

Sydney Catchment Authority's
**submission on the review of
Hunter Water Corporations
Operating Licence**

25 September 2001



Table of Contents

| | |
|--|----|
| 1. Introduction..... | 3 |
| 2. Drinking Water Quality Standards..... | 5 |
| 3. System Performance Standards And Measures | 6 |
| 4. Environmental Requirements | 10 |
| 5. Customer And Consumer Rights..... | 13 |
| 6. Public Reporting And Other Issues..... | 15 |
| 7. Conclusion..... | 17 |

1. Introduction

1.1 Background on the Sydney Catchment Authority

The NSW government established the Sydney Catchment Authority to manage and protect Sydney's water catchment and to supply clean water. The SCA is a statutory authority established under the *Sydney Water Catchment Management Act 1998* (The Act). The establishment of the SCA was a recommendation of the Sydney Water Inquiry conducted by Mr Peter McClellan QC.

The Act not only confers upon the SCA the role of being a bulk raw water supplier but also responsibility for effectively managing and protecting the catchments utilised for harvesting and storing water. These catchment areas cover 16,000 square kilometres, extending from the north of Lithgow, south to the source of the Shoalhaven River near Cooma, and from the Woronora in the east to the source of the Wollondilly west of Goulburn.

The SCA's current Operating Licence was issued on 19 April 2000 and spans 2000 – 2004. The SCA's Operating Licence is due to undergo a Mid Term Review from 1 January 2002.

1.2 Principles of Operating Licences

The SCA regards an Operating Licence as an authorisation instrument that grants powers to conduct specified activities in defined geographical areas.

The SCA regards regulation as a necessary requirement to correct for market failure and/or abuse of a monopoly position. To this end it has a consumer protection role. However, in any consideration of the extent, scope and form of regulation there is a need for regulatory agencies to carefully distinguish between actual market failure or monopoly abuse and the a perception or possibility of such failure or abuse.

The SCA is of the view that regulators need to be careful not to stifle innovation in the firms they regulate. Accordingly, the scope, extent and form of regulation needs to be carefully balanced. Consistent with this approach the SCA therefore believes that the following principles should guide the review of the Hunter Water Corporation's Operating Licence and the subsequent reviews of the SCA's and Sydney Water Corporations Operating Licence's.

1. The Licence should generally confer powers or authorise the doing of some act or thing in a clear and unambiguous manner. Where the Licence seeks to fetter, attenuate or proscribe a power in a particular way this should be described in a clear and concise manner.
2. The Licence should only prescribe actions and activities where there is evidence of market failure or abuse of monopoly position, particularly where mechanisms exist for subsequent reviews of the licence instrument.
3. Regulation should be focussed on outputs and performance. Input or processes to be adopted should only be prescribed where outputs cannot be specified.



4. Regulated outputs, inputs or processes should be relevant, unambiguous, and verifiable (i.e. auditable).
5. Regulation should not seek to duplicate or contradict other lawful regulatory instruments.
6. The Regulation or licence should not seek to impose obligations on parties other than the regulated agency unless the regulation also confers the means and the power to elicit compliance.
7. The Licence and associated instruments should be simple to understand and accessible to those benefiting from the regulation.

2. Drinking Water Quality Standards

2.1 What standards of drinking water quality are appropriate for inclusion in Hunter Water's Operating Licence? Should Hunter Water be required, like Sydney Water to comply with revisions to the health related aspects of the Australian Drinking Water Guidelines, where specified by NSW Health?

NSW Health is the regulator of public health for the three water agencies. It then follows that they should stipulate the drinking water quality standards for Hunter Water.

However, the SCA supports Hunter Water's recommendation that it be required to meet the 1996 Australian Drinking Water Guidelines and any further iteration of them.

The SCA has reservations about Hunter Water's suggestion of monthly reporting of the data to indicate compliance with the Guidelines. Turnaround time for the results of some monitoring can in some instances be a month. If the reporting is to allow for "immediate responses to a perceived problem" then by the time the data becomes available the problem has long since passed, been resolved and/or been publicised. The Authority believes that reporting of water quality outcomes on a basis more frequently than quarterly should be by way of the publication of data on the Authority's website.

The SCA's response to the issue raised below will expand on the appropriate place for such standards.

2.2 Should the requirements of Hunter Water's Memorandum of Understanding with NSW Health be codified as part of the Licence?

Currently the SCA has requirements for the development of water quality monitoring programs in its Memoranda of Understanding (MOU) with NSW Health and in its Operating Licence. During the development of the water quality monitoring program confusion arose about its contents as the requirements of the MOU and Operating Licence differed. This came about because the MOU was finalised prior to the finalisation of the current Operating Licence. To ensure that this does not occur in the future the SCA recommends that the requirements related to drinking water quality monitoring, reporting and standards and their application be stipulated in a regulatory instrument controlled by NSW Health. Until such time as another regulatory instrument exists for NSW Health to stipulate its requirements, the most appropriate place for water quality monitoring, reporting and standards application should be in the MOUs with the three water agencies.

3. System Performance Standards And Measures

3.1 Do the standards reflect customer needs and preferences? If not how could they be modified to better reflect customer's needs and preferences?

As Hunter Water conducts surveys of its customers it would seem appropriate that this information be used to provide advice on this issue. If the information is not adequate to inform this process and the response to the Issues Paper does not provide appropriate answers it is suggested the Tribunal engage the community in a survey.

3.2 In addition to meeting customer's requirements, do the individual standards provide sufficient incentives for Hunter Water to improve its performance?

The SCA believes that the fact that a standard is met or exceeded is not necessarily an argument that the standard is too lax or otherwise defective. The standard may still be appropriate and valid. Before a standard is increased the cost of meeting the new standard needs to be assessed to ensure that the cost of compliance does not out way the benefits that will come from it being met. Customer needs and expectations coupled with a "willingness to pay" should be the major component of the assessment used to identify appropriate standards.

Hunter Water clearly identifies in its submission that its performance has been driven by its willingness to meet customers expectations and needs. This is evident in the fact that they have complied with the 1996 Australian Drinking Water Guidelines when their Operating Licence only requires them to meet a lesser standard.

3.3 Are the current definitions and measurement procedures for the standards adequate and should they be incorporated into the Operating Licence?

The SCA understands that a consultant will be appointed to provide advice on definition measurement, appropriate system performance standards and customer service measures for Hunter Water Operating Licence. The SCA notes that a requirement of the consultancy is to look nationally and internationally at suitable system performance standards and also to look at the costs and benefits associated with the application of new or modified standards.

The SCA would warn against the direct application of any recommendations from the consultancy prior to consultation with the relevant agencies. While the theory behind the recommendations may appear adequate, the overall real cost of the application of any standards may need to be considered by the industry itself.



The specification of prescriptive standards in an Operating Licence must be considered carefully. While it is important that a Licence has “simple and unambiguous obligations”¹ it is also important that regulation does not drive an agency down a path that is not cost effective.

3.4 Should the system performance standards in Hunter Water’s Operating Licence be made consistent with the standards of Sydney Water or other Utilities?

While consistency in the level of a system performance standards may be desirable it may not be feasible.

The Tribunal bases its price determination on information specific to an agency and its operating environment. This inevitably leads to prices being determined having regard to circumstances that are unique to an agency.

The level of a system performance standard should be determined in a similar way to a price determination. Therefore the level of system performance standard for each agency can be different where there can be justifiable reasons for this to be the case².

While not supporting the specification of prescriptive system performance standards in an Operating Licence, the assessment of the potential standards to be applied need to be carefully considered. Moreover, care needs to be exercised in applying to a particular jurisdiction a standard from another region. There may be a range of cultural, geographic, social, economic and ecological factors that would support differentiation.

3.5 Is the water continuity standard adequate in addressing customers expectations of a reliable water supply?

No comment.

3.6 Comments on the targets and measurement of water pressure standards.

No comment.

3.7 Comments on the appropriateness of the security of supply standard.

The review of SWC’s system performance standards highlighted the need for a water reliability standard and also highlighted problems with the way security of supply is measured.

¹ Independent Pricing and Regulatory Tribunal, *Issues Paper – Review of Operating Licence for Hunter Water Corporation*, July 2001, page 5.

² With the possible exception of public health related standards.



The Issues Paper raises the question about the appropriateness of Hunter's security of supply standard.

The current operational audit for the SCA has identified an issue with respect to the system performance criteria relating to security of supply.

It appears that all three agencies use modeling to assess compliance with System Performance Standards (SPS) with respect to the security of supply. This method does not provide the customer with tangible answers about whether the water is being managed effectively.

The SCA suggests that a comprehensive investigation into the appropriate requirements for stored water reserves may be required.

The SCA also agrees that such a study should be led by the water agencies industry group (Water Services Association of Australia) in conjunction with the Tribunal.

The SCA believes that this task is bigger than the current consultancy for the system performance standard review for Hunter Water's Operating Licence. It is envisaged that it would take some time to determine appropriate standards. Therefore, the SCA would suggest that work begin as soon as possible to allow the information to feed into the end of term review of Sydney Water's and the SCA's Operating Licences. Hunter's Licence could be changed on completion of the study and in the meantime they could provide the security of the supply plan that they have offered.

There is an opportunity to explore suitable interim measures to address this issue in Sydney Water's and SCA's Mid Term Review.

3.8 Comments on the purpose of the wastewater standard and whether its role can be incorporated in alternative sewage measures.

No comment.

3.9 Comments as to whether the current standard for sewer surcharges is sufficient.

No comment.

3.10 Comments on whether standards or indicators should be adopted to measure storm water performance and seeks suggestions for measurement.

No comment.

3.11 How should the issue of Asset Management be dealt with in the Operating Licence?



The SCA has prepared and implemented an Asset Management Strategy in line with the NSW Government's "Total Asset Management Manual". This includes detailed system management plans and product delivery plans, etc.

The SCA is also required to comply with ANCOLD and NSW Dam Safety Committee requirements for the relevant storages.

The SCA supports Hunter Water's recommendation that asset management be linked to price determinations and not become part of the Operating Licence. This recommendation is supported by the Tribunal's principles relating to Operating Licences with respect to avoiding regulatory overlap. ANCOLD and the NSW Dams Committee regulate Dam Safety requirements for the SCA. In addition, the Tribunal's price path determinations provide scope for the Tribunal to critically evaluate each agency's capital investment program in infrastructure on a stepwise basis. The SCA believes that this current approach provides much greater flexibility to have issues of concern raised at the time rather than seeking to foresee them fully in advance.

3.12 Comments on the types of indicators that could apply to Hunter Water and their use.

See comments on point 3.7.

4. Environmental Requirements

4.1 Should a requirement for an Environment Plan be included in the Operating Licence, and if so, what should be the role of that plan?

The inclusion of requirements to report on environmental performance is a reasonable and sensible requirement of an Operating Licence. An Environment Plan called up by an Operating Licence should be a statement about how an agency is going to manage its own operations to ensure that it doesn't cause harm to the environment. However, the plan should not prescribe the manner of compliance. That is the function of an agency's Business Plan and management.

It is agreed that an environment plan should be the subject of public consultation as essentially its role is to inform the public about the agency's environmental performance.

The Issues Paper mentions that environmental requirements should relate to the measurement and reporting of environmental performance. It also acknowledges the EPA's and the DLWC's regulatory roles. It can therefore follow that the role of an Environment Report can be to report progress against the EPA and the DLWC licence conditions to ensure there is no environmental harm.

The SCA supports the requirement for an Environment Plan to be included in Hunter Water's Operating Licence. The Plan should assess impacts on the environment of Hunter Water's operations that are not currently regulated by the State's recognized environmental regulators; the EPA and the DLWC.

The Plan should be the subject of public consultation, reported on annually and progress against it audited.

4.2 The Tribunal seeks comments on whether Hunter Water's Operating Licence should include incentives for Hunter Water to manage the demand for water in its area and increase water efficiency, recycling and reuse. These incentives might include, for example, targets for requirements in relation to:

- demand management
- the reduction of water leakages from the water system
- the promotion of water efficient appliances
- water recycling and reuse.

It is the view of the SCA that prescriptive targets are not necessarily effective means of regulation. Such targets do not recognize the natural variability and volatility of the operating environments of the water industry. They also restrict an agencies ability to be innovative.

The SCA supports Hunter Water's recommendation that a water management licence issued by the DLWC is the most appropriate place for demand management regulation. This can then provide a link between water scarcity and cost effective demand management requirements.

4.3 How should the issue of demand management be handled in Hunter Water's Operating Licence?

See comments in 4.2 - 4.6.

4.4 Should the issue of leakage be addressed as part of Hunter Water's Operating Licence, if so how?

Leakage control is linked to effective management of demands on water sources. Again this should be dealt with as part of Hunter Water's water management licence obligations with the DLWC.

4.5 Should a requirement relating to the promotion of water efficient appliances be included in Hunter Water's Operating Licence?

As the Hunter Water is already voluntarily participating in such a scheme at a national level there would seem to be little point in requiring such participation. The Tribunal should consciously avoid regulating all such voluntary activities as the threat of regulation may inhibit the voluntary participation of agencies in similar schemes.

4.6 How should the issue of water reuse be handled in Hunter Water's Operating Licence?

This is a debate for the EPA and the DLWC to have. There is currently an issue surrounding the EPA's agenda for ensuring flows from sewage treatment plants do not enter the waterways and DLWC's insistence that these flows should be returned to the waterways to restore rivers and streams. Returning the flows from sewage treatment plants could reduce the need for water to be released from storages for environmental/riparian reasons, or otherwise increase river flows.

4.7 Should Environmental and ESD Indicators be included in Hunter Water's Operating Licence?

The SCA supports Hunter Water's recommendation to develop environmental indicators and report on them annually.

The indicators should be "indicative of an agencies" environmental performance, i.e. linked to the environment plan. The SCA would support a single set of combined indicators covering both the environment and ESD.

The indicators should reflect the principles of ESD and provide an indication of how the agency meets the principles of ESD.

As with the Environment Plan the indicators should be placed on public exhibition to ensure that the greater community has the opportunity to comment.

4.8 Is it appropriate for Energy Management policies and targets to be incorporated into Hunter Water's Operating Licence?

As a government agency the SCA is required to comply with the NSW Government Energy Management Policy for energy consumption in buildings. If Hunter Water is already complying with this requirement as a matter of policy it would seem inappropriate for there to be further regulation in relation to the matter. If not, it would seem appropriate that Hunter Water have the same requirement placed on it.

4.9 To what extent should the Operating Licence include provisions dealing with Hunter Water's water resource and catchment management functions?

Water resource management and catchment management functions are regulated by the DLWC as part of its water management licencing activities and therefore should not be included in the Operating Licence. If the Tribunal's concern is about public reporting then it should note the reporting requirements of the current Water Management Licences. The Tribunal should seek to avoid duplicating the regulatory function of other agencies.³

³ Independent Pricing and Regulatory Tribunal, *Issues Paper – Review of Operating Licence for Hunter Water Corporation*, July 2001, page 5.

5. Customer And Consumer Rights

5.1 Should Hunter Water's current Customer Contract be modified to be more consistent with these principles? If so, how should it be modified?

No comment. These are matters for consideration by customers of Hunter Water.

5.2 Should the provisions of the Customer Charter be given legal status by inclusion in Hunter Water's Customer Contract and Operating Licence?

As above.

5.3 Are Hunter Water's obligations as set out in the Customer Charter adequate? In particular, are the requirements for customer rebates and compensation adequate?

As above.

5.4 Should conditions in relation to complaints handling measures be included in Hunter Water's Operating Licence? And should Hunter Water participate in an external dispute resolution scheme?

The requirement for a complaints handling system should be included but it should not be prescriptive as this restricts the ability of an agency to adapt its system in the face of changing circumstances.

5.5 Should Hunter Water's Operating Licence include a code of practice and procedure on debt and disconnection?

No comment. These are matters for consideration by customers of Hunter Water.

5.6 Are the obligations in relation to community consultation in Hunter Water's Operating Licence adequate? If not, what additional measures should be included?

SCA supports most of the recommendations made by Hunter Water on community consultation. It would be reluctant to see the details with respect to quarterly updates to a forum reflected in the Operating Licence.

5.7 Should customer service standards or indicators such as these be included in Hunter Water's Operating Licence?



No comment. These are matters for consideration by customers of Hunter Water.

6. Public Reporting And Other Issues

6.1 Reporting on the Operational Audit

6.1.1 Are the current public reporting arrangements for Hunter Water's Operating Licence appropriate?

The Ministers for the SCA and SWC can direct these agencies to notify the public about non-compliances identified during annual audits. It is therefore suggested that the same requirement be placed in Hunter Water's Licence as;

- It is a simple requirement that will give rise to consistency between the water agencies licences regulated by the Tribunal;
- It will not impact on the customers of Hunter Water; and
- It will add a degree of transparency to the process.

6.1.2 Should the annual audit report be tabled in the NSW Parliament, and responsibility for publicising the outcomes of the audit process remain with Hunter Water?

The operational audit of Hunter Water is completed on behalf of the Minister (Clause 8.1 Hunter Water Operating Licence). This is also a requirement of the Ministers for the SCA and SWC. It is therefore suggested that the audit report be tabled in parliament as;

- It is a simple requirement that will give rise to consistency between the water authority licences regulated by the Tribunal;
- It will not impact on the customers of Hunter Water; and
- It will add a degree of transparency to the process.

6.2 Term of Licence

6.2.1 The Tribunal seeks views on the appropriate term of Hunter Water's Operating Licence.

The SCA considers that a five year term for Hunter Water's Operating Licence would be appropriate as;

- It is a simple requirement that will give rise to consistency between the water authority licences regulated by the Tribunal;
- It will bring it into line with the Price Determination processes; and
- Other regulatory instruments have a five year term as well (e.g. DLWC Water Management Licence).



The SCA would also like to raise the possibility of longer term licences be that ten or twenty year licences (e.g. WA Water). This would provide for more accurate long term planning and investment. This is not to say that the Operating Licences wouldn't be changed if there were a need.

In addition, the SCA would like to suggest less frequent audits (e.g. biannual audits as per WA Water) might also be considered given that the industry is now relatively stable. These could be staggered between the three agencies. This would free up resources, at the Tribunal and the agencies, to effectively progress action on audit recommendations between audits. At present one audit is barely completed and processes commenced to action any recommendations before the next one is starting.

6.3 Review of Operating Licence

6.3.1 The Tribunal seeks comments on the appropriate timeframes or triggers for reviewing Hunter Water's Operating Licence.

The SCA is about to begin its initial Mid Term Review. It will have just completed its second operational audit at the time of the commencement of the review. A great deal of time is spent preparing the SCA for the audits. Time will also be spent on the upcoming review. The SCA supports Hunter Water's recommendation that Operating Licences be reviewed comprehensively prior to the end of their terms. Ideally, this review would commence during the second half of the third year or at the beginning of the fourth year to allow sufficient time for a through review and writing of a new Operating Licence. Such a process would allow a more substantive program of works and investigations to be commissioned between licence reviews to inform the next licence.

Under current legislation the Governor can amend an Operating Licence at anytime. Therefore, the following circumstances currently have the potential to trigger an amendment to an Operating Licence;

- Recommendations from the annual operational audit,
- Public comment on the performance of an agency prior to the commencement of the annual audit process,
- Changes to public health standards i.e. changes to the guideline levels in the Australian Drinking Water Guidelines; and
- Changes to system performance standards.

All these triggers ensure that there is scope for Operating Licences to remain contemporary with the requirements should the need arise.

Therefore, the SCA suggests that the requirement for an end of term Review be included in Hunter Water's Operating Licence and the need for a Mid Term Review be removed from SCA's and SWC's Operating Licence in their next iterations.

7. Conclusion

The SCA recognises the difficult role that the Tribunal has in determining the appropriate requirements for a water agencies Operating Licence.

It must reiterate though that it believes that an Operating Licence should not be so prescriptive that it stifles the agencies ability to be innovative. More importantly it should allow an agency to operate in the best interests of its customers without fear of innovations being regulated. Operating Licence's should also be specific to the cultural, geographic, social, economic and ecological factors of an agency.

The SCA would be willing to be involved in any workshop that is to be held with respect the review of Hunter Water Operating Licence.