Professor T Parry  
Chairman  
Independent Pricing and Regulatory Tribunal of NSW  
PO Box Q290  
QVB Post Office  NSW  1230

Dear Professor Parry,

I am writing in relation to the end of term review of the Operating Licences for Sydney Water Corporation and Sydney Catchment Authority.

The NSW Department of Health considers that the present Operating Licences are generally meeting their objectives in terms of the protection of public health. The end of term review presents an opportunity to examine how the regulatory activities of the Department and IPART may be better integrated. For example, the Department would support combining our independent Water Quality Audit of Sydney Water with the Operational Audit. The Department recommends that aspects of the Operational Audit relating to drinking water quality or other matters of public health concern be referred to the Chief Health Officer for review and approval before publication.

The revised Australian Drinking Water Guidelines are likely to be endorsed for use in NSW before the conclusion of the end of term review. The challenge in implementing the Guidelines is maintaining a balance between risk management, monitoring and reporting. Further discussion is needed on how the revised Guidelines should be implemented and acknowledged in the Operating Licences.

I have attached a submission which provides further comment on the Issues Paper and matters of interest to the Department.

Thank you for the opportunity to contribute to the review. If officers of IPART require further information, the appropriate contact is Dr Paul Byleveld in the Department’s Water Unit on 9816 0589.

Yours sincerely,

[Signature]

DR GREG STEWART  
Deputy Director-General Public Health  
and Chief Health Officer  
6/2/04
Submission to the end of term review of the Operating Licences for Sydney Water Corporation and Sydney Catchment Authority

The following comments address relevant sections of the Issues Paper and other matters of interest to the Department.

General

3. The Regulatory Framework

3.1 Current regulatory framework. What is the appropriate role and scope of Sydney Water and Sydney Catchment Authority’s Operating Licences? How can the Operating Licences be improved to reflect regulatory best practice?

The Department considers that the current regulatory framework is generally meeting its objectives in terms of the protection of public health. However, the review should consider ways that regulatory activities of IPART, NSW Health and other agencies may be carried out more efficiently.

The Department considers it desirable to reduce the number of separate audits of each water utility. The review provides an opportunity to identify any duplication of regulation and auditing.

The Department considers the Memoranda of Understanding (MoUs) to be the major instruments defining its relationship with Sydney Water Corporation (SWC) and Sydney Catchment Authority (SCA). The Operating Licences should continue to require MoUs. At present the Operating Licences reference certain requirements of the MoUs. However, it is not necessary for the Operating Licences to specify all requirements of the MoUs.

9. Administration of the Operating Licences

9.2 Streamlined administration. How can the licence audit process be improved?

Under present arrangements, IPART conducts an annual Operational Audit of SWC. In addition, the Department commissions an independent Water Quality Audit of Sydney Water. The Department would support combining these processes into a single Operational Audit to minimise unnecessary work or duplication by all parties.

The Department is concerned that the audits accurately report the quality of water supplied. Test results that do not meet the National Health and Medical Research Council 1996 Australian Drinking Water Guidelines do not necessarily present a risk to health. As the public health regulator of SWC and SCA, the Department is called on to determine whether test results or other incidents pose a public health risk. Such decisions are based on factors including the nature of the parameter or incident, the magnitude of the result, and evidence of health effects from similar incidents.
The Department recommends that aspects of the auditor’s report relating to drinking water quality or other matters of public health interest should be referred to the Chief Health Officer for review and approval before accepting the final Operational Audit report.

Arrangements must remain in place to ensure the costs of auditing are met by SWC and the SCA.

The SCA has proposed a move away from clause by clause annual audits. The Department is willing to consider a simplified audit of public health issues, provided routine reporting arrangements remain in place. It is possible that an audit could focus on a particular area of activity each year, but also make a general report on compliance with the Operating Licence.

9.4 Memoranda of Understanding. Should the existing licence obligations to annually audit the MoUs be retained?

The Department supports an annual audit of the MoUs as an integrated part of the respective Operational Audits. As stated above the Department is willing to consider a simplified audit process.

**Sydney Water Corporation**

4. Ensuring safe drinking water

4.2 Obligations to ensure drinking water quality. Are the existing drinking water quality requirements in Sydney Water’s Operating Licence adequate?

In the context of the 1996 *Australian Drinking Water Guidelines*, the existing water quality requirements are adequate. However, it is likely that the revised *Australian Drinking Water Guidelines* will be endorsed for use in NSW by the time the end of term review is complete.

The challenge in implementing the *Australian Drinking Water Guidelines* is maintaining a balance between risk management and monitoring and reporting. It is a reasonably simple process for regulators and auditors to assess compliance by comparison with a list of guideline values. Such an approach may overlook actual risks to public health, and any investigation, response and rectification work undertaken by the water utilities.

The revised Guidelines build on the concept of a multiple barrier approach by introducing the *Framework for Management of Drinking Water Quality*. The NHMRC considers the most effective means of assuring drinking water quality and protecting public health to be a preventive management approach for all steps in water production from catchment to consumer.

The current Operative Licence contains specific and detailed requirements for monitoring, planning and reporting. The end of term review should consider the most appropriate way for these processes to be integrated in the context of the revised Guidelines and the *Framework for Management of Drinking Water Quality*. SWC maintains relevant quality management systems which already address many elements
of the Framework. The Department is concerned that SWC’s resources be appropriately balanced between planning, reporting and actual implementation of risk management strategies.

SWC’s submission to the review has proposed that the specific requirements for monitoring, reporting and planning in the Operating Licence be replaced with the requirement to comply with the *Australian Drinking Water Guidelines* as specified by NSW Health. The Department is willing to consider this proposal, provided key requirements (such as implementation of the Framework) are specified in the MoU. Although this may be perceived as a weakening of the Operating Licence, the Department retains the powers to require the monitoring and reporting under Section 10 of the *Public Health Act* (1991).

*Should reporting against aesthetic water quality parameters be formally included in Sydney Water’s Operating Licence obligations?*

The Department would not support regulating all aesthetic parameters, as they are not directly health related. The Department recommends that only key aesthetic parameters (if any) be reported, for example parameters that may give rise to dirty water complaints. Where relevant, audits should consider improvement plans and rectification works when reviewing results for aesthetic parameters.

Monitoring and reporting of aesthetic parameters gives a general indication of the acceptability of drinking water. SWC should be required to investigate and respond where water quality is clearly unacceptable. However, a requirement to report a large range of aesthetic parameters may give rise to an expectation that all aesthetic guidelines will be met, thereby imposing considerable cost on SWC and the community without clear benefit.

In some cases, non-compliance with aesthetic criteria is necessary to provide safe drinking water. Where there are both health and aesthetic guideline values (for example chlorine and monochloramine), the health value must take precedence for regulatory purposes. It is preferable to exceed the aesthetic guidelines and ensure adequate disinfection of the water supply, rather than run the risk of illness.

*Other grades of water*

With respect to other grades of water SWC must meet licences or guidelines issued by relevant Government agencies including NSW Health. The reference to the NSW Recycled Water Coordination Committee should be deleted as the Committee no longer exists.

*Demand management targets*

The Department supports water conservation measures, although any targets set must be realistic without compromising public health. NSW Health must be consulted when demand management strategies and reuse projects are developed, so that appropriate health standards and guidelines may be applied. Demand management targets must consider the need to protect public health.
Sydney Catchment Authority

4. Ensuring safe drinking water

4.1 Obligations to ensure bulk water quality. Are the existing health-related water quality obligations in Sydney Catchment Authority’s Operating Licence adequate?

The Department does not consider it necessary for the SCA to meet water quality standards for raw water which undergoes subsequent treatment (currently set out in Schedule 4 of the Operating Licence). The SCA should monitor raw water quality and respond to contamination. In the event that guideline values are exceeded in raw water, the SCA and SWC should determine an appropriate response in consultation with NSW Health.

The focus of SCA activity should be protecting and improving raw water quality, investigating to determine sources of contamination, and identifying rectification and mitigation measures. Targeted and event based monitoring must be carried out to determine the source and fate of contaminants.

Of the hundreds of parameters considered by the Australian Drinking Water Guidelines, a small number are recommended for testing in raw water on the basis that they are generally unaffected by treatment and distribution processes. It is appropriate that these parameters continue to be monitored but it must be acknowledged that the SCA does not have full control of the quality of water in its catchments. Some contamination incidents arise through human activity and others from natural events (eg periods of heavy rainfall, heavy storms).

Should site-specific standards continue to be included in the Catchment Authority’s Operating Licence?

The Department does not consider it necessary for these standard to remain in the Operating Licence, as the parameters are not directly health-related and the water undergoes subsequent treatment.

4.1.1 What should be the quality guidelines for water that is supplied for purposes other than water treatment?

Rather than setting guidelines, the Department considers it appropriate that the SCA continue to make users aware of the water quality and the recommendation that water be treated prior to consumption. It is unlikely that the SCA will be able to deliver water of a consistent quality at all times. Goals may be set for water quality based on existing environmental objectives and national Guidelines but these should not be interpreted as standards.

4.1.2 Regulatory instruments governing the quality of water for other purposes. Should the quality of raw water supplied for uses other than treatment be regulated and if so, how should this issue be dealt with in the Catchment Authority’s Licence?

The Department sees no reason to regulate this area, particularly because the SCA cannot fully control the quality of water in the catchments.
7. Catchment Management

The Department recommends that the Operating Licence require the SCA to implement those aspects of the *Australian Drinking Water Guidelines* (and the Framework) relevant to catchment protection as specified by NSW Health.

The SCA must be sufficiently empowered to maintain and improve the catchments. The current Operating Licence requires the SCA to promote implementation of the Regional Environmental Plan (REP). There is an expectation that the SCA will lead rectification action in the catchments, although it is not clear when the REP (which would facilitate this) will take effect.

The Department recommends that audits of water quality and catchment health be based on scientifically validated indicators, agreed to by regulators. The Department is willing to support the SCA’s proposal that IPART reference the catchment audit in the Operating Licence as the mechanism for measuring and assessing catchment management activities. Audits of the new Operating Licence should review implementation of the revised *Australian Drinking Water Guidelines* (and the Framework).