

Submission to IPART on Hunter Water's Draft Operating Licence 2017–2022

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1 Overview

Sydney Water welcomes the opportunity to comment on the package of reports released by IPART relating to the draft Hunter Water Corporation (Hunter Water) *Operating Licence 2017–2022* (the draft Operating Licence).

Sydney Water is well placed to comment on the proposed licence conditions, as we share many of Hunter Water's regulatory obligations and have already experienced some of the changes IPART is suggesting in this review.

On the whole, Sydney Water supports IPART's aims for the licence review of:

- more effective regulation of Hunter Water's operations – removing duplicative or unnecessary requirements reduces administrative costs of activities that provide little or no value for the community
- further enhancing a systems-based approach to licensing – this allows utilities greater flexibility in how they deliver services, while ensuring customer protections remain
- creating greater consistency between licensing approaches for major water utilities – however, this should not be applied without taking into account the particular context of each utility, or where change would result in improved licence conditions or better outcomes.

We generally support most of IPART's recommendations and proposed licence and Reporting Manual conditions, with the exceptions of:

- extending the obligation to serve wholesale customers – instead, we recommend IPART postpone consideration of this requirement until after the wholesale pricing review
- retaining existing water quality indicators – these are duplicative and inconsistent with assessment methods under the *Australian Drinking Water Guidelines*
- the extension of Customer Contract obligations relating to rebates to consumers – this would be unworkable in practice.

More detail on each of Sydney Water's positions is provided in the following sections. In some cases, while generally supportive of IPART's approach, we recommend minor changes to drafting for clarity and accuracy, or to achieve IPART's intended objectives and / or an improved outcome.

There are a number of other issues raised in the draft report and / or draft Operating Licence, not related to a specific draft recommendation. For example, some licence conditions have been maintained with no change, and in other places IPART has updated wording (such as throughout the Customer and stakeholder relations chapter). We comment on these by exception, where they:

- are relevant to or raise concerns for Sydney Water, or
- where we believe they may have a substantial impact on Hunter Water's obligations.

2 Licence context and authorisation

2.1 Change to licence structure

Recommendation 1: Adopt a proposed licence structure to better align the licence terms and conditions with Hunter Water’s operational activities.

Sydney Water position: Neutral

The proposed structure may make it easier for stakeholders to understand. A consistent approach to the licence structure across utilities would make it easier to compare obligations.

2.2 Amending licence objective

Recommendation 2: Add an objective statement to the licence.

Sydney Water position: Support, in principle; suggest reconsider wording changes

Including an objective statement in licences may assist stakeholders understand why it exists and what it aims to achieve. However, the proposed wording changes are confusing. In particular, we believe that points b) and c) in draft clause 1.1.1 are difficult to understand because considering the interests of stakeholders and minimising the regulatory burden on Hunter Water are not objectives of the licence itself. Rather, these points describe the licensing or licence review process.

Hunter Water and other water utilities, including Sydney Water, already have objective clauses in their licences, with different wording used for each. Sydney Water’s current licence objective is:

The objective of this Licence is to enable and require Sydney Water to provide the Services within its Area of Operations. Consistent with this objective, this Licence requires Sydney Water to:

- a) meet the objectives and other requirements imposed on it in the Act and other applicable laws;*
- b) comply with the quality and performance standards specified in this Licence;*
- c) recognise the rights given to Consumers and Customers; and*
- d) be subject to Operational Audits.*

This provides a straight-forward description of the licence and what it requires Sydney Water to do. The phrase “to enable and require” is particularly useful in explaining why the licence exists.

IPART notes in its draft report that the purpose of Hunter Water’s licence is already sufficiently defined in the *Hunter Water Act 1991*. However, in this case, some duplication may aid clarity.

While not a major issue, we would prefer the wording of the objective clause to remain unchanged, or to be made consistent with Sydney Water’s licence.

2.3 New clause regarding stormwater services

Recommendation 3: Amend the licence obligations to explicitly allow Hunter Water to construct and augment the stormwater drainage systems under its control.

Sydney Water position: Support

Clause 1.2.4 in the draft Operating Licence appears to be consistent with the relevant clause in Sydney Water's current Operating Licence. This was added to Sydney Water's licence in 2015 to clarify the ability of Sydney Water to construct and / or amplify stormwater assets. Due to the different nature of stormwater services and the wording of the *Sydney Water Act 1994*, there had historically been some confusion and misinterpretation about the ability of Sydney Water to do this.

Sydney Water's new clause has been helpful in clarifying our ability to provide stormwater systems and services, including amplifying the capacity of existing assets. It did not create any new or additional obligations on Sydney Water beyond those prescribed in our Act. The change was sought to assist Sydney Water to act upon system deficiencies and manage capital investment in stormwater assets on the same basis as any other asset class, with investment decisions being subject to the same prudence and efficiency criteria.

We support the modified wording used in Hunter Water's draft Operating Licence. In particular, the use of "enhance" appears to support the provision of stormwater services as a broader concept, rather than just flood mitigation – potentially including improved waterway health and liveability outcomes. This concept was raised by Newcastle City Council in its submission to the Issues Paper and at the public workshop.

A suggested improvement to the draft report (page 18) would be to use an alternative example to enlarging channels to avoid building detention basins. From a technical point of view, this is not consistent with good stormwater management practice. A more appropriate example may be source control (such as wetlands or streetscape raingardens) to reduce the need for large detention basins.

2.4 Extending obligation to supply services to wholesale customers

Recommendation 4: Extend the obligation to provide services to include certain wholesale customers.

Sydney Water position: Do not support. Postpone until completion of wholesale price review. Otherwise, strongly recommend redrafting to ensure consistency between regulatory instruments

As we have noted previously in this review, Sydney Water does not believe a licence requirement is necessary, as the *Competition and Consumer Act 2010* (Cth) is already sufficient to facilitate competition and avoid a potential refusal by the public utility to supply wholesale services. Duplicating obligations in an operating licence is not optimal nor regulatory best practice. Sydney Water has never refused service to WIC Act licensees and we understand Hunter Water similarly has no history of refusing services.

However, if IPART does wish to proceed with such a licence condition, our preference would be to defer inclusion until the end of the wholesale price review. We have some concerns with the current wording in the draft Operating Licence and a delay would allow the clause to be drafted in a way that is consistent with the wholesale price determination.

There does not appear to be a strong driver to proceed immediately, given that:

- no stakeholders advocated for a new obligation throughout the review¹
- DPI Water and Hunter Water also recommended waiting until the end of the wholesale price review
- “wholesale services” are undefined.

The definition of wholesale services has changed significantly throughout IPART’s wholesale price review and is still subject to change. As the supplementary Draft Determination will not be released until the end of March 2017, it is difficult to comment on the extent to which the proposed obligation to supply, and the scope of wholesale services subject to regulated prices, may be mismatched.

As currently drafted, the draft clause contains material definitional mismatches with the draft wholesale price determination. If pursued, the following issues require clarification:

- The draft Operating Licence imposes an obligation to provide “Services”, rather than wholesale services. This introduces ambiguity. The new obligation to supply should only relate to “wholesale services”, as defined in the final wholesale price determination. This would ensure the obligation is clearly linked to the types of services covered by the determined wholesale price. It would also limit the risk of potential contention over the level of service the public utility was obligated to supply (as this would be covered by the negotiated terms and conditions for the provision of that particular wholesale service).
- The draft Operating Licence defines “wholesale customer” as a WIC Act licensee. This does not appear to capture on-suppliers, as defined in the draft wholesale price determination. However, if this was IPART’s intention, this could be clarified with a note in the licence.
- What is the extent of Hunter Water’s obligation where a wholesale customer seeks a commercially negotiated agreement but the two parties cannot agree on price terms and conditions? This is currently unclear.
- IPART’s intention appears to be to limit the obligation to supply services where the WIC Act licensee’s end-use customers are located within Hunter Water’s geographic area of operations. However, the current wording of draft clause 1.5.2 could be misinterpreted. This is because “ultimate end-use” appears to be in reference to the wholesale customer, rather than the wholesale customer’s end-use customers.

¹ We note that this issue was mentioned by a stakeholder in the wholesale price review.

2.5 Licence review period

Recommendation 5: No change to licence review period at this point in time.

Sydney Water position: Neutral

A set review cycle would assist Sydney Water with long-term planning and resourcing. We support IPART further considering this issue for all regulated water utilities, and request that Sydney Water be involved in future discussions.

There is a drafting error on page 5 of the draft report, where this recommendation is listed under Water Conservation.

3 Water conservation

3.1 Economic level of water conservation

Recommendation 6: Adopt the concept of Economic Level of Water Conservation to replace the prescriptive limit on water consumption and the Economic Level of Leakage.

Sydney Water position: Support

It is logical and reasonable to have consistent approaches to water conservation requirements in Sydney Water and Hunter Water's licences. The minor wording changes in draft clause 2.1.2 are an improvement compared to Sydney Water's licence, and more clearly define the scope of this new licence condition.

Based on our experience, IPART has allowed Hunter Water sufficient lead time to develop the methodology (until November 2018). Sydney Water has previously stated it would be happy to assist Hunter Water to do this.

As a minor point, draft clause 2.1.5(b) could be clarified. This requires Hunter Water to "ensure that the level of leakage from its Drinking Water Network **is determined by** the methodology for the Economic Level of Leakage" (emphasis added). It seems impractical for Hunter Water to be required to ensure that leakage is exactly at the level determined by the ELL methodology. Sydney Water's equivalent requirement (no longer in force) was to ensure that leakage does not exceed 121 megalitres a day. Alternatively, Hunter Water could report actual leakage against its ELL. In either case, the note accompanying this clause would also need amending. The note states the intention of draft clause 2.1.5 is to maintain existing water conservation requirements until the approval of the ELWC methodology; however, Hunter Water's 2012–2017 leakage requirements relate solely to developing and gaining approval for the ELL methodology.

3.2 Reporting requirements

Recommendation 7: Introduce a requirement to prepare an annual Water Conservation Report after the Economic Level of Conservation methodology is approved by IPART.

Sydney Water position: Neutral

In general, we support transparent reporting of water conservation activities, especially following the introduction of a new approach in the Operating Licence. However, Hunter Water is best placed to comment on any resourcing impacts of this draft recommendation.

4 Supply services and performance standards

4.1 Water quality

4.1.1 Water quality management systems

Recommendation 8: Amend the note to the Drinking Water Quality Management System licence clause to make it clearer that unfiltered water is restricted to non-potable uses.

Sydney Water position: Neutral

Sydney Water does not have any circumstances of providing “unfiltered water” or partially treated water to customers for potable end-use.

We recommend that IPART consult closely with NSW Health to ensure an appropriate approach is adopted in the licence to deal with this particular situation. This would be our preference if a similar situation arose for Sydney Water. Such circumstances are usually niche cases, warranting case-by-case consideration of context and intended end-use.

Recommendation 9: Clarify NSW Health’s role in relation to water quality management.

Sydney Water position: Support

No recommendation: Maintain water quality compliance regime in Operating Licence

Sydney Water position: Neutral

The requirements in the draft Operating Licence for drinking water and recycled water quality management systems are largely consistent with Sydney Water’s requirements, with some minor exceptions, as outlined below:

- Our licence is silent on the method to vary these systems, whereas Hunter Water’s draft specifies changes must be agreed “in writing”. We support this change, for clarity.
- The draft Operating Licence does not require NSW Health to agree on “significant changes” to the water quality management systems. Instead, Hunter Water is only required to report proposed changes (under the Reporting Manual). We have no concerns with this approach.

We are neutral towards water quality being regulated under the Operating Licence or the *Public Health Act 2010*. This is a matter for NSW Health to comment on.

4.1.2 Water quality indicators

No recommendation: Retain water quality indicators in Reporting Manual

Sydney Water position: Do not support

The indicators for water quality in Appendix B are unnecessary and would already be covered through reporting on compliance with the *Australian Drinking Water Guidelines* (ADWG). Neither water quality indicator is consistent with the ADWG long-term compliance assessment method.

ADWG requirements for long-term microbial performance focuses largely on corrective action. It does not lend itself to a percentage measure. Long-term chemical / physical performance focuses largely on the assessment of percentiles, which accounts for the level and variation of results.

Sydney Water does not have water quality indicators in its Reporting Manual. Sydney Water responded on the same basis when the same water quality indicators were proposed for inclusion in its draft Reporting Manual.

4.1.3 Reporting on changes to the water quality management systems

Clauses 3.1.3 and 3.2.3 of the draft Operating Licence and clause 3.2.2 of the draft Reporting Manual require Hunter Water to notify IPART and NSW Health of any proposed, significant changes to its Water Quality Management Systems. This is in line with Sydney Water's requirements.

There may be a drafting error in clause 3.1.4 of the draft Reporting Manual, which requires "any changes" to the Water Quality Management Systems to be included in the annual compliance and performance report. We recommend this be changed to "any significant changes", to avoid reporting on immaterial or minor system changes.

4.2 System performance standards

4.2.1 New requirement to gather information for future review

Recommendation 10: Include a new licence condition to ensure information is gathered within the term of the new licence to inform a future review of system performance standards.

Sydney Water position: Neutral

In the past, tightening system performance standards has been considered a way to improve utility performance. However, this could bring higher costs without providing service improvements that customers want. We support any changes to system performance standards being informed by robust customer engagement.

We note there are inconsistencies with how Hunter Water's pressure and continuity standards are counted, compared to its wastewater overflow standard. Hunter Water's pressure and continuity standards count each part of a multiple occupancy separately (for example, a house and a granny flat). This is not consistent with Sydney Water's system performance standards, and would not be practical or workable for us. Our information systems are based on connected properties. In addition, as the development approvals process continues to be streamlined, the public utility will have no way of identifying such developments. A consistent and measurable approach – one bill, one count – would be preferable across all standards. This would aid clarity and comparability.

4.2.2 Report on system performance standards

Under section 3.1.4 of the draft Reporting Manual, the annual report on Drinking Water and Recycled Water is required to include a compliance report on the System Performance Standards (SPS) for pressure, continuity and overflows. This appears to be a drafting error. If IPART is seeking a single report based on a management system approach, it would seem logical for the report on SPS to be included as part of the annual compliance and performance report on the Asset Management System.

If IPART does intend for the report on SPS to be included in the report on water quality management systems, the name of the report should be amended. Similarly, the template provided in Appendix F would need updating to incorporate the SPS requirements.

5 Organisational systems management

5.1 Asset Management System

Recommendation 11: Introduce in the licence a requirement for an AMS to be consistent with ISO 55001 by 31 December 2017 and certified by 1 July 2018.

Sydney Water position: Support

ISO 55001 is the internationally recognised standard for asset management. Certification will provide additional benefits, with minor cost impacts. The proposed licensing approach should allow for reduced assurance activities. Hunter Water is best placed to comment on resourcing impacts.

Recommendation 12: Remove the requirement for State of the Assets reporting in the Reporting Manual.

Sydney Water position: Support

We support the removal of any unnecessary reporting requirements.

Recommendation 13: Include a one-off reporting requirement to provide a copy of the Strategic Asset Management Plan to IPART once certification to ISO 55001 is achieved.

Sydney Water position: Support

This will pose no additional regulatory burden, as a Strategic Asset Management Plan is required by ISO 55001.

5.2 Environmental Management System & Quality Management System

Recommendation 14: Amend the EMS and QMS licence conditions to require Hunter Water to maintain systems and certification to the most up-to-date standards.

Sydney Water position: Support

We would prefer that operating licences refer to the ISO standards instead of the AS/NZS standards, where they are consistent.² AS/NZS standards are not always updated at the same time. For example, the ISO standards for EMS and QMS were updated in 2015; however, the Australian standards for EMS and QMS were not published until March 2016, five months later.

5.3 Reporting requirements

The draft Reporting Manual should be revised to require Hunter Water to report on “major non-conformances identified by the ISO certification body”, rather than “failures” in its ISO based EMS, QMS and AMS management systems. This would be consistent with Sydney Water’s Reporting Manual and ISO systems terminology. Any major non-conformances identified by the ISO certification auditor would be significant, as distinct from self-identified non-conformances through internal system audits, which may be minor in nature.

² In the case of complaint management, the AS/NZS standard is different in content. See Section 7.2.1.

6 Performance monitoring and reporting

6.1 Performance indicator reporting

Recommendation 15: Add new licence conditions to require Hunter Water to report to IPART against NWI performance indicators.

Sydney Water position: Support

This aligns with Sydney Water's current Operating Licence and Hunter Water's current practice.

As a minor note, the draft report states that there has been no changes to requirements relating to IPART's performance indicators. However, the existing clause 8.4, which contains requirements for accurately measuring performance against IPART performance indicators, has been removed. In light of the new section on NWI indicators, Sydney Water recommends the re-insertion of this section, as per below:

Performance indicators

a) Hunter Water must maintain sufficient record systems to enable it to measure accurately its performance against the performance indicators specified in the Reporting Manual.

b) In the case of any ambiguity in the interpretation or application of any performance indicators specified in the Reporting Manual, IPART's interpretation or assessment of the indicators will prevail.

For consistency and completeness, there should either be an individual Operating Licence requirement relating to both performance indicators and NWI indicators or neither. An alternative approach would be to address both types of indicators within clause 5.2 of the draft Operating Licence, which includes general Reporting Manual obligations.

6.2 Operational audits

An additional sub-clause has been added to Hunter Water's draft Operating Licence to provide IPART or the auditor all information in Hunter Water's possession, custody or control, which is necessary or convenient for the conduct of the Operating Licence Audit (draft clause 5.1.2(a)). The intention appears to be to put the onus on the utility to proactively provide information for the audit. This would prevent a utility from not providing sufficient detail and context that would allow the auditor to make an accurate audit assessment.

Sydney Water has no concerns with this addition, as it is consistent with our current practice. We note that it may be difficult for a licensee to demonstrate full compliance with such an open-ended requirement. An alternative approach would be to address this issue through IPART's Audit Guidelines.

6.3 Other Reporting Manual issues

There are a number of inconsistencies between the indicators in the draft Reporting Manual and Sydney Water's current Reporting Manual. These could be addressed as part of the future review of performance indicators across the industry that IPART recommends in its draft report (page 63).

We recommend a few minor drafting amendments to the Reporting Manual for clarity, and to correct apparent drafting errors, as noted below:

- In Section 5.1.1, include the requirement for the Annual Statement of Compliance under a separate heading in the Reporting Manual, for emphasis
- In Section 6.3, there appears to be a drafting error with reference to the compliance and performance report on Hunter Water's "Management Systems". This should be the compliance and performance report on its "Customer and stakeholder relations management"
- In Appendix A, there appears to be a drafting error. We suggest including the Statement of Compliance under 1 September reports in Table A1.

7 Customer and stakeholder relations

7.1 Customer Contract

Recommendation 16: Amend the customer contract to make the contract easier to understand.

Sydney Water position: Neutral

There are many, minor differences between Hunter Water's and Sydney Water's Customer Contracts, mostly due to differences in historical practice between the utilities. Making our Customer Contract easier for customers to understand is generally an aim of each of our reviews.

The specific changes to the draft Customer Contract are a matter for Hunter Water, customer representative groups and customers to comment on.

Recommendation 17: Revise rebate clause in the customer contract as proposed by Hunter Water for planned water interruptions, low water pressure and wastewater overflows.

Sydney Water position: Neutral

As we noted at the public hearing, there is no 'typical' water utility rebate program throughout Australian water utilities. Rather, practice and values vary greatly.

7.2 Changes to customer related obligations in the Operating Licence

No recommendation: Clarify notification process for Customer Contract amendments

Sydney Water position: Support

No recommendation: Extend Customer Contract rebates to consumers

Sydney Water position: Do not support

The clarification around the notification process in the instance of Customer Contract amendments in draft clause 6.1.2 is a welcome insertion. However, we do not support the obligations in relation to rebates being extended to consumers (draft clause 6.2.1(b)).

The current Sydney Water Operating Licence only extends Customer Contract obligations relating to complaint handling and complaint resolution to consumers. Sydney Water is also required to set out in its Customer Contract the options available for private residential tenants experiencing payment difficulties. The extension of these obligations is appropriate and supported.

An obligation to provide rebates to consumers is impractical and unworkable. Public utilities' billing systems are based on property ownership information. We do not know if a connected property is occupied by an owner or a tenant, and have no mechanism to provide a rebate to consumers. Currently, Sydney Water provide rebates to property owners, as the person to whom bills are sent. This is usually done automatically, on identification of a system issue. It is then a matter between the property owner and the tenant as to whether the rebate is passed on.

7.2.1 Minor drafting errors and inconsistencies

There is a minor drafting error in draft clause 6.5.1 when referencing the Australian / New Zealand Standard for complaint management. This should read “which is consistent with the Australian / New Zealand Standard AS/NZS 10002:2014 – Guidelines for complaint management in organisations (AS/NZS 10002:2014)”. A similar error occurs in Sydney Water’s licence.

Sydney Water’s preference is to use the AS/NZS standard for complaint management, as opposed to our general preference for ISO standards for licence conditions relating to AMS, EMS and QMS. This is because the ISO and AS/NZS complaint standards are two distinct, albeit similar standards:

1. ISO 10002:2014 – *Quality management. Customer satisfaction. Guidelines for complaints handling in organizations*, and
2. AS/NZS 10002:2014 – *Guidelines for complaint management in organisations*.

For example, each standard contains a slightly different definition of a complaint. Sydney Water uses the Australian / New Zealand standard, rather than the ISO standard.³

The draft Reporting Manual (Appendix E, Table E.1) references “AS **ISO** 10002:2014 or the most recent up-date [sic] version of that standard” (emphasis added). This is inconsistent with clause 6.5.1 in the draft Operating Licence.

There is also a possible drafting error in section 6.3 of the draft Reporting Manual, which refers to a compliance and performance report on Hunter Water’s “Management Systems (referred to in section 6.1.1 of this Reporting Manual)”. Section 6.1.1 refers to “Customer and Stakeholder Relations Management”.

7.3 Codes of conduct with WIC Act licensees

Recommendation 18: Add a requirement to negotiate a Code of Conduct with WIC Act licensees.

Sydney Water position: Support in principle, subject to revised wording in licence clause for accuracy and revised wording in draft report for clarity

Sydney Water generally supports this recommendation, which has been included in response to the similar clause added to Sydney Water’s licence in 2015. We support a similar obligation being included for Hunter Water, which is clearly limited to where a WIC Act licensee requests a code of conduct. This appropriately limits the obligation to actions within Hunter Water’s control. This appears to be IPART’s intention in the draft licence, but this is ambiguous in the draft report.

We believe that it is appropriate to have mirror obligations in Sydney Water and Hunter Water’s licences, where possible, to reduce confusion about public water utility obligations. We also support the proposed addition being a best endeavours obligation, as Hunter Water should not be held in contravention of its licence due to another party’s unwillingness to negotiate.

³ The Energy & Water Ombudsman NSW (EWON) uses the Australian standard for complaint management in its training courses and workshops. Sydney Water and Hunter Water are required to be EWON members.

However, the reference to codes “under” the WIC Regulation is inaccurate. It would be preferable to refer to “a code of conduct of a kind referred to in clause 25 of the WIC Regulation” or “a code of conduct required under a licence under the WIC Act” (as proposed for Water NSW in its recently released draft Operating Licence).

Clause 25 of the WIC Regulation provides that the Minister may establish a generic water industry code of conduct; it does not cover scheme specific codes sought by WIC Act licensees. To date, the Minister has not established a water industry code of conduct. In the absence of such a code, the Minister has typically included a WIC Act licence condition that each network operator and retail supplier must establish such a code. Our understanding is that a code of conduct is needed only where the WIC Act licensee has a connection with a public water utility’s infrastructure.

Sydney Water supports the intent of these codes, as they reduce risks by providing clarity on roles and responsibilities. However, we have experienced only one instance to date where a WIC Act licensee has requested a stand-alone code of conduct. For other WIC Act schemes within our area of operations, there is either no physical connection to Sydney Water infrastructure, or coordination protocols are dealt with:

- via our Utility Services Agreement with the WIC Act licensee; or
- under our standard customer contract with the property owner where there is a physical connection to our assets.

IPART’s draft report also needs amending to clarify the scope of the new requirement on Hunter Water. Currently, the report suggests that Hunter Water will be required to have a code of conduct with all WIC Act licensees within its area of operations. This is not consistent with IPART’s proposed wording for the licence clause, which limits the obligation to negotiate only where a WIC Act licensee **seeks to** establish a code of conduct.

We note that the definition of the WIC Act Regulation in the draft Operating Licence refers only to the 2008 regulations. We understand the Regulation may be revised in 2017. IPART may wish to consider adding “or as amended from time to time”.

7.4 Roles and Responsibilities Protocol with DPI Water

Recommendation 19: Amend Roles and Responsibilities Protocol with DPI Water so that it says “...the review and implementation of the Lower Hunter Water Plan” rather than “...the development of the Lower Hunter Water Plan”.

Sydney Water position: Neutral

Sydney Water has previously noted our general support for this type of requirement. Our support is subject to Hunter Water retaining the ability to negotiate terms and conditions of the protocol, and the requirement being a best endeavours obligation. This is consistent with the clause in the draft Operating Licence. We note the comments by DPI Water and IPART at the public workshop that the Lower Hunter Water Plan is not a statutory plan, and that the licence clause is not meant to oblige Hunter Water to implement specific actions in the Plan. We have a neutral position on the specific wording changes proposed by IPART.

7.5 MoU with Fire and Rescue NSW

Recommendation 20: Add a requirement to establish a MoU with FRNSW to form the basis for a co-operative relationship.

Sydney Water position: Support

We support the intent of the new licence clauses to form the basis of a cooperative and productive working relationship, rather than having prescriptive performance standards that may not result in improved outcomes for the community. The establishment of Sydney Water's MoU with FRNSW has led to the cooperative identification of issues and work towards resolutions.

7.6 Use of non-standard contracts

No recommendation: No change in relation to use of non-standard customer contracts.

Sydney Water position: Support

We agree with IPART's view that the current practice of agreeing non-standard contracts with wholesale customers (that is, WIC Act licensees), is appropriate and effective. As IPART notes, commercially negotiating Utility Services Agreements (USAs) for WIC Act schemes provides scope to reflect scheme-specific terms and conditions of supply.

7.7 MoU with NSW Health

No recommendation: No change in relation to MoU with NSW Health.

Sydney Water position: Support in principle; recommend removing compliance element

We support a best endeavours requirement for Hunter Water to maintain a MoU with NSW Health. This highlights the importance of the relationship between the parties, and should assist to ensure effective collaboration on water-related public health issues.

Sydney Water is required under our Act to enter into a MoU with different regulatory agencies, including NSW Health. Our licence requirement builds on this by including an obligation to maintain these documents, and providing additional direction on their content and purpose. It is appropriate for Hunter Water's Operating Licence to include similar requirements.

However, we recommend removing the requirement **to comply with** the MoU with NSW Health (or any other party). Memoranda of understanding are not compliance instruments. Rather, as stated in the draft Operating Licence, the purpose of the MoU is to form the basis for cooperative relationships between the parties and to recognise the role of the regulator for certain activities. It is implicit in establishing the MoU that both parties will work together to adhere to its provisions. However, the ability to fulfil the objectives of the MoU requires an equal commitment from both parties. With this in mind, holding one party accountable for compliance is impractical.

If IPART retains the compliance element of draft clause 6.9.1, we recommend that the words "best endeavours" apply to both maintaining and complying with the MoU.

8 Glossary

ADWG	<i>Australian Drinking Water Guidelines</i>
AMS	Asset Management System
AS/NZS	Australian Standard / New Zealand Standard
DPI Water	Department of Primary Industries, Water
ELWC	Economic Level of Water Conservation
EMS	Environmental Management System
EWON	Energy & Water Ombudsman NSW
FRNSW	Fire and Rescue New South Wales
IPART	Independent Pricing and Regulatory Tribunal
ISO	International Organization for Standardization
LHWP	Lower Hunter Water Plan
MoU	Memorandum of Understanding
NWI	National Water Initiative
QMS	Quality Management System
USA	Utility Services Agreement
WIC Act	<i>Water Industry Competition Act 2006</i>

