

**REVIEW OF THE OPERATING LICENCE AND REVIEW
OF PRICES FOR THE SYDNEY CATCHMENT
AUTHORITY**

**SUBMISSION BY TOTAL ENVIRONMENT CENTRE TO
THE INDEPENDENT PRICING AND
REGULATORY TRIBUNAL**

INTRODUCTION

Total Environment Centre (TEC) welcomes the opportunity to comment on the review of the Operating Licence and process for the Sydney Catchment Authority (SCA). Detailed comments in response to issue raised in the IPART issues paper are provided below. In general we object to IPART's continuing desire to dumb down operating licences and make them effectively more obscure to the community.

ROLE AND FORM OF THE OPERATING LICENCE

The Operating Licence provides a simple and transparent mechanism for ensuring SCA's operations are publicly accountable in an effective manner. It is essential that the Operating Licence be an overarching instrument that clearly sets out obligations and performance requirements. Allowing these obligations to rest solely within other instruments could lead to regulatory confusion and create barriers to review of performance by the Licence Regulator.

The Operating Licence provides an integrating instrument that allows coherent management of SCA as a whole. No other regulatory agencies or instruments provide such a function.

TEC notes the Tribunal's view that outcome-orientated, system-driven licence obligations may be more appropriate for some elements of the licence not easily covered by prescriptive licence standards. The Tribunal proposes that these obligations could be included in licensing plans referenced in the Operating Licence (IPART, 2011).

TEC has reservations regarding this approach. We are concerned that the simple, transparent and overarching nature of the operating licence should not be compromised and the licence reduced to a 'shell' instrument. This could reduce the accessibility and ease of interpretation of the licence for the public. To this end, key requirements of any licence plans or systems (i.e. required outcomes) should be retained in the licence and performance against plans or systems considered in the operational audit. Removing them from the licence will make it difficult for non-specialist readers (i.e. other than IPART and water utilities) to identify key obligations or comment upon performance against them. Subsidiary licence plans should be developed by an open, transparent process with opportunity for public participation. Concerns about 'paper or process efficiency' are far less important than real public confidence and the social licence to operate. In reality, IPART is proposing a disintegrating operating licence.

Further, TEC believes that targets and prescriptive standards can act as important drivers of performance and improvement, particularly in relation to infrastructure management and water conservation. We note the Tribunal's previous observation that "introduction of these targets precipitated a major rearrangement of Sydney Water's maintenance practices" (IPART, 2009).

TEC notes the Tribunal's concern that some licence conditions duplicate legislative or other requirements and that this may cause conflict if licence obligations are not amended in line with legislative changes (IPART 2011). TEC believes that any such conflict (if it actually exists) can be readily addressed by referencing the appropriate legislation and requiring that SCA comply with the conditions of this legislation as amended. Requirements of other regulatory instruments should be referenced in a similar manner with requirements to comply with any updates or amendments to those instruments.

We also note the Tribunal's comment that some current licence conditions impose obligations upon IPART and that it may not be appropriate for an operating licence to place obligations on a party other than the regulated utility (IPART, 2011). TEC does not share this view. We believe that it is important that IPART's role and obligations in regulating SCA's performance against the operating licence be clearly set out in this document – it could be accused of seeking to avoid scrutiny. Again, the crucial role of the licence as an overarching regulatory instrument should not be diminished.

The Tribunal has proposed that the licence structure be modified to place all reporting requirements in a subsidiary Reporting Manual to allow greater flexibility in changing requirements as necessary. What does 'greater flexibility' mean? A reduction in effective transparency? TEC is concerned that any amendments should only be made via a rigorous and transparent process. It is also important that the manual (if it is adopted) not be viewed as a 'secondary' document, but as an integral part of the Operating Licence. Compliance with its requirements should be subject to the same rigorous level of audit as the rest of the licence.

TEC does not support the Tribunal's proposal to remove background and explanatory information from the introduction to the licence. We do not see how this information could possibly add to the 'regulatory burden' upon SCA. It does, however, provide valuable contextual information to the general reader outside the water industry. Removal of this information will simply make the operating licence a less accessible document.

Impact of longwall mining

The impact of longwall mining is a pressing issue affecting both the quality and quantity of water available from SCA catchments. This issue is not covered in the issue paper but requires attention.

TEC believes that urgent action is required to address the threat of damage to the catchments from longwall mining. We recommend that given the number of longwalls being mined each year, the SCA be required to monitor and publicly report every six months upon the effects of longwall mining in catchment areas (we understand that monitoring is a development consent requirement but analysis and full public reporting at a sufficient level is not).

PRICE DETERMINATION

Length of price determination period

TEC believes that 4-5 year determinations have generally worked well and are appropriate for the current review. We support the Tribunal's view that this provides a balance between providing certainty to the regulated business and limiting delays in efficiency gains (IPART, 2011). Further the current timing of four yearly determinations occurs at a point in the NSW electoral cycle that reduces the likelihood of the pricing process becoming politically compromised.

The Tribunal has noted that there are some advantages in aligning SCA price and reviews with reviews of its operating licence and Sydney Water prices (IPART, 2011). While there may be some efficiency in aligning price and operating licence reviews, TEC believes that there is benefit in resolving regulatory issues prior to determining prices.

Furthermore, conducting these reviews together or separated by only a short period of time places considerable resource constraints on many community and non-government organisations. The timing of this review, in concurrence, with a Sydney Water pricing review has placed a considerable burden on TEC's resources. There appears to be a continuing trend to favour efficiency for fully resourced agencies and to let effective public participation slide.

Shoalhaven transfers

TEC believes that price structures should reflect the additional environmental impacts and financial costs of Shoalhaven transfers. The effect of this pricing regime should be to minimise the use of these transfers. In this respect higher prices reflecting the increased costs and impacts could be a form of scarcity pricing. Further comments in relation to scarcity pricing are provided below.

Any such mechanism would, however, need to be developed and applied with caution. As noted in the discussion paper (IPART, 2011) Sydney Water could face incentives to make increased purchases from the Sydney Desalination Plant. As such, any pricing mechanism should carefully balance the environmental and financial costs of the Shoalhaven transfers and desalination to produce the most efficient and sustainable outcome.

Fixed/variable ratio for the recovery of costs

TEC does not support increasing the ratio of costs covered from fixed charges. Volumetric charges send an important price signal to Sydney Water and SCA's smaller customers.

As a way of protecting SCA from revenue volatility, TEC supports either adjusting SCA prices in the next determination if revenue variation exceeds a 'deadband' of +/- 10 % or introducing a revenue volatility allowance in to the price structure (IPART, 2011).

Drought restrictions regime

Drought restrictions remain an important tool in managing drought situations, encouraging sustainable water use and preventing unnecessary supply augmentation. We acknowledge that restriction may have a negative impact on SAC revenues. This could be addressed by adjusting SCA prices in the next determination as described above.

Scarcity pricing

TEC does not generally support the use of scarcity pricing.

Advocates of scarcity pricing ignore the importance of conserving water both during droughts and in periods of abundant supply.

Scarcity pricing is most applicable for situations where supply is provided by 'run of river' type operations with little or no storage capacity. In such situations there is no capacity to maintain storage levels to provide a buffer against later drought conditions. Reliance on scarcity pricing would allow more affluent customers to simply buy their way out of the obligation to conserve water. Application of water restrictions provides a more equitable approach and ensures that the burden of conserving water is shared more equally across all sections of the community.

TEC concurs with the view previously expressed by the Tribunal that water restrictions appear to have broad community acceptance, particularly for use as a short-term response to drought (IPART, 2011). This is indicated by the high level of compliance with restrictions in both the Sydney Water Corporation and Gosford/Wyong areas of operation.

Furthermore, restrictions have a valuable role to play in changing behaviour. As noted in Wyong Council's submission to a review of prices for Gosford and Wyong Councils, communities' water usage habits change slowly when restrictions are eased (Wyong Shire Council, 2008). It is interesting to note that despite restrictions being relaxed from level 4 to level 3 on 30 March 2008 actual demand reduction grew from 32.0% to 35.0% (Gosford City Council, 2008). While this may partly be explained by increased rainfall reducing the need for outdoor watering it is clear that there has been a significant behavioural shift amongst Central Coast water users.

TEC does, however, acknowledge that application of scarcity pricing to Shoalhaven transfers may be appropriate. As discussed above, this would reflect the higher costs and environmental impacts of these transfers and help ensure that transfers were only made during severe drought periods.

REFERENCES

Gosford City Council (2008) “Submission to Independent Pricing and Regulatory Tribunal of New South Wales. Proposal for Water, Wastewater and Stormwater Prices”, GCC.

Independent Pricing and Regulatory Tribunal (2009) “Review of the Operating Licence for Sydney Water Corporation – Water Issues Paper”, IPART.

Independent Pricing and Regulatory Tribunal (2011) “Review of the Operating Licence and review of prices for the Sydney Catchment Authority – Water Issues Paper”, IPART.

Wyong Shire Council (2008) “Submission to Independent Pricing and Regulatory Tribunal. Price Path from July 1 2009 – 30 June 2013”, WSC.