

WaterNSW Submission to the Independent Pricing and Regulatory Tribunal

Review of the WaterNSW Operating Licences



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Chief Executive Officer Foreword

I am pleased to provide the Independent Pricing and Regulatory Tribunal this submission in response to your Draft Report of the review of WaterNSW's Operating Licences and the accompanying Draft Operating Licence and Draft Reporting Manual.



WaterNSW was established on 1 January 2015 under the *Water NSW Act 2014*, effecting a merger of the former Sydney Catchment Authority and the former State Water Corporation. From that time, we have operated under the pre-existing licences of the Sydney Catchment Authority and State Water Corporation. Those licences have since been amended to incorporate functions delegated from the Water Administration Ministerial Corporation to reflect transferred functions and staff from Department of Primary Industries Water on 1 July 2016.

As we set out in our submission to IPART's Issues Paper, we see this review as an opportunity to further progress the transformation of WaterNSW to being a modern, efficient and customer centric organisation.

The review is also an opportunity to set our Operating Licence in accordance with the long term objective to achieve of the competitive market principles broadly articulated in the recommendations of the Commonwealth Government's Competition Policy Review 2015 (the Harper Review). Whilst the development of such a market will be evolutionary, the achievement of the pricing, quality and efficiency benefits of such a trajectory compel us to enable this where we can as soon as we can, and to not create unintended regulatory barriers.

We are encouraged by IPART's submission to the Harper Review, which noted:

'... important to develop nationally consistent principles in relation to competition and private sector participation in the water market, similar to the reform of water entitlements from the 2004 National Water Initiative (p.20); and

'... there is significant scope to reform the water sector' (p.14)

We are pleased to see IPART's proposal to regulate our operations under one operating licence. This provides an important signal to our staff, customers and stakeholders of our commitment to, and progress towards, an integrated and united business.

As well as its operational significance, one operating licence will provide greater clarity and transparency to the public on our functions and performance and for comparability across similar utilities and industries.

A single licence will also create opportunities for operational and administrative efficiencies to be achieved for the benefit of our customers.

We believe that appropriate 'conditioning' of our functions under a single licence can appropriately distinguish between functions specific to Greater Sydney and rural and regional NSW.

There are also other pleasing aspects of the Draft Licence; including:

- 1) the structure has moved towards greater recognition of our operations against market recognised functions being: Source Water Protection; Bulk water supply and transmission assets; System Operation; Distribution/ Reticulation and Retail (customer services);
- 2) greater uniformity in provisions of Sydney Water, Hunter Water and WaterNSW Operating Licences where comparable functions are carried out – in particular the retail function;
- 3) in principle approach by IPART to not audit if WaterNSW has an ISO certified system in place. This provides us with flexibility to best manage, and minimise, our compliance costs and obligations;
- 4) revised composition of the Customer Advisory Groups to improve customer representation.

However, on balance WaterNSW believes there is still significant scope for improvement. In our submission to the Issues Paper we sought a licence that:

- 1) sets minimum terms and conditions for our functions and provides a framework for WaterNSW to engage with our customers and stakeholders on a desire for differentiated levels of service based on our ability to offer and the customers/ stakeholders capacity to pay;
- 2) sets and measures outcomes rather than inputs or processes. The licence should provide flexibility for WaterNSW to deliver our listed functions in a way that minimises cost and reflects customer expectations. This would take the form of an outcomes based licence with assurance based regulatory oversight; and
- 3) provides clarity to our customers and stakeholders with regard to our authorised functions and provides a transparent framework to measure and incentivise performance.

In this submission we seek to provide further observations and discussion to support further improvement within the current review process.

However, as an organisation we are still working to fully absorb the functions transferred from DPI Water last year. We also believe there is a likelihood of further reform to the NSW water market in coming years.

As such, while we appreciate that Operating Licence reviews are a big commitment on the part of IPART, ourselves and our stakeholders, WaterNSW would like to recommend to IPART that it consider setting the term of this Operating Licence to two years. This would have the benefits of:

- 1) align our Operating Licence to precede our pricing determination so that any additional costs, and more importantly savings arising from deregulation, can be reflected in our prices. Our next Pricing Determination (Greater Sydney) is due in 2020 – 3 years;
- 2) provide time for WaterNSW to develop and recommend to IPART a set of minimum performance standards for each of the market functions we perform, including for the Conferred Functions;
- 3) provide time for WaterNSW to develop and recommend to IPART outcome based measures that would offer WaterNSW flexibility in how it executes its authorised functions;

- 4) provide an opportunity for IPART to demonstrate the continued need for any clauses in the New Licence justified on a 'precautionary' approach to the establishment of a single licence; and
- 5) allow for any further reform that could impact the New Licence.

WaterNSW is committed to support the NSW Government, and work with IPART, in the development of a regulatory environment that puts in place appropriate but minimal regulation to promote efficiency, service design innovation, transparency, quality and beneficial technology investment in bulk water management, including by the private and non-government sector.

I look forward to the opportunity progress the development of our operating licence with IPART.

David Harris
Chief Executive Officer
WaterNSW

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1. Introduction and Background

WaterNSW makes this submission in response to the following documents released by the Independent Pricing and Regulatory Tribunal of NSW (**IPART**) on 28 February 2017:

- WaterNSW Draft Operating Licence 2017-2022 (**Draft Licence**)
- WaterNSW Draft Reporting Manual (**Draft Manual**)
- WaterNSW Operating Licences Review - Cost Benefit Analysis Draft Report (**Draft CBA**)
- WaterNSW Operating Licences Draft Report (**Draft Report**).

WaterNSW currently operates under two existing licences (**the Existing Licences**):

- the 2013-2018 State Water Operating Licence (**SWOL**)
- the 2012-2017 Sydney Catchment Authority Operating Licence (**SCAOL**).

On 1 July 2016, each of the Existing Licences were amended and substituted by the Governor under section 13(1)(b) of the *Water NSW Act* (**our Act**). The Existing Licences were amended to non-exclusively confer on WaterNSW certain Water Administration Ministerial Corporation (**WAMC**) functions previously conferred on the Department of Primary Industries Water (**DPI Water**).

The Existing Licences each provide for an end of term review which IPART is conducting. The review is 12 months early for the SWOL to enable the Existing Licences to be reviewed together.

Under section 56(2) of our Act, IPART has the function of making recommendations to the portfolio Minister for or with respect to the granting, amendment or cancellation of an operating licence and the imposition, amendment or cancellation of conditions in relation to an operating licence. In the Draft Report, IPART has advised that following its review it will make recommendations to the Minister on the terms and conditions of a new operating licence (**the New Licence**) for the combined functions of WaterNSW.

Under section 13(1) of our Act, the Governor, on the recommendation of the portfolio Minister, may amend an operating licence or substitute an operating licence or impose, amend or revoke conditions of the operating licence. Under section 13(2) the portfolio Minister is to consult with WaterNSW before making a recommendation to the Governor under subsection (1).

It is anticipated the New Licence will commence on 1 July 2017.

2. Executive Summary

As set out in the Chief Executive Officer's Forward, WaterNSW appreciates the Draft Licence realises a number of improvements from the former SCAOL and SWOL.

However, we believe there is opportunity for further improvement. With regard to the Draft Licence, WaterNSW believes immediate improvement can be achieved through a considered review of the Draft Licence against *NSW Better Regulation Principles*¹, being:

- the need for government action should be established
- the objective of government action should be clear
- the impact of government action should be properly understood by considering the costs and benefits of a range of options, including non-regulatory options
- Government action should be effective and proportional
- consultation with business and the community should inform regulatory development
- the simplification, repeal, reform or consolidation of existing regulation should be considered
- regulation should be periodically reviewed, and if necessary reformed to ensure its continued efficiency and effectiveness.

We believe such a review would identify the following immediate opportunities:

- removing the requirement for an Economic Level of Water Conservation. The objective of the action is not clear nor does the proposal simplify existing regulation (clause 2.7)
- removing the requirement for research and education outside the Declared Catchments as the need for the actions is not clearly established nor is the objective of action (clauses 2.8 and clause 6.11);
- removing the requirement for regulated relationships beyond those required by our Act as the need for the actions is not clearly established nor is the objective of action. Furthermore, if such a need is established we believe it would be better addressed through a non-regulatory solution (clause 6.15 and 6.16)
- removing requirements that expose WaterNSW to regulatory duplication (clause 1.6 - Pricing and clause 3.5 - Dam operations during floods and spills).

WaterNSW would also welcome the opportunity to consider with IPART alternative definitions for the purpose of setting terms and conditions. Our proposed definitions seek to focus on outcomes, rather than setting definitions on the function or input or geographic distinction.

Looking beyond the current review we would welcome the opportunity to work with IPART to develop an Operating Licence that forms part of a regulatory framework that achieves the competitive market principles broadly articulated in the recommendations of the Harper Review.

¹ *NSW Government, Better Regulation Office, Guide to Better Regulation, November 2009, Page 7.*

To achieve these principles we believe an operating licence needs to:

- *Put customers at the centre of service quality and design:* adopt outcome based regulation that provides flexibility for innovation in service design and delivery
- *Improve transparency and comparability of performance:* set of minimum performance standards for WaterNSW's market functions (catchment management, bulk water storage and transmission assets, system operation, distribution and retail) which could be applied consistently across all water utilities
- *Encourage commercial arrangements with customers:* enable commercial and customer/service design flexibility through providing for a framework for direct customer relationships in place of relying on the operating licence prescribing customer arrangements
- *Create a more level playing field to allow new market entrants to serve customers:* avoid regulation that is geographic or based on definitions which obviate future innovation in technology or contractual arrangements.
- Encourage competition and innovation: deliver the greatest flexibility and ability to manage future risk, including changes that might occur in demand for water (such as in the event of drought, accelerated population growth and urban development, new agricultural or industrial processes and technology, new operating licence for desalination operation, new or enhanced dam infrastructure), regulatory settings of others in the water market, and significant public sector investment in bulk water infrastructure

3. Our compliance

The term of the SWOL is 2013-2018 with the licence thus far having been audited in 2013-14 2014-15 and 2015-16, whereas the term of the SCAOL is 2012-2017 with the licence thus far having been audited in 2012-13, 2014-15 and 2015-16.

WaterNSW compliance – SCAOL/SWOL 2012-13 – 2015-16

Year	No of Clauses Audited	Compliance grade achieved		
		Full	High	Adequate
SWOL				
2013-14	21	17	4	0
2014-15	19	17	2	0
2015-16	22	22	0	0
SCAOL				
2012-13	15	13	2	0
2013-14	6	4	2	0
2014-15	6	5	1	0
2015-16	18	11	1	0

In 2014-15 WaterNSW self-reported three technical instances of non-compliance in relation to the SCAOL which occurred as a result of the merger of the former Sydney Catchment Authority and the former State Water Corporation. They related to implementation of an Asset Management System (**AMS**) and an Environmental Management System (**EMS**). IPART indicated it considered this to be a minor matter as the risk to public health, customers and the environment was low and would be rectified within a reasonable

Licence

timeframe with the implementation and certification of WaterNSW's AMS and EMS to occur by December 2016.

In 2015-16 WaterNSW again self-reported four technical non-compliances in relation to the SCAOL obligations to develop and implement an AMS and an EMS. Two SCAOL clauses were deemed 'no requirement' (3.2.1 and 3.2.3 – Water Supply Sufficiency), as information presented during the audit demonstrated that the requirements of these clauses were not triggered during the audit period.

4 Part 1: Licence context and authorisation

WaterNSW's recognises the need for IPART to authorise our legislated functions through an Operating Licence where that function is not conferred or imposed on WaterNSW by or under another provision of our Act or by or under and other Act or law.

For the avoidance of doubt, WaterNSW is comfortable for the Operating Licence to authorise us for our complete legislated functions, on the condition that those functions conferred or imposed through another Act of law do not have terms and conditions applied through the Operating Licence. To do would expose WaterNSW to regulatory duplication.

As discussed through this submission, WaterNSW believes the Draft Operating Licence creates this risk through a number of clauses, in particular 1.6 Pricing and 3.5 Dam operations during floods and spills.

4.1 Objectives of this Licence (clause 1.1)

WaterNSW is concerned that the note to this clause does not reflect the content of sections 11 and 12 of the Act, despite purporting to do so. The last paragraph also fails to refer to the *Water NSW Act*, in addition to the *Water Management Act* and the *Water Act 1912*.

To avoid confusion, our preferred approach is for the note to read

"The purpose of this Licence is set out in section s 11 and 12 of the Act".

4.2 Licence Authorisations (clause 1.2)

WaterNSW is concerned that the Licence Authorisations use defined terms including Supply, Capture, Store and Release rather relying on the 'natural or undefined' definition of these terms which are fundamental to describing our listed functions in our Act.

This raises a number of concerns:

- 1) the use of different definitions for the same terms will create customer and stakeholder confusion. This is counter to our desire for an operating licence that provides clarity and transparency of our functions to drive performance through comparability across equivalent utilities and industries.
- 2) WaterNSW can only undertake its legislated functions where they are authorised through an operating licence. By creating definitions different to key terms in our legislated functions this creates the risk of limiting or constraining WaterNSW's authorisation under the Licence to the defined terms, not our listed functions as set out

in our Act. This could result in WaterNSW not being authorised to undertake our functions required of us by our Act.

IPART acknowledges that by using its own definitions, WaterNSW is at risk of undertaking functions unlawfully due to the misalignment of the definitions. IPART'S Draft Report states at page 29:

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

This is an unacceptable outcome. As such, WaterNSW is strongly of the view that the authorisation of its functions should be aligned to the Act and allow the natural meaning of the terms to apply.

4.3 Definitions

Overview

WaterNSW acknowledges IPART's requirement for greater distinction and clarity with regard to our functions for the purpose of setting terms and conditions, so as 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.

However, WaterNSW suggests an alternate approach based on the **outcome or purpose** of the water released or supplied, rather than the function (supply, deliver, capture and store) or area of operation (declared, non- declared catchments). We believe this basis of distinction provides a more transparent approach to applying terms and conditions.

Further, by defining the terms such as Supply, the licence is setting a very prescriptive environment which is not conducive to innovation or encouraging private sector participation with regard to non- traditional water sources.

WaterNSW proposes the following definitions for the operating licence. We would welcome an opportunity to discuss incorporating these functions into the Draft Licence. We have also provided the table on the following page to assist IPART conceptualise how the definitions would work with regard to setting terms and conditions and performance standard.

To further this understating, we have prepared this submission on the basis of our definitions being adopted in the Draft Licence.

Where IPART does not accept our definitions we have provide our comments on IPART's definitions and relevant impacted sections of the Draft Licence in Annexure A.

Proposed Definitions

1) Drinking Water made available directly by WaterNSW under its access licences

Water that is:

- intended for or likely to be used, primarily for human consumption but which has other personal, domestic or household uses such as bathing and showering
- made available by WaterNSW by pipe or drinking receptacles directly to a Drinking Water supplier; and
- suitable for consumption without treatment or filtration a third party.

2) Water Supplied by WaterNSW under its access licences for treatment or filtration by a third party prior to consumption

Water that is

- supplied by WaterNSW under its access licences to a customer by means of operation of a Water Management Works owned or operated by WaterNSW;
- supplied in accordance with a relevant supply agreement (Customer Supply Agreement or Raw Water Supply Agreement (for Sydney Water)); and
- is not suitable for consumption without treatment or filtration a third party.

3) Water Supplied to Small Customers not intended for consumption

Water that is

- supplied by WaterNSW to a customer² who is prevented from supplying water for consumption to others within NSW without legislative or regulatory permission; and
- is not suitable for consumption without treatment or filtration.

4) Water Released for extraction and use under a Customers access licence

Water that is

- made available to customers, as ordered, through the operation of Water Management Works owned or operated by WaterNSW;
- for which there is no direct supply agreement with the customer; and
- is not suitable for consumption without treatment or filtration a third party.

² Excludes Sydney Water, Water Supply Authorities, Supplied council or county council, Licensed Network Operator or Licensed Retail Supplied

Type of Water	Customers	Terms and Conditions	Performance Standards		
			Water Delivery	Water Quality	Service Interruption
Drinking Water made available directly by WaterNSW under its access licences	<ul style="list-style-type: none"> • Fish River (Drinking Water) 	<ul style="list-style-type: none"> • Maintain Water Quality Management System (WQMS) 	<ul style="list-style-type: none"> • As agreed in Customer Supply Agreement (CSA) 	<ul style="list-style-type: none"> • Must meet Australian Drinking Water Guidelines (ADWG) 	<ul style="list-style-type: none"> • As agreed in CSA
	<ul style="list-style-type: none"> • WaterNSW owned recreational areas, cottages, staff facilities, picnic areas 	<ul style="list-style-type: none"> • Maintain WMQS • Quality Assurance Plans 	<ul style="list-style-type: none"> • Self- determined 	<ul style="list-style-type: none"> • Must meet Australian Drinking Water Guidelines 	<ul style="list-style-type: none"> • Self- determined
Water Supplied by WaterNSW under its access licences for treatment or filtration by a third party prior to consumption	<ul style="list-style-type: none"> • Sydney Water • Shoalhaven Council¹ • Wingecarribee Council • Goulburn/Mulwaree Council • Oberon Council 	<ul style="list-style-type: none"> • Maintain WQMS • Maintain relevant Raw Water Supply Agreement (RWSA) for Sydney Water • Maintain CSA with customers • Compile indicators on direct impact of environment on operations 	<ul style="list-style-type: none"> • As agreed in RWSA • As agreed in CSA • <i>Operating Licence could to set minimum standards for default CSA</i> 	<ul style="list-style-type: none"> • As agreed in RWSA • As agreed in CSA • <i>Operating Licence could to set minimum standards for default CSA</i> • ADWG (relevant health related parameters) 	<ul style="list-style-type: none"> • As agreed in RWSA • As agreed in CSA
Water Supplied to Small Customers not intended for consumption	<ul style="list-style-type: none"> • Fish River (raw water) • Upper Canal • Warragamba Pipeline 	<ul style="list-style-type: none"> • Supplied on terms that cannot be 'on supplied' for consumption 	<ul style="list-style-type: none"> • As agreed in CSA 	<ul style="list-style-type: none"> • As agreed in CSA 	<ul style="list-style-type: none"> • As agreed in CSA
Water Released for extraction and use under a Customers access licence	<ul style="list-style-type: none"> • Irrigation Corporations • Water Access Licence Holders (consumptive & non- consumptive) • Rural Local Water Utilities • Broken Hill pipeline • Office Environment and Heritage • Shoalhaven Council (Nowra) 	<ul style="list-style-type: none"> • Take all reasonable steps to process all Water Orders promptly and efficiently • Take all reasonable steps to manage Water Orders so as to ensure timely water Deliveries to its Customers • Notification on water quality information to Rural LWUs 	<ul style="list-style-type: none"> • 99% of Customers who place a Non-complying Water Order are contacted within 1 working day to rectify that order; • 99% of Water Orders are Delivered within +/- 1 day of the scheduled day of Delivery; • 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; • 90% of Interstate Temporary Trades (except to South Australia) are processed within 10 days; and • 90% of Interstate Temporary Trades to South Australia are processed within 20 days. 	<ul style="list-style-type: none"> • N/A 	<ul style="list-style-type: none"> • 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;

4.4 Term of this Licence (clause 1.7)

As set out in the Chief Executive Officer's Forward, WaterNSW would like to recommend to IPART that it consider imposing only a two year term for this Operating Licence. This would have the benefits of:

- 1) aligning our Operating Licence to precede our pricing determination so that any additional costs, and more importantly savings arising from deregulation, can be reflected in our prices. Our next Pricing Determination (Greater Sydney) is due in 2020 – 3 years
- 2) providing time for WaterNSW to develop and recommend to IPART a set of minimum performance standards for each of the market functions we perform, including for the Conferred Functions;
- 3) providing time for WaterNSW to develop and recommend to IPART outcome based measures that would offer WaterNSW flexibility in how it executes its authorised functions

4.5 Pricing (clause 1.6)

Clause 1.6 of the Draft Licence comprises the following clause:

“WaterNSW 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.”

This clause is a repetition of legal obligations to which WaterNSW is subject under the *Independent Pricing and Regulatory Tribunal Act (NSW) 1992* and the *Water Act (Cth) 2007*.

As such, inclusion of this clause is inconsistent with IPART's:

- stated objectives in developing an operating licence included imposing the minimum regulatory burden on WaterNSW by avoiding duplication or conflict with other regulatory instruments (Draft Report, at page 11); and
- position that it considered if other instruments already adequately authorised and placed conditions on functions, and thus it was not necessary to include authorisations within the licence (In the Draft Report, at page 24).

This clause is particularly concerning for WaterNSW as a significant proportion of WaterNSW pricing regulation is derived from Commonwealth legislation, particularly Part 4, Division 1 of the *Water Act 2007 (Cth)*. Section 94 of that Act, provides that the ACCC is to monitor regulated water charges and compliance with the water charge rules. The ACCC must give the Commonwealth Minister a report on the results of such monitoring.

Section 137 of the *Water Act 2007* provides that the ACCC is the appropriate enforcement agency for a contravention of Part 4, regulations made for the purposes of Part 4 and the water charge rules or the water market rules.

This remains the case even though IPART is an accredited body for the setting of prices under the Water Charge Infrastructure Rules. Indeed, IPART's initial draft determination of charges subsequent to its accreditation provides in Schedule 6, clause 1.3: *The ACCC retains monitoring, enforcement and advisory functions under the Water Act (Cth) in relation to the determination of charges under the WCIR.* Moreover, the totality of the Water Charge Infrastructure Rules has not been accredited to IPART, it is only with respect to Part 6, the other parts remain with the ACCC.

Even with respect to those prices which IPART determines under the IPART Act, there is no need to duplicate the ability of IPART to monitor compliance within the New Licence. IPART's powers are set out in section 24AA of the IPART Act which states:

The Tribunal may monitor the performance of a government agency specified in Schedule 1 for the purposes of:

- a) establishing, and reporting to the Minister on, the level of compliance by the government agency with a determination of the Tribunal of the pricing for a government monopoly service supplied by the government agency, and*
- b) preparing for a periodic review of pricing policies in respect of government monopoly services supplied by the government agency.*

Sections 24AB to 24AD of the IPART Act relate to government agencies providing information, document and evidence to IPART for the purposes of 24AA.

These powers reflect the legislature's intention for oversight of prices determined under the IPART Act and provide an equivalent function to an audit under the operating licence.

We believe these powers provide an equivalent function to an audit under the operating licence.

4.6 Notices (clause 1.8)

WaterNSW new address for notices after 1 July 2017 will be Level 14, 161-169 Macquarie St, Parramatta NSW 2150.

5 Part 2: Source Water Protection and Conservation

5.1 Water Quality Management System (clause 2.1)

WaterNSW is of the view that the terms and conditions of the licence should relate to the outcome or purpose of the water released.

A Water Quality Management System (**WQMS**) applies to *Drinking Water made available directly by WaterNSW under its access licences and Water Supplied by WaterNSW under its access licences for treatment or filtration by a third party prior to consumption* where water quality outcomes are important.

These definitions remove the need to condition the WQMS on the distinction of whether the functions are within or outside of the Declared Catchments Areas. As such, we propose that clause 2.1.1 is replaced with the following, and clause 2.1.2 is removed:

- 2.1.1 *With respect to Drinking Water made available directly by WaterNSW under its access licences and Water Supplied by WaterNSW under its access licences for treatment or filtration by a third party prior to consumption, WaterNSW must maintain a water quality management system to manage risks to the quality of that water (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.*

5.2 Catchment Management (clause 2.2)

WaterNSW recommends that clause 2.2 should be removed. This first part of the clause requires compliance by reference to legislation. This is inconsistent with IPART's intended approach to the licence as set out above.

The latter section of the clause requires compliance with reference to other sections of the licence (compliance with the WQMS, AMS and EMS are required elsewhere under their own substantive provisions, Corporate Systems, in the Draft Licence). Again, this is inconsistent with IPART's intended approach avoid duplication and reporting burden.

Separately, WaterNSW sees some disconnect in managing and protecting the Declared Catchment Areas consistently with the AMS and EMS. WaterNSW only owns approximately 6 per cent of the Declared Catchment Area and therefore, our ability to protect the catchment through the AMS and EMS is not material to the protection of the catchment as a whole.

5.3 Information on the Declared Catchment Areas (clause 2.3)

WaterNSW recommends that sub-clause 2.3.1(b) of the Draft Licence and the complementary clause 2.3 of the Reporting Manual be removed.

It is not appropriate, or valuable, to require such a broad ranging data provision clause. Compliance with such a clause would require WaterNSW to publish every piece of information that is collected in all forms (raw data, interim reports etc).

We understand the intended outcome of the clause is to ensure WaterNSW makes available information and insights to stakeholders and the public that is useful in assessing WaterNSW's performance with regard to activities within the Declared Catchment Areas.

Clause 2.3.1 achieves this without the need for 2.3.1(b).

WaterNSW also considers clauses 2.3.1(d) and (e) which relate to environmental indicators are more appropriately dealt with through the Environmental Management System.

5.4 Reviewing the model for the Water Supply System Yield (clause 2.6)

WaterNSW recommends clause 2.6.1 is amended to reflect the intended outcome of the clause, being the need for the Water Supply System Yield Model to remain accurate through requiring periodic reviews or reviews required by the occurrence of a *significant* change to calculating the yield.

As such, WaterNSW suggests clause 2.6.1 be amended to read:

2.6.1 By the first quarter of 2021, or on an earlier occurrence of one of the recalculation trigger events referred to in clause 2.5.1 that significantly impacts the Water Supply System Yield, Water NSW must engage a suitably qualified independent expert to:

- a) review its modeling and procedures for calculating the Water Supply System Yield to ensure that it reflects good industry practice;*
- b) test the robustness of the modeling, the key assumptions used in the modeling, 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).*

Clause 2.6.2 provides that WaterNSW must consult with Customers, including Sydney Water regarding the review of the modelling under clause 2.6.1. The Draft Licence defines Customers to mean any person:

- (a) authorised under the Water Management Act 2000 (NSW) or the Water Act 1912 (NSW) to take and use Bulk Water and to whom Water NSW makes water deliveries; or
- (b) to whom Water NSW provides a service and includes Fish River Water Supply Scheme Customers and environmental water entitlement holders; or
- (c) a person who is Supplied Bulk Water by Water NSW.

This definition is inappropriate and burdensome for this clause as it would require WaterNSW to consult widely with customers that are not impacted by the Water Supply System Yield.

As such WaterNSW recommends that clause 2.6.2 be amended to read:

2.6.2 Water NSW must consult with:

- a) customers, stakeholders and regulators directly impacted by the Water Supply System Yield; and*
- b) any other persons reasonably expected to have an interest in the review of the modeling under clause 2.6.1,*

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

5.5 Economic Level of Water Conservation (clause 2.7)

WaterNSW is materially concerned with the Economic Level of Water Conservation (**ELWC**) clause as it does not reflect our operations or functions and it raises a number of fundamental concerns.

Regulation should only regulate what is controllable

Unlike Sydney Water or Hunter Water, WaterNSW does not operate a 'closed' system with the majority of our water supplied through networks comprising of rivers and channels in 'natural' systems.

WaterNSW's infrastructure and storages are embedded in, and comprise of, natural areas and as such natural water losses occur through natural mechanism such as evaporation and seepage into the soil.

As such it is not possible (even if it was desired, as discussed below) to apply an ELWC as contemplated in Sydney Water's operating licence.

A review of the obligation on Sydney Water shows that it is not related to any natural system but instead refers to water leakage (which in Sydney Water's case relates to their pipeline network), water recycling and water efficiency (including demand management).

It is clear that Sydney Water has an exact measurable and controllable water leakage target and water usage targets. This is because Sydney Water's water is within controllable man-made infrastructure. Therefore, Sydney Water will be able to implement an economic level of water conservation in a straightforward manner and conduct the relevant cost benefit analysis.

This is clearly not the case with WaterNSW. The only closed assets that we own and operate are bulk water pipelines, where 'fixing' a leak is not discretionary or subject to cost benefit analysis.

What is controllable is already regulated

With respect to our controllable operations the existing obligation in the SWOL, which has been carried over into the Draft Licence, requires WaterNSW to, outside of the Declared Catchment Area "*take all reasonable steps to conserve water and minimise water losses that result from undertaking its operations under this licence*"

This obligation applies with respect to losses that result "*from undertaking its operations under this licence*". Therefore, the obligation is only in respect of the actions of WaterNSW and not in respect to the natural system as a whole.

WaterNSW does not object to the continuation of this condition in the New Licence and acknowledges that this condition is difficult to audit. However, in our view, the issue of auditability of the clause is not remedied through the ELWC clause.

Conversely, IPART has provided no justification for the imposition of an ELWC other than the difficulty in auditing the current condition. Therefore, merely to overcome an issue with auditing of an existing obligation, IPART is imposing a more complex condition than that required of Sydney Water³. We note Sydney Water's condition was originally proposed as only requiring Sydney Water to determine the economic level of leakage of its pipeline system moving to include water recycling and efficiency through the review process of Sydney Water's operating licence in 2015-2016. In WaterNSW's view, this is a classic example of regulatory creep which has now spread to WaterNSW.

³ The Draft Report does acknowledge that natural systems are inherently more variable than man-made systems, noting that WaterNSW's methodology would need to make allowance for natural system variability where, for example, Sydney Water's ELWC methodology may not. Therefore, any methodology developed by WaterNSW will necessarily be more complex than that required of a man made system.

Defining what is an 'economic loss' for the purpose of ELWC

Even if resource loss from natural system loss was measurable and controllable, it would be difficult to quantify the true resource or economic loss, as a loss of surface water can be a gain to groundwater. Unlike seepage from an urban pipe, 'losses' in a natural system are not necessarily losses. In some cases the water goes to sustaining the health of the environment and in other cases is captured in another source (for example the loss of surface water to a ground water system).

This is highlighted by the environmental releases we are required to make. It would be conflicting to oblige an ELWC on WaterNSW when we are required to operate in direct contravention of such a measure to satisfy our environmental customers.

Reflecting this situation, our purpose is not to minimise losses from the *natural systems*, but to optimize the utilisation of the State's interconnected surface water and ground water systems.

It is achieving this purpose which contributed to the government transferring DPI Water functions to WaterNSW last year – to provide us the capability to effectively manage the States' interconnected surface water and ground water systems.

An ELWC is already in place in our regulatory framework

WaterNSW already operates within a regulatory framework that incorporates an ELWC type mechanism. The Murray Darling Basin (**MDB**) Plan provides for a Sustainable Diversion Limit (**SDL**) adjustment mechanism which will either allow equivalent environmental outcomes to be achieved with less water or increase the volume of water available for environmental use with neutral or improved socio-economic impact.

Projects that will be considered by the adjustment mechanism for surface water can comprise efficiency (user side), supply and constraint measures. Supply measures comprise building or improving river or water management structures (so environmental water can be delivered directly to places that need it more or those which can achieve the best outcomes) and streamlining some river operations or management rules. Constraint measures may involve allowing managers more flexibility in releasing and moving water through the system.

The Northern Basin review is a particular project focussed on developing SDLs in the north of the MDB. New SDLs come into effect on 1 July 2019 with the NSW Government required to incorporate any adjustments to SDLs into water resource plans by this date with adjustment projects required to be implemented by 2024.

The SDL adjustment mechanism is a cross-jurisdictional, multi-year program to which significant resources have been dedicated in order to conduct the correct level of analysis required for such an undertaking. WaterNSW is working with the Commonwealth and NSW Government on these initiatives. WaterNSW is concerned that IPART is proposing an obligation within its New Licence that addresses the same subject matter as that required by the MDB Plan, the subject of Commonwealth jurisdiction with significant input from NSW Government without concern for:

- the duplication of effort and resources arising from overlapping regulatory requirements; and
- the significant impost this would impose on WaterNSW in the absence of the broader resources dedicated to the MDB Plan.

Way Forward

WaterNSW suggests to alleviate any potential cost implications from the imposition of such a condition on WaterNSW's customers which in our view could be significant and, importantly, to prevent significant regulatory overlap and confusion with the requirements of the MDB Plan, that an ELWC not be imposed on WaterNSW and instead the existing licence condition be amended as follows to assist with auditability:

[t]ake all reasonable steps to conserve water and minimise water losses that result from undertaking its operations under this licence and must document those steps and any rationale or methodology in taking those steps

Separate to the above concerns, WaterNSW notes that if the driver for the clause is to promote consistency across water utilities operating licences we note that Hunter Water does not have any conditions relating to catchment management, despite Hunter Water having a catchment management function.

5.6 Research on Catchments (clause 2.8)

WaterNSW is concerned with the application of clause 2.8 of the Draft Licence *outside of the Declared Catchment Area*.

This obligation fails to recognise the intended outcome of the existing clause which is contained in the SCAOL and not in the SWOL. The outcome relates specifically to the Declared Catchment Areas recognising the need for greater research and understanding of declared catchments to reduce the risks to water quality and quantity in the Declared Catchment Areas.

There is no value for this outcome outside of the Declared Catchment Areas reflecting the limited ability to meaningfully apply any research to deliver water quality outcomes in practice.

Even a de minimis approach as contemplated in the Draft Licence "*must maintain a program of research on catchments generally*" has the very real risk to create a material regulatory obligation overtime with associated costs and administrative burden while delivering no material outcomes for customers or stakeholders.

As noted in IPART's Draft Report we identified a net cost of between \$3.4 and 4.3 million dollars in order to comply with this condition outside of the Declared Catchment Areas-. Any such amount is not currently funded and our rural customers have not been consulted on the value of this extra expenditure.

In WaterNSW's view, it is sufficient for the Licence to authorise WaterNSW to undertake research on catchments generally, and in particular on the health of the Declared Catchment Areas (as provided by sub-clause 1.2.1(j) of the Draft Licence), with clause 2.8 only conditioning the authorisation with respect to research in the Declared Catchment Areas.

2.6.1 Water NSW must maintain a program of research on the health of Declared Catchment Areas which:

- a) is consistent with its objectives under section 6 of the Act; and*
- b) assist WaterNSW to discharge its functions under sections 7(1)9g), 7(1)(h) and 7(1)(j) of the Act and report on the program in accordance with the Reporting Manual*

6 Part 3: Bulk Water Storage and Transmission

6.1 Bulk Water released to Local Water Utilities for Drinking Water purposes (clause 3.4)

WaterNSW recognises the value in effective monitoring and communication of potential risks to public health from water quality in rural and regional NSW.

We believe we have an important role to play in this regard, and understand the government's preference to have our obligations included in the New Licence.

Reflecting our role as bulk water provider, this obligation is to engage with rural Local Water Utilities to discuss what water quality information we currently monitor (and on what frequency) and agree what is relevant to be provided to the LWUs.

This balances the need of the beneficiary against the cost of the non- beneficiaries.

We are willing to partner with NSW Health and the LWUs to undertake a review of our current water quality monitoring as contemplated in clause 3.4.5 of the Draft Licence where that review is limited to identifying gaps in the 'provision of water quality monitoring we currently undertake'.

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 the provision of water quality monitoring currently undertaken by WaterNSW to LWUs

However, proposed clause 3.4.6 then provides that the results of the review are to be incorporated into the Information Request Procedure. However, the results the review may include actions for which WaterNSW is not funded to undertake. Therefore, any possible recommendations arising from the review are most appropriately contemplated through the Memorandum of Understanding with NSW Health to determine issues such as funding and the timing of implementation.

6.2 Dam operation during flood and spills (clause 3.5)

WaterNSW's *flood management* operations are provided for through Water Sharing Plans and Works Approvals that set out principles and rules for the operation of our assets during periods of floods and spills.

With regard to *flood mitigation*, WaterNSW only operates 2 dams (Burrendong and Glenbawn) that have a prescribed flood mitigation role - that is the dams are operated to maintain an 'air space' for the purpose of flood mitigation. Again, these provisions are set out in our relevant Works Approvals.

As set out in our response to the IPART Issues Paper, authorisation through an operating licence for flood mitigation could lead to unintended liability issues where WaterNSW's role is not clearly articulated – as is the case with the water sharing plans and work approvals.

For the avoidance of doubt, WaterNSW is comfortable for the New Licence to authorise us for our complete legislated functions, on the condition that those functions conferred or imposed through

another Act of law do not have terms and conditions applied through the Operating Licence. To do would expose WaterNSW to regulatory duplication and uncertainty. As such the operating licence should only authorise WaterNSW for flood mitigation and management “but only in accordance with a WaterNSW works approval”.

7 Part 4: Performance Standards

As set out earlier in this submission, where IPART agrees with WaterNSW’s proposed definitions we would anticipate clause 4.2 and clause 4.3 to be replaced with performance standards for those definitions as set out in the table below.

Where IPART does not accept our proposed definitions we have no changes to clause 4.2 and clause 4.3.

Type of Water	Performance Standards		
	Water Delivery	Water Quality	Service Interruption
Drinking Water made available directly by WaterNSW under its access licences	<ul style="list-style-type: none"> As agreed in Customer Supply Agreement (CSA) 	<ul style="list-style-type: none"> Must meet Australian Drinking Water Guidelines (ADWG) 	<ul style="list-style-type: none"> As agreed in CSA
	<ul style="list-style-type: none"> Self- determined 	<ul style="list-style-type: none"> Must meet Australian Drinking Water Guidelines 	<ul style="list-style-type: none"> Self- determined
Water Supplied by WaterNSW using its access licences for treatment or filtration by a third party prior to consumption	<ul style="list-style-type: none"> As agreed in RWSA As agreed in CSA Operating Licence could to set minimum standards for default CSA 	<ul style="list-style-type: none"> As agreed in RWSA As agreed in CSA Operating Licence could to set minimum standards for default CSA ADWG (relevant health related parameters) 	<ul style="list-style-type: none"> As agreed in RWSA As agreed in CSA
Water Supplied to Small Customers not intended for consumption	<ul style="list-style-type: none"> As agreed in CSA 	<ul style="list-style-type: none"> As agreed in CSA 	<ul style="list-style-type: none"> As agreed in CSA
Water Released for extraction and use under a Customers access licence	<ul style="list-style-type: none"> 99% of Customers who place a Non-complying Water Order are contacted within 1 working day to rectify that order; 99% of Water Orders are Delivered within +/- 1 day of the scheduled day of Delivery; 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; 90% of Interstate Temporary Trades (except to South Australia) are processed within 10 days; and 90% of Interstate Temporary Trades to South Australia are processed within 20 days. 	<ul style="list-style-type: none"> N/A 	<ul style="list-style-type: none"> 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;

8 Part 5: Organisational Systems Management

8.1 Asset Management System (clause 5.1)

WaterNSW considers it appropriate that we are provided flexibility to determine how best to provide the necessary assurances to IPART at least cost to our customers.

Assurance can be provided to IPART either through certification of relevant Management Systems or the right for IPART to undertake an operational audit.

Reflecting this position, we recommend that the words “*and that certification is maintained throughout the term of this Licence*” are deleted from clause 5.12. Clause 5.1.4 supports this flexibility.

The use of the word “fully” in clause 5.1.3 may lead to minor non-conformance as issues are identified which require rectification, even though WaterNSW maintains its certification. Therefore, we recommend the deletion of this word.

8.2 Environmental Management System (clause 5.2)

WaterNSW notes that it is only certified to *Australian/New Zealand Standard AS/NZS ISO 14001:2004* and not to *Australian/New Zealand Standard AS/NZS ISO 14001:2016*.

Therefore, if the current clause 5.2.1 is maintained, WaterNSW would be non-compliant⁴. However, WaterNSW does intend to certify to ISO 14001:2016 by December 2018. Therefore, to achieve this certification and to align with changes we have requested for the AMS, WaterNSW suggests the following:

- Clauses 5.2.1 and 5.2.2 refer to *Australian/New Zealand Standard AS/NZS ISO 14001:2004* rather than *Australian/New Zealand Standard AS/NZS ISO 14001:2016* and in clause 5.2.2 the words “*and that certification is maintained throughout the term of the Licence*” are deleted;
- Clauses 5.2.1 and 5.2.2 would fall away on 30 December 2018;
- A new clause is inserted as clause 5.2.3. This clause would require WaterNSW, by 30 December 2018, to certify its EMS to be consistent with *Australian/New Zealand Standard AS/NZS ISO 14001:2016* and to then maintain an EMS consisting with *Australian/New Zealand Standard AS/NZS ISO 14001:2016*;
- Clauses 5.2.3 and 5.2.4. are re-numbered.

As noted above for 5.1.3, the word “fully” should be removed from current clause 5.2.3.

WaterNSW assumes the reference to 14001:2015 in clause 5.2.2 is an error and should read 14001:2016.

⁴ WaterNSW assumes the reference to 14001:2015 in clause 5.2.2 is an error and should read 14001:2016.

9 Part 6: Customer and stakeholder relations

9.1 Water Metering and Monitoring (clause 6.3)

In WaterNSW's view, if WaterNSW has the consent of a customer to operate, replace, maintain, remove, connect, disconnect or otherwise modify the customers metering equipment, this would be within the scope of its authority directly under its listed functions or in the provision of facilities or services that are necessary, ancillary or incidental to its listed functions.

However, it is uncertain whether WaterNSW has the authority to do so without customer consent. To overcome any issue that arises with a lack of consent, section 31(1) of our Act provides:

WaterNSW may, if an operating licence so provides, operate, replace, repair, maintain, remove, connect, disconnect or modify metering equipment that WaterNSW does not own.

However, the authorisation in the Draft Licence provides:

Prior to WaterNSW 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.

This clause is redundant as WaterNSW would likely be required to obtain customer consent without an authorisation under section 31(1) of the Act. To give effect to section 31(1) of the Act, the New Licence needs to provide WaterNSW the ability to do the relevant things to meters it does not own without the agreement of the owner of that equipment.

In practice, the meters to which WaterNSW may be required to do things to which it does not own are those installed under a government funding agreement. This should alleviate the concerns of customers who have queried the need for an authorisation as broad as set out in section 31(1) of the Act. Therefore, WaterNSW recommends the clause for the New Licence be redrafted as follows:

Water NSW may operate, replace, repair, maintain, remove, connect, disconnect or modify Metering Equipment:

- i. installed under a government-funded meter program and owned by customers*
- ii. owned by government*
- iii. otherwise owned by customers with the consent of customers*

9.2 Customer Advisory Groups (clause 6.5)

WaterNSW is supportive of the changes to clause 6.5. However, we note the Draft Licence includes (vi) environmental users or groups in the categories of customers to become members of the Customer Advisory Group.

This appears inconsistent with the intent of the groups which is to comprise only customers.

9.3 Education programs (clause 6.11)

WaterNSW considers that any condition in the New Licence should only refer to the educative function in the Declared Catchment Area, even though the authorisation should be for the whole

of the State. Language in the clause should mirror the language in the Act. This can be achieved by editing the clause as follows:

Water NSW must undertake an educative role in conduct educational programs for the community on its activities and functions consistent with its objectives under section 6 (c) of the Act, and report on its activities in accordance with the Reporting Manual.

WaterNSW does not support extending the educative function to the rural parts of its business and further it is not expected that WaterNSW's rural customers will support paying for this function.

While IPART noted in its Draft Report that it is not IPART's intention to prescribe the level or scale at which WaterNSW delivers the educative function across its wider business, this discretion is not articulated in the draft clause and therefore could be open to misinterpretation in the future.

WaterNSW does not consider it necessary to develop a new annual report on its educative functions as its community education activities are already reported to IPART as part of the Catchment Protection Works Program and Annual Catchment Management Report and therefore proposes deletion of clause 6.1.2 of the Draft Reporting Manual.

9.4 Memorandum of Understandings NOT required by our Act (6.15 and 6.16)

We have significant concerns with the proposed approach to include additional Memorandum of Understandings (**MoUs**) in the operating licence beyond what is required by our Act.

1) We do not believe regulating relationships through regulatory instruments is best practice:

It sends the wrong signals. WaterNSW works with a broad range of stakeholders including Murray Darling Basin Authority, National Parks and Wildlife Services, Bureau of Meteorology and NSW Emergency Services. By extending the MoUs required by the operating licence beyond those required in our Act (as proposed with Local Land Service and DPI Water) it creates the impression to our stakeholders that the only way to work with WaterNSW is through an MoU, which needs to be provided through an operating licence. This is clearly not the case.

The operating licence is a relatively rigid instrument. By contrast changes to government departments and agencies can be more fluid. This is already highlighted by Clause 6.16 of the Draft Licence (**DPI Water MoU**) which has become out of date from the release of the Issues Paper to the release of the Draft Licence (with the move of the Metropolitan Water Directorate from DPI Water to Planning)

By describing specifically the agency and the relationship, it creates the risk that these arrangements will become invalid during the life of the licence.

2) The approach is inconsistent with the NSW Better Regulation Principles.

As set out below (4.22 and 4.23), WaterNSW believes that a 'need' or 'objective' for the regulation has not been clearly established.

To the extent IPART believes there is a need, WaterNSW is of the view that capturing and conditioning relationships in a regulatory instrument will provide limited benefit (the value of these relationships is maximised by collaborative partnership arrangements, not reliance on a

regulatory instrument to compel cooperation) but create additional costs through establishing and maintaining a portfolio of MoUs.

IPART should be working to reduce costs and administrative complexity for our customers.

Separately if such a need was established (that government believed there was a need to compel performance), we note that the NSW Government has recently set out a framework for setting corporate KPIs for State- owned Corporations. This framework requires financial and non-financial KPIs from defined categories. By default, the corporate KPIs become the CEOs KPIs.

This is an annual process and provides an opportunity for government to clearly set its expectations of performance. Such a process could provide a more effective incentive based regime to deliver the performance sought by government and could apply across agencies be it NSW Health or Local Land Services.

9.5 Local Lands Services (clause 6.15)

WaterNSW believes there is no clearly established *need* for an MOU with Local Land Services (LLS). The Draft Report raised concerns that there is no formal mechanism for a relationship between WaterNSW and the LLS with their removal from the proposed Customer Advisory Groups. However, WaterNSW is still required to maintain a strong working relationship with LLS through operational requirements under other regulatory and contractual requirements such as regional weed planning and pest animal control.

These contractual arrangements highlight that Local Land Services is a service provider to WaterNSW. Their operations have the potential to impact on the ability for WaterNSW to perform our functions, not the reverse. How LLS manage catchments directly impacts on the quality of water in those catchments which we have accountability for supplying to customers. We suggest, if anything the obligation for a MoU should go the other way.

9.6 Roles and Responsibilities Protocol and Memorandum of Understanding with Department of Primary Industries Water (clause 6.16)

WaterNSW believes there is no clearly established *need* for an Roles and Responsibilities Protocol or MOU with DPI Water and does not agree with the inclusion of clause 6.16 in the New Licence.

We believe there is no need for a Roles and Responsibilities Protocol the roles and responsibilities between WaterNSW and DPI Water are already defined in our Act and in comprehensive the Deeds developed and agreed between the between the parties as part of the transfer of functions.

With regard to the Conferred Functions, as the conferred functions establish a relationship between WaterNSW and the Minister responsible for administering the Water Management Act, not between WaterNSW and DPI Water. We acknowledge that the Conferred Functions in the current SWOL and SCAOL contain a clause that establishes a relationship between WaterNSW and DPI Water. We understand this clause will be removed through amendment to current SWOL and SCAOL.

As part of the transfer of WAMC functions to WaterNSW, WaterNSW entered into a three Deeds with DPI Water following lengthy negotiations. These binding deeds form the basis for determining roles and responsibilities, so no further (less-binding) MOUs are required. All three deeds (Deed of Business Transfer, WaterNSW Service Provision Deed and DoI Service Provision Deed) have mechanisms for amendment and are intended to be dynamic documents that capture the evolving relationships between the parties. The Deed of Business Transfer includes a schedule of roles and responsibilities, in circumstances where the parties have separate tasks relating to a shared function. These functions may be legislative and non-functions – so this agreed schedule provides a comprehensive overview of the parties' relationship.

Given the above, it is clear there is no need for further clarification of purpose or 'memoranda' where these other legal and binding instruments exist, and in the case of the Deed, which also describes the relationship and cooperation expected between the parties.

9.7 Compliance with Memoranda of Understanding (6.13 to 6.16)

WaterNSW notes that the provisions for each of the Memoranda of Understanding – with NSW Health under clause 6.13.1, with the Environmental Protection Authority (**EPA**) under clause 6.14.1, with the Local Land Services under clause 6.15.1 and with DPI Water under clause 6.16.1 – all require compliance with the relevant MOU.

To the extent that any MOU remain within the New Licence, and this will need to be the case for at least the one with NSW Health and the EPA, then there should be no requirement for compliance with the MOU.

The MOU are intended to be relationship documents dependent on both parties maintaining the basis of the relationship and not prescriptive documents for compliance. The asymmetrical nature of a compliance obligation only on WaterNSW makes it difficult to work in practice due to the inherent nature of the MOU. A possible compromise is to frame compliance in the context of best endeavors.

10Part 8: Definitions and interpretation

10.1 Definitions

As noted in section 4.3, WaterNSW proposes removing the following defined terms from the Licence:

- Bulk Water
- Supply
- Deliver
- Extract

and adding the following terms:

1) Drinking Water made available directly by WaterNSW under its access licences

Water that is:

- intended for or likely to be used, primarily for human consumption but which has other personal, domestic or household uses such as bathing and showering
- made available by WaterNSW by pipe or drinking receptacles directly to a Drinking Water supplier; and
- suitable for consumption without treatment or filtration a third party.

2) Water Supplied by WaterNSW under its access licences for treatment or filtration by a third party prior to consumption

Water that is

- supplied by WaterNSW under its access licences to a customer by means of operation of a Water Management Works owned or operated by WaterNSW;
- supplied in accordance with a relevant supply agreement (Customer Supply Agreement or Raw Water Supply Agreement for Sydney Water); and
- is not suitable for consumption without treatment or filtration a third party.

3) Water Supplied to Small Customers not intended for consumption

Water that is

- supplied by WaterNSW to a customer⁵ who is prevented from supplying water for consumptions to others within NSW without legislative or regulatory permission; and
- is not suitable for consumption without treatment or filtration.

4) Water Released for extraction and use under a Customers access licence

Water that is

- made available to customers, as ordered, through the operation of Water Management Works owned or operated by WaterNSW;
- for which there is no direct supply agreement with the customer; and
- is not suitable for consumption without treatment or filtration a third party.

10.2 Definitions to be amended

The Draft Licence defines **Complaint** to mean:

Complaint means an expression of dissatisfaction made by Customers or Consumers to Water NSW in relation to its products or services, staff or Complaints-handling process itself, where a response or resolution is explicitly or implicitly expected or legally required.

Even though the terms Consumers and Complaints-handling process indicate that they are defined terms within the Draft Licence, there are no definitions for those terms. WaterNSW suggests that “or Consumers” is deleted and the natural meaning of “complaints-handling process” is used.

⁵ Excludes Sydney Water, Water Supply Authorities, Supplied council or county council, Licensed Network Operator or Licensed Retail Supplied

Sub-clause 1.2.1(c) uses a defined term for the word **Regulation**. The definition should refer to any regulations made under the *Water NSW Act*, not the specific regulation that has been made as at the date of the New Licence as the regulations under the Water NSW Act may change over the life of the New Licence.

10.3 Interpretation (clause 8.2)

Sub-paragraph 8.2(b) should also refer to the Water NSW Act.

Sub-paragraph 8.2(f) provides:

Except where a contrary intention appears in this Licence, where there is any ambiguity or disagreement between Water NSW and IPART as to the proper application or interpretation of any term of this Licence or the Reporting Manual, IPART's interpretation or assessment will prevail.

A breach of the Operating Licence could lead to a monetary penalty under section 16 or section 17 of the Act or requiring WaterNSW to undertake remedial action under section 17 of the Act. Under section 18 of the Act, WaterNSW, if aggrieved by a decision of IPART to take action under section 17 in relation to WaterNSW, may apply to the Civil and Administrative Tribunal for an administrative review under the Administrative Decisions Review Act 1997 of the decision.

In these circumstances, where there are significant consequences to the breach of the licence and a review mechanism with respect to any enforcement action by IPART, it is not appropriate for IPART's interpretation of the operating licence to be final determinant of the matter and would be against the intent of the Act which includes a review mechanism of enforcement by IPART in section 18.

11 Conferred functions (Schedule A)

As noted in Part 1 above, on 1 July 2016, each of the Existing Licences were amended and substituted by the Governor under section 13(1)(b) of the the Act. The Existing Licences were amended to non-exclusively confer on WaterNSW certain WAMC functions transferred from the DPI Water.

WaterNSW and DPI Water have subsequently agreed that the conferred functions as articulated in schedule A of the Draft Licence were imprecise in describing the entities / applications for which DPI Water retained responsibility. The parties have also agreed that WaterNSW's compliance with various DPI Water manuals and guidelines was not appropriate. DPI Water and WaterNSW are also investigating whether further functions should have been conferred at 1 July 2017. As a consequence, WaterNSW envisages that the Schedule will be updated and replaced.

WaterNSW and DPI Water will liaise with IPART on the progress of the updated Schedule.

12 Reporting Manual

This section provides comments on WaterNSW key issues and concerns with the Draft Reporting Manual. A marked-up copy of Appendices A and B are provided on page 32 to reflect the comments below.

12.1 Annual reporting on water quality monitoring indicators – IPART indicators (clause 2.1.5)

WaterNSW recommends clause 2.1.5 (and corresponding Table B.2) are removed from the Reporting Manual.

The water quality indicators (H1 and H2) have previously related only to the declared catchment area (Sydney Drinking Water Catchment) and to the quality of water supplied for drinking water purposes.

Reflecting their intent, WaterNSW does not report against these indicators beyond the declared catchment areas. To monitor these indicators on a company wide basis would create additional costs for WaterNSW with any benefit unclear.

The customer indicators are new indicators proposed by IPART. WaterNSW does not agree with them being included as customer numbers are not indicator of performance.

12.2 Annual reporting on declared catchment indicators (clause 2.1.6)

Clause 2.1.6 requires WaterNSW to report annually (by 1 October) to IPART on the declared catchment indicators. The indicators are measures of biodiversity and habitats, water availability and water quality. However, the audit of catchment indicators under section 42 of the Act only requires that it be conducted every three years – see sub-section 42(3).

WaterNSW recommends that the frequency of the reporting of the declared catchment indicators be aligned with the frequency of the audit and subsequent report of the catchment audit under section 42 of the Act.

Further, WaterNSW notes that in Table B3 at page 5 – Declared catchment health indicators – the four environment indicators (E1, E2, E3, E4) are not catchment health indicators which are derived from an audit under section 42 of the Act. We suggest that these four environmental indicators are listed separately in a new table B.4 Environmental Indicators (required under Section 12 (2) (b) of Water NSW Act) to avoid confusion.

12.3 Annual reporting on NWI – public health indicators (clause 2.1.7)

There are two public health indicators included in Table B.1 – Indicator H7 has been removed from the NWI indicator list and as such WaterNSW recommends it is also removed from IPART's table. WaterNSW also suggests the note to the clause be amended as below:

[Note: The public health indicators are published by the Bureau of Meteorology in the Annual Urban National Performance Report.]

12.4 Annual reporting on National Water Initiative - water resource indicators

Table B1 of Appendix B of the Draft Manual (page 3) sets out the National Water Initiative (NWI) Performance Indicators as at February 2017.

Historically we have reported on the urban NWI Performance Indicators - water resources, environmental and financial in accordance with the requirements of the NWI and the National Performance Report: Urban Water Utilities (for SCA area of operations).

WaterNSW notes that if WaterNSW reports on a whole of business basis (beyond the Declared Catchment Areas only), as seems to be the intent of Table B1, this will be different to what is required under the NWI.

As such WaterNSW seek that it continue to report only in respect to its urban operations against the NWI urban indicators. To do otherwise and report environmental indicators on a company wide basis, is not in keeping with the intent of the NWI urban reporting requirements which relate specifically to benchmarking performance of urban water utilities.

Table B.1 includes two indicators Indicator W5 and W5.2 which relate to the former SCA's receipt of water from Fish River and are no longer appropriate for WaterNSW.

WaterNSW also suggests the note to the clause be amended as below:

[Note: The water resource indicators, which were developed as part of the National Water Initiative are developed by the Bureau of Meteorology, relate to water sourced from, and supplied by, Water NSW. The water resource indicators are also published by the Bureau of Meteorology in the Annual Urban National Performance Report.]

12.5 Publicly available documents (clause 2.3)

As noted above, WaterNSW recommends that “any information collected by WaterNSW on water quality relevant to the Declared Catchment Areas” be deleted.

12.6 Annual reporting on the certified Asset Management System and the certified Environmental Management System (clause 5.1.1)

As the certification of the AMS and EMS are comprehensive external audits, IPART should adopt a minimum approach to reporting under these audits. Therefore, WaterNSW should only have to submit the audit certificate to IPART rather than the additional information set out in the Draft Manual.

IPART requires that the report on the Certified AMS and EMS be provided to IPART by 1 September following the end of the financial year, or at a later date as agreed to by IPART. WaterNSW notes that annual audits are scheduled to occur in October. Therefore, this date will need to be adjusted to accommodate the internal schedule. We suggest that the clause requires WaterNSW to provide the report to IPART within 21 days of receipt from the auditor.

12.7 Community education reporting (clause 6.1.2)

As noted in Education programs (clause 6.11) above, WaterNSW does also not consider it necessary to develop a new annual report on its educative functions as its community education activities are already reported to IPART as part of the Catchment Protection Works Program and Annual Catchment Management Report and therefore proposes deletion of clause 6.1.2 of the Draft Reporting Manual.

12.8 Annual reporting on National Water Initiative Indicators (clause 7.1.1)

Much of this clause is duplicative as it requires reporting and indicators and performance that is already required to be reported as per Appendix B of the Reporting Manual. This clause should be limited the Statement of Compliance required by IPART's Public Water Utilities audit guidelines. WaterNSW recommends Clause 7.1.1 is amended as below:

7.1.1 Annual Statement of Compliance

IPART's Public Water Utilities (**PWU**) audit guideline specifies the information that IPART requires for a statement of compliance. Water NSW must provide a statement of compliance in accordance with our PWU audit guideline.

[Note: Our PWU audit guideline is available on IPART's website at www.ipart.nsw.gov.au. Under clause 7.1 of the Licence, IPART may undertake an Operational Audit on Water NSW's compliance with Licence. As part of the audit process, Water NSW must provide a statement of compliance which identifies any noncompliance of which it is aware.]

[Note: Under clause 7.4 of the Licence, Water NSW is required to maintain sufficient records and records systems that enable it to measure and accurately report its performance against the performance indicators and performance standards specified in this licence and the reporting manual.]

12.9 Reporting on National Water Initiative - Finance Indicators (clause 7.2)

Table B.1 in Appendix B applies to NWI Urban Water Indicators. As a result of the creation of WaterNSW, we are only able to provide financial indicators on a company wide basis and therefore recommend the financial indicators are removed from Table B.1.

12.10 Publicly available documents (clause 7.4)

WaterNSW recommends clause 7.4 is removed from the Report Manual reflecting our preference for clause 7.1.1 and that it duplicates public availability requirements. All the data provided by WaterNSW on the indicators contained in Appendix B of the Reporting Manual is made publicly available through a number of reports including the Annual Urban National Performance Report (BoM), WaterNSW Annual Water Quality Monitoring Report, Catchment Audit Report (every three years).

A Timeline for reporting

Table A.1 'Periodic' reporting under Water NSW's operating licence and reporting manual

Date	Report to	Reporting on	Reporting Manual Chapter
As required	NSW Health/ customers	Routine monitoring under the Water Quality Management System	Chapter 2: Water source protection and conservation
As required	NSW Health/ customers	Incident reporting	Chapter 2: Water source protection and conservation
31 March	IPART	Notification of changes to Management Systems and catchment management and management of Catchment Infrastructure and Design Criteria	Chapter 2: Water source protection and conservation
		Audit recommendations	Chapter 7: Performance monitoring and reporting
1 September	NSW Health/ PART	Water Quality Management System Report	Chapter 2: Water source protection and conservation
	IPART	Annual Water Conservation Program Report	Chapter 2: Water source protection and conservation
	IPART	Report against Performance Standards	Chapter 4: Performance standards
	IPART	Asset Management Report/ report on certified Asset Management System	Chapter 5: Organisational systems management
	IPART	Environmental Management Report/ report on certified Environmental Management System	Chapter 5: Organisational systems management
	IPART	Compliance and Performance Report on Customer Management	Chapter 6: Customer and stakeholder relations
	IPART	Community Education Report	Chapter 6: Customer and stakeholder relations
	IPART	Compliance and Performance Report on performance indicators	Chapter 7: Performance monitoring and reporting
1 October	IPART	Urban National Water Initiative Indicators (Water resources) (not Finance or Environment)	Chapter 7: Performance monitoring and reporting Chapter 2 Water Source Protection and Conservation
31 October	IPART	Urban National Water Initiative Indicators (Finance and Environment only)	Chapter 7: Performance monitoring and reporting Chapter 2: Water Source Protection and Conservation
30 November	NSW Health/ IPART	Water Quality Monitoring Report	Chapter 2: Water source protection and conservation
	IPART	Water quality monitoring indicators report	Chapter 2: Water source protection and conservation
	IPART	Catchment management report	Chapter 2: Water source

Note: Management System report requirements start once the Management System is implemented

Table A.2 'As required' reporting under Water NSW's Licence

Date	Report to	Event	Reporting Manual Chapter
1 November 2017	IPART	Report outlining approach to, and principles for, developing the Economic Level of Water Conservation (ELWC) methodology	Chapter 2: Water source protection and conservation
1 July 2018	IPART	State of the assets report	Chapter 5: Organisational systems management
1 November 2018	IPART	Report outlining ELWC methodology	Chapter 2: Water source protection and conservation
1 September 2019	IPART	First Water Conservation Program Report	Chapter 2: Water source protection and conservation
Recalculation trigger	Minister Public	Water supply system yield	Chapter 2: Water source protection and conservation
	Public	Review of water supply system yield	Chapter 2: Water source protection and conservation
Routine trigger	NSW Health Customers	Routine water quality monitoring results	Chapter 2: Water source protection and conservation
Incident	NSW Health Customers	Incident water quality monitoring results	Chapter 2: Water source protection and conservation
Catchment audit	Appointed auditor	Data informing Declared catchment health indicators	Chapter 2: Water source protection and conservation

Note: Management System report requirements start once the Management System is implemented

B Indicators

The tables in this Appendix B set out the indicators that Water NSW must report on.

Table B.1 contains National Water Initiative performance indicators (Performance Indicators). These indicators, and their corresponding definitions, ~~have been~~ were developed by the National Water Commission (NWC) as part of the National Benchmarking Framework for Urban Water Utilities. The definitions of the Performance Indicators are published by the NWC and the Water Services Association of Australia (WSAA). The most recent Performance Indicators are available on the [NWC-BoM](#) website.

Please note that the Performance Indicators contained in this Appendix B are up to date as at February 2017. It is Water NSW's responsibility to ensure it is reporting against current Performance Indicators, which are reviewed annually.

Table B.2 contains performance indicators (IPART indicators), which IPART has developed for Water NSW.

Table B.3 contains catchment health indicators (Declared catchment health Indicators), which were approved and published in the NSW Government Gazette under section 41 of the *Water NSW Act 2014*. Table B.3 only sets out the indicators for which Water NSW is a data custodian; it is not a comprehensive list of the gazetted indicators. The data for the remainder of the gazetted indicators is collected by other agencies involved in the catchment audit under section 41 of the Act.

[Table B.4 contains environmental indicators required under S12 \(2\) \(b\) of Water NSW Act](#)

Note: the NWC was abolished in 2015 and the NWI website has been archived. Reporting and data gathering obligations relating to urban national performance report were transferred to BoM

Table B.1 NWI Urban Performance Indicators as at February 2017

Number	Section	Indicator
W1	water resources	Volume of water sourced from surface water (ML)
W2	water resources	Volume of water sourced from groundwater (ML)
W5	water resources	Volume of water received from bulk supplier (ML)
W5.2	water resources	Volume of non-potable water received from bulk supplier (ML)
W7	water resources	Total sourced water (ML)
W11	water resources	Total urban water supplied (ML)
W11.2	water resources	Total urban non-potable water supplied
W13	water resources	Volume of water supplied – Environmental (ML)
W14	water resources	Volume of bulk water exports (ML)
W14.2	water resources	Volume of non-potable bulk water exports
E9.1	environment	Greenhouse gas emissions – bulk utility water (tonnes CO ₂ -equivalents per ML)
E11.1	environment	Net greenhouse gas emissions – other – bulk utility (net tonnes CO ₂ -equivalents per ML)
E12.1	environment	Total net greenhouse gas emissions – bulk utility (net tonnes CO ₂ -equivalents per ML)
F1	finance	Total revenue – Water (\$000)
F3	finance	Total Income for whole of utility (\$000)
F5.1	finance	Revenue for water supply services (\$/ML) – Bulk utility
F7.1	finance	Income for whole of utility (\$/ML) – Bulk utility
F11.1	finance	Operating cost – Water (\$/ML) – Bulk utility
F13.1	finance	Combined operating cost – water and sewerage: bulk utility (\$/ML)
F14	finance	Total water supply capital expenditure (\$000s)
F16	finance	Total capital expenditure for water and sewerage (\$000s)
F28.1	finance	Water supply capital expenditure (\$/ML) – Bulk utility
F20	finance	Dividend (\$000s)
F24	finance	Dividend payout ratio (%)
F22	finance	Net debt to equity (%)

Number	Section	Indicator
F24	finance	Net profit after tax (\$000s)
F28.1	finance	Water supply capital expenditure – bulk utility (\$/ML)
F30	finance	NPAT Ratio (%)
H1	public health	Water quality guidelines
H7	public health	Public disclosure of Drinking Water performance (yes/no)

Table B.2 IPART Indicators

Identifier	Section	Indicator
Water NSW	water quality	Water quality in catchment waterways in the Catchment Area measured against the applicable water quality objectives specified in the Australian and New Zealand Guidelines for Fresh and Marine Water Quality 2000
Water NSW	water quality	Occurrence of Cryptosporidium and Giardia cysts or oocysts in catchment waterways
Water supply	customers	Number of Water Supply customers supplied with Water from Declared Catchments under the operating licence
Water supply	customers	Number of Water Supply customers supplied with water from Non-declared catchments under the operating licence

Table B.3 Declared catchment health indicators

Theme	Sub-theme	Indicator	Measurement
Biodiversity and habitats	Biodiversity	Macroinvertebrates ^a	2001 and 2006 Spring AusRivAS scores, plus additional data from Sustainable Rivers Audit (SRA) ^b
Water Availability	Surface Water	Surface Water flow	Level and variability of streamflow
Water Availability	Surface Water	Environmental flows	Total volume of water by type released from SCA storages
Water Quality	River Health	Ecosystem water quality	Turbidity, pH, EC, Total Al, Total Fe, Total N, Total P, NO _x , NH ₄ , FRP, Chlorophyll a, DO and water temperature – assessed against ANZECC/ARMCANZ (2000) guidelines
Water Quality	River Health	Cyanobacterial blooms ^a	Compliance with recreational guidelines cyanobacteria ^c for Water NSW storages only

Table B.4 Environmental Indicators (required under Section 12 (2) (b) of Water NSW Act – suggested new section of table

Theme	Sub-theme	Indicator	Measurement
Environment	Energy	Water NSW E1	Total annual energy consumed by Water NSW (electricity, fuel and gas) in units provided on energy bills
Environment	Green electricity	Water NSW E2	Green electricity consumption as a % of total electricity consumption by Water NSW
Environment	Waste	Water NSW E3	Estimated volume and type of waste annually sent to landfill from Water NSW's activities (kg per year)
Environment	Waste	Water NSW E4	Waste recycled or reused expressed as a percentage of total waste generated by Water NSW's activities, by type of waste

a Other agencies also have responsibility for these indicators.

b Office of Environment and Heritage also collects macroinvertebrate data.

c NSW Office of Water and local councils also collect this data

Annexure A: Draft Licence Definitions

As referenced in this submission, should IPART not adopt WaterNSW's proposed outcome based definitions, we provide the following amendments to the definitions included in the Draft Licence

12.11 Definitions

Bulk Water: Either water which has not been treated in any way or water that has been treated to improve quality, whether by chemical treatment or otherwise but not treated at a water filtration plant

Supply: The supply by WaterNSW 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 WaterNSW.

Deliver: To ensure the arrival of water at a defined location, made available for Extraction or in-stream use, in response to a Customer order and as a result of active or passive management or operating actions using Water Management Works owned and/or controlled by Water NSW infrastructure.

Extract: Taking of water by another party from a river or water body for use or subsequent supply.