

Ms Carmel Donnelly
Chair
NSW Independent Pricing and Regulatory Tribunal

BY EMAIL: [REDACTED]

Our ref: V25/3706#37

Dear Ms Donnelly

NRAR response to IPART's draft WAMC decision

The Natural Resources Access Regulator (NRAR) accepts IPART's draft decision on the compliance management component of the 2025 WAMC price review. I note the response provided to IPART by DCCEEW Secretary Anthony Lean on behalf of WAMC. This response is supplementary to that letter and represents the views of the independent NRAR Board, and has been made available to the other WAMC entities.

We acknowledge the effort IPART has undertaken to assess NRAR's submission on compliance management, and the valuable contributions of consultants and stakeholders throughout the process. While NRAR is broadly supportive of the review of compliance management, we provide the following observations and areas for further consideration.

1. Clarification of the impactor-pays principle for compliance

A clear theme among stakeholder submissions was concern about the application of the impactor-pays principle to compliance. While IPART has provided a rationale for maintaining this approach, NRAR suggests it would be helpful to clarify that the application of this principle lies outside NRAR's control.

NRAR remains committed to fairness within the pre-determined cost recovery principles of the day. We appreciate IPART's openness to revisit this issue prior to the next determination and ask IPART include greater detail around what evidence or analysis from WAMC would support their consideration of the matter.

2. Performance metrics clarity and target design

NRAR supports the inclusion of performance metrics and agrees with the proposed final target. However, we recommend that IPART consider a transition pathway aligned with the original five-year determination period, even if the target is reached partway through the next cycle.

Natural Resources Access Regulator

Due to the nature of the IPART determination process, where the following year's budget is confirmed only three months prior to commencement, agencies have historically shaped large-scale programs with a baseline mindset rather than a growth mindset at the conclusion of each determination.

The draft decision gives NRAR the confidence to recommence programs essential to meeting performance measures, but the natural lag should not be ignored. Similarly, metrics such as customer confidence are significant lag indicators which only reflect actions from earlier periods and are unlikely to shift within the same year those interventions occur.

This issue of lag is compounded when the requirements to engage with stakeholders, prepare business cases and then present the submission early in the 3rd year is accounted for. The effective performance window is essentially limited to data finalised two years prior to the determination.

The decision for a three-year determination magnifies the limitations of the funding framework. NRAR may have only one meaningful data point to demonstrate progress, compared to three in a five-year cycle. This dynamic may incentivise changes to methodology that distort the baseline, rather than addressing the root cause impeding the long-term outcome.

Establishing a steep step change without a transition pathway may imbed negative consequences for NRAR. Failure to meet the targets could lead to unfair conclusions about NRAR's performance, while meeting targets within the period may invite scepticism in the methodology that underlines NRAR credibility.

NRAR remains committed to performance improvement and does not dispute the target but seeks a delivery pathway that acknowledges these structural constraints and better aligns with funding cycles and operational realities.

3. Determination period and pricing review timing

NRAR acknowledges the rationale for reducing the determination period to three years. However, we believe this change increases the burden on agencies and stakeholders. During the public hearing, concerns around consultation fatigue and the resource costs of ongoing engagement were clearly expressed.

The shortened timeframe, when combined with the recommendation to undertake a pricing structure review before the next determination, further increases the pressure on agency and stakeholder resources.

NRAR is the NSW water regulator. We are responsible for enforcing water laws throughout the state with targeted compliance programs that ensure water is used lawfully and shared fairly.

Natural Resources Access Regulator

NRAR supports the intent of a pricing review as well as IPART's openness to discuss the suitability of compliance and enforcement activities as monopoly services. NRAR is ready to lead these foundational discussions and seeks IPART's commitment to resolving key issues in time to support a submission that meets the expectations of community and water licence holders.

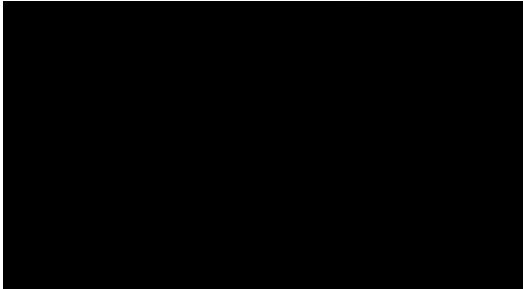
We encourage IPART to bring together the components of its proposed review into a high-level roadmap. This would help set clear expectations for licence holders, WAMC agencies and stakeholders, and reduce ambiguity around the timing, scope and depth of work required ahead of the next review cycle.

In closing

NRAR thanks IPART for its independent assessment of prudent and efficient compliance costs.

We remain committed to working collaboratively with IPART, our WAMC partners and stakeholders as we move toward the final determination and beyond. We look forward to supporting IPART as it considers options that reflect the long-term needs of a mature and trusted compliance framework.

Yours sincerely



Craig Knowles
Chair, Natural Resources Access Regulator Board

4 July 2024

NRAR is the NSW water regulator. We are responsible for enforcing water laws throughout the state with targeted compliance programs that ensure water is used lawfully and shared fairly.