing the nature of the complaints that Energy and Water Ombudsman of New South Wales (EWON) received. Sydney Water is required by the existing licence to be a member of EWON. EWON provides the external dispute resolution scheme for Sydney Water and its customers. It receives complaints from Sydney Water customers, and provides IPART with summary

⁷⁴ *Sydney Water Act 1994*, s 54(1).

⁷⁵ *Sydney Water Act 1994*, s 54(3).

information regarding these complaints.⁷⁶ This supports our preliminary finding that the customer protection obligations are well designed.

Revising the Customer Contract

We consider that the Customer Contract should:

- ▼ meet the requirements of and be consistent with the Act and the *Sydney Water Regulation 2017*
- ▼ be internally consistent
- ▼ be consistent with the defined terms used in the licence
- ▼ be written in plain English, and
- ▼ clarify the responsibilities for Sydney Water and customers on maintenance of pipes and meters.

The ownership, maintenance responsibilities and who should pay for the repair of the 'main to meter' pipe require clarification in the Customer Contract to clarify each party's obligations. Sydney Water should consider using figures or diagrams to assist customers in understanding the responsibilities on maintenance of pipes and meters.

Currently Sydney Water may send bills electronically at a customer's request.⁷⁷ The current customer billing arrangements could be updated to further encourage electronic billing. If the customer does not nominate a postal or electronic address, Sydney Water could continue to send the bill to the property to which the services are available, or the customer's last postal address.

Our preliminary view is that we should update the existing customer protection obligations in the licence clauses by requiring Sydney Water to publish information on its website and to provide information directly to each customers through the medium that the customer has selected for receiving bills (paper or electronic).

IPART seeks comments on the following

- 26 Do you agree with our preliminary view to update the existing obligations for customer protection on the ways Sydney Water communicates with customers?
- 27 What are your views on Sydney Water's proposed Customer Contract that will be attached to its submission to this Issues Paper?

⁷⁶ EWON, *Water Industry Snapshot July 2016 – September 2016*; EWON, *Water Industry Snapshot October 2016 – December 2016*; EWON, *Water Industry Snapshot January 2017 – March 2017* EWON, *Water Industry Snapshot April 2017 – June 2017*. In 2016-17, the total number of complaints received from Sydney Water customers by EWON was 493. The primary issues raised were regarding billing, customer service, property damage and other land issues, and provision of services. We note that in 2016-17, complaints about NSW water utilities made up 3% of the complaints received by EWON, with 74% of complaints received about electricity and 23% about gas.

⁷⁷ Customer Contract, Schedule 4 of the Sydney Water Corporation Operating Licence 2015-2020, s 4.4.3.

8.2 Customer engagement

As a monopoly, the best way for Sydney Water to determine its customers' preferences is through customer engagement. It should engage with its customers to understand their views, priorities and needs, and this understanding should inform its decision-making.

The existing licence includes seven clauses that set out its obligations to engage with customers and consumers, shown in Box 8.7, all of which relate to the Customer Council. Our preliminary view is that we should retain and amend the existing obligations to improve the overall quality of Sydney Water's customer engagement. This view reflects our preliminary findings that:

- ▼ the Act requires licence obligations on the establishment of and consultation with Customer Councils, and
- ▼ existing Customer Council obligations may not be well designed as they may not ensure that Sydney Water has access to views that are sufficiently representative of Sydney Water's customer base, and do not appear to be outcomes focussed.

Box 8.7 Existing Customer Council and Customer Council Charter obligations

5.5.1 Sydney Water must maintain and regularly consult with organisations representing a broad cross-section of its Customers and Consumers through the Customer Council.

5.5.2 Sydney Water must utilise the Customer Council to, among other things, obtain advice on the interests of Sydney Water's Customers and Consumers, the Customer Contract and such other key issues related to Sydney Water's planning and operations as Sydney Water may determine, consistent with the Customer Council Charter (referred to in clause 5.5.4).

5.5.3 Sydney Water must:

- a) ensure that, at all times, the membership of the Customer Council is appointed and determined by Sydney Water in accordance with the Customer Council Charter, and
- b) use its best endeavours to include, as members of the Customer Council, at least one person representing each of the following categories:
 - i) business groups, including small, medium and large business and non-residential customers;
 - ii) consumer groups;
 - iii) organisations representing low income households;
 - iv) people living in rural and urban fringe areas;
 - v) residential consumers;
 - vi) environmental groups;
 - vii) local government;
 - viii) older people;
 - ix) people with disabilities;
 - x) indigenous Australians; and
 - xi) people from non-English speaking backgrounds.

Source: Sydney Water Corporation Operating Licence 2015-2020.

Box 8.7 (continued)

5.5.4 Sydney Water and members of the Customer Council must, for the term of this Licence, maintain a charter (the Customer Council Charter) that addresses all of the following issues:

- a) the role of the Customer Council;
- b) selection criteria on how members of the Customer Council will be drawn from the community and information on how vacancies for membership will be advertised;
- c) the processes for appointment of new members;
- d) the term for which members are appointed;
- e) information on how the Customer Council will operate;
- f) a description of the type of matters that will be referred to the Customer Council and how those matters will be referred;
- g) procedures for the conduct of Customer Council meetings, including the appointment of a chairperson and the requirement to invite, on an annual basis, a co-chair of the Customer Council from Customer representatives;
- h) procedures for communicating the outcomes of the Customer Council's work to the public;
- i) procedures for monitoring issues raised at meetings of the Customer Council and ensuring appropriate follow-up of those issues; and
- j) funding and resourcing of the Customer Council by Sydney Water.

5.5.5 Sydney Water must provide the Customer Council with information in Sydney Water's possession or under its control necessary to enable the Customer Council to discharge the tasks assigned to it, other than information or documents that are confidential (including documents that are subject to client legal privilege).

5.5.6 Sydney Water must make a copy of the Customer Council Charter and minutes from proceedings of the Customer Council, available to any person, free of charge:

- a) on its website for downloading; and
- b) upon request made to the Contact Centre.

5.5.7 Sydney Water and the Customer Council may each propose any amendments to the Customer Council Charter. However, such amendments will not be effective until they have been approved by both Sydney Water and the Customer Council.

Source: Sydney Water Corporation Operating Licence 2015-2020.

8.2.1 The Act requires licence obligations to establish and consult with customers

The Act requires Sydney Water's licence to include terms and conditions that require it to establish and consult with one or more Customer Councils on Sydney Water's provision of systems and services.⁷⁸ Therefore, the licence must contain obligations on customer engagement and Customer Councils.

⁷⁸ *Sydney Water Act 1994*, Section 15.

8.2.2 Existing Customer Council obligations may not be well designed

We would like to explore whether the existing approach to Sydney Water's Customer Council is working effectively and achieving its objectives. We consider the licence obligations for the Customer Council should enable Sydney Water to effectively engage with its customers.

May not properly represent the overall customer base and customer preferences

The existing licence obligations require Sydney Water to maintain and regularly consult with a broad cross-section of its customers and consumers through the Customer Council, and to use its best endeavours to ensure this council includes members from a specified list of categories. While this list does cover a broad range of customer types, it does not necessarily ensure the council is representative of Sydney Water's almost two million customers, and can provide informed advice about these customers' perspectives, values and priorities. To perform this role, the Customer Council should comprise of members selected for their expertise in using scientific and statistically-based customer research and engagement methods to understand customer perspectives, values and priorities.

An option may be to have an approach where instead of the Customer Council members being individuals representing diverse stakeholder groups, the Customer Council could be comprised of members selected for their expertise in representative customer engagement. The members could advise Sydney Water on ways to enable engagement that is representative of the overall customer base including groups or individuals representing diverse views. The Customer Council members could have expertise in using scientific and statistically-based customer research and engagement methods to understand customer perspectives, values and priorities.

We note that in the United Kingdom, water utilities establish Customer Challenge Groups (CCGs) that:

- ▼ provide independent oversight of the quality of their customer engagement activities
- ▼ report on how the results of customer engagement are reflected in business planning and level of service decisions, and
- ▼ may include subject matter experts but must include two key stakeholder representative bodies.

The role of these groups is to assess the overall quality of customer engagement and the degree to which the results of this engagement have been reflected in the utility's proposed business plan. While they do not need to approve or endorse this overall plan, they are expected to highlight areas of challenge and disagreement.⁷⁹ They are also expected to produce a report that documents how trade-offs have been explored and reflected in the development of the utility's business plan.

We consider that a similar approach could be adopted for Sydney Water's Customer Council, where the role of the Customer Council could include both:

- ▼ representing the interests of Sydney Water's customers on key issues related to Sydney Water's planning and operations (similar to existing clause 5.5.2), and

⁷⁹ Ofwat, *Ofwat's customer engagement policy statement and expectation for PR19*, May 2016, p 24.

- ▼ providing advice to Sydney Water on its customer engagement strategies and the use of those strategies in making decisions on level of service and business planning decisions.

Licence does not appear to be clear on outcomes to be achieved through the Customer Council

The existing licence obligations on the Customer Council are very prescriptive – for example, in addition to prescribing the council’s composition, they prescribe that the council must maintain a Customer Council Charter, the content of this charter, the information Sydney Water must provide to the council, and so on. However, they do not appear to clearly indicate what outcomes the interactions between Customer Council and Sydney Water should achieve.

In our view, Sydney Water should undertake customer consultation, including via the Customer Council that:

- ▼ is consistent with the outcome-based principles from our *Guidelines for Water Agency Pricing Submissions* (provided in full in section 2.5)
- ▼ provides it with a strong and up-to-date understanding of its customers’ preferences, and
- ▼ informs its decisions about planning and operations, and its regulatory proposals (for example, its proposed changes to service standards, regulatory allowances for discretionary expenditure and changes to price structures).

We understand Sydney Water currently undertakes consultation with its customers via the Customer Council, and other methods including sentiment and customer experience tracking. It also engages with its customers, community members and other stakeholders to support its planning, delivery and operation of specific programs, projects, products and services. In 2018, Sydney Water commenced a customer engagement program to inform this review and the next price review, as well as its ongoing planning and investment decision-making. We consider this more recent work is a positive step. Sydney Water should continue to engage with its customers in a way that is relevant, representative, proportionate, objective, clearly communicated and accurate, to enable it to adequately understand its customers and their preferences, during the next licence period.

We consider that obligations imposed on Sydney Water for customer engagement should not prescribe the customer engagement methodologies or activities, but instead should focus on ensuring that Sydney Water’s engagement with its customers is relevant, representative, proportionate, objective, clearly communicated and accurate. Further, we consider Sydney Water should have an ongoing relationship with its customers.

Our preliminary view is that the licence obligations for the Customer Council should enable Sydney Water to effectively engage with its customers in ways that are relevant, representative, proportionate, objective, clearly communicated and accurate.

Our preliminary view is that we should amend existing obligations on the composition of the Customer Council to require experts in customer engagement to enable Sydney Water to engage in a way that is representative of its entire customer base including groups or individuals representing diverse views.

Our preliminary view is that we should amend existing obligations on the role of the Customer Council to include both:

- obtaining advice on and representing the interests of Sydney Water’s customers on key issues related to Sydney Water’s planning and operations (similar to existing clause 5.5.2), and
- providing advice to Sydney Water on its customer engagement strategies and the use of those strategies in making level of service and business planning decisions.

IPART seeks comments on the following

- 28 What are your views on the effectiveness of the existing Customer Council?
- 29 Do you agree with our preliminary view on the composition and role of the Customer Council?
- 30 Do you agree with our preliminary view to remove prescriptive obligations and replace them with outcome-based obligations?

8.3 Cooperative relationships with stakeholders

Sydney Water has existing cooperative relationships with government stakeholders including policy agencies and regulators. The objectives of having cooperative relationships are to optimise and align Sydney Water’s operations with the expectations of customers, government and regulators, as well as influence its operating environment. Sydney Water’s existing licence includes requirements for developing and/or maintaining cooperative relationships through memoranda of understanding (MOUs) or other instruments, in some cases these instruments are required by the Act.

Our preliminary views are that we should:

- ▼ maintain the existing obligations for MOUs with NSW Health, Environment Protection Authority (EPA) and Water Administration Ministerial Corporation (WAMC)
- ▼ maintain and consolidate the existing obligation for an MOU with Fire and Rescue NSW (FRNSW), and
- ▼ remove the existing obligation for a roles and responsibilities protocol with Department of Planning and Environment (DPE).

8.3.1 Maintain the obligations for MOUs with NSW Health, EPA and WAMC

The existing licence includes seven clauses which set out Sydney Water's obligations to maintain MOUs with NSW Health, EPA and WAMC, shown in Box 8.8. Our preliminary view is that these clauses should be maintained. This reflects our preliminary findings that:

- ▼ the Act requires licence obligations on maintaining cooperative relationships through MOUs with these parties, and
- ▼ existing MOU obligations are well designed as they are outcome-based.

Box 8.8 Existing licence clauses regarding memoranda of understanding

9.1 NSW Health

9.1.1 Sydney Water must maintain the memorandum of understanding with NSW Health entered into under section 35 of the Act.

9.1.2 The purpose of the memorandum of understanding referred to in clause 9.1.1 is to form the basis for co-operative relationships between the parties to the memorandum of understanding. In particular, the purpose of the memorandum of understanding referred to in clause 9.1.1 is to recognise the role of NSW Health in providing advice to the NSW Government in relation to Drinking Water quality standards and the supply of water which is safe to drink.

9.1.3 The memorandum of understanding referred to in clause 9.1.1 must include arrangements for Sydney Water to report to NSW Health information on any events in relation to Sydney Water's systems or Services, which may pose a risk to public health.

9.2 Environment Protection Authority

9.2.1 Sydney Water must maintain the memorandum of understanding with the Environment Protection Authority entered into under section 35 of the Act.

9.2.2 The purpose of the memorandum of understanding referred to in clause 9.2.1 is to form the basis for co-operative relationships between the parties to the memorandum of understanding. In particular, the purpose of the memorandum of understanding referred to in clause 9.2.1 is to recognise the role of the Environment Protection Authority as the environment regulator of New South Wales and to commit Sydney Water to environmental obligations.

9.3 Water Administration Ministerial Corporation

9.3.1 Sydney Water must maintain the memorandum of understanding with the Water Administration Ministerial Corporation (WAMC) entered into under section 35 of the Act.

9.3.2 The purpose of the memorandum of understanding referred to in clause 9.3.1 is to form the basis for co-operative relationships between the parties to the memorandum of understanding. In particular, the purpose of the memorandum of understanding referred to in clause 9.3.1 is to recognise the role of WAMC in regulating water access, use and management and Sydney Water's right to use water vested in WAMC.

Source: Sydney Water Corporation Operating Licence 2015-2020.

The Act requires licence obligations on maintaining cooperative relationships with NSW Health, EPA and WAMC

The Act requires Sydney Water to enter into a separate MOU with each of the regulatory agencies listed in the Act, which include NSW Health, the EPA and WAMC.⁸⁰ The licence therefore is required to include relevant clauses about these memoranda of understanding.

Existing obligations for MOUs with NSW Health, EPA and WAMC are well designed

We consider the existing licence obligations are well designed, as they are appropriate and outcome-based. They state the purpose of each MOU, which is to achieve the outcome of forming cooperative relationships between the parties. The obligation for the MOU with NSW Health includes additional details about the arrangements for reporting on events which pose a risk to public health, which we consider is the minimum requirement for Sydney Water to demonstrate a cooperative relationship with NSW Health. Additional obligations are not necessary for the MOUs with EPA and WAMC.

8.3.2 Maintain and update the obligation for an MOU with FRNSW

The water supply network is one of several mechanisms affecting water availability for urban firefighting. Others include the maintenance and continuing provision for existing fire systems such as installed systems required by building codes. Sydney Water can contribute to improving fire safety by collaborating with Fire and Rescue NSW (FRNSW) to enable better understanding by both parties of water availability needs for firefighting and water supply network limitations.

We are also considering the provision of water for firefighting in our current review of developer charges and backlog sewerage charges for metropolitan water agencies. Our draft decision in that review is to set a new charge for a voluntary upgrade of services to existing properties. This charge:

- ▼ would provide a way to fund infrastructure upgrades in built-in areas, to increase water pressure and flow for firefighting, and
- ▼ would share upgrade costs between existing properties (on a voluntary basis) and new developments.⁸¹

The existing licence includes four clauses that set out Sydney Water's obligations to use its best endeavours to develop and enter into an MOU with FRNSW, and once the MOU is in place for Sydney Water to use its best endeavours to comply with the MOU, shown in Box 8.9. Our preliminary view is that these obligations should be maintained and consolidated. This reflects our preliminary findings that:

- ▼ although the Act does not specifically require Sydney Water to maintain a cooperative relationship through an MOU with FRNSW, an MOU to maintain a cooperative relationship is necessary, and
- ▼ existing MOU obligations are mostly well designed, but can be updated to reflect that an MOU is now in place.

⁸⁰ *Sydney Water Act 1994*, ss 34, 35 and 36.

⁸¹ IPART, *Maximum prices to connect, extend or upgrade a service for metropolitan water agencies – Sydney Water, Hunter Water and Central Coast Council – Draft Report*, June 2018.

Box 8.9 Fire and Rescue NSW – Memorandum of understanding

9.4 Fire and Rescue NSW

9.4.1 Sydney Water must use its best endeavours to develop and enter into a memorandum of understanding with Fire and Rescue NSW (FRNSW) by 31 December 2015.

9.4.2 Once the memorandum of understanding referred to in clause 9.4.1 is developed and entered into, Sydney Water must use its best endeavours to comply with the memorandum of understanding.

9.4.3 The purpose of the memorandum of understanding referred to in clause 9.4.1 is to form the basis for co-operative relationships between the parties to the memorandum of understanding. In particular, the purpose of the memorandum of understanding referred to in clause 9.4.1 is to:

- a) develop the roles and responsibilities of the parties to the memorandum of understanding as they relate to each other;
- b) identify the needs and constraints of the parties to the memorandum of understanding as they relate to each other; and
- c) identify and develop strategies for efficient and effective provision of firefighting water consistent with the goals of each party to the memorandum of understanding.

9.4.4 The memorandum of understanding referred to in clause 9.4.1 must require:

- a) the establishment of a working group, comprised of representatives from Sydney Water and FRNSW; and
- b) the working group to consider the following matters (at a minimum):
 - i) arrangements regarding information sharing between Sydney Water and FRNSW;
 - ii) agreed timelines and a format for Sydney Water to provide a report to FRNSW detailing the network performance with regard to availability of water for firefighting (taking into account the minimum available flow and pressure in localised areas of the network);
 - iii) arrangements for Sydney Water to consult with FRNSW in the design of new assets and planning of system maintenance, where planning indicates that minimum available flow and pressure may unduly impact firefighting in the network section under consideration; and
 - iv) other matters as agreed by both parties to the memorandum of understanding.

Source: Sydney Water Corporation Operating Licence 2015-2020.

Licence obligations to maintain a cooperative relationship with FRNSW is necessary

The Act does not require the licence to contain terms and conditions for Sydney Water to develop or maintain a cooperative relationship with FRNSW. However, we consider that licence obligations to ensure Sydney Water maintains this cooperative relationship is necessary.

In 2015, prior to the inclusion of the FRNSW MOU clauses in the existing licence, FRNSW raised concerns about the lack of coordinated initiatives undertaken by different public agencies in meeting needs with regard to firefighting.⁸² We have received more recent submissions from FRNSW to our current reviews of developer charges and backlog sewerage charges for metropolitan water agencies, and water utility performance indicators, that suggest the formalisation of the relationship between Sydney Water and FRNSW has improved the cooperation between the two agencies and that it should be maintained.

Existing obligations for MOU with FRNSW are mostly well designed, but can be updated

We consider the existing licence obligations are well designed, however these can be updated. These require Sydney Water to use its best endeavours to develop and enter into an MOU with FRNSW but this has already occurred. Therefore, these should be updated to require Sydney Water to use its best endeavours to maintain and comply with the MOU with FRNSW. By requiring Sydney Water to use best endeavours, Sydney Water is not penalised if FRNSW decides not to participate in all or some of the MOU approach.

We consider that the ongoing obligation to have an MOU with FRNSW combined with our draft decision to set a new charge in the current review of developer charges and backlog sewerage charges for metropolitan water agencies⁸³ for a voluntary upgrade of services to existing properties, adequately addresses the issue of water for firefighting.

8.3.3 Remove the obligation for a protocol with the DPE

The existing licence includes an obligation for Sydney Water to maintain a roles and responsibilities protocol with the Metropolitan Water Directorate (MWD), shown in Box 8.10. The functions previously undertaken by the MWD are now undertaken by the DPE. Our preliminary view is to remove the existing obligation from the licence. This reflects our preliminary finding that licence obligations to maintain a cooperative relationship is not required, and the same outcome can be achieved in the absence of licence obligations.

⁸² FRNSW, Submission to the review of the operating licence for Sydney Water, 7 April 2015.

⁸³ IPART, Maximum prices to connect, extend or upgrade a service for metropolitan water agencies – Sydney Water, Hunter Water and Central Coast Council – Draft Report, June 2018.

Box 8.10 Department of Planning and Environment – Roles and Responsibilities Protocol

3.1 Roles and Responsibilities Protocol

3.1.1 Sydney Water must use its best endeavours to:

- a) develop and agree a Roles and Responsibilities Protocol with the Metropolitan Water Directorate for the development and implementation of the Metropolitan Water Plan; and
- b) maintain and comply with the Roles and Responsibilities Protocol that has been developed and agreed under clause 3.1.1(a).

Source: Sydney Water Corporation Operating Licence 2015-2020.

Licence obligations to maintain a cooperative relationship with DPE is not necessary

The Act does not specifically require the licence to contain terms and conditions for Sydney Water to develop or maintain a cooperative relationship with DPE. We consider that the outcome of forming a cooperative relationship with DPE could be achieved in the absence of a licence obligation.

As demonstrated in the 2016-17 audit of Sydney Water's existing licence clause 3.1.1, Sydney Water and the DPE are communicating effectively in the absence of a signed protocol. Sydney Water provided evidence through email trails and staff work programs that demonstrated Sydney Water and the DPE currently have a positive and cooperative working relationship, and are progressing the implementation of the Metropolitan Water Plan and associated projects.⁸⁴ Under the Best Practice Licensing Framework, we consider retaining a requirement in the licence unnecessary.

Our preliminary view is that we should:

- Maintain existing obligations on Sydney Water to maintain memorandums of understanding (MOUs) with NSW Health, the Environment Protection Authority (EPA) and the Water Administration Ministerial Corporation (WAMC).
- Maintain and update the existing obligation to maintain an MOU with Fire and Rescue NSW (FRNSW).
- Remove the existing obligation for Sydney Water to maintain a Roles and Responsibilities Protocol with the Department of Planning and Environment (DPE) because Sydney Water has formed a cooperative relationship with the DPE in the absence of a signed protocol, making this obligation unnecessary.

IPART seeks comments on the following

31 Do you agree with our preliminary view to:

- Maintain the obligation for Sydney Water to maintain cooperative relationships with NSW Health, the Environment Protection Authority (EPA) and the Water Administration Ministerial Corporation (WAMC)?

⁸⁴ IPART, *Sydney Water Corporation Operational Audit 2016-17, Report to the Minister*, December 2017.

-
- Maintain and update the obligation for Sydney Water to maintain a cooperative relationship with Fire and Rescue NSW (FRNSW)?
 - Remove the obligation for Sydney Water to maintain a cooperative relationship with the Department of Planning and Environment (DPE)?

9 Performance monitoring and reporting

Performance monitoring and reporting is the sixth part of our proposed structure for the amended licence. This part sets out Sydney Water's obligations related to three areas:

1. operational audits
2. reporting, and
3. environmental indicators.

We have assessed these obligations, using the approach set out in section 2.4. Our preliminary views and findings, where we have them, on each area are set out below.

9.1 Operational audits

Operational audits are essential to monitor and report to the Minister on Sydney Water's compliance with the licence. Sydney Water's existing licence includes a range of obligations Sydney Water must meet to ensure that an audit can be conducted to the requirements of the existing licence and to the expectations of IPART. The existing licence includes three clauses on operational audits, shown in Box 9.1.

Our preliminary view is that these obligations should be maintained. This view reflects our preliminary findings that:

- ▼ the Act requires licence obligations on operational audits, and
- ▼ existing operational audits obligations are well designed as they are outcome-based.

Box 9.1 Existing operational audits obligations

8.1 Operational audits

8.1.1 IPART may undertake, or may appoint an Auditor to undertake, an audit of Sydney Water's compliance with any of the following:

- a) this Licence;
 - b) the Reporting Manual; and
 - c) any matters required by the Minister;
- (the Operational Audit).

8.1.2 Sydney Water must, within a reasonable time period of receiving a request from IPART or an Auditor to provide information, provide IPART or the Auditor with all the information in Sydney Water's possession, or under Sydney Water's custody or control, which is necessary to conduct the Operational Audit, including any information that is reasonably requested by IPART or an Auditor.

8.1.3 For the purpose of any Operational Audit or verifying a report on an Operational Audit, Sydney Water must, within a reasonable time period of receiving a request from IPART or an Auditor, permit IPART or the Auditor to:

- a) access any works, premises or offices occupied by Sydney Water;
- b) carry out inspections, measurements and tests on, or in relation to, any such works, premises or offices;
- c) take on to any such premises or offices any person or equipment necessary for the purpose of performing the Operational Audit or verifying any report on the Operational Audit;
- d) inspect and make copies of, and take extracts from, any books and records of Sydney Water that are maintained in relation to the performance of Sydney Water's obligations under this Licence (including the Reporting Manual); and
- e) discuss matters relevant to the Operational Audit or any report on the Operational Audit with Sydney Water, including Sydney Water's officers and employees.

Source: Sydney Water Operating Licence 2015-2020

9.1.1 The Act requires licence obligations to prepare operational audits

The Act states that the licence must provide for the preparation of an operational audit in accordance with the licence auditing functions of IPART.⁸⁵ Therefore, obligations to ensure preparation of operational audits are required.

9.1.2 Existing operational audits obligations are well designed

We consider the existing operational audits obligations are well designed because they are outcome-based rather than prescriptive, which promote efficient operational audits.

⁸⁵ *Sydney Water Act 1994*, ss 14(2) and 31.

The obligations require Sydney Water to provide timely information for the operational audits and to cooperate with us or the auditors to facilitate the operational audits.

Our preliminary view is that we should maintain the existing obligations for Sydney Water to provide timely information for the operational audits and cooperate with us and the auditors to facilitate the operational audits.

IPART seeks comments on the following

- 32 Do you agree with our preliminary view to maintain the existing obligations for operational audits?

9.2 Reporting

Reporting requirements are an essential part of performance monitoring. The existing licence includes four obligations on reporting, shown in Boxes 9.2 and 9.3.

Our preliminary view is that these obligations should be maintained and, as discussed in previous chapters of this paper, other similar reporting obligations should be removed. This will ensure all obligations related to reporting obligations are set out once, in the same part of the licence. This view reflects our preliminary findings that:

- ▼ although the Act does not require licence obligations on reporting, licence obligations to ensure reporting are necessary to provide inputs to operational audits and to inform relevant stakeholders, and
- ▼ existing reporting obligations are mostly well designed, but similar reporting obligations in the existing licence can be consolidated

Box 9.2 Existing Reporting obligations

8.2 Reporting

8.2.1 Sydney Water must comply with its reporting obligations set out in the Reporting Manual, which include:

- a) reporting to IPART and NSW Health in accordance with the Reporting Manual;
- b) making reports and other information publicly available, in the manner set out in the Reporting Manual; and
- c) reporting to IPART on Sydney Water's performance against the National Water Initiative Performance Indicators.

8.2.2 Sydney Water must maintain sufficient record systems that enable it to report accurately in accordance with clause 8.2.1

Source: Sydney Water Corporation Operating Licence 2015-2020

Box 9.3 Existing performance indicators and system performance standards obligations

8.4 Performance indicators and system performance standards

8.4.1 Sydney Water must maintain record systems that are sufficient (to IPART's satisfaction) to enable Sydney Water to measure accurately its performance against the performance indicators and System Performance Standards specified in the Reporting Manual.

8.4.2 In the case of any ambiguity in the interpretation or application of any performance indicators specified in the Reporting Manual, IPART's interpretation or assessment of the application of the indicators will prevail.

Source: Sydney Water Corporation Operating Licence 2015-2020

9.2.1 Licence obligations to ensure reporting are necessary

The Act does not require the licence to contain reporting requirements, except for requiring reporting of indicators of direct impact on the environment of Sydney Water's activities (discussed in section 9.3). However, we consider reporting is an essential part of performance monitoring and therefore the licence should include reporting obligations.

We use the information from reporting as input to our risk-based approach to compliance monitoring, including scoping our operational audits of Sydney Water's licence. We understand NSW Health considers the water quality monitoring information as one input when assessing Sydney Water's implementation of the water quality management systems to ensure safe water quality. NSW Health views water quality monitoring as an essential requirement for satisfactory implementation of a water quality management system. Sydney Water's customers and consumers use the information to determine whether the products are safe, or the services are adequate. Public reporting can provide transparency to Sydney Water's operational activities and could potentially enhance public confidence in Sydney Water.

We are committed to ensuring that where information is reported to us as a requirement of the Reporting Manual, it is useful and the benefit it provides outweighs the costs of collecting and reporting the information. We have recently applied this approach to our review of water utility performance indicators which streamlines the IPART performance indicator set and reduces regulatory burden. Our Final Report on our review of water utility performance indicators will be released on 29 June 2018.

9.2.2 Existing reporting obligations are mostly well designed, but similar obligations in the licence can be consolidated

The existing reporting obligations are mostly well designed, but similar reporting obligations in the existing licence can be consolidated in these reporting clauses. For example existing obligations to report on water conservation (clause 3.2.7) and response time for water main breaks (clause 4.3.1) can be consolidated in one part of the amended licence.

Our preliminary view is that we should maintain the existing obligations on reporting but consolidate these obligations in the amended licence.

IPART seeks comments on the following

- 33 Do you agree with our preliminary view to maintain the existing obligations on reporting but consolidate these obligations in the amended licence?

9.3 Environmental indicators

Environmental reporting is important to allow for monitoring of Sydney Water's direct impact on the environment. The existing licence includes one clause that requires Sydney Water to compile and report on environmental indicators, shown in Box 9.4. Our preliminary finding is that we should maintain and consolidate the obligations to avoid duplications.

This view reflects our preliminary findings that:

- ▼ the Act requires licence obligations on compiling indicators of direct impact on the environment of Sydney Water's activities, and
- ▼ the existing obligation on environmental indicators are mostly well designed, but contain some duplication that can be removed.

Box 9.4 Existing environmental indicators obligations

6.2.1 Sydney Water must:

- a) prepare indicators of the direct impact on the environment of Sydney Water's activities (the Environmental Performance Indicators);
- b) monitor and compile data on the Environmental Performance Indicators; and
- c) report on the Environmental Performance Indicators in accordance with the Reporting Manual.

Source: Sydney Water Corporation Operating Licence 2015-2020.

9.3.1 The Act requires licence obligations on compiling environmental indicators

The Act states that the licence must include terms or conditions requiring Sydney Water to compile indicators of the direct impact on the environment of Sydney Water's activities.⁸⁶ Therefore, obligations to ensure preparation of environmental indicators are required.

9.3.2 Existing environmental indicators are mostly well designed but contain some duplication

We consider the existing environmental indicator obligations are mostly well designed, although the requirement to report on the Environmental Performance Indicators in

⁸⁶ Sydney Water Act 1994, s 14(1)(d).

accordance with the Reporting Manual (clause 6.2.1 c) duplicates the reporting obligations discussed above (clause 8.2.1 in Box 9.2 and clause 8.4.1 in Box 9.3) and so can be removed.

The environmental indicators are set out in the existing Reporting Manual. In our concurrent review of water utility performance indicators, we propose a reduction in the number of environment performance indicators for Sydney Water (from 14 to 10).⁸⁷ We received limited stakeholder views on Sydney Water's environmental indicators in that review, and are interested in stakeholder views on the most useful environmental indicators for Sydney Water to report against.

Our preliminary view is that we should maintain the existing obligations on environmental indicators but remove the requirement to report on them in compliance with the Reporting Manual as it duplicates the existing reporting obligations.

IPART seeks comments on the following

- 34 Do you agree with our preliminary view to maintain the existing environmental indicator obligations and remove duplication with the existing reporting obligation?
- 35 Do you have a view on what would be the most useful environmental indicators for Sydney Water to report on?

⁸⁷ IPART, Review of water utility performance indicators – Draft Report, April 2018.