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Erica van den Honert  
Director, Assessment Practice  
EIA Improvement Project  
NSW Department of Planning and Environment  
GPO Box 39  
Sydney NSW 2001

Dear Ms van den Honert

### Submission – Environmental Impact Assessment Improvement Project

Thank you for the opportunity to comment on the Draft Environmental Impact Assessment (EIA) Guidance Series. We have considered and provided comments only on the parts of the guidance series that are relevant to our role regulating public water utilities<sup>1</sup> (PWUs) and water utilities licensed under the *Water Industry Competition Act 2006* (WIC Act).

### Impediments to competition in water

#### IPART recommendation:

- 1 Review the effect of planning legislation on public water utilities and WIC Act licensees to consider how the Government could amend the *Environmental Planning and Assessment Act 1979* (EP&A Act) (and/or related instruments) to remove impediments to competition between public and private water utilities. IPART could assist with such a review.

The proposed outcomes of the EIA Improvement Project would increase the difference in planning requirements between PWUs and WIC Act licensees. This is because State Significant Infrastructure provisions (to which the EIA Guidance Series are relevant) apply to certain development carried out by PWUs, but not to equivalent development carried out by WIC Act licensees. For example, if a PWU and WIC Act licensee were each to carry out development for the purpose of a sewage treatment plant (for which Part 5 environmental assessment and an Environmental Impact Statement were required under the EP&A Act):

- ▼ for the **PWU**, the development would be State Significant Infrastructure,<sup>2</sup> and the EIA Guidance Series would apply; but
- ▼ for the **WIC Act licensee**, the development would **not** be State Significant Infrastructure and the EIA Guidance Series would **not** apply.

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<sup>1</sup> Sydney Water, Hunter Water and WaterNSW.

<sup>2</sup> *State Environmental Planning Policy (State and Regional Development) 2011*, Schedule 3, cl 1(1).

This means that the environmental assessment requirements for the PWU would be different to those for the WIC Act licensee for the same development. Such differences in planning requirements can create impediments to competition, as they mean that there is not a level playing field between public and private water utilities' regulatory requirements.

### **Environmental conditions could overlap with water utility licence conditions**

IPART recommendations:

- 2 Include guidance in '*Guideline 7 – Approach to Setting Conditions*' that requires the Department of Planning and Environment's assessment officers to consider other regulatory instruments (such as operating licences for PWUs, and licences issued under the WIC Act) to avoid duplication of conditions where possible.
- 3 If the Government implements the 'transferable conditions' regime outlined in the draft Environmental Planning and Assessment Amendment Bill 2017, include guidance in '*Guideline 7 – Approach to Setting Conditions*' on how to draft conditions in this context.

We support the principle that conditions should avoid duplication, as this is an efficient way to regulate. The draft '*Guideline 7 – Approach to Setting Conditions*' does not include any guidance on how assessment officers can avoid duplication. The operating licences for PWUs and licences issued under the WIC Act contain conditions that might be duplicated in conditions of consent. For example, Sydney Water, Hunter Water and network operators licensed under the WIC Act must manage recycled water quality consistent with the Australian Guidelines for Water Recycling.<sup>3</sup>

The transferable conditions regime (outlined in the draft Environmental Planning and Assessment Amendment Bill 2017) would allow certain consent conditions to cease to have effect, if they are substantially consistent with conditions imposed under another approval or licence. In our submission regarding that bill,<sup>4</sup> we supported this proposal. We consider that conditions should be drafted in a way that makes any transfer of conditions as efficient as possible. In this context, it might be beneficial to consult with other regulators so that conditions are consistent with other licences and approvals where possible.

IPART's contact officer for this project is Narelle Berry, Director, Water Licensing and Compliance, contactable on the details above.

Yours sincerely



**Peter J. Boxall AO**  
Chair

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<sup>3</sup> Sydney Water Operating Licence 2015-2020, cl 2.2; Hunter Water Operating Licence 2017-2022, cl 3.2; *Water Industry Competition (General) Regulation 2008*, Schedule 1, cl 7.

<sup>4</sup> IPART, *Submission - draft Environmental Planning and Assessment Amendment Bill 2017*, March 2017.