



Independent Pricing and Regulatory Tribunal
New South Wales

Water NSW operating licences review

Draft Report



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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.

Submissions are due by 7 April 2017

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:

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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. IPART will then make every effort to protect that information, but 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 Executive summary

The Independent Pricing and Regulatory Tribunal of NSW (IPART) is conducting a review of Water NSW's operating licences.

Water NSW operates under provision of two operating licences: the 2013-2018 State Water Corporation (State Water) operating licence and the 2012-2017 Sydney Catchment Authority (SCA) operating licence. These operating licences were previously issued to State Water and SCA and cover Water NSW's functions outside of and within the declared Sydney Catchment Area,¹ respectively. On 1 July 2016, the operating licences were amended by the Minister administering the *Water NSW Act 2014* (NSW) (Water NSW Act)² and reissued as Water NSW (State Water) and Water NSW (SCA) operating licences.

The operating licences are the main regulatory instruments that authorise Water NSW, within a defined area of operations, to undertake its functions. These functions are listed in the Water NSW Act.³ They also set out the terms and conditions that regulate how Water NSW should operate to enable the protection of public health, consumers, and the environment, and meet other policy objectives of the NSW Government.

We have commenced a review of the Water NSW operating licences with the aim of recommending a new operating licence to the Minister for Regional Water (the Minister) that will commence on 1 July 2017.⁴ We will propose that the operating licence has a maximum term of five years. The existing Water NSW (SCA) operating licence is due to expire on 30 June 2017, at the end of its five-year term. To continue its operations within the Sydney Catchment Area, Water NSW requires a new operating licence to commence on 1 July 2017. The existing Water NSW (State Water) operating licence is due to expire on 30 June 2018. We have taken this opportunity to also review that licence and enable the potential bringing together of these two licences into a single operating licence for Water NSW.

The operating licence package consists of the draft report (this report), draft operating licence, and draft reporting manual, supported by a draft cost-benefit analysis (CBA). Once we have finalised this process, the final report, final operating licence and final CBA will be provided to the Minister for final decision. The reporting manual remains IPART's instrument.

This report sets out our draft recommended inclusions for the proposed operating licence and reporting manual, explains the analysis that supports these inclusions and seeks

¹ The Sydney Catchment Area means the declared catchment area referred to in clause 17 of Schedule 2 of the *Water NSW Act 2017* (NSW) (Water NSW Act).

² At the time, the Minister for Lands and Water.

³ Water NSW Act, section 7.

⁴ The Water NSW operating licence(s) is granted under the Water NSW Act, section 11. Section 11(1) of the Water NSW Act allows the Governor to grant more than one operating licence to Water NSW if each operating licence specifies the functions to which it relates and the area or circumstances in which those functions may be exercised.

comment from all interested parties prior to finalising the operating licence and reporting manual for recommendation to the Minister.

1.1 Overview of major draft recommendations

In this report, we recommend terms and conditions in the Water NSW draft operating licence and obligations in the associated reporting manual. All of our recommendations are included below in section 1.5. In developing these recommendations, we considered all aspects of the two operating licences as part of a first principles approach to bringing the two existing operating licences together.

Stakeholders are welcome to comment on any of the recommendations. In particular, we seek feedback from stakeholders on the following:

- ▼ An optimal design of the operating licence which can be applied to all public water utilities and more closely aligns to the business functions and organisational structure of Water NSW. (see chapter 3: Licence structure)
- ▼ Differences that were in place between the Water NSW (State Water) and the Water NSW (SCA) operating licences and whether these should be brought into line and have similar requirements state-wide, or whether these differences should be maintained.
- ▼ Whether or not to define key terms to distinguish listed functions, particularly “capture and store and release” of water and “supply” of water (see section 4.3 Definition of key terms).
- ▼ Whether or not to evolve the previous requirements for water conservation into a new transparent and more objective Economic Level of Water Conservation and whether to apply this state-wide. (see section 5.4 Economic Level of Water Conservation)
- ▼ Whether or not to authorise flood mitigation in the operating licence, including in the Greater Metropolitan Region, subject to direction from the Minister (see section 6.5 Dam operating during floods and spills).
- ▼ Developing appropriate performance standards for water delivery, service interruptions and water quality in relation to water that is captured, stored, released or supplied by Water NSW, as required by the Water NSW Act. (See chapter 7 Performance standards)
- ▼ What level of certification for management systems is appropriate and whether or not to have a Water Quality Management System for all declared catchment areas. (See chapters 8 Organisational systems management and section 5.2 Water quality management system)

1.2 The review process

The process we have followed in conducting this review to date has included public consultation and analysis.

As part of this process, we have:

- ▼ Released an Issues Paper⁵ in June 2016 that explained the review and sought submissions from Water NSW and other stakeholders on the issues and options that we should consider for inclusion in the operating licence (and accompanying reporting manual). We received nine submissions to our Issues Paper.⁶ The submissions, and our responses, are summarised in Appendix A to this report.
- ▼ Considered these submissions to develop a set of options for inclusions in the proposed operating licence and associated reporting manual
- ▼ Conducted a CBA of the options and undertaken further consultation. The costs and benefits of the various options were assessed relative to a 'Base case' representing the requirements of the existing Water NSW operating licences.
- ▼ Considered the draft results of the CBA, including qualitative and quantitative net benefits, and stakeholder comments to develop draft recommended options, and developed drafts of the proposed operating licence and reporting manual.
- ▼ Released our draft operating licence package, which includes this Draft Report and the draft operating licence, draft reporting manual and the draft CBA.⁷

1.3 Where to from here?

We now invite all interested parties, including current or potential customers, environmental and other interest groups and water user advocacy organisations and government agencies to make submissions on the Draft Report and other elements of the package. Submissions are due by 7 April 2017. Information on how to make a submission is provided on page iii at the front of this report.

We intend to hold a stakeholder workshop in Sydney on 21 March 2017. This workshop will allow interested parties to participate in a discussion with the Tribunal on the proposed draft operating licence and reporting manual. We will publicise arrangements for this workshop closer to the date.

We will consider all the comments made in submissions and the public workshop before making our final recommendations and providing our recommended operating licence and reporting manual to the Minister in May 2017. The Minister may accept or reject our recommendations before endorsing a new operating licence for approval by the Governor, and subsequent gazettal, by the end of June 2017.

⁵ IPART, *Review of the WaterNSW Operating Licences - Issues Paper*, June 2016.

⁶ From WaterNSW, Australian Modern Dairy, Department of Environment and Energy (Commonwealth Environmental Water Holder), NSW Department of Planning and Environment, a combined response from certain NSW Government agencies collated by NSW Treasury (referred to in this report as the submission from the NSW Government), NSW Irrigators' Council, Sydney Water, Tamworth Regional Council, and a confidential anonymous submission.

⁷ The draft operating licence package is available from our website at <https://www.ipart.nsw.gov.au/Home/Industries/Water/Reviews/Licensing-WaterNSW/Review-of-the-WaterNSW-operating-Licences?qDh=2>

Table 1.1 sets out our indicative timetable for completing this review. We will update this timetable on our website as the review progresses.

Table 1.1 Timetable for review

Key task	Date
IPART released Issues Paper and invites submissions	23 June 2016
Water NSW's submission on Issues Paper received	30 August 2016
Other stakeholders' submissions on Issues Paper received	13 September 2016
IPART releases draft report, operating licence, reporting manual and cost benefit analysis (draft operating licence package) for comment	28 February 2017
Stakeholder workshop on draft operating licence package	21 March 2017
Stakeholders' submissions on draft operating licence package due	7 April 2017
IPART provides the Minister with final recommendations and associated operating licence and supporting reporting manual and report	30 May 2017
IPART releases final reporting manual and operating licence is published	July 2017

1.4 Structure of this Draft Report

The rest of this report explains the terms and conditions that we recommend for inclusion in the operating licence, and obligations for the reporting manual, reasons for these inclusions and their costs and benefits. Each chapter briefly discusses the issues, relevant stakeholder comments, options assessed and our preferred option. For more information on stakeholder comments refer to Appendix A of this report or the stakeholder submissions to the Issues Paper available on our [website](#).

The structure of the report reflects our draft recommended structure for the new licence and is as follows:

- ▼ Chapter 3 explains the proposed structure of the new licence
- ▼ Chapter 4 discusses our proposed inclusions for the "Licence context and authorisations" chapter of the operating licence
- ▼ Chapter 5 discusses our proposed inclusions for the "Water source protection and conservation" chapters of the operating licence and reporting manual
- ▼ Chapter 6 discusses our proposed inclusions for the "Bulk water storage and transmission" chapters of the operating licence and reporting manual
- ▼ Chapter 7 discusses our proposed inclusions for the "Performance Standards" chapters of the operating licence and reporting manual
- ▼ Chapter 8 discusses our proposed inclusions for the "Organisational systems management" chapters of the operating licence and reporting manual
- ▼ Chapter 9 discusses our proposed inclusions for the "Customer and stakeholder relations" chapters of the operating licence and reporting manual
- ▼ Chapter 10 discusses our proposed inclusions for the "Performance Monitoring and Reporting" chapters of the operating licence and reporting manual
- ▼ Appendix A of this report contains a summary of the stakeholder submissions to the Issues Paper.

1.5 Draft recommendations for the operating licence and reporting manual

Our recommendations for inclusion in the draft the operating licence and reporting manual are set out in Chapters 3 to 10. These recommendations, together with the pages that they appear on, are listed below.

Draft recommendations for the Operating Licence:

Licence structure

- | | | |
|---|--|----|
| 1 | The Governor grants a single licence to Water NSW to regulate all its activities, with the licence to consolidate all licence authorisations and terms and conditions relating to the functions of Water NSW for the whole area of operations. | 13 |
| 2 | The operating licence is structured to reflect the water 'supply chain'. | 13 |

Licence context and authorisations

- | | | |
|---|--|----|
| 3 | Replace the existing licence 'objective' and 'purpose' of the current licences with a new licence objective, including a note outlining the 'purpose'. | 19 |
| 4 | The licence authorises Water NSW to undertake its functions and activities to the fullest extent possible as described under the Water NSW Act 2014, including: | 19 |
| | – all listed functions | 19 |
| | – ancillary facilities and services or other activities which further the objectives | 19 |
| | – certain conferred functions of the <i>Water Management Act 2000</i> (NSW), the <i>Water Act 1912</i> (NSW), the Water Management (General) Regulation 2011, the Access Licence Dealing Principles Order 2004 | 19 |
| | – functions of certain other water corporations or water supply authorities as allowed under the Water NSW Act but only in agreement with the relevant organisation, and | 19 |
| | – the operation, repair, maintenance, removal, connection, disconnection or modification of metering equipment it does not own. | 19 |
| 5 | The operating licence defines key terms to differentiate between "capture, store and release" and "supply" of water which are both authorised within Water NSW's whole area of operations. Defining the key terms will differentiate between the distinct functions of Water NSW, apply performance standards appropriately and improve the auditability and clarity of the licence for the utility, customers, stakeholders, and IPART. | 19 |
| 6 | Authorise Water NSW within the licence to undertake its activities throughout the State of NSW, and outside of NSW as permissible under any applicable laws. | 19 |
| 7 | The operating licence includes an auditable condition with respect to application of the relevant pricing determination. | 19 |

Water source protection and conservation

- | | | |
|----|---|----|
| 8 | The operating licence authorises Water NSW to protect and enhance the quality and quantity of water in declared catchment areas. | 35 |
| 9 | The operating licence includes terms and conditions requiring Water NSW to maintain a Water Quality Management System, to manage the water quality within declared catchment areas. | 35 |
| 10 | The operating licence includes terms and conditions requiring Water NSW to maintain a Water Quality Management System to manage supplied water quality from non-declared catchments (where relevant). | 35 |
| 11 | The operating licence retains the existing obligations relating to water supply system yield for declared catchment areas, with minor updates. | 35 |
| 12 | The operating licence includes an obligation for Water NSW to develop an Economic Level of Water Conservation methodology and associated reporting obligations. | 35 |
| 13 | The operating licence retains the existing Water NSW (SCA) operating licence catchment management and catchment infrastructure management obligations. | 35 |
| 14 | The operating licence includes a new obligation in relation to undertaking research on catchments state-wide, and a corresponding reporting obligation. | 35 |

Bulk water storage and transmission

- | | | |
|----|---|----|
| 15 | The operating licence authorises Water NSW to construct, operate and maintain water management works throughout NSW. | 57 |
| 16 | The operating licence requires this function to be undertaken consistent with an Asset Management System. | 57 |
| 17 | The operating licence authorises Water NSW to supply water to its customers throughout NSW, consistent with the listed functions of the Water NSW Act. | 57 |
| 18 | The operating licence requires Water NSW to undertake the supply functions in accordance with a relevant water quality management system and customer supply agreement. | 57 |
| 19 | The operating licence authorises Water NSW to capture and store water and to release water to persons entitled to take the water, including release to regional towns and for any other lawful purpose, including the release of environmental water. | 57 |
| 20 | The operating licence includes terms and conditions to regulate how Water NSW releases this water, and provide information in relation to the water released, to customers. | 57 |
| 21 | The draft operating licence does not include any additional obligations for Water NSW to make water supply, capture, store or release services available to any customer on request. | 57 |

-
- 22 The operating licence authorises Water NSW to undertake flood mitigation and management subject to receiving a written direction from the Minister and where not already required to do so under any other statute or regulatory instrument. In these instances, the operating licence should include terms and conditions to regulate how Water NSW operates its Water Management Works. 57
 - 23 The reporting manual includes obligations for Water NSW to prepare water balance reports for all water that it **releases** to customers and for any lawful purposes. The reporting manual will not prescribe inclusions for these reports but will require Water NSW to make these reports available publicly. 57
 - 24 Where required to undertake flood mitigation and management under the operating licence, the reporting manual also requires Water NSW, to include in its water balance reports, relevant information in relation to this function. 57

Performance standards

- 25 The operating licence specifies water delivery and service interruptions performance standards in relation to water that is captured, stored and released. These preliminary performance standards are developed from performance indicators in the existing Water NSW (State Water) reporting manual. 79
- 26 The operating licence specifies water quality, water delivery and service interruptions performance standards in relation to water that is supplied. 79
- 27 The reporting manual includes requirements for Water NSW to report annually on its performance in relation to the performance standards set in the operating licence. 79

Organisational systems management

- 28 The operating licence includes terms and conditions for maintenance and implementation of a certified Asset Management System (AMS) and Environmental Management System (EMS). 89
- 29 The operating licence includes terms and conditions for maintenance of programs and activities to manage risks to the assets/environment, in the absence of a certified AMS/EMS. 89
- 30 The reporting manual includes requirements for Water NSW to prepare annual compliance and performance monitoring reports on the AMS and EMS and make this publicly available on its website. 89
- 31 The reporting manual includes a requirement for Water NSW to report to IPART (once during the term of the licence) on the state of all of its assets, including those transferred to it from DPI Water. 89
- 32 The reporting manual includes requirements for Water NSW to notify IPART of any AMS/EMS audits. 89

Customer and stakeholder relations

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|----|---|-----|
| 33 | The operating licence includes requirements for Water NSW to enter into supply agreements with all customers to whom it supplies water, throughout NSW. | 104 |
| 34 | The operating licence includes requirements for Water NSW to maintain water allocation accounts for each customer that holds a water licence and a notification system in relation to changes in flow release patterns. | 104 |
| 35 | The operating licence authorises Water NSW to operate, replace, repair, maintain, remove, connect, disconnect, or modify metering equipment that it does not own, but only by agreement with the owner, including Government funded meters. | 104 |
| 36 | The operating licence requires Water NSW to determine the volume of water extracted by, or supplied to, its customers. | 104 |
| 37 | The operating licence includes requirements for Water NSW to establish and maintain customer advisory groups and a customer advisory group charter. | 104 |
| 38 | The operating licence includes requirements for Water NSW to establish and maintain a customer service charter, a code of practice on payment difficulties, processes for handling customer complaints and escalating unresolved disputes with customers. | 104 |
| 39 | The operating licence includes requirements for Water NSW to use its best endeavours to cooperate with any licensed network operator, or retail supplier under the WIC Act, that seeks to establish a code of conduct with it. | 104 |
| 40 | The operating licence authorises Water NSW to undertake an educative role within the community and include terms and conditions requiring Water NSW to undertake this function consistent with the objectives of the Act. | 104 |
| 41 | The reporting manual requires Water NSW to report on its activities to conduct educational programs within the community. | 104 |
| 42 | The operating licence includes terms and conditions regulating the nature of Water NSW's Memoranda of Understanding with NSW Health and the Environment Protection Authority. | 104 |
| 43 | The operating licence includes terms and conditions requiring Water NSW to use its best endeavours to enter into, maintain and comply with a Memorandum of Understanding with Local Land Services. | 105 |
| 44 | The operating licence includes terms and conditions requiring Water NSW to use its best endeavours to enter into a Memorandum of Understanding with DPI Water to form the basis of a cooperative relationship, particularly for the role of Water NSW in the review and implementation of the Metropolitan Water Plan, and for undertaking the conferred functions. | 105 |

Performance monitoring and reporting

- | | | |
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| 45 | The operating licence includes terms and conditions in relation to the operational audits. | 138 |
|----|--|-----|

46	The reporting manual includes obligations requiring Water NSW to report on the status of any recommendations identified in the most recent operational audit and in IPART's audit report to the Minister, and requiring Water NSW to provide an update on the implementation of any opportunities for improvement identified in the audit.	138
47	The operating licence includes terms and conditions requiring Water NSW to comply with its obligations in the reporting manual, and maintain adequate records to allow it to comply with these obligations.	138
48	The operating licence includes terms and conditions requiring Water NSW to provide IPART or an auditor with information relating to its performance, and any information that IPART or an auditor may require to conduct a review of investigation.	138
49	The operating licence includes terms and conditions requiring Water NSW to maintain sufficient records and record systems to measure and accurately report its performance against performance indicators and the system performance standards.	138
50	The reporting manual includes new and existing performance indicators reporting manual relating to water supplied to customers new performance indicators but no new performance indicators in relation to water that is captured, stored and released.	138

Conferred functions

51	The operating licence includes a schedule of the functions conferred on Water NSW under other acts with minimal changes to these conferred functions from how they currently appear in the existing Water NSW (State Water and SCA) operating licences.	151
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1.6 Stakeholder feedback

We welcome stakeholder feedback on any aspect of the draft package, including the draft recommendations or specific licence obligations. Further we are seeking stakeholder input on the following specific issues:

IPART seeks comments on the following

1	We seek stakeholder input on whether these standards are appropriately defined and measureable or if alternative supply standards can be suggested, including the alternate option of relying on the WQMS and / or AMS	85
2	We further welcome feedback from stakeholders about the suitability of the proposed supply standards. In particular we seek feedback on whether the suggested performance standards can be more clearly defined.	86
3	We also seek feedback on whether the status quo approach of the AMS and WQMS would satisfy the requirements for water delivery, water quality and service interruptions performance standards as required in the Act and provide sufficient clarity for customers on the expected levels of service.	86

2 Introduction

2.1 What is Water NSW?

Water NSW is a public water utility that manages dams and water infrastructure across the State of NSW. It provides water supply and delivery services to a range of customers.

Water NSW is a statutory State Owned Corporation (SOC).⁸ It was established on 1 January 2015 under the *Water NSW Act 2014* (Water NSW Act) by the effective merger of two former organisations, State Water Corporation (State Water) and the Sydney Catchment Authority (SCA).⁹

2.2 What is an operating licence?

An operating licence is an enforceable regulatory instrument that authorises a water utility to carry out its functions, and regulates how it undertakes the functions.

Under the transitional arrangements of the Water NSW Act,¹⁰ Water NSW operates under two exiting operating licences: the 2013-2018 State Water operating licence and the 2012-2017 SCA operating licence. On 1 July 2016, the operating licences were amended by the Minister for Regional Water (the Minister) and reissued as Water NSW(State Water) and Water NSW (SCA) operating licences.

The existing two operating licences contain:

- ▼ terms and conditions that specify the way in which it is to carry out its functions
- ▼ quality and system (performance) standards that it must achieve, and
- ▼ requirements for monitoring and reporting on its operational performance.

The two operating licences are supported by reporting manuals issued by IPART, which contain the details, deadlines and definitions of Water NSW's reporting requirements.

The existing operating licences and reporting manuals will continue to remain in effect until a new operating licence is granted.

⁸ Section 20(A) and Schedule 5 of the *State Owned Corporations Act 1989*.

⁹ Section 4(1) of the Water NSW Act renamed the former State Water Corporation "Water NSW". The Water NSW Act also abolished the former Sydney Catchment Authority and conferred its functions on Water NSW. In this Report, we refer to that process as the former State Water Corporation and the former Sydney Catchment Authority being "effectively merged", as a shorthand.

¹⁰ Water NSW Act, Division 4 of Schedule 2.

2.3 Why are we reviewing Water NSW's operating licences?

The current Water NSW (SCA) operating licence is due to expire on 30 June 2017, at the end of its five year term. To continue its operations within the Sydney Catchment Area, Water NSW requires a new operating licence to commence on 1 July 2017.

To develop the new operating licence, we have commenced a review of the existing Water NSW operating licences. This review is the first opportunity to consider what form of operating licence best reflects the current merged organisation as well as any potential changes over the next five years. As such, we are reviewing both licences at the same time even though the Water NSW (State Water) operating licence is due to expire on 30 June 2018. At the conclusion of our review, we will make recommendations in relation to replacing both licences.

The Water NSW Act specifies that there must be an operating licence and explains what it must and may include. An operating licence is a more flexible regulatory instrument than legislation. It is regularly reviewed for currency and to check that it reflects changes in public expectations, best practice and changing circumstances.

2.4 Our objectives for this review

For this review, we intend to develop an operating licence consistent with its objectives to:

- ▼ provide transparent and auditable terms and conditions for Water NSW to lawfully undertake its activities at industry good-practice
- ▼ consider the interests of stakeholders within its Area of Operations, and
- ▼ impose the minimum regulatory burden on Water NSW by avoiding duplication or conflict with other regulatory instruments.

Furthermore, in this review, we aim to:

- ▼ increase the consistency in the licensing approach to the major public water utilities in NSW, of which Water NSW is one, and
- ▼ implement a system-based approach to licensing.

We aim to recommend inclusions in the operating licence (and accompanying reporting manual) that meet the objectives of the operating licence, providing a net benefit to society but without imposing unnecessary compliance and administration costs on Water NSW.

Our intention is to design an operating licence which authorises Water NSW to continue to undertake its current functions and activities within a regulatory framework similar to its current one; that is, we seek to avoid increasing Water NSW's regulatory burden without justification.

The new Water NSW legislation also opens up opportunities for Water NSW to expand its activities beyond its current operations, if authorised within the operating licence. Our review will consider possible future scenarios and design a flexible operating licence capable of authorising and regulating those, so that it does not hinder the ability of Water NSW to undertake these functions and activities.

2.5 Our approach to the review

Our approach for this review reflects Stages 2 to 4 of the Licensing Framework¹¹ that we developed as part of our review of licensing schemes in NSW.

Broadly speaking, this approach includes the following main steps:

1. Developing a set of options for inclusion in the operating licence (and accompanying reporting manual) after considering:
 - a) the regulatory framework that applies to Water NSW, including the requirements in the Water NSW Act and other regulatory instruments
 - b) the performance of Water NSW under its current operating licence
 - c) developments in best-practice operation and regulation, including issues raised and changes that we made in the recent review of Sydney Water's operating licence, and
 - d) the issues raised by stakeholders in our review consultation process.
2. Conducting cost benefit analysis (CBA) on these options for inclusion in the operating licence and reporting manual. This analysis compares the costs and benefits of each potential inclusion, comparing with the 'Base case' of the current operating licence/reporting manual requirements (ie, including terms and conditions in the new operating licence that reflect the current licensing regime exactly, with no change). As this is a new operating licence, strictly speaking, the Base case for comparison is no operating licence or terms and conditions. However, for practical reasons, we have assumed the base case option to represent a new operating licence that will emulate the existing operating licence regime.
3. Deciding on our recommended inclusions in the operating licence and reporting manual, based on the results of our CBA and further consultation.
4. Drafting a new operating licence and reporting manual.

As Chapter 1 discussed, at the conclusion of the review, we will make recommendations to the Minister on our preferred options for an operating licence which will both authorise and regulate Water NSW's activities. The Minister may accept or reject our recommendations before endorsing a new operating licence for approval by the Governor of NSW, in accordance with the Water NSW Act.

¹¹ Pricewaterhouse Coopers (PwC), *A best practice approach to designing and reviewing licensing schemes*, March 2013.

3 Licence structure

Water NSW currently operates under the obligations of two licences granted to its former constituent organisations, SCA and State Water. Under the Water NSW Act an option exists to retain the current arrangement (more than one licence) or to consolidate the licence conditions into one licence¹².

In addition to considering whether one or more licences should be granted to Water NSW, we also considered how to arrange the terms and conditions of the new licence.

Our draft recommended positions are listed below. Our analysis and reasoning for the draft recommendations are discussed in more detail in the remaining sections of this chapter.

Draft recommendations for the operating licence

- 1 The Governor grants a single licence to Water NSW to regulate all its activities, with the licence to consolidate all licence authorisations and terms and conditions relating to the functions of Water NSW for the whole area of operations.
- 2 The operating licence is structured to reflect the water 'supply chain'.

3.1 One or more operating licences?

We have proposed one combined operating licence to replace the two existing Water NSW (State Water and SCA) licences. One licence would reflect Water NSW's combined organisation since the merger of the previous State Water and SCA on 1 January 2015.

3.1.1 Issues raised

In the Issues Paper we sought comment on proposed options for the configuration of the operating licence. In the case of more than one operating licence, each individual operating licence would have to specify the functions that they authorised and regulated, and in which areas.¹³

Stakeholders, including Water NSW, expressed a preference for a single operating licence for reasons of increasing efficiency, removing duplication and reflecting the rationale and structure of the combined organisation.

Concerns such as differentiation of functions and maintaining standards within the existing Sydney Catchment Area were also expressed.

¹² Section 11.

¹³ As per the provisions of section 11(2) of the Water NSW Act.

3.1.2 Options assessed

Table 3.1 Licence configuration options

Options	Description
Option A	One operating licence authorising all of Water NSW's listed functions
Option B	One operating licence tailored to authorise some of Water NSW's listed functions
Option C	Two (or more) operating licences

No quantifiable costs or benefits were identified for these options.

The single licence option (Option A) authorising all listed functions is selected as it offers a simpler model for authorising and regulating the listed and other functions of Water NSW. This model is consistent with the model for the other State Owned Corporation (SOC) water utilities in NSW (eg, Sydney Water Corporation and Hunter Water Corporation) and avoids applying duplicative terms and conditions within the individual licences. It also allows the changing organisation maximum flexibility to undertake all functions throughout the area of operations, even where this has not historically been the case (See also section 4.2 - What should the licence authorise?).

The option for a single tailored operating licence (Option B) or any other alternative configuration of the licence was the least preferred option, and required significant consideration to ensure no unintended consequences were created.

The option for maintaining two operating licences (Option C) offers some administrative and regulatory benefits because it could be more easily distinguished if some of Water NSW's functions only applied within a particular area. For example, currently Water NSW only undertakes some functions within the Sydney Catchment Area and it may be appropriate to continue to maintain this distinction, as discussed further within this report. We consider that this issue is best addressed on a case by case basis within the Terms and Conditions themselves as relevant.

3.1.3 Preferred option

We preferred Option A, to recommend a single operating licence that authorises and conditions all of the functions of Water NSW.

Recommendation

- 1 The Governor grants a single licence to Water NSW to regulate all its activities, with the licence to consolidate all licence authorisations and terms and conditions relating to the functions of Water NSW for the whole area of operations.

3.2 What should be the structure of the single licence?

We propose to structure the new operating licence differently from the existing Water NSW (State Water and SCA) operating licences. In preparing the draft operating licence, we needed to consider how to best group licence conditions for clarity and accessibility to the utility, customers and other stakeholders and auditors.

We propose to structure the terms and conditions of the operating licence to reflect the supply chain of Water NSW's business operations. We have also proposed this structure for the Hunter Water's operating licence, which is also currently under review, and we consider there are benefits from having consistent licence structures for the public water utilities IPART regulated.

3.2.1 Issues raised

The licence structure of the existing Water NSW operating licences was not specifically raised as an issue in the Issues Paper. Water NSW did consider that the distinct business functions of the new organisation could be accommodated within a new structure of a single licence.

The existing licences contain terms and conditions relating to the functions of the former constituent entities. We consider that simply retaining all the existing chapter headings and combining these terms and conditions under those headings, do not provide the general public or relevant stakeholders with a clear understanding of the scope of Water NSW's operations, or provide a logical sequencing and grouping of related clauses. Furthermore, all three public water utilities have differing licence structures. Sometimes these differences are justified, but we found that there were instances where they were not.

3.2.2 Options assessed

Table 3.2 Licence structure options

Options	Description
Option A	Simple merge of licences retaining all existing chapter headings from existing two licences
Option B	Modify licence structure to reflect the supply chain of Water NSW's business operations (See Table 3.3).

No quantifiable costs or benefits were identified for either of these options.

3.2.3 Preferred option

We prefer Option B.

The new licence is designed to allow stakeholders a straightforward way of identifying which part of the business is the subject of their interest, and to locate the relevant licence clauses.

We developed potential improvements to the current licence structure when we encountered difficulties with drafting the new licence. We therefore propose the new structure of the licence, for the following reasons:

- ▼ To allow stakeholders to better understand Water NSW's operations and enable a more straightforward way of identifying which part of the business is the subject of their interest, and to locate the relevant licence clauses.

- ▼ To provide a better grouping of licence requirements into similar activity areas with these areas be based around the general water supply chain of ‘catchment to tap’, where applicable.
- ▼ To better align with the responsibility areas within Water NSW, thus making compliance more efficient.
- ▼ To enable a licence structure that can (as a general rule) be applied to all public water utility operating licences.

We expect that the new structure will allow stakeholders to better align the operating licence conditions to each component of Water NSW’s activities.

We propose to recommend that the licence be restructured as follows:

- ▼ **Part 1: Licence context and authorisations** including provisions on licence objective, purpose, licence authorisations, the term of the licence, the non-exclusivity of the licence, availability of the licence, compliance with pricing determinations, end of term review and notices.
- ▼ **Part 2: Water source protection and conservation** including provisions relating to the water quality management system, catchment management, information on the declared catchment area, catchment infrastructure management, calculation and review of water supply system yield, the economic level of water conservation, and research on catchments.
- ▼ **Part 3: Bulk Water storage and transmission** including provisions on water management works, water supplied, bulk water released to local water utilities for drinking water purposes, and dam operation during floods and spills.
- ▼ **Part 4: Performance Standards** in relation to the water supply and capture storage and release of water.
- ▼ **Part 5: Organisational systems management** requiring asset management and environmental management systems.
- ▼ **Part 6: Customer and stakeholder relations** including provisions in relation to customer supply agreements and service charter, water accounting, metering, notifications, customer advisory groups, payment difficulties, complaints handling education programs, codes of conduct with WICA licensees and memoranda of understanding and protocols with various Government agencies.
- ▼ **Part 7: Performance monitoring and reporting** including provisions in relation to audits, reporting and provision of information.
- ▼ **Part 8: Definitions and interpretation.**
- ▼ **Schedule A: Conferral of functions.**
- ▼ **Schedule B: Indicative map of operations.**

Table 3.3 presents our proposed licence structure and lists the major obligations under each of the above parts of the licence.

These structural changes will not have an impact on the content of the obligations, simply on the grouping of similar obligations. For this reason, Option B has been selected as it will have qualitative benefits and minimal dis-benefit.

Recommendation

- 2 The operating licence is structured to reflect the water 'supply chain'.

Table 3.3 Proposed licence structure

Licence context and authorisation	Water source protection and water conservation	Bulk water storage and transmission	Performance standards	Organisational systems management	Customer and stakeholder relations	Performance monitoring and reporting	Schedules
<ul style="list-style-type: none"> ▼ Licence objective and purpose ▼ Licence authorisations ▼ Term of licence ▼ Non-exclusive licence ▼ Licence availability ▼ Pricing ▼ End of term review ▼ Notices 	<ul style="list-style-type: none"> ▼ Water quality management system ▼ Catchment and infrastructure management ▼ Information on the Declared Catchment Areas ▼ Water Supply System Yield ▼ Economic Level of Water Conservation ▼ Research on catchments 	<ul style="list-style-type: none"> ▼ Construct, maintain and operate water management works ▼ Water Supplied ▼ Dam operation during floods and spills 	<ul style="list-style-type: none"> ▼ Water Supplied ▼ Capture, storage and release of water 	<ul style="list-style-type: none"> ▼ Asset Management System ▼ Environmental Management System 	<ul style="list-style-type: none"> ▼ Customer Supply Agreements ▼ Accounting for water ▼ Water metering and monitoring ▼ Advance notification of changes to flow release patterns ▼ Customer advisory groups & charter ▼ Customer Service Charter ▼ Code of practice on payment difficulties ▼ Internal complaints handling procedure ▼ External dispute resolution scheme ▼ Education programs ▼ Code of Conduct with Water Industry Competition Act licensees ▼ Memoranda of Understanding and Roles and responsibilities protocol with NSW Health, EPA, LLS, and DPI Water 	<ul style="list-style-type: none"> ▼ Operational audits ▼ Reporting ▼ Provision of information to IPART and auditor ▼ Performance indicators 	<ul style="list-style-type: none"> ▼ Conferred functions ▼ Indicative map of operations

4 Licence context and authorisations

The first part of the recommended draft licence includes clauses relating to the licence as a whole, rather than particular operational activities, and provides context for the rest of the licence. It contains items such as the licence objectives, authorisations, term of the licence and the end of term review. We have also included a new clause relating to complying with pricing determinations.

The significant recommendations for the draft Operating Licence are listed below. We have provided explanation and background on how we developed each of these recommendations within this chapter.

Draft recommendations for the operating licence

- 3 Replace the existing licence ‘objective’ and ‘purpose’ of the current licences with a new licence objective, including a note outlining the ‘purpose’.
- 4 The licence authorises Water NSW to undertake its functions and activities to the fullest extent possible as described under the Water NSW Act 2014, including:
 - all listed functions
 - ancillary facilities and services or other activities which further the objectives
 - certain conferred functions of the *Water Management Act 2000* (NSW), the *Water Act 1912* (NSW), the Water Management (General) Regulation 2011, the Access Licence Dealing Principles Order 2004
 - functions of certain other water corporations or water supply authorities as allowed under the Water NSW Act but only in agreement with the relevant organisation, and
 - the operation, repair, maintenance, removal, connection, disconnection or modification of metering equipment it does not own.
- 5 The operating licence defines key terms to differentiate between “capture, store and release” and “supply” of water which are both authorised within Water NSW’s whole area of operations. Defining the key terms will differentiate between the distinct functions of Water NSW, apply performance standards appropriately and improve the auditability and clarity of the licence for the utility, customers, stakeholders, and IPART.
- 6 Authorise Water NSW within the licence to undertake its activities throughout the State of NSW, and outside of NSW as permissible under any applicable laws.
- 7 The operating licence includes an auditable condition with respect to application of the relevant pricing determination.

4.1 What is the objective and purpose of the operating licence?

4.1.1 Issues raised

The first clause of the two existing licences contained a similar listing of the aims of each licence under the headings 'Objectives of this Licence' in the SCA licence and 'Purpose of this Licence' in the State Water licence.

In selecting an appropriate opening statement for the Water NSW operating licence we reviewed the function of the licence and considered whether either an objective and / or purpose statement would help to clarify what the licence is intended to achieve and why the licence was necessary.

The Water NSW Act outlines what the operating licence *must* and *may* contain. In preparing the draft the licence we have considered the requirements and provisions of the Act¹⁴ in relation to the operating licence.

The Water NSW Act states that the listed functions *may only* be exercised under the authority of an operating licence.¹⁵

The operating licence is required to specify which functions Water NSW can undertake, where not already provided for in another regulatory instrument. Further, it should include terms and conditions to regulate how Water NSW undertakes these functions within its area of operations.

In relation to some of the listed functions,¹⁶ the Water NSW Act specifies that if the functions are authorised in the operating licence, it *must* also contain certain terms and conditions regulating how these functions are to be carried out. These include quality and performance standards which Water NSW must achieve.¹⁷ The Water NSW Act does not specify any mandatory terms and conditions in relation to the other listed functions.

We understand that for Water NSW to be able to undertake a function, the operating licence must contain the authorisation for that function,¹⁸ unless already authorised by another regulatory instrument.¹⁹ The operating licence should also specify the areas and circumstances in which Water NSW is able to exercise its authorised functions.²⁰ We understand that if a listed function is not authorised by the operating licence, or any other

¹⁴ Primarily s outlined primarily in sections 11, 12 16, 21, 25 and 60 of the Water NSW Act.

¹⁵ Water NSW Act, section 7(3)(a).

¹⁶ These are the functions to capture, store, release or supply water (sections 7[1][a]-7[1][e] of the Water NSW Act), and the declared catchment area functions)sections 7[1][g], [h] and [j] of the Water NSW Act.

¹⁷ Water NSW Act, section 12.

¹⁸ The functions of Water NSW that may only be exercised under the authority of, and in accordance with, an operating licence are:

- (a) its listed functions (being those functions set out in s 7(1) of the Water NSW Act)
- (b) the provision of facilities or services that are necessary, ancillary or incidental to its listed functions and
- (c) the conduct of any business or activity (whether or not related to its listed functions) that it considers will further its objectives. (Section 7 of the Water NSW Act, 2014)

Section 7(5) of the Water NSW Act provides that the Act does not require the authorisation of an operating licence for Water NSW to exercise a function conferred on it under a provision of the Water NSW Act, other than s 7, or by another Act or law.

¹⁹ Water NSW Act, sections 7(3) and (5).

²⁰ Water NSW Act, section 11.

instrument, Water NSW must not undertake that function or it would be in breach of the Water NSW Act.

Even if already authorised by another instrument, we consider that it is appropriate to authorise a function in the operating licence where we seek to include additional terms and conditions related to that function that are not included within the other instrument. This is because we consider that the Water NSW Act can only impose conditions on the exercise of those functions which it authorises.

In general, terms and conditions are intended to impose responsibilities on Water NSW which are enforceable and auditable. They provide transparent obligations particularly where customers rely on Water NSW to deliver services. The terms and conditions of an operating licence (including the standards), must be reflective of any legislative provisions, and customer expectations and willingness to pay. These requirements set the priorities of Water NSW's operations within the term of the operating licence.

This issue was not raised in the Issues Paper, nor did any stakeholder submissions specifically discuss the objective of the licence.

4.1.2 Options assessed

Table 4.1 Licence objective and purpose options

Options	Description
Option A	No objective or purpose statement
Option B	Simple merge of all items under the existing 'objective' and 'purpose' headings (Base case)
Option C	New objective statement with a note articulating the purpose
Option D	New objective statement and purpose statements

No costs were identified relating to any of these options.

Water NSW operates under the requirements of numerous legislative and regulatory instruments. As such, we consider that a benefit of including an objective statement is to improve clarity about the distinction between the operating licence and other regulatory instruments. It would also serve to guide the development of appropriate terms and conditions to apply to Water NSW; that is, to assess whether they are consistent with the objective of the licence as part of deciding whether or not to include them.

The objective of the licence is not explicitly described in the legislation so we have considered the provisions of the Act in relation to the operating licence in developing the objective of the licence.

The objective statement will also serve as a test for all other provisions of the licence.

The purpose of the licence is more clearly outlined in numerous sections of the Act, and therefore we have included a 'purpose statement' as a note to the objective statement to aid with context and clarity for the user of the operating licence.

Accordingly we consider that the purpose of the licence is to:

-
- ▼ specify the listed functions and other functions conferred upon Water NSW to which the licence relates
 - ▼ authorise Water NSW to carry out the listed and conferred functions specified in the licence
 - ▼ specify the areas and circumstances Water NSW is authorised to carry out the specified listed functions and conferred functions
 - ▼ set out terms and conditions which apply to the conduct of the functions authorised by the licence, including in relation to commercially viable systems and services, performance standards and performance indicators, and
 - ▼ to make provisions for the preparation of operational audits.

4.1.3 Preferred Option

We prefer Option C, and include an objective statement as clause 1.1 of the operating licence with a purpose statement included as a note. The proposed licence provision is shown in Box 4.1.

Box 4.1 Licence objective

1.1.1 This licence aims to:

- a) provide transparent and auditable terms and conditions for Water NSW to lawfully undertake its activities to industry good-practice;
- b) consider the interests of stakeholders within its area of operations, and
- c) impose the minimum regulatory burden on Water NSW by avoiding duplication or conflict with other regulatory instruments.

[Note: In accordance with sections 11 and 12 of the Act the purpose of this Licence is to:

- a) specify the Listed Functions and other functions conferred upon Water NSW to which the Licence relates;*
- b) authorise Water NSW to carry out the Listed Functions specified in this Licence and Conferred Functions;*
- c) specify the areas and circumstances in which Water NSW is authorised to carry out the specified Listed Functions and Conferred Functions;*
- d) set out the terms and conditions which apply to the conduct of the functions authorised by the Licence;*
- e) make provision for the preparation of Operational Audits;*
- f) include terms and conditions under which Water NSW is required to provide, construct, operate, manage and maintain efficient, co-ordinated and commercially viable systems and services to capture, store, release or supply water;*
- g) include terms and conditions under which Water NSW is required to ensure that the systems and services meet the Performance Standards specified in the operating licence in relation to water delivery, water quality, Service Interruptions or any other matters set out in the licence;*
- h) with respect to a Declared Catchment Area – include terms and conditions under which Water NSW is required to compile indicators of the direct impact of Water NSW's activities (including, but not limited to, the impact of energy used and waste generated) on the environment so as to provide information about its performance and enable reports to be prepared; and*
- i) specify other requirements as required and allowed for under the Act. Sections 16, 21, 25 and 60 of the Act allow for other terms and conditions of the licence. This Licence may be amended in accordance with section 13 of the Act.*

This Licence does not reproduce Water NSW's statutory obligations in full. Water NSW's licence obligations may be subject to other laws including the Water Management Act 2000 and the Water Act 1912.]

We used our best endeavours to develop an operating licence that will meet this objective through a transparent and consultative review process.

We recommend including the 'purpose' of the licence as a footnote, so that it does not have any regulatory effect and thus avoids any risk of inconsistency with the Act.

Recommendation

- 3 Replace the existing licence 'objective' and 'purpose' of the current licences with a new licence objective, including a note outlining the 'purpose'.

4.2 What should the licence authorise?

The Water NSW Act outlines a number of functions and activities which Water NSW may *only* exercise if authorised by the operating licence²¹ including the listed functions of section 7(1) of the Water NSW Act. In drafting the operating licence we considered which functions and activities were appropriate for the licence to authorise and the areas and circumstances²² in which it should be authorised to conduct these activities.

Further we considered if other instruments already adequately authorised and placed conditions on functions, and thus it was not necessary to include authorisations within the licence.

As a general principle for clarity, certainty and consistency within the operating licence, if the operating licence applies terms and conditions to a particular function we consider it is appropriate to also authorise the function within the operating licence.

4.2.1 Issues raised

Our Issues Paper asked whether each of the listed functions should be authorised and conditioned. The existing licences implicitly authorised all of the functions of each of the constituent entities (now termed the 'listed functions'). Stakeholders had mixed views in relation to each of the specific listed and other functions of the Act.²³

In many cases stakeholders identified authorisations which exist in other instruments, however still considered further terms and conditions were necessary.

In relation to flood mitigation and management Water NSW raised concerns about potential unintended consequences of authorisation. These might include the legal liability associated with authorising this function and the subsequent effective obligation to undertake this function, even though there is no actual obligation in the operating licence.

The Issues Paper also discussed whether the other functions of section 7(2)²⁴ of the Act should be authorised. Some stakeholders responded with examples of specific activities that should be authorised within the licence. None objected to the authorisation of the section 7(2) functions.

In relation to authorisation of other utilities' functions within their areas of operations the Issues Paper also sought comment on whether the licence should include this type of

²¹ Water NSW Act, sections 7(1), 7(2), 7(4), 15(4), 31(1).

²² In accordance with section 11 of the Water NSW Act.

²³ See Appendix **Error! Reference source not found.** for more detailed information on stakeholder views.

²⁴ Section 7(2) of the Water NSW Act states that Water NSW may:

(a) provide facilities or services that are necessary, ancillary or incidental to its listed functions, and
(b) conduct any business or activity (whether or not related to its listed functions) that it considers will further its objectives.

authorisation as allowed for by section 15(2) of the Act. Water NSW agreed with the proposed inclusion provided that it is not obliged to undertake the functions of the utilities or water supply authorities. The NSW Government did not object to this inclusion as long as Water NSW was required to obtain agreement from the utilities or water supply authorities, as required by the Water NSW Act.

Our Issues Paper also questioned whether Water NSW should be authorised to undertake activities on water meters it does not own, as allowed for within section 31(1) of the Act. Stakeholders offered mixed views on the option to authorise this activity. Water NSW and Sydney Water were in favour of authorisation; the NSW Irrigators Council considered that it should only apply to Government funded meters and not customer owned meters. The NSW Government submission stated that it considered that the existing licences dealt with the questions of authorisation adequately.

With respect to the area of operations within which each of the functions and activities should be undertaken, stakeholders were generally in favour of authorising all functions within the whole area of operations, ie, the whole of the State as defined in the Act.

Our Issues Paper also discussed whether Water NSW should be authorised within the operating licence to operate outside New South Wales.

Water NSW explained that including this provision in the new operating licence would allow it to continue to interact with the Commonwealth and other states when undertaking certain of its functions under the Water NSW (State Water) operating licence. In particular, Water NSW is required to undertake its activities under the Murray Darling Basin Agreement. The NSW Government submission supported this approach.

For more detailed information on stakeholder views refer to Appendix A of this report or the stakeholder submissions to the issues paper available on our [website](#).

4.2.2 Options assessed

Table 4.2 Licence authorisation options

Options	Description
Option 1A	No explicit authorisations
Option 1B	Authorise only selected functions and activities (because others are authorised elsewhere)
Option 1C	Authorise only selected functions and activities (because Water NSW should not undertake others)
Option 1D	Authorise all functions and activities allowed for by the Act within the licence

Table 4.3 Area of operations authorisations options

Options	Description
Option 2A	Selectively authorise functions within parts of the whole area of operations similar to existing licenses
Option 2B	Authorise all functions throughout the whole area of operations.

In relation to all of these options no quantifiable costs or benefits were identified.

We consider that clear, explicit authorisations should be contained within the licence as it assists with clarity for the utility, regulators and auditors as well as stakeholders and is consistent with section 11(1) of the Act.

Although we identified other instruments which contain some similar authorisations which would be relied on under Option 1B, we did not find an overarching authorisation throughout the whole State, rather these authorisations existed at an infrastructure level within individual works approvals. Further, terms and conditions were generally sought to be applied to the majority of the functions. We consider that a duplication of ‘authorisation’ does not present a cost to Water NSW in relation to these functions. Further, if a function is not authorised, it would not be clear if that was because we considered that the authorisation existed elsewhere or because it was deliberately intended for Water NSW to not be authorised to undertake the activity.

With respect to Option 1C we identified no functions or activities within the Act which should not, in principle, be authorised within the operating licence. We consider the unintended consequences identified by stakeholders in relation to flood mitigation and concerns raised in relation to water metering can be addressed by appropriate limitations within the terms and conditions applied to these functions (as discussed further in sections 6.4 and 9.1.3).

Our preferred option is Option 1D, ie, to authorise all functions and activities as allowed for within the Act.

With respect to the areas and circumstances within which the functions should be authorised, we found no reason to constrain any particular function to a subset of the area of operations. Even if historically and currently some functions only take place within smaller areas, we consider the operating licence should not impose this constraint. For this reason, Option 2B is our preferred option for the areas and circumstances within which the functions are authorised.

4.2.3 Preferred option

The preferred model of authorisations for the licence is the combination of Options 1D and 2B. This model would authorise Water NSW to the fullest extent possible under the Act. We consider this to be appropriate and consistent with the intention of the Act. This will allow the licence maximum flexibility to regulate the activities of an evolving organisation and maximise the longevity of the licence throughout the proposed 5-year term of the licence. This is particularly relevant for an organisation such as Water NSW which is continuing to undergo significant change to its structure and operations. We also consider that this is the simplest and clearest model of authorisation and will maximise efficiency of administering the licence.

We propose authorising Water NSW to undertake its functions outside NSW, as required, and as permissible under any relevant law. This is consistent with the existing provisions of the Water NSW (State Water) operating licence.

We note that we are not proposing to define Water NSW’s area of operations to be more than the state of NSW. Rather, we are proposing to include a provision that allows Water NSW to undertake any functions outside its area of operations, if it so requires (and as

permissible under law). As such, we consider that while this provision does not currently exist in the Water NSW (SCA) operating licence, including it in a combined licence does not have a material impact on the costs and benefits in comparison to the base case.

The proposed licence authorisations are shown in Box 4.2.

Box 4.2 Licence Authorisations

1.2.1 Subject to any terms and conditions, areas and circumstances specified in the Licence, this Licence authorises Water NSW to undertake the following Listed Functions within its Area of Operations:

- a) to Capture and Store Water and to Release Water:
 - i) to persons entitled to take the water, including release to regional towns; and
 - ii) for any other lawful purpose, including the release of environmental water;
- b) to Supply water to Sydney Water;
- c) to Supply water to water supply authorities and to local councils or county councils prescribed by the Regulations;
- d) to Supply water to Licensed Network Operators or Licensed Retail Suppliers;
- e) to Supply water to other persons and bodies, but under terms and conditions that prevent the person or body concerned from supplying the water for consumption by others within the State unless the person or body is authorised to do so by or under an Act;
- f) to construct, maintain and operate Water Management Works (including providing or constructing systems or services for supplying water);
- g) to protect and enhance the quality and quantity of water in Declared Catchment Areas;
- h) to manage and protect Declared Catchment Areas and Water Management Works vested in or under the control of Water NSW that are used within or for the purposes of such areas;
- i) to undertake flood mitigation and management subject to clause 3.5.1 of this Licence;
- j) to undertake research on catchments generally, and in particular on the health of Declared Catchment Areas; and
- k) to undertake an educative role within the community.

[Note: Although clause 1.2.1 largely mirrors section 7(1) of the Act, it differs in that the terms “Supply” and “Capture and Store Water and Release Water” have the defined meanings set out in Chapter 8 of this Licence for the purposes of clause 1.2.1, whereas those terms are not defined in the Act. The intention behind that difference between clause 1.2.1 and section 7(1) of the Act is that, pursuant to section 7(3)(a) of the Act, the Listed Functions set out in sections 7(1)(a)-7(1)(e) of the Act are only intended to be authorised by this Licence to the extent that they fall within the defined meanings of the terms “Supply” and “Capture and Store Water and Release Water” under this Licence.]

1.2.2 Subject to any terms and conditions, areas and circumstances specified in the Licence, this Licence authorises Water NSW, within its Area of Operations to:

- a) provide facilities or services that are necessary, ancillary or incidental to its Listed Functions; and
- b) conduct any business or activity (whether or not related to its Listed Functions) that it considers will further its objectives.

- 1.2.3 Subject to any terms and conditions, areas and circumstances specified in the Licence, this Licence authorises Water NSW, within its Area of Operations, to undertake the Conferred Functions specified in Schedule A.
- 1.2.4 Subject to any terms and conditions, areas and circumstances specified in the Licence and to the maximum extent permissible by law, this Licence authorises Water NSW pursuant to section 15(4)(b) of the Act to exercise any function of a type referred to in section 15(2) of the Act, but only with the agreement of the Relevant Body.
- 1.2.5 Subject to any terms and conditions, areas and circumstances specified in the Licence, and to the maximum extent permissible by law, this licence authorises Water NSW pursuant to section 31(1) of the Act, to exercise the functions set out in section 31(1) within its Area of Operations.
- 1.2.6 Despite anything in this clause 1.3, but subject to any terms and conditions, areas and circumstances specified elsewhere in the Licence, and to the maximum extent permissible by law, this Licence authorises Water NSW, pursuant to section 15(4)(a) of the Act, to carry out any of its functions outside of the State.
- 1.2.7 For the avoidance of any doubt, where this clause 1.3 authorises a function of Water NSW, that authorisation is intended to apply in respect of the Fish River Water Supply Scheme, to the maximum extent permissible by law.

[Note: The intention behind clause 1.3.7 is that clauses 2.1.2-2.1.5, 3.2.1, 4.2.1, 5.1.1-5.1.4, 5.2.1-5.2.4, 6.1.1-6.1.3, 6.3.1, 6.3.2, 6.5.1-6.5.4, 6.6.1-6.6.3, 6.8.1-6.8.4, 6.9.1-6.9.4, and 6.10.2 apply in respect of the Fish River Water Supply Scheme, to the maximum extent permissible by law. See section 293(2) of the Water Management Act 2000 (NSW).]

Recommendations

- 4 The licence authorises Water NSW to undertake its functions and activities to the fullest extent possible as described under the Water NSW Act 2014, including:
- all listed functions
 - ancillary facilities and services or other activities which further the objectives
 - certain conferred functions of the *Water Management Act 2000* (NSW), the *Water Act 1912* (NSW), the Water Management (General) Regulation 2011, the Access Licence Dealing Principles Order 2004
 - functions of certain other water corporations or water supply authorities as allowed under the Water NSW Act but only in agreement with the relevant organisation, and
 - the operation, repair, maintenance, removal, connection, disconnection or modification of metering equipment it does not own.

4.3 Definition of key terms

The Water NSW Act includes the terms ‘supply water’ and ‘capture and store water and release of water’ and these terms are not defined. This means we would rely on the dictionary definition of the terms. As a result, the terms risk being used interchangeably, but by contrast we consider these terms to be referring to quite different functions.

We consider it important to define these terms to ensure that the terms and conditions within the licence clearly and unambiguously apply to the appropriate Water NSW functions.

4.3.1 Issues raised

In a single operating licence, authorising all the functions of Water NSW within the whole area of operations, there is risk of confusion in the definitions of the functions relating to the 'supply' of water and 'capture and store water and release' of water. Thus identifying when and where the functions occur, and the terms and conditions which apply to the functions is an important consideration in the drafting of the licence, particularly in ensuring the licences are auditable.

For more detailed information on stakeholder views, refer to Appendix **Error! Reference source not found.** of this report or the stakeholder submissions to the issues paper available on our [website](#).

4.3.2 Options assessed

Table 4.4 Options for defining key terms

Options	Description
Option A	No explicit definitions within the licence
Option B	Define the term 'supply' separately to 'capture, store and release' water

In relation to these options no quantifiable costs or benefits were identified.

Under the scenario where we are authorising all functions within a single licence, there is a risk of ambiguity between the terms 'Supply water and 'Capture and store water and to release water'. Relying solely on dictionary definitions of these terms will not provide the necessary distinction for clarity of the licence and or auditing purposes.

Further, a lack of clarity in the distinction between these functions can result in terms and conditions being interpreted to apply to all functions. To clearly identify where and how a function is being conducted and to provide transparent and auditable terms and conditions consistent with the licence objective, we have chosen to define the key terms of these functions.

We acknowledge that defining these terms also gives rise to the risk that inadvertently the definition may be wrong, inconsistent with the Act or exclude a function that Water NSW undertakes because it does not fit the definition.

4.3.3 Preferred Option

In one combined operating licence, we consider that it is necessary to differentiate between the "capture, store and release" and "supply" functions. We propose to clarify that the definitions only apply for the purposes of the operating licence and reporting manual to minimise the risk of conflicting with definitions otherwise used in the industry.

The proposed definitions of the key terms are shown in Box 4.3.

Box 4.3 Definitions of key terms

Supply means the supply by Water NSW of water extracted under its water access licences to a downstream Customer (in accordance with a relevant water supply agreement) by means of Water Management Works owned and/or controlled by Water NSW.

[Note: Water NSW may supply water to a downstream Customer by using active or passive management or operating actions. Such downstream Customer does not have their own water access licence for that water.]

Capture and Store Water and Release of Water means the capture, store and release (but not Supply) of water by Water NSW:

- a) to persons entitled to take water; and
- b) for any other lawful purpose, including the release of environmental water,

by means of Water Management Works owned and/or controlled by Water NSW.

[Note: Water NSW may undertake such functions by using active or passive management or operating actions to enable passage of captured and stored water into a river or channel system.]

Box 4.4 How do these functions relate to existing customers?

These definitions will mean that not all customers of Water NSW are receiving services under the same functions. This Box provides some examples of customers who will receive services under the '**Supply**' functions and the '**Capture and Store water and Release water**' function.

Examples of Supply Customers:

Supply customers do not extract water under their own Water Access Licences rather they receive water which is provided by Water NSW through its own infrastructure. These customers have supply agreements with Water NSW. Examples of these types of customers include:

- ▼ large water utilities such as Sydney Water Corporation
- ▼ Water Industry Competition Act licensees
- ▼ a small customer with a connection to a pipeline
- ▼ one of the water supply authorities, local councils or county councils prescribed by the regulations (there are currently only 3 prescribed entities).

Examples of Capture and Store Water and Release Water Customers:

Capture and Store Water and Release Water customers hold their own Water Access Licences which allow them to extract water from a regulated river using nominated water supply works (eg, a pump) according to other certain conditions (eg, metering requirements or extraction rate). Water NSW maintains water allocation accounts for each of these customers. Upon receiving complying water orders from customers, Water NSW releases water which the customer extracts, upon arrival of this water at the authorised work. The water is debited against the customer's allocation account. Examples of these types of customers include:

- ▼ irrigators
- ▼ irrigation corporations
- ▼ regional towns
- ▼ environmental water holders and environmental releases.

4.4 How will the term of the licence be defined?

While there is merit in sequencing the operating licence review a number of years before the pricing determination, we have decided at this stage to recommend retaining the maximum five-year period of the operating licence, as allowed for by the Act.

4.4.1 Issues raised

Theoretically, the ideal sequence of the licence review is that it always precedes the pricing review by two years, such that the pricing implications of determined licence obligations are more certain for input into the price proposals. Currently, the operating licence is granted for a term of five years, while the price determinations are generally made for four years.

Water NSW is also currently subject to three price determinations:

- ▼ IPART 2010 determination – applied to coastal valleys and some Fish River Water Supply Scheme customers

- ▼ ACCC 2014 Decision for MDB valleys and some other Fish River Water Supply Scheme customers, and
- ▼ IPART 2016 Greater Sydney determination.

In response to the discussion of pricing and licensing synergies in our issues paper Water NSW confirmed that it had a preference for the term of the operating licence remaining for a maximum term of five years.

No alternative views were raised by other stakeholders.

4.4.2 Options considered

Table 4.5 Licence term options

Options	Description
Option A	Recommend maximum licence term of 5 years

Only one option was considered in relation to Water NSW. The maximum licence term minimises the administrative costs associated with a more frequent review period. With multiple price determinations applicable to Water NSW there is, at present, no clear timeframe in which an appropriate Licence-Pricing sequence can be achieved.

4.4.3 Preferred option

We propose a maximum term of five years with the new operating licence effective 1 July 2017 to 30 June 2022. This approach is consistent with the IPART Licensing Framework,²⁵ which recommends that the operating licence term is set for the maximum allowed period. The Water NSW Act states that the operating licence term can be for a maximum of five years.²⁶

We do, however, still consider there is merit in sequencing licence reviews and pricing determinations generally, and we will look for further opportunities to do so in the future.

4.5 Compliance with pricing determinations

4.5.1 Issues raised

Our issues paper noted that unlike the Sydney and Hunter Water operating licences, neither of the existing Water NSW licences contained an explicit obligation requiring consistent application of the relevant pricing determination. We asked whether a similar obligation requiring compliance with the price determination should be included in the new operating licence.

²⁵ PwC, *A best practice approach to designing and reviewing licensing schemes – Guidance material*, March 2013.

²⁶ Water NSW Act, Section 14.

Water NSW considered that a similar obligation should not be included for reasons of duplication with the obligations to comply with price determinations contained within both the IPART and Commonwealth Water Acts. Water NSW expressed a view that duplication would result in confusion. Other stakeholders considered that it is appropriate to include such an obligation for clarity and consistency with other licences.

4.5.2 Options considered

Table 4.6 Pricing options

Options	Description
Option A (Base case)	No pricing obligation
Option B	New pricing obligation that requires compliance with the pricing determinations.

We considered whether to retain the status quo arrangement with no operating licence condition relating to the pricing obligation, or to include a new obligation relating to pricing.

In addition to consistency with the other Water SOC operating licences, the main benefit of including this obligation is auditability and enforceability of the application of Water NSW's pricing determinations.

Furthermore, it would enable the making of recommendations in relation to the application of the Water NSW price determinations if audited and found to be incorrectly applied within a price determination period.

Although there may be some additional administrative costs associated with preparing for the audit of this obligation, it should not create any additional cost for Water NSW. According to the risk-based scoping procedure of audits, the audit frequency of this condition would not necessarily be every year, unless non-compliances were identified or self-reported.

4.5.3 Preferred option

We prefer Option B, ie, to include an obligation requiring the correct application of the relevant pricing determination. The proposed condition is shown in Box 4.5.

Noting Water NSW's concerns about multiple price determinations under State and Commonwealth legislation, we have attempted to draft the obligation more broadly than the equivalent condition in the Sydney or Hunter Water operating licences.

Box 4.5 Pricing operating licence condition

1.6.1 Water NSW must ensure that the level of fees, charges and other amounts payable for its services are applied subject to the terms of this Licence, the Act and any maximum prices or methodologies for fixing maximum prices determined from time to time by IPART under the IPART Act or under any other lawful determination or instrument.

[Note: at the time of granting of the licence IPART is the body responsible for determining prices for Water NSW's services and is also an accredited determining body on behalf of the ACCC.]

Recommendation

- 7 The operating licence includes an auditable condition with respect to application of the relevant pricing determination.

4.5.4 Other licence context and authorisation conditions

Other provisions to this chapter of the operating licence are the provisions of the non-exclusivity of the licence, making copies of the licence available, the End of term review and Notices. These are largely the same as one or both of the previous licences with minor updates as relevant.

5 Water source protection and conservation

Chapter 2 of the operating licence relates to the first step of the water supply chain which we consider is water source protection and conservation. A water utility is expected to maximise the quality and quantity of the water provided to the extent that it has control over these aspects of the water provided. In relation to Water NSW the obligations contained within this chapter of the operating licence are consistent with the principal objectives of the Act, and in particular 6(1)(c)²⁷ of the Act and the listed functions 7 (1)(g), (h) and (j)²⁸

The draft recommendations to develop the draft operating licence and reporting manual are listed below.

Draft recommendations for the operating licence:

- 8 The operating licence authorises Water NSW to protect and enhance the **quality** and **quantity** of water in declared catchment areas.
- 9 The operating licence includes terms and conditions requiring Water NSW to maintain a Water Quality Management System, to manage the water quality within declared catchment areas.
- 10 The operating licence includes terms and conditions requiring Water NSW to maintain a Water Quality Management System to manage supplied water quality from non-declared catchments (where relevant).
- 11 The operating licence retains the existing obligations relating to water supply system yield for declared catchment areas, with minor updates.
- 12 The operating licence includes an obligation for Water NSW to develop an Economic Level of Water Conservation methodology and associated reporting obligations.
- 13 The operating licence retains the existing Water NSW (SCA) operating licence catchment management and catchment infrastructure management obligations.
- 14 The operating licence includes a new obligation in relation to undertaking research on catchments state-wide, and a corresponding reporting obligation.

²⁷ Section 6(1)(c) of the Water NSW Act states that one of Water NSW's principal objectives is to:
"to ensure that declared catchment areas and water management works in such areas are managed and protected so as to promote water quality, the protection of public health and public safety, and the protection of the environment"

²⁸ Section 7(1) of the Water NSW Act states that Water NSW's listed functions, in relation to catchments including declared catchments are:
"(g) to protect and enhance the quality and quantity of water in declared catchment areas
(h) to manage and protect declared catchment areas and water management works vested in or under the control of Water NSW that are used within or for the purposes of such areas
(j) to undertake research on catchments generally, and in particular on the health of declared catchment areas."

5.1 How should Water NSW protect and enhance the quality and quantity of water in catchment areas?

We consider that Water NSW should be authorised to “protect and enhance the quality and quantity of water in declared catchment areas”. The Water NSW Act states that this is a listed function of Water NSW²⁹. Water NSW currently undertakes this function under the authority of its Water NSW (SCA) operating licence. We consider it is important that Water NSW is able to continue to undertake this function because it has an impact on Water NSW’s capacity to supply water to customers within the Sydney Catchment Area for drinking water purposes. The function is consistent with the principal objective 6(1)(c) of the Water NSW Act.³⁰ A number of sections of the licence relate to this function as discussed within the remainder of this chapter.

Similarly, we consider that it is also important for Water NSW to undertake its functions as efficiently as possible in non-declared catchment areas. This includes both operational efficiency and resource management efficiency. The former is addressed through a systems based approach (see Chapter 8). The latter can be managed through including terms and conditions relating to capture, store and release, which is a state-wide function. Therefore, we have proposed to enhance the current water conservation obligations in the Water NSW (State Water) operating licence, to make them transparent, objective and consistent with other water utilities.

We also propose that Water NSW continue to be responsible for calculating the water supply system yield function as it has done previously.

We discuss below the terms and conditions that we consider appropriate for inclusion in the operating licence, to regulate how Water NSW undertakes these functions. We propose conditions relating to the Water Quality Management System, Water Supply System Yield and the Economic Level of Water Conservation. These are discussed individually below (sections 5.3 and 5.4). Note that while these terms and conditions primarily relate to the Water NSW Act s 7(1)(g) listed function, they are also relevant to the ‘supply’ and ‘capture, store and release’ functions.

5.2 Water quality management system

5.2.1 Issues raised

The Water Quality Management System (WQMS) is a condition relating to the declared catchment areas and the supply functions.

In the issues paper we noted that currently, the Water NSW (SCA) operating licence requires Water NSW to maintain a WQMS that is consistent with the Australian Drinking Water Guidelines (ADWG). Further, the WQMS is required to incorporate any amendments or additions to the ADWG required by the NSW Ministry of Health (NSW Health). The WQMS is used to manage the quality of water supplied to customers within the Sydney

²⁹ Water NSW Act, section 7(1)(g)

³⁰ Principal objective 6(1)(c) of the Water NSW Act is to: “ensure that declared catchment areas and water management works in such areas are managed and protected so as to promote water quality, the protection of public health and public safety, and the protection of the environment”

Catchment Area, using a holistic catchment-to-tap approach. We asked whether all water supplied should be subject to a WQMS depending on the risk level of the customer's end use.

Water NSW, the NSW Government and Sydney Water support the inclusion of a requirement to maintain a WQMS in the operating licence. Sydney Water stated that it assists Sydney Water to meet its own responsibilities to ensure that drinking water supplied is subject to a "catchment to tap" management system.

5.2.2 Options considered

Table 5.1 WQMS options

Options	Description
Option A (Base case)	Retain existing WQMS obligation (updated to specify declared catchment function)
Option B	Retain existing WQMS with additional WQMS for non-declared catchments

We considered two options in relation to the WQMS obligation. Option A is largely similar as the status-quo obligation. However, it has been updated to reference activities within the declared catchment area.

Option B contains the updated status quo obligation with respect to the declared catchment area. However, it contains a secondary obligation for a WQMS to be maintained in relation to any water supply activities that occur outside the declared catchment area.

As a result of the formation of Water NSW under the Water NSW Act, the water supply functions can now apply outside the declared catchment areas.³¹ The additional component of WQMS relates to any new supply activities outside a declared catchment area.

The cost benefit analysis of Option B identified that the updated component relating to declared catchments represented a drafting change only and had no related cost or benefit.

In relation to the WQMS in non-declared catchments, no quantitative costs or benefits could be identified as this represents a cost which may be incurred in the future and will depend on the specific nature of the activities. A potential qualitative cost of duplicative regulation was raised as a concern. However, we have attempted to draft the condition to avoid such an outcome. The benefit identified is derived from the assurance that a water quality management system will be required for all water supplied within the area of operations.

5.2.3 Preferred option

Our preferred option is Option B, ie, to include two components to the WQMS. Drafting of the preferred option is shown in Box 5.1.

³¹ Except for the Fish River Water Supply Scheme we understand that this activity does not currently occur outside of the declared catchment area.

The reporting manual obligations associated with this option would need to be updated from the existing reporting manual, and represent no material cost/benefit compared with the Base case. These are included in Box 5.2.

We consider that it is appropriate to include terms and conditions in the new operating licence, similar to those of clause 2.1 of the existing Water NSW (SCA) operating licence, requiring Water NSW to maintain a WQMS. The WQMS relates to Water NSW's function to protect and enhance the *quality* of water in declared catchment areas. The updated component of the existing condition should clarify that each term applies to "supply" activities within the "declared catchment area" to avoid them becoming applicable across all of Water NSW's activities in NSW. This also highlights the importance of defining what we mean by "supply" (see definition in section 4.3).

We note that currently this licence condition only applies to the Sydney Catchment Area but it will become applicable to any other catchment areas if they are declared in future. We consider that this is appropriate as the end use will be to provide drinking water. Further, it is consistent with Water NSW's listed function in the Water NSW Act.

In terms of costs and benefits, these changes are not substantial. The costs could become more apparent if, in the future, more catchment areas are declared, but this is difficult to assess at this stage. As such, we consider that including this updated requirement in the new operating licence has no material impact on the CBA.

In relation to managing water quality in non-declared catchments we consider a water quality management system is not appropriate unless water is also supplied within the area. To ensure longevity of the licence in the case that the function could occur more broadly than the current circumstances, the second component of Option B has been drafted broadly to take into account as many future scenarios as possible (including Recycled Water which Water NSW does not currently supply).

We consider that the WQMS does not need to be developed unless the supply function (as defined within the operating licence) occurs. Thus, if the activity does not occur for a number of years (or indeed throughout the entire term of the licence) then the obligation is not required. We note that the immediate impact of this obligation is minimal and has been included to maximise the flexibility and longevity of the licence. It is not intended to apply to the capture and store of water and release of water functions, which relate to the majority of activity in non-declared catchments: for example, the WQMS is not intended to apply to water captured, stored and released to irrigators or local towns.

We have been careful to avoid regulatory duplication. If a particular supply activity is already regulated under the Public Health Act, the Quality Assurance Plan required under that act will satisfy the condition. We have allowed an option for IPART to approve an alternative WQMS guideline or requirement should Water NSW consider an alternative guideline appropriate for a given circumstance.

Consistent with the preferred option for the WQMS operating licence condition are the associated reporting obligations contained within the reporting manual. These reporting obligations are largely drafting updates of existing reporting manual obligations and give rise to no net costs or benefits. These are shown in Box 5.2.

Box 5.1 WQMS operating licence conditions

2.1 Water Quality Management System

2.1.1 With respect to Declared Catchment Areas, Water NSW must maintain a water quality management system to manage the risks to water quality (**Water Quality Management System**) that is consistent with:

- a) the Australian Drinking Water Guidelines; or
- b) if NSW Health specifies any amendment or addition to the Australian Drinking Water Guidelines that applies to Water NSW, the Australian Drinking Water Guidelines as amended or added to by NSW Health.

[Note: It is generally expected that for the Declared Catchment Areas Water NSW will develop a system consistent with the Australian Drinking Water Guidelines, including the Framework for Management of Drinking Water Quality. However, where NSW Health considers appropriate, the application of those Guidelines may be amended or added to, to take account of Water NSW's circumstances and/or Drinking Water quality policy and practices within New South Wales. It is generally expected that Water NSW will manage the Declared Catchment Areas and the associated Catchment Infrastructure Works in light of its knowledge of the whole Drinking Water Supply System. That is, Water NSW should have adequate systems and processes in place to manage Bulk Water quality to its water supply Customers, taking into account the implementation of planning and risk management across the whole Drinking Water Supply System.]

2.1.2 With respect to Non-Declared Catchment Areas from which Water NSW Supplies water, Water NSW must maintain a Water Quality Management System. The Water Quality Management System must be consistent with at least one of the following:

- a) a relevant quality assurance program under section 25 of the *Public Health Act 2010* (NSW);
- b) the Australian Drinking Water Guidelines;
- c) the Australian Guidelines for Water Recycling; or
- d) other requirements as specified or approved by NSW Health or IPART,

as relevant to the source and final end use of water.

[Note: It is generally expected that Water NSW will manage the water under its control in light of its knowledge of the downstream water supply system, including that of its Customers. Therefore the Water Quality Management System should be developed in consultation with the relevant Customers to whom it Supplies water.]

2.1.3 Water NSW must ensure that the relevant Water Quality Management System(s) is fully implemented and that all relevant activities, are carried out in accordance with the relevant Water Quality Management System, and to the satisfaction of NSW Health.

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

2.1.5 Water NSW must ensure that any significant changes that Water NSW proposes to make to its Water Quality Management System(s) are to the satisfaction of NSW Health before implementing or carrying out its activities in accordance with them.

Box 5.2 WQMS reporting obligations

2.1 Periodic reporting

2.1.1 Routine monitoring reporting

Water NSW must report to its Customers and NSW Health the results of routine monitoring undertaken under the monitoring program that it develops as part of the Water Quality Management System. This requirement is relevant to all water **supplied** from both the declared catchment areas and non-declared catchment areas.

This report is to contain the results of routine monitoring which the monitoring program requires to be reported to Water NSW's Customers and NSW Health.

*[Note: Under clause 2.1 of the Licence, Water NSW must maintain and implement a Water Quality Management System to manage the risks to the quality of any water that is **supplied**.*

With respect to Declared Catchment Areas, the Water Quality Management System must be consistent with the Australian Drinking Water Guidelines. The Guidelines seek to provide a framework for good management of Drinking Water supply. A central aspect of this framework is the use of monitoring to confirm the effectiveness of the preventive measures and barriers to contamination, and to enhance Water NSW's understanding of the performance of the system that implements the Guidelines. As such, to comply with the Licence, the Water Quality Management System must include a monitoring program.

*Similarly, with respect to other Non-declared Catchment Areas from which Water NSW **supplies** water, Water NSW must maintain a Water Quality System consistent with the Australian Drinking Water Guidelines and Australian Guidelines for Water Recycling (**Guidelines**), or any other requirements as specified or approved by NSW Health or IPART. Both Guidelines recommend the use of water quality monitoring. If a Quality Assurance Program is required under the Public Health Act 2010, the Quality Assurance Program developed will satisfy these requirements.*

This section 2.1.1 of this reporting manual requires Water NSW to report on its monitoring of water quality, with respect to water in the declared catchment areas, under such a monitoring program, to ensure timely reporting for operational purposes.]

2.1.2 Annual water quality management system reporting

Water NSW must submit an annual report to IPART and NSW Health (for each financial year) on the implementation of the Water Quality Management System (**Water Quality Management System Report**). This requirement is relevant to all water **supplied** from both the declared catchment areas and non-declared catchment areas.

Water NSW must use the template in Appendix C of this reporting manual to prepare the Water Quality Management System Report. Water NSW must submit this report to IPART by **1 September** after the end of the financial year, or at a later date agreed to by IPART.

The Water Quality Management System Report must include details on the following matters for each financial year:

- ▼ the water quality management activities and programs completed by Water NSW in the financial year to meet Water NSW's water quality objectives, including the results and outcomes from those activities and programs,
- ▼ the water quality management activities and programs proposed by Water NSW to meet Water NSW's water quality objectives in the future, including the expected outcomes, scope

and timetable for completion, and

- ▼ any non-conformances with the system and the actions taken to resolve them.

*[Note: As explained in the Note to section 2.1.1 above, Water NSW must maintain and implement a Water Quality Management System for managing water that it **supplies** (whether from a Declared or Non-declared Catchment Area), in accordance with the Licence. This section requires Water NSW to report on how it complies with this Licence requirement.]*

The Water Quality objectives referred to in this section are objectives that Water NSW identifies in implementing the Water Quality Management System. Water NSW's water quality objectives may be:

- ▼ *the broad objectives of the Water Quality Management System. For example, a broad objective may be to ensure consistent management of water quality. Under Element 4 of the Australian Water Drinking Guidelines, operational procedures should be developed to achieve this objective, such as a data analysis procedure which is followed when routine data monitoring results are available. Objectives may cover all 12 elements of the Guidelines, and may include monitoring, operation, maintenance, training, community consultation and research programs; or*
- ▼ *the target water quality criteria (ie. operational water quality objectives) for each operational characteristic included in the monitoring program developed as part of the Water Quality Management System (eg, E.coli numbers in feeder streams and Bulk Water).*

The water quality management activities and programs referred to in this section 2.1.2 are those that Water NSW would need to undertake to carry out risk assessment. Risk assessment is part of the Australian Drinking Water Guidelines and Australian Guidelines for Water Recycling, with which the Water Quality Management System may be required to be consistent (as relevant – refer to sections 2.1.1-2.1.2 for information). The activities and programs should be identified in the risk assessments as actions required for managing or maintaining a risk below a tolerable level.

With respect to Non-declared Catchment Areas, where NSW Health or IPART has specified or approved requirements that the Water Quality Management System is to be consistent with, other than the Guidelines, Water NSW must still report to IPART on the water quality management activities and programs proposed to meet its water quality objectives in the future.]

2.1.3 Annual water quality monitoring reporting

Water NSW must submit an annual report to IPART and NSW Health (for each financial year) regarding its monitoring of water quality (**Water Quality Monitoring Report**). This requirement is relevant to all water **supplied** from both the Declared Catchment Areas and Non-declared Catchment Areas.

Water NSW must submit this Water Quality Monitoring Report to IPART and NSW Health by **30 November** after the end of the financial year, or at a later date agreed to by IPART. Water NSW must also report publicly on this report in accordance with section **Error! Reference source not found.** of this reporting manual, by the same date.

The Water Quality Monitoring Report must:

- ▼ summarise the monitoring program developed under the Water Quality Management System, including Water NSW's water quality objectives relating to monitoring and the applicable guidelines for water quality (eg, the Australian Drinking Water Guidelines)
- ▼ summarise the monitoring results and analyse if the results address Water NSW's water quality objectives. This will include the results of:

- routine monitoring of the water quality characteristics identified in the Water Quality Management System, and
 - non-routine monitoring (event-based and investigative monitoring), including a summary of water quality incidents identified during the financial year and actions taken to resolve, eliminate or mitigate the effect of those incidents, especially to protect public health during the incident
- ▼ provide information on the integrity of the data reported.

For 2017 and 2019, Water NSW must also include in the Water Quality Monitoring Report, an analysis of trends in water quality over the previous 10 years:

- ▼ at the inflows to any (downstream) water filtration plants,
- ▼ within Water NSW's water storages, and
- ▼ at other locations as specified by NSW Health and DPI Water (including inflows into Water NSW's water storages).

2.1.5 Annual reporting on water quality monitoring indicators – IPART indicators

With respect to water supplied from both Declared and Non-declared Catchment Areas, Water NSW must submit an annual report to IPART (for each financial year) on the water quality indicators contained in Table B.2 in Appendix B of this reporting manual (Water Quality Monitoring Indicators Report). The water quality indicators in Table B.2 are those indicators identified by "water quality" in the second column of that table.

Water NSW must submit the report to IPART by 30 November after the end of the financial year, or at a later date agreed to by IPART.

The Water Quality Monitoring Indicators Report must include an analysis of trends in the data (including possible causes or actions proposed in response to any improvement or deterioration in performance).

[Note: This section 0 requires Water NSW to report on indicators of water quality, in the catchment waterways, that is supplied to customers.]

2.2.2 Incident reporting

Water NSW must report to NSW Health and its Customers immediately if there is an incident where the Bulk Water it supplies poses a risk to human health.

"Incident" is as defined under the Water Quality Management System.

Water NSW must report in accordance with the reporting protocols developed in the Water Quality Management System.

[Note: To be consistent with the framework in the Australian Drinking Water Guidelines, the Water Quality Management System should define "incidents" and include protocols for external communications and reporting of incidents. This section 2.2.2 requires Water NSW to report these incidents in accordance with these protocols.]

Recommendations

- 8 The operating licence authorises Water NSW to protect and enhance the **quality** and **quantity** of water in declared catchment areas.
- 9 The operating licence includes terms and conditions requiring Water NSW to maintain a Water Quality Management System, to manage the water quality within declared catchment areas.
- 10 The operating licence includes terms and conditions requiring Water NSW to maintain a Water Quality Management System to manage supplied water quality from non-declared catchments (where relevant).

5.3 Water supply system yield

The existing Water NSW (SCA) operating licence and previous versions of it have contained a longstanding provision for the calculation of Water Supply System Yield on the occurrence of a number of trigger events. Further, it includes a requirement to regularly review the model for calculating Water Supply System Yield. These requirements are currently only applicable to the Sydney Catchment Area.

We consider it important to retain the requirements so as to protect the quantity of water in declared catchment areas

5.3.1 Issues raised

In our issues paper we sought feedback from stakeholders about whether long term planning and supply sufficiency were appropriately informed by the obligations to calculate water supply system yield, if the water supply system yield was appropriately defined and calculated, and if the design criteria are appropriately defined and calculated.

Water NSW responded that it considers the concept of the yield to be sufficiently defined within the existing obligations of the Water NSW (SCA) operating licence. Water NSW also commented that the design criteria form part of the Water NSW levels of service which are developed during consultation with customers and should not be detailed in the new licence.

Sydney Water similarly considered the existing provisions appropriate however sought additional information in relation to the assumptions underlying the yield to be made publicly available in addition to the design criteria. Sydney Water stated triggers for reviewing the model should also be included.

The NSW Government submission stated that the existing requirements should be maintained but an additional yield definition should be included to match the approach adopted in the Metropolitan Water Plan which would include medium and long-term indicators of supply sufficiency.

5.3.2 Options considered

Table 5.2 Water supply system yield options

Options	Description
Option A (Base case)	Existing clauses updated to clarify scope within the declared catchment area
Option B	Inclusion of two types of yield calculation: 'fixed' and 'time varying yield'

We considered two options for the water supply system yield obligation. Option A is the existing obligations, updated to clarify its application in respect of a Declared Catchment Area only, and to include trigger events for the review of the model. Option B includes the modified version of the water supply system yield obligations but introduces a second definition of yield in response to the NSW Government submission. These are termed the “fixed” and “time varying” water supply system yield.

The CBA identified the cost of the additional modelling over the five year term of the operating licence would be between \$0.85 million-1.049 million.³² The benefits identified were not quantifiable but were recognised as improved modelling capacity which may lead to better decision making.

5.3.3 Preferred option

Our preferred option is Option A for the water supply system yield obligations. The drafting of the preferred option is shown in Box 5.3.

We consider that it is appropriate to retain the existing clauses with simple updates in the new operating licence, similar to those of clauses 3.2 and 3.3 of the existing Water NSW (SCA) operating licence.

We have not chosen to introduce an additional definition of yield at this time, until the benefits of such a definition can be better identified and quantified. We consider this could be a matter dealt with between Water NSW and DPI Water as part of their MoU (which is discussed in section 9.5).

We consider that these terms and conditions facilitate Water NSW’s planning and relate to its function to protect and enhance the *quantity* of water in declared catchment areas. We therefore also need to authorise this function, in the licence.

Consistent with the preferred option for the water supply system yield operating licence conditions, the associated reporting obligations contained within the reporting manual. These reporting obligations are largely drafting updates of existing reporting manual obligations and give rise to no net cost or benefits. These are shown in Box 5.4.

³² These costs are based on Net Present Value (NPV) over the term of the proposed operating licence (ie, five years) using discount rates recommended by NSW Treasury, *tpg 07-5, NSW Government Guidelines for Economic Appraisal*, July 2007, p 52

Box 5.3 Water supply system yield operating licence conditions

2.5 Calculating Water Supply System Yield

2.5.1 Water NSW must recalculate the Water Supply System Yield in respect of a Declared Catchment Area on the occurrence of any one or more of the following events:

- a) the conclusion of any drought event affecting the Declared Catchment Area;
- b) the commencement of any modification or augmentation to the Catchment Infrastructure Works or Customers' infrastructure, that will have a significant impact on Water NSW's Supply of water in respect of the Declared Catchment Area;
- c) any material change to the operating rules of the Catchment Infrastructure Works in respect of the Declared Catchment Area; or
- d) any material change to the Design Criteria in respect of the Declared Catchment Area.

2.5.2 Water NSW must advise the Minister:

- a) of any changes to the Water Supply System Yield relative to the previous Water Supply System Yield (including reasons for change) following a re-calculation under clause 0; or
- b) if Water NSW considers that future demand for Bulk Water may exceed the Water Supply System Yield and when this exceedance might occur

in accordance with the reporting manual.

2.5.3 As soon as practicable after advising the Minister of any changes to the Water Supply System Yields under clause 2.5.2, Water NSW must make those changes and the reasons for those changes available to the public in accordance with the reporting manual.

2.6 Reviewing the model for the Water Supply System Yield

2.6.1 By the first quarter of 2021, or on an earlier occurrence of one of the recalculation trigger events to the Water Supply System Yield referred to in clause 2.5.2, Water NSW must engage a suitably qualified independent expert to:

- a) review its modelling and procedures for calculating the Water Supply System Yield to ensure that it reflects good industry practice;
- b) test the robustness of the modelling, the key assumptions used in the modelling, and the process for calculating the Water Supply System Yield, including the appropriate frequency of yield re-calculation and the appropriateness of the trigger events in clause 2.5.1; and
- c) advise Water NSW on whether it should re-calculate the Water Supply System Yield based on the findings of the test conducted under clause 2.6.1(b).

2.6.2 Water NSW must consult with:

- a) Customers, including Sydney Water;
- b) stakeholders and regulators as agreed with IPART; and
- c) any other persons reasonably expected to have an interest in the review of the modelling under clause 2.6.1,

regarding the review of the modelling under clause 2.6.1 and provide the results of the consultation to the suitably qualified independent expert.

2.6.3 The review of the model for the Water Supply System Yield must be completed by 30 June 2021 and reported to IPART in accordance with the reporting manual.

Box 5.4 Water supply system yield reporting obligations

2.2.3 Water Supply System Yield reporting

Following a recalculation of the Water Supply System Yield under clause 2.5.1 of the Licence, Water NSW must:

- ▼ advise the Minister of any changes (including reasons for the changes) in writing, as soon as practicable after the recalculation, and
- ▼ report publicly on the changes (including reasons for the changes) in accordance with section 2.3 of this reporting manual, as soon as practicable after advising the Minister of the changes.

[Note: Under clause 2.5.1 of the Licence, Water NSW must re-calculate the Water Supply System Yield with respect to declared catchment areas only, if certain events occur. Under clause 2.5.2 of the Licence, Water NSW must report any changes to the Yield. This section 2.2.3 of the reporting manual requires Water NSW to report the changes to the Water Supply System Yield following its recalculation.]

Water NSW must also advise the Minister if it considers that future demand for Bulk Water may exceed the Water Supply System Yield when this exceedance might occur, in accordance with clause 2.5.2 of the Licence.

2.2.8 Review of Water Supply System Yield model

Water NSW must report publicly in accordance with section 2.3 of this reporting manual on the review of the model and procedure for calculating the Water Supply System Yield (required under clause 2.6 of the Licence).

The report must include:

- ▼ the independent expert's findings of the review, and
- ▼ Water NSW's response to those findings.

[Note: Under clause 2.6 of the Licence, Water NSW must retain an independent expert to review its model and procedure for calculating the Water Supply System Yield. This section 2.2.8 requires Water NSW to report on this review.]

2.2.9 Where future demand may exceed Water Supply System Yield

Water NSW must advise the Minister in writing as soon as practicable if it considers that future demand for Bulk Water may exceed the Water Supply System Yield.

[Note: Under clause 2.5.2 of the Licence, Water NSW must advise the Minister if it considers that future demand for Bulk Water may exceed the Water Supply System Yield in accordance with this reporting manual. This section 2.2.9 requires Water NSW to advise the Minister on this matter.]

Recommendation

- 11 The operating licence retains the existing obligations relating to water supply system yield for declared catchment areas, with minor updates.

5.4 Economic Level of Water Conservation

Water conservation is an important consideration for efficient, modern and good-practice water utilities.

In the past, regulatory approaches to water conservation have been mixed. Within the existing Water NSW operating licences, the SCA licence is silent. Water conservation has no explicit obligation beyond the Environmental Management System. However, the State Water licence has an explicit water conservation obligation requiring Water NSW to take all reasonable steps to conserve water and minimise water losses that result from undertaking operations under the licence. In more recent reviews, we have introduced the concept of an Economic Level of Water Conservation (ELWC) within the Sydney Water and draft Hunter Water operating licences.

5.4.1 Issues raised

Our Issues Paper did not specifically discuss water conservation measures and we received no specific submissions on the issue. We have proposed inclusion of licence obligations in relation to ELWC in the draft licence as we consider that it relates to the function to protect and enhance the quantity of water in declared catchment areas, but also relates to the efficient, co-ordinated and commercially viable conduct of the capture, store, release and supply of water in the whole area of operations.

5.4.2 Options considered

Table 5.3 Water conservation options

Options	Description
Option A (Base case)	Retain existing wording of the Water NSW (State Water) licence
Option B	Include an obligation for an Economic Level of Water Conservation methodology

The intention of both options is the same; that is, to ensure that Water NSW undertakes a level of water conservation activity where the benefits equal or exceed the costs.

In reviewing the licence we considered whether to retain the existing licence condition of the Water NSW (State Water) licence which requires Water NSW to:

‘take all reasonable steps to conserve water and minimise water losses that result from undertaking its operations under this licence’

In considering whether to retain this obligation, we considered if it should apply only to the capture and store water and release water functions or to all of Water NSW’s functions. We also considered the auditability of the clause and consistency with other similar requirements in other operating licences. The wording of the existing clause is difficult to audit because there is no requirement for a documented methodology or thorough consideration of water conservation options. Thus, while Water NSW undertakes activity in the area of water conservation, it is difficult to assess whether it has taken all reasonable steps to conserve water and minimise water losses.

Water NSW was unable to provide costs relating to the development and maintenance of an ELWC methodology, but expected them to be substantial.

We consider the benefits of moving to an ELWC methodology obligation include potential greater efficiency of activities, transparency and objectivity around the selection of water conservation projects and improved documentation and rigour of water conservation programs which will facilitate simpler auditing of the clauses. We note that although the form of the licence obligation will change, and there is likely to be some initial set up costs, the level and nature of the water conservation programs and activities may not necessarily change, unless the methodology suggests previously unidentified potential improvements or identifies new projects that are considered to have a net social benefit.

5.4.3 Preferred option

For the draft licence we have chosen Option B, to include a requirement for Water NSW to develop an ELWC methodology and to report its water conservation activities in line with its methodology. The proposed drafting of the condition is shown in Box 5.5.

We consider that an obligation for an ELWC methodology is an opportunity for Water NSW to change the approach towards identifying potential water conservation projects from ‘all reasonable steps’ which could be broadly interpreted, to only those projects that can demonstrate that savings or advantages can outweigh the costs. This will enhance the transparency in the decision making process and the certainty in auditability of this clause in the future.

By designing an ELWC appropriate for Water NSW’s circumstances, using cost benefit analysis for deciding on the ELWC methodology design and utilising existing procedures, the costs relating to development of the methodology could be minimised.

It is worth noting that although the form of the obligation is very similar to that included in the Sydney Water operating licence, the ELWC methodology developed by Water NSW could vary substantially from that developed by Sydney Water. Water NSW would need to allow for variances occurring in natural systems (eg, evaporation and seepage from rivers and dams). This is in contrast, for example, to Sydney Water which calculates an ELWC only allowing for variations that occur in man-made systems (eg, infrastructure such as pipes). Natural systems are inherently more variable than man-made systems. Man-made systems are more easily able to be monitored for losses. This means that Water NSW’s ELWC methodology would need to make allowance for natural system variability where, for example, Sydney Water Corporation’s ELWC methodology may not.

We consider that these terms and conditions also relate to Water NSW’s listed function to protect and enhance the quality and **quantity** of water in non-declared catchment areas. We therefore also need to authorise this as a function.

Further, we consider that an obligation related to water conservation is a term or condition which contributes to fulfilling the required terms and conditions described by section 12(2)(a)(i) of the Act.³³

Corresponding reporting obligations in relation to the ELWC have been included in the draft reporting manual as shown in Box 5.6

Box 5.5 ELWC operating licence conditions

2.7 Economic level of water conservation

- 2.7.1 By 1 November 2017, Water NSW must submit to IPART (for IPART's approval) a report outlining Water NSW's approach to, and principles for, developing a methodology for determining its economic level of water conservation.
- 2.7.2 Once the approach and principles referred to in clause 2.7.1 are approved by IPART, Water NSW must develop a methodology in accordance with the approach and principles. The methodology must be able to consider (at a minimum) water conservation measures that relate to water storage and transmission in relation to undertaking its operations under this licence.
- 2.7.3 By 1 November 2018, or a later date specified by IPART, Water NSW must submit the proposed methodology to IPART for IPART's approval. IPART may refuse approval of the methodology and require Water NSW to resubmit it by a specified date after making changes requested by IPART, or approve the methodology unconditionally, or approve the methodology subject to conditions. Water NSW must comply with any such conditions.
- 2.7.4 Once the methodology is approved by IPART, Water NSW must obtain IPART's written consent to make any changes to the methodology (other than changes to correct minor grammatical or typographical errors).
- 2.7.5 Until Water NSW has obtained IPART's approval for the methodology (in accordance with clauses 2.7.2 and 2.7.3), and developed a water conservation program, Water NSW must take all reasonable steps to conserve water and minimise water losses that result from undertaking its operations under this licence.
- 2.7.6 By 1 September 2019, or by a later date specified by IPART, Water NSW must develop and provide to IPART, a water conservation program using the methodology approved by IPART under clause 2.7.3.

[Note: The water conservation program will be outlined in the first Water Conservation Program Report, which is to be submitted to IPART by 1 September 2019 in accordance with the reporting manual.]

- 2.7.7 Water NSW must report to IPART on the implementation of the water conservation program in accordance with the reporting manual.

³³ The operating licence must include terms or conditions under which Water NSW is required: 'a) in connection with an operating licence that authorises Water NSW to capture, store, release or supply water: (i) to provide, construct, operate, management and maintain efficient, co-ordinated and commercially viable systems and services to capture, store, release or supply water,...'

Box 5.6 ELWC reporting obligations

2.1.10 Annual water conservation report

Water NSW must submit an Annual Water Conservation Report to IPART by 1 September 2020, and by the same date of each subsequent year, or by a later date agreed to by IPART (**Annual Water Conservation Program Report**). *[Note: In accordance with clause 2.7.6 of the operating licence and section 2.2.6 of this reporting manual, Water NSW must provide the first Water Conservation Program Report to IPART by 1 September 2019.]*

The Water Conservation Program Report must:

- ▼ Include the elements of Water NSW's water conservation program for the previous financial year and for at least the next five financial years. These elements may include (but are not limited to):
 - Water NSW's strategies, programs and projects relating to water storage and transmission, water leakage, recycled water and water efficiency,
 - Water NSW's water conservation objectives and timetables, and
 - the extent to which these elements accord with the economic level of water conservation activity and the methodology.
- ▼ Describe and explain Water NSW's progress against implementation (or otherwise) of each of the elements of its water conservation program for the previous financial year, including any deviations from this program.
- ▼ Describe and explain any changes to Water NSW's water conservation program relative to the previous annual Water Conservation Program Report, from the second year of reporting.
- ▼ Include information on the level of water leakage from Water NSW's water supply system against the economic level of leakage for that financial year. Water NSW should also include information for the previous financial year, as well as earlier financial years (where applicable) of the Licence term.

2.2.4 Economic level of water conservation – Principles and Approach Report

In accordance with clause 2.7.1 of the Licence, Water NSW must prepare a report outlining its approach to, and principles for, developing the methodology. Water NSW must submit the report to IPART by 1 November 2017.

2.2.5 Economic level of water conservation – Methodology

In accordance with clauses 2.7.2 and 2.7.3 of the Licence, Water NSW must prepare a report outlining its methodology in accordance with the approach and principles. Water NSW must submit the report to IPART by 1 November 2018 or a later date specified by IPART.

2.2.6 Economic level of water conservation – Water conservation program

In accordance with clause 2.7.6 of the Licence, Water NSW must prepare a water conservation program in accordance with the methodology. Water NSW must submit a report on the program to IPART by 1 September 2019 or by a later date specified by IPART. This will be the first Water Conservation Program Report submitted to IPART.

Note: Under section 2.1.10 of this reporting manual, Water NSW must submit annual Water Conservation Program reports on 1 September every year after this first Water Conservation Program Report is submitted on 1 September 2019.]

2.2.7 Notification of changes to economic level of water conservation methodology

In accordance with clause 2.7.4 of the Licence, once the methodology is approved by IPART, Water NSW must:

- ▼ notify IPART of any changes that it proposes to make to the methodology, and
- ▼ obtain IPART's consent to make the changes to the methodology prior to implementing the changes.

Recommendation

- 12 The operating licence includes an obligation for Water NSW to develop an Economic Level of Water Conservation methodology and associated reporting obligations.

5.5 Manage and protect declared catchments

We consider that Water NSW should be authorised to “manage and protect declared catchment areas and water management works vested in or under the control of Water NSW that are used within or for the purposes of such areas”. The Water NSW Act states that this is a listed function of Water NSW.³⁴ Water NSW currently undertakes this function under the authority of its Water NSW (SCA) operating licence.

We consider it important that Water NSW is able to continue to undertake this function because it has an impact on Water NSW's capacity to supply water to customers within the Sydney Catchment Area for drinking water purposes and is related to its other declared catchment functions. The function is consistent with the principal objective of Water NSW stated in section 6(1)(c) of the Act.

5.5.1 Issues raised

Our issues paper discussed the declared catchment functions together. In relation to management and protection of declared catchment areas and works, the NSW Government, Sydney Water and Water NSW submissions expressed a similar view in favour of retaining existing conditions within the existing Water NSW (SCA) licence for catchment management.

The existing Water NSW (SCA) operating licence contains two ‘catchment management’ specific obligations and two ‘catchment infrastructure management’ obligations.³⁵

³⁴ Water NSW Act, s 7(1)(h).

³⁵ Clauses 4.1.1 and 4.2.1 and clauses 3.1.1 and 3.1.2 of the Water NSW (SCA) operating licence respectively.

5.5.2 Options considered

Table 5.4 Catchment management and protection options

Options	Description
Option A (Base case)	Retain existing licence conditions
Option B	Update existing conditions to include references to the Declared Catchment Area, Asset Management System and (where relevant) the Water Quality Management System and Environmental Management System. Retain existing obligation to report on environmental indicators

Note: The cost benefit analysis discusses the obligations under two separate headings as they were formerly contained within two separate chapters of the Water NSW (SCA) operating licence. Due to their inter-related nature and the new structure of the operating licence they have been co-located within the draft operating licence. Clause 3.1.2 of the existing licence was moved to the reporting manual and clause 4.2.1 of the existing licence was combined with the information provision clause as shown in Box 5.7 below.

The amendments to the existing conditions in Option B recognise the inter-related nature of multiple sections of the licence to the Declared Catchment management and protection function. The intent is consistent with the existing clauses and thus no additional costs or benefits were identified.

5.5.3 Preferred option

Our preferred option is Option B, to retain the intention of the existing clauses but include the updates described above. The wording of the proposed conditions is shown in Box 5.7. This wording connects the obligation more clearly to the listed functions and other sections of the licence. This focus on the interconnected nature of the licence obligations reflects the interrelated nature of the functions, activities and operations of Water NSW.

In respect of the existing condition relating to the environmental indicators (clause 7.2 of the existing Water NSW (SCA) operating licence), it has been combined with a related clause on information on Catchment Areas (clause 4.2 of the existing Water NSW [SCA] operating licence) for co-location of related conditions and ease of use.

In the same way as for to other obligations in this chapter, the associated reporting obligations are simple drafting updates of the existing reporting manual obligations. They give rise to no net costs or benefits and are shown in Box 5.7.

Box 5.7 Catchment management and protection operating licence conditions

2.2 Catchment management

2.2.1 Water NSW must manage and protect the Declared Catchment Areas consistently with its objectives and functions under the Act, the Water Quality Management System required under Clause 2.1 of this Licence, the Asset Management System required under Clause 5.1 of this Licence and the Environmental Management System required under Clause 5.2 of this Licence.

2.3 Information on the Declared Catchment Areas

2.3.1 Water NSW must:

- a) reasonably cooperate with the Appointed Auditor;
- b) publish information collected by Water NSW on water quality relevant to Declared Catchment Areas (including data compiled under paragraph (d) below);
- c) provide data in relation to the Catchment Health Indicators to the Appointed Auditor, in accordance with the reporting manual;
- d) monitor, record and compile data on the Environmental Indicators; and
- e) report on the Environmental Indicators in accordance with the reporting manual.

[Note: Section 12(2)(b) of the Act requires that, in connection with an operating licence that authorises Water NSW to exercise functions with respect to a Declared Catchment Area, the operating licence must include terms or conditions under which Water NSW is required to compile indicators of the direct impact of Water NSW's activities (including, but not limited to, the impact of energy used and waste generated) on the environment. Paragraph (c) of clause 2.3.1 is intended to fulfil that requirement.]

2.4 Catchment Infrastructure Works management

2.4.1 Water NSW must ensure that, in Declared Catchment Areas, the Catchment Infrastructure Works are operated and managed consistently with the Design Criteria and the Asset Management System referred to in clause 5.1.

Note: Clause 2.3 of the operating licence (Information on the Declared Catchment Areas) relates to the 'manage and protect the declared catchment function' however it also relates to the research on catchments function.

Box 5.8 Catchment management and protection reporting obligations

2.1.6 Annual reporting on declared catchment indicators

Water NSW must report to IPART on the Declared Catchment Health Indicators contained in Table B.3 in Appendix B of this reporting manual for each financial year.

Water NSW must submit the report to IPART by 1 October after the end of the financial year, or at a later date agreed to by IPART.

[Note: Clause 2.3.1 of the Licence requires Water NSW to monitor, report and compile data on Environmental Indicators, and report on those indicators in accordance with this reporting manual. These environmental indicators are contained within Table B.3.]

2.2.1 Declared catchment health indicators – Catchment audit

Water NSW must provide to the Appointed Auditor all data within Water NSW's possession which informs the Declared Catchment Health Indicators contained in Table B.3 in Appendix B of this reporting manual. This requirement is relevant to the health of the Declared Catchment Areas only.

Water NSW must provide the data to the Appointed Auditor at the time specified by the appointed auditor, after they are appointed under the Act to undertake an audit of the health of the Declared Catchment Areas.

[Note: Clause 2.3.1 of the Licence requires Water NSW to provide this data to the Appointed Auditor in accordance with this reporting manual. Under section 41 of the Act, Catchment Health Indicators of the health of the Declared Catchment Areas have been approved and published in the NSW Government Gazette. When the Appointed Auditor conducts Catchment Audits, they must have regard to the gazetted indicators.]

Recommendation

- 13 The operating licence retains the existing Water NSW (SCA) operating licence catchment management and catchment infrastructure management obligations.

5.6 Research on catchments

We consider that Water NSW should be authorised to “undertake research on catchments generally and in particular on the health of the declared catchment areas”. The Water NSW Act states that this is a listed function of Water NSW.³⁶ Water NSW currently undertakes this function under the authority of its Water NSW (SCA) operating licence. We consider it important that Water NSW is able to continue to undertake this function because it has an impact on Water NSW's capacity to supply water to customers within the Sydney Catchment Area for drinking water purposes and supports its other declared catchment functions. The function is consistent with the principal objective of Water NSW stated in section 6(1)(c) of the Act.

This section discusses the terms and conditions that we consider appropriate for inclusion in the operating licence, to regulate how Water NSW undertakes this function. In relation to

³⁶ Water NSW Act, s 7(1)(j).

the conduct of this function, we have proposed a condition on research on catchments and a condition regarding information on the declared catchment.³⁷

5.6.1 Issues raised

Our issues paper discussed the declared catchment functions together, but not specifically the research on catchments function. The NSW Government submission indicated that research on catchments generally could be conducted outside the Sydney Catchment Area.

The existing Water NSW (SCA) operating licence contains no specific condition relating to research on the declared catchment. It does contain a condition relating to environmental indicators. At a minimum this condition would need to be retained to satisfy the requirements with section 12(2)(b) of the Water NSW Act.³⁸ This condition relates to both the research on catchments function and the management and protection of declared catchment functions, and has already been discussed in section 5.5 above.

5.6.2 Options considered

Table 5.5 Research on catchments options

Options	Description
Option A (Base case)	Only authorisation for research with no specific condition
Option B	Authorisation in addition to a new specific research obligation

Option A is to retain the status quo which is to authorise the function of research on catchments generally and in particular on the health of declared catchment areas, but not include a specific condition on the conduct of this function.

Option B includes the authorisation as for Option A, but also includes a specific obligation with respect to maintaining a program of research on catchments and annual reporting on its program. Water NSW has identified a net cost of between \$3.4 to \$ 4.3 million dollars relative to the base case in order to comply with this condition. This estimate is based on an assumption that an increase in research activity will be required outside the declared catchment which is not currently undertaken, but that the licence clause would not compel a fundamental change of research objectives.

Although the wording of this option authorises the function throughout the State, there will be no obligation to undertake the function in a particular way or location. This obligation has been drafted to avoid prescription and allows Water NSW to determine the portfolio and scale of its research programs. Associated reporting manual obligations have also been included.

³⁷ Note that this condition also relates to the other declared catchment functions and is included in Box 5.7 above.

³⁸ 'The operating licence must include terms or conditions under which Water NSW is required: In connection with an operating licence that authorised Water NSW to exercise functions with respect to a declared catchment area – to compile indicators of the direct impact of Water NSW's activities (including but not limited to, the impact of energy used and waste generated) on the environment so as to provide information about its performance and enable reports to be prepared.

As the function in a 'listed function' of Water NSW, that is one which can only be exercised under the authority of and in accordance with an operating licence, we see benefit in including an obligation within the operating licence, corresponding to the authorisation, for transparency and auditability of the listed function. We do not see benefit in creating an overly prescriptive obligation, which may restrict beneficial research activities in the future. Expenditure on research activities will also be subject to the normal pricing determination processes.

5.6.3 Preferred option

Our preferred option, Option B, is to include a non-prescriptive condition within the operating licence specifically relating to research on catchments. The proposed wording is presented in Box 5.9 below.

Corresponding reporting obligations have been included, as shown in Box 5.10 below.

Box 5.9 Research on catchments operating licence conditions

2.8 Research on catchments

2.8.1 Water NSW must maintain a program of research on catchments generally and in particular on the health of Declared Catchment Areas which:

- a) is consistent with its objectives under section 6 of the Act; and
- b) assists Water NSW to discharge its functions under sections 7(1)(g), 7(1)(h) and 7(1)(j) of the Act and report on the program in accordance with the reporting manual.

Box 5.10 Research on catchments reporting obligation

2.1.11 Annual research on catchments report

Water NSW must submit an annual report to IPART on its Research programs (**Catchment Research Report**).

Water NSW must submit the Catchment Research Report to IPART and report on it publicly by 1 September after the end of the financial year, or at a later date agreed to by IPART.

The Catchment Research Report must include:

- ▼ an explanation of the types of catchment research activities and programs undertaken by Water NSW,
- ▼ the actual (completed) catchment research activities, to meet Water NSW's research objectives, and
- ▼ any other matter notified by IPART to Water NSW.

Recommendation

- 14 The operating licence includes a new obligation in relation to undertaking research on catchments state-wide, and a corresponding reporting obligation.

6 Bulk water storage and transmission

The third part of the draft recommended licence includes clauses relating to the construction, operation and maintenance of water management works, supply of water to customers, capture and store water and release water to customers and dam operation during floods and spills.

The significant recommendations for the draft operating licence and reporting manual are listed below. This chapter explains and provides background on how we developed each of these recommendations.

Draft recommendations for the operating licence:

- 15 The operating licence authorises Water NSW to construct, operate and maintain water management works throughout NSW.
- 16 The operating licence requires this function to be undertaken consistent with an Asset Management System.
- 17 The operating licence authorises Water NSW to supply water to its customers throughout NSW, consistent with the listed functions of the Water NSW Act.
- 18 The operating licence requires Water NSW to undertake the supply functions in accordance with a relevant water quality management system and customer supply agreement.
- 19 The operating licence authorises Water NSW to capture and store water and to release water to persons entitled to take the water, including release to regional towns and for any other lawful purpose, including the release of environmental water.
- 20 The operating licence includes terms and conditions to regulate how Water NSW releases this water, and provide information in relation to the water released, to customers.
- 21 The draft operating licence does not include any additional obligations for Water NSW to make water supply, capture, store or release services available to any customer on request.
- 22 The operating licence authorises Water NSW to undertake flood mitigation and management subject to receiving a written direction from the Minister and where not already required to do so under any other statute or regulatory instrument. In these instances, the operating licence should include terms and conditions to regulate how Water NSW operates its Water Management Works.
- 23 The reporting manual includes obligations for Water NSW to prepare water balance reports for all water that it **releases** to customers and for any lawful purposes. The reporting manual will not prescribe inclusions for these reports but will require Water NSW to make these reports available publicly.
- 24 Where required to undertake flood mitigation and management under the operating licence, the reporting manual also requires Water NSW, to include in its water balance reports, relevant information in relation to this function.

6.1 Construct, operate and maintain water management works

We consider that Water NSW should be authorised to continue to construct, operate and maintain water management works. The Water NSW Act states that this is a listed function of Water NSW.³⁹ Water NSW currently undertakes this function throughout NSW under the authority of its Water NSW (State Water and SCA) operating licences. For Water NSW to be able to continue to undertake this function, we consider that the new operating licence must authorise it.

Further, we consider that the operating licence should require Water NSW to undertake this function consistent with an Asset Management System (AMS). Terms and conditions regulating implementation, maintenance and certification of the AMS are discussed further in section 8.1. All reporting requirements related to the AMS are discussed in section 8.3.

6.1.1 Issues raised

The issues paper asked stakeholders if Water NSW should be authorised to construct, operate and maintain water management works. Three stakeholders (Water NSW, the NSW Government and DP&E) responded supporting authorisation of this function in the new licence. With regard to terms and conditions to regulate this function, Water NSW considered expressed that the operating licence should only include terms and conditions related to requiring a certified AMS.

6.1.2 Options assessed

Table 6.1 Options for authorising and regulating construction, operation and maintenance of assets by Water NSW

Options	Description
Option A (Base case)	Authorise Water NSW to construct, operate and maintain its assets (throughout NSW) and include terms and conditions related requiring an AMS
Option B	Authorise Water NSW to construct, operate and maintain its assets (throughout NSW) and include terms and conditions to clearly link this function with the AMS
Option C	Do not authorise Water NSW to construct, operate and maintain its assets and do not include any terms and conditions

Currently, Water NSW is authorised to construct, operate and maintain its assets throughout NSW under its existing Water NSW (State Water and SCA) operating licences. With Option A, we could maintain this authorisation in the new operating licence which would allow us to include terms and conditions to regulate how it undertakes this function. The existing licences include terms and conditions requiring an AMS, which none of Water NSW's other regulatory instruments currently do. Therefore to avoid losing these requirements when the existing licences are replaced, they could be replicated in the new operating licence. If the AMS requirements are not maintained in the new operating licence, there will no longer be any obligation on Water NSW to maintain an AMS, which we consider would be a significant gap. All other public water utilities are required to maintain an AMS to an appropriate industry standard. This allows us to more uniformly regulate the

³⁹ Water NSW Act, s 7(1)(f).

management of these assets across the utilities to a consistent, acceptable and approved standard.

We understand that Water NSW's water supply work approvals under the *Water Management Act 2000* authorise it to construct, operate and maintain individual assets (dams and weirs only). Further, they include some terms and conditions regulating how it undertakes this function. However, these terms and conditions do not require Water NSW to maintain or implement an AMS. We consider that duplicating the authorisation of this function in the operating licence, such that we can subsequently establish a condition to maintain the AMS requirements, will not negatively impact on Water NSW's regulatory burden as we do not intend to duplicate the terms and conditions of the water supply work approvals.

Option B includes a condition in the operating licence that links Water NSW's construction, operation and maintenance of its assets to be in accordance with its AMS. We understand that including this requirement will not impact on Water NSW's existing costs. However, we consider that including this condition increases clarity of the link between the function and the AMS, ultimately improving our regulation and audit process. Further, in connection with an operating licence that authorises Water NSW to capture, store, release or supply water, the Act requires mandatory terms or conditions under which Water NSW is required to provide, construct, operate, manage and maintain efficient, co-ordinated and commercially viable systems and services to capture, store, release or supply water.⁴⁰ We consider that a term or condition linking the Asset Management System to this function achieves this requirement. The CBA did not identify any incremental costs with this option, but identified a number of efficiencies (although these were not quantifiable).

Option C is largely theoretical and would not authorise Water NSW to undertake this function in the operating licence. While this may not preclude Water NSW from undertaking this function entirely as it may be able to do so under its individual water supply work approvals, if infrastructure not covered by a works approval were required it would not be authorised. Additional terms and conditions, for example related to the AMS, would not be applicable. As explained above, we consider that this would result in a significant regulatory gap. Further, it is not supported by stakeholder views. Because of this lack of clarity and the regulatory gaps identified, this option did not proceed to formal cost benefit analysis.

6.1.3 Preferred option

Option B is our preferred option. It will allow us to include terms and conditions in the operating licence requiring Water NSW to undertake this function in accordance with an AMS, and will fulfil the mandatory obligation of the operating licence under section 12(2)(a)(i) of the Act.

The proposed terms and conditions for inclusion in the licence are presented in Box 6.1.

⁴⁰ Water NSW Act, section 12(2)(a)(i).

Box 6.1 Construct, maintain and operate Water Management Works operating licence condition

3.1 Construct, maintain and operate Water Management Works

3.1.1 Water NSW must construct, maintain and operate its Water Management Works in accordance with its Asset Management System referred to in clause 5.1.

Recommendation

- 15 The operating licence authorises Water NSW to construct, operate and maintain water management works throughout NSW.
- 16 The operating licence requires this function to be undertaken consistent with an Asset Management System.

6.2 Water supplied

We consider that Water NSW should be authorised to undertake its listed functions for supply to customers, namely:

- ▼ to supply water to Sydney Water Corporation
- ▼ to supply water to water supply authorities and to local councils or county councils prescribed by the regulations
- ▼ to supply water to licensed network operators or licensed retail suppliers within the meaning of the *Water Industry Competition Act 2006*, and
- ▼ to supply water to other persons and bodies, but under the terms and conditions that prevent that person or body concerned from supplying the water for consumption by others within the State unless the person or body is authorised to do so by or under an Act.⁴¹

Water NSW currently undertakes these functions within the Sydney Catchment Area only, under the authority of its Water NSW (SCA) operating licence. Historically, the now repealed *State Water Corporation Act 2004* did not include these supply functions as a function of the previous State Water. As such, these functions are not authorised under the existing Water NSW (State Water) operating licence.

For Water NSW to be able to continue to undertake these functions, we understand that the new operating licence must authorise them. We consider that the new operating licence should authorise these functions, but should not constrain the execution of these function to within a geographic area. To avoid any terms and conditions related to these functions being inappropriately applied across all of Water NSW's activities, we have proposed to define "supply", as previously discussed in section 4.2. This allows longevity of the licence, if in future Water NSW intends to supply to customers outside the Sydney Catchment Area.

Further, we consider that the operating licence should require that when Water NSW undertakes these supply functions, it does so in accordance with a relevant water quality

⁴¹ Water NSW Act, section 7(1)(b)-(e).

management system and customer supply agreement. Specific terms and conditions related to the WQMS and customer supply agreement are discussed in sections 5.2 and 9.1.1 respectively.

6.2.1 Issues raised

The issues paper asked if Water NSW should be authorised to supply water to its customers, as allowed under the Water NSW Act. Three stakeholders, (Water NSW, the NSW Government and Sydney Water) responded.

Water NSW and Sydney Water supported authorising supply of water to customers in the operating licence. Further, Water NSW stated that supply functions should not be constrained to a geographical area. Water NSW considered that it supplied water to regional, local and county councils and to certain persons in 'rural NSW' (ie, outside the Sydney Catchment Area), who are prevented from further on-selling that water.

The NSW Government submission considered that this could be a potential duplication of the *Water Management Act 2000* as the water supply work approvals already authorise this function.

In general, these stakeholders considered that the operating licence should include terms and conditions regulating how it undertakes retail services to supply to customers (such as customer agreements, debt recovery processes) and to include requirements for a WQMS for all water supplied.

The stakeholders' responses have informed our preferred option. We have discussed the NSW Government's concern about duplication of authorisation of these functions in the operating licence in our discussion of the options below. We have further discussed stakeholders' views for including requirements relating to a WQMS and for managing Water NSW's retail services in sections 5.2 and 9.1 respectively

6.2.2 Options assessed

Table 6.2 Options for authorising and regulating water supply by Water NSW

Options	Description
Option A (Base case)	Authorise Water NSW to supply water to customers in the Sydney Catchment Area without clearly linking this function to a relevant Water Quality Management System and customer supply agreement
Option B	Authorise Water NSW to supply water to customers throughout NSW, and include terms and conditions to clearly link this function to a relevant Water Quality Management System and customer supply agreement. The term "supply" is defined so that any terms and conditions associated to distinguish between the 'capture, store and release of water' functions.
Option C	Do not authorise Water NSW to supply water to customers

Currently, Water NSW is authorised to supply water to its customers in the Sydney Catchment Area under its existing Water NSW (SCA) operating licence. With Option A, we could maintain this authorisation in the new operating licence which would allow us to include terms and conditions to regulate how it undertakes this function. These terms and

conditions would include a water quality management system, as discussed in section 5.2 and customer related functions as discussed in Chapter 9.

We acknowledge that the NSW Government has expressed concern that authorisation of supply functions in the operating licence could duplicate Water NSW's water supply work approvals under the *Water Management Act 2000* which may already authorise supply activities within the Sydney Catchment Area. However, we consider that duplicating the authorisation of this function in the operating licence to maintain the WQMS and customer related requirements will not negatively impact on Water NSW's regulatory burden as we do not intend to duplicate any terms and conditions of the water supply work approvals.

Under Option A, authorisation of the supply functions would be constrained to apply only within the Sydney Catchment only. We consider that this is not a flexible approach and it would unnecessarily constrain this function. It does not allow longevity of the licence if, for example, Water NSW wishes to expand its business operations in future to "supply" water to customers outside of the Sydney Catchment Area, as the Act allows for, it will be inhibited from doing so by this option.

Under Option B, we propose to authorise Water NSW to supply customers without constraining geographically where it undertakes this function. Water NSW will be authorised to undertake this function throughout NSW. To avoid the unintended consequences previously discussed, we propose to define "supply" as described in section 4.2 and include a condition in the operating licence that links Water NSW's supply of water to its customers to the WQMS and customer supply agreements.

We understand that including this requirement will not impact on Water NSW's existing costs. However, we consider that including this condition increases clarity of the link between the supply functions and their associated terms and conditions, ultimately improving our regulation and audit process. In a similar way to the previous condition, this is another of the terms or conditions which fulfil the mandatory conditions required under section 12(2)(a)(i) of the Act. The CBA did not identify any incremental costs with this option, but identified a number of efficiencies (although they were not quantifiable).

Option C is largely theoretical and would not provide authorisation within the operating licence for Water NSW to supply to customers. Water NSW would still be authorised to undertake some of these functions under its water supply work approvals, but this would be infrastructure-specific, and constrained to within the Sydney Catchment Area. Further, the water supply work approvals do not include the WQMS and customer requirements that are contained in the operating licence, to regulate how Water NSW supplies water from its catchments. For these reasons this option did not proceed to formal cost benefit analysis.

6.2.3 Preferred option

Option B is our preferred option. It will allow us to include terms and conditions in the operating licence requiring Water NSW to supply water to its customers in accordance with a relevant WQMS and customer supply agreement.

The proposed terms and conditions for the licence, are presented in Box 6.2.

Box 6.2 Water supplied Operating Licence condition

3.2 Water Supplied

3.2.1 Water NSW must ensure that any water Supplied to Customers is Supplied in accordance with a relevant Water Quality Management System, any relevant Customer Supply Agreement, and any relevant arrangements with Sydney Water established under section 25 of the Act.

Recommendation

- 17 The operating licence authorises Water NSW to supply water to its customers throughout NSW, consistent with the listed functions of the Water NSW Act.
- 18 The operating licence requires Water NSW to undertake the supply functions in accordance with a relevant water quality management system and customer supply agreement.

6.3 Capture and Store water and release water

We consider that Water NSW should be authorised to capture and store water, and to release water to persons entitled to take the water, including release to regional towns and for any other lawful purpose, including release of environmental water. The Water NSW Act states that this is a listed function of Water NSW.⁴² Water NSW currently undertakes this function throughout the area of operations except within the Sydney Catchment Area, under the authority of its Water NSW (State Water) operating licence. Historically, the now repealed *Sydney Water Catchment Management Act 1998* did not include the capture, store and release of water function. Accordingly, this function is not authorised under the existing Water NSW (SCA) operating licence.

For Water NSW to be able to continue to undertake this function, we consider that the new operating licence must authorise it. However, we consider that the new operating licence should not constrain where, within its area of operation, Water NSW undertakes this function. This approach would authorise it to undertake the function both within and outside the Sydney Catchment Area.

In relation to this function we consider that the operating licence should include terms and conditions regulating how it undertakes this function. Within this chapter we recommend including a condition requiring Water NSW to maintain a register for all Local Water Utilities (LWUs) for which it maintains a Water Allocation Account and to which it supplies water for drinking water purposes. A requirement to maintain water allocation accounts is discussed separately in section 9.1.2. Other conditions relating to this function are also included in the Customers section (see Chapter 9).

Further, we consider the operating licence should include terms and conditions requiring Water NSW, when requested, to implement a procedure for providing information to LWUs that could inform drinking water quality assurance programs of the LWUs, when requested.

⁴² Water NSW Act, s 7(1)(a). This function has two components which were discussed separately in the Issues Paper. Stakeholders made comments on the separate components; however we have not sought to separate this function in either authorisation or terms and conditions.

The operating licence should also have some specific requirements related to the procedure for an information request. These requirements are very similar to those currently included in the Water NSW (State Water) operating licence.

Finally, we consider that the operating licence should require Water NSW (in consultation with relevant stakeholders), to complete a review of its health-related monitoring of water quality of water released to LWUs.

6.3.1 Issues raised

The issues paper asked stakeholders if Water NSW should be authorised to capture, store and release water to persons entitled to take the water, including regional towns, and for any other lawful purposes, including release of environmental water as allowed under the Water NSW Act.⁴³

Water NSW, Sydney Water and the NSW Irrigators' Council considered that it would be appropriate for the new operating licence to authorise Water NSW to undertake the first component of this listed function.⁴⁴ However, the NSW Government considered that this authorisation was not necessary because Water NSW's water supply work approvals already authorise this function throughout NSW, including within and outside the Sydney Catchment Area.

In relation to the second component⁴⁵ of this function the response to authorisation was also mixed. Water NSW considered only authorisation was appropriate, however the NSW Government response and NSW Irrigators' Council were not in favour of authorisation. The reasons raised in the NSW Government submission were because of duplication with the infrastructure specific works approvals, while NSW Irrigators' council raised concerns relating to the potential for price increases in relation to environmental water being passed on to all customers. The Commonwealth Environmental Water Holder submission sought an operating licence which neither diminished nor enhanced licensed entitlements held for environmental use relative to like entitlements for other purposes.

Most stakeholders considered that new additional obligations beyond the existing Water NSW (State Water) operating licence conditions were unnecessary. Water NSW considered that the existing obligations of the Water NSW (State Water) operating licence, included in clauses 2 and 3 of the licence, should be retained in the new operating licence.

⁴³ Water NSW Act 2014, section 7(1)(a).

⁴⁴ The first component of the capture, store and release function is to: "...release water to persons entitled to take the water including release to regional towns".

⁴⁵ The second component of the capture, store and release function is to: "...release water for any other lawful purpose, including the release of environmental water."

6.3.2 Options assessed

Table 6.3 Options for authorising and regulating capture, storage and release of water

Options	Description
Option A (Base case)	Authorise Water NSW to capture, store and release water outside the Sydney Catchment Area only, and include terms and conditions similar to clauses 2 and 3 of the Water NSW (State Water) operating licence
Option B	Authorise Water NSW to capture, store and release water to persons entitled to take the water throughout NSW, and include terms and conditions similar to clauses 2 and 3 of the Water NSW (State Water) operating licence
Option C	Do not authorise Water NSW to capture, store or release water to persons entitled to take the water

Currently, Water NSW is authorised to capture, store and release water outside the Sydney Catchment Area under its existing Water NSW (State Water) operating licence. With Option A, we could maintain this authorisation in the new operating licence which would allow us to maintain the existing terms and conditions to regulate how it undertakes this function. The existing terms and conditions include maintaining a register for all LWUs for which Water NSW maintains a Water Allocation Account and to which it supplies water for drinking water purposes, implementing a procedure for providing information to LWUs that could inform their drinking water quality assurance programs, if requested, as well as some specific requirements related to this information-request procedure. The existing terms and conditions also include requirements for WaterNSW to process and manage water orders received from customers..

Also relevant to the capture and store water and release of water function are other conditions such as the Economic Level of Water Conservation, performance standards, management systems and some of the customer related conditions. These conditions (or their predecessors) formerly included in these sections have been moved to other sections of the licence, consistent with the new structure. As such these are discussed in the relevant sections of the report.

We acknowledge the NSW Government's concerns that authorisation of this function in the operating licence could duplicate Water NSW's water supply work approvals under the infrastructure specific *Water Management Act 2000* which may already authorise it to release water to customers throughout NSW. However, we consider that duplicating the authorisation of this function in the operating licence to maintain the obligations included in the existing Water NSW (State Water) operating licence will not negatively impact on Water NSW's regulatory burden as we do not intend to duplicate any terms and conditions of the water supply work approvals.

Option A largely meets the requirements of the stakeholders. However, under Option A, authorisation of the function in the operating licence would be constrained to outside the Sydney Catchment Area only. As such, we consider that this is not a flexible approach and does not promote longevity of the licence. To facilitate this longevity, we consider that Option B would be a more flexible approach.

Under Option B, we propose to authorise Water NSW to capture, store and release water to customers without constraining geographically where it undertakes this function. Effectively, Water NSW can undertake this function throughout NSW. Under this option,

we propose to include the same terms and conditions as discussed under Option A. We understand this option will not substantially increase Water NSW's current costs.

Option C, would not authorise Water NSW to capture, store and release water to customers in the operating licence. Water NSW may still be authorised to undertake components of this function under its infrastructure-specific water supply work approvals but without authorising it in the operating licence, we would not be able to include the terms and conditions discussed above. We consider that this would result in a gap as similar conditions are not included in the water supply work approvals. We consider that these terms and conditions facilitate the efficient and co-ordinated release of water, and provision of information about that water, to customers, which meets their requirements.

6.3.3 Preferred option

Option B is our preferred option. It will allow us to include terms and conditions in the operating licence requiring Water NSW to capture, store and release water to customers in accordance with the terms and conditions that are largely included in the existing Water NSW (State Water) operating licence. Without authorising this function in the operating licence, we cannot retain these terms and conditions which we consider would result in a regulatory gap. While this slightly expands the existing authorisation to the whole area of operations, this option provides the greatest consistency for the utility and stakeholders who generally expressed a preference for maintaining the status quo for conditions in relation to this function.

We set out the proposed terms and conditions for inclusion in the licence, in Box 6.3. Other terms and conditions relating to this function are discussed in the following chapters on Organisational systems management and Customer and stakeholder relations (Chapters 8 and 9 respectively).

Box 6.3 Capture and store water and release of water operating licence conditions

3.3 Capture and Store Water and to Release Water

3.3.1 Water NSW must take all reasonable steps to process all Water Orders promptly and efficiently.

3.3.2 Water NSW must take all reasonable steps to manage Water Orders so as to ensure timely water Deliveries to its Customers.

3.4 Bulk Water released to Local Water Utilities for Drinking Water purposes

3.4.1 Water NSW must maintain a register of all Local Water Utilities:

- a) for which Water NSW maintains a Water Allocation Account; and
- b) to which Water NSW releases water that will be used for the purposes of Drinking Water (Local Water Utility Customers)

(LWU Register).

The LWU Register must include contact details for each Local Water Utility Customer, and the Water Source and approximate location from which the Local Water Utility Customer Extracts water.

3.4.2 Water NSW must maintain and implement a procedure for providing information to Local Water Utilities (LWU Information Request Procedure). Water NSW must follow the LWU Information Request Procedure when any Local Water Utility requests information to inform that utility's Drinking Water quality assurance program. Water NSW must maintain the LWU Information Request Procedure during the term of this Licence.

3.4.3 Water NSW's LWU Information Request Procedure under clause 3.4.2 must:

- a) describe how a Local Water Utility is to request information;
- b) describe how Water NSW will respond to the request in a timely manner; and
- c) define any fees and charges that will be charged by Water NSW to recover reasonable costs incurred for responding to an information request, how these will be calculated, and how they are to be paid.

3.4.4 Water NSW must make details of the LWU Information Request Procedure available free of charge on its website for downloading by any person.

3.4.5 By 31 December 2018, Water NSW must, in consultation with NSW Health, the Local Water Utility Customers on the LWU Register and its customer advisory groups established under clause 6.5, complete a review of its health related monitoring of water quality released to Local Water Utilities.

3.4.6 By 30 June 2019, Water NSW must update its LWU Information Request Procedure in accordance with the review described in clause 3.4.5, as agreed with NSW Health.

[Note: The purpose of Clause 3.4 is to ensure that there are mechanisms in place for Water NSW to share information which it currently, or is best placed to collect with interested Local Water Utilities, where that information could usefully inform a Local Water Utility's Drinking Water quality assurance program.]

Recommendation

- 19 The operating licence authorises Water NSW to capture and store water and to release water to persons entitled to take the water, including release to regional towns and for any other lawful purpose, including the release of environmental water.
- 20 The operating licence includes terms and conditions to regulate how Water NSW releases this water, and provide information in relation to the water released, to customers.

6.4 Obligation to provide services

We have discussed below, our consideration of including obligations to provide services in relation to both, the *capture, store and release water* function and *supply* of water functions, as we have defined these terms.

We consider that the existing Water NSW (SCA) operating licence does not require or effectively require Water NSW to supply water to its customers. We consider that it is appropriate to maintain this approach and have not proposed any obligations to supply water to the supply customers in the draft operating licence.

In contrast, we consider that the existing Water NSW (State Water) operating licence already effectively requires Water NSW to capture, store and release water to its customers. If these terms and conditions are retained in the proposed operating licence, further obligations to provide capture, store and release services are not required.

We did not seek stakeholder comment in the Issues Paper on the inclusion of an obligation to provide services in the operating licence and we are therefore seeking comment now.

6.4.1 Supplying water

Table 6.4 Options for obliging Water NSW to supply water

Options	Description
Option A (Base case)	Do not include terms and conditions obliging Water NSW to supply water to its supply customers
Option B	Include terms and conditions to oblige Water NSW to make supply of water services available on request to any supply customer.

We consider that Option A does not require or effectively require Water NSW to supply water to its potential new supply customers.

Four of the Water NSW Act listed functions relate to ‘supply’ of water to various categories of customer. These are to Sydney Water, prescribed water authorities or councils, WICA licensees and any other person. In considering whether an obligation to supply WICA licensees should be included, we considered if the obligation should be applied to all categories of ‘supply’ customers. We could not prioritise one type of ‘supply’ customer over others.

The 'supply' functions occur when a water sharing plan, under the *Water Management Act 2000*, provides a given volumetric or share component entitlement to Water NSW under a major utility access licence. Water from this entitlement is then provided to its supply customers under the conditions of a water supply agreement (the operating licence requires the establishment of customer supply agreements with each of the customers to whom it supplies water, as discussed above in section 6.2), or, in the case of Sydney Water, arrangements established under section 25 of the Act.⁴⁶ Once a supply agreement is in place, Water NSW is required to supply in accordance with the supply agreement (or arrangements with Sydney Water).

Given that the water sharing plans fix the allocations to maximum levels of water available for supply, including an obligation to make supply services available on request to any customer could result in lower security for all other supply customers. This may mean renegotiation of supply agreements, when new supply customers are required to be serviced. When a major utility allocation is exhausted, or in an area where no major utility allocation has been assigned, Water NSW will be unable to 'supply' any further customers without third party impacts, unless the water sharing plan is amended.

Because of the potential conflict between the two obligations (ie, an obligation to supply, and the requirement to supply in accordance with the upper limits set within a water sharing plan) we consider that an obligation to supply might be limited in its applicability.

While we consider there may be some benefits in including an obligation to supply water to supply customers in the operating licence, we consider that there could also be risks of conflict with other regulatory instruments.

Preferred option

It is our preference to maintain the existing approach of the Water NSW (SCA) operating licence and not include obligations for WaterNSW to supply water to supply customers in the draft operating licence. We consider that the risk of potentially undermining the availability of water for supply to other supply customers within the Water NSW entitlement could potentially impact on Water NSW's capacity to comply with its existing supply agreements and sets up potential for conflict between regulatory instruments.

⁴⁶ Note that section 27 of the Water NSW Act prescribes a Role of IPART with respect to the arrangements with Sydney Water, which requires consultation with IPART, public consultation prior to entering into, amending or replacing an arrangement and IPART presenting a report to the Minister on the proposed arrangements.

6.4.2 Capture, store and release water.

Options assessed

Table 6.5 Options for obliging Water NSW to capture, store and release water

Options	Description
Option A (Base case)	Do not include terms and conditions obliging Water NSW to make capture, store and release of water to its customers
Option B	Include additional terms and conditions to obligate Water NSW to make capture, store and release of water services available on request to any customer.

We consider that Option A already includes terms and conditions which effectively require Water NSW to capture, store and release water to its customers.

Currently, in order to extract water from a regulated river, Water NSW's customers must hold a Water Access Licence (WAL) under the *Water Management Act 2000* (NSW) or a water licence under the *Water Act 1912* (NSW). DPI Water regulates this licensing regime⁴⁷ and water extractors are given access to particular shares or entitlements, which attract "allocations" of water, as allowed under the respective Acts. If the licensed water extractors require more water than they have been allocated, they can trade entitlements (permanent trades) or water allocations (temporary trades), if available.

Water NSW holds water supply work approvals under the *Water Management Act 2000* and two water management licences under the *Water Act 1912*. These licences allow it to capture, store and release water from its storage assets into the rivers for the licensed users to extract under their own work approvals. Water NSW releases this water in response to water orders that the users/customers make to Water NSW. A customer can make these water orders once it has a Water Allocation Account with Water NSW.

While Water NSW's water supply work approvals *allow* it to capture, store and release water, they do not *require* Water NSW to undertake this activity. Nor do they hold Water NSW accountable for delivery of any of the water to the customers. However conditions within the draft operating licence do effectively require Water NSW to manage release and delivery of water to these customers:

Water NSW must take all reasonable steps to process all water orders promptly and efficiently

Water NSW must take all reasonable steps to manage water orders so as to ensure the timely deliveries of water to its customers.

Inclusion of these terms and conditions in the draft operating licence was also discussed and proposed in the previous section 6.3. We note that these conditions only require Water NSW to deliver water to its *existing* customers. To allow *prospective* customers similar rights, the following condition from the draft Water NSW licence is relevant:

Water NSW must maintain a Water Allocation Account for each Customer that holds a Water Licence⁴⁸

⁴⁷ Some of the licensing functions have been conferred to Water NSW through the conferred functions schedule of the operating licence.

⁴⁸ Draft Water NSW operating licence, clause 6.2.1. (This is based on the existing licence clauses of the Water NSW (State Water) licence)

Inclusion of this condition is discussed further in section 9.1.2. The draft operating licence also includes performance standards in relation to the delivery and service interruptions of water orders, as discussed in Chapter 7.

Preferred option

We consider that the combination of licence conditions discussed above will effectively oblige Water NSW to capture, store and release water to any customer (new or existing), subject to the customer *first* obtaining a relevant WAL or water management licence. Therefore, we consider that no further terms and conditions are required to oblige Water NSW to capture, store and release water to its customers.

Recommendation

- 21 The draft operating licence does not include any additional obligations for Water NSW to make water supply, capture, store or release services available to any customer on request.

6.5 Dam operation during floods and spills

We consider that Water NSW should be authorised to manage its dams during floods and spills, to mitigate floods and to manage their impacts. The Water NSW Act states that flood mitigation and management is a listed function of Water NSW.⁴⁹

Currently, only the existing Water NSW (State Water) operating licence authorises Water NSW to undertake this function, in addition to the water supply work approvals, issued to dams outside the Sydney Catchment Area under the *Water Management Act 2000*. These water supply work approvals also include terms and conditions regulating how Water NSW undertakes these activities. Authorising this function in the operating licence will allow Water NSW to also undertake it within the Sydney Catchment Area, as its water supply work approvals currently do not authorise this.

Historically, the now repealed *Sydney Water Catchment Management Act 1998* did not include flood mitigation as a function. The major dams in this area have been considered as water supply dams, not flood mitigation dams. The role of these dams is the subject of an ongoing discussion within Government, with a recent announcement that the Government will invest \$58 million in a study of Warragamba Dam augmentation options that might enable it to have enhanced flood mitigation capability in the future. Conversely, the *State Water Corporation Act 2004* specified flood mitigation as the third component of the 'capture, store and release' function. With the Water NSW Act, this has become a general 'listed function' which is relevant to the whole area of operations (ie, the State of NSW).

We consider that the new operating licence should authorise this function generally, and should not constrain where Water NSW undertakes this function in NSW, consistent with the Act. The operating licence could include terms and conditions that only trigger Water NSW to undertake this function, on direction by the Minister, where it is not otherwise authorised to do so by another instrument. In effect, Water NSW would be authorised to undertake this function only if directed by the Minister. This would create

⁴⁹ Water NSW Act, s 7(1)(a)(i).

flexibility within the operating licence to deal with uncertainty about the Government's future position of Government with respect to Warragamba Dam, minimising the risk of a mid-term amendment to the licence.

6.5.1 Issues raised

The issues paper asked stakeholders if Water NSW should be authorised to undertake flood mitigation and management at any dams in NSW, as allowed under the Water NSW Act. We received responses from Water NSW and the NSW Government neither of which supported authorising Water NSW to undertake this function in the operating licence. However, Sydney Water did so.

Water NSW and the NSW Government were concerned that authorising the function in the operating licence, could lead to duplication with the water supply work approvals under the *Water Management Act 2000*. The NSW Government considered that if, in future, Water NSW was required to undertake the function within the Sydney Catchment Area, the operating licence could be amended at the time to authorise it. The NSW Government considered that any requirement to undertake this function at Warragamba Dam was not likely to occur during the first five-year term of the operating licence, and accordingly, the issue could be dealt with during the next five-yearly review of the licence.

Water NSW also had concerns that authorising this function in the operating licence would contradict the transitional provisions contained within Division 4 of Schedule 2 (Existing operating licences) of the Water NSW Act, which does not authorise this function within the Sydney Catchment Area.

6.5.2 Options assessed

Table 6.6 Options for authorising and regulating flood mitigation and management under the operating licence

Options	Description
Option A (Base case)	Make no change to the authorisations included in the existing Water NSW licences; do not include any terms and conditions
Option B	Do not authorise Water NSW to undertake flood mitigation and management at any storages in NSW
Option C	Authorise Water NSW to undertake flood mitigation and management at all storages throughout NSW; do not include any terms and conditions
Option D	Authorise Water NSW to undertake flood mitigation and management at all storages throughout NSW; include terms and conditions that limit this function to being triggered by direction from the Minister

Currently, only the Water NSW (State Water) operating licence authorises this function in addition to the water supply work approvals relating to Water NSW's storages outside the Sydney Catchment Area. With Option A, we could continue to maintain this approach and the operating licence could remain silent with regard to terms and conditions applied to this function. This minimises any risk of duplication with the water supply work approvals.

If in future Water NSW needs to undertake this function at a dam in the Sydney Catchment Area (eg, as is currently being considered for Warragamba Dam), the operating licence

would need to first be amended at the time to authorise this function. Alternatively, the relevant water supply work approval(s) may be able to be amended to authorise flood management activities. We consider that this would be consistent with the approach taken thus far by the NSW Government, with other water supply work approvals authorising this function in other parts of NSW. However, we note that we do not have any role in recommending changes to water supply work approvals.

Option B would not authorise or condition the flood mitigation and management function in any areas or circumstances. This would be a reduction from the authorisations contained within the existing Water NSW (State Water) operating licence. To undertake this function, Water NSW would rely upon the authorisations of its other regulatory instruments, such as the infrastructure-specific works approvals. As for Option A, if the need arises within the term of the operating licence to undertake flood mitigation at any location without such an approval, an amendment would be required either to the operating licence or the relevant approval.

Under Option C, Water NSW would be authorised to undertake this function at all of its storages in NSW, without geographical constraint. This option would allow longevity of the licence, reducing the need to amend the licence if Water NSW is required to undertake this function within the Sydney Catchment Area in the future. We consider that duplication of the authorisation alone, without duplicating any terms and conditions of the water supply work approvals, does not negatively impact on Water NSW's regulatory burden. However, it clarifies that this function is authorised and enables any appropriate terms and conditions to be applied through the operating licence. We note that Water NSW has expressed concern with this option as it considers that it places a social obligation on Water NSW to undertake this function even where it may not be practicable. This could therefore pose fiscal and legal liability risks to Water NSW.

With Option D, Water NSW would be authorised to undertake this function at all of its storages in NSW, to the extent that it is not already authorised elsewhere eg, currently this includes the Sydney Catchment Area). Under this option, terms and conditions to trigger this function would only be on direction by the Minister. This trigger would only be applicable to those storages that are not already authorised elsewhere. This minimises any social obligation on Water NSW to undertake this function, unless directed by the Minister. This option could enable future decisions of Government without having to amend the licence mid-term. It could also enable efficient implementation of a Ministerial decision regarding if and when Water NSW should undertake this function in the Sydney Catchment Area.

Option D, proposes that further terms and conditions be included to regulate how Water NSW undertakes this function. These terms and conditions would be limited to only apply to those areas where Water NSW is not already authorised to undertake flood management activities, and to the extent that they are consistent with any direction of the Minister. This reduces the risk of regulatory duplication. These terms and conditions will largely mirror those currently included in Water NSW's water supply work approvals for outside the Sydney Catchment Area.

We consider that authorising Water NSW to undertake flood mitigation and management in the operating licence is consistent with Water NSW Act. Previously, this function was only undertaken by State Water under the now repealed *State Water Corporation Act 2004* and not

by SCA. It was listed as a subcomponent of State Water’s “capture, store and release” function. We consider that the Water NSW Act may have separated flood mitigation and management from the “capture, store and release” function to clarify that it should be undertaken throughout the State.

We consider that Division 4 of Schedule 2 of the Act only refers to the existing arrangements (where Water NSW is operating under the two licences previously granted to State Water and the SCA) and will no longer be applicable once any new licence granted under section 11 of the Act comes into effect.

6.5.3 Preferred option

Option D is our preferred option. It will allow Water NSW to undertake flood mitigation and management at its dams in the Sydney Catchment Area, if the need for this should arise in future. It allows longevity of the operating licence as the licence would not need to be amended in the event of any future government decisions for dams within the Sydney Catchment Area (eg, Warragamba Dam). Further, Option D minimises any obligation on Water NSW to undertake this function and the associated liability, until expressly directed to do so by the Minister.

The proposed terms and conditions of the licence are presented in Box 6.4.

Box 6.4 Dam operation during floods and spills operating licence conditions

3.5 Dam operation during floods and spills

3.5.1 If directed in writing to do so by the Minister, and where not already required to do so under any other statute or regulatory instrument, Water NSW must operate its Water Management Works during flood and spilling of water, so as to maintain the safety of the work and to minimise risks to public safety.

3.5.2 To the extent that it is directed to do so through a direction under Clause 3.5.1 of this Licence, Water NSW’s operation of the Water Management Works, during times of flood or spilling of water, must:

- a) leave the water storage levels of the Water Management Works, at or below full supply level, at the completion of the flood or spilling of water, subject to maintenance of any airspace volume requirements under any other statute or regulatory instrument;
- b) ensure the maximum rate of outflow from the Water Management Work is less than or equal to the maximum rate of inflow;
- c) ensure the rate of outflow from the Water Management Work does not exceed the rate of inflow to the Water Management Work until after the flood has peaked; and
- d) lessen downstream flood damage, where possible.

Recommendation

- 22 The operating licence authorises Water NSW to undertake flood mitigation and management subject to receiving a written direction from the Minister and where not already required to do so under any other statute or regulatory instrument. In these instances, the operating licence should include terms and conditions to regulate how Water NSW operates its Water Management Works.

6.6 Reporting manual – water balance reporting

6.6.1 Issues raised

Water balance reporting is an obligation of the existing Water NSW (State Water) operating licence, supported by obligations within the reporting manual. Under the existing Water NSW (State Water) reporting manual, Water NSW is required to submit water balance reports on the water it *releases* outside the Sydney Catchment Area only. The Water NSW (State Water) reporting manual prescribes the form of these water balance reports.

The Issues Paper, we sought stakeholder feedback on the operating licence requirement to prepare water balance reports. We did not seek specific stakeholder comment on options for inclusion in the reporting manual. However, Water NSW and the NSW Government responded indicating the existing obligations are potentially duplicative of the water balance reporting obligations of the individual water supply works approvals.

We understand that the water supply work approvals prescribe specific inclusions in the water balance reports that Water NSW must prepare. However, the water supply work approvals do not require Water NSW to make these reports publicly available on its website, which we consider is a valuable requirement to maintain for stakeholder information.

6.6.2 General water balance reporting

Options assessed

Table 6.7 Options for including water balance reporting requirements in the reporting manual

Options considered	Description
Option A (Base case)	Include prescriptive water balance reporting requirements for all water released to customers and for any lawful purpose (including for the environment) outside the Sydney Catchment Area only, and include a requirement to make these water balance reports publicly available on Water NSW's website
Option B	Include prescriptive water balance reporting requirements for all water released to customers and for any lawful purpose (including for the environment) only but not constrained to any geographical area, and include a requirement to make these water balance reports publicly available on Water NSW's website
Option C	Include non-prescriptive requirements for Water NSW to prepare water balance reports for all water released (without geographical constraint), and include a requirement to make these water balance reports publicly available on Water NSW's website
Option D	Do not include any water balance reporting requirements

Currently, the Water NSW (State Water) reporting manual requires Water NSW to prepare water balance reports for all water that it releases to its customers and to the environment, outside the Sydney Catchment Area only. With Option A, we could retain these requirements in the new operating licence. However, we consider that this is not a flexible approach, as it does not anticipate if Water NSW were to *release* water within the Sydney Catchment Area in future.

With Option B, we propose to include all of the existing water balance reporting requirements in the Water NSW (State Water) reporting manual, but these would be applicable to all water *released* by Water NSW, across NSW. However, we note that Water NSW considers that this option would result in costs of between \$62,150 and \$77,050 over the five-year term of the licence in extra costs to meet the current prescriptive reporting requirements to include water released within the Sydney Catchment Area as well.

With Option C, Water NSW could still report on all of the water it releases throughout NSW, but we propose to not include any prescriptive requirements in the reporting manual for the format of the reports. Water NSW's water supply work approvals already include prescriptive requirements for these inclusions. The existing requirements of the Water NSW (State Water) reporting manual largely duplicate these requirements. Under this option, Water NSW could prepare the water balance reports in line with the requirements of the water supply work approvals, where available, but would have to make the reports publicly available on its website, which is currently not required by the water supply work approvals. Water NSW has confirmed that this option will not result in any extra costs as it is already preparing these reports to meet the requirements of its water supply work approvals.

With Option D, the reporting manual could remain silent on water balance reporting requirements. Water NSW would still be required to prepare the water balance reports in accordance with the reporting manuals, but would not be required to make the reports publicly available on its website.

Preferred option

We propose that the new reporting manual should still require Water NSW to prepare water balance reports on water that it *releases*, but without geographical constraint. Further, Water NSW should make these reports public. The reports will not need to include information on water that Water NSW *supplies* (consistent with the existing approach). We have not proposed to prescribing the inclusions of the water balance reports, to avoid duplication with Water NSW's water supply work approvals under the *Water Management Act 2000*.

Option C is our preferred approach. It will require Water NSW to make the water balance reports publicly available, which we consider is information beneficial to stakeholders, including IPART, and should continue to be maintained. However, Water NSW will be able to prepare these reports consistent with the requirements of the water supply work approvals only. We will not impose additional requirements in the reporting manual, thereby avoiding regulatory duplication.

The proposed reporting obligations for inclusion in the reporting manual are presented in Box 6.4.

Further, we propose that the new Water NSW reporting manual should include reporting obligations with respect to flood mitigation and management water balance reporting, where Water NSW is directed (by the Minister) to undertake flood management under the operating licence. This will be a new reporting requirement as the existing Water NSW operating licences do not authorise flood mitigation. These requirements are discussed in section 6.6.3.

Box 6.5 Annual water balance reporting obligations

3.1.1 Annual water balance reports

Water NSW must complete water balance reports for each financial year for all water that is captured, stored and released annually from each water source (river valley). Water balance reports are not required to include water supplied directly to customers. Water NSW is not required to submit these completed reports to IPART but must report on them publicly (at the same time as completion), in accordance with section 3.3 of this reporting manual.

[Note: Water balance information provided to other government agencies will satisfy this requirement of the reporting manual if made publicly available].

Recommendation

- 23 The reporting manual includes obligations for Water NSW to prepare water balance reports for all water that it **releases** to customers and for any lawful purposes. The reporting manual will not prescribe inclusions for these reports but will require Water NSW to make these reports available publicly.

6.6.3 Flood mitigation and management specific water balance reporting

Options assessed

Table 6.8 Options for including water balance reporting requirements in the reporting manual

Options considered	Description
Option A (Base case)	Do not include any water balance reporting requirements with respect to flood mitigation and management
Option B	Include water balance reporting requirements for any storage where Water NSW is directed to undertake flood mitigation and management, and include a requirement to make these water balance reports publicly available on Water NSW's website

Currently, the Water NSW (State Water) reporting manual does not include any water balance reporting requirements with respect to flood mitigation and management. With Option A, we could maintain the same approach. However, we consider that this is not preferable as we propose to authorise flood mitigation and management in the operating licence. As a result, Water NSW should be required to report on how it undertakes this function, where applicable.

With Option B, reporting requirements for Water NSW would be to include in its water balance reports, an annual account of water storage levels before, during and at completion of the flood event, the volume of water in the storage asset and airspace, and the rate of outflow and rate of inflow from the start to end of the flood event. Water NSW would only have to do this where it is required to undertake flood mitigation and management activities under the operating licence. Water NSW did not identify any net costs or benefits associated with this option.

Preferred option

Option B is our preferred option. It will require Water NSW to include in its water balance reports, information on its storage assets, in relation to its flood management activities it is directed to undertake under the operating licence..

The proposed reporting obligations in the reporting manual are presented in Box 6.5.

Box 6.6 Water Balance reporting obligations (flood mitigation and management, where applicable)

Where Water NSW is required to undertake flood mitigation and management activities under the Licence, Water NSW must include, in the water balance reports required under this section 3.1.1, an annual account of:

- ▼ the water storage levels of the water management work before, during and at the completion of the flood or spilling of water,
- ▼ the volume of water in the dam and airspace, as may be required under any other Act, and their rate of evacuation, and
- ▼ the rate of outflow and the rate of inflow to the water management from the start to the end of the spill or flood event.

[Note: Clause 3.5.1 of the Licence requires Water NSW to operate its water management works during flood and spilling of water, on direction from the Minister, where not already required to do so under any other statute or regulatory instrument].

Recommendation

- 24 Where required to undertake flood mitigation and management under the operating licence, the reporting manual also requires Water NSW, to include in its water balance reports, relevant information in relation to this function.

7 Performance standards

The fourth part of the draft recommended licence includes performance standards to apply when Water NSW captures and stores and releases water, and also for when it supplies water. The Water NSW Act requires that an operating licence which authorises Water NSW to capture, store, release or supply water must specify that Water NSW is required to ensure it meets performance standards in relation to water delivery, water quality, service interruptions or any other matters.⁵⁰ We consider that the Water NSW Act does not require all of the water delivery, service interruptions and water quality performance standards to be applied to capture, store and release of water *and* supply of water. Rather, the relevant performance standards can be specified in relation to the function to which they best apply.

We consider that setting performance standards within the operating licence allows customers a level of certainty about the minimum service levels they can expect, for the capture, store, release or supply of water.

Draft recommendations for the operating licence and reporting manual:

- 25 The operating licence specifies water delivery and service interruptions performance standards in relation to water that is captured, stored and released. These preliminary performance standards are developed from performance indicators in the existing Water NSW (State Water) reporting manual.
- 26 The operating licence specifies water quality, water delivery and service interruptions performance standards in relation to water that is supplied.
- 27 The reporting manual includes requirements for Water NSW to report annually on its performance in relation to the performance standards set in the operating licence.

7.1 Types of performance standards

Setting performance standards depends on the services and systems provided as well as customers' expectations of level of service. Some customers, such as large organisations, are able to enter into negotiations with water utilities regarding the level of service required and the cost for that service. Smaller organisations or individuals may not have the capacity to negotiate as effectively.

7.1.1 Issues raised and options available

Our Issues Paper identified four potential types of performance standards and sought feedback from stakeholders about including one, or a combination of, these performance standards in the operating licence:

⁵⁰ Water NSW Act, section 12(2).

- ▼ **Type 1: Prescriptive standards** which instruct licensees precisely what measures to take and require little interpretation on their part. These standards identify 'inputs' ie, the specific actions required of licensee in a particular situation.
- ▼ **Type 2: Performance standards** which specify the desired performance level, but leave the concrete measures to achieve this open for the licensee to adapt to varying local circumstances.
- ▼ **Type 3: Goal-setting standards** which set out goals that the licensee must aim to accomplish, such as ensuring the protection of public health. These standards leave it to the discretion of the licensee as to how they achieve those goals.
- ▼ **Type 4: Systems standards** which identify a particular framework, or series of steps, to be followed in the pursuit of a goal, ranging from the requirement to identify hazards and assess and control risks (found in many national standards), to the more ambitious requirement to engage in a particular systemic approach at an organisational level.

Water NSW, the NSW Government and Sydney Water provided comment on the types of performance standards described and the appropriateness of prescribing them in the operating licence.

Water NSW considered that it was appropriate to prescribe minimum performance levels for customers who have been supplied with, or captured, stored and released water (ie, type 2). Water NSW also provided input into the types of performance standards that could be set in the operating licence.

The NSW Government and Sydney Water cautioned that any performance standards set should not impact on any health related activities or the quality or continuity of water supplied. Further issues raised by stakeholders are discussed below, in relation to performance standards for water captured, stored and released (section 7.2) or water supplied (section 7.3).

7.1.2 Options assessed

We considered each of the types of standards in formulating performance standards for each of the categories identified in section 12(2)(a)(ii) of the Act. The following options were assessed in relation to setting system performance standards for each category:

Table 7.1 Options for performance standards (generally)

Option	Description
Option A (Base case)	Rely on the service levels identified within the Management Systems (in particular the Asset Management System and Water Quality Management System)
Option B	Include specific 'type 2 performance standards' within the operating licence relating to water delivery, water quality and service interruptions

As the term "performance standards" is not defined in the Water NSW Act, we consider that any of the options for types of standards presented in the Issues Paper would meet the requirements of the Act. Not including standards within the operating licence was not considered as an option as it is required by the Water NSW Act.

The existing licences rely solely on the Management Systems (ie, AMs and EMS) required within the licence. This is similar to the type 4 option. This approach is best suited to circumstances where there are large uncertainties, diverse operational conditions and diverse customer types and sizes. However, it provides minimal certainty for customers about a level of service. It is also difficult to audit to determine if the performance standards have been met. We also consider that there could be room for error both when being implemented by Water NSW and when being regulated and audited. Therefore, where possible, we have considered whether performance standards can be otherwise defined according to the categories described above.

In formulating alternative options for performance standards to satisfy the criteria, we sought to utilise existing indicators where possible, to minimise set up costs for the utility to measure and report on parameters not previously recorded. We have attempted to introduce type 2 performance standards, where appropriate, which are more prescriptive than goal setting (type 3) or system standards (type 4) but provide more certainty for customers about a level of service. However, if our proposed type 2 performance standards are not practicable to implement, we can continue to rely on type 4 performance standards, as per the approach of the existing Water NSW operating licences.

We have not recommended prescriptive standards (type 1) in the operating licence because it would not be practical to design highly prescriptive standards for an organisation with the diverse customer base, operations and functions that Water NSW has. While some level of prescription may be useful, we consider that it is unnecessary in the context of public water utilities that have experience providing services in the water industry.

7.1.3 Preferred option

In the next two sections we discuss the specific performance standards we recommend in relation to water that is captured, stored and released, and those for water that is supplied, as required by the Water NSW Act.

We seek stakeholder input on whether these standards are appropriately defined and measurable, or if alternative standards can be suggested, particularly for the supply performance standards. This could include relying on the WQMS and/or AMS as per the approach of the existing Water NSW operating licences.

7.2 Performance standards in relation to the capture and store of water and release of water

We consider that the operating licence should include performance standards for water delivery and service interruptions in relation to water that is captured, stored and released but that water quality performance standards are not relevant to this water. We note that the existing operating licences include requirements to comply with an asset management system but they do not clarify that this is a performance standard which must be met.

We propose to set type 2 performance standards in relation to water delivery by converting the existing performance indicators in the Water NSW (State Water) reporting manual. These indicators currently only relate to water that Water NSW captures, stores and releases to customers outside the Sydney Catchment Area. We note that the performance standard

would relate to all water captured, stored and released by Water NSW throughout its area of operations.

The Water NSW (State Water) reporting manual currently requires Water NSW to report on:

1. the percentage of customers, who after placing a non-complying water order, are contacted within 1 working day to rectify that order
2. the percentage of complying water orders delivered outside +/- 1 day of the scheduled day of delivery, as measured by complaints
3. the percentage of complying water orders rescheduled in consultation with an affected customer within 1 working day of an expected water shortage or delivery, and
4. the percentage of complying intra-valley transfers processed within 5 working days of Water NSW's receipt of a correct application and fee.

We consider that these performance indicators also relate to service interruptions as they measure when complying water orders are delivered, and when they are rescheduled if not delivered within the required time.

The performance standards that we propose are based on Water NSW's reported historical performance in relation to these performance indicators. We propose not to include these performance indicators in the new reporting manual if they are included in the operating licence as performance standards.

7.2.1 Issues raised

In response to the Issues Paper, Water NSW and the NSW Government considered that the existing performance indicators from the Water NSW (State Water) reporting manual could be converted to performance standards relevant to water delivery and service interruptions.

Water NSW considered that there may also be scope for converting the performance indicators in the Water NSW (SCA) reporting manual into performance standards. However, the NSW Government considered that this may not be appropriate or relevant to water delivery and service interruptions.

7.2.2 Options assessed

Table 7.2 Options for performance standards (in relation to the capture and store of water and release of water)

Option	Description
Option A (Base case)	Rely on the service levels identified within the Management Systems, (in particular the Asset Management System)
Option B	Include specific 'type 2 performance standards' within the operating licence relating to water delivery and service interruptions

In the CBA we presented Water NSW with two options for specifying performance standards in the operating licence in relation to its "capture and store water and release water" function.

With Option A, the operating licence would rely on type 4 performance standards. We consider that this represents the Base case. The existing Water NSW (State Water and SCA) operating licences do not prescribe standards but rely on the Asset Management System to set water delivery performance levels (ie, system performance standards). However, as explained in section 7.1.2 above, where possible, we have sought to develop type 2 performance standards within the operating licence. This represents a more transparent and certain level of service for customers.

Therefore, we propose Option B to convert the current performance indicators in the Water NSW (State Water) reporting manual to type 2 performance standards in the operating licence. We consider that the performance indicators in the Water NSW (SCA) reporting manual do not relate to delivery or service interruptions.

Water NSW considered that Option B would not substantially impact on Water NSW's current operational costs. This is because Water NSW considers that its operational performance already exceeds the standards proposed. However, Water NSW suggested modifying the final performance standard to more accurately describe the different types of transfers it undertakes. Water NSW has suggested levels of performance for these three standards based on consistency with National Water Initiative principles (see standards D – F in Box 7.1).

7.2.3 Preferred option

We consider that specifying type 2 performance standards in the operating licence (Option B) is appropriate in relation to water delivery and service interruptions performance standards and that they provide some certainty to customers about expected service levels and will allow auditability.

However, we welcome stakeholder feedback about whether Option A is a preferable option.

We recommend the performance standards set out in Box 7.1, in relation to water delivery and service interruptions.

Box 7.1 Performance standards related to water delivery and service interruptions

4.3.1 The Performance Standards set out in clause 4.3.2 **Error! Reference source not found.** apply in respect of the Capture and Store of Water and Release of Water by Water NSW.

[Note: Clause 4.3 is intended to discharge section 12(2) of the Act in respect of the Capture and Storage of Water and the Release of Water by Water NSW.]

4.3.2 Water NSW must ensure that:

- a) Capture and Store Water and Release of Water Standard A: 99% of Customers who place a Non-complying Water Order are contacted within 1 working day to rectify that order;

[Note: This indicator should be calculated as a percentage of all Non-complying Water Orders placed.]

- b) Capture and Store Water and Release Water of Standard B: 99% of Water Orders are Delivered within +/- 1 day of the scheduled day of Delivery;

[Note: This indicator should be calculated as a percentage of all complying Water Orders placed. The scheduled day of delivery takes into account the period of required notice specified in Water Management Work approvals, licences, or entitlements. This could be measured by Complaints and/or if Water NSW identifies a delivery delay eg, through its staff, systems or otherwise identifies or becomes aware of a delivery delay.]

- c) Capture and Store Water and Release of Water Standard C: 100% of Water Orders rescheduled (Service Interruptions) are rescheduled in consultation with an affected Customer within 1 working day of an expected water shortage, or other delivery delay;

[Note: This indicator should be calculated as a percentage of all Water Orders rescheduled due to an expected shortage or delivery delay.]

- d) Capture and Store Water and Release of Water Standard D: 90% of complying Temporary Trades within the State are processed within five working days of Water NSW's receipt of a correct application and fee;
- e) Capture and Store Water and Release of Water Standard E: 90% of Interstate Temporary Trades (except to South Australia) are processed within 10 days; and
- f) Capture and Store Water and Release of Water Standard F: 90% of Interstate Temporary Trades to South Australia are processed within 20 days.

Recommendation

- 25 The operating licence specifies water delivery and service interruptions performance standards in relation to water that is captured, stored and released. These preliminary performance standards are developed from performance indicators in the existing Water NSW (State Water) reporting manual.

7.3 Performance standards in relation to supplying water

We consider that the operating licence should include water quality, water delivery and service interruptions performance standards in relation to water that is supplied. These would be new standards as the existing operating licence does not explicitly require Water NSW to comply with performance standards. We note that the operating licences

include requirements to comply with a water quality management system and asset management system, but they do not clarify that these are performance standards that must be met.

We consider that the performance indicators in the existing Water NSW reporting manuals cannot be converted to performance standards that relate to water that is supplied. We consider that the performance indicators of the Water NSW (State Water) reporting manual relate to water that is captured, stored and released. The existing performance indicators of the Water NSW (SCA) reporting manual do not relate to water quality, water delivery or service interruptions.

We have therefore proposed performance standards informed by those proposed by Water NSW. Water NSW suggested four standards (type 2) in its response to the Issues Paper. These standards are based on historical data from Water NSW's operations in relation to water quality, delivery and service interruptions of water that is supplied.

IPART seeks comments on the following

- 1 We seek stakeholder input on whether these standards are appropriately defined and measureable or if alternative supply standards can be suggested, including the alternate option of relying on the WQMS and / or AMS

7.3.1 Issues raised

In response to the Issues Paper, Water NSW suggested four potential performance standards that could be set in relation to water supply.

However, the NSW Government raised a concern that setting minimum performance standards in the operating licence in relation to water quality may be inconsistent with the risk management approach set out in the *Australian Drinking Water Guidelines 2011* which aims to supply water at the highest practicable quality (as opposed to a quality set in an operating licence).

The NSW Government further commented that it may not be appropriate to convert the performance indicators in the existing Water NSW (SCA) reporting manual into water quality performance standards. It considered that these performance standards may not be able to be met in all circumstances due to varying upstream catchment management practices. Further, it considered that a number of catchment health indicators specified in the Water NSW (SCA) reporting manual are variables that are difficult to control. This could reduce their capacity to be converted to performance standards.

Sydney Water raised the concern that water quality standards prescribed in the operating licence may not be stringent enough to meet Sydney Water's needs. It considered that it could be more appropriate for the quality of water supplied to be able to be negotiated through the raw water supply agreement that it has with Water NSW, as it currently does, rather than prescribe quality standards in the operating licence.

7.3.2 Options assessed

Unlike the standards recommended for the capture and store water and release water function, no existing indicators were suggested to be suitable as the supply standards.

Table 7.3 Options for performance standards (in relation supplying water)

Option	Description
Option A (Base case)	Rely on the service levels identified within the Management Systems (in particular the Asset Management System and Water Quality Management System)
Option B	Include specific 'type 2 performance standards' within the operating licence relating to water quality, water delivery and service interruptions

In the CBA we presented Water NSW with two options for specifying performance standards in the operating licence in relation to supplying water.

With Option A, the operating licence would rely on type 4 performance standards. We consider that this represents the Base case. The existing Water NSW (State Water and SCA) operating licences do not prescribe standards but rely on the Asset Management System and Water Quality Management System to set water deliver and water quality performance levels (ie, system performance standards). However, where possible, we have sought to prescribe performance standards. Therefore, we propose Option B which specifies type 2 performance standards based on Water NSW's input. We acknowledge Sydney Water's concern that the performance standards set may not be stringent enough to meet its needs. However, we consider that the performance standards specified in the operating licence are minimum service levels only. If more stringent requirements are deemed necessary at any time, these can be negotiated through the raw water supply agreement. We consider that the performance standards provide a baseline service level that will be provided to customers.

We also acknowledge the NSW Government's concerns about the performance standards setting unrealistically high standards that cannot always be achieved. We note that we have proposed standards based on information provided by Water NSW, based on its historical performance.

IPART seeks comments on the following

- 2 We further welcome feedback from stakeholders about the suitability of the proposed supply standards. In particular we seek feedback on whether the suggested performance standards can be more clearly defined.
- 3 We also seek feedback on whether the status quo approach of the AMS and WQMS would satisfy the requirements for water delivery, water quality and service interruptions performance standards as required in the Act and provide sufficient clarity for customers on the expected levels of service.

When presented with the options, Water NSW preferred Option A because it did would not impact on its operational costs as much as Option B would, and presented a cost of 0.2 FTE for additional collection and reporting of information not currently reported. The CBA estimated this to represent a cost of approximately \$37,000 each year or between \$127,000 and \$158,000 over the five-year term of the licence.

7.3.3 Preferred option

Where practical, we consider that specifying type 2 performance standards in the operating licence (Option B) is preferable to provide some certainty to customers about expected service levels and to allow auditability.

However, we welcome stakeholder feedback about whether Option A is a preferable option in light of Water NSW's feedback that it is a more cost-effective option. Alternatively, we welcome feedback on alternative type 2 performance standards to those that we have proposed in the draft operating licence.

The preliminary proposed performance standards, in relation to water supply are shown in Box 7.2.

Box 7.2 Performance standards related to water supply

4.2.1 The Performance Standards set out in paragraphs (a)-(d) below apply in respect of the Supply of water by Water NSW:

- a) *Quality of Water Supplied Standard A: Water Supplied to Customers meets relevant Bulk Water quality standards >95% of the time.*
- b) *Quality of Water Supplied Standard B: Water Supplied to Customers meets health standards 100% of the time.*
- c) *Delivery and Service Interruption regarding Water Supplied Standard A: Water is Supplied to Customers on time 100% of the time.*
- d) *Delivery and Service Interruption regarding Water Supplied Standard B: Water is Supplied to Customers in the agreed quantities 100% of the time*

[Note: These are the minimum water Supply and interruption standards. Water NSW must also Supply water in accordance with the terms and conditions of the relevant Customer Supply Agreement.]

[Note: Clause 4.2 is intended to discharge section 12(2) of the Act in respect of the Supply of water by Water NSW.]

Recommendation

- 26 The operating licence specifies water quality, water delivery and service interruptions performance standards in relation to water that is supplied.

7.4 Reporting manual – performance standards reporting

Consistent with the proposed new performance standards, we have introduced new reporting requirements in Chapter 4 of the reporting manual in relation to the performance standards. This chapter requires Water NSW to report annually with respect to its performance against the performance standards. We consider that this will increase the transparency of Water NSW's operational performance, as the report must include an explanation of how Water NSW has complied, or not complied, with the performance standards, detailing major factors that have included Water NSW's performance and reasons for any variation between Water NSW's historical performance.

Recommendation

- 27 The reporting manual includes requirements for Water NSW to report annually on its performance in relation to the performance standards set in the operating licence.

8 Organisational systems management

The fifth part of the draft recommended licence includes clauses relating to Water NSW's asset management and environmental management systems.

The draft recommendations that we have used to develop the draft operating licence and reporting manual are listed below. We provide explanation and background about how we developed each of these recommendations within this chapter.

Draft recommendations for the operating licence and reporting manual:

- 28 The operating licence includes terms and conditions for maintenance and implementation of a certified Asset Management System (AMS) and Environmental Management System (EMS).
- 29 The operating licence includes terms and conditions for maintenance of programs and activities to manage risks to the assets/environment, in the absence of a certified AMS/EMS.
- 30 The reporting manual includes requirements for Water NSW to prepare annual compliance and performance monitoring reports on the AMS and EMS and make this publicly available on its website.
- 31 The reporting manual includes a requirement for Water NSW to report to IPART (once during the term of the licence) on the state of all of its assets, including those transferred to it from DPI Water.
- 32 The reporting manual includes requirements for Water NSW to notify IPART of any AMS/EMS audits.

8.1 Asset management

As discussed in section 6.1, we consider that it is necessary to include terms and conditions requiring Water NSW to maintain an Asset Management System (AMS) in the new Water NSW operating licence. This would also satisfy the requirement of section 12(2)(a) of the Water NSW Act which requires that "in connection with an operating licence that authorises Water NSW to capture, store, release or supply water, the operating licence must include terms or conditions under which Water NSW is required to provide, construct, operate, manage and maintain efficient, coordinated and commercially viable systems and services to capture, store release or supply water".⁵¹

These terms and conditions would require Water NSW to ensure that its AMS is certified and implemented. Further, Water NSW would have to maintain programs and activities to manage its assets in the absence of a certified AMS (eg, if the certification lapses).

⁵¹ Note that our proposed draft operating licence authorises all of capture, store, release and supply of water.

The existing Water NSW (State Water and SCA) operating licences include terms and conditions regulating how Water NSW maintains its assets. Similar terms and conditions are not included in any other instrument applying to Water NSW. Therefore to maintain the requirements of the existing licences, they need to be included in the new operating licence.

8.1.1 Issues raised

The Issues Paper, sought feedback on the terms and conditions that should be included to regulate how Water NSW constructs, operates and maintains water management works. We received responses from Water NSW, the NSW Government and Sydney Water.

The NSW Government stated that there would be benefit in requiring Water NSW to develop, implement and maintain an AMS, particularly since Water NSW has recently been vested a large number of assets from DPI Water, including flowmeters and monitoring sites. Setting minimum standards for asset management in the operating licence would facilitate appropriate maintenance and operation of these assets.

Further, Water NSW and Sydney Water considered that there would be benefit in requiring Water NSW to have an AMS that was certified. Water NSW and Sydney Water considered that by requiring a certified system, IPART's audit and regulatory surveillance process could be minimised by relying more on the certification and review process. Further, it would allow consistency with other utilities that have similar requirements in their operating licences.

8.1.2 Options assessed

Table 8.1 Options for regulating Water NSW's management of assets

Options considered	Description
Option A (Base case)	Do not change existing licences which both include terms and conditions related to developing and maintaining an Asset Management System
Option B	Include terms and conditions similar to Clause 4 of the existing Water NSW (State Water) licence, with some changes

We consider Option A to be the Base Case because it represents the status quo, ie, the terms and conditions included in the existing Water NSW (State Water and SCA) licences. However, we consider that maintaining all of the clauses of the existing two licences in a new operating licence is not a feasible option under a new Act and new structure of licence (ie, a combined operating licence). Some of these terms and conditions duplicate each other whereas in some instances, they are inconsistent.

The CBA indicated that net costs would not occur as a result of the Asset Management Obligation and between \$216,000 to \$268,000 worth of efficiencies arise from consistencies across the business and reduced IPART reporting and audit preparation, over the term of the licence.

We have therefore suggested Option B, which includes retaining the terms and conditions currently contained in the existing Water NSW (State Water) licence with some changes.

The terms and conditions in the existing Water NSW (State Water) licence are more consistent with other public water utilities licences (eg, Hunter Water and Sydney Water) than the Water NSW (SCA) licence conditions.

We consider that it is important to contain a requirement for Water NSW to maintain an AMS consistent with *International Standard ISO 55001:2014 Asset Management – Management systems – Requirements*. This is consistent with similar requirements that we place on other public water utilities (and is already a requirement of the existing Water NSW (State Water) licence). We consider that Water NSW does not need a requirement to develop the AMS because, as indicated at the previous audit, Water NSW has developed an AMS that it will use to manage all of its assets since the effective merger of the previous State Water and SCA.

We consider that it is also necessary to include requirements for Water NSW to ensure that the AMS is certified and to ensure that the certified system is implemented. Implementation of a certified AMS is industry good practice and provides a framework for an organisation to identify and target its objectives for managing its assets. We consider that this is a reasonable requirement, particularly because Water NSW previously advised IPART that it intended to have its AMS certified by December 2016. During the 2015-16 operational audit, it was confirmed that Water NSW was on track to complete this.⁵² Further, this would be consistent with requirements we place on other public water utilities in their operating licences.

We also consider that under this option, the operating licence should include terms and conditions to regulate how Water NSW maintains its assets in the absence of a certified AMS is a necessary contingency, in the case that certification lapses or are otherwise lost.

8.1.3 Preferred option

Option B is our preferred option as Option A is not feasible under the Water NSW Act and the new operating licence structure.

The proposed terms and conditions to include in the licence are set out in Box 8.1.

⁵² Letter to IPART, Cobbitty Consulting Engineering and Advisory Services, 2015/16 Operational Audit of WaterNSW, Assessment of WaterNSW progress in development of its management systems, 21 November 2016.

Box 8.1 Proposed AMS operating licence conditions

5.1 Asset Management System

- 5.1.1 5.1.1 Water NSW must maintain a Management System that is consistent with the *International Standard ISO 55001:2014 Asset Management – Management systems – Requirements (Asset Management System)* for carrying out the functions authorised under this Licence.
- 5.1.2 Water NSW must ensure that its Asset Management System is certified by an appropriately qualified person to be consistent with the *International Standard ISO 55001:2014 Asset Management – Management Systems – Requirements* and that certification is maintained throughout the term of this Licence.
- 5.1.3 Water NSW must ensure that the certified Asset Management System is fully implemented and that all relevant activities are carried out in accordance with the Asset Management System.
- 5.1.4 In the absence of a certified Asset Management System, Water NSW must continue to maintain Asset management programs and activities to manage risks to its Assets and to maintain appropriate levels of service of those Assets; and ensure all its activities are carried out in accordance with those programs.

[Note: clause 5.1.4 is only applicable if the certification of the Asset Management System is lost, lapses or is otherwise not obtained, it is not intended as an alternative Asset management obligation. The clause requires Water NSW to maintain programs for Asset management which would be regulated under this clause until certification is regained or obtained.]

Recommendations

- 28 The operating licence includes terms and conditions for maintenance and implementation of a certified Asset Management System (AMS) and Environmental Management System (EMS).
- 29 The operating licence includes terms and conditions for maintenance of programs and activities to manage risks to the assets/environment, in the absence of a certified AMS/EMS.

8.2 Environmental management

We consider that it is important to retain terms and conditions requiring Water NSW to maintain an Environmental Management System (EMS) in the new Water NSW operating licence. These terms and conditions would require Water NSW to ensure that the EMS is certified and implemented. Further, Water NSW would have to maintain programs and activities to manage its assets in the absence of a certified EMS (eg, if the certification lapses).

The existing Water NSW (State Water and SCA) operating licences include similar terms and conditions related to an EMS. Such terms and conditions are not included in any other of Water NSW's regulatory instruments. We consider that it is important to maintain these requirements, because, together with other environmental obligations that are imposed on Water NSW, they help to manage the impact of Water NSW's activities on the environment.

8.2.1 Issues raised

The Issues Paper, sought feedback on the terms and conditions that should be included in the operating licence in relation to an EMS. We received responses from Water NSW, the NSW Government and Sydney Water.

The NSW Government stated that there would be benefit in requiring Water NSW to develop, implement and maintain an EMS that is validated and audited by a third party.

Sydney Water considered that such requirements are already included in the existing Water NSW operating licences and it was important that these requirements be maintained. Sydney Water considered that the EMS is a valuable tool for catchment protection to maintain water quality to a standard suitable for drinking water supply. Further, Sydney Water considered that the most recent version of the ISO 14001 standard (released in 2015) should be referred to in the new Water NSW operating licence.

Water NSW considered that the operating licence should include terms and conditions related to a certified EMS as this could reduce the scope for audits by relying on the certification audit process. However, Water NSW considered that the operating licence need not address implementation and maintenance of the EMS.

8.2.2 Options assessed

Table 8.2 Options for regulating Water NSW's management of the impact of its activities on the environment

Options considered	Description
Option A (Base case)	Do not change existing licences which both include terms and conditions related to developing and maintaining an Environmental Management System
Option B	Include terms and conditions similar to Clause 6 of the existing Water NSW (State Water) licence/Clause 7 of the Water NSW (SCA) licence, with some changes

We consider Option A to be the Base case because it represents the status quo, ie, the terms and conditions included in the existing Water NSW (State Water and SCA) licences. However, we consider that maintaining all of the clauses of the existing two licences in a new operating licence is not a feasible option under a new Act and new structure of licence (ie, a combined operating licence). As explained in relation to the AMS, some of these terms and conditions duplicate each other whereas in some instances, they are inconsistent.

Option B includes retaining the terms and conditions currently contained in the existing Water NSW (State Water) licence with some minor changes. The terms and conditions in the existing Water NSW (State Water) licence are more consistent with other public water utilities licences (eg, Hunter Water and Sydney Water) than the Water NSW (SCA) licence conditions.

With Option B, we consider that it is important to contain a requirement to maintain an EMS consistent with *International Standard AS/NZS ISO 14001:2016 Environmental management – Requirements with guidance for use*. This is consistent with similar requirements that we place on other public water utilities and is already a requirement of the existing Water NSW

(State Water) licence). We consider that Water NSW does not need a requirement to develop an EMS because, as we understand, Water NSW has already developed one.

However, we consider that it is necessary to include requirements for Water NSW to ensure that the EMS is certified and implemented. Implementation of a certified EMS is industry good practice and provides a framework for an organisation to identify and target the environmental risk and impact of all its business activities. We consider that this is a reasonable requirement, particularly because Water NSW previously advised IPART that it intended to have its EMS certified by December 2016. During the 2015-16 operational audit, it was confirmed that Water NSW was on track to complete this.⁵³ Further, this would be consistent with requirements we place on other public water utilities in their operating licences.

We acknowledge that in its response to the Issues Paper, Water NSW considered that the operating licence should not include requirements related to maintenance and implementation of the EMS. However, we consider that obligations requiring maintenance and implementation of the EMS are critical to ensuring the objectives of the EMS are achieved. These conditions enable monitoring and auditing of the activities undertaken under the EMS and test the effectiveness of the EMS.

Further, these conditions in part replace the more prescriptive obligations of the existing licences to “maintain programs to manage risks to the environment from carrying out its activities; and ensure that all its activities are carried out in accordance with those programs”. We consider that these conditions should not be removed without introducing a corresponding obligation relating to the EMS.

An additional condition included to regulate how Water NSW manages the impacts of its activities on the environment, in the absence of a certified EMS, is a necessary contingency, in the case that certification lapses or are otherwise lost.

The CBA identified no incremental costs or benefits from the EMS-related obligations proposed in Option B.

8.2.3 Preferred option

Option B is our preferred option as Option A is not a viable one. The proposed terms and conditions for inclusions in the licence, are set out in Box 8.2 below.

⁵³ Letter to IPART, Cobbitty Consulting Engineering and Advisory Services, 2015/16 Operational Audit of WaterNSW, Assessment of WaterNSW progress in development of its management systems, 21 November 2016.

Box 8.2 EMS operating licence conditions

5.1 Environmental Management System

- 5.2.1 Water NSW must maintain an Environmental Management System consistent with the *Australian/New Zealand Standard AS/NZS ISO 14001:2016: Environmental management systems – Requirements with guidance for use* (**Environmental Management System**) for carrying out the functions authorised under this Licence.
- 5.2.2 Water NSW must ensure that its Environmental Management System is certified by an appropriately qualified person to be consistent with the *Australian/New Zealand Standard AS/NZS ISO 14001:2016 Environmental management systems –Requirements with guidance for use* and that certification is maintained throughout the term of the Licence.
- 5.2.3 Water NSW must ensure that the certified Environmental Management System is fully implemented, and that all relevant activities are carried out in accordance with the Environmental Management System.
- 5.2.4 In the absence of a certified Environmental Management System, Water NSW must continue to maintain programs and activities to manage risks to the environment from carrying out its activities and must ensure that all its activities are carried out in accordance with those programs.

[Note: clause 5.2.4 is only applicable if the certification of the Environmental Management System is lost, lapses or is otherwise not obtained, it is not intended as an alternative Environmental management obligation. The clause requires Water NSW to maintain programs for Environmental management which would be regulated under this clause until certification is regained.]

Recommendation

- 28 The operating licence includes terms and conditions for maintenance and implementation of a certified Asset Management System (AMS) and Environmental Management System (EMS).
- 29 The operating licence includes terms and conditions for maintenance of programs and activities to manage risks to the assets/environment, in the absence of a certified AMS/EMS.

8.3 Reporting manual - asset management and environmental management

In general, we have proposed that the new Water NSW reporting manual should include reporting obligations with respect to its AMS and EMS, similar to those in the existing Water NSW (State Water and SCA) reporting manuals. The Issues Paper did not seek stakeholder comment on options for inclusion in the reporting manual. This section discusses the options we have considered for inclusion in the reporting manual, and our preferred options.

8.3.1 Annual compliance and performance reporting

We propose that the reporting manual will include requirements for Water NSW to report annually on the compliance and performance of its AMS and EMS. Further, Water NSW

will be required to make these reports available free of charge on its website, for downloading by any person.

Options assessed

Table 8.3 Options for annual compliance and performance reporting

Options considered	Description
Option A (Base case)	Do not change existing reporting requirements (ie, only require an annual compliance and performance report for Water NSW's assets outside the Sydney Catchment Area but require such a report on how Water NSW manages the impacts of its activities on the environment throughout NSW)
Option B	Include a requirement for Water NSW to provide annual compliance and performance reports on both the AMS and EMS, for all of its activities throughout NSW

Currently, Water NSW is required to submit a compliance and performance report on its AMS for outside the Sydney Catchment Area only. However, it is required to provide such a report on the EMS for all of NSW. We note that while the reporting requirements for environmental management within the Sydney Catchment Area exist, they are not as extensive as that required for outside the Sydney Catchment Area. We consider that maintaining these requirements under Option A is not feasible under the new Water NSW structure.

It would be preferable to have uniform reporting requirements throughout NSW, for both the AMS and EMS, similar to the currently requirements in the Water NSW (State Water) reporting manual. For a certified system, Water NSW would be required to provide a summary of the objectives and targets of the AMS/EMS, activities Water NSW completes to meet these objectives and targets, the performance and outcomes from those activities and any non-conformances with the AMS/EMS, any planned significant changes to the AMS/EMS, and actions taken to resolve those non-conformances. In the case that certification lapses or is otherwise lost, Water NSW would have to demonstrate that it maintains and implements programs manage risks to its assets or to the environment. Further, Water NSW will be required to make these reports available free of charge on its website, for downloading by any person. These requirements are consistent with those that we place on other public water utilities.

We consider that this information is valuable to stakeholders and in particular, to auditors and regulators for monitoring of Water NSW's asset management and environmental management activities. This will, in turn, inform our audit plans for future audits of the systems. Water NSW has confirmed that preparation of the Asset Management reports will not result in significant additional costs however they have reported environmental management reporting to cost an additional \$448,000 to \$558,000 over the five-year term of the licence.

Preferred option

Option B is our preferred option. This option provides valuable information which will inform our audits of the systems.

Box 8.3 Organisational management systems reporting manual obligations

5.1.1 Annual compliance and performance monitoring

Annual reporting on the certified Asset Management System

For a certified Asset Management System, Water NSW must submit an annual compliance and performance report (for each financial year) to IPART (**report on Certified Asset Management System**).

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

The report on Certified Asset Management System must include:

- ▼ a summary of the objectives and targets of the Asset Management System,
- ▼ the asset management activities completed by Water NSW in the financial year to meet the objectives and targets of the Asset Management System,
- ▼ the performance and outcomes from those activities,
- ▼ the asset management activities proposed to be undertaken by Water NSW to meet the objectives of the Asset Management System in the future, including the timetable for completion and proposed performance measures, and
- ▼ any non-conformances with the Asset Management System and the actions taken to resolve those non-conformances.

[Note: Water NSW must maintain an Asset Management System certified to International Standard ISO55001: 2014 (clause 5.1 of the Licence).

This section 5.1.1 of the reporting manual requires Water NSW to report on how it complies with these Licence conditions. The asset management activities referred to in this section 5.1.1 are those that Water NSW would need to undertake to achieve the objectives and targets of the Asset Management System.]

Annual reporting on the Asset Management System in the absence of certification

In the absence of a certified Asset Management System, Water NSW must report to IPART each financial year on:

- ▼ the objectives and targets of the Asset Management programs and activities, and
- ▼ programs for asset management completed by Water NSW in the financial year to meet the objectives and targets of the Asset Management System

(Asset Management Report).

The report must cover Water NSW's progress in maintaining its programs across the business to manage risks to the assets and meet their requirements under the Act.

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

Water NSW must report publicly on the report in accordance with section 5.3 of this reporting manual.

[Note: Under Clause 5.1.4 of the Licence, Water NSW must maintain programs to manage risks to its assets from carrying out its activities, and ensure that its activities are carried out in accordance with those programs. In implementing those programs, Water NSW must

identify the objectives and targets for those programs. This section 5.1.1 requires Water NSW to report on those programs and on those objectives and targets].

Annual reporting on the certified Environmental Management System

For a certified Environmental Management System, Water NSW must submit an annual compliance and performance report (for each financial year) on its Environmental Management System to IPART (report on Certified Environmental Management System).

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

The report on Certified Environmental Management System must include:

- ▼ a summary of the objectives and targets of the Environmental Management System,
- ▼ the environmental management activities completed by Water NSW in the financial year to meet the objectives and targets of the Environmental Management System,
- ▼ the performance and outcomes of those activities,
- ▼ the environmental management activities proposed to be undertaken by Water NSW to meet the objectives and targets of the Environmental Management System in the future, including a timetable for completion and proposed performance measures, and
- ▼ any non-conformances with the Environmental Management System and the actions taken to resolve those non-conformances.

[Note: Water NSW must maintain an Environmental Management System certified to International Standard AS/NZS ISO14001: 2016 (clause 5.2 of the Licence). The standard outlines the components of an Environmental Management System, which includes identifying and developing objectives and targets for the Environmental Management System.]

This section 5.1.1 of the Reporting Manual requires Water NSW to report on how it complies with these Licence conditions. The environmental management activities referred to in this section 5.1.1 are those that Water NSW would need to undertake to achieve the objectives and targets of the Environmental Management System.]

Annual reporting on the Environmental Management System in the absence of certification

In the absence of a certified Environmental Management System, Water NSW must report to IPART each financial year on:

- ▼ the objectives and targets of the Environmental Management programs and activities, and
- ▼ programs for asset management completed by Water NSW in the financial year to meet the objectives and targets of the Environmental Management System

(Environmental Management Report).

The report must cover Water NSW's progress in maintaining its programs across the business to manage risks to the assets and meet the requirements of the Act.

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

Water NSW must report publicly on the report in accordance with section 5.3 of this Reporting Manual.

[Note: Under Clause 5.2.4 of the Licence, Water NSW must maintain programs to manage risks to the environment from carrying out its activities, and ensure that its activities are carried out in accordance with those programs. In implementing those programs, Water NSW must identify the

objectives and targets for those programs. This section 5.1.1 requires Water NSW to report on those programs and on those objectives and targets.]

Recommendation

- 30 The reporting manual includes requirements for Water NSW to prepare annual compliance and performance monitoring reports on the AMS and EMS and make this publicly available on its website.

8.3.2 State of the assets report (relevant to asset management only)

We propose that the Water NSW reporting manual should include a requirement for Water NSW to report on the state of its assets at 1 July 2017, ie at commencement of the licence, once during the licence period. We consider that this information is beneficial to stakeholders.

Options assessed

Table 8.4 Options for State of the Assets reporting

Options considered	Description
Option A (Base case)	Do not change existing reporting requirements (ie, Water NSW is required to provide a State of the Assets report for the Sydney Catchment Area only)
Option B	Include reporting obligations similar to section 5.3 of the Water NSW (SCA) reporting manual (State of the Assets reporting), with some changes, but apply it to all Water NSW's asset management activities in its Area of Operations.
Option C	Do not include a requirement for State of the Assets reporting and instead rely on output reports from the Asset Management System

Currently, Water NSW is required to submit a report to us on the state of its assets in the Sydney Catchment Area. Under the existing Water NSW (SCA) licence, Water NSW is only required to submit this report to us once during the five-year period of the Water NSW (SCA) operating licence.⁵⁴ This report provides a description of the Water NSW's assets in the Sydney Catchment, including an assessment of their capability and other major issues relating to their performance. This information is valuable to stakeholders, including IPART. However, we consider that Option A is not a feasible option because if Water NSW is to continue to report on the state of its assets, it should have to do this for all of its assets throughout its area of operations, including any assets that have been transferred to Water NSW from DPI Water. Therefore, under the Water NSW Act and new structure, this is not a feasible option.

Under Option B, we would require Water NSW to provide similar information as described above, but for all of its assets through its Area of Operations (ie, NSW). We consider that this information is valuable to stakeholders. We propose to only require that Water NSW report on the state of its assets once during its five-year term, as is similarly required in the

⁵⁴ This period commenced before the merger of the previous SCA and State Water. The Water NSW (SCA) reporting manual required that this report must cover the state of the assets as at 30 June 2015, ie, not long after the merger of the two previous organisations on 1 January 2015. When this obligation was written, it was intended to only cover the state of the previous SCA's assets.

existing Water NSW (SCA) reporting manual. However, we note that Water NSW has estimated that it will require \$84,000 annually to prepare such a report, money that could be saved if Option C were relied on instead.

To rely on outputs from the AMS rather than require State of the Assets reporting (Option C), we would require a better understanding of the kind of outputs that would be available and whether they would provide a similar or equivalent type of information as the State of the Assets report.

Preferred option

Option B is our preferred option. This option enables information on the state of the assets to be reported to stakeholders transparently. As Water NSW has recently merged from two separate organisations and has also received a number of assets from the NSW Government, it is likely there is disparity in the state of assets now under Water NSW control. We consider that the exercise of evaluating and reporting the asset base is particularly important in this environment. Placing a reporting obligation early within the term of the licence will provide information that is valuable to stakeholders (particularly IPART).

We note that Water NSW has previously stated that there are significant costs required to develop a State of the Assets report that would cover all of its assets throughout its Area of Operations. In light of this, we welcome feedback from stakeholders if they consider that Option C is preferable. However, if the state of the assets report were not required, we would require information on the type of AMS output(s) we could rely on, with an explanation of how this output would provide equivalent, information on Water NSW's assets. The wording of the proposed

Box 8.4 State of the assets reporting obligations

5.2.1 State of the assets report

Water NSW must submit a report to IPART on the state of each group of Assets managed by Water NSW (**State Of The Assets Report**). Water NSW must submit the report to IPART by 1 July 2018 or at a later date agreed to by IPART.

The State Of The Assets Report must cover the following matters as at 1 July 2017:

- ▼ a description of each group of Assets,
- ▼ Water NSW's assessment of the expected capability, including condition and criticality, of the Assets to deliver the services and to meet the existing obligations of Water NSW consistent with the Licence and all applicable laws with which Water NSW must comply,
- ▼ Water NSW's assessment of the major issues or constraints on current and future performance of the Assets,
- ▼ the strategies and expected costs of future investments in the Assets,
- ▼ Water NSW's progress in implementing the management of the Assets and any recommended improvements in processes, practices, systems and plans for the management of the Assets, and
- ▼ other such information reasonably required by IPART.

[Note: Under clause 5.1.1 of the Licence, Water NSW must maintain and implement an Asset Management System. To implement the Asset Management System, Water NSW must assess the state of the Assets and their performance in accordance with the matters listed above. This section 5.2.1 requires Water NSW to report on these matters.]

Recommendation

- 31 The reporting manual includes a requirement for Water NSW to report to IPART (once during the term of the licence) on the state of all of its assets, including those transferred to it from DPI Water.

8.3.3 Notification of AMS and EMS audits

We propose that the reporting manual require Water NSW to notify IPART prior to any precertification, certification, recertification, or surveillance audits of the AMS and EMS. This would allow us to determine if there is benefit in us attending any external audits of the AMS and EMS. As the systems-based approach to licensing is still relatively new, we consider that it is necessary to allow us the opportunity to be involved and observe audits, as may be appropriate. We may move towards more heavily relying on the outcomes of external audits as the process matures.

8.3.4 Options assessed

Table 8.5 Options for notification of AMS audits

Options considered	Description
Option A (Base case)	Do not change existing reporting requirements (ie, do not include a requirement for notification of AMS and EMS audits)
Option B	Include a new requirement for Water NSW to notify us prior to any precertification, certification, recertification, or surveillance audits.

Currently, we do not require Water NSW to notify us prior to any audits associated with its AMS and EMS. Under Option A, we could continue to not require this in the new Water NSW reporting manual. However, we note that the existing Water NSW (SCA) operating licence does not require Water NSW to have its AMS/EMS certified and certification in the Water NSW (State Water) licence is only required near the end of the licence period. As such, there is less of a need for us to be notified of any external/certification audits for the AMS/EMS.

Under Option B, Water NSW would be required to notify us prior to any precertification, certification, recertification or surveillance audits. We note that Water NSW has previously advised us that our attendance at these audits could result in extra costs, particularly if we seek to increase the scope of these audits. Water NSW has estimated that this could result in extra costs of between \$48,000 and \$60,000 to respond to any additional requests for information from IPART.

This is a notification obligation only. It is not our intention to increase the scope of external audits without justification. However, we consider that the systems-based approach to licensing is still at an early stage of implementation. In the immediate term we may not be able to rely completely on any precertification, certification, recertification or surveillance audits of the AMS/EMS. We may consider undertaking audits of high risk components of the AMS/EMS. Then, depending on audit findings and recommendations, we could consider relying more heavily on certifications for compliance monitoring in the future. During the interim, we consider that there is benefit in allowing us to attend these external audits. Our attendance would allow us comfort and certainty in the external audit process to ensure that it meets our expectations for managing assets and risks to the environment, in order for us to fulfil our reporting obligations on compliance with the licence. We are sometimes similarly involved in other utilities' system audits.

We note that the CBA indicates that by relying on external certification audits, Water NSW could save between \$216,000 and \$269,000 over the term of the licence, that it currently spends in preparing for IPART audits and in following up with IPART requests for further information. We acknowledge this benefit but as noted above, while the systems-based approach to licensing is still relatively new, we consider that this is a benefit that cannot be realised in its entirety in the immediate future. IPART's attendance at external audits will assist us to determine scope of our own future audits.

8.3.5 Preferred option

Option B is our preferred option. This option allows us the opportunity to observe precertification, certification, recertification or surveillance audits, as may be necessary. It is

not our intention to interfere with external audits without justification. Our proposed condition for notification of audits is set out in Box 8.5.

Box 8.5 Asset Management System and Environmental Management System notification obligation

5.2.2 Notification of Asset Management System and Environmental Management System audits

Prior to any precertification, certification, recertification or surveillance audits, Water NSW must provide IPART with enough notice, no less than 21 days, to allow for IPART attendance as an observer at the audit.

Recommendation

- 32 The reporting manual includes requirements for Water NSW to notify IPART of any AMS/EMS audits.

9 Customer and stakeholder relations

The sixth part of the recommended draft licence includes clauses designed to protect of customers when being supplied water by Water NSW, or when customers extract water that Water NSW captures, stores and releases. Further, it includes clauses relating to education programs that Water NSW must run to educate the community on its activities, and Memoranda of Understanding and roles and responsibilities protocols that it must maintain with different entities.

The draft recommendations that we have used to develop the draft operating licence and reporting manual are listed below. We have provided explanation and background on how we developed each of these recommendations within this chapter.

Draft recommendations for the operating licence and reporting manual:

- 33 The operating licence includes requirements for Water NSW to enter into supply agreements with all customers to whom it supplies water, throughout NSW.
- 34 The operating licence includes requirements for Water NSW to maintain water allocation accounts for each customer that holds a water licence and a notification system in relation to changes in flow release patterns.
- 35 The operating licence authorises Water NSW to operate, replace, repair, maintain, remove, connect, disconnect, or modify metering equipment that it does not own, but only by agreement with the owner, including Government funded meters.
- 36 The operating licence requires Water NSW to determine the volume of water extracted by, or supplied to, its customers.
- 37 The operating licence includes requirements for Water NSW to establish and maintain customer advisory groups and a customer advisory group charter.
- 38 The operating licence includes requirements for Water NSW to establish and maintain a customer service charter, a code of practice on payment difficulties, processes for handling customer complaints and escalating unresolved disputes with customers.
- 39 The operating licence includes requirements for Water NSW to use its best endeavours to cooperate with any licensed network operator, or retail supplier under the WIC Act, that seeks to establish a code of conduct with it.
- 40 The operating licence authorises Water NSW to undertake an educative role within the community and include terms and conditions requiring Water NSW to undertake this function consistent with the objectives of the Act.
- 41 The reporting manual requires Water NSW to report on its activities to conduct educational programs within the community.
- 42 The operating licence includes terms and conditions regulating the nature of Water NSW's Memoranda of Understanding with NSW Health and the Environment Protection Authority.

- 43 The operating licence includes terms and conditions requiring Water NSW to use its best endeavours to enter into, maintain and comply with a Memorandum of Understanding with Local Land Services.
- 44 The operating licence includes terms and conditions requiring Water NSW to use its best endeavours to enter into a Memorandum of Understanding with DPI Water to form the basis of a cooperative relationship, particularly for the role of Water NSW in the review and implementation of the Metropolitan Water Plan, and for undertaking the conferred functions.

9.1 Customer protection terms and conditions

In this section, we discuss the terms and conditions that we propose to include in the Water NSW operating licence to protect the interests of customers, to whom Water NSW *releases* or *supplies* water.

9.1.1 Customer supply agreements

As discussed in section 6.2, we consider that Water NSW should supply water in accordance with a relevant customer supply agreement. We propose that the operating licence include requirements for the inclusions of these customer supply agreements, similar to those currently in the Water NSW (SCA) operating licence, and the Water NSW (State Water) operating licence (with respect to supply of water to the Fish River Water Supply Scheme).

These customer supply agreements would apply to most of Water NSW's customers to whom it *supplies* water, except to Sydney Water. The Water NSW Act already requires Water NSW to enter into supply arrangements with Sydney Water and prescribes the inclusions for those supply agreements.⁵⁵ We consider that the operating licence does not need to have further requirements in relation to supply to Sydney Water.

Issues raised

The Issues Paper asked stakeholders if the existing customer related terms and conditions of the Water NSW (State Water and SCA) operating licences were adequate to protect customers' interests when being supplied services by Water NSW. Water NSW considered that the existing terms and conditions of the Water NSW licence were adequate to protect the customers' interests when supplying water to them. No stakeholders proposed that additional terms and conditions were necessary (eg, such as a customer contract like the one included in the Sydney Water and Hunter Water licences or requirements to enter into contracts with particular customers or groups of customers).

⁵⁵ Water NSW Act, Part 2, Division 7.

Options assessed

Table 9.1 Options for regulating Water NSW's customer supply agreements (for all supply customers except Sydney Water)

Options considered	Description
Option A (Base case)	Include Clause 6.1 of the Water NSW (SCA) operating licence and clause 5.4 of the Water NSW (State Water) operating licence in the new operating licence for specific categories of customers
Option B	Include clause 6.1 of the Water NSW (SCA) operating licence, with some edits to reflect the wording of the Water NSW Act and to incorporate relevant aspects of clause 5.4 of the Water NSW (State Water) operating licence applicable to all categories of customers

Currently, Water NSW is required to supply water to its customers in the Sydney Catchment Area in accordance with clause 6.1 of the Water NSW (SCA) operating licence and to customers of the Fish River Water Supply Scheme in accordance with clause 5.4 of the Water NSW (State Water) operating licence. These terms and conditions do not apply to Sydney Water. We consider that maintaining all of these clauses in the new operating licence is not a preferable option as many of them are similar. Therefore to avoid duplication and inconsistencies between clauses, we consider that having a combined set of requirements related to all customers to whom Water NSW *supplies* water is a preferable option.

With Option B, we propose to include the terms and conditions currently included in clause 6.1 of the Water NSW (SCA) operating licence but with some changes to incorporate the relevant aspects of clause 5.4 of the Water NSW (State Water) operating licence and updated to be consistent with the wording of the listed function 7(1)(e) of the Act. This minimises the risk of duplication between clauses within the same operating licence. The requirements are applicable to all of Water NSW's supply customers, throughout NSW, except Sydney Water. Water NSW has confirmed that this option will not result in any additional costs from current operations. However, Water NSW considered that customer supply agreements did not need to be regulated as they were negotiated individually with customers. We consider that it is important to continue to regulate the customer supply agreements in order to protect the interests of customers.

We did not consider the option to remove existing terms and conditions requiring and regulating customer supply agreements in the operating licence. We consider that it is important that Water NSW supply water in accordance with a relevant customer supply agreement to protect the interests of the customers.

Preferred option

Option B is our preferred option. It will allow us to include terms and conditions requiring and regulating customer supply agreements for all supply customers except Sydney Water, without creating a risk of duplication or inconsistencies. While the condition is drafted to contain a minimum set of requirements that the supply agreements must cover, it is not prescriptive as to how Water NSW is to achieve or agree them. This still allows Water NSW and its customers the flexibility to negotiate on the expected levels of each of the terms of the customer supply agreements.

We have included the proposed terms and conditions for inclusion in the licence, in Box 9.1.

Box 9.1 Customer Supply Agreements operating licence conditions

6.1 Customer Supply Agreements – Customers other than Sydney Water

6.1.1 Water NSW must establish and maintain Customer Supply Agreements with each of its Customers to whom it Supplies water (except Sydney Water), with terms and conditions for the Supply of water.

[Note: Under section 25 of the Act, Water NSW is required to enter into arrangements with Sydney Water regarding the Supply of water by Water NSW to Sydney Water. Therefore, the operating licence does not regulate the Supply arrangements with Sydney Water under section 25 of the Act.]

6.1.2 Water NSW must only Supply water to these Customers in accordance with the terms and conditions of these Customer Supply Agreements.

6.1.3 The terms and conditions of the Customer Supply Agreements must, at a minimum, include provisions on:

- a) water quality standard Supplied by Water NSW;
- b) the continuity of the water Supplied by Water NSW (that is, provisions relating to interruptions, disconnections and reconnections to Supply);
- c) any metering arrangements;
- d) the costs to be paid by the Customers for the Supply of water to them;
- e) dispute resolution and Complaints handling procedures; and
- f) terms and conditions preventing the person or body concerned from supplying the water for consumption by others within the State unless the person or body is authorised to do so by or under a statute or regulatory instrument (where relevant).

Recommendation

- 33 The operating licence includes requirements for Water NSW to enter into supply agreements with all customers to whom it supplies water, throughout NSW.

9.1.2 Water allocation accounts and flow release patterns change notifications

We consider that the operating licence should include requirements for Water NSW to maintain a water allocation account for each customer that holds a water licence. As we propose to authorise Water NSW to capture and store water and release water to customers, we consider that it is appropriate to include terms and conditions regulating how it undertakes this listed function. We understand that Water NSW releases water to customers who hold water licences (under the *Water Management Act 2000* or the *Water Act 1912*), when they place a water order. For billing and water management purposes, these customers must have water allocation accounts to place these water orders and receive the water. Further, as discussed in section 6.4, we consider that requiring Water NSW to maintain water allocation accounts, in combination with other proposed terms and conditions for the draft operating licence, requires Water NSW to capture, store and release water to its existing, and any interested prospective, customers. We consider that this is a regulatory

gap that is important for the operating licence to bridge for the protection of Water NSW's customers.

We also consider that the operating licence should include requirements to maintain an effective system to provide advance notification of any significant changes to flow patterns from its water management works to stakeholders who have registered to be notified of such changes.

Issues raised

We did not seek specific feedback in the Issues Paper on the management of water allocation accounts or a notification system for flow release patterns. In general we sought feedback about the existing terms and conditions of the Water NSW (State Water) operating licence relating to the capture, store and release of water, which include these requirements. Stakeholders considered that it was valuable to include these terms and conditions in the new operating licence.

Options assessed

Table 9.2 Options for regulating how Water NSW manages water allocation accounts and a notification system for changes in flow release patterns

Options considered	Description
Option A (Base case)	Include clauses 3.1.2 and 3.2 of the existing Water NSW (State Water) operating licence in the new operating licence applicable outside the Sydney Catchment Area only
Option B	Include clauses 3.1.2 and 3.2 of the existing Water NSW (State Water) operating licence in the new operating licence, with some minor changes, applicable throughout Water NSW's area of operations
Option C	Do not include clauses 3.1.2 and 3.2 of the existing Water NSW (State Water) operating licence in the new operating licence

Currently, Water NSW is required to maintain a water allocation account for each access licence held by a customer and issued under the *Water Management Act 2000* and each management licence issued under the *Water Act 1912*. Further, Water NSW must maintain an effective system to provide advance notification of any significant changes to flow release patterns from its water management works, to customers and other stakeholders that have registered to be notified of such changes. These requirements are only applicable outside the Sydney Catchment Area. With Option A, we could retain this approach in the new operating licence. However, we consider Option B is preferable because these requirements will be applicable throughout Water NSW's area of operations, wherever it captures, stores and releases water.

We consider that Option C is not a preferable approach. As we propose to authorise Water NSW to capture and store water, and release water to its customers, we consider that it is important to have appropriate terms and conditions to regulate how it undertakes this function. We consider that by requiring Water NSW to maintain water allocation accounts for customers that hold water licences, Water NSW must maintain a system by which customers' water orders are tracked and water is released in response to these orders. We

consider that the notification system provides valuable flow release information to stakeholders and assists to improve transparency of Water NSW's operations.

Preferred option

Option B is our preferred option. The proposed terms and conditions for inclusion in the licence are set out in Box 9.2.

Box 9.2 Water allocation accounts and flow release patterns change notifications operating licence conditions

6.2 Accounting for water

6.2.1 Water NSW must maintain a Water Allocation Account for each Customer that holds a Water Licence.

6.4 Advance notification of changes to flow release patterns

6.4.1 Water NSW must maintain an effective system to provide advance notification of any significant changes to flow release patterns from its Water Management Works, to Customers and other stakeholders that have registered to be notified of such changes.

Recommendation

- 34 The operating licence includes requirements for Water NSW to maintain water allocation accounts for each customer that holds a water licence and a notification system in relation to changes in flow release patterns.

9.1.3 Water metering and monitoring

We consider that the operating licence should authorise Water NSW to operate, replace, repair, maintain, remove, connect, disconnect, or modify metering equipment that it does not own. The Water NSW Act allows that an operating licence can make provisions to allow this activity.⁵⁶

Issues raised

In the Issues Paper, we sought feedback from stakeholders on whether it was appropriate to authorise Water NSW to operate, replace, repair, maintain, remove, connect, disconnect, or modify metering equipment that it does not own, as allowed in the Water NSW Act.

We received responses from Water NSW, the NSW Government, Sydney Water and the NSW Irrigators' Council. Water NSW and Sydney Water considered that there was benefit in authorising this activity as Water NSW may sometimes be contracted by customers to undertake the activity for customer-owned meters. However, Sydney Water considered that it would be appropriate to allow Water NSW to undertake this activity only with the agreement of the customer. We note that the NSW Irrigator's Council considered that Water NSW should not be authorised to undertake this activity for customer-owned meters,

⁵⁶ Water NSW Act section 31(1).

only for government-funded meters. However, it did not provide further reasoning for this position.

The NSW Government stated that on 1 July 2016 the Water NSW (State Water) operating licence had been updated to allow Water NSW to undertake this activity for any metering equipment installed under a government funded meter program. Further, we note that Water NSW could undertake this activity, or part of it, for metering equipment where provided for in an agreement between Water NSW and the Minister, or DPI Water.

Options assessed

Table 9.3 Options for regulating Water NSW's water metering and monitoring functions, in relation to meters that it does not own

Options considered	Description
Option A (Base case)	Maintain clause 4.2 of the existing Water NSW (State Water) operating licence and 5.2 of the Water NSW (SCA) operating licence
Option B	Authorise Water NSW to operate, replace, repair, maintain, remove, connect, disconnect, or modify metering equipment that it does not own, and include new terms and conditions regulating how it undertakes this function
Option C	Do not authorise Water NSW to operate, replace, repair, maintain, remove, connect, disconnect, or modify metering equipment that it does not own, and do not include any terms and conditions regulating how it undertakes this function

Under its existing licences, Water NSW is only authorised to operate, replace, repair, maintain, remove, connect, disconnect, or modify metering equipment that it does not own if it has been installed under a government-funded meter program. For customer meters, Water NSW is only authorised and required to read each of the meters. For other meters, Water NSW is required to read the metering equipment, determine water extraction, and carry out any other specified water monitoring functions if set out in an agreement between Water NSW and the Minister or DPI Water. Both of the Water NSW (State Water and SCA) operating licences include the same provisions so that they are applicable across the whole of Water NSW's area of operations. With Option A, we could maintain these current requirements in the new operating licence.

With Option B, we propose to simplify the provisions of the existing licences, in the new operating licence. We propose to authorise Water NSW to operate, replace, repair, maintain, remove, connect, disconnect, or modify metering equipment that it does not own, but before it does so, it must obtain the agreement of the owner of the equipment. We consider that this would include both government-funded and customer-owned (including, for example, Sydney Water owned meters) metering equipment allowing Water NSW to be contracted by customers to undertake this activity for customer-owned meters. It also allows Water NSW to undertake the activity of its own initiative for customer-owned meters where it considers that it is necessary; however, it must obtain the agreement of the customer first.⁵⁷ Water NSW considered that this would not substantially impact its current operational costs.

⁵⁷ Where it cannot obtain the agreement of the customer, but the meter is considered faulty Water NSW has been conferred functions under s 326(1) of the *Water Management Act 2000* to direct a landholder or person to take specified measures to install, replace or to properly maintain metering equipment.

We also propose to remove the requirement for Water NSW to *read* its customer meters and instead to determine the volume of water extracted by, or supplied to, its customers for the purpose of accurate account management billing and reporting. This is a more flexible approach that would more easily include circumstances such as remote collection of metered data, and not just physical meter readings by operational staff. Water NSW considered that this option would not substantially impact on its current operational costs and would likely enable savings in terms of removing the requirement for physical meter reading.

We consider that the existing requirements to read/determine extractions that relate only to meters where agreed with the Minister or DPI Water⁵⁸ are unnecessary. We consider that if an agreement is in place for a particular meter, the terms and conditions of that agreement will enable both parties to ensure the agreement is adhered to and this does not need further regulation in the operating licence. Further, we have introduced a requirement for a roles and responsibilities protocol with DPI Water (refer Chapter 9). Terms and conditions relating specifically to metering could be included within the protocol.

We consider that Option C is not to be preferred as Water NSW needs to continue to be able to undertake this activity for some of the meters that it does not own, such as the government-funded meters. Further, restricting the authorisation to only government-funded meters does not ensure longevity of the licence in the case that Water NSW and a customer have mutually agreed for Water NSW to undertake this activity on the customer's meter.

Preferred option

Option B is our preferred option. It will allow us to include terms and conditions relating to Water NSW's water metering and monitoring activities that are more flexible than those in the existing licence. It will allow Water NSW to operate, replace, repair, maintain, remove, connect, disconnect, or modify all metering equipment that it does not own, subject to agreement from the customer owner (including relevant government departments in the case of government owned meters).

It will also, more generally, require Water NSW to determine the volume of water extracted by, or supplied to, its customers.

The proposed terms and conditions for inclusion in the licence are in Box 9.3.

⁵⁸ Water NSW (State Water and SCA) operating licences, clause 4.2.2

Box 9.3 Water metering and monitoring operating licence conditions

6.3 Water metering and monitoring

6.3.1 Water NSW must determine the volume of water Extracted by, or Supplied to, each of its Customers, at least annually, for the purpose of accurate account management, billing and reporting.

6.3.2 Prior to Water NSW operating, replacing, repairing, maintaining, removing, connecting, disconnecting or otherwise modifying Metering Equipment it does not own, it must obtain the agreement of the owner of that equipment.

[Note: In accordance with section 31(1) of the Act and clause 1.2.5 of this Licence Water NSW is authorised to operate, replace repair, maintain, remove, connect, disconnect or modify Metering Equipment that Water NSW does not own. Water NSW must only exercise this authority in accordance with this condition.]

Recommendations

- 35 The operating licence authorises Water NSW to operate, replace, repair, maintain, remove, connect, disconnect, or modify metering equipment that it does not own, but only by agreement with the owner, including Government funded meters.
- 36 The operating licence requires Water NSW to determine the volume of water extracted by, or supplied to, its customers.

9.1.4 Customer advisory groups and charter

We consider that the operating licence should include requirements for Water NSW to establish and maintain area-based customer advisory groups. Water NSW must regularly consult with these advisory groups to allow customer involvement in issues relevant to Water NSW's performance and provision of services (ie, *release* and *supply* of water to customers). These groups provide a platform for customers to provide feedback to Water NSW about its services. In this way, inclusion of these requirements protects customers' interests. These customer advisory groups are relevant to all of Water NSW's customers, to whom it both *releases* and *supplies* water.

The proposed requirements for the customer advisory groups are similar to those in the existing Water NSW (State Water) operating licence which relates to existing customer service committees (for customers outside the Sydney Catchment Area to whom water is *released* only) and a customer council for the Fish River Water Supply Scheme. However the existing requirements do not cover *supply* customers in the Sydney Catchment Area. We consider that this is a gap that can be addressed in the new operating licence.

Further, we consider that the operating licence should require a customer advisory group charter. This is consistent with similar requirements of other public water utility operating licences.⁵⁹ Water NSW can choose to maintain one charter for all customer advisory groups or have multiple charters for the different groups. The operating licence should include the minimum requirements for the customer advisory group charter including, for example, the role of the customer advisory group, membership and how these

⁵⁹ For example, Sydney Water operating licence clause 5.5 which requires a customer council charter.

members and the chair will be appointed, the term for which members are appointed, and information on how the customer advisory group will operate. This will allow clarity and transparency in how the customer advisory groups function.

Issues raised

The Issues Paper sought feedback on the appropriateness of including terms and conditions in the new operating licence, with regard to customer advisory groups, similar to the existing requirements of the Water NSW (State Water) operating licence.

We received responses from Water NSW and NSW Irrigators' Council. Both the stakeholders generally considered that requiring specific customers or groups of customers to be invited to the customer advisory groups is beneficial. They considered that this would provide for different types of customers to be represented, ideally representing all types of customers, and this allows, Water NSW to be aware of different customers' issues and needs. However, Water NSW observed that currently the customer service committees had large representation from Government agencies and not enough from customers.

Options assessed

Table 9.4 Options for regulating Water NSW's customer advisory groups

Options considered	Description
Option A (Base case)	Include clauses 5.1 and 5.3 of the Water NSW (State Water) operating licence for customers outside the Sydney Catchment Area only
Option B	Include clause 5.1 of the Water NSW (State Water) operating licence, with some edits to incorporate relevant aspects of clause 5.3 of the Water NSW (State Water) operating licence, (eg, revised membership of customer committees, include a new requirement for Water NSW to maintain a customer advisory group charter(s), apply requirements to all of Water NSW's customers throughout NSW)
Option C	Do not include any terms and conditions related to customer advisory groups

Currently, under the Water NSW (State Water) operating licence, Water NSW is required to maintain customer service committees and a customer council for its customers outside the Sydney Catchment Area. Water NSW is not required to do this for its customers in the Sydney Catchment Area. We consider that maintaining these requirements in the new operating licence, under Option A, is not preferable. We consider that it would be preferable to combine the requirements of clauses 5.1 and 5.3 of the existing Water NSW (State Water) licence, as appropriate, and make changes so that they are applicable to all of Water NSW's *supply* and *release* customers.

We consider it is not necessary to maintain all of the requirements of clause 5.3 in the new operating licence as these relate specifically to the membership of the Fish River Water Supply Scheme Customer Council. We consider that retaining two sets of similar requirements for different categories of customer councils within one operating licence is unnecessary. Rather, one more generic requirement for conditions applying to all customer advisory groups is preferable.

With Option B, we propose to modify the terms and conditions based on those currently included in clause 5.1 of the existing Water NSW (State Water) licence with greater

consistency with other public water utility licences. We also propose revising the membership of the customer groups to more generic groups that Water NSW must invite to be part of the advisory groups. We consider that not specifying particular stakeholders will minimise the risk that all customers are not being fairly represented at the advisory groups. In revising the membership of the customer advisory groups, we have not changed the intent to have a representative sample of customers in each group. We have ensured that all customers that were previously specifically named can continue to be represented by being effectively included within one or more of the customer categories. Further where we have removed a Government agency which is not a customer (such a DPI Water or Local Land Services) we have ensured that the relationship between the agencies continues to be maintained and recognised within the operating licence by introducing a requirement for a Memoranda of Understanding or roles and responsibilities protocol, which is a more appropriate form of maintaining communication between the agencies. This will allow customer advisory groups to better represent the needs of customers as they relate to Water NSW.

Further, we propose to include requirements related to the customer advisory group charter to promote uniformity as to how the advisory groups are managed. Water NSW has confirmed that this option will not result in any additional costs relative to current operations.

We consider that Option C is not preferred. We consider that customer advisory groups are important for considering and discussing customers' interests in relation to the services provided by Water NSW. They allow customers the opportunity to interface with Water NSW to discuss issues. We understand that currently, no other instrument requires such groups.

Preferred option

Option B is our preferred option. It will allow us to include terms and conditions requiring customer advisory groups, and an associated charter for running these groups, for all customers to whom Water NSW *releases* and *supplies* water.

The proposed terms and conditions for inclusion in the licence are Box 9.4.

Box 9.4 Customer advisory group operating licence conditions

6.5 Customer advisory groups

6.5.1 Water NSW must establish and maintain area-based customer advisory groups representing a broad cross-section of its Customers for those areas.

6.5.2 Water NSW must regularly consult with the area-based customer advisory groups to enable Customer involvement in issues relevant to the performance of Water NSW's obligations to Customers under this Licence or the Customer Service Charter, obtain advice on the interests of Water NSW's Customers and such other key issues relating to Water NSW's planning and operations as Water NSW may determine consistent with the Customer Advisory Group Charter(s) (referred to in clause 6.6.1 of this Licence.)

6.5.3 For each customer advisory group, Water NSW must:

- a) ensure that, all times, the membership of the customer advisory groups is appointed and determined by Water NSW in accordance with the Customer Advisory Group Charter; and
- b) use its best endeavours to include as members of the customer advisory groups at least one person representing each of the following categories (where there are Customers in this category for the area associated with the customer advisory group):
 - i) stock and domestic users
 - ii) Customers which are Regulated River water users
 - iii) Customers which are Unregulated River water users
 - iv) Customers which are groundwater users
 - v) environmental water holders
 - vi) environmental users or groups
 - vii) industrial and commercial Customers
 - viii) Local Water Utilities
 - ix) Major Utilities
 - x) volumetric categories of users (small/medium/large)
 - xi) Indigenous Australians

6.5.4 Water NSW must provide the customer advisory groups with adequate information within its possession or under its control necessary to enable the customer advisory groups to discharge the tasks assigned to them other than information or documents that are confidential (including documents that are subject to client legal privilege).

6.6 Customer Advisory Group Charter

6.6.1 Water NSW must, in consultation with relevant area-based customer advisory groups, establish and maintain a customer advisory group charter in accordance with this clause 6.6 (Customer Advisory Group Charter). Water NSW may have one or more Customer Advisory Group Charters, for different customer advisory groups, as it deems appropriate.

6.6.2 The Customer Advisory Group Charter must address all of the following issues:

- a) the role of the customer advisory group;
- b) how members and the Chair of the customer advisory group will be appointed;
- c) the term for which members are appointed;
- d) information on how the customer advisory group will operate;
- e) a description of the type of matters that will be referred to the customer advisory group and how those matters will be referred;
- f) procedures for communicating the outcomes of the customer advisory groups' work to the public;
- g) procedures for monitoring issues raised at meetings of the customer advisory groups and ensuring appropriate follow-up of those issues;
- h) procedures for amending the charter; and
- i) funding and resourcing of the customer advisory groups by Water NSW.

6.6.3 Water NSW or any member of the customer advisory groups may propose any amendments to the Customer Advisory Group Charter(s). However, such amendments will not be effective until they have been approved by the relevant customer advisory group.

Recommendation

- 37 The operating licence includes requirements for Water NSW to establish and maintain customer advisory groups and a customer advisory group charter.

9.1.5 Customer service charter

We consider that the operating licence should include requirements for Water NSW to establish and maintain a customer service charter. The purpose of the charter will be to set out the mutual responsibilities of Water NSW and its customers for the provision of services to customers.

We propose that *supply* customers should be excluded from this requirement. Our proposal that there be a customer supply agreement for all customers who are supplied water, negates the need for a customer service charter.

The purpose of the customer service charter is similar to the customer supply agreement, ie, to protect the interests and rights of the customers being provided services by Water NSW.

The customer service charter should therefore only be required for customers to whom Water NSW *releases* water.

Issues raised

In the Issues Paper, we sought feedback on the appropriateness and value of the existing requirements of the Water NSW (State Water) operating licence related to the customer service charter. The Water NSW submission considered that these requirements were adequate and valuable. In response to the Issues Paper question about customer contracts, Water NSW expressed a view that the Act is not structured in the same way as the Sydney and Hunter Water Acts which include deeming provisions, therefore its view is that formal customer contracts were not feasible under the Act.

Options assessed

Table 9.5 Options for regulating Water NSW's customer service charter

Options considered	Description
Option A (Base case)	Include Clause 5.2 of the Water NSW (State Water) operating licence in the new operating licence for customers outside the Sydney Catchment Area only
Option B	Include Clause 5.2 of the Water NSW (State Water) operating licence in the new operating licence, updated, for all of Water NSW's capture, store and release customers throughout NSW
Option C	Do not include terms and conditions requiring a customer service charter

Currently, under the Water NSW (State Water) operating licence, Water NSW is required to maintain a customer service charter that sets out the mutual responsibilities and obligations of Water NSW and its customers. These requirements only relate to the customers outside the Sydney Catchment Area to whom Water NSW *captured and stored water and released water*. We consider that maintaining these requirements in the new operating licence, under

Option A is not preferred because it excludes the possibility of capture, store and release customers within the Sydney Catchment Area in the future. All of Water NSW's customers receiving the same function throughout NSW should be protected by the customer service charter.

With Option B, we propose to include the same terms and conditions as in Option A, but we will not constrain where these requirements apply. However, we propose that Water NSW will not need to have customer service charters covering customers with whom it has established customer service agreements, as they serve a similar purpose. In effect, Water NSW's customer service charter will cover customers to whom it *releases* water, because we have proposed that the operating licence require Water NSW to enter into a relevant customer supply agreement with all customers to whom it *supplies* water. We also propose some other minor edits to allow consistency with similar requirements of other public water utility operating licences. Water NSW has confirmed that this option will not result in additional costs relative to current operations.

We consider that Option C is not a preferable option. We consider that a customer service charter is important for protecting customers' interests when receiving services from Water NSW. Similar to a supply agreement, it sets out the mutual responsibilities of both Water NSW and the customer. This provides clarity, transparency, and information to mitigate any issues with provision of services. We understand that currently, no other instrument requires Water NSW to have a customer service charter.

Preferred option

Option B is our preferred option, in combination with a requirement to have customer supply agreements for all supply customers. The customer service charter seeks to protect the interests of customers by establishing the mutual responsibilities of Water NSW and the customer, in providing and receiving services. In this way, it acts similarly to a customer supply agreement.

The proposed terms and conditions for inclusion in the licence, are set out in Box 9.5.

Box 9.5 Customer service charter operating licence conditions

6.7 Customer Service Charter

- 6.7.1 Water NSW must, in consultation with relevant Customers and/or customer advisory groups, establish and maintain a customer service charter (Customer Service Charter) in accordance with this clause 6.7. Water NSW may have one or more Customer Service Charters, for different categories of Customers, as it deems appropriate.
- 6.7.2 The Customer Service Charter(s) must set out the mutual responsibilities of Water NSW and its Customers consistently with this Licence, the Act, the *Water Management Act 2000* (NSW), the *Water Act 1912* (NSW) and any other applicable law.
- 6.7.3 Water NSW must make the Customer Service Charter available free of charge on its website for downloading by any person.

[Note: Where Water NSW has established a Customer Supply Agreement with a Customer (or category of Customers), a Customer Service Charter covering that Customer or category of Customers is not required.]

9.1.6 Handling payment difficulties

We consider that the operating licence should include requirements for Water NSW to maintain and implement a code of practice on payment difficulties, and make this code, or information on the code, easily accessible for customers. A code of practice on payment difficulties is to protect the interests of customers. The code would also provide customers information on methods of repayment and will explain the circumstances under which Water NSW may restrict provision of services to the customers. These circumstances must be reasonable, giving the customer opportunities to repay any outstanding debts.

We propose that these requirements should be similar to the existing requirements of the Water NSW (State Water) operating licence, but should apply to all customers to whom Water NSW provides services.

Issues raised

In the Issues Paper, we sought feedback about whether the existing requirements of the Water NSW (State Water) operating licence were fair and adequate to protect customers experiencing financial hardship. We only received a response from Water NSW which considered that its existing code of practice was fair and adequate. Further, it considers that it is adequately communicated as it is available on Water NSW's website. Further, Water NSW currently provides information about the code in its customer service charter.

Options assessed

Table 9.6 Options considered for regulating a code of practice on payment difficulties

Options considered	Description
Option A (Base case)	Include Clause 5.5 of the Water NSW (State Water) operating licence in the new operating licence for customers outside the Sydney Catchment Area only.
Option B	Include Clause 5.5 of the Water NSW (State Water) operating licence in the new operating licence, with some updates, to apply to all of Water NSW's customers throughout NSW.
Option C	Do not include terms and conditions related to a code of practice on payment difficulties

Currently, under the Water NSW (State Water) operating licence, Water NSW is required to maintain a code of practice on payment difficulties for its customers outside the Sydney Catchment Area, to whom it *releases* water. We consider that maintaining these requirements in the new operating licence, under Option A is not preferable. All of Water NSW's customers throughout NSW should be protected by the code of practice on payment difficulties, if they experience difficulty paying for services at any time.

With Option B, we propose to include the same terms and conditions as in Option A, but we will not constrain where these requirements apply. We also propose some other minor edits to allow consistency with similar requirements of other public water utility operating licences. Water NSW has confirmed that this option will not result in additional costs relative to current operations.

We consider that Option C is not a preferable option. We consider that a code of practice on payment difficulties is important for protecting customers' interests when receiving services

from Water NSW. We understand that currently, no other instrument requires Water NSW to adopt such a code.

Preferred option

Option B is our preferred option. It will allow us to include terms and conditions requiring Water NSW to establish a code of practice on payment difficulties. The code of practice seeks to protect the interests of customers by articulating assistance that customers can receive to pay debts and the circumstances in which Water NSW may restrict their access to services.

The proposed terms and conditions for inclusion in the licence are set out in Box 9.6.

Box 9.6 Code of practice on payment difficulties operating licence conditions

6.8 Code of Practice on Payment Difficulties

6.8.1 Water NSW must maintain and fully implement a code of practice that assists Customers experiencing financial hardship to better manage their current and future Bills (**Code of Practice on Payment Difficulties**) in accordance with this clause 6.8.

6.8.2 The Code of Practice on Payment Difficulties must:

- a) provide for a payment plan for Customers who are responsible for paying their Bills and who are, in Water NSW's reasonable opinion, experiencing financial hardship;
- b) include procedures for identifying the circumstances under which Water NSW may restrict the provision of services to a customer (including Supply of water or the Capture and Storage of Water and Release of Water);
- c) include procedures for identifying the circumstances under which Water NSW may suspend water access licences, and an overview of the process that must be followed prior to suspension; and
- d) include procedures for self-identification, identification by community welfare organisations and identification by Water NSW of Customers experiencing financial hardship.

6.8.3 Water NSW must set out details of the Code of Practice on Payment Difficulties in the Customer Service Charter, or, where a Customer Supply Agreement is established in respect of a Customer, in that Customer Supply Agreement.

6.8.4 Water NSW must provide, free of charge, information on the Code of Practice on Payment Difficulties:

- a) to Customers, at least once annually with their Bills; and
- b) to Customers whom Water NSW identifies as experiencing financial hardship on the date that Water NSW first identifies that the Customer is experiencing financial hardship; and
- c) on its website for downloading by any person.

9.1.7 Handling customer complaints

We consider that the operating licence should include requirements for Water NSW to maintain and implement a procedure for receiving, responding to and resolving complaints. Further, Water NSW must make information on the procedure easily available to customers.

The operating licence should also include requirements for Water NSW to be a member of the Energy and Water Ombudsman NSW (EWON) to allow external resolution of disputes between Water NSW and its customers. Water NSW should prepare information on the dispute resolution service provided by EWON and make it easily available to its customers.

Similar terms and conditions are included in the existing Water NSW operating licences. The purpose of these requirements is to further protect the interests of customers, providing mechanisms for customers to make complaints about services Water NSW provides and to escalate any unresolved issues. The conditions are subject to audit, and further, we consider that these requirements complement the other customer requirements proposed, including the requirements for customer advisory groups.

Issues raised

The Issues Paper, sought feedback about the practicality for Water NSW to be able to maintain one internal complaints handling procedure for all of its customers, following the merger of the previous State Water and SCA. Water NSW responded that it considered it appropriate to adopt the previous State Water's customer complaints handling procedure to cover Water NSW's entire customer base.

We further, asked stakeholders whether EWON was the appropriate external dispute resolution scheme to specify in the operating licence. Water NSW confirmed it considered that EWON was appropriate. Water NSW currently makes information about the EWON scheme available to customers on its website, and annually through customer bills, as currently required by the Water NSW (State Water) operating licence.

No submissions proposed including additional terms and conditions in the operating licence relating to the protection of customers.

Options assessed

Table 9.7 Options for regulating Water NSW's customer advisory groups

Options considered	Description
Option A (Base case)	Include clauses 5.6 and 5.7 of the Water NSW (State Water) operating licence for Water NSW's customers outside the Sydney Catchment Area and clause 6.2 of the Water NSW (SCA) operating licence in the new operating licence for customers within the Sydney Catchment Area
Option B	Include clauses 5.6 and 5.7 of the Water NSW (State Water) operating licence in the new operating licence, with some updates, for all of Water NSW's customers throughout NSW
Option C	Do not include terms and conditions related to complaints handling and external dispute resolution

Currently, for customers outside the Sydney Catchment Area, Water NSW is required to manage complaints in accordance with clause 5.6 of the Water NSW (State Water) operating licence and escalate any unresolved disputes to EWON in accordance with clause 5.7 of the Water NSW (State Water) operating licence. For customers within the Sydney Catchment Area, Water NSW must manage complaints in accordance with clause 6.2 of the Water NSW (SCA) operating licence. This licence does not require Water NSW to escalate any unresolved disputes to an external resolution body. We consider that maintaining all of these clauses in the new operating licence, under Option A, is not a preferable option. The complaints handling terms and conditions are similar, yet there is a gap in resolving disputes externally for customers in the Sydney Catchment Area. Therefore to avoid duplication and inconsistencies between clauses, we prefer to have a combined set of requirements related to all customers to whom Water NSW provides services.

With Option B, we propose to include the terms and conditions currently included in clauses 5.6 and 5.7 of the Water NSW (State Water) operating licence but revised with some changes to incorporate the relevant aspects of clause 6.2 of the Water NSW (SCA) operating licence. This minimises the risk of duplication and inconsistencies between clauses within the same operating licence, or any gaps. These combined requirements are applicable to all of Water NSW's customers across NSW. We have also proposed some minor changes to the existing clauses for consistency with similar requirements of other public water utility operating licences. Water NSW has confirmed that this option will not result in any additional costs from current operations.

We consider that Option C is not a preferable option. We consider that complaints handling and external dispute resolution processes are important for protecting customers' interests when receiving services from Water NSW. We understand that currently, no other instrument requires Water NSW to adopt such processes.

Preferred option

Option B is our preferred option. It will allow us to include terms and conditions requiring Water NSW to establish and implement processes for dealing with customer complaints and for escalation of unresolved disputes.

The complaints handling procedure must be consistent with the *Australian Standard AS/NZS 10002-2014: Customer satisfaction Guidelines for complaints handling in organisations (AS/NZS 10002:2014, MOD)*. Water NSW must make information on this process available to its customers.

Water NSW must be a member of the EWON scheme and provide information on EWON's dispute resolution service to its customers.

The proposed terms and conditions for inclusion in the licence are set out in Box 9.7.

Box 9.7 Complaints handling operating licence conditions

6.9 Internal Complaints Handling Procedure

6.9.1 Water NSW must maintain a procedure for receiving, responding to and resolving

Complaints, which is consistent with the *Australian Standard AS/NZS 10002-2014: Customer satisfaction Guidelines for complaints handling in organisations* (AS/NZS 10002:2014, MOD) (**Internal Complaints Handling Procedure**).

- 6.9.2 Water NSW 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.
- 6.9.3 Water NSW must provide to Customers, at least annually with their Bills, information concerning internal Complaints handling, which explains how to make a Complaint and how Water NSW will receive, respond to and resolve Complaints.
- 6.9.4 Water NSW must make the information concerning internal Complaints handling referred to in clause 6.9.3 available to any person, free of charge, on its website for downloading

6.10 External dispute resolution scheme

- 6.10.1 Water NSW must be a member of the Energy and Water Ombudsman of NSW to facilitate the resolution, by a dispute resolution body, of disputes between Water NSW and its Customers.
- 6.10.2 Water NSW must
- a) prepare information that explains the dispute resolution service provided by the Energy and Water Ombudsman of NSW, including any right to have a Complaint or dispute referred to the Energy and Water Ombudsman of NSW and how such a Complaint or dispute can be assessed;
 - b) provide the information prepared under clause 6.10.2(a), free of charge to Customers at least once a year with their Bills; and
 - c) make the information prepared under clause 6.10.2(a) available to any person, free of charge, on its website for downloading.

Recommendation

- 38 The operating licence includes requirements for Water NSW to establish and maintain a customer service charter, a code of practice on payment difficulties, processes for handling customer complaints and escalating unresolved disputes with customers.

9.1.8 Code of conduct with Water Industry Competition Act licensees

We consider that the operating licence should include requirements for Water NSW to use its best endeavours to cooperate with licensees under the *Water Industry Competition Act 2006* (WIC Act) that seek to establish a code of conduct under their licences.

Water NSW is not currently required to enter into a code of conduct with WIC Act licensees under its existing Water NSW (State Water or SCA) operating licences. However, we consider that this is currently a gap. As a standard requirement of WIC Act licences, where the Minister has not established a code of conduct under clause 25 of the WIC Regulation, licensees are required to establish a code of conduct with any other WIC Act licensee or public water utility that supplies it water (or other services). To facilitate this, we consider that any public water utility that supplies WIC Act licensees with water should be required to use its best endeavours to cooperate with the WIC Act licensees to establish the code of conduct with them. We propose that this requirement should apply to WIC Act licensees

anywhere within Water NSW's area of operations. If the Minister has established a code of conduct under clause 25 of the WIC Regulation, this requirement will not apply because the Minister will specify the respective responsibilities of the utilities involved in the code of conduct.

Issues raised

In the Issues Paper we sought feedback from stakeholders on any terms and conditions that could be included in the new operating licence to regulate supply of water to WIC Act licensees.

We received responses from Water NSW and Sydney Water which both indicated that the existing terms and conditions of the Water NSW operating licences were sufficient to regulate supply of water to customers in general, which could include WIC Act licensees. The NSW Government submission noted that other public water utilities, such as Sydney Water, were required to use its best endeavours to establish codes of conduct with WIC Act licensees. However, the submission considered that the requirements of the Sydney Water licence were comparable to the requirements of the existing Water NSW (SCA) operating licence. This suggests that the submission considered that additional requirements related to WIC Act licensees were unnecessary.

Options assessed

Table 9.8 Options for regulating Water NSW's customer advisory groups

Options considered	Description
Option A (Base case)	Do not include any terms and conditions related to a code of conduct with licensees under the WIC Act
Option C	Include terms and conditions requiring Water NSW to use its best endeavours to cooperate with any licensed network operator or retail supplier under the WIC Act that seeks to establish a code of conduct with it.

Currently, Water NSW is not required to establish any codes of conduct with WIC Act licensees. With Option A, the operating licence could continue to remain silent with regard to a code of conduct with WIC Act licensees. This is consistent with the submissions that we received in response to the Issues Paper. However, we consider that this would not be the preferable option because WIC Act licensees require licenses to enter into a code of conduct with water suppliers. This is difficult to do without the cooperation of the public water utility.

Similarly to our approach for the recent Sydney Water operating licence and draft Hunter Water operating licence we propose in Option B, ie, to include a condition requiring Water NSW to use its best endeavours to cooperate with any WIC Act licensee that seeks to establish a code of conduct with Water NSW. This cooperation facilitates the code of conduct that WIC Act licensees are required to establish. Water NSW considers that this new requirement will not result in substantial costs relative to its existing operations. However, Water NSW queried the necessity for this clause as it stated it has not historically been approached by WIC Act licensees to establish any codes of conduct. We acknowledge this position. While we note that other stakeholders also queried the necessity of this

inclusion, we consider that including the requirement will allow longevity of the licence, in the event that Water NSW commences supply of water to WIC Act licensees, and the WIC Act licensee is required to establish such a code of conduct with Water NSW. We consider that the existing Water NSW operating licences do not already place obligations on Water NSW in relation to a code of conduct.

Preferred option

Option B is our preferred option. It will facilitate the establishment of a code of conduct with a WIC Act licensee, where Water NSW supplies water to the licensee and where the licensee is required to establish such a code.

The proposed terms and conditions for inclusion in the licence are set out in Box 9.8

Box 9.8 WIC Act code of conduct licence conditions

6.12 Code of Conduct with WIC Act licensees

6.12.1 Water NSW must use its best endeavours to cooperate with any Licensed Network Operator or Licensed Retail Supplier that seeks to establish with Water NSW a code of conduct required under a licence under the WIC Act.

Recommendation

- 39 The operating licence includes requirements for Water NSW to use its best endeavours to cooperate with any licensed network operator, or retail supplier under the WIC Act, that seeks to establish a code of conduct with it.

9.1.9 Reporting manual – customers

In general, in section 6.1 of the reporting manual we have retained Water NSW's annual compliance and performance reporting requirements from its existing Water NSW (State Water and SCA) reporting manuals and combined them so that all of the reporting obligations are applicable to all of Water NSW's activities, in relation to customers, under the operating licence.

The annual compliance and performance report in relation to customers must include any systematic problems arising from customer complaints and the action taken to resolve them, and any proposed significant changes to the customer advisory group charter, the customer service charter, code of practice on payment difficulties, the internal complaints handling procedure and the external dispute resolution scheme. We consider that this aids transparency and is valuable information to stakeholders. Further, it assists to inform future operational audits.

9.2 Education Programs

We consider that Water NSW should be authorised to undertake an educative role within the community. The Water NSW Act states that this is a listed function.⁶⁰

Currently, Water NSW is authorised to undertake this function under the Water NSW (SCA) operating licence. This is because, historically, the now repealed *Sydney Water Catchment Management Act 1998* included it as a function of the previous SCA. We consider that it is important to authorise Water NSW to continue to undertake this function as no other instrument currently authorises it. By authorising this function, Water NSW is able to conduct educational programs within the community on its role and activities, such that the community can interact with Water NSW and participate in discussions effectively. This is particularly relevant with regard to catchment management as the community can have an impact on the health of a catchment. However, as the Act does not specifically define or constrain this function to its catchment management activities we have not sought to do so either. This will mean that educational activities not currently undertaken can be expanded, if desired.

We propose that the educational activities should be undertaken consistent with the objectives under the Act. We also propose that Water NSW should be required to report annually on its community education practices (both actual and planned). Reporting requirements are discussed further in section 9.3 of this report.

9.2.1 Issues raised

The Issues Paper asked whether Water NSW should be authorised to undertake an educative role within the community.

We received responses from Water NSW, Sydney Water and the NSW Government. These three stakeholders consider that the operating licence should authorise Water NSW to educate the community, which is a normal and expected part of running a State owned corporation. Further, Sydney Water and the NSW Government considered that no terms and conditions were necessary to regulate how it undertakes an educative role within the community.

9.2.2 Options assessed

Table 9.9 Options for authorising and regulating education programs

Options considered	Description
Option A (Base case)	Authorise Water NSW to educate the community within the Sydney Catchment Area, but do not include any terms and conditions
Option B	Authorise Water NSW to educate the community throughout NSW, but do not include any terms and conditions
Option C	Authorise Water NSW to educate the community throughout NSW, and include terms and conditions regulating how Water NSW undertakes this function
Option D	Do not authorise Water NSW to educate the community

⁶⁰ Water NSW Act, s 7(1)(k).

Currently, Water NSW is authorised under the Water NSW (SCA) operating licence to educate the community within the Sydney Catchment Area only. This is because previously, only the *Sydney Water Catchment Management Act 1998* (now repealed) included community education as a function of the previous SCA. The repealed *State Water Corporation Act 2004* (NSW) did not include a similar function.

With Option A, the operating licence could continue to authorise Water NSW to only undertake this function within the Sydney Catchment Area. However, we consider that authorising Water NSW to undertake this function more widely across its area of operations is a more preferable option. In this way, we consider that Water NSW can conduct community education programs in all aspects of Water NSW's operations and thus the community can interact more effectively with Water NSW. However, Water NSW would not be required to undertake extensive educative programs throughout NSW. The extent of the community education should be at Water NSW's discretion and consistent with its objectives.

With Option B, the operating licence would authorise Water NSW to educate the community throughout NSW. However, we consider that Option C is preferable as under this option, we propose to include a condition in the licence requiring Water NSW to undertake education activities consistent with the objectives of the Act. We consider that this makes no material difference to Water NSW in comparison with Option B, but it would allow the authorisation to be more measurable, thereby increasing its auditability. This is a regulatory benefit for us. However, we note that Water NSW has concerns that this will result in substantial costs for Water NSW, in the order of \$14 million annually (between \$48 million - \$60 million over the five-year term of the licence). However, we consider that the proposed licence condition would not oblige Water NSW to undertake extensive educative programs throughout NSW, to the same extent that it currently undertakes them at Warragamba Dam. The extent of the educative role in NSW should be at Water NSW's discretion, consistent with the objectives of the Water NSW Act. We have attempted to provide a non-prescriptive condition, allowing Water NSW to consider the most appropriate educational programs with a simple reporting obligation.

We consider that Option D is not a desirable position and we consider that this is not the intention of the Water NSW Act. If Water NSW is not authorised to undertake community education practices in the operating licence, it will not be able to undertake this function as it is not authorised under any other legislative instrument. Community education is an important risk mitigation measure for protection of the catchments.

9.2.3 Preferred option

Option C is our preferred option. It will allow Water NSW to conduct educational programs and activities for the community about its activities, consistent with the objectives of the Act, and it will allow us to effectively regulate how Water NSW undertakes this function.

The proposed terms and conditions for inclusion in the licence are set out in Box 9.9.

Box 9.9 Education program operating licence condition

6.11 Education programs

6.11.1 Water NSW must conduct educational programs for the community on its activities and functions consistent with its objectives under the section 6 of Act, and report on its activities in accordance with the reporting manual.

Recommendation

- 40 The operating licence authorises Water NSW to undertake an educative role within the community and include terms and conditions requiring Water NSW to undertake this function consistent with the objectives of the Act.

9.3 Reporting manual – Education programs

We propose that the new Water NSW reporting manual should include reporting obligations with respect to Water NSW's activities to educate the community. We consider that this will improve Water NSW's accountability towards implementing this function. Currently, the Water NSW (SCA) operating licence and reporting manual include no obligations with regard to this function. As such, this will be a new reporting requirement. We propose that these reporting obligations will include an explanation of the types of community education activities that Water NSW runs and the programs that it has completed to meet its objectives under the Water NSW Act.

The Issues Paper did not seek stakeholder comment on options to include in the reporting manual.

9.3.1 Options assessed

Table 9.10 Options for reporting on Water NSW's education of the community activities

Options considered	Description
Option A (Base case)	Do not include any reporting obligations in relation to Water NSW's activities for education of the community
Option B	Include obligations for Water NSW to report on its activities for education of the community

Water NSW is currently not required to report on any of its community education activities. With Option A, the new reporting manual could continue to remain silent on any reporting requirements on Water NSW's education activities. However, we consider that this is not a preferable option.

We consider that including reporting obligations in Option B, improves Water NSW's accountability towards implementing this function. We consider that the proposed reports will provide valuable information to stakeholders, including the community. Further, it allows auditability of Water NSW's implementation of this function. We have written the

reporting obligation with as minimal prescription as possible. We envisage that the report length and format would be at the discretion of Water NSW.

9.3.2 Preferred option

Option C is our preferred option. It provides a level of transparency for us, and other stakeholders to understand what educational programs and activities Water NSW undertakes in relation to the listed function authorised by the licence. This information will allow us to effectively regulate how Water NSW undertakes this function.

The proposed terms and conditions for inclusion in the licence are set out in Box 9.10.

Box 9.10 Education programs reporting obligation

6.1.2 Community education reporting

Water NSW must submit an annual report to IPART on its community education practices (Community Education Report).

Water NSW must submit the Community Education Report to IPART and report on it publicly in accordance with section 6.3 of this reporting Manual, by 1 September after the end of the financial year, or at a later date agreed to by IPART.

The Community Education Report must include:

- ▼ an explanation of the types of community education activities and programs run by Water NSW,
- ▼ the actual (completed) community education activities, to meet Water NSW's community education objectives, and
- ▼ any other matter notified by IPART to Water NSW.

[Note: Under clause 6.11 of the Licence, Water NSW must educate the community on its activities and functions consistent with its objectives under the Act and report on how it complies with this Licence condition.]

Recommendation

- 41 The reporting manual requires Water NSW to report on its activities to conduct educational programs within the community.

9.4 Memoranda of Understanding

9.4.1 NSW Health and the EPA

Water NSW is currently required to enter into memoranda of understanding (MoUs) with NSW Health and the Environment Protection Authority (EPA) under the Water NSW (SCA) operating licence, for its activities in the Sydney Catchment Area, but not by the Water NSW (State Water) operating licence. This is because this was a requirement of the now repealed *Sydney Water Catchment Management Act 1998* but the *State Water Corporation Act 2004* (NSW)

did not require it. The Water NSW Act requires Water NSW to enter into MoUs with NSW Health and the EPA “...of the nature referred to in the operating licence”.⁶¹

We propose that the operating licence will include terms and conditions requiring Water NSW to *maintain* MoUs with NSW Health and the EPA and generally describing the nature of the MoUs. Further, the operating licence will require Water NSW to make these MoUs available for downloading from its website as we consider that this information is valuable to stakeholders.

We consider that the new operating licence should not constrain to which area the MoUs apply. Water NSW’s MoUs with NSW Health and the EPA should cover all of its activities where it interacts with these entities. We consider that the content of these MoUs is a matter for the respective signatories to them.

9.4.2 Issues raised

In the Issues Paper, we sought feedback from stakeholders on whether the operating licence should prescribe the matters to be included in the MoUs and whether the MoUs should cover Water NSW’s activities throughout NSW or, only in the Sydney Catchment Area (as per the existing requirements).

We received responses from Water NSW, Sydney Water and the NSW Government. The stakeholders considered that the operating licence should regulate the nature of the MoUs, as allowed by the Water NSW Act. However, Water NSW and the NSW Government considered that terms and conditions similar to those in the existing Water NSW (SCA) operating licence were sufficient to regulate Water NSW’s relationship with NSW Health and the EPA, and further prescription was not necessary. Sydney Water noted that while the Water NSW Act requires Water NSW to enter into MoUs with these entities, it does not require it to maintain them.

9.4.3 Options assessed

Table 9.11 Options for regulating Water NSW’s MoUs with NSW Health and the EPA

Options considered	Description
Option A (Base case)	Include clause 9.1 of the Water NSW (SCA) operating licence in the new operating licence, regulating Water NSW’s relationships with NSW Health and the EPA covering its activities in the Sydney Catchment Area
Option B	Include clause 9.1 of the Water NSW (SCA) operating licence in the new operating licence, with some edits, regulating Water NSW’s relationships with NSW Health and the EPA covering its activities throughout its area of operations
Option C	Do not include any terms and conditions in relation to MoU’s with NSW Health and the EPA

We consider that the operating licence should not be prescriptive about the nature of these MoU. However, there is value in the operating licence recognising the purpose of the MoUs. We consider that this establishes a strong basis for the entities negotiating the details of the

⁶¹ Water NSW Act, section 21.

MoUs. While we have sought to minimise prescription, we propose a new obligation for the MoU with NSW Health to include arrangements for Water NSW to report to NSW Health on any events in relation to its systems or services that may impact on public health. We consider that this is necessary to protect public health.

Currently, Water NSW is required to maintain a MoU with NSW Health and the EPA under clause 9.1 of the Water NSW (SCA) operating licence. While the clause does not specify that the MoU only covers Water NSW's relationship with these entities with respect to its activities in the Sydney Catchment Area, this is implied because the Water NSW (SCA) operating licence only applies to this area. The existing operating licence recognises the purpose of the MoUs to recognise the roles of NSW Health and the EPA.

With Option A, we could maintain similar terms and conditions in the new operating licence as clause 9.1 of the Water NSW (SCA) operating licence.

With Option B, the MoUs would cover Water NSW's relationship with the entities with respect to its activities throughout its area of operations, and not just in the Sydney Catchment Area. We consider that this is appropriate because Water NSW's activities outside the Sydney Catchment Area can also have the potential to impact on the environment and public health. Further, we consider that it is consistent with the Water NSW Act which does not indicate that requirements of section 21 apply only within the Sydney catchment area. With this option we also propose some minor changes to the clauses for consistency with other public water utilities. We also propose a new obligation for the MoU with NSW Health to include arrangements for Water NSW to report to NSW Health on any events in relation to its systems or services that may impact on public health.

We consider that Option C is not desirable. While we seek to avoid unnecessary prescription in the operating licence, we consider that there is value in the operating licence requiring the MoUs to be maintained and to recognise the purpose of the MoUs. This establishes a basis for negotiation of the content of the MoUs between the entities.

9.4.4 Preferred option

Option B is our preferred option. With this option, the operating licence would require Water NSW to maintain the MoUs with NSW Health and the EPA, and it would recognise the purpose of the MoUs.

The proposed terms and conditions for inclusion in the licence are set out in Box 9.11.

Box 9.11 Memoranda of Understanding with NSW Health and the EPA operating licence conditions

6.13 Memorandum of Understanding with NSW Health

6.13.1 Water NSW must:

- a) maintain a memorandum of understanding with the Secretary of the Ministry of Health (NSW Health) entered into under section 21(1) of the Act; and
- b) comply with the memorandum of understanding maintained under clause 6.13.1(a).

6.13.2 The purpose of the memorandum of understanding referred to in clause 6.13.1 is to form the basis for co-operative relationships between the parties to the memorandum of understanding and particularly to recognise the role of NSW Health in providing advice to the NSW Government in relation to water quality standards and public health, with respect to Water NSW's activities in the Supply of water and the Capture and Storage of Water and Release of Water.

6.13.3 The memorandum of understanding referred to in clause 6.13.1 must include arrangements for Water NSW to report to NSW Health information on any events, in relation to Water NSW's systems or services, which may impact on public health.

6.13.4 Water NSW must publish on its website for downloading by any person, the memorandum of understanding maintained with NSW Health under clause 6.13.1(a).

6.14 Memorandum of Understanding with Environment Protection Authority

6.14.1 Water NSW must:

- a) maintain the memorandum of understanding with the Environment Protection Authority entered into under section 21(1) of the Act; and
- b) comply with the memorandum of understanding maintained under clause 6.14.1(a).

6.14.2 The purpose of the memorandum of understanding referred to in clause 6.14.2 is to form the basis for co-operative relationships between the parties to the memorandum of understanding and particularly to recognise the role of the Environment Protection Authority as the environment regulator of New South Wales.

6.14.3 Water NSW must publish on its website, for downloading by any person, the memorandum of understanding maintained with the Environmental Protection Authority under clause 6.14.1(a).

Recommendation

- 42 The operating licence includes terms and conditions regulating the nature of Water NSW's Memoranda of Understanding with NSW Health and the Environment Protection Authority.

9.4.5 Local Land Services

We propose that the operating licence include terms and conditions requiring Water NSW to use its best endeavours to enter into an MoU with Local Land Services (LLS). The existing Water NSW operating licences do not include such a requirement.

Currently, Water NSW is required by its Water NSW (State Water) operating licence to involve LLS in a customer service committee. We have not included this requirement in the new obligation on customer advisory groups as the LLS is not a customer. Instead, we have proposed the establishment of a MoU with LLS.

We consider that it is valuable for Water NSW to continue to maintain a relationship with LLS due to LLS's role in managing the natural resources in the catchment areas of NSW by means of Catchment Action Plans. We consider that the new operating licence should not constrain the area to which the MoU with LLS applies. Water NSW's MoU with LLS should cover all of its activities where it interacts with LLS.

9.4.6 Issues raised

The Issues Paper, sought feedback on whether the operating licence could improve the interaction between Water NSW and LLS.

We received responses from Water NSW and the NSW Government. Water NSW considers that the operating licence did not need to regulate its relationship with LLS as it was already working effectively. However, the NSW Government considers that a MoU between the agencies could be beneficial and had the potential to expand current partnerships. Water NSW generally expressed concern about operating licence conditions requiring MoUs with other parties (ie, other than NSW Health and the EPA) creating 'asymmetric obligations'. The licence condition only applies to Water NSW and not to the other party.

9.4.7 Options assessed

Table 9.12 Options for regulating Water NSW's relationship with LLS

Options considered	Description
Option A (Base case)	Do not include any terms and conditions regulating Water NSW's relationship with LLS
Option B	Include terms and conditions requiring Water NSW to use best endeavours to establish and maintain, a MoU between Water NSW and LLS and comply with this MoU

Currently, Water NSW's operating licences do not require it to enter into a MoU with LLS. With Option A, we could retain this approach in the new operating licence and not regulate Water NSW's relationship with LLS. We note that this is the approach that Water NSW prefers. However, we consider that this is not a preferable option because we have proposed to remove the requirement to include LLS in the customer advisory groups that is currently required by the Water NSW (State Water) operating licence. Without this requirement, there is no longer any regulatory requirement for Water NSW and LLS to work together cooperatively.

With Option B, we propose to include terms and conditions in the operating licence requiring Water NSW to use its *best endeavours* to establish and maintain a MoU with LLS, and also comply with the MoU. We use the term 'best endeavours' to address Water NSW's concern regarding asymmetric obligations.

Further, Water NSW must make the MoU publicly available on its website. We consider that these requirements will improve auditability of Water NSW's relationship with LLS which is currently not measurable.

We note that Water NSW has stated that this option will result in additional costs of \$161,000 in the first year, and an ongoing annual future cost of \$115,000 (between \$434,000 and \$535,000 over the five-year term of the licence).

While we acknowledge that there will be some costs in establishing an MoU initially, we consider that Water NSW already has an established relationship with LLS which should minimise the ongoing costs. This relationship is reflected by the current requirement to include LLS in the current customer service committees. We have sought to avoid prescription in the operating licence for the MoU, which could result in additional costs to the organisations.

9.4.8 Preferred option

Option B is our preferred option. With this option, the operating licence would require Water NSW to use its best endeavours to establish, maintain and comply with a MoU with LLS.

The proposed terms and conditions for inclusion in the licence are set out in Box 9.12.

Box 9.12 Memorandum of Understanding with LLS operating licence conditions

6.15 Memorandum of Understanding with Local Lands Services

6.15.1 Water NSW must use its best endeavours:

- a) to establish and maintain a memorandum of understanding with the Local Land Services; and
- b) to comply with the memorandum of understanding maintained under clause 6.15.1(a).

6.15.2 The purpose of the memorandum of understanding referred to in clause 6.15.1 is to form the basis for co-operative relationships between the parties to the memorandum of understanding.

6.15.3 Water NSW must publish on its website, for downloading by any person, the memorandum of understanding maintained with Local Lands Services under clause 6.15.1(a).

Recommendation

- 43 The operating licence includes terms and conditions requiring Water NSW to use its best endeavours to enter into, maintain and comply with a Memorandum of Understanding with Local Land Services.

9.5 Roles and responsibilities protocol with DPI Water

We propose that the operating licence include terms and conditions requiring Water NSW to publish a statement on the roles and responsibilities protocol as agreed with the Department of Primary Industries Water (DPI Water), and any other relevant government agencies, with

regard to the conferred functions specified in a schedule to the licence. This is currently a requirement of the Water NSW (State Water) operating licence.

Further, we propose that the operating licence require Water NSW to use its best endeavours to establish and maintain an MoU with DPI Water, and also comply with that MoU. This is currently not required by either of the existing Water NSW operating licences or the Water NSW Act. We consider that the MoU is necessary as Water NSW and DPI Water work closely together, particularly in the areas of:

- ▼ the conferred of functions (As included in Schedule A of the operating licence),
- ▼ development and implementation of the water sharing plans and the Metropolitan Water Plan, and
- ▼ metering, hydrometrics and other water monitoring functions.

In relation to metering, hydrometrics and other water monitoring functions, both the Water NSW operating licences (State Water and SCA) contain an obligation regarding agreements between the Minister or DPI water and Water NSW regarding metering. We have removed this obligation from the metering section, as we consider the Roles and Responsibilities protocol could also accommodate metering arrangements. We consider an obligation for agreement covering all areas of interaction is simpler for administration and auditing than requiring multiple agreements across separate sections of the licence.

We consider that it is appropriate that the operating licence is not prescriptive about Water NSW's role in the review and implementation of the Metropolitan Water Plan. The MoU could establish the relationship between Water NSW and DPI Water's for the review and implementation of the Metropolitan Water Plan, as may be required.

We consider that the new operating licence should not constrain the area to which the roles and responsibilities protocol and the MoU apply. These documents should cover all of Water NSW's activities, wherever it interacts with DPI Water.

9.5.1 Issues raised

In the Issues Paper, we sought feedback from stakeholders on how the operating licence could regulate the relationship between Water NSW and DPI Water.

We received responses from Water NSW and the NSW Government. Water NSW considers that it was not necessary for the operating licence to regulate Water NSW's relationship with DPI Water as they already have a prescriptive Deed regulates this.

We also sought feedback from stakeholders on whether the operating licence should require Water NSW to develop a protocol (or similar, eg, MoU) with DPI Water specifically for the purpose of outlining Water NSW's roles and responsibilities in relation to the Metropolitan Water Plan. We received responses from Water NSW, NSW Government and Sydney Water. Water NSW does not support including a requirement to develop such a protocol but the NSW Government and Sydney Water do. Both of these stakeholders considered that this would be appropriate as it is consistent with the requirements placed on other public water utilities. Further, the NSW Government stated that a protocol would facilitate the ongoing review and implementation of the Metropolitan Water Plan.

We also sought feedback from stakeholders on whether a preferable alternative to a protocol or MoU with DPI Water in relation to the Metropolitan Water Plan might be to have specific requirements in the operating licence. Again we received responses from Water NSW, NSW Government and Sydney Water. Water NSW and Sydney Water do not support this option. As Water NSW advised, there are requirements currently in Water NSW's water supply work approvals, under the *Water Management Act 2000*, in relation to the Metropolitan Water Plan. Further, the Metropolitan Water Plan is reviewed and amended regularly. Specific requirements in the operating licence may not anticipate these changes and is not a flexible approach. However the NSW Government considered that there could be some merit in including specific requirements in the operating licence as not all of the objectives of the Metropolitan Water Plan are currently required by Water NSW's water supply work approvals.

Water NSW generally expressed concern about operating licence conditions requiring MoUs with other parties (ie, agencies other than NSW Health and the EPA) creating 'asymmetric obligations', as the licence condition only applies to Water NSW and not to the other party.

9.5.2 Options assessed

Table 9.13 Options for regulating Water NSW's relationship with DPI Water

Options considered	Description
Option A (Base case)	Do not include any terms and conditions requiring an MoU between Water NSW and DPI Water. Include terms and conditions requiring a roles and responsibilities protocol with DPI Water (for activities outside the Sydney Catchment Area)
Option B	Include terms and conditions requiring Water NSW to establish a roles and responsibilities protocol with DPI Water, and use best endeavours to establish and maintain a MoU with DPI Water and comply with this MoU

Currently, the Water NSW operating licence does not require Water NSW to enter into a MoU with DPI Water. The existing Water NSW (State Water) operating licence requires Water NSW to publish a statement setting out its agreed roles and responsibilities with DPI Water (or the Ministerial corporation or any other relevant government departments or agencies) to undertake the functions conferred on it. As this is a requirement of the Water NSW (State Water) operating licence, it only applies to Water NSW's activities outside the Sydney Catchment Area. With Option A, we could maintain this approach in the new operating licence. Currently, there is no requirement on Water NSW to develop a relationship with DPI Water for the review and implementation of the Metropolitan Water Plan. The current requirement is only in relation to the execution of the conferred functions. Further we have not included other obligations from the existing licence⁶² in relation to the metering arrangements and the requirement for DPI Water to be invited to sit on customer councils, so adopting Option A would mean that the operating licence would no longer recognise these aspects of the interactions between DPI Water and Water NSW.

Option B would require Water NSW to formalise its relationship with DPI Water as they work together closely, particularly to undertake the conferred functions but also in relation to other areas described above. The MoU would allow Water NSW and DPI Water to agree

⁶² Clauses 4.2.2 and 4.2.3 of the existing Water NSW (State Water) operating licence.

on their roles and responsibilities. The current requirement for Water NSW to publish a statement of roles and responsibilities to undertake the conferred functions can also be retained.

The MoU could also allow Water NSW to agree on its role for the review and implementation of the Metropolitan Water Plan, where appropriate. We consider that it is appropriate that there is a mechanism for Water NSW to be involved in the review and implementation of the Metropolitan Water Plan, but we consider that this mechanism does not need to be prescribed in the operating licence. We acknowledge that Water NSW has explained that there is already a prescriptive Deed, but we consider that the MoU can be negotiated so that it does not duplicate the contents of the Deed. We understand that the Deed would not cover the review and implementation of the Metropolitan Water Plan.

We consider that the operating licence should not prescribe specific obligations for Water NSW in relation to the Metropolitan Water Plan as this is not a flexible approach, particularly if the Plan were to change. Water NSW and DPI Water could negotiate appropriate responsibilities in the MoU which is a more flexible instrument than the operating licence.

9.5.3 Preferred option

Option B is our preferred option. With this option, the operating licence would require Water NSW to use its best endeavours to establish and maintain an MoU with DPI Water and comply with it. Further, it would require Water NSW to publish on its website a statement setting out the roles and responsibilities that Water NSW has agreed with DPI Water. The MoU will be an auditable requirement and Water NSW would be required to demonstrate to an auditor that it has used its best endeavours to enter into, maintain and comply with the protocol. This approach is consistent with other public water utility licences.

The proposed terms and conditions for inclusion in the licence are set out in Box 9.13 below.

Box 9.13 Roles and Responsibilities Protocol and memorandum of understanding with DPI Water operating licence conditions

6.16 Roles and Responsibilities Protocol and Memorandum of Understanding with Department of Primary Industries Water

6.16.1 Water NSW must:

- a) agree with the Department of Primary Industries Water (DPI Water) the roles and responsibilities regarding the conduct of Conferred Functions specified in Schedule A of this Licence (Roles and Responsibilities Protocol);
- b) use its best endeavours to establish and maintain a memorandum of understanding with DPI Water. The purpose of the memorandum of understanding is to form the basis for cooperative relationships between the parties and particularly the role of Water NSW for the review and implementation of the Metropolitan Water Plan (Memorandum of Understanding); and
- c) use its best endeavours to comply with the memorandum of understanding maintained under clause 6.16.1(b).

6.16.2 By 30 June 2018 Water NSW must publish on its website, for downloading by any person, a statement setting out the roles and responsibilities protocol required under clause 6.16.1(a) and, if established, the memorandum of understanding required under clause 6.16.1(b).

[Note: The statement may also include roles and responsibilities agreed with the ministerial corporation or any other relevant government departments or agencies.]

6.16.3 Water NSW must publish on its website for downloading by any person, the Roles and Responsibilities Protocol maintained with DPI Water under clause 6.16.1(b).

Recommendation

- 44 The operating licence includes terms and conditions requiring Water NSW to use its best endeavours to enter into a Memorandum of Understanding with DPI Water to form the basis of a cooperative relationship, particularly for the role of Water NSW in the review and implementation of the Metropolitan Water Plan, and for undertaking the conferred functions.

10 Performance monitoring

The seventh part of the draft recommended licence includes clauses relating to Water NSW's performance monitoring and reporting obligations, in relation to its compliance with the operating licence. The draft recommendations that we have used to develop the draft operating Licence and reporting manual are listed below. We have provided explanation and background on how we developed each of these draft recommendations within this chapter

Draft recommendations for the operating licence and reporting manual:

- 45 The operating licence includes terms and conditions in relation to the operational audits.
- 46 The reporting manual includes obligations requiring Water NSW to report on the status of any recommendations identified in the most recent operational audit and in IPART's audit report to the Minister, and requiring Water NSW to provide an update on the implementation of any opportunities for improvement identified in the audit.
- 47 The operating licence includes terms and conditions requiring Water NSW to comply with its obligations in the reporting manual, and maintain adequate records to allow it to comply with these obligations.
- 48 The operating licence includes terms and conditions requiring Water NSW to provide IPART or an auditor with information relating to its performance, and any information that IPART or an auditor may require to conduct a review of investigation.
- 49 The operating licence includes terms and conditions requiring Water NSW to maintain sufficient records and record systems to measure and accurately report its performance against performance indicators and the system performance standards.
- 50 The reporting manual includes new and existing performance indicators reporting manual relating to water supplied to customers new performance indicators but no new performance indicators in relation to water that is captured, stored and released.

10.1 Operational audits

We consider that it is appropriate for the operating licence to include terms and conditions outlining the responsibilities of Water NSW and IPART in relation to operational audits, similar to those in the existing Water NSW (State Water and SCA) operating licences. The Water NSW Act requires IPART to ensure that we prepare operational audits in accordance with the Water NSW operating licence(s).⁶³

The Water NSW Act also allows the operating licence to include terms and conditions relating to the determination of the cost of carrying out the operational audit.⁶⁴ However, we consider that doing this would be unnecessarily prescriptive. The existing Water NSW licences do not include such terms and conditions. We undertake a competitive process in

⁶³ Water NSW Act, section 57(3).

⁶⁴ Water NSW Act, section 60(2).

the selection of auditors, in line with the NSW Government procurement requirements. Audits are then undertaken in accordance with an audit scope and audit guidelines that we prescribe. Further, we oversee the audit process for uniformity across audits and auditors.

10.1.1 Issues raised

The Issues Paper, asked stakeholders what terms and conditions should be included in the Water NSW operating licence in relation to its operational audits, and also in relation to the determination of the cost of carrying out these audits.

We received submissions from Water NSW and the NSW Government, both expressing support for that the operating licence including terms and conditions in relation to operational audits.

The NSW Government did not express a view in relation to the determination of the costs of carrying out the audits. However, Water NSW considered that there was benefit in clarifying in the operating licence that the scope of the audit matched only that which is required by the operating licence. Further, it considered that IPART should be required to follow a competitive process in determining the fees for the audit and to select a suitably qualified independent auditor.

10.1.2 Options assessed

Table 10.1 Options for provisions regarding operational audits

Options considered	Description
Option A (Base case)	Include Clause 7.1 of the existing Water NSW (State Water) operating licence and Clause 8.1 of the Water NSW (SCA) operating licence in relation to operational audits
Option B	Combine clauses 7.1 and 8.1 of the existing Water NSW operating licences in the new operating licence, with minor changes
Option C	Combine clauses 7.1 and 8.1 of the existing Water NSW operating licences in the new operating licence, with minor changes, and include prescriptive terms and conditions for determining the cost of the audit

Currently, Water NSW is expected to adhere to clause 7.1 of the existing Water NSW (State Water) operating licence and clause 8.1 of the Water NSW (SCA) operating licence in relation to the operational audits. These requirements set out the information that Water NSW must provide and other responsibilities of Water NSW. With Option A, we could maintain the requirements of clause 7.1 of the existing Water NSW (State Water) operating licence and clause 8.1 of the Water NSW (SCA) operating licence in the new operating licence. However, we consider that maintaining all of the clauses of the existing two licences in a new operating licence is not a feasible option under a new Act and new structure of licence (ie, a combined operating licence). Some of these terms and conditions are duplicative whereas in some instances, they are inconsistent.

We have therefore suggested Option B, which would retain the terms and conditions currently contained in the existing Water NSW (State Water and SCA) licences, with some minor changes. The proposed minor changes are to allow better consistency with similar

requirements we place on other utilities. Water NSW noted that there would be no additional costs to imposing these minor changes in comparison with existing operations.

We note that Water NSW considered that there was benefit in clarifying in the operating licence that the scope of the audit should match only that which is required by the operating licence. However, we consider that the existing requirement of the licences which state that the audit will cover Water NSW's compliance with the licence, the reporting manual, or any other matters required by the Minister, already sets the scope of the audit. Further, IPART's functions are outlined within Part 5 of the Water NSW Act.

We consider that Option C is not preferable. We acknowledge that Water NSW supported including terms and conditions in the operating licence in relation to the determination of the cost of the audit, requiring IPART to follow a competitive process to determine this cost. We consider that this level of prescription is unnecessary in the operating licence. We already undertake a competitive process to select auditors for audits, and the cost of the audit is one of the criteria we use to select the appropriate auditor. We select the auditors consistent with the State Government Procurement procedures. As these procedures are in place for the whole organisation, we consider that specific requirements within the licence would be duplicative and potentially reduce flexibility. The cost of the audit charged to Water NSW is the sum of the costs incurred by IPART and the auditors in relation to the audits.

We note that review of the audit scopes, auditor procurement and costing decisions should continue to be reviewed, in consultation with the utilities.

10.1.3 Preferred option

Option B is our preferred option as Option A is not a feasible one under the Water NSW Act and the new operating licence structure. Further, we consider that Option C is unduly prescriptive which could result in duplication with other processes and potentially reduce flexibility.

The proposed terms and conditions for inclusions in the licence are set out in Box 10.1.

Box 10.1 Operational audit provisions in operating licence

7.1 Operational audits

7.1.1 IPART may annually, or from time to time as occasion requires, undertake, or may appoint an Auditor to undertake, an audit on Water NSW's compliance with:

- a) this Licence,
- b) the Reporting Manual, and
- c) any matters required by the Minister

(Operational Audit).

7.1.2 Water NSW must provide to IPART or the Auditor all information in Water NSW's possession, or under Water NSW's custody or control, which is necessary or convenient for the conduct of the Operational Audit.

7.1.3 Without limiting clause 7.1.2, Water NSW must provide to IPART or the Auditor any information necessary or convenient for the conduct of the Operational Audit which IPART or the Auditor requests in writing, within any reasonable timeframe specified by IPART or the Auditor in writing.

7.1.4 For the purpose of any Operational Audit or verifying a report on an Operational Audit, Water NSW 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 Water NSW;
- 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, Works 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 WaterNSW that are maintained in relation to the performance of Water NSW'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 Water NSW, including Water NSW's officers and employees.

[Note: Water NSW is required under section 60 of the Act to pay to the Treasurer the cost (as certified by IPART) involved in and in connection with carrying out the Operational Audit of Water NSW.]

Recommendation

45 The operating licence includes terms and conditions in relation to the operational audits.

10.2 Operational audits – reporting manual

We propose that Water NSW report to IPART annually on the status of any audit recommendations identified in the most recent operational audit, and as outlined in IPART's audit report to the Minister. Water NSW may also report to IPART on the implementation

of any opportunities for improvement that we have identified in our report to the Minister on the results of the audit.

Currently Water NSW is required to do this under sections 8 of the Water NSW (State Water and SCA) reporting manuals. Both of these reporting manuals include largely similar obligations. We have not proposed substantial changes to these reporting obligations other than to allow consistency with other public water utility reporting manuals.

The proposed terms and conditions for inclusions in the reporting manual are set out in Box 10.2.

Box 10.2 Operational audit reporting obligations

7.2.1 Annual audit recommendations status report

Water NSW must report to IPART annually on the status of any audit recommendations identified in the most recent Operational Audit and outlined in IPART's audit report to the Minister.

Water NSW must submit the audit recommendations status report to IPART by **31 March** each year (or at a later date agreed to by IPART).

Water NSW may, but is not required to, report to IPART on the implementation of any opportunities for improvement identified in IPART's report to the Minister on the results of the audit.

Water NSW should provide this information with the status update on audit recommendations, if it chooses to report on opportunities for improvement. This information may be considered by an auditor in the subsequent annual audit.

[Note: Under clause 7.1 of the Licence, IPART or an Auditor may undertake an Operational Audit. This section 7.2 (of this Reporting Manual) requires Water NSW to report on the status of implementing recommendations identified in an Operational Audit.]

IPART requirements for opportunities for improvement are set out in the Audit Guideline – Public Water Utilities.]

Recommendation

- 46 The reporting manual includes obligations requiring Water NSW to report on the status of any recommendations identified in the most recent operational audit and in IPART's audit report to the Minister, and requiring Water NSW to provide an update on the implementation of any opportunities for improvement identified in the audit.

10.3 Reporting obligations in the operating licence

We consider that it is appropriate for the operating licence to include terms and conditions requiring Water NSW to comply with its reporting obligations in the reporting manual, including reporting to IPART and NSW Health, making the specified reports and other information publicly available, and reporting to IPART on Water NSW's performance against the IPART indicators, National Water Initiative Performance indicators and system performance standards. Further, Water NSW must maintain sufficient record systems to comply with its reporting obligations.

10.3.1 Issues raised

In the Issues Paper we asked stakeholders what terms and conditions should be included in the Water NSW operating licence to regulate how Water NSW's reports information, including the type of information that it should report on.

We received responses from Water NSW, the NSW Government and Sydney Water. All these stakeholders considered that the operating licence should include similar reporting obligations to those currently imposed by the Water NSW (State Water and SCA) reporting manuals.

10.3.2 Options assessed

Table 10.2 Options for regulating Water NSW's reporting requirements

Options	Description
Option A (Base case)	Include Clause 7.2 of the existing Water NSW (State Water) operating licence and Clause 8.2 of the Water NSW (SCA) operating licence in relation to operational audits
Option B	Combine clauses 7.2 and 8.2 of the existing Water NSW operating licences in the new operating licence, with minor updates

Currently, Water NSW is expected to adhere to clause 7.2 of the existing Water NSW (State Water) operating licence and clause 8.2 of the Water NSW (SCA) operating licence in relation to its obligations to meet its requirements as set out in the reporting manual. We take this approach to allow flexibility, as the reporting manual can be more easily updated than the operating licence. As such, we prefer not to specify reporting obligations in the operating licence as these may need to evolve with the business.

With Option A, we could maintain the requirements of clause 7.2 of the existing Water NSW (State Water) operating licence and clause 8.2 of the Water NSW (SCA) operating licence in the new operating licence. However, we consider that maintaining all of the clauses of the existing two licences in a new operating licence is not a feasible option under a new Act and new structure of licence (ie, a combined operating licence). Some of these terms and conditions duplicate each other whereas in some instances they are inconsistent.

We therefore recommend Option B, which retains the intent of the terms and conditions currently contained in the existing Water NSW (State Water and SCA) licences with some minor updates. The proposed minor changes are to allow better consistency with similar requirements we place on other utilities. Water NSW noted that there would be no additional costs to imposing these minor changes in comparison to existing operations.

Preferred option

Option B is our preferred option as Option A is not a feasible one under the Water NSW Act and the new operating licence structure. The proposed terms and conditions for inclusions in the licence are set out in Box 10.3 below.

Box 10.3 General reporting obligations

7.2 Reporting in accordance with the licence and Reporting Manual

- a) 7.2.1 Water NSW must comply with its reporting obligations set out in this Licence and in the Reporting Manual, which include: reporting to IPART and NSW Health
- b) making reports and other information publicly available; and
- c) reporting to IPART on Water NSW's performance against the NWI Performance Indicators

in the manner set out in the Reporting Manual.

7.2.2 Water NSW must maintain sufficient record systems that enable it to report accurately in accordance with clause 7.2.1.

Recommendation

- 47 The operating licence includes terms and conditions requiring Water NSW to comply with its obligations in the reporting manual, and maintain adequate records to allow it to comply with these obligations.

10.4 Provision of information to IPART and the Auditor

We consider that it is appropriate for the operating licence to include terms and conditions requiring Water NSW to provide IPART or an auditor with information relating to its performance and any information that IPART or an auditor may require to conduct a review of investigation. These requirements will apply to any of Water NSW's contractors, if it contracts out any of its activities to any person. We expect that the information must be provided to IPART or an auditor even, if it is confidential.

10.4.1 Issues raised

The Issues Paper did not seek feedback on the inclusion of terms and conditions in the operating licence in relation to provision of information to IPART and the auditor, as we do not propose substantial changes to the terms and conditions of the existing Water NSW operating licences.

10.4.2 Options assessed

Table 10.3 Options for regulating the provision of information to IPART and Auditor

Options	Description
Option A (Base case)	Include Clause 7.3 of the existing Water NSW (State Water) operating licence and Clause 8.3 of the Water NSW (SCA) operating licence in relation to operational audits
Option B	Combine clauses 7.3 and 8.3 of the existing Water NSW operating licences in the new operating licence, with minor updates

Currently, Water NSW is required to adhere to clause 7.3 of the existing Water NSW (State Water) operating licence and clause 8.3 of the Water NSW (SCA) operating licence in

relation to its obligations to meet its requirements as set out in the reporting manual. With Option A, we could maintain the requirements of clause 7.3 of the existing Water NSW (State Water) operating licence and clause 8.3 of the Water NSW (SCA) operating licence in the new operating licence. However, we consider that maintaining all of the clauses of the existing two licences in a new operating licence is not a feasible option under a new Act and new structure of licence (ie, a combined operating licence). Some of these terms and conditions duplicate each other whereas in some instances, they are inconsistent.

We therefore recommend Option B, which retains the terms and conditions currently contained in the existing Water NSW (State Water and SCA) licences, with some minor changes. The proposed minor changes are to allow better consistency with similar requirements we place on other utilities. Water NSW noted that there would be no additional costs to imposing these minor changes in comparison to existing operations.

Preferred option

Option B is our preferred option as Option A is not a feasible one under the Water NSW Act and the new operating licence structure. The proposed terms and conditions for inclusions in the licence, are set out in Box 10.4.

Box 10.4 Provision of information to IPART and Auditor operating licence conditions

7.3 Provision of information to IPART and Auditor

- 7.3.1 Water NSW must provide IPART or an Auditor with information relating to the performance of any of Water NSW's obligations under clause 7.2 (including providing IPART with physical and electronic access to the records required to be kept under clause 7.2) within a reasonable time period of Water NSW receiving a request from IPART for that information.
- 7.3.2 Water NSW must provide IPART or an Auditor with such information as is reasonably required to enable IPART or an Auditor to conduct any review or investigation of Water NSW's obligations under this Licence within a reasonable time period of Water NSW receiving a request from IPART for that information.
- 7.3.3 If Water NSW contracts out any of its activities to any person (including a subsidiary), it must take all reasonable steps to ensure that, if required by IPART, or any Auditor, any such persons provide information and do the things specified in this clause 7.3 as if that person were Water NSW.
- 7.3.4 Where this Licence requires Water NSW to provide information to IPART or an Auditor, to the maximum extent permitted by law, Water NSW must provide that information even if it is confidential.
- 7.3.5 IPART and Auditors are to conduct themselves in respect of any confidential information, provided to them by Water NSW under this Licence, as though section 24FF(1) of the IPART Act applied to that information.

[Note: Section 24FF(1) of the IPART Act makes provision in respect of confidential information received by IPART in connection with its licence auditing functions.]

Recommendation

- 48 The operating licence includes terms and conditions requiring Water NSW to provide IPART or an auditor with information relating to its performance, and any information that IPART or an auditor may require to conduct a review of investigation.

10.5 Performance indicators and performance standards

We propose including requirements in the operating licence to maintain sufficient records and record systems to measure and accurately report its performance against performance indicators and the system performance standards specified in the licence and the reporting manual. Further, Water NSW should also maintain records to report against performance indicators specified in any other instruments that give effect to the National Water Initiative.

These are new requirements in the operating licence. Similar terms and conditions are not included in either of the existing Water NSW operating licences. However, as Water NSW is required to report against these performance indicators and standards, we consider that it is beneficial to include in the operating licence terms and conditions related to the maintenance of records to report against these performance indicators and standards.

10.5.1 Issues raised

The Issues Paper did not seek feedback on the inclusion of terms and conditions in the operating licence in relation to the maintenance of records to report against performance indicators and standards.

10.5.2 Options assessed

Table 10.4 Options for including terms and conditions in relation to performance indicators and performance standards

Options	Description
Option A (Base case)	Do not include any terms and conditions in relation to the maintenance of records to report against performance indicators and standards
Option B	Include terms and condition requiring Water NSW to maintain records and record systems to accurately report its performance against performance indicators and performance standards.

With Option A, we could retain the existing approach of not including any requirements in the operating licence to maintain records to report against performance indicators and standards. However, we consider that this option is not preferable because Water NSW is already required to report against performance indicators and standards. Accordingly, it would be preferable to require Water NSW to maintain records that assist it to report against these performance indicators and standards, as in Option B. This condition improves auditability of the indicators and standards. Further, this option allows the operating licence to be consistent with other public water utility operating licences.

Preferred option

Option B is our preferred option as it will require Water NSW to maintain records and record systems to report against indicators and performance standards, as it is already required to do by the existing reporting manuals. The proposed terms and conditions for inclusions in the licence are set out in Box 10.5.

Box 10.5 Record Systems operating licence conditions

7.4 Performance reporting

7.4.1 Water NSW must maintain sufficient records and record systems that enable Water NSW to measure and accurately report its performance against the performance indicators and Performance Standards specified in this licence and the Reporting Manual.

7.4.2 Water NSW must maintain sufficient records and record systems to enable it to measure accurately its performance against any NWI Performance Indicators.

Recommendation

- 49 The operating licence includes terms and conditions requiring Water NSW to maintain sufficient records and record systems to measure and accurately report its performance against performance indicators and the system performance standards.

10.6 Performance indicators – reporting manual

We propose to include most of the performance indicators of the existing Water NSW (SCA) reporting manual in the new reporting manual, indicating that these relate to ALL the water supplied. The performance indicators currently only relate to the water supplied in the Sydney Catchment Area.

We also propose to include some new indicators to measure the impact of Water NSW's activities of the environment, as required by the Water NSW Act. The Water NSW Act requires that an operating licence that authorises Water NSW to exercise functions with respect to a declared catchment area must include terms and conditions requiring Water NSW to compile indicators of the direct impact of Water NSW's activities on the environment (including, but not limited to, the impact of energy used and waste generated).⁶⁵ We propose to clarify that these only indicators will relate to water supplied from declared catchment areas.

Finally, we propose to include two new indicators to understand the number of customers supplied with water from declared catchment areas as opposed to those supplied with water from non-declared catchment areas. The definition of "supply" would capture both and, as such, the existing performance indicators for the volumes of water supplied would not differentiate between them). Currently, Water NSW only reports on water supplied from the Sydney Catchment Area, but we consider that it would be appropriate to obtain information on water supplied from non-declared catchment areas, particularly because we have proposed an operating licence obligation for Water NSW to manage the quality of water supplied from these areas.

⁶⁵ Water NSW Act section 12(2)(b).

We propose that the performance indicators from the existing Water NSW (State Water) reporting manual should not be included because we have proposed to convert these to performance standards instead.

10.6.1 Issues raised

The Issues Paper, sought feedback about including performance indicators in the reporting manual. We received responses from Water NSW and Sydney Water.

These stakeholders considered that it was appropriate to include the performance indicators from the existing reporting manuals. However, Water NSW suggested that the existing water quality monitoring indicators could be removed as Water NSW considered that they are a subset of those in the water quality monitoring program developed under its Water Quality Management System (WQMS) and the results of this program are made available to IPART annually.

10.6.2 Options assessed

Table 10.5 Options for including terms and conditions in relation to performance indicators and performance standards

Options	Description
Option A (Base case)	Include all of the performance indicators from the existing Water NSW (State Water and SCA) reporting manuals in the new reporting manual with no change
Option B	Do not include the reporting indicators from the Water NSW (State Water) reporting manual in the new reporting manual, but include all of the indicators from the Water NSW (SCA) reporting manual with some additional inclusions
Option C	Do not include the reporting indicators from the Water NSW (State Water) reporting manual in the new reporting manual, but include all of the indicators from the Water NSW (SCA) reporting manual with some additional inclusions and do not include any water quality indicators and rely on outcomes from the Water Quality Management System
Option D	Do not include any performance indicators in the new Water NSW reporting manual

With Option A, we could consider including all of the performance indicators in the existing Water NSW (State Water and SCA) reporting manuals in the new reporting manual. However, we consider that this option is not preferable because the performance indicators from the Water NSW (State Water) reporting manual would duplicate the performance standards that we have proposed in relation to the capture, store and release of water in the operating licence.

With Option B, we propose to include only the performance indicators from the Water NSW (SCA) reporting manual. These indicators would relate to water supplied in general, and not just to the water supplied from the declared catchment area (except for specific declared catchment health indicators). We propose to include two new performance indicators to differentiate between the number of customers supplied in the declared and non-declared catchment areas. Further, we propose to include some additional performance indicators, in relation to declared catchment areas, to measure the impact of energy used and waste generated by Water NSW and which will meet the requirements of s 12(2)(b) of the Water NSW Act. Water NSW has confirmed that inclusion of these additional requirements will not negatively impact on its operational costs, provided that they only relate to the

declared catchment areas, as allowed for in the Water NSW Act.⁶⁶ With this option, we would retain the water quality monitoring indicators currently contained in the Water NSW (SCA) reporting manual.

Option C is very similar to Option B, but we would not include two water quality indicators that are currently contained in the Water NSW (SCA) reporting manual. Water NSW considered that this option could allow the reporting manual to be simpler but did not offer any reduction in operational costs. In light of this, we consider that Option B is preferable for transparency of Water NSW's operational performance.

We consider that Option D is not desirable. Performance indicators provide transparency to stakeholders on Water NSW's operational performance. For this reason, this option was not presented to Water NSW as part of the cost benefit analysis.

10.6.3 Preferred option

Option B is our preferred option. We propose the reporting manual require that Water NSW to report annually on its performance against the performance indicators specified in the reporting manuals.

These performance indicators will include most of those currently included in the existing Water NSW (SCA) reporting manual, but will relate to all water supplied from both the declared and non-declared catchment areas. The specific declared catchment area health indicators will relate only to the health of the declared catchment areas. We propose to also include two new performance indicators to differentiate between the customers in the declared and non-declared catchment areas.

[Draft recommendations for the operating licence and reporting manual](#)

- 50 The reporting manual includes new and existing performance indicators reporting manual relating to water supplied to customers new performance indicators but no new performance indicators in relation to water that is captured, stored and released.

10.7 Other reporting manual obligations

In general, in Chapter 6 of the reporting manual we have retained Water NSW's annual compliance and performance reporting requirements from its existing Water NSW (State Water and SCA) reporting manuals, and combined them so that all of the reporting obligations are applicable to all of Water NSW's activities in relation to customers, pursuant to the operating licence.

An example is the annual compliance and performance report in relation to performance monitoring must include a report on Water NSW's performance against the performance indicators set out in an Appendix to the reporting manual and an analysis of any problems of a systemic nature arising from Water NSW's performance against these indicators. Further, Water NSW must report to us on the financial indicators contained in the reporting manual.

⁶⁶ We note that in the Cost Benefit Analysis, we referred to these declared catchment indicators as "environmental indicators".

Water NSW will also be required to submit an annual report of any significant changes it has made to its water quality management system, design criteria, the operation and management of the catchment infrastructure, management and protection of the catchment area, AMS and EMS, customer advisory group charter and customer service charter.

11 Conferred functions

IPART on the following draft recommendation:

- 51 The operating licence includes a schedule of the functions conferred on Water NSW under other acts with minimal changes to these conferred functions from how they currently appear in the existing Water NSW (State Water and SCA) operating licences.

On 1 July 2016 the Minister amended the previous State Water and SCA operating licences and issued these as the Water NSW (State Water and SCA) operating licences. In the amended licences, the Minister included an extensive list of functions conferred on Water NSW under other acts, and in particular the *Water Management Act 2000* and the *Water Act 1912*. These are included as a schedule to both of the existing operating licences.

We have proposed some typographical and clarification changes to the conferred functions as they currently appear in the schedules to the existing Water NSW operating licences.

The Water NSW submission stated that the schedules would shortly be amended, however to date we have not been informed that the Minister has conferred any additional functions upon Water NSW. Therefore, the schedule that has been included in the draft licence is substantially the same as the one that was included in the Water NSW (SCA and State Water) operating licences on 1 July 2016.

Glossary

Adaptive environmental water condition	A condition imposed on a water access licence of a type referred to in section 8(1)(b)(i) of the <i>Water Management Act 2000</i> (NSW)
ADWG	Australian Drinking Water Guidelines
AGWR	Australian Guidelines for Water Recycling
AMS	Asset Management System
BoM	Bureau of Meteorology
Catchment audit	An audit conducted under s 42 of the <i>Water NSW Act 2014</i>
Catchment health	In relation to a declared catchment area, means the condition of ecosystems and systems of management (such as sewerage and stormwater systems) in that catchment that protect water quality
Catchment management	Management of land and water resources in a declared catchment area
CBA	Cost benefit analysis
Declared catchment area	An area of land for the time being declared under the <i>Water NSW Act 2014</i> to be a declared catchment area
DPI Water	NSW Department of Primary Industries – Water division
Drinking water	Water that is intended, or likely, to be used for human consumption, or for purposes connected with human consumption
EMS	Environmental Management System
EPA	NSW Environment Protection Authority

Fish River Water Supply scheme	<p>The water management work comprising the concrete dam on Fish River on Oberon and Duckmaloi Weir, together with:</p> <ul style="list-style-type: none"> (a) its associated gravitation main, concrete reservoirs, reticulation systems and treatment works (b) the pumping station at Oberon (c) all incidental and connected works, and (d) all additions, amplifications, improvements and extensions to that scheme
IPART	Independent Pricing and Regulatory Tribunal of NSW
ISO 14001	<i>AS/NZS ISO 14001 Environmental Management Systems – Requirements with guidance for use</i>
ISO 55001	<i>ISO 55001 International Standard for Asset Management</i>
Listed function	has the meaning given in section 7(1) of the <i>Water NSW Act 2014</i>
LLS	The body corporate with that name established under the <i>Local Land Services Act 2013</i> (NSW).
LWU	<p>Local water utility including:</p> <ul style="list-style-type: none"> (a) a water supply authority (b) a council or county council exercising water supply functions under Division 2 of Part 3 of Chapter 6 of the <i>Local Government Act 1993</i>, or (c) a licensed network operator within the meaning of the <i>Water Industry Competition Act 2006</i>
Metering equipment	Includes any device used for or in connection with measuring the flow of water and any ancillary wiring, pipework, telemetry equipment or apparatus and any supporting structure
Metropolitan Water Plan	<i>2010 Metropolitan Water Plan</i>
Minister	Minister for Regional Water
Ministerial corporation	Water Administration Ministerial Corporation constituted by <i>Water Management Act 2000</i> (NSW) section 371
ML	One megalitre, equivalent to 1,000,000 litres
MoU	Memorandum of Understanding
Non-declared Catchment Areas	Means all areas that are not Declared Catchment Areas

NSW Health	NSW Ministry of Health
NWI	National Water Initiative
Operating licence	Water NSW's operating licence issued under <i>Water NSW Act 2014</i> (NSW) section 11
Regulated river	A river that is declared by the Minister, by order published in the Gazette, to be a regulated river
River	Has the same meaning as under the <i>Water Management Act 2000</i> (NSW)
SOC	State Owned Corporation
SOC Act	<i>State Owned Corporations Act 1989</i>
Sydney catchment area	The declared catchment area known as the Sydney catchment area referred to in clause 17 of Schedule 2 of the <i>Water NSW Act 2014</i> , as declared under the Act
Water NSW Act	<i>Water NSW Act 2014</i> (NSW)
WA1912 or Water Act	<i>Water Act 1912</i> (NSW)
WAL	Water Access Licence which means an access licence referred to in of the <i>Water Management Act 2000</i> section 56
Water management licence	A water licence issued under the <i>Water Act 1912</i>
Water management work	A water supply work, a drainage work or a flood work, and includes any part of such a work
WMA or Water Management Act	<i>Water Management Act 2000</i> (NSW)
Water supply work approval	An approval referred to in <i>Water Management Act 2000</i> section 90(2)
Water use approval	An approval referred to in the <i>Water Management Act 2000</i> , section 89
WIC Act	<i>Water Industry Competition Act 2006</i> (NSW)
WIC Reg	<i>Water Industry Competition Regulation 2008</i> (NSW)
WQMS	Water Quality Management System
Unregulated river	A river that is not a Regulated river.



Appendices



A Summary of submissions to Issues Paper

Table A.1 is a summary of the nine submissions received in response to the Issues Paper released in 2016 in. These submissions informed the proposed draft operating licence and reporting manual, as discussed in this draft report.

The Issues Paper, including the full list of questions asked of stakeholders, is available on IPART's website: www.ipart.nsw.gov.au. The complete submissions are also posted on our website.

Table A.1 Summary of submissions to Issues Paper

Stakeholder	Category	Qn No.	Summary of submission
Water NSW	Regulatory requirements	1	Functions authorised by the operating licence may also be required by means of terms and conditions (but do not have to be).
Water NSW	Configuration of licence	2	Water NSW supports one operating licence combining functions of the previous State Water Corporation (State Water) and Sydney Catchment Authority (SCA).
Sydney Water	Configuration of licence	2	Sydney Water notes Water NSW's preference for one operating licence. Sydney Water highlights that a combined operating licence should uphold the current standards related to the Sydney Catchment Area, particularly for water supply, water quality and catchment management.
NSW Government	Configuration of licence	2	The NSW Government supports one operating licence (with specific functions and requirements within the declared catchments). This reflects the NSW Government's rationale for integrating the former SCA and State Water. Further, they consider that it will assist to improve efficiency of administration and reduce duplication of elements that apply across NSW. The NSW Government highlighted that it is important that the combined clearly differentiates between functions carried out in the Sydney Catchment Area and in the rest of NSW.
NSW Irrigators' Council	Configuration of licence	2	The Council considers that the two previous State Water and SCA operating licences should be merged into one operating licence without duplication of common terms and conditions.
Water NSW	Configuration of licence	3	Water NSW does not support any other configurations of licences (eg, more than one licence).
Water NSW	Configuration of licence	4	Water NSW does not support defining the proposed key terms.
NSW Government	Configuration of licence	4	The NSW Government does not consider it necessary to include definitions of the proposed key terms in the operating licence as the water supply work approvals specify conditions that relate to these functions.
Water NSW	Capture, store and release water	5	The new operating licence should authorise Water NSW to capture, store and release water to persons entitled to take the water. The licence should include parts 2 and 3 of the existing Water NSW (State Water) licence. However, the licence should not include cl 3.1.3 (maintenance of water allocation accounts) and cl 3.3.1 (water balance reporting).
NSW Government	Capture, store and release water	5	The operating licence does not need to authorise this function. The water supply work approvals and licences issued by DPI Water already authorise Water NSW to capture, store

Stakeholder	Category	Qn No.	Summary of submission
			and release water.
Sydney water	Capture, store and release water	5	The operating licence should authorise this function. However, within the Sydney catchment area, the current standards for water quality and catchment management should not be diminished in any way.
Commonwealth Environmental Water Holder	Capture, store and release water	5	The Commonwealth Environmental Water Holder (CEWH) is not seeking changes to the existing conditions but emphasises that they should not be advantaged or disadvantaged in the operating licence, in comparison to other licensed entitlement holders, with respect to fees and charges, access to allocations, capacity to use, trade, and carryover.
NSW Irrigators' Council	Capture, store and release water	5	The operating licence should not authorise capture, store and release of environmental water.
Water NSW	Capture, store and release water	6	No new terms and conditions are necessary (than those currently included in parts 2 and 3 of the Water NSW [State Water] licence). The function should be authorised throughout NSW, without constraint.
NSW Government	Capture, store and release water	6	No new terms and conditions are necessary.
Water NSW	Capture, store and release water	7	Water balance reporting (currently required under clause 3.3 of the State Water operating licence) should not be retained in the Water NSW operating licence. This function is already required under Water NSW's water supply work approvals (under the WMA) and water management licences (under WA1912).
NSW Government	Capture, store and release water	7	The existing water balance information required by the Water NSW (State Water) reporting manual duplicates at least some of the requirements of Water NSW's water supply work approvals. IPART should discuss the water balance information requirements with DPI Water to avoid unnecessary duplication and regulatory burden on Water NSW.
Water NSW	Capture, store and release water	8	The operating licence should not increase water quality monitoring and reporting requirements for bulk water supplied to local water utilities.
NSW Government	Capture, store and release water	8	There may be some benefit in increasing Water NSW's responsibility to monitor and provide information on bulk water quality to downstream water utilities. These should be determined according to risk and could be defined in the reporting manual.
Sydney Water	Capture, store and release water	8	The licence should not increase water quality monitoring and reporting requirements with regard to water supplied to Sydney Water.
Water NSW	Capture, store and release	9	The operating licence does not need to require water quality monitoring and reporting for

Stakeholder	Category	Qn No.	Summary of submission
	water		other customers that Water NSW captures, stores and release water to (other than local water utilities).
Water NSW	Capture, store and release water	10	<p>The operating licence should not specify for which other lawful purposes Water NSW captures, stores and releases water to customers.</p> <p>Water NSW requests that these "other lawful purposes" be generally authorised by the operating licence without trying to articulate what these purposes are. Many of these other releases are already authorised and regulated under the <i>Water Management Act 2000</i> and <i>Water Act 1912</i>. Water NSW explains that these conditions are dynamic and change over time to suit needs.</p>
NSW Government	Capture, store and release water	10	The water supply work approvals issued to Water NSW by DPI Water include conditions relating to incidents and emergencies which may result in water being released for other purposes. This must be managed in accordance with the requirements specified by the Minister.
Water NSW	Capture, store and release water	11	Release of water for other lawful purposes (including environmental flows) should not be regulated differently to other releases.
NSW Government	Capture, store and release water	11	Release of water for other lawful purposes (including environmental flows) should not be regulated differently to other releases. These releases are already regulated under the licences and work approvals issued by DPI Water to Water NSW and should not be duplicated by the operating licence.
Water NSW	Capture, store and release water	12	The operating licence should authorise Water NSW to release environmental flows but should not include terms and conditions regulating how it undertakes this function. Terms and conditions are already included in Water NSW's water supply approvals and water management licences.
NSW Government	Capture, store and release water	12	The operating licence should not authorise release of environmental flows in the operating licence as it is already adequately regulated under the <i>Water Management Act</i> and <i>Water Act 1912</i> .
NSW Irrigators' Council	Capture, store and release water	12	The NSW Irrigators' Council is concerned that as the portfolio for planned environmental water increases, and Water NSW has to incur more expenses to store and release planned environmental water. This cost is likely being unfairly passed on to customers.
Water NSW	Supply water	13	<p>The operating licence should authorise Water NSW to supply water to its customers.</p> <p>Part 2 (Water Quality Management System) and Part 6 (customer agreements and complaint management) of the existing SCA operating licence should be included in the new operating licence.</p>

Stakeholder	Category	Qn No.	Summary of submission
NSW Government	Supply water	13	Supply of water to customers is already authorised under the <i>Water Management Act 2000</i> so the operating licence does not need to duplicate this.
Sydney Water	Supply water	13	<p>The operating licence should authorise Water NSW to supply water to Sydney Water. Section 25 of the Water NSW Act already requires Water NSW to enter into arrangements with Sydney Water regarding the supply of raw water (Raw Water Supply Agreement). Clause 2 of the Water NSW (SCA) operating licence should be retained in the new licence. Together with the Raw Water Supply Agreement, it satisfies the requirements of Sydney Water and provides flexibility.</p> <p>Monitoring and information requirements should continue to be set under the Raw Water Supply Agreement through mutual agreement of both parties, considering Sydney Water's customers' needs.</p>
Water NSW	Supply water	14	<p>The operating licence does not need to include additional terms and conditions to regulate how it supplies water to customers (except for those noted above).</p> <p>Supply functions should not be constrained to a particular geographical area.</p> <p>Without considering IPART's definition for "supply", Water NSW considers that it supplies water to its the regional local and county councils and to certain persons in rural NSW who are prevented from further on-selling this water.</p> <p>Water NSW notes that water that is not supplied from the declared catchments or the Fish River Scheme should not be subject to a water quality management system.</p>
NSW Government	Supply water	14	<p>The new licence should include requirements similar to clause 3.1 of the current Water NSW (State Water) operating licence. These relate to processing water orders promptly and efficiently, taking all reasonable steps for timely delivery of water to customers, and minimising water losses from its operations.</p> <p>This should apply to all of Water NSW's activities across NSW.</p>
NSW Government	Supply water	15	<p>The NSW Government considers that all water supplied by Water NSW should be subject to a water quality management system (including water supplied from storages and operated by Water NSW in rural catchments as a number of these supply water for town water supply). The Fish River Water Supply Scheme is required to have a Quality Assurance Program under the <i>Public Health Act 2010</i>.</p>
Sydney Water	Supply water	15	<p>Sydney Water supports the application of a water quality management system for any water supplied by Water NSW, mimicking the existing Clause 2.1 of the Water NSW (SCA) operating licence. This aids Sydney Water to meet its responsibility to ensure that drinking water it supplies is subject to a "catchment to tap" quality management system. (Sydney Water has not commented on the Fish River Water Supply scheme).</p>

Stakeholder	Category	Qn No.	Summary of submission
Water NSW	Supply water	16	Terms and conditions may need to be applied differently to water supply functions in declared catchments than they are being applied to the Sydney catchment area, if new catchment areas are declared in future.
Sydney Water	Supply water	16	The existing standards for protecting declared catchment areas to maintain the current drinking water quality for customers should be upheld.
Water NSW	Supply water	17	Part 6 of the existing Water NSW (SCA) operating licence should be retained in the new licence. Further, these terms and conditions should be made consistent with the Fish River Water Supply Scheme customer contracts terms and conditions of the Water NSW (State Water) licence (further comment under "Other - Retail services").
Water NSW	Supply water	18	Part 2 of the existing SCA operating licence requiring Water NSW to maintain a water quality management system to the satisfaction of NSW Health should be retained in the new operating licence.
NSW Government	Supply water	18	Good catchment management practices improve water quality which is particularly important where the water is ultimately used as drinking water. The operating licence requirement to develop a water quality management system could be framed to drive an appropriate level of catchment management including in rural catchments. Further, declared catchment management practices in the existing Water NSW (SCA) operating licence (Part 4) should be maintained.
Water NSW	Supply water	19	Terms and conditions are not necessary to enhance or require coordination between Water NSW and its customers to maximise end user benefits. Water NSW has negotiated supply agreements with its customers (eg, its Raw Water Supply Agreement with Sydney Water). These arrangements allow for commercial incentives to optimise investment.
Sydney Water	Supply water	19	Terms and conditions are not necessary to enhance or require coordination between Water NSW and its customers to maximise end user benefits. Sydney Water and Water NSW already have protocols in place in its Raw Water Supply Agreement to address this issue. Sydney Water would prefer that any terms and conditions to maximise benefits to customers to be included in the Agreement by mutual agreement.
Australian Modern Dairy	Supply water	19	Diversions from Redbank North Channel, that distributes water to licensed water users in the Redbank North area, are assessed through a meter owned and maintained by Water NSW. This meter is known to be inaccurate and significant volumes of water escape from the channel prior to being diverted for productive purposes by Australian Modern Dairy. However, the total volume of water diverted, including transmission losses, is charted to licensed entitlement holders. The Australian Modern Dairy considers that IPART should review the role of Water NSW in

Stakeholder	Category	Qn No.	Summary of submission
			the continuing operations and maintenance of infrastructure used in water supply and distribution in the Redbank North Area.
Water NSW	Supply water	20	Terms and conditions related to reviews and amendments of supply arrangements with Sydney Water are not necessary. Provisions of the Water NSW Act related to these arrangements are already prescriptive (Part 2, Division 7 of the Water NSW Act). Further, Water NSW does not consider this necessary for any other customers.
Sydney Water	Supply water	20	Terms and conditions related to reviews and amendments of supply arrangements with Sydney Water are not necessary as the Water NSW Act already contains terms and conditions for the review of these arrangements. Sydney Water would prefer to continue to negotiate specific details with Water NSW.
Water NSW	Supply water	21	Terms and conditions specifically relating to supply of water to licensees under the <i>Water Industry Competition Act 2006</i> (WIC Act) are not necessary for inclusion in the operating licence.
NSW Government	Supply water	21	<p>The existing requirements of the Water NSW operating licences which apply to WIC Act licenses should be maintained in a new operating licence, but it should be made more clear that they are relevant to these licensees. This is explained below:</p> <p>Part 2 of the existing Water NSW (State Water) operating licence to provide information to local water utilities also applies to WICA licensees, based on the definition of local water utilities in the operating licence (same as under the <i>Water Management Act 2000</i>).</p> <p>Part 5 of the operating licence, relating to Fish River Water Supply Scheme customer agreements could also relate to WIC Act licensees. Similarly, Part 6 of the Water NSW (SCA) operating licence requiring Water NSW to establish terms and conditions for supplying raw water to customers other than Sydney Water applies to WIC Act licensees.</p> <p>Since WIC Act network operators' licences require the licensee to negotiate a code of conduct with any public water utility supplying them with water, the NSW Government queries whether a clause similar to clause 5.8 of the Sydney Water operating licence to use best endeavours to cooperate with WIC Act licensees to establish a code of conduct is necessary. The codes of conduct required in the Sydney Water operating licence include items comparable to those listed in Part 6 of the current Water NSW (SCA) operating licence.</p>
Sydney Water	Supply water	21	Specific terms and conditions relating to supply of water to WIC Act licensees may not be necessary. The existing requirements for Water NSW to enter into customer agreements with customers other than Sydney Water (ie, clause 6.1 of the existing Water NSW [SCA] operating licence) should be retained in the new operating licence. These requirements

Stakeholder	Category	Qn No.	Summary of submission
			would apply to WIC Act licensees as well.
Water NSW	Supply water	22	<p>Water NSW considers the water system supply yield when undertaking long term planning and considering supply sufficiency is beneficial.</p> <p>Water NSW considers that Part 3 of the existing Water NSW (SCA) operating licence should be retained in the new licence. It is adequately defined and calculated. The model and yield calculation was recently reviewed independently and found to be consistent with industry best practice.</p> <p>The Design criteria form part of the Water NSW level of service framework's range of criteria that are developed in consultation with customers.</p>
NSW Government	Supply water	22	<p>The current obligation to calculate the water supply system yield for Greater Sydney supply system should be maintained in a new operating licence. However, they should be updated to reflect the approach adopted in the next Metropolitan Water Plan. The new plan will include both a "target supply" and a "maximum supply". These two yields should be calculated. Target supply will indicate medium term supply sufficiency. Maximum supply will continue to act as an indicator of long term planning supply sufficiency.</p>
Sydney Water	Supply water	22	<p>The supply system yield calculation requirement should be maintained in the new operating licence. Sydney Water considers that it could be useful if the data and assumptions underlying calculations about yield were publicly available. Similarly, the design criteria should be made publicly available.</p> <p>Further, the operating licence could consider triggers for reviewing the model. The design criteria should be reviewed in conjunction with the Metropolitan Water Plan and be informed by community preferences.</p>
Water NSW	Construct, operate and maintain water management works	23	<p>The operating licence should authorise Water NSW to construct, operate and maintain its water management works.</p>
NSW Government	Construct, operate and maintain water management works	23	<p>The operating licence should authorise Water NSW to construct, operate and maintain its water management works.</p>
NSW Department of Planning and Environment	Construct, operate and maintain water management works	23	<p>If the licence authorises construction, operation and maintenance should not do not override the provisions of the <i>Environmental Planning and Assessment Act 1979</i> (EP&A Act) or associated environmental planning instruments (EPIs). The licence should ensure that any terms or conditions applied to that licence would not conflict with the conditions of development approval or cause instances resulting in non-compliances.</p>
Water NSW	Construct, operate and maintain water management works	24	<p>The operating licence should not include terms and conditions regulating how it undertakes this function as this is covered by other legislation (including the <i>Water Management Act 2000</i>, <i>Water Act 1912</i> and <i>Dam Safety Act</i>). The only terms and conditions required are</p>

Stakeholder	Category	Qn No.	Summary of submission
			around certification of an Asset Management System. The operating licence should also not limit Water NSW from undertaking this function throughout NSW.
Water NSW	Construct, operate and maintain water management works	25	Water NSW should be required to have a certified Asset Management System which could reduce the scope for audits. No requirement necessary for implementation and maintenance of the Asset Management System.
NSW Government	Construct, operate and maintain water management works	25	<p>The NSW Government supports the requirement for Water NSW to develop, implement and maintain an asset management system. Water NSW has recently been vested a large number of assets from DPI Water, including meters and monitoring sites. To ensure that these assets continue to be maintained, the operating licence should set minimum standards for asset management.</p> <p>The asset management system should differentiate between critical assets in the declared catchment(s) and assets in other areas. An asset management condition supports continuity of supply.</p>
Sydney Water	Construct, operate and maintain water management works	25	Sydney Water supports a requirement for Water NSW to develop, implement and maintain an Asset Management System certified to ISO 55001. Certification and regular maturity assessments could allow for lighter regulatory surveillance to be applied in the long term. Further, this will enable consistency between all the NSW water utilities and a comparison of the effectiveness for all of the utilities.
Water NSW	Construct, operate and maintain water management works	26	It is not necessary/ appropriate to constrain Water NSW's control of water in its storage assets as this is already regulated under the WMA, WA1912 and the Murray Darling Basin Agreement.
Water NSW	Construct, operate and maintain water management works	27	The reporting manual does not need to include the existing requirements (reporting on state and performance of assets) but can rely on the reports required by certification audit and surveillance system audits.
Water NSW	Catchment management	28	The operating licence should authorise Water NSW to undertake its listed declared catchment management functions for all declared catchment areas and not just the Sydney Catchment Area (ie, currently the only declared catchment area).
NSW Government	Catchment management	28	The operating licence should authorise Water NSW to undertake its listed declared catchment management functions in the declared Sydney Catchment Area.
Sydney Water	Catchment management	28	The operating licence should authorise Water NSW to undertake its listed declared catchment management functions in the declared Sydney Catchment Area to protect the quality of water supplied for drinking water purposes and avoid, where possible, water quality incidents.

Stakeholder	Category	Qn No.	Summary of submission
Water NSW	Catchment management	29	The operating licence can include terms and conditions that regulate how these functions are undertaken and may require Water NSW to undertake these functions and/or certain activities related to these functions. Part 4 of the Water NSW (SCA) operating licence should be included in the new Water NSW operating licence but it should be constrained to apply to only the Sydney Catchment Area.
Sydney Water	Catchment management	29	No specific terms and conditions. Maintain minimum standard at least for managing declared catchment areas.
Water NSW	Catchment management	30	Water NSW does not currently undertake any catchment management functions in other catchment areas that it currently undertakes in the Sydney Catchment Area. Consequently, there does not need to be any terms and conditions in the operating licence related to these functions.
NSW Government	Catchment management	30	In the declared Sydney Catchment Area, catchments are managed for maintaining quality of water supplied to customers whereas in rural catchments, catchments are managed for multiple purposes. Consequently, the existing catchment management requirements of the Water NSW (SCA) operating licence should be maintained without losing their objective. Research on catchments generally, catchment protection works and environmental management (both upstream and downstream of dams) could be conducted at rural catchments as well, using a risk-based approach. Managing water quality health risks through a multiple barrier approach in accordance with the Australian Drinking Water Guidelines, as required in the declared Sydney catchments, could also be relevant to rural catchments as some of them supply local water utilities for drinking water purposes.
Water NSW	Catchment management	31	Further regulation between Water NSW and Local Land Services is not necessary. The two entities currently work together effectively.
NSW Government	Catchment management	31	The NSW Government considers that a Memorandum of Understanding between Water NSW and Local Land Services in catchment areas may be beneficial and could expand current partnerships.
Water NSW	Flood mitigation and management	32	The operating licence should not authorise Water NSW to undertake flood mitigation and management. Water NSW considers that Division 4 of Schedule 2 of the Water NSW Act does not enable it to undertake the catchment management functions within the Sydney catchment area. As such, if Water NSW is required to undertake this function within this area, it needs sufficient legislative support to cover its risks. Outside the Sydney Catchment Area, Water NSW considers that it is adequately regulated under other legislation (eg, <i>Water Management Act 2000</i> , <i>Water Act 2007</i> , <i>Dam Safety Act</i> and <i>State Emergency Act</i>).

Stakeholder	Category	Qn No.	Summary of submission
NSW Government	Flood mitigation and management	32	<p>The operating licence should not authorise Water NSW to undertake flood mitigation and management. For rural NSW, Water NSW's water supply work approvals (under the <i>Water Management Act 2000</i>) already include conditions related to managing the dams during floods. Therefore the operating licence does not need to include further requirements.</p> <p>In the Sydney Catchment Area, the NSW Government considers that it is unlikely that the completion of the augmentation of Warragamba Dam will occur during the term of this operating licence. Any flood operations required during construction would need to be specified in the conditions of consent of the Planning approval. If required, this function can be authorised at Warragamba Dam in the following term.</p>
Sydney Water	Flood mitigation and management	32	<p>Water NSW should be authorised to undertake flood mitigation and management should the proposal to raise Warragamba Dam's wall proceed. Water NSW also considers that amendment of the Water NSW Act (Division 4 of Schedule 2) would be required before Water NSW could undertake flood mitigation.</p>
Water NSW	Flood mitigation and management	33	<p>Terms and conditions are not required as the function should not be authorised in the new operating licence.</p>
NSW Government	Flood mitigation and management	33	<p>Any flood mitigation or management functions should result in neutral or beneficial effects on water quality and on the ability to manage the catchment to protect public health for declared catchment areas.</p>
Sydney Water	Flood mitigation and management	33	<p>Sydney Water does not have a view on any specific terms and conditions related to flood mitigation and management. However, if Water NSW makes investments in flood mitigation and management in the Sydney Catchment Area, IPART should consider how Water NSW is to recover the costs of these activities as it is unfair to pass the cost on to the customers.</p>
Water NSW	Flood mitigation and management	34	<p>Terms and conditions are not required. Therefore none are required to constrain where Water NSW undertakes this function.</p>
Water NSW	Flood mitigation and management	35	<p>No terms and conditions are required to regulate Water NSW's relationships with other entities such as the State Emergency Services and the Dam Safety Committee because these relationships are clear, effective and efficient.</p>
Water NSW	Education of the community	36	<p>The operating licence should authorise Water NSW to educate the community.</p>
NSW Government	Education of the community	36	<p>The operating licence should authorise Water NSW to educate the community which should be a normal and expected part of running the business. No specific terms and conditions are necessary to regulate how it undertakes this function.</p>
Sydney Water	Education of the community	36	<p>The operating licence should authorise Water NSW to educate the community. No further requirements related to this are necessary.</p>

Stakeholder	Category	Qn No.	Summary of submission
Water NSW	Education of the community	37	No terms and conditions are required to regulate how Water NSW educates the community.
Water NSW	Other – environmental management	38	Water NSW should be required to have a certified EMS which could reduce the scope for audits. No requirement necessary for implementation and maintenance of the Environmental Management System.
NSW Government	Other – environmental management	38	Water NSW should be required to develop, implement and maintain an Environmental Management System, validated and audited by a third party.
Sydney Water	Other – environmental management	38	The requirements to develop, implement and maintain an EMS should be retained in the operating licence. The EMS is a valuable tool to ensure the catchments are protected to maintain water quality to a standard suitable for drinking. The most recent version of ISO 14001 standard (released in 2015) should be referred to in the operating licence.
Water NSW	Other – performance standards	39	<p>Water NSW considers that performance standards should be minimum requirements for customers who have been supplied or delivered water. Water NSW suggests the following minimum standards (for supply only):</p> <ul style="list-style-type: none"> water supplied to customers meets raw water quality standards > 95% of the time water supplied to customers meets health standards 100% of the time water is supplied to customers on time 100% of the time water is supplied to customers in the agreed quantities 100% of the time.
NSW Government	Other – performance standards	39	The NSW Government considers that standards should not be prescribed in the operating licence for health related activities. The NSW Government considers that setting minimum standards is inconsistent with the preventative risk management approach set out in the Australian Drinking Water Guidelines which aims to supply water at the highest practicable quality.
Sydney Water	Other – performance standards	39	Sydney Water notes that any performance standards prescribed to water supply should not impact on the quality of water and continuity of supply to Sydney Water. Sydney Water prefers for minimum supply standards to be negotiated through its Raw Water Supply Agreement with Water NSW. Sydney Water considers that the minimum standards proposed by Water NSW for its operating licence do not meet Sydney Water's needs regarding water quality.
Water NSW	Other – performance standards	40	Water NSW considers that the previous State Water and SCA performance indicators can be converted to performance standards for Water NSW.
NSW Government	Other – performance standards	40	The performance indicators specified in Appendix A of the Water NSW (State Water) reporting manual can be converted into performance standards as these are relevant to water delivery and service interruptions.

Stakeholder	Category	Qn No.	Summary of submission
			<p>It is not appropriate to convert the NWI indicators in the Water NSW (SCA) reporting manual to standards as these may vary from year to year. These relate to water resources, environment and finance.</p> <p>The NSW Government also does not recommend converting the water quality indicators in the Water NSW (SCA) reporting manual to standards. As these may not be able to be met in all circumstances due to varying upstream catchment management practices.</p> <p>A number of catchment health indicators specified in the Water NSW (SCA) reporting manual are variables that are difficult to control so cannot be changed to standards.</p>
Sydney Water	Other – performance standards	40	Sydney Water does not support prescriptive performance standards and prefers for them to be negotiated in customer supply agreements to suit each customer.
Water NSW	Other – performance standards	41	Water NSW considers that the performance indicators should relate to minimum requirements only. Any additional requirements can be negotiated with customers.
Water NSW	Other – conferral of functions	42	The operating licence should not regulate Water NSW's relationship with DPI Water as they already have a prescriptive Deed to regulate this.
NSW Government	Other – conferral of functions	42	The NSW Government considers that the operating licence could regulate Water NSW's relationship with DPI Water via a Memorandum of Understanding.
Water NSW	Other – conferral of functions	43	The operating licence should not include limitations on the audit requirements of the conferred functions.
NSW Government	Other – conferral of functions	43	Where a conferred function is subject to an assessment of "reasonableness" or "practicability", in the July 2016 amended Water NSW (State Water and SCA) operating licences, the NSW Government recognises that the audit requirements in the operating licence may be amended to ensure that IPART is able to exercise its audit function in a meaningful way.
Water NSW	Other – area of operations	44	Water NSW queries the capacity of the operating licence to constrain certain functions to only some areas of operations. Water NSW instead supports functional market distinctions in the operating licence, rather than geographical area distinctions.
Water NSW	Other – area of operations	45	<p>The operating licence should authorise Water NSW to undertake its functions outside the state of NSW, similar to the existing Water NSW (State Water) operating licence.</p> <p>Water NSW interacts with the Commonwealth and other States when undertaking its functions (particularly through Murray Darling Basin Agreement) and needs to facilitate trades of entitlements between holders within and outside NSW.</p>
NSW Government	Other – area of operations	45	The operating licence should authorise Water NSW to undertake its functions outside the state of NSW.

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NSW Irrigators' Council	Other – area of operations	45	Water NSW should be able to legally undertake all the functions it has been conferred from DPI Water.
Water NSW	Other – area of operations	46	Water NSW should be authorised to exercise functions conferred or imposed on Sydney Water, Hunter Water or a water supply authority under the <i>Water Management Act 2000</i> , in their areas of operations, with their agreement.
Sydney Water	Other – area of operations	46	Water NSW can be authorised to exercise functions conferred or imposed on Sydney Water in its area of operations, with its agreement.
Water NSW	Other – area of operations	47	Water NSW should always be required to seek a utility's agreement before commencing to undertake functions conferred or imposed on that utility. Water NSW should never be obliged to undertake these functions.
NSW Government	Other – area of operations	47	Water NSW should always be required to seek the relevant utility's agreement before undertaking their conferred functions as this is a requirement of section 15(5) of the Water NSW Act.
Sydney Water	Other – area of operations	47	Sydney Water considers that the current commercial arrangements with Water NSW already sufficiently address this and additional requirements are not required in the operating licence.
Water NSW	Other - contravening the operating licence	48	No further requirements are necessary in the operating licence related to contraventions of the operating licence. This is adequately covered in the Water NSW Act.
Water NSW	Other – memoranda of understanding	49	The new operating licence should include Part 9 of the existing Water NSW (SCA) operating licence. Further prescription on the matters to be included in the memoranda of understanding (MoU) is not necessary.
NSW Government	Other – memoranda of understanding	49	The existing requirement in the Water NSW (SCA) operating licence to enter into MoUs with NSW Health and the EPA should be included in the operating licence. No further prescription on the matters to be included in the MoU should be included in the operating licence. This should be agreed and set by both parties.
Sydney Water	Other – memoranda of understanding	49	Water NSW should be required to enter into a MoU with NSW Health and the EPA. The operating licence could provide some direction on the content and/or purpose of the MoUs. The legislation makes no requirement for Water NSW to maintain its MoUs with NSW Health and the EPA once entered into.
Water NSW	Other – memoranda of understanding	50	The operating licence does not need to constrain where the MoU applies in relation to Water NSW's operations. The MoUs with NSW Health and the EPA are mutually agreed upon before execution. Therefore its inclusions are self-managed effectively.
NSW Government	Other – memoranda of	50	The operating licence does not need to constrain where the MoU applies in relation to

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	understanding		Water NSW's operations.
Sydney Water	Other – memoranda of understanding	50	The operating licence does not need to constrain where the MoU applies in relation to Water NSW's operations, provided it does not reduce the stringency applied to the Sydney Catchment Area.
Water NSW	Other – memoranda of understanding	51	The operating licence should not require Water NSW to enter into MoUs with any other entities. If this becomes required in future, the Minister can require it by means of section 22 of the Water NSW Act.
NSW Government	Other – memoranda of understanding	51	The NSW Government considers that the operating licence should include a requirement for a MoU between Water NSW and DPI Water. This could be similar to the requirement specified in the existing Water NSW (State Water) operating licence. The MoU could include responsibilities for water quality monitoring (including water temperature) and provision for liaison groups between the two organisations.
Sydney Water	Other – memoranda of understanding	51	The operating licence does not need to include a requirement to enter into a MoU with Sydney Water as the Raw Water Supply Agreement already prescribes a relationship protocol.
Water NSW	Other - metering	52	The operating licence should authorise Water NSW to operate, replace, repair, maintain, remove, connect, disconnect or modify metering equipment that it does not own. Water NSW may sometimes be contracted by customers to undertake these functions for customer owned meters.
NSW Government	Other - metering	52	DPI Water considers that this question is no longer relevant and clause 4.2 of the existing Water NSW (State Water) operating licence was amended to reflect this.
Sydney Water	Other - metering	52	Water NSW could be authorised to operate, replace, repair, maintain, remove, connect, disconnect or modify metering equipment that it does not own provided that these functions are only carried out with the agreement of the asset owner.
NSW Irrigators' Council	Other - metering	52	Water NSW should not be authorised to operate, replace, repair, maintain, remove, connect, disconnect or modify any meters owned by customers. This should only apply to government funded meters.
Water NSW	Other - metering	53	Water NSW should not be required to undertake this function.
Water NSW	Other - metering	54	Include clause 4.2.1 of the existing Water NSW (State Water) operating licence, but edited as follows: "Water NSW must determine the usage of each of its customers."
Water NSW	Other – operational audits	55	The operating licence should include terms and conditions similar to those in the existing Water NSW (State Water and SCA) operating licences in relation to undertaking audits.

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			Further, Water NSW wants the scope of the Asset Management System and Environmental Management System audits to be reduced as described previously.
NSW Government	Other – operational audits	55	The operating licence should include terms and conditions similar to those in the existing Water NSW (State Water and SCA) operating licences in relation to undertaking audits. But not at any detriment to water quality (NSW Health) should be consulted.
Water NSW	Other – operational audits	56	The operating licence should be clear on any determination of cost of carrying out of the audit by IPART. This should be clear that the scope of the audit matches only that required by the operating licence. IPART should be required to follow a competitive process in determining the fees for the audit and to select a suitably qualified independent auditor.
Water NSW	Other – retail services	57	The operating licence should not contain obligations requiring compliance with pricing determinations as this will lead to duplication with the IPART Act and the Commonwealth Water Act.
NSW Government	Other – retail services	57	The operating licence should include an obligation for Water NSW to comply with the pricing determinations, consistent with the requirements in Sydney Water's and Hunter Water's operating licences.
Sydney Water	Other – retail services	57	The operating licence should include an obligation for Water NSW to comply with the pricing determinations, consistent with the requirements in Sydney Water's and Hunter Water's operating licences, to avoid a monopoly power
Water NSW	Other – retail services	58	Clause 5.4 of the existing Water NSW (State Water) operating licence and clause 6.1 of the existing Water NSW (SCA) operating licence adequately protect customers' interests. These requirements should be combined and included in the operating licence
Water NSW	Other – retail services	59	Water NSW does not support including a customer contract in the operating licence because there is a lack of adequate legislation to support one. Unlike for Sydney Water and Hunter Water whose acts have adequate provisions including deeming provisions.
NSW Government	Other – retail services	59	Water NSW should not be required or authorised to establish customer contracts with all categories of customers as this would be a regulatory duplication for licence holders under the <i>Water Management Act 2000</i> and <i>Water Act 1912</i> .
Water NSW	Other – retail services	60	Further terms and conditions related to customer contracts are not necessary in the new operating licence.
Water NSW	Other – retail services	61	The minimum requirements for membership of customer service committees should be expanded in the operating licence to include other groups of customers. Water NSW considers that currently, the committees have over-representation from government agencies.

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NSW Irrigators' Council	Other – retail services	61	The customer service committees should be maintained in the new operating licence. It is important that all types of customers are adequately represented. Especially in light of the increased functions and responsibilities Water NSW has acquired since the conferral of new functions from DPI Water.
Water NSW	Other – retail services	62	The obligation of the existing Water NSW (State Water) operating licence requiring a customer service charter is adequate and valuable
Water NSW	Other – retail services	63	Water NSW considers that the code of practice is adequate and fair for customers experiencing hardship and it is adequately communicated.
Water NSW	Other – retail services	64	Water NSW considers that by adopting the previous State Water's customer complaints handling procedure, this will be adequate to cover all of Water NSW's customers since the merger.
Water NSW	Other – retail services	65	EWON is the appropriate external dispute resolution scheme for Water NSW. Information about the scheme is available on Water NSW's website and is communicated once a year through bills to customers.
Water NSW	Other – retail services	66	Other terms and conditions related to customer protection are not necessary for inclusion in the new operating licence.
Water NSW	Other – Metropolitan Water Plan	67	The operating licence should not include specific requirements of the Metropolitan Water Plan. These are imposed on Water NSW through its water supply work approvals and the Water Sharing Plans under the <i>Water Management Act 2000</i> .
NSW Government	Other – Metropolitan Water Plan	67	The operating licence should require Water NSW to comply with the obligations of the Metropolitan Water Plan and contribute to its periodic review. This will ensure that they are independently reviewed/ audited during the period of the term of the operating licence. Not all requirements of the Metropolitan Water Plan are achieved through the work approvals and Water Sharing Plans. A condition in the operating licence could clarify Water NSW's obligations under the plan.
Sydney Water	Other – Metropolitan Water Plan	67	The operating licence should not include specific requirements of the Metropolitan Water Plan as the plan is likely to be updated soon. If the operating licence includes requirements that the amended plan recommends, this may not allow Water NSW time to consider feasibility of projects recommended by the plan.
Water NSW	Other – Metropolitan Water Plan	68	The operating licence should not require Water NSW to develop a protocol with the Metropolitan Water Directorate.
NSW Government	Other – Metropolitan Water Plan	68	The NSW Government supports including a requirement in the operating licence for Water NSW to develop a roles and responsibilities protocol with DPI Water. The protocol

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			would facilitate the ongoing review and implementation of the Metropolitan Water Plan. This would be consistent with other major public water utilities.
Sydney Water	Other – Metropolitan Water Plan	68	The operating licence should require Water NSW to make its best endeavours to develop a protocol with the Metropolitan Water Directorate, similar to the Sydney Water and Hunter Water operating licences.
Water NSW	Other – synergies with price regulation	69	The Water NSW operating licence does not need to enhance links with IPART's pricing function. Water NSW is already regulated under federal legislation (whereas the operating licence would only be state wide). The requirements to comply with pricing determinations are set out in the IPART Act and the Commonwealth Water Act.
Water NSW	Other – synergies with price regulation	70	Ongoing sequencing with the pricing determinations would be of benefit. However, the Water NSW operating licence term should be set at the maximum of five years. Since the pricing determinations are on a 4-year cycle, they can follow the operating licence.
NSW Government	Other – synergies with price regulation	70	Different terms to those currently in place for price reviews and operating licence reviews should be considered. Rational sequencing of operating licence reviews and price reviews, and reviews of water security and infrastructure plans will assist in achieving least cost outcomes.
Sydney Water	Other – synergies with price regulation	70	The ideal sequencing will vary for each utility. Typically operating licence periods are set at the maximum allowable period. If licensing reviews are undertaken before pricing reviews, sufficient time for planning and budgeting relating to levels of service could be planned for.
Water NSW	Other – Reporting Manual	71	The reporting obligations (through the reporting manuals) from the existing Water NSW operating licences should be included in the new operating licence. The obligation(s) to make reports publicly available should only relate to reports where there is a demonstrated material benefit in doing so and should not duplicate other reporting obligations.
NSW Government	Other – Reporting Manual	71	The operating licence should require Water NSW to comply with reporting obligations currently set out in the reporting manual. Reporting requirements for within the declared catchment should be maintained and applied to other catchments on a risk basis.
Sydney Water	Other – Reporting Manual	71	Sydney Water supports reporting obligations being imposed through a reporting manual as this is a consistent approach with other utilities regulated by IPART. Water NSW should be required to report on outcomes achieved by the Drinking Water Quality Management System to support transparent reporting to IPART and customers on the quality and safety of water supplied.
Water NSW	Other – Reporting Manual	72	Performance indicators from the existing Water NSW (State Water) reporting manual should

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			<p>be retained. Most of the performance indicators from the existing SCA reporting manual (including catchment health indicators) should be retained in the new operating licence. However, Water NSW suggests deleting two IPART indicators (Table B2 of reporting manual) as these are a subset of the water quality monitoring program developed under the WQMS and the results of this program are made available to IPART annually (in the Annual Water Quality Monitoring Report).</p> <p>For indicators relating to the impact of energy used and waste generated: Water NSW considers that data collection for energy and waste is resource intensive and is challenging to meet timeframes. Water NSW suggests new indicators for waste.</p>
Sydney Water	Other – Reporting Manual	72	Sydney Water believes there is benefit in including a requirement for Water NSW to report against NWI performance indicators as it will provide consistency with other water utility operating licences.
Water NSW	Other – ancillary functions	73	The operating licence should generally authorise Water NSW to undertake any functions ancillary to its listed and other functions.
Water NSW	Other – ancillary functions	74	Water NSW considers that the water market and associated legislation can be reformed. Water NSW considers that the operating licence should be structured according to market function.
NSW Government	Other – ancillary functions	73	Water NSW should be authorised to undertake additional water quality monitoring functions. It is important that water quality is monitored both upstream and downstream of each of the storages so that the impacts on water quality can be assessed. Particularly in relation to water temperature monitoring. Especially now that the responsibilities and functions for catchment water quality monitoring have been moved from DPI Water to Water NSW, the requirements should be set in the new operating licence.
Tamworth Regional Council	Other – ancillary functions	73	Tamworth Regional Council seeks postage stamp pricing for bulk water within NSW. Further, Water NSW should be authorised to administer water licences for Local Government.
Tamworth Regional Council	Other – ancillary functions	74	Tamworth Regional Council considers that the operating licence should enable Water NSW to administer licensing functions for Local Government. Council considers that there is potential duplication of regulation with DPI Water retaining licensing functions for Local Government and Water NSW administering licensing for private customers.
Tamworth Regional Council	Other – ancillary functions	75	Tamworth Regional Council has not proposed any specific terms and conditions to regulate how Water NSW should administer licensing for Local Government.
NSW Irrigators' Council	Other – ancillary functions	73	NSW Irrigators' Council requests more clarity on which of Water NSW's services are

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			<p>negotiable and can be tailored. Previously Water NSW has stated that its operations are non-negotiable because of its complex legislative requirements. The council wants to know how Water NSW intends to offer tailored contracts to customers.</p> <p>The Irrigators' Council queries whether this is the appropriate time to undertake the review of Water NSW's operating licences. Water NSW may be subject to operational changes through the implementation of the Murray-Darling Basin Plan and the NSW Water Resource Plans. Further, the NSW Irrigators' Council considers that its current North Coast Pilot is an ideal opportunity to gauge customer interest in changes to Water NSW service delivery model.</p>
Australian Modern Dairy	Other – ancillary functions	73	<p>Diversions from Redbank North Channel, that distributes water to licensed water users in the Redbank North area, are assessed through a meter owned and maintained by Water NSW. This meter is known to be inaccurate and significant volumes of water escape from the channel prior to being diverted for productive purposes by Australian Modern Dairy. However, the total volume of water diverted, including transmission losses, is charted to licensed entitlement holders.</p> <p>IPART should review the role of Water NSW in the continuing operations and maintenance of infrastructure used in water supply and distribution in the Redbank North Area.</p>

