



Hunter Water Corporation
ABN 46 228 513 446

PO Box 5171
HRMC NSW 2310
36 Honeysuckle Drive
NEWCASTLE NSW 2300
hunterwater.com.au
1300 657 657 (T)
enquiries@hunterwater.com.au

27 November 2017

Our Ref: HW2011-1081/3

Compliance and Enforcement Policy
Independent Pricing and Regulatory Tribunal
PO Box K35
Haymarket Post Shop NSW 1240

Dear Mr Harmstorf,

COMPLIANCE AND ENFORCEMENT POLICY

Hunter Water appreciates the opportunity to comment on the Independent Pricing and Regulatory Tribunal's (IPART's) *Compliance and Enforcement Policy - Draft Policy* (the Draft Policy), as published in October 2017.

Hunter Water welcomes IPART's stated intent to improve the consistency of approach and actions across all of IPART's regulatory compliance functions and regulated industries. The Draft Policy is an improvement to the *Energy and Water Licence Compliance Policy (July 2013)*, both in terms of coverage of compliance and enforcement functions and readability.

Hunter Water considers IPART's principles and approach to be consistent with regulatory best practice, as encapsulated in the statement:

... we seek to make the best use of our resources to minimise excessive costs to regulated entities and avoid broader costs being imposed on the community. We apply a risk-based regulatory model which allows us to focus on allocating resources to areas of higher risk, increase our efficiency and tailor our enforcement response. (IPART Draft Compliance and Enforcement Policy, p 5)

IPART's various regulatory responsibilities are in place to protect the broader community. Hunter Water welcomes IPART's willingness to take into account the following factors when determining the appropriate enforcement action(s) to apply:

- The conduct/culpability of the offender.

This recognises that the manner in which the regulated entity deals with non-compliances, including rectification and self-reporting, is an important part of compliance behaviour. It also encourages collaboration and transparency between the regulator and the regulated entity.

- The compliance history of the offender.

Whether the non-compliance is an isolated, uncharacteristic instance, or whether it forms part of a pattern of non-compliant behaviour should be a determinant of the enforcement response. This principle is consistent with those underpinning our broader legal system.

- The materiality of the contravention.

This ensures that enforcement actions reflect the consequences of the non-compliance and is consistent with a 'risk-based' approach to compliance.

Hunter Water is supportive of IPART's use of a risk-matrix to assess the risk of harm and to transparently define the *consequence descriptors* (in Table 3.2). This is a well-accepted approach to defining risks.

Hunter Water notes the use of adjectives and terms in Table 3.2 that are subjective, such as: *widespread, extensive, extended, multiple, long term, extensive, significant, serious, severe, small, and material/immaterial*. These terms may require the regulator to make interpretational decisions, which may reduce the consistency and transparency of the proposed approach.

Clarification is sought on the applicability of the risk-based model to enforcement action decision-making. IPART states in Section 3 that priorities for compliance and enforcement are based on the risk of harm and level of compliance (as shown in Figure 3.2). This is not referenced later in the Draft Policy in relation to matters considered when deciding whether to take enforcement action and what action to take (in section 5).

A further minor refinement opportunity would be to note that selection of approved auditors from Audit Panels is an option that only applies to specific industries or types of regulated entities. A footnote would provide sufficient clarity.

Hunter Water prioritises compliance with its regulatory obligations and supports IPART's efforts in ensuring that the compliance and enforcement framework is well designed and implemented with benefits to the community as a core focus.

Yours faithfully,

Peter Shields
Manager Regulatory Policy