

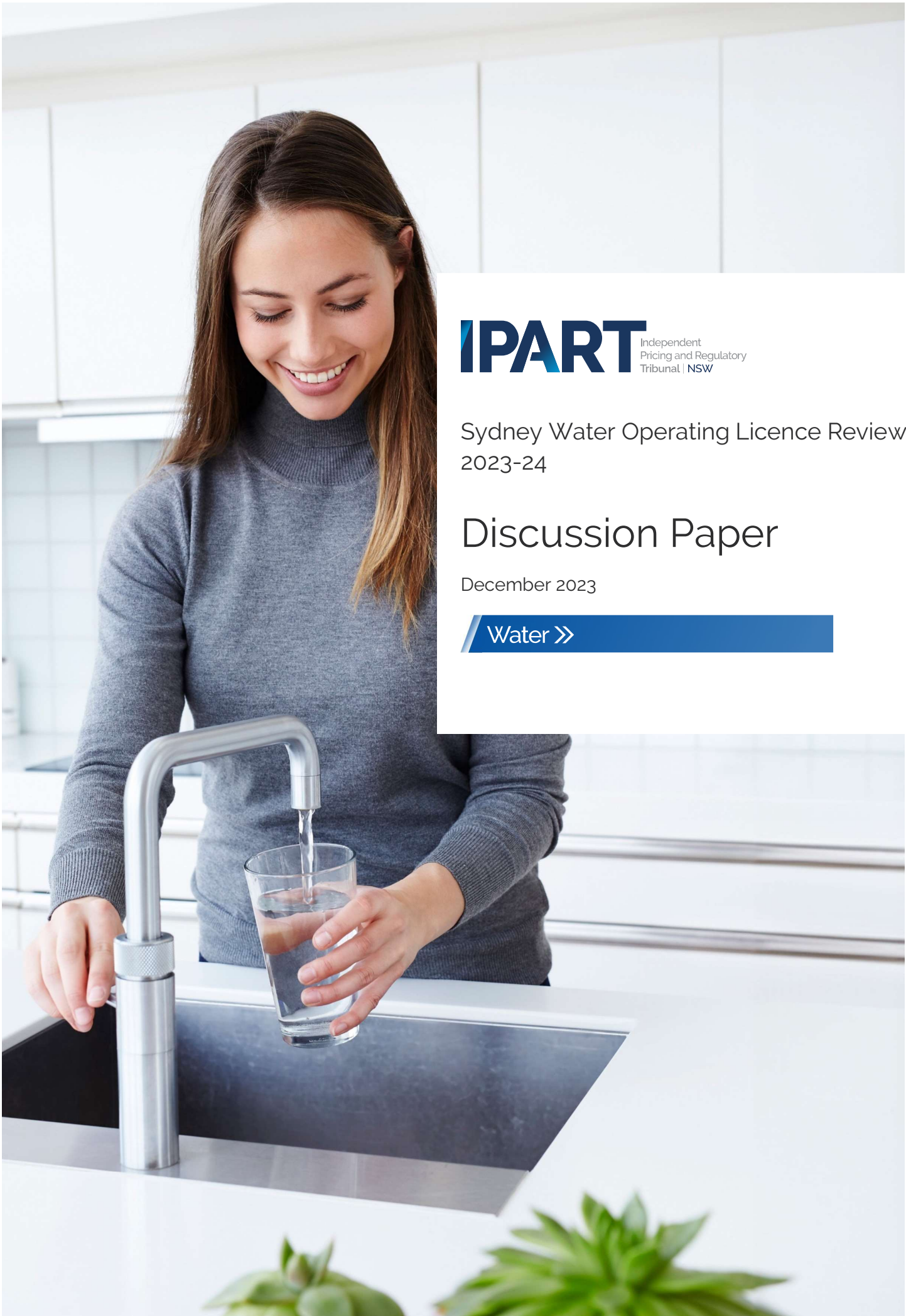


Sydney Water Operating Licence Review
2023-24

Discussion Paper

December 2023

Water >>



Acknowledgment of Country

IPART acknowledges the Traditional Custodians of the lands where we work and live. We pay respect to Elders both past and present.

We recognise the unique cultural and spiritual relationship and celebrate the contributions of First Nations peoples.

Tribunal Members

The Tribunal members for this review are:

Carmel Donnelly PSM, Chair
Jonathan Coppel

Enquiries regarding this document should be directed to a staff member:

Christine Allen (02) 9290 8412
Mamata Titus (02) 9113 7750

Invitation for submissions

IPART invites comment on this document and encourages all interested parties to provide submissions addressing the matters discussed.

Submissions are due by Friday, 8 March 2024

We prefer to receive them electronically via our [online submission form](#).

You can also send comments by mail to:

Sydney Water Operating Licence Review
Independent Pricing and Regulatory Tribunal
PO Box K35
Haymarket Post Shop, Sydney NSW 1240

If you require assistance to make a submission (for example, if you would like to make a verbal submission) please contact one of the staff members listed above.

Late submissions may not be accepted at the discretion of the Tribunal. Our normal practice is to make submissions publicly available on our [website](#) as soon as possible after the closing date for submissions. If you wish to view copies of submissions but do not have access to the website, you can make alternative arrangements by telephoning one of the staff members listed above.

We may decide not to publish a submission, for example, if we consider it contains offensive or potentially defamatory information. We generally do not publish sensitive information. If your submission contains information that you do not wish to be publicly disclosed, please let us know when you make the submission. However, it could be disclosed under the *Government Information (Public Access) Act 2009* (NSW) or the *Independent Pricing and Regulatory Tribunal Act 1992* (NSW), or where otherwise required by law.

If you would like further information on making a submission, IPART's [submission policy](#) is available on our website.

The Independent Pricing and Regulatory Tribunal

IPART's independence is underpinned by an Act of Parliament. Further information on IPART can be obtained from [IPART's website](#).

Contents

Contents

Chapter 1

Recommendations	1
1.1 We want to know what you think about the Sydney Water Operating Licence	2
1.2 Our review	2
1.3 This discussion paper	3
1.4 We seek your views on our draft recommendations	4
1.5 How we developed our draft recommendations	5
1.6 How this discussion paper is structured	10
1.7 How you can submit feedback	11
1.8 Next steps	11

Chapter 2

Water quality, system performance standards and asset management	12
2.1 Water quality standards	14
2.2 Clarifying NSW Health's role in the operating licence	17
2.3 Fluoridation	20
2.4 System performance standards for service interruptions	23
2.5 Removing the optimal level of performance and the design threshold	26
2.6 Asset management	36
2.7 Asset management standard specified in the operating licence	38

Chapter 3

Water conservation, efficiency and long-term planning	43
3.1 Requiring a 5-year water conservation plan	46
3.2 The current economic method	53
3.3 Water strategy planning consistent with the Greater Sydney Water Strategy	56
3.4 Data sharing arrangement with DPE	57
3.5 Greater Sydney Drought Response Plan	59
3.6 Long-term capital and operational planning	62
3.7 Undertaking water supply augmentation planning with WaterNSW	65
3.8 Sydney Desalination Plant	68
3.9 Priority Sewerage Plan	70

Chapter 4

Climate risk readiness	72
4.1 Abatement	75
4.2 Resilience and adaptation	77
4.3 Climate-related planning and risk management	78
4.4 Climate-related disclosures	84

Chapter 5

Sydney Water's obligations to its customers	89
5.1 Payment assistance options	94
5.2 Family violence policy	99

5.3	Providing information on the family violence policy	101
5.4	Protecting vulnerable tenants	103
5.5	Internal complaints handling	106
5.6	External dispute resolution scheme	110
5.7	Customer Contract	113
5.8	Consulting with customers	122

Chapter 6

Critical infrastructure security	126	
Cyber security management system	128	
6.1	Maintain and implement a cyber security management system	128
6.2	Responsibility for implementation	130
6.3	Security clearances	132
6.4	Retiring the licence conditions	135

Chapter 7

Stakeholder cooperation and competition	137	
7.1	Engaging with Government stakeholders	139
7.2	Relationship with Fire and Rescue NSW	143
7.3	Dealing fairly with competitors	151
7.4	Publishing servicing information	156

Chapter 8

Administration	160	
8.1	Operating licence objectives	162
8.2	Term of the operating licence	164
8.3	Requirements to comply with IPART pricing determinations	164
8.4	Operational audits	165
8.5	Reporting and providing information	167
8.6	Environmental Performance Indicators	168
8.7	Other parts of the operating licence	171
8.8	Reporting requirements	173

Chapter 9

Recommendations	175	
9.1	Our draft recommendations for the licence	176

Chapter 1

Recommendations

IPART has reviewed Sydney Water's Operating Licence and proposes improvements

01

1.1 We want to know what you think about the Sydney Water Operating Licence

This report sets out our draft recommendations for how Sydney Water's operating licence should be changed to better meet its objectives and resolve issues that have arisen during the term of the current operating licence that may impact its effectiveness.

Sydney Water is a monopoly service provider that provides essential services to 5 million customers. As a monopoly service provider, Sydney Water's customers do not have an option to change service providers if they are dissatisfied with their level of service. As Sydney Water does not face competition, regulation and licensing are required to promote positive consumer outcomes.

The [2019-2024 Sydney Water Operating Licence](#) (current operating licence) authorises Sydney Water to operate under terms and conditions which address:

- the quality of products or services including the protection of public health and the environment
- the availability of essential products or services.

The current operating licence term will expire on 30 June 2024.^a We will make our recommendation for a new operating licence to the Minister for Water (the Minister) to come into effect by 1 July 2024. Our recommendations for the new operating licence will be informed by the findings of this end-of-term review of the current operating licence (Review).

Sydney Water's prices are regulated by IPART's price determinations. Price regulation, in combination with operating licence requirements, protects customers from excessive (monopoly) prices.

1.2 Our review

We are conducting this Review to assess whether:

- the current 2019-2024 operating licence meets its objectives in a way that imposes the lowest possible cost on Sydney Water and its customers
- the operating licence objectives remain fit for purpose.

The operating licence objectives are set out in clause 1.1 of the current operating licence as follows:



- a. authorise and require Sydney Water, within its area of operations, to:
 - i store or supply water
 - ii provide sewerage services
 - iii provide stormwater drainage services
 - iv dispose of wastewater.

^a The current operating licence was previously set to expire on 29 November 2023 but has been extended until 30 June 2024.

- b. set efficient and effective terms and conditions, including quality and performance standards, that require Sydney Water to provide services in a way that:
 - i supports its principal objectives under the *Sydney Water Act 1994* (the Act) to protect public health and the environment
 - ii support its principal objective under the Act to be a successful business, including by having regard to the interest of the community
 - iii does not prevent or hinder competition.

We have also reviewed the customer contract, which is part of the operating licence, and the [Sydney Water Reporting Manual](#) (the Reporting Manual). We have published our draft recommendations for the new operating licence, customer contract and Reporting Manual on our [website](#) for your feedback.

The Reporting Manual is an IPART document and does not require the Minister's approval as part of our recommendations for the new operating licence (and customer contract). Sydney Water will publish it on Sydney Water's website once the new operating licence comes into effect.

 <p>The terms and conditions to regulate how Sydney Water undertakes its functions in its area of operations are outlined in the operating licence.</p>	 <p>The operating licence contains a Customer Contract which sets the terms and conditions for how Sydney Water provides services to its customers.</p>	 <p>IPART publishes a Reporting Manual to support the operating licence. The manual includes details and deadlines for Sydney Water's reporting requirements.</p>
--	--	--

1.3 This discussion paper

In this discussion paper, we:

- explain our recommendations for the draft operating licence
- explain our proposed changes to Sydney Water's reporting requirements (set out in the Reporting Manual).

We have published the following information papers to support this report:

- Information Paper 1 – Overview of our recommendations for key areas of the operating licence
- Information Paper 2 – Summary of changes to the customer contract
- Information Paper 3 – Summary of submissions to our Issues Paper that have informed our draft recommendations
- Information Paper 4 - Contextual information outlining the scope of our approach to the Review and the timeline of the Review.

1.4 We seek your views on our draft recommendations

We welcome your feedback on our draft recommendations for the operating licence and our preliminary positions for the Reporting Manual discussed in this report. The full list of all draft recommendations made in this report is in Chapter 9.

We want to recommend terms and conditions for the operating licence that reflect customers' preferences and needs. This is particularly important for customers of monopoly suppliers such as Sydney Water where customers cannot change their provider. Your feedback allows a customer-focused approach to the Review. This will improve outcomes and ensure we have the right customer protections in the recommended operating licence.

We have set out the key recommendations that we seek your feedback on below:

- Retain the current water quality standards and system performance standards in the operating licence with minimal changes.
- Include a new operating licence condition requiring Sydney Water to maintain and implement a system to identify properties that may have experienced any service interruptions. We consider that this will not be a substantial change as Sydney Water would already have a system or process in place.
- Remove duplicative fluoridation requirements from the operating licence and Reporting Manual.
- Reinstate the 2-yearly state of the assets report to support our function in monitoring Sydney Water's compliance with its operating licence requirements for asset management.
- Include a new operating licence condition requiring Sydney Water to maintain, implement and periodically review a 5-year water conservation plan that uses an economic approach to selecting programs for investments. Currently, the economic method specified in the operating licence is the Economic Level of Water Conservation Methodology. Sydney Water should also consider other strategic and environmental objectives (i.e. not only make decisions based on economic benefits).
- Include new operating licence conditions for water strategy, drought response, augmentation and long-term capital and operational planning.
- Remove the current operating licence obligation requiring Sydney Water to participate in any government reviews of the Priority Sewerage Program and implement any outcomes of a review as directed by the Minister. The Minister can require Sydney Water to provide sewerage services under the State Owned Corporations framework if they are satisfied this is in the public interest.
- Include new operating licence conditions requiring Sydney Water to establish a management program that addresses climate-related risks specifically, consistent with the NSW Climate Risk Ready Guide.
- Do not include new operating licence obligations to regulate how Sydney Water reduces its carbon footprint (abatement) or develops climate change resilience and adaptation strategies.

- Include new operating licence conditions requiring Sydney Water to comply with International Sustainability Standards Board (ISSB) climate disclosure reporting from 2025-26, unless an Australian standard based on ISSB becomes mandatory in the meantime.
- We have not made a specific recommendation to the Minister about making changes to legislation to allow Sydney Water to bill tenants for water usage. Currently, Sydney Water sends bills to landowners as they are Sydney Water's customers. If the NSW Government decides to make the necessary legislative changes required to allow Sydney water to directly bill tenants, IPART would be available to assist with undertaking any review of costs and benefits.
- Include a new operating licence obligation requiring Sydney Water to provide network performance information at the fire hydrants in its network by the dates specified in the operating licence, to assist Fire and Rescue NSW to plan for firefighting.
- Retain the current requirements in the operating licence to provide servicing information about Sydney Water's water and wastewater systems to allow Sydney Water's competitors and new entrants into the market to make informed investment decisions. However, we recommend including flexibility in the operating licence for Sydney Water to be able to meet this operating licence condition if the required information is available in published Developer Service Plans, without the need for additional or duplicative information to be published.

1.5 How we developed our draft recommendations

We undertook a cost-benefit analysis (CBA) when developing our draft recommendations for the operating licence to assess whether our recommendations provide a net benefit to customers that outweighs costs.

For the most part, we have only made recommendations where there is a net economic benefit. However, in some cases, while the economic costs seem much higher than the economic benefits, there are other unquantifiable benefits, such as supporting the government's long-term water conservation and climate-resilience goals, that justify recommending the operating licence condition.



What is a cost-benefit analysis?

An operating licence best serves the people of NSW when each condition adds value to the operating licence overall. Cost-benefit analysis is a method of testing the value of a condition. To perform a cost-benefit analysis we contrast 2 situations:

- an existing or proposed operating licence condition in force (we call this the 'factual' scenario)
- the existing or proposed licence condition is not included in the operating licence but some realistic alternative set of arrangements is in place (we call this the 'counterfactual' scenario).

We look at differences in social benefits between factual and counterfactual and differences in cost. Ultimately, all costs are borne by either water customers or taxpayers. Social benefits include net financial benefits to the State as a whole, but importantly they also include non-financial benefits, which could include:

- avoidance of health and safety risks from contaminated water
- avoidance of inconvenience from disrupted or poor-quality services
- a healthy environment
- resilience to extreme weather events.

Comparison of costs and benefits

Benefits of operating licence conditions are usually experienced by the customers of the licensed utility or the general public (for example with environmental conditions). Quantifying these benefits is sometimes difficult, particularly if they relate to non-monetary values.

Operating licence conditions usually impose costs on the licensed utility because the operating licence requires it to undertake certain activities or to refrain from undertaking certain others that it might prefer to do on commercial grounds. Further, operating licence conditions entail compliance and enforcement costs. Activity costs or costs of foregone opportunities are usually able to be quantified with accounting data.

Provided that both benefits and costs of the factual compared to the counterfactual can be quantified, the comparison can be expressed by subtraction (to obtain a net benefit, which would ideally be positive, but could be negative) or division (to obtain a benefit to cost ratio, which would ideally be greater than one, but could be less than one). If benefits or costs cannot be quantified, we will consider the benefits and costs qualitatively.

In this report, we have discussed our conclusions of the CBA and have not included the full details of how we have quantified the costs and benefits.

Stakeholders made submissions in response to our Issues Paper that we published in July 2023. The Issues Paper included our analysis of the issues that may be relevant for the operating licence and this Review, and it also sought feedback from stakeholders about issues unknown to us. We received submissions from Sydney Water, NSW Department of Planning and Environment (DPE),^b the Energy and Water Ombudsman NSW (EWON), the Environment Protection Authority (EPA), NSW Health and some anonymous individuals.^c

These submissions, and subsequent discussions with key stakeholders to clarify their feedback to the Issues Paper, informed our draft recommendations for the operating licence and customer contract. We have also applied lessons learnt from our end-of-term review of the 2022-2027 Hunter Water operating licence, where there are similar conditions in the Sydney Water operating licence. Consistency across similar operating licence conditions for the 3 public water utilities that we regulate (including Sydney Water, Hunter Water and WaterNSW) enables easier administration for regulators, and potentially enables utilities to benchmark against each other or collaborate on compliance-related solutions.

^b In January 2024, DPE will become the Department of Climate Change, Energy, the Environment and Water (DCCEEW). Our draft recommendations for the operating licence reference DPE but we will change to DCCEEW in our final recommendations.

^c The stakeholder submissions to our Issues Paper are available on our [website](#).

We have applied 6 principles for this Review



Principle # 1: Protecting customers, the community and the environment

Sydney Water's operating licence should authorise the provision of services that are safe and reliable in a way that protects customers, the community, and the environment.

Water and sewerage services are essential services, delivered to customers who mostly have no choice in who they buy their services from because Sydney Water is a monopoly supplier. Through this Review, we seek to support IPART's work to ensure that customers pay fair prices to receive these services. We balance this with the need to ensure adequate safety and reliability standards are in place to protect customers.



Principle # 2: Setting minimum protections

The operating licence conditions should set minimum protections for safety and reliability that hold Sydney Water to account when delivering services to customers.

In this Review, we are exploring if the current operating licence sets appropriate minimum protections for customers, the community, and the environment. The operating licence establishes the minimum standards and allows us to monitor Sydney Water's compliance with delivering these protections.



Principle # 3: Supporting the pricing framework

This Review of the operating licence supports [IPART's water pricing regulatory framework](#). The Review does not seek to drive reductions in the current level of service provided to customers or discourage Sydney Water from providing a higher standard of service than the operating licence requires. It complements the objectives of the pricing framework which are to incentivise customer value and deliver a higher standard of service where customers want it and are willing to pay for it.



Principle #4: Focusing on outcomes

The Review focuses on outcomes for the customers, the community and the environment and considers how the operating licence works with other regulatory frameworks and NSW Government policies to achieve these outcomes.



Principle # 5: Removing redundancy

The Review focuses on removing redundancy and streamlining current regulation. At times, this means removing current operating licence conditions that are redundant or duplicative without additional benefits.



Principle #6: Recognising new strategies or policies

The Review considers new events since the current (2019-2024) operating licence conditions were drafted. We have considered changes to policy or the regulatory framework or environment since the previous 2019 end-of-term review when making recommendations for a new operating licence (for example, recognising that the new NSW Water Strategy and Greater Sydney Water Strategy have now been published).

1.6 How this discussion paper is structured

This discussion paper discusses our recommendations for addressing the key issues relevant to the Review in the operating licence, and our proposals for the Reporting Manual for reporting on these operating licence obligations.

We have grouped the issues and our recommendations under 6 key focus areas and structured the paper accordingly, as shown in Table 1.1 below.


Table 1.1 Structure of discussion paper and the issues discussed in each chapter

Chapter of the Discussion paper	Issues discussed
Chapter 2: Performance standards	<ul style="list-style-type: none"> • Water quality standards • System performance standards for customer service interruptions • Asset management
Chapter 3: Water conservation & efficiency and long-term planning	<ul style="list-style-type: none"> • Water conservation & efficiency (5-year water conservation plan, the current economic method – which is the economic level of water conservation methodology) • Water planning (the Greater Sydney Water Strategy, Long Term Capital and Operational Plan, Water Supply Augmentation, Drought Planning, data sharing, Priority Sewerage Program) • Stormwater drainage
Chapter 4: Climate risk readiness	<ul style="list-style-type: none"> • Emissions abatement • Climate risk resilience and adaptation • Climate risk management
Chapter 5: Sydney Water's obligations to its customers	<ul style="list-style-type: none"> • Customer contract and rebates • Consumer protections (including tenants) • Operating licence conditions for protecting customers' rights (payment assistance options, family violence policy, external dispute resolution, internal complaints handling, external dispute resolution and providing information to customers) • Operating licence conditions for consulting with customers and the community
Chapter 6: Critical infrastructure security	<ul style="list-style-type: none"> • Cyber security management system • Security clearances
Chapter 7: Stakeholder cooperation and competition	<ul style="list-style-type: none"> • Stakeholder cooperation (with the Water Administration Ministerial Corporation, NSW Health, the Environment Protection Authority and Fire and Rescue NSW) • Engaging with private water utilities and providing servicing information
Chapter 8: Administration	<ul style="list-style-type: none"> • Administrative operating licence conditions (operating licence objectives, licence term, licence amendments, making copies of the licence available, end of term review of the licence, notices, licence authorisations, obligation to make services available to customers, performance monitoring and reporting) • Pricing condition
Chapter 9: Full list of our draft recommendations for your comment	This chapter includes the full list of draft recommendations made in this discussion paper.

1.7 How you can submit feedback

We invite all interested people to make submissions in response to this paper by **8 March 2024**.

We look forward to receiving your submission. For more information on how to make a submission and our submission policy, and how to manage confidential or commercially sensitive information in your submission, please see page ii at the front of this paper.

 **Have your say**

Your input is valuable to our review process. Make a submission »

You can be involved by making a submission in response to this discussion paper or attending a public hearing.

1.8 Next steps

We intend to provide our recommended new Operating Licence and Customer Contract to the Minister by May 2024. This will allow a new operating licence to come into effect by 1 July 2024. We will complete the Review according to the timeline below:

Figure 1.1 Timeline for the Sydney Water Operating Licence Review



Chapter 2

Water quality, system performance standards and asset management

Performance standards directly impact on the level and quality of service that customers receive.

02

The *Sydney Water Act 1994* (the Act) requires the operating licence to include quality and performance standards.¹ Quality and performance standards define the levels of quality and/or performance that a utility must meet to satisfy a regulatory or other requirement. They generally focus on one or more aspects of the level of service customers can expect from the utility.

Specifying standards within the operating licence protects customers by requiring Sydney Water to provide services to customers which meet the required standards, or face enforcement action. This is important for customers of monopoly service providers like Sydney Water^d, as customers are unable to change their service provider if they are unhappy with the standard of service they receive.

In this chapter, we discuss the water quality and system performance standards that Sydney Water must meet under the current operating licence. We also discuss operating licence conditions regulating Sydney Water's asset management in this chapter. Appropriate asset management is necessary to enable Sydney Water to meet the quality and performance standards specified in the operating licence, and ultimately customers' expectations for services.

We seek your feedback on our draft recommendations for retaining these standards and operating licence conditions, below:

Draft recommendations for the operating licence

1. Retain the current water quality standards in the operating licence, which require Sydney Water to maintain and implement water quality management systems consistent with:
 - the Australian Drinking Water Guidelines and the Australian Guidelines for Water Recycling
 - any health-based requirements that NSW Health reasonably specifies in writing.
2. Remove the current operating licence conditions requiring Sydney Water to comply with the *NSW Code of Practice for Fluoridation of Public Water Supplies*.
3. Retain the current system performance standards for water continuity, water pressure and dry weather wastewater overflows in the operating licence with no changes to the service levels specified by these system performance standards.
4. Remove the optimal level and tolerance band in the current operating licence for the water continuity standard.

^d The *Independent Pricing and Regulatory Tribunal (Water, Sewerage and Drainage Services) Order 1997* declares certain services provided by Sydney Water are "government monopoly services".

- 5. Increase the rebates that Sydney Water provides to customers for service interruptions in line with inflation.
- 6. Retain the current operating licence conditions requiring Sydney Water to maintain and implement an asset management system consistent with *Australian Standard AS ISO 55001:2014* (or another standard approved by IPART in writing).

We also seek your feedback on our draft proposals for reporting against these operating licence requirements, as set out below.

Draft proposals for the Reporting Manual



Reporting Manual: Water quality and management

We propose to:

- retain most of the current water quality reporting requirements outlined in the Reporting Manual but remove requirements for fluoridation monitoring
- remove the current requirement for Sydney Water to provide IPART with a Strategic Asset Management Plan
- include a new requirement for Sydney Water to provide IPART with a 2-yearly state of the assets report or provide the required information in another report.

2.1 Water quality standards



Review principle

Protecting customers, the community and the environment



Our draft recommendation

We recommend retaining the current operating licence conditions requiring Sydney Water to maintain² and implement³ a drinking water quality management system that is consistent with the Australian Drinking Water Guidelines (ADWG) and a recycled water quality management system that is consistent with the Australian Guidelines for Water Recycling (AGWR).

The Act requires the operating licence to include water quality standards. Specifying water quality standards in the operating licence minimises the risk of a utility providing drinking water to customers that is unsafe for consumption or recycled water that is not of the required quality for its intended end-uses.

Both Sydney Water and NSW Health supported retaining the current operating licence requirements when we consulted on this in the Issues Paper.

The ADWG and AGWR set the minimum standards necessary to ensure that Sydney Water provides water of an appropriate quality for its intended end-uses, consistent with other water utilities across NSW. The ADWG and AGWR are the current National Health and Medical Research Council (NHMRC) water quality standards. Since the first operating licence, the water quality standards have been based on NHMRC guidelines.

Supporting information for this review



Risk management approach in the ADWG/AGWR frameworks

The ADWG and AGWR follow a risk-based approach, where the level of water quality required for an intended use is determined by:

1. the extent of exposure to harmful pathogens and nutrients,
2. the frequency of that exposure, and
3. the corresponding negative health implications.

The ADWG and AGWR set out a process for developing a preventative risk management framework to achieve health-based targets. These targets are consistent with those adopted by the World Health Organisation (WHO)⁴ and by more than 93 other countries.⁵

2.1.1 Other relevant regulation

Specifying water quality standards in the operating licence does not duplicate any other regulation for water quality.

Sydney Water is a 'supplier of drinking water' under the *Public Health Act 2010 (NSW)* (the Public Health Act).⁶ The Public Health Act requires all drinking water suppliers to implement a quality assurance program for the safe supply of drinking water that includes a process for controlling potential health risks in accordance with the Framework for Management of Drinking Water Quality^e (as set out in the ADWG).⁷ The Chief Health Officer at NSW Health may, by notice in writing, exempt a supplier of drinking water from a quality assurance program if the Chief Health Officer is satisfied that the supplier is subject to other appropriate licensing or regulatory requirements.⁸ The Chief Health Officer has exempted Sydney Water from this requirement because of the operating licence requirements, ensuring that there is no regulatory duplication.

There is currently no other regulatory instrument, other than the operating licence, for managing recycled water quality to a defined standard.

^e The Framework for Management of Drinking Water Quality consists of 12 elements considered good practice for system management of drinking water supplies.



Cost-benefit analysis for drinking and recycled water quality management

We consider that the benefit of requiring consistency with the ADWG when managing the quality of drinking water supplied to customers outweighs the costs.

We have not been able to conclude quantifiably that the benefits of supplying recycled water to customers outweighs the costs. However, our qualitative analysis concludes that the operating licence should include recycled water quality standards to meet the requirements of the Act and because recycled water is not regulated elsewhere.

In the 2019 review, we assessed the costs and benefits of retaining the operating licence conditions setting the drinking and recycled water quality standards in the operating licence against the costs and benefits of the counterfactual. As including water quality standards in the operating licence is required by the Act, the counterfactual would not be to remove them, but to recommend alternative water quality standards to the ADWG and AGWR. We have not reassessed the costs and benefits for this Review as we consider it unlikely that they have significantly changed since 2019.

The benefit of the ADWG/AGWR is that they are well understood, and they set out a process for developing a preventative risk management framework to achieve health-based targets. These targets are consistent with those adopted by the World Health Organisation (WHO) and by more than 93 other countries. Alternative standards could potentially present a more cost-effective option for ensuring health and environmental outcomes and allow for innovation. However, we consider that they could also lead to undesirable outcomes. A more cost-effective option would likely mean a standard that prescribes a health-based target lower than the current level of tolerable risk for Sydney Water's customers and lower than the standard accepted by the WHO. In practice, it is likely it could also result in different water quality standards being applied across NSW.

We came to the same conclusion in the 2022 review of the Hunter Water operating licence.

2.2 Clarifying NSW Health's role in the operating licence



Review principle

Protecting customers, the community and the environment



Our draft recommendation

We recommend retaining the current operating licence conditions requiring Sydney Water to comply with any requirements for managing drinking water or recycled water quality, specified by NSW Health. We recommend also clarifying in the operating licence that NSW Health's requirements must be:

- about health-related matters
- specified in writing
- reasonable.

In their responses to the Issues Paper, Sydney Water and NSW Health supported the approach proposed in our recommendation.

Clarifying that Sydney Water must ensure that its water quality management systems are consistent with any health-based requirements that NSW Health provides in writing will help ensure that this operating licence condition is enforceable, and we can monitor Sydney Water's compliance.

Specifying that Sydney Water must comply with requirements 'reasonably' specified in writing will allow Sydney Water to consider if requirements are not reasonable and discuss these with us and with NSW Health. We made similar recommendations in the 2022-2027 Hunter Water operating licence.

In the Issues Paper, we considered whether the operating licence should require that NSW Health's requirements be additional to what is in the ADWG/AGWR and should not depart from the guidelines. However, we have decided not to recommend limiting the scope of NSW Health's requirements, as it could prevent Sydney Water from attending to acute public health matters that may require temporary departures from the ADWG/AGWR. NSW Health confirmed to IPART that it does, on occasion, specify requirements that allow such departures but in general, it would only specify departures or additional requirements on rare occasions.

2.2.1 Compliance during the 2019-2024 operating licence term

We have found that Sydney Water has had a high level of compliance with the water quality standards during the 2019-2024 operating licence term.

We have not found any issues, either through this Review or through our compliance monitoring function, that need to be resolved through changes to the operating licence conditions. Any issues that we identified during operational audits were caused by issues with Sydney Water's asset management practices. We discuss Sydney Water's obligations for asset management in section 2.6.

2.2.2 Our recommended operating licence conditions

We have proposed minor structural changes only to the current operating licence conditions for water quality management. In the current operating licence, the requirements for drinking water quality management and recycled water quality management are in separate clauses. We have proposed to combine the requirements for both water quality management systems in one clause for readability. This change will not impact on how Sydney Water implements these operating licence conditions or how we will enforce them.

Box 2.1 Recommended licence conditions for water quality management

14 Water quality management systems

- (1) Sydney Water must maintain a water quality management system for:
 - (a) Drinking Water (Drinking Water Quality Management System), and
 - (b) Recycled Water (Recycled Water Quality Management System).
- (2) Sydney Water must implement:
 - (a) the Drinking Water Quality Management System, and
 - (b) the Recycled Water Quality Management System.
- (3) The Drinking Water Quality Management System must be consistent with:
 - (a) the Australian Drinking Water Guidelines, and
 - (b) any health-based requirements for Drinking Water which NSW Health reasonably specifies in writing.
- (4) The Recycled Water Quality Management System must be consistent with:
 - (a) the Australian Guidelines for Water Recycling, and
 - (b) any health-based requirements for Recycled Water which NSW Health reasonably specifies in writing.
- (5) The requirements specified by NSW Health in clauses 14(3)(b) and 14(4)(b) prevail if they are inconsistent with:
 - (a) the Australian Drinking Water Guidelines, or
 - (b) the Australian Guidelines for Water Recycling.

2.3 Fluoridation



Review principle

Removing redundancy



Our draft recommendation

We recommend removing the current operating licence condition requiring Sydney Water to comply with the *NSW Code of Practice for Fluoridation of Public Water Supplies*⁹ (Fluoridation Code) as it duplicates other fluoridation legislation.

Fluoridation of water in NSW is governed under the *Fluoridation of Public Water Supplies Act 1957*, *Fluoridation of Public Water Supplies Regulation 2022* and the NSW Code of Practice for Fluoridation of Public Water Supplies (Fluoridation Code). Under this legislative framework, NSW utilities must not fluoridate the drinking water they supply except with the approval, or at the direction, of NSW Health. Utilities may apply for approval or seek a direction from NSW Health which permits them to fluoridate drinking water supplies if they seek to do so.¹⁰ If they are approved or directed to fluoridate, the *Fluoridation of Public Water Supplies Regulation 2022* requires that they manage key aspects of fluoridation in accordance with the Fluoridation Code.¹¹ This applies to Sydney Water.

In the Issues Paper, we tested removing the current operating licence requirements requiring Sydney Water to comply with the Fluoridation Code. This would not result in a reduction in requirements on Sydney Water. As stated above, the fluoridation regulation requires Sydney Water to manage key aspects of fluoridation in accordance with the Fluoridation Code. We consider that duplicating this in the operating licence does not provide benefit.

Sydney Water supported removing the current operating licence condition. However, NSW Health did not. We understand that NSW Health's concern is that if the current operating licence condition is removed, we would no longer be able to audit Sydney Water's compliance with the Fluoridation Code. As NSW Health does not audit utilities' fluoridation, NSW Health relies on IPART to monitor Sydney Water's operational compliance.

We consider that removing the licence condition to comply with the Fluoridation Code will not limit our ability to audit compliance. We will continue to audit Sydney Water's compliance with the prescribed aspects of the Fluoridation Code and other fluoridation requirements when we audit Sydney Water's implementation of its drinking water quality management system. In the next box, we explain how compliance with the Fluoridation Code is covered in its drinking water quality management system (see "supporting information for this decision").

Supporting information for this decision



Reflecting fluoridation practices in Sydney Water's drinking water quality management system

Element 1 of the Framework requires drinking water quality management systems to identify and document all relevant regulatory and formal requirements. This will include the *Fluoridation of Public Water Supplies Regulation 2022* which requires that Sydney Water manage key aspects of fluoridation in accordance with the Fluoridation Code.

Element 2 of the Framework requires that water quality management systems include an assessment of a utility's drinking water supply system, from catchment to consumer, to enable effective identification of, and prevention and control of hazards. As Sydney Water fluoridates the water it supplies, its fluoridation practices will be reflected in its system supply analysis.

Sydney Water's fluoridation practices will also be reflected in its preventive measures for drinking water quality management (required under element 3 of the Framework). Sydney Water confirmed, in its submission to the Issues Paper, that fluoridation is a critical control point in its drinking water quality management system. Critical control points are preventive measures recognised in the ADWG.

Fluoridation practices will also be reflected in its operational procedures and process control (element 4 of the Framework), verification of drinking water quality (Element 5 of the Framework) and the documentation of all these procedures (element 10 of the Framework).

Compliance audits will test that in undertaking these fluoridation practices, Sydney Water is complying with the relevant legislation and therefore applying the Fluoridation Code where required.



Reporting Manual: Reporting requirements for water quality management

We propose to retain most of the current reporting requirements for water quality management and monitoring in Chapter 3 of Sydney Water's 2019-2024 Reporting Manual. Under these requirements:

- Sydney Water must prepare:
 - annual compliance reports on its Drinking Water Quality Management System and Recycled Water Quality Management System to IPART and NSW Health
 - quarterly water quality monitoring reports (and publish these on Sydney Water's website)
 - quarterly exception-based reports on its water quality monitoring to NSW Health
 - monthly fluoride monitoring reports to NSW Health.
- Sydney Water must immediately notify NSW Health of any water quality incidents and emergencies.
- Sydney Water must notify IPART and NSW Health on any significant^f changes it proposes to make to a water quality management system prior to implementing the change. We propose minor changes to clarify that Sydney Water must notify IPART and NSW Health at least 30 days before implementing the change and we have explained what constitutes a significant change.

We consider that these requirements are essential for Sydney Water to demonstrate it is meeting an equivalent standard to the Quality Assurance Program requirements in Part 5 of the *Public Health Regulation 2022*. In the 2022 review of Hunter Water's operating licence, NSW Health advised that this is the basis for maintaining an exemption from the Public Health Act requirements.¹² NSW Health supports retaining the current reporting requirements for water quality management and monitoring. It does not view the current requirements as excessive due to the essential nature of the utility.

However, we propose to remove the current reporting requirements for fluoridation monitoring, because fluoridation reporting requirements are set out in the Fluoridation Code and in more detail than in our Reporting Manual. We consider that partially duplicating them in the Reporting Manual may not provide benefit. Sydney Water supported this position in its response to the Issues Paper.

Our proposed reporting requirements can be viewed in full in the draft Reporting Manual.

^f Details on what could be considered a significant change is provided in the Reporting Manual.

2.4 System performance standards for service interruptions



Review principle

Setting minimum protections



Our draft recommendation

We recommend retaining the current system performance standards for water continuity, water pressure and dry weather wastewater overflows in the operating licence with no changes to the service levels specified by these performance standards.

System performance standards require Sydney Water to provide adequate quality products and services to meet customers' needs. We recommend retaining the 4 system performance standards for service interruptions contained in the current operating licence. These standards set out the minimum number of properties that Sydney Water must ensure are not affected by service interruptions in a financial year, as follows:

- one water continuity standard
 - at least 9,800 properties out of every 10,000 receive a drinking water supply service unaffected by an unplanned water interruption
- one water pressure standard
 - at least 9,999 properties out of every 10,000 receive a drinking water supply service affected by fewer than 12 water pressure failures (defined as a situation where a property receives water pressure of less than 15 metres head of pressure for a continuous period of one hour or more, measured at the point of connection to Sydney Water's drinking water infrastructure)
- Two dry weather wastewater overflow standards:
 - at least 9,928 private properties that receive sewerage services from Sydney Water, out of every 10,000, receive a service unaffected by an uncontrolled wastewater overflow (defined as a wastewater overflow that was not directed by Sydney Water to a predetermined location such as a stormwater drainage system or waterway)
 - at least 9,999 private properties that receive sewerage services from Sydney Water, per 10,000, receive a service affected by fewer than 3 uncontrolled Wastewater Overflows

The standards incentivise Sydney Water to maintain services to customers at or above the standard set in the operating licence because even one property count below the target level for any of the standards will result in a breach of the operating licence. Compliance with the standards depends on how well Sydney Water manages its assets. For example, increased breakage will lead to increased service interruptions. We discuss our recommendations for asset management in section 2.6.

Sydney Water consulted its customers through its 'Our Water, Our Voice' engagement program to understand their preferences regarding the service levels they value and expect, and the service level failures for which they would expect a rebate. Sydney Water provided information about the results of this engagement to us to inform our review of the system performance standards. This consultation showed that including performance standards for water continuity, water pressure and dry weather wastewater overflows reflect customer preferences.

2.4.1 Service levels required by the system performance standards

We recommend retaining the current service levels required by the system performance standards for water continuity, water pressure and dry weather wastewater overflows.

Raising the standard set by the current service levels may drive expenditure on asset maintenance and renewals above what customers are willing to spend.⁹ This is assuming that Sydney Water can undertake additional activities to reduce the number and/or impact of service interruptions, but even when it can, the cost of these activities will ultimately need to be recovered from customers via water and wastewater bills. Sydney Water could reduce costs, and ultimately customer bills, by spending less on managing its networks, but this would result in customers experiencing more of these inconvenient service interruptions. Further, customers who are already disproportionately affected by service interruptions due to rapidly deteriorating infrastructure are at risk of becoming further inconvenienced.

We consider that the current service levels act as an adequate safety net, preventing unacceptable deteriorations in service standards, but do not drive overinvestment.

⁹ Customers' willingness to spend was tested during Sydney Water's customer consultation work, undertaken as part of Sydney Water's 'Our Water, Our Voice' program.



Cost-benefit analysis for system performance standards for service interruptions

We undertook a comprehensive CBA in the 2019 end-of-term review of the Sydney Water Operating Licence before recommending the service levels specified in the current operating licence. We consider that the service levels remain appropriate and reflect customers' expectations. We have not reassessed the costs and benefits for this Review as we consider it unlikely that they have significantly changed since 2019.

Sydney Water provided information on its customer consultation results to us as part of this Review. Sydney Water tested with its customers whether they would be willing to pay for higher levels of service or willing to accept lower levels of service. Sydney Water demonstrated to their customers the impact to customer bills with increasing or lowering current service levels and attempted to describe the impact that would be felt by customers.

The consultation results showed that most of Sydney Water's customers prefer to retain the current service levels and consider that Sydney Water is already providing a high quality of service. Some were willing to pay for a slightly higher level of service, but not substantially higher. Most did not wish to accept a lower level of service for any of the standards, and in particular the water continuity and dry weather wastewater overflow standards. Retaining the current service levels is consistent with the general feedback from most customers.

Overinvestment by Sydney Water in its asset maintenance would exceed the cost that customers are willing to pay - a risk with high standards. Conversely, the cost savings associated with reducing performance are valued by customers far less than the disbenefits that customers would suffer.

Sydney Water has told us that with changing climate conditions, it is becoming difficult to maintain the same level of service as required in the current operating licence without substantial impacts to customer bills. Sydney Water proposes to review how it tracks against the service levels over the next operating licence period to determine if it needs to propose changes in the next operating licence review (planned to be in 2028).

2.4.2 Water Continuity Standard

We recommend retaining the water continuity standard in the current operating licence. That is, Sydney Water should continue to be required to ensure that 9,800 per 10,000 properties receive a drinking water supply service unaffected by an unplanned water interruption in each financial year.

Sydney Water and DPE supported retaining the water continuity standard in the operating licence in their responses to the Issues Paper. Maintaining this standard is consistent with Sydney Water's customers' expectations. Sydney Water's customer engagement work demonstrates that customers value water continuity (reliability) highly.

2.4.3 Compliance during the 2019-2024 operating licence term

During the 2019-2024 operating licence term, we found that Sydney Water did not meet the performance standard for water continuity in its first year. Sydney Water attributes this non-compliance to drought conditions affecting soil moisture and resulting in greater pipe breakages. Sydney Water returned to compliance following the first year.

We have not proposed changes to the service level specified by the water continuity standard. Given the ongoing issues with asset management identified in the current operating licence term (discussed in section 2.6.1) it is our preference to retain the current service level. However, we seek feedback from stakeholders if you consider that the standard in the operating licence requires changes. In its response to the Issues Paper, Sydney Water raised concerns about its ability to meet the standard in the operating licence with rapidly changing climate conditions. However, it has not proposed different service levels for the 2024-2028 operating licence.

2.5 Removing the optimal level of performance and the design threshold



Review principle

Removing redundancy



Our draft recommendation

We recommend removing the requirement to use the Water Continuity Optimal Level and Water Continuity Tolerance Band in making decisions about the network.

In addition to the minimum standard discussed above, the current operating licence also specifies an optimal level of performance and a maximum level of performance (forming a tolerance band). Not meeting these levels does not result in a breach of the operating licence. The purpose of these levels is not compliance. When we recommended these levels in the 2019-2024 operating licence, we sought to incentivise performance while placing a maximum limit on this performance to reduce the risk of Sydney Water over-investing in asset maintenance.

The optimal threshold represents an optimal expenditure to ensure that most properties in Sydney Water's area of operations received a continuous drinking water supply and the design threshold represents the maximum expenditure Sydney Water should invest on its assets. That is, if there are fewer service outages in Sydney Water's area of operations than the design threshold specifies, that would suggest that Sydney Water is over-investing in asset maintenance.

We now consider that the role of the operating licence is to set minimum standards to protect customers and setting optimal and design thresholds in the operating licence are not necessary. Performance and expenditure can and should be managed through the pricing mechanisms. Price determinations are more flexible than the operating licence and would allow Sydney Water to trade-off higher levels of performance with community needs and willingness to pay. The next Sydney Water price determination will apply from 1 July 2025.

2.5.1 Our recommended operating licence conditions

We have proposed the following changes to the current operating licence conditions specifying the water continuity standard. The changes do not materially impact on the standard of service provided to customers:

- Express the standard in percentage of properties that are unaffected by an unplanned water interruption. That is, instead of saying "at least 9,800 per 10,000 properties", we consider that it is clearer to state that "at least 98 % of properties" must be unaffected by an unplanned water interruption.
- Clarify that it is an unplanned service interruption if Sydney Water has not provided at least one week's written notice prior to the event. The current operating licence states that a property is taken to have experienced an unplanned service interruption if Sydney Water did not provide prior notice of the service interruption but does not specify a time period for this notification. A week's prior notice is consistent with Sydney Water's customers' expectations, as expressed in Sydney Water's customer engagement process.
- Remove the word 'normal' from the current provision, which states that the unplanned service interruption ends when a 'normal' supply of water resumes. We consider that the interpretation of what is a 'normal' supply is subjective. Instead, we propose to clarify that an unplanned water interruption is when a customer has not had service with at least 5m head of water pressure for more than 5 continuous hours. This would mean that a detected service interruption would end when a customer's service is returned to at least 5m head of pressure.

If the customer's water pressure is then not returned to 15m head of pressure within 4 days (assuming the cause of the interruption was a temporary operational problem), it would then become a breach of the water pressure standard.

Box 2.2 Recommended licence conditions for the water continuity standard

15 Water Continuity Standard

- (1) Sydney Water must ensure that, in each financial year, at least 98.00% of Properties that Sydney Water supplies Drinking Water to are unaffected by an Unplanned Water Interruption (the Water Continuity Standard).
- (2) Subject to clause 15(3), a Property is taken to have experienced an Unplanned Water Interruption for the purposes of the Water Continuity Standard if:
 - (a) the supply of Drinking Water at the first cold water tap of the Property is interrupted,
 - (b) the occupant of the Property does not receive at least one week's prior notice in writing from Sydney Water of that interruption, and
 - (c) it takes more than 5 continuous hours for supply of Drinking Water (with at least 5 meters head of pressure) to be restored to the Property.
- (3) A Property is taken not to have experienced an Unplanned Water Interruption for the purposes of the Water Continuity Standard if the interruption is caused by:
 - (a) a Third Party, or
 - (b) a power failure.
- (4) For the purpose of the Water Continuity Standard:
 - (a) each separately billed part of a Multiple Occupancy Property is to be counted as a separate Property, and
 - (b) each separate instance, in a financial year, of a single Property experiencing an Unplanned Water Interruption is to be counted as a separate Property that has experienced an Unplanned Water Interruption (but not as a separate Property to which Sydney Water supplies Drinking Water).

19 Interpretation of standards

In the case of any ambiguity in the interpretation or application of the Water Continuity Standard, the Water Pressure Standard or the Dry Weather Wastewater Overflow Standard, IPART's interpretation or assessment of the standard will prevail.

2.5.2 Rebates for water supply interruptions

We propose that Sydney Water should increase the rebates that it currently provides customers for unplanned service interruptions from \$40 to \$46 for the first and 2nd events in a rolling 12-month period. Sydney Water currently provides customers a rebate equivalent to the whole water service charge for recurring unplanned service interruptions and we consider that this continues to be appropriate. It will provide this once a 3rd event is experienced in a rolling 12-month period. This is the same as in the current Customer Contract.

Similarly, we propose to increase the rebates that Sydney Water currently provides for planned interruptions from \$20 to \$23.

2.5.3 Water pressure standard

We recommend retaining the water pressure standard in the current operating licence with minimal changes. That is, Sydney Water should continue to be required to ensure that at least 9,999 per 10,000 properties receive a drinking water supply service affected by less than 12 water pressure failures in a financial year. A water pressure failure occurs when a property experiences water pressure of less than 15m head for a continuous period of one hour or more, when measured at the customer's connection point to Sydney Water's drinking water infrastructure.

Sydney Water and DPE support retaining the water pressure standard in the operating licence. Maintaining this standard is consistent with Sydney Water's customers' expectations. Sydney Water's customer engagement showed that while water pressure is important to customers, it is not as high a priority as water quality and service reliability. Customers are generally satisfied with the water pressure that they receive.

While water pressure may not be an immediate inconvenience for customers, we consider that it is beneficial to maintain appropriate water pressure standards in the operating licence. It is important that Sydney Water is incentivised to balance supplying water at a pressure that meets customers' service needs while minimising excess pressure and pressure fluctuations in the system that can lead to leakage and infrastructure damage. Further, compliance with the specified water pressure standard drives Sydney Water to undertake necessary preventive maintenance. Without adequate preventive maintenance, there will be a risk of increased scale or slime inside water distribution piping which can greatly reduce hydraulic performance of the system and Sydney Water's ability to supply water at the pressure required in the operating licence.

2.5.4 Compliance during the 2019-2024 operating licence term

Throughout the 2019-2024 operating licence term, we found that Sydney Water was compliant with the minimum performance standard for water pressure. We consider that the water pressure standard is set at an appropriate level and we have not proposed changes to the service level specified by this standard. However, we seek feedback from stakeholders if you consider that the standard in the operating licence requires changes.

2.5.5 Our recommended operating licence conditions

We have proposed the following changes to the current operating licence conditions specifying the water pressure standard. The changes do not materially impact on the standard of service provided to customers:

- Express the standard in percentage of properties that are unaffected by a water pressure failure. That is, instead of saying "at least 9,999 per 10,000 properties", we consider that it is clearer to state that "at least 99.99% of properties" should be unaffected by a water pressure failure.
- Clarify that Sydney Water should not count a property as experiencing a water pressure failure, where it occurred due to a planned or unplanned water interruption. This will avoid Sydney Water being penalised for failure to meet both its water continuity and water pressure standards for events with the same root cause.

Box 2.3 Recommended licence condition for water pressure standard

16 Water Pressure Standard

(1) Sydney Water must ensure that, in each financial year, at least 99.99% of Properties that Sydney Water supplies Drinking Water to receive a Drinking Water supply service affected by fewer than 12 Water Pressure Failures (the Water Pressure Standard).

(2) Subject to clause 16(3), a Property is taken to have experienced a Water Pressure Failure for the purposes of the Water Pressure Standard when it experiences pressure of less than 15 metres head of pressure (measured at the point of connection of the Property to Sydney Water's Drinking Water supply system) for a continuous period of one hour or more.

(3) A Property will not be taken to have experienced a Water Pressure Failure for the purposes of this clause 16 if that Water Pressure Failure is caused by:

- (a) an ongoing Planned Water Interruption or Unplanned Water Interruption,
- (b) water usage in the case of a fire or other abnormal demand, or
- (c) a short term or temporary operational problem (such as a main break), including where caused by a Third Party, that is remedied within four days of its commencement.

(4) For the purposes of the Water Pressure Standard:

- (a) where a Property experiences multiple Water Pressure Failures in a day, only one of those Water Pressure Failures is to count as a Water Pressure Failure experienced by the Property,

Box 2.3 Recommended licence condition for water pressure standard

(b) where a Property experiences a Water Pressure Failure that affects more than one day, each day affected is to be counted as a separate Water Pressure Failure,

(c) each separately billed part of a Multiple Occupancy Property is to be counted as a separate Property,

(d) each Property that is affected by 12 or more Water Pressure Failures in a financial year is to be counted once only as a Property that has been affected by 12 or more Water Pressure Failures in that financial year, and

(e) a Property in a Property Cluster is not to be counted if:

(i) the Property was connected for the first time to Sydney Water's Drinking Water supply system on or after 1 July 2020, and

(ii) Sydney Water informed the owner before or at the time of connection of:

(A) the risk of recurring Water Pressure Failures should the Property be connected to that system, and

(B) options to reduce that risk.

19 Interpretation of standards

In the case of any ambiguity in the interpretation or application of the Water Continuity Standard, the Water Pressure Standard or the Dry Weather Wastewater Overflow Standard, IPART's interpretation or assessment of the standard will prevail.

2.5.6 Rebate for low water pressure

We propose that the operating licence should require Sydney Water to increase the rebates that it currently provides customers for water pressure failures from \$40 to \$46 for every quarter.

2.5.7 Dry weather wastewater overflows

We recommend retaining the 2 standards in the current operating licence for dry weather wastewater overflows. That is, Sydney Water should continue to be required to ensure that, in a financial year, at least:

- 9,928 per 10,000 private properties receive a wastewater service unaffected by an uncontrolled wastewater overflow.
- 9,999 per 10,000 private properties receive a wastewater service affected by fewer than 3 uncontrolled wastewater overflows.

Compliance with the dry weather wastewater overflow standard is important for protecting public health, by minimising customers' exposure to wastewater overflows onto their private properties. Sydney Water and DPE support retaining this standard in the operating licence. Retaining this standard is consistent with Sydney Water's customers' expectations. The EPA also supports retaining this standard as it considers that it will incentivise Sydney Water to adequately fund proactive asset maintenance and it will encourage Sydney Water to replace pumps and pipes in line with best practice.

2.5.8 Compliance during the 2019-2024 operating licence term

During the 2019-2024 operating licence term, Sydney Water was compliant with the minimum performance standard for dry weather wastewater overflows. We consider that this standard is set at an appropriate level, and we have not proposed changes to the service level specified by this standard. However, we seek feedback from stakeholders if you consider that the standard in the operating licence requires changes.

2.5.9 Our recommended operating licence conditions

Our recommended operating licence conditions for the dry weather wastewater overflows standards are shown below.

We have proposed the following changes to the current operating licence conditions specifying the two dry weather wastewater overflow standard which do not materially impact on the standard of service provided to customers:

- Express the standard in percentage of properties that are unaffected by a dry weather wastewater overflow event, as we have proposed for the water continuity and water pressure standards:
 - Instead of saying "at least 9,928 per 10,000 properties" receive a wastewater service unaffected by an uncontrolled wastewater overflow, we consider that it is clearer to state that "at least 99.28% of properties" should be unaffected.
 - Similarly, instead of "at least 9,999 per 10,000 properties" receive a wastewater service affected by fewer than 3 uncontrolled wastewater overflows, we consider that it is clearer to state that "at least 99.99% of properties" should be unaffected.

Box 2.4 Recommended licence condition for dry weather wastewater overflow standard

17 Dry Weather Wastewater Overflow Standard

(1) Sydney Water must ensure that, in each financial year, at least:

Box 2.4 Recommended licence condition for dry weather wastewater overflow standard

(a) 99.28% of Properties that Sydney Water supplies a Wastewater service to (but excluding Public Properties) receive a Wastewater service unaffected by an Uncontrolled Wastewater Overflow, and

(b) 99.99% of Properties that Sydney Water supplies a Wastewater service to (but excluding Public Properties) receive a Wastewater service affected by fewer than three Uncontrolled Wastewater Overflow,

(the Dry Weather Wastewater Overflow Standard).

(2) For the purposes of the Dry Weather Wastewater Overflow Standard:

(a) each Multiple Occupancy Property is to be counted as a single Property,

(b) for the purposes of clause 17(1)(a), each separate instance, in a financial year, of a single Property experiencing an Uncontrolled Wastewater Overflow is to be counted as a separate Property that has experienced an Uncontrolled Wastewater Overflow (but not as a separate Property that Sydney Water supplies a Wastewater service to), and

(c) for the purposes of clause 17(1)(b), each Property that experiences three or more Uncontrolled Wastewater Overflows in a financial year is to be counted only once as a Property that has experienced three or more Uncontrolled Wastewater Overflows.

19 Interpretation of standards

In the case of any ambiguity in the interpretation or application of the Water Continuity Standard, the Water Pressure Standard or the Dry Weather Wastewater Overflow Standard, IPART's interpretation or assessment of the standard will prevail.

2.5.10 Rebate for wastewater overflow onto private property

We propose that Sydney Water should increase the rebates that it currently provides customers for wastewater overflows from \$75 to \$87 for the first event and from \$150 to \$17 after the 2nd event in a rolling 12-month period. Sydney Water currently provides customers a rebate equivalent to the whole annual water service charge for recurring wastewater overflows and we consider that this continues to be appropriate. It will provide this once a 3rd event is experienced in a rolling 12-month period. This is the same as in the current Customer Contract.

2.5.11 Including a requirement to have a system to detect Unplanned Water Interruption, a Water Pressure Failure, or an Uncontrolled Wastewater Overflow

We recommend retaining the current requirement to detect unplanned interruptions using available information⁴³ but restructuring it as a requirement to have a system to detect interruptions and expanding it to include water pressure failures and dry weather wastewater overflows.

We consider that in order to properly detect these failures and meet performance standards Sydney Water must monitor for them using available data and investigate to determine whether an interruption or failure has occurred. We have made this change because the previous licence condition that required Sydney Water to use the best available data (taking account of water pressure data, where available) to determine whether a property has experienced an Unplanned Water Interruption was legally ambiguous. By specifying that Sydney Water must have a system to monitor for interruptions and investigate, rather than determine whether a property has an outage we think the condition better reflects normal business processes. The new expression of this requirement also allows for occasions where despite best endeavours, Sydney Water was unable to detect a failure.

The addition of the requirement to monitor for water pressure failures and uncontrolled wastewater overflows into the licence is for completeness and we consider would reflect current business practice by Sydney Water.

Box 2.5 Recommended licence condition for detecting Unplanned Water Interruption, a Water Pressure Failure, or an Uncontrolled Wastewater Overflow

18 Monitoring system

- (1) Sydney Water must maintain a monitoring system to proactively identify Properties that may have experienced an Unplanned Water Interruption, a Water Pressure Failure, or an Uncontrolled Wastewater Overflow.
- (2) Sydney Water must implement the monitoring system.
- (3) The monitoring system must use the best available information, including:
 - (a) water pressure data, where available, and
 - (b) data obtained through Sydney Water's data collection systems and hydraulic analysis.
- (4) Sydney Water must promptly investigate all potential incidents notified by the community or identified by the monitoring system to determine whether a Property has experienced an Unplanned Water Interruption, a Water Pressure Failure, or an Uncontrolled Wastewater Overflow.



Reporting Manual: Reporting requirements for system performance standards

We propose to retain the current reporting requirements in section 4.1 of the 2019-2024 Reporting Manual for Sydney Water to report on its performance against the system performance standards in the operating licence, for each financial year.

In the annual compliance and performance report, Sydney Water must report on how it has complied, or not complied, with the 4 system performance standards for service interruptions.

Sydney Water must report on:

- major factors (both positive and negative) that have influenced Sydney Water's performance, including factors that are both within and beyond Sydney Water's control
- reasons for any significant variation (both positive and negative) between Sydney Water's performance in the financial year and performance in the previous five years.

In the Issues Paper, we sought feedback on whether these reporting requirements should be removed from Sydney Water Reporting Manual, relying only on data reported against IPART indicators connected to these performance standards. However, Sydney Water did not support this proposal. Sydney Water considers that there is great value to stakeholders in the analytical trending and commentary on performance standards contained in the current annual report. This commentary is not provided with the reporting against indicators. Sydney Water stated that removing this reporting obligation does not result in any reduction in burden to Sydney Water as a substantial component of the work involved in the reporting is in the data collation and validation. Sydney Water would need to continue to undertake this work even without the annual reporting requirement to be able to report accurately against the indicators.

We consider that similar commentary could be provided in the report on performance against the IPART indicators, as already allowed for in the 2019-2024 Reporting Manual. However, on balance, we consider that there is no disbenefit in retaining the current requirement for the annual compliance and performance report on Sydney Water's management of the performance standards. At present this report is only provided to IPART. Therefore, to realise the benefits that Sydney Water has outlined, we propose to require Sydney Water to publish this report. PIAC's response to our Issues Paper supports this approach.¹⁴

Sydney Water's proposed reporting requirements can be viewed in full in the draft Reporting Manual.

2.6 Asset management



Review principle

Protecting customers, the community and the environment



Our recommendation

We recommend retaining the current operating licence condition requiring Sydney Water to maintain and fully implement an asset management system consistent with the Australian Standard AS ISO 55001:2014 *Asset Management – Management systems – Requirements* (AS ISO 55001:2014).

An asset management system is a system for tracking, managing, and maintaining assets. The benefits of Sydney Water maintaining and implementing an asset management system are that it helps Sydney Water to:

- manage its assets through all phases of the asset's lifecycle including strategy and planning; asset creation; maintenance; and asset renewal
- meet its system performance standards and operate critical assets to provide essential services to more than 5 million customers
- monitor asset performance, which determines its overall system performance
- meet objectives (such as the water quality and system performance standards for service interruptions) by effectively managing asset risks and asset performance
- identify and pre-empt issues that may pose a significant risk to asset integrity and/or public health, including risks brought about by a changing climate
- identify the root cause of poorly performing assets and maximise asset value
- keep records of maintenance activities, which is essential to track performance, optimise maintenance, and identify areas requiring frequent attention.

We consider that retaining the current operating licence condition is important because it:

- requires Sydney Water to manage its assets adequately through processes developed consistent with an approved industry standard
- makes Sydney Water accountable for adhering to its asset management processes – there are currently no other legislative requirements requiring Sydney Water to have and implement an asset management system and be accountable for it
- enables IPART to monitor Sydney Water's compliance with the system through compliance audits - if there was a high-risk incident or a non-compliance, we would be able to readily audit Sydney Water's asset management, identify the cause of the issue, make recommendations to rectify the non-compliance or take enforcement action
- minimises any risk that Sydney Water could cease to maintain the asset management system due to commercial incentives if there are costs increases or changes to leadership at Sydney Water in the future, recognising the criticality of maintaining the asset management system for Sydney Water to deliver on its functions and meet the performance standards.

Sydney Water, NSW Health and the EPA expressed their support to continue to include requirements for an asset management system when we tested this in the Issues Paper, particularly in light of ongoing non-compliances during the 2019-2024 operating licence term as discussed below.

2.6.1 Compliance during the 2019-2024 operating licence term

We found Sydney Water's current asset management system to be compliant with the elements of AS ISO 55001:2014, when audited during the 2019-2024 operating licence term. Through our compliance monitoring function, we have found that Sydney Water has had consecutive non-compliances with the implementation of its asset management system from 2020-2022.^{15-16,17} The non-compliances related to how Sydney Water documented its reasons and decisions for deferring asset maintenance and replacement actions.

We consider that these non-compliances should be dealt with through our compliance monitoring function and do not need to be resolved through changes to the operating licence conditions. We propose to increase Sydney Water's reporting obligations by requiring a 2-yearly state of the assets report so that we can have visibility of asset performance and can better inform our audit scope. This will enable us to monitor whether Sydney Water is implementing its asset management processes on significant assets that are operationally non-compliant or underperforming. This is discussed below where we discuss Sydney Water's reporting obligations.

Sydney Water submitted a list of actions and reporting dates to IPART on 17 May 2023 to address the identified issues and improve its compliance. These actions included a program of works (which Sydney Water termed 'the Service Excellence Roadmap'). The Tribunal issued an Enforcement Notice to Sydney Water on 31 May 2023, which provided a direction to Sydney Water to complete the proposed program of works and provide reports.^h

The Service Excellence Roadmap has 21 workstreams, including 5 asset-related workstreams, that when implemented should provide a degree of oversight and assurance that:

- Sydney Water will have developed and implemented appropriate processes to capture overdue/deferred maintenance items.
- the improved processes will adequately describe reasons for deferment, and the effect (if any) on risks associated with that asset class.
- the improved processes will monitor and report on overdue items to an appropriate leadership/governance group who will then be responsible for ensuring action is taken to complete outstanding items.

^h [Enforcement Action Notice 11/2023](#).



Cost-benefit analysis for requiring asset management in the operating licence

Given the benefits described above, we conclude that there are net benefits to recommending operating licence condition for asset management.

As we undertook a comprehensive CBA during 2019 end-of-term review of the operating licence, we have not re-considered this CBA. We consider it unlikely that the costs and benefits have significantly changed. It is our view that the costs of retaining the operating licence condition requiring the asset management system are modest. They consist only of the compliance-related costs for Sydney Water and IPART, which we expect would be small.

We came to a similar conclusion in the 2022 review of the Hunter Water operating licence.

2.7 Asset management standard specified in the operating licence



Review principle

Protecting customers, the community and the environment



Our recommendation

We recommend:

- continuing to require in the operating licence that Sydney Water's asset management system be consistent with AS ISO 55001:2014 as it sets the appropriate level of mandatory requirements and guidance for asset management.
- allowing flexibility in the operating licence to allow Sydney Water to nominate and alternative standard and approved by us in writing. In its response to our Issues Paper, Sydney Water supported this approach.

Sydney Water's asset management system is currently certified to AS ISO 55001:2014. The International Organisation for Standardisation (ISO) Technical Committee for asset management systems is currently updating AS ISO 55001:2014. The ISO Technical Committee has not advised when the updated standard will be released but we expect this to occur sometime in 2024. At this stage, we do not recommend requiring the 2024 version of the standard to apply. Sydney Water will also need time to transition its asset management system to the updated standard. Typically, ISO transition periods are for 3 years.

Our recommended operating licence conditions will not restrict Sydney Water from transitioning to the updated standard when it is released and once Sydney Water is ready to comply with the updated standard. In the meantime, the 2014 version remains appropriate. However, we seek stakeholder feedback if you consider that the operating licence should mandate transition to the 2024 version of the standard once the standard is released.

2.7.1 Our recommended operating licence conditions

Box 2.6 Recommended operating licence condition for asset management

20 Asset management

- (1) Sydney Water must maintain a Management System for Sydney Water's Assets that is consistent with:
 - (a) the Australian Standard *AS ISO 55001:2014 Asset management – Management systems – Requirements*,
 - (b) any other standard nominated by Sydney Water and approved by IPART in writing
- (2) Sydney Water must implement the asset Management System.



Reporting Manual: Reporting requirements for asset management

We intend to:

- remove the current reporting requirement to prepare and submit to IPART a strategic asset management plan
- reinstate a requirement to provide a 2-yearly state of the assets report that includes the following information (at minimum), or provide the required information in another format:
 - a description of each group of assets managed by Sydney Water
 - Sydney Water's assessment of the expected capability of the assets to deliver services and to meet the existing obligations under the operating licence, Customer Contract, and all applicable laws that Sydney water must comply with
 - Sydney Water's assessment of the major issues or constraints on current and future performance of its assets
 - the strategies and expected costs of future investment in assets.

The strategic asset management plan

Sydney Water is required to prepare a strategic asset management plan under AS ISO 55001. Therefore, there is no benefit in duplicating this requirement in the Reporting Manual. The purpose of the strategic asset management plan is to describe Sydney Water's strategic plan for managing its assets, linking Sydney Water's organisational objectives and strategy and its Asset Management Policy and asset management processes together.

Sydney Water normally provides the strategic asset management plan to IPART during annual compliance audits of the asset management system. We consider that there would be no additional benefit in requiring Sydney Water to provide the report to us through a separate process. Both NSW Health and Sydney Water support removing this requirement from the Reporting Manual.

The state of the assets report

Sydney Water was required to provide a state of the assets report to IPART in September 2023 and September 2024, by an enforcement notice that the Tribunal issued to Sydney Water for contravening clause 5.5.2 of the 2019-2024 operating licence (i.e. for contravening requirements to implement its asset management system).

We previously required Sydney Water to submit a 2-yearly state of the assets report to us in the 2015-2020 Reporting Manual, but we took this reporting requirement out of the 2019-2024 Reporting Manual. At that time the Tribunal considered that the requirement added unnecessary reporting burden and we could obtain the same information from other information requests.¹⁸ We amended our Reporting Manual to require Sydney Water to provide the Strategic Assets Management Plan, which was only required once during the licence term, to replace the requirement to regularly provide state of the assets reports.

We consider that the repeat non-compliances justify reinstating the Reporting Manual requirement for the state of the assets reports from Sydney Water on a 2-yearly cycle. These reports would:

- allow us to continue monitoring Sydney Water's asset management performance after the Enforcement Notice period ends
- provide IPART with important information to track and target specific assets for annual operational audits and monitor how Sydney Water is managing its assets and whether its asset management processes are being implemented. This could potentially identify emerging issues before incidents or non-compliances occur. For example, the state of the assets reports could give us visibility about any assets that are underperforming or failing, allowing us to target how we audit Sydney Water's implementation of its asset management system
- provide transparency regarding trends in asset conditions and management (not just those that have been identified as non-compliant)
- provide an incentive to ensure that performance does not decline and minimise risk of similar non-compliances in the future.

NSW Health supports reinstating the 2-yearly state of the assets report to IPART. Sydney Water objects as it considers that its Service Excellence Roadmap, which sets out its program of works to address identified asset management non-compliances, and reporting on the roadmap deliverables to IPART, is a comprehensive enough process to monitor its progress with rectifying the identified non-compliances. However, we consider that the Service Excellence Roadmap is too broad in scope to provide the information that we are seeking. If Sydney Water demonstrates that a similar level of detail to what is expected in the state of the assets report can be provided to IPART in other reports, we may not need to prescribe a 2-yearly state of the assets reporting requirement in the Reporting Manual.

Our proposed reporting requirements for the 2-yearly state of the assets report are set out in the draft Reporting Manual.



Cost-benefit analysis for requiring the State of the Assets Report

Compared to the near-zero cost of requiring Sydney Water to produce 2-yearly state of the assets reports, we consider that this reporting requirement would easily pass the cost-benefit test.

Sydney Water advised us that the cost of preparing a 2-yearly state of the assets report was approximately \$225,150. However, it is evident that Sydney Water prepares regular state of the assets reports for its own purposes independent of this licence condition (which has not yet come into force). For example, the Executive Summary of the draft State of Assets report for 2023 notes,

"Purpose: The State of Assets (SoA) report provides Sydney Water with a view of the status of its infrastructure systems to deliver the required corporate and service objectives to achieve customer outcomes, and covers asset information, property and water related service assets. The information presented is used for planning and prioritising delivery of Sydney Water's capital and maintenance programs." (p 3)

This operating licence condition only requires Sydney Water to give IPART a copy of an existing report, so it should impose minimal additional costs.

This licence condition gives IPART greater visibility of some of Sydney Water's asset management decisions and the facts that drive them. This visibility allows for a degree of external scrutiny of Sydney Water's asset management practices, which could be expected to have a positive impact on Sydney Water's asset management outcomes.

It is obviously difficult to quantify the impact of this external scrutiny. However, an indication of the dollar impact of Sydney Water's unexpected asset failures can be gained by examining the fines levied by the EPA on Sydney Water for breaches of its Environment Protection Licences arising from uncontrolled sewage discharges. Over the period 2020 – 2023, the EPA obtained court judgements leading to fines against Sydney Water totalling at least \$3.2m, equating to an average rate of \$800,000 per year. [source: EPA media releases searching on Sydney Water^{19,20}].

Chapter 3

Water conservation, efficiency and long-term planning

Water conservation & efficiency and long-term planning ensure the sustainable supply of water.

03

Sydney Water's operating licences have had obligations for water conservation and long-term planning since Sydney Water was established in 1994, recognising that water conservation and planning are integral to efficient investment in the long-term interest of customers.

Long-term plans provide a framework for strategic decision making. They allow water utilities to set clear goals, prioritise investments, and align resources with long-term sustainable water supply objectives. Regular reviews and monitoring help ensure the utility's plans remain relevant, aligned with changing needs and responsive to emerging challenges. Inadequate water conservation and planning measures can lead to greater supply augmentation costs in later years. However, this must be balanced with considering how much investment is adequate. Too much investment in water conservation can mean unnecessarily high costs to customers, both in the short and long term.

Planning efforts should support growth in the region and ensure Sydney Water can respond to system shocks, including drought and longer-term changing climate impacts. The current operating licence relies on the approaches outlined in the 2017 Metropolitan Water Plan that has now been replaced with the [NSW Water Strategy](#) and the [Greater Sydney Water Strategy](#). The Greater Sydney Water Strategy underpins the long-term planning to support the delivery of the *Greater Sydney Region Plan – A Metropolis of Three Cities and Six Cities'* regions, and the government's priority for Greater Sydney. It sets the direction for water management in Greater Sydney to deliver sustainable and integrated water service for the next 20-40 years.

Population growth in Greater Sydney means that the city's water supply system is close to its sustainable limit.²¹ Without the actions proposed in the Greater Sydney Water Strategy, water supply will be insufficient to meet demand over the long term. Inability to service growth in key growth areas within the committed timeframe would mean that community needs may not be met, and economic opportunities not realised.²²

ⁱ The document titled *Greater Sydney Region Plan—A Metropolis of Three Cities* is taken to be the regional strategic plan made under the *Environmental Planning and Assessment Act 1979*, s 3.5(3).

The current 2019-2024 operating includes requirements for Sydney Water to participate in and support water planning. This is to ensure that Sydney Water manages water supply and demand effectively and efficiently and contributes to achieving the policy objectives of the NSW Government. Since then, the Greater Sydney Water Strategy was released to address inter-related issues such as how to service a growing population, support the economy and jobs, while also building resilience to drought and a changing climate. The strategy also considers the potential impact of decisions about reducing flood risks. Decisions about reducing flood risk could have an impact on the broader water supply system. We have considered the objectives of the Greater Sydney Water Strategy to enable Sydney Water to meet the supply needs for growth and adapt to a changing climate.

New water infrastructure for growth areas in Greater Sydney can be funded in 2 ways. Firstly, it can be funded by Sydney Water planning the delivery of services around the NSW Government land release program and comply with IPART's pricing determinations. Before funding infrastructure, Sydney Water must show that there's demand for that infrastructure in the community with a high certainty of delivery and timing. Developments must be ready to connect to infrastructure soon after it is constructed for it to be an efficient and economical investment. Secondly, a developer can opt to independently fund infrastructure to accelerate planning and construction and can apply to the NSW Government to bring forward the release of precincts for development. If the Government approves the proposal, then the developer can approach Sydney Water or engage a private utility to provide services

Draft recommendations for the operating licence

7. Include new operating licence conditions requiring Sydney Water to:
 - maintain and implement its 5-year water conservation plan
 - review and update the plan annually
 - submit a copy of the updated plan to DPE and IPART and publish it on Sydney Water's website by 30 November every year.
 - engage in water strategy planning consistent with Greater Sydney Water Strategy
 - Cooperate with Water NSW to review the Greater Sydney drought response plan
 - engage in ongoing water supply augmentation planning for Greater Sydney
 - maintain a Long-term capital and operational plan

8. Retain an economic approach to water conservation consistent with the NSW Government's Water Efficiency Framework which allows Sydney Water to also consider other social and environmental factors in identifying and deciding on water conservation programs and projects to implement.

- 9. Retain operating licence conditions requiring Sydney Water to publish its current economic method as well as a plain English summary of the method.
- 10. Include operating licence conditions requiring Sydney Water to update the economic level of water conservation using the current economic method but removing current requirements for Sydney Water to publish the economic level of water conservation on its website.
- 11. Retain operating licence conditions requiring Sydney Water to review and update its economic method and include a new condition requiring Sydney Water to seek the Minister's approval if it seeks to initiate changes to the current economic method.
- 12. Include a new operating licence condition requiring Sydney Water to comply with the Decision Framework when submitting production requests to the Sydney Desalination Plant.

3.1 Requiring a 5-year water conservation plan



Review principle

Focusing on outcomes



Our draft recommendation

We recommend that the operating licence should include new conditions requiring Sydney Water:

- to maintain and implement its 5-year water conservation plan
- review and update the plan annually
- submit a copy of the updated plan to DPE and IPART and publish it on Sydney Water's website.

These requirements will replace current operating licence conditions to maintain a water conservation work program and implement water conservation measures.

We consider that it is beneficial for the operating licence to continue to require Sydney Water to undertake water conservation activities to protect our precious water supplies, particularly considering climate variations and its impact on water availability.

The [NSW Water Strategy](#) and the [Greater Sydney Water Strategy](#) identify water efficiency and water conservation as NSW Government priorities. Ongoing water conservation practices allow better valuing of water resources. Therefore, it is appropriate for us to consider operating licence conditions for water conservation & efficiency.

Water conservation and efficiency are a part of range of responses in the short term to support growth and enhance the resilience of water supply for Greater Sydney. We discuss our recommendations for including operating licence conditions to ensure that Sydney Water considers the impacts of climate change on its network and takes steps to enhance resilience separately, in Chapter 4. While water conservation and climate risk resilience are linked, we have discussed climate change actions separately as they should apply to all of Sydney Water's functions and operations.

The current operating licence requires Sydney Water to maintain a water conservation work program and to implement certain water conservation measures. Sydney Water's current water conservation work program includes established programs, early lifecycle projects, pilot projects, and research and innovation projects. Sydney Water advised that it has now developed a 5-year water conservation plan, as required under the Greater Sydney Water Strategy.^j We recommend that the operating licence should require Sydney Water to maintain and implement this 5-year water conservation plan. The plan would supersede the water conservation work program required under the current operating licence. Our recommended licence condition would specify the required content of the plan. In particular, it will require that the plan set out Sydney Water's water conservation activities planned for the next 5 years on a rolling basis.

Under our recommendations, Sydney Water would be required to review and update the plan annually to review that the plan is meeting its intended objectives and the requirements of the operating licence. In contrast, the previous water conservation work program, required under the current 2019-2024 operating licence, was a more static program. In its response to the Issues Paper, DPE stated that it seeks a detailed review document that explains the performance of Sydney Water's water conservation program over the previous 12 months and demonstrates use of this data to revise and adapt the forward five-year rolling program.

^j Action 2.1 of the implementation plan for the Greater Sydney Water Strategy requires Sydney Water to develop and maintain a detailed 5-year Water Efficiency Plan working together with the DPE.



Cost-benefit analysis for requiring a 5-year water conservation plan in the operating licence

The benefit of having a 5-year water conservation plan is that more water would be conserved than if the plan was not required by the licence. In reply to our information request, Sydney Water estimated that it could save 11,220 ML of water from FY25 to FY29 with a Water Conservation Plan, compared to the likely water savings without such a plan.

This water savings could be quantified by multiplying it by the Long Run Marginal Cost of water, which is approximately \$2.6/kL. The 11.2 GL water savings would therefore be valued at approximately \$29.2m over 5 years.

Sydney Water estimates that the additional investment and operating expenses required under the proposed licence condition would be \$2.7m per annum over the 5-year period.

Based on these estimates of costs and benefits, the licence requirement for a 5-year water conservation plan appears to easily pass a cost-benefit test.

While it is likely that Sydney Water will maintain and update the 5-year water conservation plan under its responsibilities under the Greater Sydney Water Strategy, including an operating licence condition will allow us to monitor Sydney Water's implementation of the plan. The operating licence condition is enforceable and transparent, and it will provide assurance that Sydney Water is undertaking water conservation appropriately.

We recommend that the licence require Sydney Water to complete and report on the review of the water conservation plan to DPE and IPART by 30 November every year, or another date approved by IPART. This will allow the water conservation plan to inform the Monitoring, Evaluation and Review (MER) process for reviewing progress of the Greater Sydney Water Strategy implementation plan's actions. Aligning the water conservation plan and MER process in this way will mean that there is support from DPE (and IPART) for Sydney Water's updated water conservation plans and that they align with the targets, priorities and outcomes of the Greater Sydney Water Strategy.

3.1.1 Specifications for the 5-year water conservation plan

We recommend that the operating licence should require Sydney Water's 5-year water conservation plan to meet several requirements, including to:

- cover a range of options for water conservation including, but not limited to, water efficiency (including consumer behaviour programs), leakage reduction and Recycled Water.
- be consistent with the NSW Water Efficiency Framework (published in August 2022)
- consider the strategic context provided by the Greater Sydney Water Strategy

- demonstrate how Sydney Water contributes to the water conservation goals set in the Greater Sydney Water Strategy and any subsequent monitoring, evaluation, reporting or annual reviews of the strategy.

We recommend that the operating licence should continue to require an economic approach to water conservation, as in the current operating licence. We consider that this continues to be appropriate and is in the public interest. This means Sydney Water will continue to be required to assess proposed programs and projects against the current economic method. However, Sydney Water should not be limited to using only an economic approach in making investment decisions for water conservation.

Supporting information for this review



The current economic method

The current economic method (currently the economic level of water conservation method) requires Sydney Water to consider the largest amount of water conservation that can be achieved for a cost that is less than the value of the water that is saved. This is the economic level of water conservation. Conservation activities beyond this point are not useful for customers or taxpayers because the cost of achieving that extra conservation is higher than the benefit of the water saved.

The current economic method requires Sydney Water to thoroughly investigate all options before deciding on water conservation measures to be implemented, making it more likely that prudent investments will be identified and less likely that good conservation opportunities will be overlooked.

We recommend that the operating licence should require Sydney Water to consider specified factors, including an economic approach, in choosing water conservation programs and projects in its 5-year water conservation for implementation, as follows:

- Sydney Water should include details of programs and projects that Sydney Water has considered over the 5-year life of the water conservation plan and explain which ones are selected for implementation, using an economic approach to assess the relative costs and benefits of each water conservation project. This is consistent with the recommended approach in the NSW Water Efficiency Framework which informs utilities about how to use an economic approach to water conservation. Sydney Water should consider the guidance in the NSW Water Efficiency Framework in implementing its economic approach to selecting water conservation programs and projects.
- Sydney Water should consider the strategic context of the Greater Sydney Water Strategy and demonstrate how its selected water conservation projects and programs contribute to the water conservation goals in the Greater Sydney Water Strategy for Sydney to save 38 GL/year of drinking water by 2030 and 49 GL/year by 2040,²³ or any changes to these goals as the strategy is reviewed and updated. Sydney Water can demonstrate where it has selected water conservation programs or projects that may not be the most economic choice if it helps meet the strategic context and goals of the Greater Sydney Water Strategy. Examples of this could be for Sydney Water to include projects or programs aimed at behaviour change and public education initiatives about water conservation.

- Similarly, Sydney Water should consider the objectives of the operating licence and consider how its selected water conservation projects and programs help to minimise or manage the impacts of climate change on the water supply.



Cost-benefit analysis for requiring an economic approach including applying the current economic method in the operating licence

The current economic method applies an economic level of water conservation (ELWC) to determine which water conservation activities Sydney Water should undertake. The ELWC framework compares the economic benefit of conserving a given quantity of water to the cost of achieving that conservation. Under the current economic method, those activities where the benefit exceeds the cost would be prioritised.

Economic benefit is estimated by applying the Long Run Marginal Cost (LRMC) per kilolitre to the number of kilolitres conserved. LRMC estimates the avoided cost of augmenting water supply to produce the quantity of water that is conserved.

The current economic method based on ELWC has a built-in cost-benefit analysis. Setting a conservation target that is either higher or lower than the ELWC-based target would result in a loss of net economic benefit compared to the ELWC target. In other words, requiring the current economic method (based on ELWC) to be applied will maximise net benefits as long as it is applied correctly and the chosen activities are undertaken.

In their responses to the Issues Paper, DPE and PIAC made comments that support the proposed approach in our draft recommendations. Their view was that Sydney Water should not be limited to only implementing water conservation measures that are assessed as economic to avoid economic efficiencies being prioritised over genuine water conservation.

Supporting information for this review



The NSW Water Efficiency Framework

In 2022, DPE published the [NSW Water Efficiency Framework and Program](#) consistent with action 6.6 of the NSW Water Strategy.²⁴

Action 6.6 is one of many actions in the NSW Water Strategy to support resilient, prosperous and liveable cities and towns. The Framework seeks to drive greater water efficiency and water conservation in NSW and considers the total water cycle.

The Framework serves as a best practice guide for the water industry designed to use when implementing water efficiency initiatives. The Framework contains guidance for economic evaluation and criteria that emphasises the use of a robust economic assessment.²⁵

Source: DPE, Water Efficiency Framework, September 2022. Available at: [Water Efficiency Framework \(water.dpie.nsw.gov.au\)](http://water.dpie.nsw.gov.au)

3.1.2 Our recommended operating licence conditions

Box 3.1 Recommended licence conditions for water conservation and efficiency

12 Water conservation

12.1 Water conservation plan

- (1) Sydney Water must maintain a 5-year water conservation plan that:
 - (a) covers a range of options for water conservation including, but not limited to, water efficiency (including Consumer behaviour programs), leakage reduction and Recycled Water,
 - (b) is consistent with the NSW Water Efficiency Framework (published by the NSW Government in August 2022 and the Greater Sydney Water Strategy),
 - (c) demonstrates how Sydney Water contributes to the water conservation goals set in the NSW Water Efficiency Framework and Greater Sydney Water Strategy,
 - (d) demonstrates how Sydney Water contributes to any subsequent monitoring, evaluation, reporting or annual reviews of the Greater Sydney Water Strategy,
 - (e) includes details, including timeframes, of proposed programs and projects over the life of the water conservation plan,
 - (f) assesses the proposed programs and projects against the Current Economic Method,
 - (g) furthers the objectives set out in clause 1(1)(b), and
 - (h) considers any written guidance that the Minister provides to Sydney Water.
- (2) Sydney Water must implement the current water conservation plan.
- (3) Sydney Water must, by 30 November each year (or by another date nominated by Sydney Water and approved by IPART in writing):
 - (a) review and update the water conservation plan to:
 - (i) identify activities carried out under the plan over the immediately preceding financial year,
 - (ii) assess its progress towards meeting the overall objectives of the plan, and

Box 3.1 Recommended licence conditions for water conservation and efficiency

- (iii) ensure the plan is meeting its objectives, and the requirements of clause 12.1(1),
- (b) submit to the Department and IPART:
 - (i) the updated plan, and
 - (ii) a report outlining the reasons for any changes to the plan and the outcomes of the annual review, and
- (c) make the updated plan and report following the annual review Publicly Available.

3.2 The current economic method



Review principle

Recognising new strategies or policies



Our draft recommendation

We recommend:

- Retaining requirements for Sydney Water to make a copy of the current economic method and a plain English summary of the current economic method publicly available and including requirements to keep these updated at least annually.
- Including new requirements for Sydney Water to update the economic level of water conservation using the current economic method but removing requirements for Sydney Water to publish the economic level of water conservation on its website.
- Rephrasing the current operating licence conditions that give the Minister the power to make directions to Sydney Water to update the current economic method to focus on the requirement on Sydney Water to update the method if requested to do so by the Minister.
- Including a new operating licence condition requiring Sydney Water to seek the Minister's approval if it seeks to initiate changes to the current economic method

Our recommendations do not materially change the requirements on Sydney Water under the current operating licence.

Retaining these requirements promotes transparency about the current economic method used to calculate the economic level of water conservation and identify efficient water conservation programs (noting that this is not the only factor for identifying appropriate water conservation programs, as discussed in the previous section).

We consider that it is appropriate for Sydney Water to continue to provide an explanation of the current economic method on its website for transparency.

We have proposed to remove the current operating licence requirement for Sydney Water to publish the economic level of water conservation that it has calculated using the current economic method. We consider that reporting a single, aggregated economic level of conservation does not serve any specific purpose, and may well be misleading as conditions change, particularly during drought events. Instead, we have proposed to replace this operating licence condition with one to update the economic level of water conservation using the current economic method. This is implied in the current operating licence as Sydney Water must calculate the economic level of water conservation before it can publish it. The proposed new operating licence condition makes Sydney Water's obligation clear.

We recommend retaining requirements for Sydney Water to review and update the current economic method.

We consider that it is necessary that Sydney Water regularly reviews and updates the current economic method to ensure that it remains an accurate way to identify efficient water conservation measures. We recommend that this review takes place at least annually by 30 September every year. In its response to the Issues Paper, Sydney Water stated that it would support a requirement to review the economic level of water conservation on a quarterly basis for internal decision-making purposes.

We have proposed a new operating licence condition to enable Sydney Water to initiate reviews of the current economic method, with the Minister's approval. The current operating licence does not enable Sydney Water to seek changes to its economic approach and we consider this to be a gap. We consider that the Minister should continue to be responsible for that approval. This is an important policy decision and the Minister is the appropriate decision maker. Sydney Water and DPE support providing a mechanism in the operating licence for modifying the Current Economic Method. Our recommendation does not inhibit Sydney Water from reviewing the current economic method more frequently than annually. Annual reviews are the minimum requirement.

We do not recommend retaining the current operating licence condition which gives the Minister power to direct Sydney Water to change its assessment of conservation efficiency or general economic approach. Instead, Sydney Water should be required to update the current economic method if directed by the Minister. The Minister has existing powers to issue directions to Sydney Water under the *State Owned Corporations Act 1989* (NSW) (SOC Act). In its response to the Issues Paper, PIAC agreed with the approach proposed in our draft recommendation.

3.2.1 Our recommended operating licence conditions

Box 3.2 Recommended licence condition for the current economic method

12 Water conservation

12.2 Current economic method

- (1) Sydney Water must make the following Publicly Available:
 - (a) a copy of the Current Economic Method
 - (b) a plain English summary of the Current Economic Method.
- (2) Sydney Water must:
 - (a) update the economic level of water conservation using the Current Economic Method for the purposes of clause 12.1(1) annually by 30 September of each year,

Box 3.2 Recommended licence condition for the current economic method

- (b) review and update the Current Economic Method if requested to do so by the Minister in writing, and
 - (c) in reviewing the Current Economic Method, consider any matters specified by the Minister in writing.
- (3) Sydney Water may review and update the Current Economic Method at any time with the Minister's written approval.
- (4) Sydney Water must update the information referred to in clause 12.2(1) to reflect any changes to the Current Economic Method and the plain English summary within 10 business days of the changes taking effect.



Reporting Manual: Reporting on water conservation and efficiency

We propose to remove current requirements for reporting on water conservation and efficiency in the Reporting Manual.

Section 2.1 of the current Reporting Manual includes prescriptive requirements for Sydney Water to report on its water conservation program and to include a forward-looking plan for the next 5 years. We consider that this is no longer necessary with the introduction of the 5-year water conservation plan in the operating licence. Under our draft recommendations for the operating licence, Sydney Water would be required to publish the 5-year water conservation plan on its website and provide a copy of the updated plan to DPE and IPART after its annual review. Additional prescription in the reporting manual would not add benefit.

We also propose to remove the current requirements for Sydney Water to notify IPART of changes to the current economic method under section 2.2 of the current Reporting Manual. DPE leads the reviews of the current economic method. While IPART may provide input into the review process, we do not have an active role in the current economic method. We consider that it is adequate that the Minister approves changes to the current economic method and no further role is necessary for IPART.

3.3 Water strategy planning consistent with the Greater Sydney Water Strategy



Review principle

Focusing on outcomes



Our draft recommendation

We recommend including new operating licence conditions requiring Sydney Water to:

- engage in water strategy planning for Greater Sydney that is consistent with the priorities of the Greater Sydney Water Strategy
- cooperate with the Department of Planning and Environment in any review of the Greater Sydney Water Strategy.

We do not recommend including requirements for Sydney Water to implement the Greater Sydney Water Strategy.

Our recommended operating licence condition requiring Sydney Water to cooperate with the Department of Planning and Environment in reviews of the Greater Sydney Water Strategy is similar to requirements in the current operating licence for Sydney Water to participate in reviews of the Metropolitan Water Plan.²⁶ We consider that this requirement supports the successful delivery of the Greater Sydney Water Strategy. Having an operating licence condition allows us to monitor Sydney Water's compliance and participation in the reviews.

In its response to the Issues Paper, Sydney Water supported the approach proposed in our draft recommendation. Sydney Water explained that it is committed to contributing key inputs into the Greater Sydney Water Strategy such as demand forecasts and investment in water conservation. Sydney Water ensures that any revised plan considers whole of water cycle management, community and stakeholder engagement, provides clear accountabilities and responsibilities and is aligned with its environmental requirements.

We have not recommended that Sydney Water implement actions from the Greater Sydney Water Implementation Plan, unlike in the current operating licence which requires Sydney Water to implement actions from the Metropolitan Plan.²⁷ We consider that hardwiring requirements to implement actions from the Greater Sydney Water Strategy implementation plan into the operating licence may result in these actions not being able to be updated and re-evaluated as easily, in accordance with funding availability and as circumstances change. Instead, we recommend that Sydney Water must engage in water strategy planning for Greater Sydney that is consistent with the priorities of the Greater Sydney Water Strategy. We consider that this achieves a similar objective but is a more flexible approach.

Finally, we do not recommend including a requirement in the licence for the Minister to be able to direct Sydney Water to implement actions under the Greater Sydney Water Strategy Implementation Plan, similar to the requirements of the current operating licence.²⁸ The Minister has existing powers to issue directions to Sydney Water under the SOC Act.²⁹

3.4 Data sharing arrangement with DPE



Review principle

Focusing on outcomes



Our draft recommendation

We recommend retaining and updating the current operating licence condition about Sydney Water's data sharing agreement with DPE which assists the 2 parties to deliver actions under and review of the Greater Sydney Water Strategy.

We recommend requiring Sydney Water in the operating licence condition to use its 'best endeavours' to maintain this agreement and also comply with it. Our draft recommendations for this area are not substantially different to what is in the current 2019-2024 operating licence.

We recommend retaining the current operating licence conditions relating to a data sharing agreement with DPE but propose that Sydney Water should be required to comply with, and use its 'best endeavours' to maintain, this agreement, acknowledging that maintaining the agreement this cooperation from DPE.

The purpose of the data sharing agreement is to facilitate 2-way data and information sharing between Sydney Water and DPE, and to assist them in reviewing the Greater Sydney Water Strategy and other related reviews. A data sharing agreement is a useful instrument for establishing the requirements for Sydney Water to provide information to DPE. Such an agreement supports DPE's urban water policy and planning functions, while also ensuring that Sydney Water has certainty about its expectations to provide such information. There is currently no other instrument that requires Sydney Water to provide accurate and timely data for reviewing the Greater Sydney Water Strategy.

In their responses to the Issues Paper, Sydney Water and DPE expressed their support for retaining the current requirement for data sharing to support the government's urban water strategies and long-term planning. DPE explained that that Sydney Water will need to participate in reviews led by DPE and should engage closely with DPE on any Sydney Water led reviews. The data sharing agreement is necessary for DPE to request documents from Sydney Water to facilitate DPE's participation in Sydney Water's reviews.

3.4.1 Our recommended operating licence conditions

Box 3.3 Recommended licence condition for the Greater Sydney Water Strategy

13 Water Planning

13.1 Greater Sydney Water Strategy

- (1) Sydney Water must engage in water strategy planning for Greater Sydney that is consistent with the priorities in the Greater Sydney Water Strategy.
- (2) Sydney Water must cooperate with the Department in any review of the Greater Sydney Water Strategy.

32 Data sharing

- (1) Sydney Water must use its best endeavours to maintain a data sharing agreement with the Department that identifies:
 - (a) the roles and responsibilities of Sydney Water and the Department under the agreement,
 - (b) the types of data and information that are covered by the agreement,
 - (c) the purposes for the sharing of data and information,
 - (d) the technical and quality requirements that shared data and information must meet,
 - (e) agreed timelines and the format for sharing data and information,
 - (f) procedures for resolving matters of conflict in providing data and information, and
 - (g) other matters that Sydney Water and the Department agree are necessary to support effective collaboration on water planning and strategy.
- (2) Sydney Water must comply with the data sharing agreement.

3.5 Greater Sydney Drought Response Plan



Review principle

Focusing on outcomes



Our draft recommendation

We recommend including new operating licence conditions requiring Sydney Water to:

- cooperate with WaterNSW to jointly review the Greater Sydney Drought Response Plan annually
- use its best endeavours to revise the plan annually with WaterNSW
- provide a draft updated plan to DPE for comment
- provide the updated plan to the Minister after considering DPE's comments and make it publicly available on Sydney Water's website
- implement all actions that are assigned to it in the Greater Sydney Drought Response Plan by the dates specified in the Plan.

The current operating licence requires Sydney Water use its best endeavours to develop a drought response plan this in cooperation with WaterNSW.³⁰ We recommend replacing this requirement with one to maintain the [Greater Sydney Drought Response Plan](#) which Sydney Water developed with WaterNSW and DPE. As Sydney Water and WaterNSW developed the plan together and both have responsibilities for drought response that are interrelated, it is important that they have joint responsibility to maintain the Greater Sydney Drought Response Plan.

We consider that it is appropriate that Sydney Water (and WaterNSW) be required to review the plan annually and provide the updated plan and an explanation of the changes to the Minister. Sydney Water should also be required to make the plan publicly available on its website for transparency. Sydney Water should be required to use its best endeavours to undertake the review cooperatively with WaterNSW. If changes cannot be agreed, Sydney Water should explain any points of disagreement to the Minister.

DPE currently maintains the plan. In its response to the Issues Paper, DPE sought that the updated plan should be provided to DPE. However, we consider that the updated plan should be provided to the Minister. This is an important policy decision and the Minister is the appropriate decision maker. The Minister can engage DPE as required. We have proposed that prior to providing the updated plan to the Minister, Sydney Water should provide a draft updated plan to DPE for review, and Sydney Water should address any comments from DPE provided within the timeframe set out in the recommended operating licence. We have proposed this timeframe to allow Sydney Water adequate time to consider the comments fully before providing the updated plan to the Minister.



Cost-benefit analysis for requiring a Greater Sydney Drought Response Plan in the operating licence

We have not performed a quantitative cost-benefit analysis on this requirement given that it is focused on processes rather than outcomes. However, qualitatively, we consider that this requirement would create net benefits. Planning investments usually create net economic benefits because poor planning, or a lack of planning, can be extremely serious.

In their responses to the Issues Paper, Sydney Water expressed support for including operating licence conditions for Sydney Water to maintain and review the Greater Sydney Drought Response Plan, jointly with WaterNSW.

Finally, we recommend including operating licence requirements for Sydney Water to implement actions that are assigned to it in the Greater Sydney Drought Response Plan by the dates set out in the plan. This will not prevent Sydney Water and DPE from reviewing and making changes to the actions and completion dates set out in the plan as circumstances change. In their responses to the Issues Paper, Sydney Water and DPE supported including operating licence requirements for implementing the Greater Sydney Drought Response Plan.

While stakeholders consider that Sydney Water will meet its obligations with implementing the Greater Sydney Drought Response Plan, an operating licence requirement will ensure accountability and transparency.

3.5.1 Our recommended operating licence conditions

Box 3.4 Recommended licence conditions for the Greater Sydney Drought Response Plan

13 Water Planning

13.2 Greater Sydney Drought Response Plan

(1) Sydney Water must:

(a) cooperate with Water NSW to jointly review the Greater Sydney drought response plan each calendar year,

(b) submit to the Minister an updated Greater Sydney drought response plan and a report explaining the outcome of the review and any changes, by:

(i) 30 November each year, or

(ii) another date nominated by Sydney Water and approved by IPART in writing, and

Box 3.4 Recommended licence conditions for the Greater Sydney Drought Response Plan

(c) make the updated plan Publicly Available within 10 business days of submitting it to the Minister.

(2) Sydney Water must:

(a) use its best endeavours to agree on an updated plan with Water NSW and to jointly submit the updated plan to the Minister under clause 13.2(1)(b), and

(b) if Sydney Water and Water NSW do not agree on an updated plan, identify any points of disagreement in its report to the Minister under clause 13.2(1)(b).

(3) In the event Sydney Water and Water NSW do not agree on an updated plan, Sydney Water is to submit separate updated plan to the Minister.

(4) Sydney Water must:

(a) submit a draft updated plan to the Department for comment at least 30 business days before submitting it to the Minister under clause 13.2(1)(b), and

(b) consider any comments the Department provides within 20 business days of the date the draft updated plan was submitted to the Department under clause 13.2(4)(a), before finalising the plan and submitting it to the Minister under clause 13.2(1)(b).

(5) Sydney Water must:

(a) implement all actions in the plan that are assigned to it by the date specified in the plan, and

(b) cooperate with Water NSW to implement all actions in the plan that are jointly assigned to it and Water NSW, and use its best endeavours to do so by the time specified in the plan

3.6 Long-term capital and operational planning



Review principle

Recognising new strategies or policies



Our draft recommendation

We recommend including a new operating licence condition which requires Sydney Water to have a Long-Term Capital and Operational Plan that:

- considers the strategic context of the Greater Sydney Water Strategy
- identifies and assesses water supply augmentation on a catchment to consumer basis
- considers the implications of the preferred water supply augmentation options on Water NSW,
- considers a range of long-term investment options that delivers the best value for customers
- recommends to the Department the preferred water supply augmentation option(s) that should be taken forward to an investment decision, and
- considers any written guidance that the Minister provides to Sydney Water.

We also recommend that Sydney Water should review and update the Long-Term Capital and Operational Plan at least once every 5 years and submit the updated plan to the Minister.

The Long-Term Capital and Operational Plan captures Sydney Water's key infrastructure and operational decisions. It is aligned with the NSW Water Strategy and the Greater Sydney Water Strategy. It also provides the long-term context for future pricing proposals to IPART. We expect a business to provide us with its long-term investment plans to support its pricing proposals in some detail, together with supporting evidence and assumptions. We do not intend to micro-manage the investment programs, but we need to be confident that the investment plans are designed to deliver in the long-term interest of customers.

On 22 January 2021, the Minister issued a direction to Sydney Water to transfer accountability for augmentation planning in the Greater Sydney region from WaterNSW to Sydney Water. This Ministerial direction sets out requirements for the contents of the Long-Term Capital and Operational Plan as well as how Sydney Water is to work together with WaterNSW. We have mirrored similar requirements for the Long-Term Capital and Operational Plan, as set out in this [Ministerial direction](#), in our draft recommendations for the operating licence. Including these requirements in the operating licence allows us to monitor Sydney Water's compliance and increases transparency and accountability.

In their responses to the Issues Paper, Sydney Water, DPE and EPA expressed their support for including operating licence conditions requiring Sydney Water to have a Long-Term Capital and Operational Plan, in cooperation with WaterNSW, to support long term planning. DPE and the

EPA also support including requirements for Sydney Water to periodically review and update the plan and provide it to the Minister. In subsequent discussions, DPE has informed IPART that it would expect the Long-Term Capital and Operational Plan to be reviewed at least every 5 years, or sooner if Sydney Water identifies that this is necessary and allow DPE an opportunity to review the plan and provide comments, consistent with our draft recommendations.

PIAC suggested that Sydney Water should be required to cooperate with other relevant stakeholders and consider the long-term interests of consumers and the community in all long-term planning processes. We have not made recommendations specifically for this Long-Term Capital and Operational Plan in response to PIAC's feedback. However, we have recommended a new clause 1(2) of the operating licence that Sydney Water must consider the operating licence objectives when doing anything authorised by the operating licence. This includes supporting the long-term interests of customers and consumers in the community.

3.6.1 Our recommended operating licence conditions

Box 3.5 Recommended licence conditions for the Long-term capital and operational plan

13 Water Planning

13.6 Long-term capital and operational plan

- (1) Sydney Water must maintain a long-term capital and operational plan that:
 - (a) considers the strategic context of the Greater Sydney Water Strategy,
 - (b) identifies and assesses water supply augmentation on a catchment to Consumer basis,
 - (c) considers the implications of the preferred water supply augmentation options on Water NSW,
 - (d) considers a range of long-term investment options that deliver the best value for Consumers,
 - (e) recommends to the Department the preferred water supply augmentation option(s) that should be taken forward to an investment decision, and
 - (f) considers any written guidance the Minister provides to Sydney Water.
- (2) Sydney Water must review and update its long-term capital and operational plan and submit a copy of the updated plan, along with a report explaining the outcome of the review and any changes, to the Minister:
 - (a) at least once between 1 July 2024 and 30 June 2028, and
 - (b) on request by the Minister with any additional review to be completed within 12 months of the Ministers request.
- (3) Sydney Water must:
 - (a) consult with Water NSW in its review of its plan,
 - (b) submit a draft updated plan to the Department for comment at least 30 business days before submitting it to the Minister under clause 13.6(2),
 - (c) consider Water NSW's input and any comments the Department provides within 20 business days of the date the draft updated plan was submitted to the Department under clause 13.6(3)(b) before finalising the plan and submitting it to the Minister under clause 13.6(2), and
 - (d) obtain board approval of the plan before finalising the plan and submitting it to the Minister under clause 13.6(2).

3.7 Undertaking water supply augmentation planning with WaterNSW



Review principle

Recognising new strategies or policies



Our draft recommendation

We recommend including new operating licence conditions specifying Sydney Water's responsibilities for water supply augmentation planning as follows:

- assessment of the need for water supply augmentation planning
- identification of water supply augmentation options, including capital and non-capital options
- whole of system assessment of the water supply augmentation options and prioritisation to support strategic business cases
- concept development and feasibility studies for preferred water supply augmentation options to support business cases
- costings of preferred water supply augmentation options to support a strategic business case.

We also recommend requiring Sydney Water to maintain a Memorandum of Understanding with WaterNSW so that the 2 entities can work together cooperatively to deliver the water supply augmentation function for Greater Sydney.

Sydney Water has been undertaking this role under [direction from the Minister](#) issued on 22 January 2021 (Ministerial Direction). It previously used to be undertaken by WaterNSW. The Ministerial Direction transferred the role to Sydney Water.

Including conditions in the operating licence setting out Sydney Water's responsibilities allows us to monitor Sydney Water's compliance and increases transparency and accountability. In their responses to the Issues Paper, Sydney Water and DPE expressed their support for including requirements in the operating licence setting out Sydney Water's responsibilities for supply augmentation planning in Greater Sydney.

We have also proposed operating licence conditions requiring Sydney Water to use its best endeavours to maintain and comply with a Memorandum of Understanding (MoU) with WaterNSW because Sydney Water requires WaterNSW's support in undertaking the water supply augmentation planning role. Sydney Water and WaterNSW first developed this MoU under the Ministerial Direction when the water supply augmentation role was transferred from WaterNSW to Sydney Water.



Cost-benefit analysis for requiring Sydney Water to engage in ongoing water supply augmentation planning for Greater Sydney

We have not performed a quantitative cost-benefit analysis on this requirement, given that it is focused on processes rather than outcomes. However, it is possible to say in general that undertaking planning functions and working cooperatively with other supply chain partners are not particularly high-cost activities.

In contrast, the consequences of making a sub-optimal investment choice in multi-billion dollar assets such as a new dam, water recycling or desalination plant would likely be of a similar order of magnitude to these investments themselves.

It seems very likely that the requirements to plan and work cooperatively with Water NSW would deliver net economic benefits that are potentially large.

In its response to the Issues Paper, DPE expressed its support for using a MoU to create clear and transparent roles and responsibilities. DPE notes that the current intention is for the planning function to continue to be led by Sydney Water, with the asset related inputs to be provided and outcomes to be implemented by Sydney Water and WaterNSW based on their respective responsibilities under their Acts and operating licences.

Our recommended licence condition requires that the MoU include processes for WaterNSW to support Sydney Water by providing the necessary information, resources and knowledge for Sydney Water to undertake its water supply augmentation role. In turn, the MoU must also set out how Sydney Water is to support WaterNSW. Given that Sydney Water is undertaking the lead role with water supply augmentation, but WaterNSW continues to calculate the supply yield, Sydney Water is to consult with WaterNSW so that the calculations are well-informed. It should also provide any relevant information to WaterNSW about impacts to it from the water supply augmentation work that Sydney Water is undertaking.

We are considering making similar recommendations for the WaterNSW operating licence, which we are also currently reviewing.

3.7.1 Our recommended operating licence conditions

Box 3.6 Recommended licence conditions for Water supply augmentation planning

13 Water Planning

13.3 Water supply augmentation planning

(1) Sydney Water must engage in ongoing water supply augmentation planning for Greater Sydney that includes:

- (a) assessment of the need for water supply augmentation,
- (b) identification of water supply augmentation options, including capital and non-capital options,
- (c) whole-of-system assessment of water supply augmentation options and prioritisation to support strategic business cases,
- (d) concept development and feasibility studies for preferred water supply augmentation options to support strategic business cases, and
- (e) costings of preferred water supply augmentation options to support a strategic business case.

(2) Sydney Water must use its best endeavours to:

- (a) maintain a memorandum of understanding with Water NSW about water supply augmentation planning for Greater Sydney, and
- (b) comply with that memorandum of understanding.

(3) The memorandum of understanding referred to in clause 13.3(2) must include processes for:

- (a) Water NSW to assist Sydney Water with water supply augmentation planning by providing Sydney Water with:
 - (i) data, information and knowledge, and
 - (ii) resourcing support, including access to Water NSW subject-matter experts.
- (b) Water NSW to consult with Sydney Water on system yield calculations,
- (c) Sydney Water to consult with Water NSW on:
 - (i) projects that may impact system yield, and
 - (ii) water supply augmentation options that may have implications for Water NSW.
- (d) Sydney Water and Water NSW to obtain board approval for water supply augmentation options that may have implications for Water NSW.

3.8 Sydney Desalination Plant



Review principle

Protecting customers, the community and the environment



Our draft recommendation

We recommend including a new operating licence condition that requires Sydney Water to make production requests to the Sydney Desalination Plant (SDP) in accordance with the *Decision Framework for SDP Operation* (Decision Framework)

The Sydney Desalination Plant (SDP) is a rainfall independent source of drinking water, with current capacity to produce up to 250 million litres of drinking water per day, equivalent to about 15% of Sydney's current demand.

From 1 July 2023, SDP commenced operating on a flexible full-time basis to produce drinking water and increase/decrease production in response to dam levels and risk triggers.³¹ This is a shift from the current stop-start nature of operation and gives SDP more flexibility to respond to risk triggers such as system shocks, outages and increasing dam depletion rates. SDP is required under its [operating licence](#) under the *Water Industry Competition Act 2006* (NSW) (WIC Act) to produce drinking water in the volumes specified in a production request made by Sydney Water that is in accordance with the Decision Framework.³²

SDP's operating licence defines the Decision Framework as a framework for Sydney Water to determine the quantities of drinking water to be supplied from SDP and specifies requirements that should be fulfilled relating to amending or replacing the framework.³³

The Decision Framework is part of government policy initiatives to satisfy the objectives of the Greater Sydney Water Strategy. Action 2.2 of the Greater Sydney Water Strategy implementation plan³⁴ sets out that Sydney Water, together with DPE, will:

- amend Sydney Desalination Plant (SDP) operating rules to provide flexible operation and optimise its contribution to water supply security and drought management in line with the Greater Sydney Water Strategy
- report annually on the operation and production of the SDP.

The Decision Framework was endorsed by the then Minister for Lands and Water in July 2022.

To protect the interests of customer, we consider there is value in requiring Sydney Water to apply the Decision Framework when making production requests to SDP. Imposing a licence condition on Sydney Water will allow us to audit and enforce Sydney Water's compliance with the Decision Framework. This would enable transparency and accountability on how SDP is used and support the annual report under the Greater Sydney Water Strategy implementation plan.

In our Issues Paper we raised that the Greater Sydney Water Strategy and its implementation plan do not require Sydney Water to comply with the Decision Framework. The Decision Framework puts the responsibility of assessing the efficiencies and justifying SDP's water production onto Sydney Water. SDP's role is to operate and maintain infrastructure to deliver the flow requests made by Sydney Water. The level of risk arising from SDP's flexible operation depends on how well Sydney Water applies the Decision Framework and the robustness of the framework itself to cater for all situations.

SDP's new prices came into effect from 1 July 2023. IPART's Final Report for the price review outlines that based on the new prices and an average production level of 68.4%, Sydney Water, who is SDP's only customer at this time, will have an annual bill in 2023-24 that is 8% higher than the bill in 2022-23.³⁵

For end-use customers, the costs of SDP's services to Sydney Water make up around 10% of a typical Sydney Water end-use customer bill. Therefore, an 8% increase in the prices SDP charges to Sydney Water would flow through to a 0.6% increase in end-use customer bills. For a typical residential customer bill of about \$1,300 per year, this would result in about a \$10 increase in the annual bill.³⁶

The actual annual bills that Sydney Water pays will vary each year based on how much it decides to use SDP. Any inefficiencies from Sydney Water in applying the Decision Framework to production requests could also have a potential impact on the costs to Sydney Water's customers. If Sydney Water were to make a production request that was not in accordance with the Decision Framework, there is a risk that SDP produces and supplies water at volumes in excess of the actual needs of Sydney Water's customers.

DPE does not support any new conditions in the operating licence for Sydney Water for interacting with SDP. DPE considers that SDP's obligations under its network operating licence under the *Water Industry Competition Act 2006* are adequate to meet the annual production requests and should adequately protect customer interests.

Sydney Water considers that the long-term interests of customers are considered under the Greater Sydney Water Strategy, SDP's licence obligations and the Decision Framework. However, it has acknowledged IPART's concerns about ensuring compliance and increasing transparency and accountability. To this end, Sydney Water supports a licence condition that focus on requiring Sydney Water to make production requests in accordance with the Decision Framework.

3.8.1 Our recommended operating licence condition

Box 3.7 Recommended licence conditions for annual production requests to Sydney Desalination Plant

13 Water Planning

13.4 Annual production requests to Sydney Desalination Plant

Sydney Water must make Annual Production Requests consistently with the Decision Framework.

3.9 Priority Sewerage Plan



Review principle

Removing redundancy



Our draft recommendation

We recommend removing the current operating licence conditions requiring Sydney Water to:

- participate in any government reviews of the Priority Sewerage Program.
- Implement and comply with any outcomes of any NSW Government review of the Priority Sewerage Program, if required by the Minister.

The current operating licence requires Sydney Water to participate cooperatively in any NSW Government review of the Priority Sewerage Program and also to implement and comply with any outcomes of any NSW Government review of the Priority Sewerage Program if required by the Minister.³⁷

We have proposed removing these requirements because we consider that the operating licence is not the appropriate instrument to empower the Minister to require Sydney Water to provide sewerage services to unsewered areas. There are other avenues for the Minister to do this, including under the SOC Act.

These requirements in the operating licence may set an expectation that Sydney Water will eventually provide services to currently unsewered areas and that the costs for this will be borne by Sydney Water's customer base. This could inhibit other options from being explored, such as a private utility providing services at a more cost-effective rate, or developer contributions being made to provide the public infrastructure. IPART has determined maximum prices for connecting to a water supply, sewerage or drainage system.³⁸

The Priority Sewerage Program was initiated by the NSW Government in the 1990s. The program provides improved wastewater services to selected existing but unsewered urban towns and villages in environmentally sensitive areas identified at that time by the Environment Protection Authority (EPA). The EPA does not have a role in determining Priority Sewerage Program obligations, the primary responsibility for the program is with the government. The areas to which the Priority Sewerage Program currently applies are Austral, Menangle, Menangle Park, Nattai, Scotland Island and Yanderra.³⁹

The Priority Sewerage Program has been a long running NSW Government program where properties in some of the unsewered areas have progressively been serviced or commitments for the provision of services have been made at various times. We consider that continuing to retain the current operating licence condition related to the Priority Sewerage Program may lead to a misperception that Sydney Water is responsible for delivering the program, when better options for servicing unsewered areas may be available now. We want to avoid encouraging residents to defer maintenance and upgrades to their onsite systems because they believe that a centralised sewerage service will shortly be provided by Sydney Water.

Chapter 4 >>

Climate risk readiness

Climate risk preparedness requires Sydney Water to manage its climate risks and provide sustainable services now and into the future.



Human-induced climate change refers to long-term shifts in temperatures and weather patterns because of anthropogenic activities.⁴⁰ NSW's climate is projected to change which will mean changing weather patterns, and increasing frequency, duration, and intensity of extreme weather events such as bushfires and floods.⁴¹⁻⁴² Government and policymakers have a key role in helping address the economic and social impacts of climate change.

The NSW Government has made commitments to take decisive and responsible action on climate change. These include climate-related objectives and actions outlined in NSW Climate Change Policy Framework, State Infrastructure Strategy 2018–2038, NSW Critical Infrastructure Resilience Strategy and NSW 2040 Economic Blueprint. Water specific objectives and priorities are outlined in the NSW Water Strategy and the Greater Sydney Water Strategy.

Climate change can impact water security, quality, demand and how water will be used in the future. Water industry infrastructure are also vulnerable to climatic events. Therefore, effective risk management is critical to the water industry's climate change resilience and adaptation.

Sydney Water has identified the following climate-related risks to its operations:

- reduced fresh water supplies
- increased customer demand for water
- increased risk of severe bushfires in water catchments
- increased algal blooms in dams
- increased risk of pipe corrosion and odours
- more extreme storms that push water resource recovery facilities over capacity
- higher sea levels and more storms that threaten low-lying coastal assets
- increased pipe failures due to changes in soil structure and stability
- large-scale disruptions to electricity supplies.⁴³

Sydney Water's operating licence sets minimum standards and protections for the essential water and wastewater services it provides to its 5 million customers. Therefore, it is appropriate for us to consider operating licence conditions relating to climate change.

In this chapter, we discuss our recommendations for the operating licence. Our draft recommendation is to promote effective management of climate-related risks without duplicating existing and emerging obligations. We have explained how we reached our recommendations the sections below, under the topics of abatement (mitigation), resilience, adaptation and risk management.

We propose to amend the operating licence objectives to establish an expectation for Sydney Water to consider climate change risks and actions. We are also proposing to link the objectives to planning-related clauses in the operating licence to strengthen the expectations. This is discussed in section 8.1.1.

We seek your feedback on our draft recommendations for including new operating licence conditions regulating Sydney Water's climate risk preparedness, below:

Draft recommendations for the operating licence

13. Include a new operating licence condition requiring Sydney Water to:
 - engage in an ongoing climate risk assessment and management process that is consistent with the NSW Government's Climate Risk Ready Guide
 - achieve a climate-risk maturity level of 'embedded', as defined in the Guide, by 30 June 2027 or another date nominated by Sydney Water and approved by IPART in writing and make reasonable progress to achieving a climate-risk maturity level of 'advanced' by 30 June 2028, or another date nominated by Sydney Water and approved by IPART in writing.
14. Include a new operating licence condition for Sydney Water to publish annual climate-related disclosures consistent with the IFRS S2 climate-related disclosures standard, or an Australian equivalent, from FY2025-26 onwards, if not already required by other legislation.

We also seek your feedback on our draft proposal for reporting against these operating licence requirements, as set out below.

Draft proposals for the Reporting Manual



Reporting Manual: Reporting on climate risk readiness

We propose including a requirement for reporting on Sydney Water's progress in achieving its net zero targets in the Reporting Manual.

4.1 Abatement



Review principles

- Protecting customers, the community and the environment
- Recognising new strategies or policies



Our draft recommendation

We recommend not including operating licence conditions for climate change abatement.

Abatement refers to how Sydney Water is reducing the impact of its operations on climate change. The services that Sydney Water provides are energy intensive and the processes that it undertakes, such as wastewater treatment, release significant greenhouse gas emissions to the environment.^k

We consider that the Sydney Water's actions under the Greater Sydney Water Strategy and its objectives under the Act require Sydney Water to undertake abatement action. We are also aware the NSW Government's [Climate Change \(Net Zero Future\) Bill 2023](#), which proposes to legislate NSW's net zero by 2050 target and establish an independent Net Zero Commission to monitor the State's progress.⁴⁴ NSW Environment Protection Authority's (EPA) are also developing requirements (discussed below) that will further promote abatement actions from Sydney Water.

Licence requirements requiring Sydney Water to undertake further prescriptive abatement actions may not provide additional benefit. These may also risk duplicating existing obligations or conflict with emerging obligations.

In their responses to the Issues Paper, DPE, OECC, EPA and Sydney Water expressed their support for this proposed approach.

The NSW Government's Statement of Expectations for Sydney Water^l sets out the expectations for Sydney Water to operate its business in a way that is consistent with the NSW Net Zero 2050 Plan. The NSW Net Zero Plan set a target to achieve a 70% reduction in greenhouse gas emissions by 2035 compared to 2005 emission levels and reach net zero by 2050.⁴⁵ The Greater Sydney Water Strategy Implementation Plan⁴⁶ also has actions for reducing emissions and supporting the NSW Government's Net Zero Plan.

Sydney Water has set its own aspirational target to achieve Net Zero by 2030 for its Scope 1 and 2 emissions^m and in its supply chain by 2040 (Scope 3 emissionsⁿ).⁴⁷ This aspirational target exceeds the Net Zero Plan targets.

^k Greenhouse gases covered are listed in Office of Energy and Climate Change, *Scope of the NSW state-wide net zero by 2050 target*, p 2, accessed 28 June 2023.

^l The Statement of Expectations for Sydney Water Corporation was issued by the then NSW Portfolio Minister and Shareholding Ministers on 26 April 2022. The purpose of the statement is to help Sydney Water ensure that its strategic direction aligns with the NSW Government's expectations.

^m Scope 1 emissions refer to those that are generated from sources that are directly owned or controlled by Sydney Water. Scope 2 emissions refer to all indirect emissions from the generation of the electricity purchased and used by Sydney Water on location.

ⁿ Scope 3 emissions refer to all indirect emissions that occur in Sydney Water's supply chain.

Relevant statutory objectives



Section 21 - The objectives of Sydney Water under the Act

(1) The principal objectives of the Corporation are—

(c) to be a successful business and, to this end—

[...]

(iii) to exhibit a sense of social responsibility by having regard to the interests of the community in which it operates, and

(b) to protect the environment by conducting its operations in compliance with the principles of ecologically sustainable development contained in section 6(2) of the *Protection of the Environment Administration Act 1991*, and

(c) to protect public health by supplying safe drinking water to its customers and other members of the public in compliance with the requirements of any operating licence.

The EPA also expects to impose climate change obligations on Sydney Water. Action 5(b) of the EPA's Climate Change Action Plan 2023-26 provides that the EPA will progressively require environment protection licensees^o (including Sydney Water) to prepare and implement a Climate Change Mitigation and Action Plan (CCMAP) to minimise emissions and exposure to climate risks.⁴⁸ The licensees will also have to report on the effectiveness of their CCMAP.

Currently, the EPA is still developing the requirements for the CCMAP. The focus for the CCMAP is expected to be on environmental impacts from emissions and risk of pollution events due to climate change impacts on licensee infrastructure. This could potentially include emissions targets for sectors or specific facilities. It is not expected to encompass impacts to customers or service delivery.⁴⁹ These requirements will also support Sydney Water in implementing appropriate climate-related opportunities and risk mitigation actions, including any future actions on abatement.

^o Environment protection licences are issued by the EPA under the *Protection of the Environment Operations Act 1997* (NSW) to regulate activities that may impact the environment.

4.2 Resilience and adaptation



Review principles

- Protecting customers, the community and the environment
- Recognising new strategies or policies



Our draft recommendation

We recommend not including operating licence conditions for climate change resilience and adaptation.

Resilience and adaptation are vital to enable Sydney Water to provide its services both now and into the future. Resilience relates to Sydney Water's ability to withstand and adapt to changing climate conditions and recover positively from shocks and long-term stresses. Adaptation refers to actions that Sydney Water takes to reduce the impact of changing climate conditions on assets, systems and products.

Climate change adaptation and resilience are complex issues for water utilities and there are no universal pathways, solutions or metrics as yet. We have considered existing and emerging obligations on Sydney Water relating to climate resilience and adaptation. Our draft recommendation is to not obligate Sydney Water with additional prescriptive resilience or adaptation actions as this may not provide further benefit, and risk duplicating or conflicting with current and emerging obligations.

In the previous section (4.1) we discussed Sydney Water's climate change obligations under the Greater Sydney Water Strategy and under the anticipated environment protection licence incoming requirements from that the EPA is developing. A key focus of the Greater Sydney Water Strategy is on improving Sydney's water security by building resilience to drought and the changing climate. The Greater Sydney Water Strategy Implementation Plan actions include:

- Developing and maintaining a detailed 5-year Water Efficiency Plan consistent with the long-term water efficiency goals for Sydney to save 38 GL/year of drinking water by 2030 and 49 GL/year by 2040.
- Improving Sydney's water security by building resilience to drought and the changing climate making better use of stormwater, wastewater and recycled water.
- Completing a long-term capital and operating plan (LTCOP)^P detailing 20-year investment needs to meet growth, renewals, service standards, and Greater Sydney Water Strategy outcomes.⁵⁰ The LTCOP considers of climate change on Sydney Water's services in identifying investment needs for the future.⁵¹

^P Sydney Water published its [long-term capital and operating plan](#) on May 2023

In the next section of this report, we discuss our draft recommendation for a new operating licence condition requiring Sydney Water to maintain and implement a climate risk management process that is consistent with the [NSW Climate Risk Ready Guide](#). This will require Sydney Water to identify and manage its climate-related risks. This should also assist Sydney Water in adapting and building climate resilience.⁵²

In their responses to the Issues Paper, DPE, OECC, EPA and Sydney Water expressed their support for this proposed approach.

4.3 Climate-related planning and risk management



Review principles

- Protecting customers, the community and the environment
- Recognising new strategies or policies



Our draft recommendation

We recommend including a new operating licence condition requiring Sydney Water to:

- engage in an ongoing climate-related risk assessment and management process consistent with the NSW Government's [Climate Risk Ready Guide](#) (Guide)
- on the enterprise scale, meet a climate-risk maturity level of "embedded", as defined in the Guide, by 30 June 2027 or another date nominated by Sydney Water and approved by IPART in writing, and make reasonable progress to achieve a climate-risk maturity level of "advanced" by 30 June 2028, or another date nominated by Sydney Water and approved by IPART in writing.

4.3.1 Climate-related risk management process

As discussed in the previous sections, Sydney Water has several obligations to manage its climate-related risks. These include the [NSW Water Strategy](#), the [Greater Sydney Water Strategy](#) and existing operating licence conditions.

Under its operating licence, Sydney Water is required to have management systems in place which include risk management frameworks that would implicitly consider risks posed by natural hazards.⁹ There are also new rules under the *Security of Critical Infrastructure Act 2018* (Cth), requiring Sydney Water to have a Critical Infrastructure Risk Management Program (CIRMP) as it is a responsible entity for critical water assets⁵³, and the EPA's anticipated requirements for a CCMAP (discussed in section 4.1 on abatement).

⁹ Sydney Water currently has a Drinking Water Quality Management System, Recycled Water Quality Management System, Asset Management System and Cyber Security Management System, as required by the current operating licence, in addition to other management systems.

However, some enterprise level risks exist outside Sydney Water's current management systems, and these are identified and considered separately by Sydney Water.⁵⁴

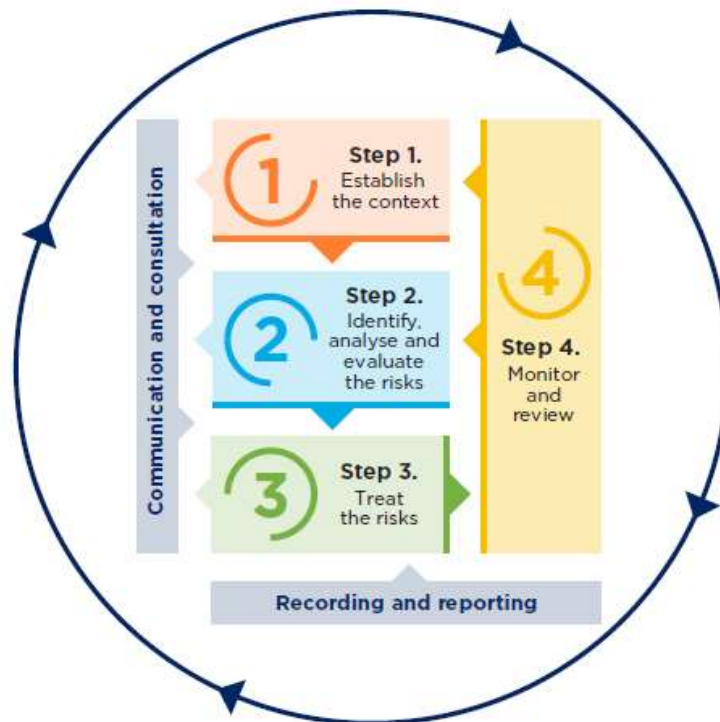
Requiring Sydney Water to have an organisation-wide climate-related risk assessment and management process would enable climate-related risks to be coordinate throughout the organisation, be clearly identifiable, visible, and appropriately addressed. The risk management process would provide a mechanism for IPART to review and audit Sydney Water's management of climate-related risk and drive greater transparency and accountability.

We are recommending that Sydney Water's climate-risk management process be consistent with the Guide.⁵⁵ This would have the following benefits:

- It strengthens Sydney Water's management of climate-related risks.
- It provides Sydney Water with clear guidance on NSW Government's expectations in a climate-risk management process.
- It will enable Sydney Water to align with NSW Government's approach to managing climate risks.⁵⁶ The NSW Audit Office includes state-owned corporations in its definition of agency.
- It provides Sydney Water flexibility to integrate that climate risk management and adaptation into existing frameworks and procedures and therefore minimises regulatory burden.
- It will set a standard against which we can audit Sydney Water's compliance and provide assurance that climate-related risks are being identified and managed appropriately.

The Guide provides a 4-step process for NSW Government agencies on how to consider climate risks that might impact their ability to achieve government objectives. It is aligned to the general process and considerations contained in *ISO 31000:2108 – Risk management guidelines* and *ISO 14091 – Adaptation to climate change – Guidelines on vulnerability, impacts and risk assessment*.

Figure 2 Outline of the Climate Risk Ready NSW process aligned to ISO 31000



Source: NSW Climate Risk Ready Guide, page 12.

In their responses to the Issues Paper, DPE and Sydney Water expressed their support for including a new operating licence condition requiring Sydney Water to have a climate-related risk management process consistent with the Guide.

4.3.2 Climate risk maturity

The Guide includes a Climate Risk Maturity Health Check Tool⁵⁷. The recommended maturity levels are outlined in Table 4.1. The Guide recommends that NSW Government organisations should aim to achieve a minimum climate risk maturity of 'systematic'. We consider that Sydney Water because a failure of Sydney Water's ability to provide water and sewage services would have a catastrophic impact on consumers, we should be required to reach a maturity level of 'advanced' at the enterprise level. This is because Sydney Water provides essential services with physical assets that are exposed to climate-related hazards, including floods and bushfires. We expect that climate-related hazards have a higher probability of disrupting the essential services that Sydney Water provides. The impact to people from this is also expected to be greater than disruptions to a typical government agency or department.

Table 4.1 Climate change risk maturity levels^a

Maturity level	Description
Fundamental	Climate change risk assessments have been undertaken in isolated parts of the organisation. Climate change risk is not considered in risk frameworks.
Repeatable	Climate change risk is considered in risk management frameworks and processes. Climate risk assessments are undertaken in isolated parts of the organisation.
Systematic	Clear and disciplined climate change risk management processes are established and proactively managed with an annual review of adaptation action implementation. A climate risk officer role is established in a central corporate function.
Embedded	Priority climate change risks for the organisation have been identified. An organisation-wide adaptation strategy for managing climate risks has been established. Monitoring, learning and reporting on climate risks is consistent.
Advanced	Climate change risk assessments and adaptation responses consider broader economic, financial, social and environmental resilience. Shared and interdependent risks are being actively managed. Monitoring, learning and reporting on climate risks results in continuous improvement.

Source: Climate Risk Ready NSW Guide, p 21



Cost-benefit analysis for climate risk management process

In the factual, the operating licence would require Sydney Water to develop and maintain a climate-related risk management program consistent with the NSW Guide. In the counterfactual, Sydney Water would not maintain a climate-related risk management program. Instead, these risks would be managed through other management systems and under other obligations. There would be no one centralised climate-related risk management program.

Under the factual scenario, Sydney Water would incur costs for developing and maintaining a climate-related risk management program.

The benefit of a climate risk management program could be that it would address climate-related risks specifically, including identifying priority risks and mitigative actions. It could ensure that all climate-related risks are clearly identified, visible and appropriately addressed. It could also provide a mechanism for IPART to review and audit Sydney Water's management of climate-related risk driving greater transparency and accountability. Requiring Sydney Water to develop and maintain a program that is consistent with the Guide provides certainty to Sydney Water and sets a standard that ensures a comprehensive risk management program that is consistent with NSW Government expectations.

Sydney Water estimated that having a climate risk management program in place would save them \$150m over 20 years because of the reduction in the value-at-risk carried by its existing asset base.

Sydney Water told us that their costs to establish a climate risk management program would be \$770,000 in the first year, \$660,000 in the second year, and then between \$300,000 and \$380,000 per year thereafter. Their potential costs for likely program elements were said to be \$800,000 in year 2, \$750,000 in year 3 and in each subsequent year.

The costs add up to approximately \$1.5m to establish the program and \$1.1m per annum thereafter. The benefits average \$7.5m per annum. These figures indicate a benefit-cost ratio significantly in excess of 1, meaning that the licence condition would create net benefits.

4.3.3 Our recommended operating licence conditions

Box 4.1 Recommended licence condition for climate-related risk management

13 Water planning

13.5 Climate-related planning and risk management

- (1) Sydney Water must engage in an ongoing climate risk assessment and management process that:
 - (a) is consistent with the NSW Government's Climate Risk Ready Guide (published March 2021) and addresses climate-related risks specifically, including priority risks, mitigation actions and adaptation actions,
 - (b) furthers the objectives set out in clause 1(1)(b) of this Licence, and
 - (c) considers, where appropriate:
 - (i) principles of NSW Government's Climate Change Adaptation Strategy (published June 2022), and
 - (ii) updated or replacement guidance material on climate risk assessment and management as it is released by the NSW Government and other bodies Sydney Water identifies as relevant.
- (2) Sydney Water must, on the enterprise scale, meet an embedded level of climate risk management maturity, as defined in the NSW Government's Climate Risk Ready Guide, by:
 - (a) 30 June 2027, or
 - (b) another date nominated by Sydney Water and approved by IPART in writing.
- (3) Sydney Water must, on the enterprise scale, make reasonable progress towards meeting an advanced level of climate risk management maturity, as defined in the NSW Government's Climate Risk Ready Guide, by:
 - (a) 30 June 2028, or
 - (b) another date nominated by Sydney Water and approved by IPART in writing.

4.4 Climate-related disclosures



Review principles

- Protecting customers, the community and the environment
- Recognising new strategies or policies



Our draft recommendation

We recommend including a new operating licence condition requiring Sydney Water to publish annual climate-related disclosures consistent with the IFRS S2. However, Sydney Water is not required to comply with this licence condition to the extent it is required by law to comply with an Australian equivalent or other similar standard.

In June 2023, the International Sustainability Standards Board (ISSB) released the IFRS S1 *General Requirements for Disclosure of Sustainability-related Financial Information* and IFRS S2 *Climate-related Disclosures* standards.⁵⁸ The climate-related disclosure standard, IFRS S2 requires an entity to disclose information about climate-related risks and opportunities that could reasonably be expected to affect the entity's prospects.⁵⁹

In our Issues Paper, we discussed not requiring Sydney Water to publish climate-related disclosures based on IFRS S2 in the operating licence to avoid duplication with *Government Sector Finance Act 2018 (NSW)* (GSF Act) requirements, administered by NSW Treasury, which are consistent with the Task Force on Climate related Financial Disclosures (TCFD).

However, we now consider that there would be benefit in requiring Sydney Water to publish disclosures consistent with the IFRS S2 standard. Requiring Sydney Water to disclose this information would increase transparency and allow stakeholders, including government, the community, and regulators, to monitor Sydney Water's progress towards meeting its climate change objectives.

The benefits of IFRS S2 disclosures compared to the current NSW Treasury obligations for TCFD based disclosures is that:

- IFRS S2 disclosure is a standard and has specific and detailed requirements for compliance that are universally comparable, while TCFD is a framework and only provides principle-based guidance.
- IFRS S2 standard requires Scope 3 emissions reporting.
- IFRS S2 standard requires industry and sector specific information that is more relevant.
- IFRS S2 standard defines and focuses on disclosing information that is material.⁶⁰

We acknowledge that the Australian Accounting Standards Board (AASB)^r standard is still under development. Therefore, there is uncertainty on whether the NSW climate-related disclosure requirements would be upgraded to the more substantive IFRS S2 standard or the draft Australian Sustainability Reporting Standard (ASRS 2) (once finalised).

We consider that it is important for Sydney Water to be held to the same standards as private and publicly listed companies. This is supported by the [Sustainable Finance Strategy Consultation Paper](#) released by the Federal Treasury. The paper outlines the importance of climate-related disclosures in the public sector:

Governments and public sector entities are also subject to climate-related opportunities and risks. As markets and regulators demand more comprehensive disclosures by companies, it is important that similar requirements apply to comparable public sector entities. This will support planning and risk management and build community confidence that these risks are being managed by public authorities and policy makers.⁶¹

Sydney Water and DPE do not support operating licence conditions requiring mandatory climate-related disclosures due to risk of duplication with incoming requirements.

^r The AASB is an Australian Government agency under the *Australian Securities and Investments Commission Act 2001 (Cth)*. Under section 227 (1) of that Act, the AASB's functions include making accounting standards under section 334 of the *Corporations Act 2001 (Cth)*; and to formulate accounting standards for other purposes.

Supporting information for this review

 **Current and developing requirements for climate-related disclosures**
GSF Act

Division 7.3 of the GSF Act requires reporting GSF agencies to prepare annual reporting information. Section 2.4(1)(h) of the GSF provides that each State owned corporation is a GSF agency.

NSW Treasury Policy and Guidelines –Annual Reporting Requirements (TPG23-10) requires that from 1 July 2025, Reporting GSF Agencies must include climate-related disclosures in their annual reports.⁶² NSW Treasury's Annual Reporting Framework, which was superseded by TPF23-10 states the framework will be assessed after the first year of reporting to incorporate any changes or improvements. The assessment will include a consideration of ISSB's climate-related disclosure standards.⁶³

Australian Accounting Standard on climate-related disclosures

The Australian Federal Government has committed to introducing internationally aligned mandatory climate-related financial reporting for large businesses and financial institutions. Subsequently, the Australian Accounting Standards Board (AASB) was tasked to prepare and publish an Australian climate-related disclosures standard.⁶⁴

The AASB has published an exposure draft 'Australian Sustainability Reporting Standards – Disclosure of Climate-related Financial Information' (ED SR1) on 23 October 2023 for consultation.⁶⁵ This includes draft Australian Sustainability Reporting Standard (ASRS) S2 Climate-related Financial Disclosures, developed using IFRS S2 Climate-related Disclosures as the baseline.

There are differences between draft ASRS 2 and IFRS S2 which may further diverge once consultation on the draft ED SR1 ends on 1 March 2024.

4.4.1 Our recommended operating licence conditions

Box 4.2 Recommended licence conditions for climate-related disclosures**42 Climate-related disclosures**

- (1) Subject to clause 42(3), Sydney Water must make annual climate-related disclosures for the immediately preceding financial year Publicly Available by:
- (a) 1 October each year, or

Box 4.2 Recommended licence conditions for climate-related disclosures

- (b) another date nominated by Sydney Water and approved by IPART in writing.
- (2) The climate-related disclosures referred to in clause 42(1) must be made in accordance with the requirements of:
- (a) International Financial Reporting Standard (IFRS) S2 Climate-related Disclosures issued in 2023, or
 - (b) another climate-related disclosures standard nominated by Sydney Water and approved by IPART in writing.
- (3) Sydney Water is not required to make disclosures under clause 42(1) for:
- (a) the financial year commencing on 1 July 2024,
 - (b) a financial year for which Sydney Water has made disclosures required by another law that are consistent with an Australian equivalent of IFRS S2, or
 - (c) a financial year for which Sydney Water has made disclosures required by another law of information about:
 - (i) climate-related risks and opportunities that could reasonably be expected to affect Sydney Water's cash flows, and
 - (ii) Sydney Water's access to finance or cost of capital over the short, medium or long term that are consistent with the requirements of IFRS S2 or an Australian equivalent.



Reporting Manual: Reporting on climate change

We propose to include a new environmental indicator in the Reporting Manual requiring Sydney Water to report to IPART on its progress towards achieving net zero.

If Sydney Water were to be required to report on its progress towards achieving net zero under other legislation in future, we can consider removing the proposed new environmental indicator to avoid duplication and regulatory burden.

Sydney Water has publicly declared its aspirational targets toward net zero, which exceed those currently set by the State Government. Therefore, placing an obligation on Sydney Water to publish its progress towards net zero would foster public trust and hold Sydney Water accountable. This would also enable Sydney Water to demonstrate its regard to the interest of the community, as required under its current operating licence objective in clause 1.1.1 (b) (ii).

Sydney Water, DPE and OECC support the requirement to report on its progress towards achieving Net Zero.



Reporting Manual: Proposed changes to environmental indicators

Indicator E11

Provide net zero emissions target, progress to achieving target, and whether progress is on projected path to meet target.

Definition

Provide details of:

E11. Progress towards achieving net zero emissions

Net zero emissions target for scope 1, 2 and 3 greenhouse gas (GHG) emissions; and for each scope, projected pathway to net zero in years and actual annual GHG emissions. Emissions to be expressed as kilotonnes of CO₂ equivalent.

Include:

- which greenhouse gases are covered in the target
- all previously reported data under this obligation.

Chapter 5 >>

Sydney Water's obligations to its customers

Protection for customers' rights and requirements for consultation with customers

05



Having adequate measures to protect customers' rights is important to prevent Sydney Water from potentially taking advantage of its monopoly power. This could adversely affect the quality and delivery of essential water and sewerage services.

The current operating licence includes terms and conditions that aim to ensure that Sydney Water provides a minimum level of customer service. In the absence of such operating licence conditions, there is a risk that Sydney Water may not offer consumer protections where it is not in its commercial interest to do so.

Sydney Water's 'customers' are the owners of land that is connected to a water or sewer main owned by Sydney Water.⁵ Tenants are not Sydney Water's customers. 'Consumers' are defined in the operating licence as 'any person who consumes or uses the services and includes a tenant or an occupier.' The operating licence currently requires Sydney Water to extend some customer protections to its consumers, including tenants.

The current operating licence includes the following provisions for protecting customers' rights, which require Sydney Water to:

- make services available to properties in its area of operations (clause 1.5.1)
- have policies in place for payment difficulties, including payment assistance and actions for non-payment (clause 6.4)
- have internal complaints handling procedures (clause 6.7)
- facilitate external dispute resolution (clause 6.8)
- provide information to customers and the general public (clause 6.2)
- undertake customer engagement to understand customer preferences, willingness to pay for service levels and to identify any issues in the community (clause 6.6).

We seek your feedback about retaining these requirements in the 2024-2028 operating licence as set out in our draft recommendations below. Our recommendations aim to:

- ensure that Sydney Water's customers continue to be provided a minimum level of customer service and protections

⁵ 'Customer' is also defined in the operating licence to mean any person who owns Property in the Rouse Hill Stormwater Catchment Area and any person who is taken to enter into a Customer Contract under s 55(2) of the Sydney Water Act relating to the imposition of availability charges or stormwater drainage area charges.

- minimise the risk that Sydney Water may avoid offering consumer protections where it is not in its commercial interest to do so.

Draft recommendations for the operating licence

15. Retain the current operating licence conditions requiring Sydney Water to maintain and fully implement payment assistance options for its customers and consumers.
16. Retain the current operating licence conditions requiring Sydney Water to publish information about the payment assistance options available to its customers and consumers.
17. Define 'family violence' in the operating licence to align with the definition in the *Family Law Act 1975* (Cth).
18. Retain the current operating licence conditions requiring Sydney Water to have a family violence policy and to implement it and include new operating licence conditions to publish information about the family violence policy.
19. Retain the current operating licence conditions requiring Sydney Water to maintain, implement and publish information about its internal complaints handling procedure but update the current condition to require this procedure to be consistent with *AS 10002:2022 - Guidelines for complaint management in organizations* (and not the 2014 version in the current operating licence).
20. Retain the current operating licence conditions requiring Sydney Water to be a member of the Energy and Water Ombudsman NSW (EWON) and publish information about EWON's services and how to contact EWON.
21. Retain the current operating licence conditions for Sydney Water to make its customer contract publicly available on its website and on request through its customer centre.
22. Include new operating licence conditions for Sydney Water to make the customer contract available to customers immediately after it has been varied.

- 23. Retain the current operating licence conditions that extend protections under the customer contract to consumers, but include a new condition requiring Sydney Water to produce a separate explanatory document specifically for consumers which sets out their rights
- 24. Retain the current operating licence conditions for Sydney Water to publish up-to-date information about the protections under the customer contract available to both customers and consumers on its website.
- 25. Retain the current operating licence conditions requiring Sydney Water to maintain and consult with its customer council (known as the Customer and Community Reference Group) and removing prescription in the current operating licence about how Sydney Water is to use this Customer and Community Reference Group.
- 26. Retain the current operating licence conditions requiring Sydney Water to engage its customers to understand customer preferences about service levels provided by Sydney Water and to better inform Sydney Water's systems and processes and IPART reviews of the operating licence and price determination.

We also seek your feedback on our draft proposals for reporting against these operating licence requirements, as set out below.



Reporting Manual: Reporting on vulnerable customers

We propose to include new reporting obligations in the Reporting Manual requiring Sydney Water to report to IPART on the number of complaints received each financial year, as well as the number of customers impacted by family violence or who are on a payment assistance plan.

The new reporting requirements would include:

- any systemic problems arising from customer and consumer complaints and Sydney Water's performance with managing these complaints, including any actions taken to resolve them
- the number of complaints received from customers and consumers
- the number of customers experiencing family violence
- the number of customers on payment assistance programs
- the number of customers experiencing payment difficulties and the intersection with those experiencing payment difficulty and family violence
- the number of customers that have had their services restricted as a consequence of non-payment.

5.1 Payment assistance options

5.1.1 Requiring Sydney Water to maintain and implement payment assistance options



Review principle

Setting minimum protections



Our draft recommendation

We recommend retaining the current operating licence obligations requiring Sydney Water to maintain and implement payment assistance options and actions for non-payment including:

- A policy that assists customers and consumers experiencing payment difficulties to better manage their current and future payments.
- Procedures for supporting payment plans with customers and consumers experiencing payment difficulties.
- Procedures for identifying the reasonable circumstances under which Sydney Water may disconnect or restrict a supply of water to a property.
- Provisions for self-identification, identification by community welfare organisations and identification by Sydney Water of customers and consumers experiencing payment difficulties.

Access to payment assistance options is necessary to protect customers experiencing financial difficulty. It protects them from Sydney Water restricting or disconnecting the water supply due to unpaid bills. Customers require adequate access to their water service for basic hygiene and drinking water.

The objectives of [Sydney Water's payment assistance policy](#) are to help customers keep their water service connected (that is, avoid restrictions or being disconnected), irrespective of their capacity to pay, and to help customers to pay their bills in a way that they can manage. Under this policy, Sydney Water offers customers the following payment assistance options:

- Customers can seek extensions to their payment date.
- Sydney Water offers payment plans where customers can pay bills in smaller amounts more frequently with no payment fees or interest charges applied.
- Customers can seek payment assistance through the Payment Assistance Scheme (PAS). Sydney Water will apply PAS credits directly to the customer's bill if they're eligible (thereby reducing the total bill that the customer must pay). Customers must seek PAS credits before paying the bill and not retrospectively.

Sydney Water's Customer Care team proactively monitors which customers may be experiencing payment difficulties and then engages with them to offer support.

- PlumbAssist is available to property owners experiencing financial difficulty to repair or replace leaking plumbing fixtures or to find and repair hidden leaks.⁶⁶ PlumbAssist is not available to tenants because it is the property owner's responsibility, under the Customer Contract, to fix leaks.⁶⁷
- Customers receiving an aged disability or service pension government allowance may qualify for a pension rebate on their water service charges (not water usage charges).⁶⁸ Sydney Water is committed to assisting customers to identify any applicable concessions. Sydney Water applies these concessions directly to the customer's bills.

In their responses to the Issues Paper, Sydney Water and the Energy and Water Ombudsman NSW (EWON) supported the proposed approach in our draft recommendations for the operating licence. We have not recommended additional obligations because we consider that Sydney Water offers a wide range of payment assistance options and is operating effectively in this area.



Cost-benefit analysis for providing payment assistance

We conclude that an operating licence requirement for a payment assistance policy would take Sydney Water further in the direction of leniency than they might choose to go based on commercial considerations alone.

The essence of this requirement is leniency toward customers who may struggle to pay bills on time. The counterfactual scenario would involve an absence of leniency. This could involve harsh measures for customers facing payment difficulties, including disconnection or restriction of water supply. Therefore, we consider that this licence requirement generates net economic benefits.

The leniency provided to customers experiencing hardship is of benefit to them. By forming part of the general social safety net, this type of leniency policy provides wider benefits to the community. That is to say that there is a public benefit to the hardship policy.

A leniency policy might encourage some customers to refuse to pay their bills, even in situations that do not involve financial hardship. Sydney Water rarely takes the action to disconnect a property (even a non-residential property). It may be conducted if a property poses a threat to the integrity of our water supply system, such as a backflow prevention device issue or having no backflow prevention device fitted. Non-residential customers are required to install and annually test backflow prevention device as a measure. Sydney Water does not see a cost saving for disconnection/restriction of properties for non-payment. These actions present additional costs such as debt recovery fees, meter maintenance fees, legal costs, resource costs and loss of revenue in some instances. We conclude from this response that a non-lenient counterfactual scenario does not generate cost savings for Sydney Water.

We came to a similar conclusion in the 2022 review of the Hunter Water operating licence.

5.1.2 Providing information on payment assistance options



Review principle

Setting minimum protections



Our draft recommendation

We recommend retaining the current operating licence conditions requiring Sydney Water to publish information about their available payment assistance options:

- on the Sydney Water website
- together with customer bills, provided at least annually
- to customers as soon as Sydney Water has identified them as facing payment difficulty
- on request through the Contact Centre.⁶⁹

We recommend including new operating licence conditions requiring Sydney Water to keep the information it publishes on its website up to date.

Our draft recommendations for the operating licence will require Sydney Water to provide information about its payment assistance options on its website and explain on its customer bills that customers can access this information through the website or through Sydney Water's customer centre.

We recommend requiring Sydney Water to provide information about its payment assistance options to customers as soon as they identified as facing payment difficulties to ensure that they are aware of the payment options available and how they can access those options. Payment assistance is only effective as a customer protection if the customers are aware of its existence. Further, it is important that this information is provided in a timely way as payment difficulties can continue to escalate as time progresses.

We also consider that it is important to require Sydney Water to keep the information that it provides about its payment assistance option up to date so that customers have access to the most current and relevant information. We have proposed specifying a 10-day timeframe within which the information should be updated.

In their responses to the Issues Paper, Sydney Water, EWON and the Public Interest Advocacy Centre (PIAC) generally supported the proposed approach in our draft recommendations.

Sydney Water has told us that it currently undertakes the following actions to ensure its customers are aware of the payment assistance options available to them:

- Sydney Water advertises the payment assistance options on its website as well as on its customer bills so that customers facing payment difficulties are aware.

- Sydney Water participates in the Thriving Communities Partnership where essential service providers can collaborate to protect vulnerable customers. The partnership's One Stop One Story (OSOS) Hub enables frontline workers in corporate and community organisations to connect and refer their clients to a range of supports through a single access point. They can refer cases of financially vulnerable customers to Sydney Water's for Sydney Water to action.
- Sydney Water takes steps to avoid restrictions due to payment failures as far as possible, with the objective of protecting those who have not paid due to payment difficulty. Sydney Water will send 3 notices of an overdue bill payment. If still unpaid, Sydney Water will hand-deliver a restriction notice to the customer's property which includes information on the escalation process to avoid restrictions. Sydney Water will only consider restrictions if the customer has not made contact (or payment) at the end of this process.

5.1.3 Our recommended operating licence conditions

Box 5.1 Recommended licence conditions for payment assistance

24 Payment assistance options

- (1) Sydney Water must maintain a payment assistance policy that deals with Customers and Consumers experiencing payment difficulty.
- (2) Sydney Water must implement the payment assistance policy.
- (3) The payment assistance policy must, at a minimum, provide for:
 - (a) assistance to residential Customers experiencing payment difficulty to better manage their current and future Bills,
 - (b) procedures for residential Customers to enter a payment plan where they are experiencing payment difficulties,
 - (c) procedures for identifying the circumstances under which Sydney Water may disconnect or restrict a supply of water to a Customer's Property, and
 - (d) processes for self-identification, identification by community welfare organisations and identification by Sydney Water of residential Customers experiencing payment difficulties.
- (4) Sydney Water must:
 - (a) prepare a communication that explains the payment assistance policy,
 - (b) make a copy of that communication Publicly Available,

Box 5.1 Recommended licence conditions for payment assistance

(c) provide a copy of that communication to each residential Customer that Sydney Water identifies is experiencing payment difficulty within one business day of the date that Sydney Water first identifies that the Customer is experiencing payment difficulty,

(d) at least once each calendar year using the method chosen by the Customer to receive their Bill, notify all residential Customers that the communication is Publicly Available, and

(e) update the communication to reflect any variations to the payment assistance policy within 10 business days of the variations taking effect.

5.2 Family violence policy



Review principle

- Setting minimum protections
- Focusing on outcomes



Our draft recommendation

We recommend defining 'family violence' in the operating licence to align with the definition in *the Family Law Act 1975* (Cth).

We recommend retaining the current operating licence conditions requiring Sydney Water to:

- implement and maintain a family violence policy
- include how Sydney Water addresses the following matters in its family violence policy, at a minimum:
 - the protection of private and confidential information
 - access to payment assistance options
 - processes that minimise the reliance on individuals to disclose their family violence
 - processes for referrals to specialist services.⁷⁰

We also recommend including new operating licence conditions requiring Sydney Water to include provisions in its family violence policy for:

- identifying customers and consumers experiencing family violence
- customers and consumers to nominate their preferred method of communication and when they can be contacted.

We recommend retaining, with minor modifications, the current operating licence requirements for Sydney Water's family violence policy to ensure that Sydney Water continues to implement it even if there are competing strategic priorities. We consider that the family violence policy offers necessary security to vulnerable customers.

The *Family Law Act 1975* (Cth) defines family violence to be violent, threatening or other behaviour by a person that coerces or controls a member of the person's family, or causes the family member to be fearful.⁷¹ It is important that providers of essential services take actions to reduce risks for vulnerable customers.

We consider that Sydney Water's family violence policy should:

- Address how Sydney Water will protect vulnerable customers' personal information. This is required in the current operating licence. Customers and consumers experiencing family violence need to be confident that there will be no deliberate or inadvertent disclosure of their personal information to anyone associated with the perpetrator of abuse.
- Address how Sydney Water will refer vulnerable customers to the payment assistance options available to them if they are facing payment difficulty. This is required in the current operating licence. Family violence can increase the complexity of financial hardship.⁷² Perpetrators of family violence often avoid responsibility for debts and leave their partners or former partners with substantial liabilities. Debt incurred through jointly held accounts is one of the most difficult issues for customers experiencing family violence to resolve with financial institutions.⁷³ Domestic and family violence is the leading cause of homelessness for women and children.⁷⁴
- Make provisions to identify its customers and consumers who are experiencing family violence. This is a proposed new operating licence requirement. We consider that adequate identification of vulnerable customers is a necessary first step before Sydney Water can take steps to protect their personal information and minimise the need for the customers to disclose their family violence (as required in the current operating licence).
- Make provisions for vulnerable customers to nominate when and how they can be contacted, so that they are not contacted at times or via communication methods that could inadvertently increase their vulnerability to family violence. This is a proposed new operating licence requirement.

In their responses to our issues paper, Sydney Water, the Council on The Aging (COTA), EWON and PIAC supported including operating licence requirements to maintain and implement a family violence policy. EWON and PIAC sought greater prescription than we have recommended to encourage Sydney Water further towards best practice in family violence protection. However, we consider that the operating licence should prescribe the minimum necessary protections and should not attempt to prescribe best practice to avoid excessive burden and ultimately costs to customers. We consider that Sydney Water is already working effectively in this area and the additional requirements we have recommended is adequate to achieve the outcomes that EWON and PIAC are seeking.



Cost-benefit analysis for the family violence policy

This provision imposes modest costs on Sydney Water, but it potentially provides vital protection to customers who may be vulnerable to or because of family violence. We have not performed a quantitative cost-benefit analysis on this provision, but we consider that this provision would be likely to provide net social benefits.

We came to a similar conclusion in the 2022 review of the Hunter Water operating licence.

5.3 Providing information on the family violence policy



Review principle

- Setting minimum protections
- Focusing on outcomes



Our draft recommendation

We recommend including new operating licence conditions requiring Sydney Water to:

- publish information about its family violence policy:
 - on its website
 - annually with customer bills
 - on request through the Contact Centre.
- keep the information it provides about its family violence policy up to date.

These recommendations are similar to those we have made for payment assistance options, internal complaints handling policy and external dispute resolution scheme.

A family violence policy is only effective if customers are aware of its existence and know how to gain access to it. It is important that Sydney Water provides information and educates its customers on how to gain access to these services.

Sydney Water has confirmed that it already publishes its family violence policy on its website and it plans to advertise the policy more widely with customers in future editions of its quarterly newsletter *Waterwrap*.⁷⁵ Therefore, these new requirements will not result in additional regulatory burden. The benefit of making it an operating licence requirement is that it will ensure that Sydney Water always makes the family violence policy available to the public on its website and through other channels. Sydney Water must also update the information it provides to customers within 10 business days of a change to its policy taking effect.

5.3.1 Our recommendation for the licence

Box 5.2 Recommended licence conditions for a family violence policy

25 Family violence policy

- (1) Sydney Water must maintain a family violence policy that deals with Customers and Consumers experiencing Family Violence.
- (2) Sydney Water must implement the family violence policy.
- (3) The family violence policy must, at a minimum, provide for:
 - (a) the identification of Customers and Consumers experiencing Family Violence,
 - (b) the protection of private and confidential information,
 - (c) access to payment assistance options,
 - (d) processes that minimise the reliance on individuals to disclose their Family Violence,
 - (e) processes for Customers and Consumers experiencing Family Violence to nominate their preferred method of communication and when they can be contacted, and
 - (f) processes for referrals to local specialist support services.
- (4) Sydney Water must:
 - (a) prepare a communication that explains the family violence policy,
 - (b) make a copy of that communication Publicly Available,
 - (c) at least once each calendar year using the method chosen by the Customer to receive their Bill, notify all residential Customers that the communication is Publicly Available, and
 - (d) update the communication to reflect any variations to the family violence policy within 10 business days of the variations taking effect.

5.4 Protecting vulnerable tenants

In the Issues Paper, we asked how protections could be improved for tenants who are responsible for paying water usage at a separately metered property through the operating licence or customer contract. We consider that Sydney Water provides appropriate protections to tenants within the current legislative framework and we do not recommend additional operating licence requirements to increase these protections at this time. In section 5.1.2, we recommend that Sydney Water should clearly information about the protections that it current provides to tenants but we do not recommend imposing additional requirements.

Sydney Water's billing relationship is with 'customers' who are the landowners, not tenants who may be residing at connected premises. Tenants receive bills for water usage charges from their landlords. The operating licence cannot enable this direct relationship. Legislative changes to the *Residential Tenancies Act 2010* (Residential Tenancies Act) and the *Sydney Water Act 1994* would be required to enable a direct billing relationship between Sydney Water and tenants. Should the NSW Government seek to make the necessary changes, IPART would be well placed to advise on the costs and benefits, as well as the practical implications of any contemplated legislative change.

EWON, PIAC and the Tenants Union NSW expressed their support for a direct billing relationship between Sydney Water and tenants, in their responses to the Issues Paper. We consider that a direct relationship between Sydney Water and tenants could provide benefits. For example, some tenants may prefer to enter into payment arrangements directly with Sydney Water, particularly if they are in financial difficulty and want to minimise the risk that their landlord will become aware of their financial situation. We consider that the current billing arrangements are likely to discourage tenants from seeking payment assistance, given the need to disclose to landlords. However, Sydney Water noted that it would result in additional costs, with unpaid debts being absorbed by all customers through increased bills. Currently, Sydney Water can claim unpaid debts from the landlord.

5.4.1 Tenancy protections under the Residential Tenancies Act

Tenants are the consumers of the services provided by Sydney Water at the residence that they occupy, and in many cases are responsible for paying the water usage charges.^t As they do not have a direct billing relationship with Sydney Water, tenants pay these water usage charges to their landlord.^u This relationship is set up under the Residential Tenancies Act.

The Residential Tenancies Act seeks to protect tenants paying for their water usage bills in the following ways:

- A landlord must pay all charges (other than water usage charges) in connection with:
 - a water supply service to separately metered residential premises and
 - a water supply service to residential premises that are not separately metered.⁷⁶

^t The Residential Tenancies Act sets out when tenants are responsible for paying their water usage charges.

^u Clause 11 of the Standard form residential tenancy agreement in Schedule 1 to the *Residential Tenancies Regulation 2019*.

- Under the standard residential tenancy agreement,⁷⁷ the tenant must pay water usage charges to the landlord for a residential premises, but only if:
 - the service is separately metered or the premises are not connected to a water supply service and water is delivered to the premises by vehicle.
 - the property meets certain water efficiency measures
 - the landlord gives the tenant at least 21 days to pay the charges
 - the landlord requests payment of the charges not later than 3 months after the issue of the bill for the charges
 - the landlord provides the tenant with a copy of the bill (or a copy of the part of the bill setting out the charges, or other evidence of the cost of water used by the tenant).⁷⁸
- The landlord must give the tenant the benefit of, or an amount equivalent to, any rebate received by the landlord for water usage charges payable or paid by the tenant.⁷⁹

5.4.2 Tenancy protections under the Operating Licence and Customer Contract

The current operating licence and customer contract do not duplicate the protections under the Residential Tenancies Act. Instead, they have, to date, focused on protections for vulnerable tenants such as those experiencing payment difficulties. Sydney Water must make payment assistance options available to tenants responsible for paying water usage charges and who are facing payment difficulty.⁸⁰

Sydney Water's NSW Payment Assistance Scheme (PAS) is one of the options available to tenants facing difficulties paying their water usage bill.^v Tenants can seek PAS assistance by calling Sydney Water and requesting to speak to a case coordinator in Sydney Water's Customer Care team, or by making an appointment with an accredited community agency in the individual's local government area. Any applicable PAS credits will be applied to the property owner's account for the usage charge.

5.4.3 Advantages and disadvantages of retaining the customer relationship with the landlord

An advantage of continuing the current legislative arrangement requiring Sydney Water to have a customer relationship with landlords only is that Sydney Water is afforded security against unpaid bills. Landlords are responsible for debts incurred for water and sewage services at a property. Landlords can seek to recover costs relating to water usage from tenants through various means, but Sydney Water cannot.

^v Clause 6.3 of the 2019-2024 Sydney Water Operating Licence and clause 5.1 of the Sydney Water Customer Contract requires Sydney Water to make payment assistance options available to tenants who are responsible for paying water usage charges and who may be facing payment difficulty.

However, for tenants, the current relationship has the following limitations:

- A tenant may not wish to access payment assistance from Sydney Water if there is a risk that their financial situation could be disclosed to the landlord. A tenant's real or perceived vulnerability to a discontinuation of a rental arrangement or rental increases from a landlord who becomes aware of the tenant's financial situation may deter some tenants from seeking payment assistance from Sydney Water.
- Tenants may prioritise paying water usage charges to their landlord over other essential expenses to avoid their financial difficulties becoming known to their landlord. Advocacy groups claim that tenants are more likely to prioritise payment of water usage charges levied by their landlord over less visible costs such as food or medications to avoid disclosing their financial situation and placing their tenancy at risk.^w
- If the landlord has already paid the full bill to Sydney Water, the PAS credits will be applied to subsequent bills leaving the tenant liable to reimburse the landlord for the full cost paid by them.
- The absence of a direct billing relationship with Sydney Water means tenants are vulnerable to exploitation where unscrupulous or unwitting property owners seek payments from tenants exceeding what they are liable for under the Residential Tenancies Act. While there are protections in place to escalate complaints tenancy issues (such as complaining to NSW Fair Trading), the advocacy groups advise that the likelihood for consumers to pursue those mechanisms is low, even where they are aware of them, to protect their rental status. Communities facing language barriers and who are less aware of NSW protection laws may be particularly at risk.

In addition, landlords may reclaim water usage charges from tenants 3 months after the issue of a bill for those charges, if they provided the tenant with the bill within 3 months of the landlord receiving that bill from Sydney Water.⁸¹ Advocacy groups claim that this puts tenants at further disadvantage because:

- Tenants do not receive timely price signals to reduce their usage. The lag between water usage and a bill being received by a tenant is increased by the additional 3 months a landlord has to recover water usage costs after receiving the bill from Sydney Water.
- Tenants have limited visibility of potential leaks due to lags between water usage and billing of tenants. A tenant may receive a bill up to 6 months after a water leak occurs. It is the landlord's responsibility to monitor and fix leaks once notified. Sydney Water proactively contacts property owners when leaks at their properties are suspected. However, in practice, this arrangement may leave tenants vulnerable to large water usage bills if the leak goes undetected and unreported, or a landlord does not fix the leak.

Tenants rely on their landlords for timely payment of water bills and have no visibility or assurance that this occurs. Sydney Water has told us that it:

- takes steps to ensure that services to properties are only restricted when there is no response from customers after Sydney Water tries to seek payments
- provides reasonable notice of restriction directly to the occupier of the property (whether that is the property owner or tenant).

^w Information provided by the Tenants Union of NSW and the NSW Public Interest Advocacy Centre

Tenants can contact Sydney Water directly if services to their residence have been restricted and can arrange to pay Sydney Water directly for outstanding water charges (including their usage charges) to resume services.⁸² The tenant may then recover the amount paid as a debt due to the tenant or by deducting the amount paid from any rent. This is currently the only scenario where the tenant can pay directly to Sydney Water. The advocacy groups reported that Sydney Water's response for returning services after contact from tenants is timely and appropriate. However, tenants can face the inconvenience of a restriction occurring and the administrative and financial burden of having to make and recover payment due to circumstances beyond their control.

5.5 Internal complaints handling

5.5.1 Maintaining an internal complaints handling procedure



Review principle

Setting minimum protections



Our draft recommendation

We recommend updating the current operating licence condition requiring Sydney Water to maintain an internal complaint handling procedure to reference the 2022 version of the Australian Standard AS 10002- Guidelines for complaint management in organisations.

Requiring Sydney Water to maintain and implement an internal complaints handling procedure is beneficial because customers of utilities should have the opportunity to provide feedback and make complaints if the service provided does not meet their expectations. This allows the utility to improve their services, aligned with customer expectation. An effective complaints handling mechanism means that customers will enjoy a higher quality of service than they otherwise would, everything else being the same. This is particularly important in the case of monopoly suppliers of essential services like Sydney Water where customers do not have the choice of changing providers.

Including a requirement for an internal complaint handling procedure in the operating licence ensures that Sydney Water implements the procedure and protects its customers, even if there is no commercial incentive. Sydney Water may be less prompt in resolving customer complaints where there might be a commercial advantage in ignoring them or delaying a response. An organisation in a competitive market would have strong incentives to address customer complaints promptly or lose market share to those competitors who do. However, that competitive discipline is absent for a monopoly supplier.

In their responses to the Issues Paper, Sydney Water and PIAC supported the approach proposed in our draft recommendations. Further, Sydney Water confirmed that its internal complaint handling procedure is already consistent with AS 10002:2022 and therefore supported specifying the 2022 version of the standard from the operating licence commencement date without a need for a transition period. Specifying the standard in the operating licence ensures that Sydney Water's complaints handling procedures meet industry standards and expectations.

5.5.2 Providing information on the internal complaints handling procedure



Review principle

Setting minimum protections



Our draft recommendation

We recommend retaining the current operating licence conditions requiring Sydney Water to provide information about its internal complaints handling procedure:

- on its website
- annually with customer bills
- on request through the Contact Centre.

We recommend including new operating licence conditions requiring Sydney Water to keep the information it provides about its internal complaints handling procedures up to date.

Our recommendations seek to ensure that customers are aware of Sydney Water's complaints handling procedure and how to make complaints, and to ensure that customers have access to the most current information about the procedure. These recommendations are similar to those we have made requiring Sydney Water to provide information about payment assistance options, the family violence policy and the external dispute resolution scheme.



Cost-benefit analysis for internal complaints handling

We did not undertake a quantitative CBA for requiring Sydney Water to maintain and implement an internal complaints handling procedure. However, we have assessed the qualitative costs and benefits.

The net benefit of an effective complaints handling process is that the organisation is prevented from earning monopoly rents by providing a lower quality of service. Complaints-handling systems help to ensure that quality standards are enforced. While a monopoly firm foregoes an opportunity to increase profits by reducing quality (something that even a price-regulated organisation can sometimes do), there is a net gain to society. Deadweight loss through lower quality service is minimised by good complaints-handling. This analysis presumes that the complaints-handling system is relatively efficient itself, and that Sydney Water's reputation would be an insufficient incentive to provide the ideal level of quality.

We came to a similar conclusion in the 2022 review of the Hunter Water operating licence.

5.5.3 Our recommended operating licence conditions

Box 5.3 Recommended licence conditions for internal complaint handling

27 Internal Complaints Handling

- (1) Sydney Water must maintain an internal complaints handling procedure for receiving, responding to and resolving Complaints.
- (2) Sydney Water must implement the internal complaints handling procedure.
- (3) The internal complaints handling procedure must be consistent with:
 - (a) *Australian Standard AS 10002:2022 – Guidelines for complaint management in organizations*, or
 - (b) any other complaint management standard nominated by Sydney Water and approved by IPART in writing.
- (4) Sydney Water must:
 - (a) prepare a communication that explains the internal complaint handling procedure including how to make a Complaint and how Sydney Water will receive, respond to and resolve Complaints,
 - (b) make a copy of that communication Publicly Available,
 - (c) at least once each calendar year using the method chosen by the Customer to receive their Bill, notify all residential Customers that the communication is Publicly Available, and
 - (d) update the communication to reflect any changes to the internal complaints handling procedure or the information within 10 business days of the variations taking effect.

5.6 External dispute resolution scheme

5.6.1 Being a member of the Energy and Water Ombudsman Scheme



Review principle

Setting minimum protections



Our draft recommendation

We recommend retaining the current operating licence condition requiring Sydney Water to facilitate the resolution of disputes between Sydney Water and its customers and consumers by being a member of the Energy and Water Ombudsman NSW (EWON) as an external dispute resolution provider

We recommend not including flexibility in the operating licence for Sydney Water to be a member of an alternative external dispute resolution scheme instead of EWON.

We consider that it is beneficial to retain requirements for Sydney Water to enable its customers to escalate any unresolved complaints to an external dispute resolution service. As with complaints handling, external dispute resolution helps to ensure that services provided meet customer expectations.

In their responses to the Issues Paper, Sydney Water, EWON and PIAC supported retaining the current operating licence conditions requiring Sydney Water to be a member of EWON. Sydney Water was in favour of greater flexibility in the operating licence allowing it to be a member of a different external dispute resolution scheme, and not constrained to using only EWON. However, EWON and PIAC were opposed to introducing this flexibility in the operating licence.

We have not recommended flexibility in the operating licence for Sydney Water to be a member of another external dispute resolution scheme instead of EWON, as we contemplated in the Issues Paper. At this time, we consider that there are no suitable alternatives to EWON that would ensure customers are given similar levels of protection. EWON and PIAC support our recommendation. They both supported including more flexible requirements in the 2022-2027 Hunter Water operating licence. However, they now consider that this is not appropriate.

While our recommended licence requires Sydney Water to be a member of EWON, it does not prevent Sydney Water from voluntarily being a member of an alternative external dispute resolution scheme alongside EWON.



Cost-benefit analysis for external dispute resolution

We did not undertake a quantitative CBA for requiring Sydney Water to be a member of EWON and publish information about it to its customers. However, we have assessed the qualitative costs and benefits.

We concluded that as long as the external dispute resolution scheme is relatively efficient itself, it should yield net economic benefits by reducing the deadweight loss that might otherwise occur from the use of monopoly power to deliver a lower quality of service than a competitive firm would.

The analysis of this operating licence requirement is the same as the analysis of the requirement for an internal complaint handling system. External dispute resolution scheme membership is another safeguard against monopoly rents and the associated deadweight loss caused by providing substandard quality of service.

We came to a similar conclusion in the 2022 review of the Hunter Water operating licence

5.6.2 Providing information on the external dispute resolution scheme



Review principle

Setting minimum protections



Our draft recommendation

We recommend retaining the current operating licence conditions requiring Sydney Water to provide information to EWON, including information about EWON's services and how customers can contact EWON:

- on its website
- annually with customer bills
- on request through the Contact Centre.⁸³

We recommend including new operating licence conditions requiring Sydney Water to keep the information it provides about EWON's services up to date.

These proposed changes are consistent with the changes we have proposed for payment assistance options, the family violence policy and internal complaints handling. Our recommendations seek to ensure that customers are aware of EWON's services and how to contact EWON, and to ensure that customers have access to the most current information.

Box 5.4 Recommended licence condition for external dispute resolution

28 External dispute resolution scheme

- (1) Sydney Water must be a member of EWON to facilitate the resolution of Complaints and dispute between Sydney Water and its Customers and Consumers.
- (2) Sydney Water must:
 - (a) prepare a communication that explains the right to have a Complaint or dispute referred to EWON, lists the dispute resolution services provided by EWON, and explains how to contact EWON,
 - (b) make a copy of that communication Publicly Available,
 - (c) at least once each calendar year using the method chosen by the Customer to receive their Bill, notify all residential Customers that the communication is Publicly Available, and
 - (d) update the communication to reflect any variations within 10 business days of the variations taking effect.



Reporting Manual: Reporting on customer protections

We propose to include new reporting requirements (in the Reporting Manual) for Sydney Water to prepare and publish, for each financial year, a report about:

- the number of complaints received from customers and consumers
- the average time taken for Sydney Water to resolve complaints
- any systemic problems arising from customer and consumer complaints and its performance with managing these complaints
- any actions that Sydney Water has taken to resolve these complaints
- the number of customers affected by family violence
- the number of customers on payment assistance programs
- the number of customers on payment assistance programs who are also affected by family violence and also on payment assistance programs
- the number of customers that have had their services restricted of non-payment.

We seek stakeholder feedback about whether the proposed reporting obligations are appropriate.

5.7 Customer Contract

5.7.1 Our proposed changes to the Customer Contract



Review principle

Setting minimum protections



Our draft recommendation

We have recommended changes to the Customer Contract and explained our recommendations in an information paper on our [website](#) (Summary of our proposed changes to the Customer Contract).

Our proposed changes to the Customer Contract focus on making customer responsibilities and the general readability of the document clearer and to better reflect how current business practices will enable potential future business changes.

We also propose that Sydney Water be required to explain consumer and tenant rights in a separate document and not include this in the Customer Contract.

Customers' rights and protections are set out in Sydney Water's standard customer contract which is included in Schedule C of the current operating licence. The Act specifies that terms and conditions of Sydney Water's customer contract must be set out in the operating licence.⁸⁴ In addition to being a mandatory requirement of the operating licence, we consider that the Customer Contract provides benefit because it sets out the terms and conditions for supply of service to Sydney Water's customers. It aims to ensure that customer service is provided at a quality that meets customers' expectations.

Our recommendations for the customer contract have been informed by Sydney Water's submission in September 2023, which was informed by feedback provided by its customers.^x

Our recommended operating licence conditions

Box 5.5 Recommended licence conditions for the customer contract

21 Customer Contract

(1) The Customer Contract sets out the rights and obligations of Customers and Sydney Water in relation to the Services provided in accordance with this Licence. The Customer Contract as at 1 July 2024 is set out in Schedule B of this Licence.

5.7.2 Making the Customer Contract available to customers



Review principle

Setting minimum protections



Our draft recommendation

We recommend retaining the current operating licence conditions requiring Sydney Water to make its Customer Contract easily accessible to customers:

- on its website
- on request through the Contact Centre.⁸⁵

We recommend including new operating licence conditions requiring Sydney Water to make the Customer Contract available to customers immediately after it is varied.

We consider that it is beneficial to retain the operating licence requirements to make customers aware of their rights and protections under the Customer Contract.

^x Sydney Water's proposed changes to the Customer Contract are available on our [website](#).

The Act permits Sydney Water to vary the Customer Contract, with the Governor's approval, by providing notice setting out, or summarising, the changes to the Customer Contract and publishing the notice in a daily newspaper circulating in the area of operations.⁸⁶ Sydney Water must publish notice at least 6 months before the variation takes effect, unless the Minister approves a shorter period. The Act also states that the operating licence may specify how, following variation of a customer contract, Sydney Water is to make copies of the contract and associated explanatory material publicly available.⁸⁷

We recommend including a new operating licence condition for Sydney Water to make a copy of the varied customer contract publicly available as soon as it has been varied. This will ensure that customers can access their up-to-date rights and protections under the customer contract.

Our recommended operating licence conditions

Box 5.6 Recommended licence conditions for the customer contract

21 Customer Contract

- (1) [...]
- (2) Sydney Water must make a copy of the Customer Contract Publicly Available.
- (3) If the Customer Contract is varied under section 59 of the Act, Sydney Water must make a copy of the varied Customer Contract Publicly Available from the date the variation takes effect.

5.7.3 Protecting consumers (tenants)



Review principle

Setting minimum protections



Our draft recommendation

We recommend retaining the current operating licence conditions that extend protections under the Customer Contract to consumers as though they were customers and expanding the protections for consumers.

We recommend including a new operating licence condition requiring Sydney Water to prepare a document specifically for consumers which sets out their rights.

Generally, the customer contract does not apply to consumers as they are not Sydney Water's customers. The Act provides that there is a customer contract between Sydney Water and the landholder.⁸⁸ Some consumers, such as tenants, are not a party to the customer contract. However, the operating licence requires Sydney Water to extend some provisions of the customer contract to consumers to ensure that they are given adequate protections when using Sydney Water's services (these include payment assistance, protections to avoid restrictions and complaints handling and resolution). As the customer contract does not usually cover consumers, these operating licence conditions fill a gap in consumer protection. If Sydney Water fails to provide protections to consumers under the extended provisions of the customer contract, it will have contravened its operating licence.

We propose to require that the following clauses of the customer contract should continue to apply to consumers. These clauses have been re-worded and re-numbered in the recommended customer contract.



Continuing clauses in the customer contract to be applied to consumers

- Clause 2.5 – When does this Customer Contract end? (clause 14.1 of the current customer contract)
- Clause 2.6 – Variation of this Customer Contract (clause 14.2 of the current customer contract)
- Clause 6 - What can I do if I am unable to pay my bill (clause 5.1 of the current Customer Contract)
- Clause 13 – What can I do if I am unhappy with the services provided by Sydney Water (clause 12 of the current customer contract)
- Clause 15 – Consultation, information and privacy (clause 13 of the current customer contract)

We also propose that the following clauses of the customer contract should also apply to consumers:

- Clause 2.2 - Who is covered by this contract?
- Clause 2.4 - When does this Customer Contract commence?
- Clause 7.2(8) and (9) – Notice of restriction or disconnection of supply of water for non-payment – when Sydney Water will not restrict or disconnect services
- Clause 12.3 - Forms of redress
- Clause 12.4 - Claim for monetary compensation
- Clause 14 - Who should I contact

We consider that these are adequate to protect consumer interests. Sydney Water and EWON support this approach.

Under the current operating licence and customer contract, the rights and obligations of tenants are scattered throughout the customer contract. We consider that this is undesirable because it is difficult for tenants to easily identify which parts of the customer contract are relevant to them. To address this, we are recommending that:

- The customer contract is simplified and targeted only at customers
- Sydney Water prepare a separate document, specifically targeted at tenants, that explains how Sydney Water will act in its dealing with tenants. This must include, at a minimum and to an equivalent level of detail, the matter dealt with by the above clauses of the customer contract.

This will make it easier for tenants to understand their rights.

Our recommended operating licence conditions

Box 5.7 Recommended licence conditions for extending protection to consumers

22 Consumers

(1) Sydney Water must, in its dealings with Consumers, act in accordance with its obligations under the following clauses of the Customer Contract as though the Consumers were parties to the Customer Contract:

- (a) Clause 2.2 – Who is covered by this contract?
- (b) Clause 2.4 – When does this Customer Contract commence?
- (c) Clause 2.5 – When does this Customer Contract end?
- (d) Clause 2.6 – Variation of this Customer Contract
- (e) Clause 6 – What can I do if I am unable to pay my bill?
- (f) Clause 7.2(8) and (9) – Notice of restriction or disconnection of supply of water for non-payment – when Sydney Water will not restrict or disconnect services.
- (g) Clause 12.3 – Forms of redress
- (h) Clause 12.4 – Claim for monetary compensation
- (i) Clause 13 – What can I do if I'm unhappy with the services provided by Sydney Water?
- (j) Clause 14 – Who should I contact?
- (k) Clause 15 – Consultation, information and privacy.

(2) Sydney Water must prepare a document that:

- (a) is specifically targeted at Consumers,
- (b) explains how Sydney Water will act in its dealings with Consumers,
- (c) includes at a minimum and to an equivalent level of detail, the matters dealt with by the clauses of the Customer Contract referred to in clause 22(1).

5.7.4 Communicating customers' and consumers' rights under the Customer Contract



Review principle

Setting minimum protections



Our recommendation

We recommend retaining the current operating licence conditions requiring Sydney Water to:

- Provide up-to-date information to customers to:
 - briefly explain or summarise the Customer Contract and customers rights and obligations under it,
 - explain the payment assistance options available,
 - outline the rebates available and how customers may be eligible,
 - outline that customers can enter into service agreements with Sydney Water that are separate to the Customer Contract, and
 - provide information on how customers can contact Sydney Water.
- Keep this information up-to-date and publish it:
 - on Sydney Water's website,
 - on request through the Contact Centre, and
 - at least annually with customer bills.

We also recommend extending the requirement to provide an explanation of the customer contract to include the document referred to in section 5.7.3 that is specifically targeted at tenants.

Customer protections (such as family violence protection and payment assistance) are only effective if customers are aware of their existence and know how to gain access to them. It is important that Sydney Water provides information on its customer protection provisions and educates its customers on how to gain access to these services.

We consider that the current operating licence requirements are working effectively. During the current operating licence term, Sydney Water has had a high level of compliance with these operating licence requirements.

As with other operating licence conditions for providing information with customer bills, the operating licence requires Sydney Water to provide directions to customers to access information about the customer contract from its website or through the customer centre. Sydney Water is not required to provide a copy of the summary of the customer contract, or the customer contract itself, with customer bills. This approach will ensure that the objective of this licence condition, of ensuring customers and consumers are aware of their rights and protections under the customer contract, is still achieved while allowing Sydney Water some flexibility in how it achieves it.

Our recommended operating licence conditions

Box 5.8 Recommended licence conditions for providing information to customers and consumers

23 Providing information to Customers and Consumers

- (1) Sydney Water must prepare one or more communications that:
 - (a) provide a brief explanation of:
 - (i) the Customer Contract, and
 - (ii) the document referred to in clause 22(2),
 - (b) refer to the types of relief available for Customers and Consumers experiencing payment difficulties,
 - (c) outline the rights of Customers and Consumers to claim a rebate and the conditions that apply to those rights,
 - (d) contain information about how to contact Sydney Water by telephone, email or post, including the Contact Centre, and
 - (e) explain that Customers may enter into agreements with Sydney Water separate to the Customer Contract for the provision of Services.
- (2) Sydney Water must:
 - (a) make the communication(s) Publicly Available,
 - (b) update the communication(s) to reflect any variations to the Customer Contract or the document referred to in clause 22(2) within 10 business days of the variations taking effect, and
 - (c) at least once each calendar year using the method chosen by the Customer to receive their Bill, notify all residential Customers that the communication(s) is Publicly Available.

5.8 Consulting with customers

Customer and Community Reference Group



Review principle

Setting minimum protections



Our recommendation

We recommend retaining the current operating licence condition requiring Sydney Water to maintain and consult with its Customer Council (referred to by Sydney Water as the Customer and Community Reference Group).

We do not recommend prescribing how Sydney Water is to use its Customer Council. We recommend removing the requirements in the current operating licence for Sydney Water to:

- provide the Customer Council with information to be able to undertake their assigned tasks
- maintain and make publicly available minutes of the proceedings of the Customer Council
- review the operation of the Customer Council and report on the review to IPART.⁸⁹

The objective of the Customer and Consumer Reference Group (CCRG) is to work alongside Sydney Water as an independent voice to ensure that Sydney Water's strategic plans, investment decisions and regulatory submissions are in the best long-term interests of customers and the community. Key topics for discussion will include Sydney Water's Price proposal, Strategic Planning and Customer Engagement.⁹⁰ Sydney Water's CCRG includes members who aim to bring perspectives and identify issues concerning First Nations peoples, vulnerable groups, developers, business owners, the environment, regional areas and customers and local government.⁹¹

It is a requirement of the Act that the operating licence include terms or conditions that require Sydney Water to establish and regularly consult with one or more customer councils.⁹² The requirement to establish and regularly consult with CCRG meets this requirement.

In their responses to the Issues Paper, Sydney Water, EWON, COTA, PIAC and an individual submission from a representative of the CCRG supported retaining requirements in the operating licence for the CCRG. The individual submission confirmed that the CCRG is working effectively.

PIAC was concerned that the CCRG fulfilled many different functions relating to Sydney Water's current operating licence and revenue determinations, as well as its ongoing community stakeholder engagement, stating that this is not best practice. PIAC suggested that a better approach is to have 2 separate (if potentially overlapping) groups to fulfil these functions, as this would be more effective and sustainable in the longer term. However, we have not recommended operating licence conditions supporting this view as we consider that it is unnecessary prescription.

It is IPART's view that customer engagement should not be limited to customer councils. Therefore, instead of prescribing in the operating licence how Sydney Water must structure or use its CCRG, we have recommended that the operating licence requires Sydney Water to use its CCRG as well as undertake other customer engagement (discussed in the section below). Our draft licence permits Sydney Water to have more than one CCRG.



Cost-benefit analysis for Sydney Water's Customer Council

We did not undertake a CBA for retaining the operating licence conditions for the Customer Council (CCRG), as this is a requirement of the Act. The Act gives IPART no discretion to recommend removing this requirement from the operating licence. Since our recommended changes largely remove prescription, there is no increased burden on Sydney Water.

We came to a similar conclusion in the 2022 review of the Hunter Water operating licence.

During the current operating licence term, Sydney Water has had a high level of compliance with this operating licence requirement.

Consulting customers through other avenues



Review principle

Setting minimum protections



Our recommendation

We recommend retaining the current operating licence condition requiring Sydney Water to undertake customer engagement to understand its customers' preferences and willingness to pay for service levels.⁹³

We also recommend including additional requirements clarifying that Sydney Water's customer engagement should also help it:

- understand how its systems and processes can better support more effective, direct relationships with consumers (including residential tenants)
- in the lead up to the end of term review of the operating licence, obtain advice and perspectives on the operating licence (including the Customer Contract).

Sydney Water uses its 'Our Water Our Voice' program to understand customers' preferences and willingness to pay as well as to obtain advice and perspectives on the Customer Contract and other key issues related to Sydney Water's planning and operations.⁹⁴ Sydney Water has told us that it aims to ensure that it engages with a diverse audience including First Nations peoples, people living with disability, culturally and linguistically diverse communities and people coming from various ages, genders, sectors of the industry and geographical locations.⁹⁵ In addition, Sydney Water has told us that it has an ongoing customer feedback and community sentiment tracking program and it proactively reaches out to communities affected by its infrastructure projects to obtain feedback.

In their responses to the Issues Paper, Sydney Water, EWON and PIAC supported the approach proposed in our recommendations for the operating licence. When we first explored including additional operating licence conditions for how Sydney Water must undertake customer consultation in the Issues Paper, Sydney Water expressed concern, stating that the current requirements under the IPART pricing regulatory framework is sufficient.

IPART's recently introduced pricing regulatory framework supports prudent investment by water businesses to provide customer value, which is driven by strong customer engagement.⁹⁶ Under this framework, Sydney Water must demonstrate how it would engage its customers in a meaningful way to understand customers' needs and preferences, which are then used to inform Sydney Water's pricing proposal.⁹⁷

Therefore, we have proposed minimal prescription to minimise burden on Sydney Water, and ultimately its customers. The new operating licence conditions we have recommended clarify the purpose of the customer engagement required by the operating licence to meet our expectations for Sydney Water under the operating licence and the pricing regulatory framework.

PIAC suggested additional prescription to support Sydney Water's customer engagement and meet best practice. However, we have not recommended this additional prescription. IPART already oversees how Sydney Water undertakes its customer consultation under the pricing framework. Further prescription in the operating licence may not provide benefit and would increase the burden on Sydney Water and ultimately increase costs for its customers. We have recommended the minimum requirements necessary in the operating licence, in our view, to align Sydney Water's services with customer expectations.

Our recommendation for the licence

Box 5.9 Recommended licence conditions for consulting with customers

26 Engaging Customers and Consumers

- (1) Sydney Water must engage with Customers, and Consumers to:
 - (a) understand Customer and Consumer preferences and willingness to pay for service levels;
 - (b) understand how its systems and processes can better support more effective, direct relationships with Consumers including residential tenants, and
 - (c) in the lead up to the end of term review referred to in clause 8, hear feedback and perspectives from Customers and Consumers on this Licence, including the Customer Contract.
- (2) Sydney Water must establish and regularly consult with a Customer and Community Reference Group to support its customer engagement with Customers and Consumers.
- (3) Sydney Water may have more than one Customer and Community Reference Group.

Chapter 6 >>

Critical infrastructure security

Protecting Sydney Water's critical assets which impact economic and social wellbeing

06

Since July 2018, Sydney Water has been regulated as a responsible entity under the *Security of Critical Infrastructure Act 2018* (Cth) (SOCl Act). The SOCl Act provides a risk-based regulatory framework to manage risks to, and strengthen the security of, Australia's critical infrastructure assets.

Sydney Water is the largest operator of water and wastewater services in Sydney, Illawarra and the Blue Mountains. To protect Sydney Water's critical assets, the current operating licence requires Sydney Water to:

- maintain and implement a cyber security management system
- nominate a dedicated compliance manager who is:
 - responsible for compliance with Sydney Water's obligations under the SOCl Act and the critical infrastructure security conditions in the operating licence, and
 - to act as a contact person for the Commonwealth Representative
- ensure select staff hold security clearances.⁹⁸

The SOCl Act was amended in March 2022 to introduce enhanced security obligations on responsible entities in relation to their critical infrastructure assets.⁹⁹

The SOCl Act now requires responsible entities for certain critical infrastructure assets to:

- develop, implement and comply with a Critical Infrastructure Risk Management Program (CIRMP)¹⁰⁰, and
- report annually to the Cyber and Infrastructure Security Centre (CISC) on the status of the CIRMP within 90 days of the end of each financial year¹⁰¹.

The *Security of Critical Infrastructure (Critical infrastructure risk management program) Rules (LIN 23/006) 2023* (Cth) (CIRMP Rules) commenced on 17 February 2023.¹⁰² The CIRMP Rules specify the critical infrastructure assets for which responsible entities must develop, implement and comply with a CIRMP. They also prescribe the requirements for a CIRMP.¹⁰³ As the CIRMP requirements apply to responsible entities for critical water assets, Sydney Water must comply with them.¹⁰⁴


Each responsible entity was required to develop and implement its CIRMP by 18 August 2023.^y However, responsible entities have until 18 August 2024 to implement the cyber and information security framework referred to in their CIRMP.^z Until that time, we consider that it is beneficial to retain the current operating licence obligations to manage risks to Sydney Water's critical infrastructure. We recommend then retiring the current operating licence obligations on 18 August 2024 to avoid duplication with the SOCl Act.

^y The CIRMP Rules provide a 6-month grace period from commencement to develop and implement a CIRMP for responsible entities that were operational on commencement of the CIRMP Rules: *Security of Critical Infrastructure (Critical infrastructure risk management program) Rules (LIN 23/006) 2023* (Cth), s 4(2).

^z In addition to the 6-month grace period, the CIRMP Rules provide a further 12 months for responsible entities to implement the cyber and information security framework referred to in their CIRMP: *Security of Critical Infrastructure (Critical infrastructure risk management program) Rules (LIN 23/006) 2023* (Cth), s 8(3).

We seek your feedback about retaining the current operating licence conditions for critical infrastructure security until 18 August 2024, as set out in our draft recommendations below:

Draft recommendations for the operating licence

-  27. Retain the following operating licence conditions, until 18 August 2024, requiring Sydney Water to maintain:
- and implement a cyber security management system
 - a critical infrastructure compliance manager responsible for implementing the cyber security management system
 - security clearances for select employees participating in classified discussions with government agencies.

We also seek your feedback on our draft proposals for reporting against these operating licence requirements, as set out below.

Draft recommendations for the Reporting Manual



Reporting Manual: Reporting on cyber security

We propose to remove the reporting requirements for Sydney Water to provide an annual cyber security audit report to IPART.

Cyber security management system

6.1 Maintain and implement a cyber security management system



Review principle

Recognising new strategies or policies



Our draft recommendation

We recommend retaining the current operating licence requirement for Sydney Water to maintain and implement a cyber security management system until the new rules under the SOCI Act commence on 18 August 2024.

We proposed this approach in the Issues Paper and Sydney Water expressed its support.

Before the CIRMP Rules were introduced, the SOCI Act did not specify how responsible entities were to secure information. Information is a high-risk area for cyber related harm. The current Sydney Water operating licence specified requirements for a cyber security management system to address this gap.

We have not undertaken a cost-benefit analysis on retaining these requirements as we are not recommending changes other than to retire the conditions on 18 August 2024. There is no additional burden on Sydney Water.

6.1.1 Our recommended operating licence conditions

The recommended operating licence conditions for maintaining and implementing a cyber security management system are shown in Box 6.1 below.

Box 6.1 Recommended licence condition for maintaining and implementing a cyber security management system

36 Cyber Security Management System

- (1) Subject to clause 39, Sydney Water must maintain a cyber security Management System.
- (2) Sydney Water must implement the cyber security Management System.
- (3) The cyber security Management System must cover:
 - (a) information technology environments, hardware and systems, and
 - (b) operational technology environments, hardware and systems.

In its submission, Sydney Water sought to understand how we intend to monitor its compliance under the new operating licence. We expect Sydney Water to report on its compliance with these licence conditions from 1 July 2024 to 18 August 2024. If we decide to audit Sydney Water's compliance with its operating licence conditions, it would be for this period only.

6.2 Responsibility for implementation



Review principle

- Recognising new strategies or policies
- Removing redundancy



Our draft recommendation

We recommend retaining the current operating licence condition requiring Sydney Water to have a critical infrastructure compliance manager who is responsible for implementing the cyber security management system until 18 August 2024.

We proposed the same view in the Issues Paper and Sydney Water expressed its support.

Prior to the introduction of the CIRMP Rules, the SOCI Act did not require a specific compliance manager. The current operating licence sought to address this regulatory gap. The current operating licence sought to address this regulatory gap. However, this gap no longer exists with the commencement of the CIRMP Rules.

Sydney Water is required to consider if its CIRMP identifies each person who is responsible for developing and implementing its CIRMP under the SOCI Act, as well as reviewing and keeping the CIRMP up to date.¹⁰⁵ As Sydney Water has until 18 August 2024 to implement the cyber and information security framework referred to in its CIRMP, we recommend retaining this operating licence condition until that time.

As with the requirements for the cyber security management system, we expect Sydney Water to report on its compliance with these licence conditions from 1 July 2024 to 18 August 2024. If we decide to audit Sydney Water's compliance with its operating licence conditions, it would be for this period only.

We have not undertaken a cost-benefit analysis on retaining these requirements as we are not recommending changes other than to retire the conditions on 18 August 2024. There is no additional burden on Sydney Water.

6.2.1 Our recommended operating licence conditions

The recommended operating licence conditions for having a critical infrastructure compliance manager are shown in Box 6.2 below.

Box 6.2 Recommended licence condition for maintaining a critical infrastructure compliance manager

37 Critical Infrastructure Compliance Manager

(1) Subject to clause 39, Sydney Water must have a manager responsible for compliance with:

- (a) Part 9 of the licence, and
- (b) Sydney Water's obligations under the *Security of Critical Infrastructure Act 2018* (Cth).

(2) The manager must be:

- (a) an executive level employee,
- (b) nominated by notice in writing to:
 - (i) IPART, and
 - (ii) the Commonwealth Representative, and

Note: The reference to an executive level employee is a reference to a Level 3 employee or above under Sydney Water's structure on the date this Licence commences.

(c) the contact person for the Commonwealth Representative.

6.3 Security clearances



Review principle

- Recognising new strategies or policies
- Removing redundancy



Our draft recommendation

We recommend retaining the current operating licence conditions, until 18 August 2024, requiring Sydney Water to ensure that national security clearances are held by the following employees:

- critical infrastructure compliance manager
- two board members
- executive level employees

where these employees are responsible for the following matters:

- operational technology security (including cyber security strategy, managing remote access to Assets and delivery of SCADA capability)
- network operations security (including operation, maintenance and physical security of Assets)
- personnel security operations (including security of Personnel and security risks posed by Personnel).

The purpose of this operating licence condition is to ensure that Sydney Water employees participating in classified discussions with government agencies are appropriately vetted and the security of sensitive information is maintained. They can be retired on 18 August 2024, as with the other critical infrastructure security operating licence conditions.

In its response to the Issues Paper, Sydney Water stated that its preference is to remove this operating licence condition so that it could retire the national security clearances for some of its staff early.

The relevant Sydney Water staff hold negative vetting level (NV1) clearance,^{aa} under this operating licence requirement. NV1 clearances have a term of 10 years. Most of Sydney Water's staff obtained their NV1 clearances about 3 years ago. Sydney Water would prefer to only maintain NV1 clearances for the rest of the 10-year term for its Chief Security Officer and/or for the person responsible for maintaining its Critical Infrastructure Risk Management Program (under the SOCI Act). However, Sydney Water is not opposed to maintaining all existing NV1 clearances for their full 10-year term, if required.

^{aa} The purpose of the security vetting process is to determine whether an individual is suitable to hold a security clearance. NV1 security clearance holders can be provided with temporary access to TOP SECRET classified resources in certain circumstances.

Our proposed operating licence conditions will only require Sydney Water to retain the NV1 clearances for around another 2 months into the 2024-2028 operating licence term. From 18 August 2024 onwards, Sydney Water will have to comply with the security clearance requirements under the SOCI Act rules. Sydney Water was required to comply with the requirements for background checks under the CIRMP Rules by 18 August 2023. However, Sydney Water has until 18 August 2024 to implement the cyber and information security framework identified in its CIRMP. We consider it is more expedient to retain the current operating licence conditions and retire the critical infrastructure security conditions collectively on 18 August 2024.

6.3.1 Supporting information for this review



CIRMP Rules for background checks

The CIRMP Rules require Sydney Water to identify individuals who have ongoing access to sensitive aspects of its business including employees, contractors and agents.

Sydney Water's CIRMP will need to include processes and procedures to minimise or eliminate material risks that critical personnel may pose. Background checks are one method of managing these risks.

The SOCI Act enables AusCheck and other providers to provide background checking. Responsible entities are not required to use background checking services in managing personnel risks if they can manage the risk in another way.¹⁰⁶ Further information on using the AusCheck background checking function is available to Sydney Water at <https://www.auscheck.gov.au/critical-infrastructure>.

We have not undertaken a cost-benefit analysis on retaining these requirements. There is no additional burden on Sydney Water.

6.3.2 Our recommended operating licence conditions

The recommended operating licence conditions for maintaining national security clearances for select staff are shown in Box 6.3 below.

Box 6.3 Recommended licence conditions for maintaining national security clearances for select staff

38 National Security Clearances

Subject to clause 39, Sydney Water must ensure that National Security Clearances are held by the manager referred to in clause 37, two board members and the executive level employees responsible for each of the following matters:

- (1) operational technology security (including cyber security strategy, managing remote access to Assets and delivery of supervisory control and data acquisition capability),
- (2) network operations security (including operation, maintenance and physical security of Assets), and
- (3) Personnel security operations (including security of Personnel and security risks posed by Personnel).

6.4 Retiring the licence conditions

The CIRMP Rules provides two grace periods for complying with its requirements:

- **18 August 2023:** Sydney Water has until this date to develop and implement a CIRMP.
- **18 August 2024:** Sydney Water has until this date to implement the cyber and information security framework identified in its CIRMP.

As the cyber and information security framework is a critical component of the CIRMP, we consider that it is prudent to retain all current operating licence conditions and collectively retire these conditions on 18 August 2024. The recommended operating licence condition for retiring the critical infrastructure security operating licence conditions is shown below.

Box 6.4 Recommended licence condition for exemption from Part 9 of the Operating Licence

39 Exemption from Part 9

Sydney Water is not required to comply with this Part 9 from:

- (1) 18 August 2024, or

Note: From 18 August 2024, Sydney Water will be required to implement all aspects of its critical infrastructure risk management program under the *Security of Critical Infrastructure Act 2018* (Cth) and the *Security of Critical Infrastructure (Critical infrastructure risk management program) Rules 2023* (Cth).

- (2) another date nominated by Sydney Water and approved by IPART in writing.



Reporting Manual: Reporting on cyber security

We do not intend to retain the current requirements of the 2019-2024 Reporting Manual to provide a cyber security audit report to IPART and the Commonwealth Representative (i.e. the First Assistant Secretary with responsibility for critical infrastructure security within the Commonwealth Department of Home Affairs).

The current reporting manual requires Sydney Water to have its cyber security management system audited annually and provide a cyber security audit report to IPART and the Commonwealth Representative.¹⁰⁷

It will not be meaningful to retain these requirements as we are recommending that the operating licence requirements for the cyber security management system will be retired on 18 August 2024. We do not expect Sydney Water to audit its cyber security management system within the short time period from when the operating licence commences (1 July 2024 to 18 August 2024).

We consider that the requirements under the SOCI Act are adequate to ensure transparency and accountability and additional reporting is not necessary. The SOCI Act requires periodic and event-based reporting, including providing for annual report to the CISC within 90 days after the end of the financial year.¹⁰⁸

Chapter 7

Stakeholder cooperation and competition

Licence conditions requiring Sydney Water to maintain relationships to align with the expectations of customers, Government and regulators.

07

Sydney Water maintains important and cooperative relationships with Government stakeholders and private water utilities. Our draft recommendations throughout this section focus on the licence conditions required to ensure that Sydney Water maintains the required relationships with government bodies (such as NSW Health and Fire and Rescue NSW) and encouraging fair market competition with private water utilities.

We seek your feedback on our draft recommendations.

Draft recommendations for the operating licence

- 28. Include operating licence conditions requiring Sydney Water to:
 - maintain memoranda of understanding (MoU) with the Water Administration Ministerial Corporation (WAMC), NSW Health and the Environment Protection Authority (EPA)
 - use its best endeavours to comply with its MoUs with WAMC, NSW Health, and the EPA.
- 29. Include operating licence conditions regulating Sydney Water's relationship with Fire and Rescue NSW (FRNSW), requiring Sydney Water to:
 - use its best endeavours to maintain a MoU with FRNSW
 - comply with its MoU with FRNSW
 - provide water pressure, flow rate and other information about all fire hydrants in its water supply network to FRNSW within specified timeframes.
- 30. Retain the current operating licence conditions for Sydney Water to engage with and provide information to its competitors, including requirements for Sydney Water to:
 - engage with licensees under the *Water Industry Competition Act 2006* (NSW) (WIC Act) and potential competitors in good faith
 - publish the servicing information about its water and wastewater systems specified in the operating licence, unless already provided in Developer Service Plans
 - use its best endeavours to establish a code of conduct with WIC Act licensees if sought by the WIC Act licensee in writing.
- 31. Remove the current operating licence condition which assumes Sydney Water has entered into a code of conduct with a WIC Act licensee where it applies to an industry code established by the Minister, under the WIC Regulation.

We also seek your feedback on our draft proposals for reporting against these operating licence requirements, as set out below.

Draft recommendations for the reporting manual



Reporting Manual: Reporting on competitor engagement

We propose to retain the requirements for Sydney Water to report on its engagement with competitors (both current and potential new competitors), including where it has provided information and services.

7.1 Engaging with Government stakeholders

The current operating licence requires Sydney Water to maintain cooperative relationships with key Government stakeholders through memoranda of understandings (MoUs). These relationships encourage Sydney Water to align its operations with the expectations of the public, Government and regulators.

A MoU is a flexible administrative tool that facilitates agreements between the parties on matters that may not be foreseen at the time that the operating licence is granted. Generally, we consider that MoUs are cost-effective ways for parties to establish effective working relationships. They promote cooperative approaches to addressing issues of mutual concern, such as data and information sharing, and they can be easily reviewed and updated.

7.1.1 Memoranda of understanding with WAMC, NSW Health and EPA



Review principle

Protecting customers, community and the environment



Our draft recommendation

We recommend including operating licence conditions requiring Sydney Water to:

- maintain MoUs with the Water Administration Ministerial Corporation (WAMC), NSW Health and the Environment Protection Authority (EPA)
- use its best endeavours to comply with its MoUs with WAMC, NSW Health and the EPA.

We propose that the operating licence should continue to require Sydney Water to maintain its MoUs with WAMC, NSW Health and the EPA as these MoUs are a requirement of the Act.¹⁰⁹

In its response to the Issues Paper, Sydney Water explained that it has sometimes faced difficulties with maintaining these MoUs, particularly the MOU with WAMC, as this requires cooperation from the other party as well and is not solely in Sydney Water's control. We acknowledge these difficulties but consider that softening the operating licence condition to require Sydney Water to use its best endeavours to maintain these MoUs, as requested by Sydney Water, would be inconsistent with the requirements of the Act. We discuss the issues with the MoU with WAMC further below.

We have proposed to introduce new operating licence conditions requiring Sydney Water to maintain the MoUs as we consider that the licence conditions are beneficial in supporting the MoU's purpose to maintain cooperative relationships. We are also recommending that Sydney Water should use its best endeavours to comply with the MoUs, acknowledging that full compliance relies on cooperation from the other parties.

DPE, NSW Health and the EPA expressed their support for retaining requirements for Sydney Water to maintain these MoUs and supported introducing requirements for compliance in their responses to the Issues Paper.



Cost-benefit analysis for the MoUs with WAMC, NSW Health and the EPA

We did not undertake a CBA for retaining the operating licence conditions requiring MoUs with WAMC, NSW Health and the EPA as this is a requirement of the Act. As we do not recommend substantial changes, there is no increased burden on Sydney Water.

We came to a similar conclusion in the 2022 review of the Hunter Water operating licence.

Memorandum of understanding with WAMC

The current MoU with WAMC recognises the role of WAMC in regulating water access, use and management, and Sydney Water's right to use water vested in WAMC. WAMC is a statutory body representing the Crown established under the *Water Management Act 2000*.¹¹⁰ Currently, DPE works together with the Natural Resource Access Regulator (NRAR) and WaterNSW to carry out WAMC functions.

In its response to the Issues Paper, Sydney Water explained that it has had difficulties with maintaining its MoU with WAMC because it is unclear who should be involved in the MoU since WAMC's responsibilities have been divided between DPE, NRAR and WaterNSW, leading to delays with keeping the MoU up to date.

Sydney Water requested that the operating licence be clear about the stakeholder(s) (within WAMC) with whom Sydney Water must maintain the MoU. However, we do not recommend this change to the operating licence condition. The requirement of the Act is for Sydney Water to maintain the MoU with WAMC. Additionally, the operating licence cannot be easily updated if there were to be further structural changes and changes in allocation of WAMC's responsibilities, including responsibilities for maintaining the MoU.

DPE has advised that the MoU is currently being revised and updated to give better effect to its purpose. We expect that this should address some of the difficulties that Sydney Water has been facing.

Memorandum of understanding with NSW Health

NSW Health is the lead agency for guiding water-related public health incident responses. The current MoU with NSW Health recognises NSW Health's role in providing advice to the Government about drinking water quality standards and the supply of water which is safe to drink.

In its response to the Issues Paper, NSW Health confirmed that the MoU is maintained, functional and revised as required over time.

Memorandum of understanding with the Environment Protection Authority (EPA)

The MoU with the EPA recognises its role as the environment regulator of New South Wales. In its response to the Issues Paper, the EPA expressed its support for retaining requirements for the MoU with the EPA. It said that the MoU is maintained and functional.

We recommend removing the statement in the current operating licence which states that the purpose of the MoU is to commit Sydney Water to environmental obligations. We consider that this is not the purpose of the MoU. Sydney Water's environmental obligations are regulated through environment protection licences issued by the EPA under the *Protection of the Environment Operations Act 1999* (NSW) (POEO Act).¹⁴⁴ The purpose of the MoU is to encourage a cooperative relationship with the EPA. It is not a legal instrument to enforce obligations. However, it can assist the EPA in its regulatory functions by encouraging the two parties to come to mutual agreements regarding the environmental obligations, as necessary.

Sydney Water supported removing these words from the operating licence, in its response to the Issues Paper.

Compliance during the 2019-2024 operating licence term

We audited Sydney Water's compliance with the operating licence requirements for these MoUs in 2023 for the first time in the current 2019-2024 licence term. The results of this audit will be publicly available before we make our final recommendations to the Minister. We will consider if there are any compliance issues that need to be addressed through specific operating licence conditions.

Our recommended operating licence conditions

Box 7.1 Recommended licence condition for MOUs with WAMC, NSW Health and EPA

29 Memoranda of understanding with WAMC, NSW Health and EPA

(1) Sydney Water must:

(a) maintain the memoranda of understanding entered into under section 35 of the Act with:

- (i) the Water Administration Ministerial Corporation (WAMC),
- (ii) the Secretary of the Ministry of Health (NSW Health), and
- (iii) the Environment Protection Authority (EPA).

(b) use its best endeavours to comply with the memoranda of understanding.

(2) The purpose of the memoranda of understanding referred to in clause 29(1) is to:

- (a) form the basis for cooperative relationships between the parties,
- (b) recognise the role of WAMC in regulating water access, use and management and Sydney Water's right to use water vested in WAMC,
- (c) recognise the role of NSW Health in advising the NSW Government on Drinking Water quality standards and the supply of safe Drinking Water, and
- (d) recognise the role of EPA as the environment regulator of New South Wales.

7.2 Relationship with Fire and Rescue NSW

Memorandum of Understanding with FRNSW



Review principle

Protecting customers, community and the environment



Our draft recommendation

We recommend including operating licence conditions requiring Sydney Water to use its best endeavours to:

- maintain a MoU with FRNSW
- comply with its MoU with FRNSW.

FRNSW is Sydney's urban fire and rescue service. Its purpose is to enhance community safety, quality of life and confidence by minimising the impacts of hazards and emergency incidents on the people, property, environment and economy of NSW.¹¹²

The current operating licence does not require Sydney Water to provide water to FRNSW for firefighting purposes. However, because Sydney Water is a monopoly water supplier, the community expects Sydney Water to provide a system that is not prone to failure and will meet community needs, including for firefighting. It is one of Sydney Water's principal objectives under the Act to exhibit a sense of social responsibility by having regard to the interests of the communities in which it operates.¹¹³

Sydney Water's water supply network is one of several mechanisms affecting water availability for urban firefighting. An example of another mechanism is the maintenance of, and continuing provision for, existing fire systems such as installed systems required by building codes. Sydney Water contributes to improving fire safety by collaborating with FRNSW for better understanding by both parties of water availability needs for firefighting and water supply network limitations.

The Act does not require a MoU between Sydney Water and FRNSW as it does for WAMC, NSW Health and the EPA. The current operating licence requires this MoU because it recognises the benefits of and need for Sydney Water and FRNSW to work together collaboratively. The MoU provides a flexible mechanism for Sydney Water and FRNSW to:

- set out the roles and responsibilities of the parties as they relate to each other
- identify the needs and constraints of the parties as they relate to each other
- identify and develop strategies for efficient and effective provision of firefighting water consistent with the goals of each party.

The MoU can be easily and regularly updated with agreement from both parties. Therefore, we propose to retain the same approach.

We have proposed that the operating licence requires Sydney Water to use its best endeavours to maintain and comply with this MoU, recognising that this takes cooperation from FRNSW as well.



Cost-benefit analysis for the MoU with FRNSW

We did not undertake a quantitative CBA for this MoU. However, we have assessed the qualitative costs and benefits. In general, we consider that MoUs are an appropriate and efficient administrative tool and that they are likely to generate net economic benefits.

The benefit of a MoU is flexibility to deal with uncertain future events. The main cost of a MoU is the cost of providing a regular forum for Sydney Water employees and the respective agencies to discuss emerging issues and attempt to negotiate solutions. It is intrinsically difficult to quantify the value of flexibility, but not difficult to anticipate that this value could be high in some situations. In contrast, the costs of a MoU, being principally employee time, are relatively modest.

We came to a similar conclusion in the 2022 review of the Hunter Water operating licence.

Compliance during the 2019-2024 operating licence term

We audited Sydney Water's compliance with the operating licence requirements for this MoU in 2023 for the first time in the current 2019-2024 licence term. The results of this audit will be publicly available before we make our final recommendations to the Minister.

FRNSW has shared its difficulties with obtaining information that it requires from Sydney Water in a timely manner. We discuss draft operating licence conditions to address this in the next section.

Our recommended operating licence conditions

Box 7.2 Recommended licence conditions for the MoU with FRNSW

30 Memorandum of understanding with FRNSW

- (1) Sydney Water must use its best endeavours to:
 - (a) maintain a memorandum of understanding with FRNSW, and
 - (b) comply with that memorandum of understanding.
- (2) The purpose of the memorandum of understanding with FRNSW is to:
 - (a) form the basis for cooperative relationships between the parties,
 - (b) set out the roles and responsibilities of the parties as they relate to each other,
 - (c) identify the needs and constraints of the parties as they relate to each other, and
 - (d) identify and develop strategies for efficient and effective provision of firefighting water consistent with the goals of each party.
- (3) The memorandum of understanding with FRNSW must establish a working group that:
 - (a) includes representatives from Sydney Water and FRNSW,
 - (b) may include representatives from other organisations such as the NSW Rural Fire Service, and
 - (c) considers at a minimum:
 - (i) information sharing arrangements between Sydney Water and FRNSW;
 - (ii) agreed timelines and a format for Sydney Water to provide a report to FRNSW detailing the network performance with regard to availability of water for firefighting (taking into account the minimum available flow and pressure in localised areas of the network),
 - (iii) arrangements for Sydney Water to consult with FRNSW in the design of new Assets and planning of system maintenance, where planning indicates that minimum available flow and pressure may unduly affect firefighting in the network section under consideration, and
 - (iv) other matters as agreed by both Sydney Water and FRNSW.

Information sharing between Sydney Water and FRNSW



Review principle

Recognising new strategies or policies



Our draft recommendation

We recommend including new operating licence conditions requiring Sydney Water to provide water pressure and flow rate information at all fire hydrants in its water supply network to FRNSW within specified timeframes.

There are parts of Sydney Water's area of operations where the water pressure is too low for fire hydrants to meet the fire standard.^{bb} This is because of increased building development in older areas which reduces the overall water pressures. Upgrades to resolve this are expensive and would result in an increased cost to customers. In these circumstances, FRNSW must source alternative water for firefighting purposes (such as tankered water). In some cases, building owners or developers are required to provide stored water for firefighting, particularly in larger commercial and industrial properties or residential medium-to-high rise apartment blocks.

Currently, FRNSW has water pressure and flow rate data for about 25% of the hydrants in Sydney Water's network. These hydrants were prioritised and agreed cooperatively between Sydney Water and FRNSW. However, FRNSW has expressed concerns to us about the difficulty in obtaining this information and the length of time it has taken Sydney Water to provide it. Having access to this information allows FRNSW to resource firefighting jobs efficiently, improving FRNSW's response to emergencies and implementation of preventative fire safety measures. This information also assists FRNSW in understanding the effectiveness of the fire safety system when reviewing designs of proposed buildings. Availability of information about water pressure at the hydrants is important to continue to protect the community.

We have proposed operating licence conditions requiring Sydney Water to provide the requested data for all hydrants in Sydney Water's area of operations by the dates specified, to ensure that providing this data is prioritised and Sydney Water can be adequately funded. The Council of The Aging supported this proposal when we tested it in the Issues Paper.

^{bb} The fire standard is separate to the water pressure standards in the current operating licence, which are intended to meet domestic water needs.
The fire standard referred to here is the Australian Standard 2419.1:2021. "Fire hydrant installations System design, installation and commissioning."

Sydney Water is opposed to this proposal, stating that the provision of data to FRNSW is better managed through the MoU. Sydney Water has been limited in its capacity to provide information at the remaining hydrants quickly because its hydraulic models have not been set up to include this data. Sydney Water is currently upgrading its models to include this information and has told IPART that it is committed to providing the remainder of the required information to FRNSW once the model upgrade works are completed. Sydney Water explained that it is adequately incentivised to complete these model upgrade works as the benefits of these upgrade works go beyond providing data to FRNSW. It also improves how Sydney Water can undertake its functions. Therefore, Sydney Water says it does not need to be incentivised through the operating licence. However, Sydney Water has acknowledged that there are other competing organisational priorities and Sydney Water has faced difficulties with adequate funding to appropriately resource these model upgrades.

Given the ongoing delays, now going over 2 operating licence periods, we consider that it would be beneficial to move away from relying on the MoU for this matter and include enforceable operating licence requirements to provide the data. It will provide assurance to FRNSW and the community that this action will be completed in this operating licence period. We expect there to be minimal burden on Sydney Water on having an operating licence mandate given Sydney Water's intention to provide the information regardless.



Cost-benefit analysis operating licence conditions to provide information to FRNSW

We consider that there is a net benefit in the operating licence including requirements for Sydney Water to provide the information that FRNSW requests by the dates specified in the operating licence.

Quantitative data provided by Sydney Water and FRNSW suggests that costs and benefits are finely balanced for the provision of the comprehensive water pressure data that FRNSW requested. Sydney Water estimated that the costs of providing this information are \$10m over 4 or more years, equating to \$2.5m per year or less.

FRNSW provided us an assessment of 13 residential fires in the Sydney Water area of operation between 2015 and 2023 (an 8-year period). Each of the fires in that list had recorded low water pressure as a factor contributing to the damage caused by the fire. FRNSW estimated costs that could have been saved at each of these fires if the desired water pressure data had been available to the firefighting crew at the scene. The total of this savings from accurate pressure data was \$11.2m over 8 years, averaging to \$1.4m per year.

We note that FRNSW's report contained many caveats. We note also that Sydney Water's account of costs may be applicable to more than 4 years.

Given the limitations of the available data, we consider that the costs and benefits of the requirement to report water pressure information are broadly similar. This comparison takes into account only costs of property damage. With fires there is also a risk to safety with a possibility of injury or death to firefighters and property occupants. Inclusion of safety factors would likely push the net benefit into positive territory for the water pressure reporting requirement.

Our recommended operating licence conditions

Box 7.3 Recommended licence condition for information sharing with FRNSW

31 Information to be provided to FRNSW

(1) Sydney Water must, in accordance with this clause 31, provide the following information to FRNSW about fire hydrants in its water supply network:

- (a) hydrant ID,
- (b) model name,
- (c) watermain size, date and type,

Box 7.3 Recommended licence condition for information sharing with FRNSW

- (d) water supply zone,
 - (e) land zoning,
 - (f) coordinates (easting/northing),
 - (g) Map Grid of Australia (MGA) coordinate (x, y), and
 - (h) Fire flow (litres per second) at 95 percentile / 4 m head of pressure.
- (2) Sydney Water must provide the information in clause 31(1) about:
- (a) 40% of fire hydrants in its network by:
 - (i) 30 June 2025; or
 - (ii) another date nominated by Sydney Water and approved by IPART in writing;
 - (b) 60% of fire hydrants in its network by:
 - (i) 30 June 2026; or
 - (ii) another date nominated by Sydney Water and approved by IPART in writing;
 - (c) 80% of fire hydrants in its network by:
 - (i) 30 June 2027; or
 - (ii) another date nominated by Sydney Water and approved by IPART in writing;
 - (d) 100% of fire hydrants in its network by:
 - (i) 30 June 2028; or
 - (ii) another date nominated by Sydney Water and approved by IPART in writing.
- (3) Sydney Water must:
- (a) use its best endeavours to agree with FRNSW on:
 - (i) a list of fire hydrants or areas that Sydney Water will prioritise when providing the information in clause 31(1), and
 - (ii) the data type and format to provide the information,

Box 7.3 Recommended licence condition for information sharing with FRNSW

- (b) prioritise providing the information in clause 31(1) for the fire hydrants or areas agreed with FRNSW,
- (c) provide the information in the data type and format agreed with FRNSW, and
- (d) review and update the information provided to FRNSW under clause 31(2)(a) and 31(2)(b) at least once before:
 - (i) 30 June 2028, or
 - (ii) another date nominated by Sydney Water and approved by IPART in writing.

Open access to Sydney Water's network performance data

FRNSW requested open access to Sydney Water's network performance data, which is information about water pressures and flow rates at the fire hydrants in Sydney Water's network. FRNSW proposes that providing open access to information about the capacity of the water mains to provide water for firefighting could help stakeholders make informed investment decisions. Developers and property owners are required to provide alternative sources of firefighting water where the water main does not provide adequate flow, but this comes at a cost.

While we acknowledge the potential benefits of FRNSW's proposal, we consider that this matter does not need to be regulated by the operating licence. We understand that the requested network performance data is already available to developers and building owners by application to Sydney Water for a statement of available pressure and flow. This will give the applicant information on their site-specific requirements on a range of flow rates, based on up-to-date model configurations. Sydney Water will calculate water flow and pressure at the site. The cost of this work is recovered by the application fee which is approved by IPART as part of the [pricing determination for Sydney Water](#)

We consider that this remains an appropriate model. Developers and building owners recover the costs from their sales or rent. We consider that it is not appropriate to require Sydney Water to provide this information free of cost as that cost will need to be borne by Sydney Water's customer base.

7.3 Dealing fairly with competitors



Review principle

Setting minimum protections



Our draft recommendation

We recommend retaining the current operating licence conditions requiring Sydney Water to:

- provide services to WIC Act licensees where a connection is available, and subject to reasonable terms and conditions from Sydney Water
- negotiate with WIC Act licensees and other potential competitors in 'good faith'
- use best endeavours to cooperate with WIC Act licensees seeking to establish a code of conduct.

Sydney Water promotes fair competition by engaging in good faith with licensees under the *Water Industry Competition Act 2006* (WIC Act). Sydney Water supports retaining the current operating licence obligations for protecting WIC Act licensees and other potential competitors when dealing with Sydney Water.

7.3.1 Providing services to competitors

The WIC Act and *Water Industry Competition (General) Regulation 2021* were introduced to encourage private sector participation and competition in the supply of water and provision of sewerage services in NSW. This regulatory framework enabled a new type of water supplier to emerge – WIC Act licensees. WIC Act licensees are private water utilities that can provide drinking water, recycled water and/or wastewater services to end-use (or 'retail') customers within their defined areas of operation.

The private water utilities are customers of Sydney Water when they seek a connection to Sydney Water's services (to then onsell to residential customers). Private water utilities are customers and should be adequately protected. As a monopoly supplier, Sydney Water is often the only option for a private water utility to connect to for additional or supplementary capacity. If Sydney Water were to refuse to deal with its competitors (current or potential), there is a risk that they could be discouraged from entering the market to supply water or sewerage services. This in turn can reduce the ability of the competitors to effectively compete with Sydney Water.



Cost-benefit analysis for recommending operating licence conditions to promote competition

We did not undertake a quantitative CBA for these provisions of the operating licence. However, qualitatively, we consider there is a net benefit in retaining them as they increase competition and there are potential gains to consumers that effective competition creates. The costs to Sydney Water of complying with these provisions should be small. The benefits, while hard to quantify, are potentially large in the longer term.

The WIC Act is necessary, but not always sufficient to ensure that potential competitors have the opportunity to compete on the merits. This part of the recommended operating licence provides protections to WIC Act licensees and to potential competitors who inform Sydney Water that they intend to carry out activities that would require a licence under the WIC Act (the competitors).

In the absence of these protections, it would be open to an incumbent such as Sydney Water to pursue strategies that would have the same practical effect as a refusal to deal. In this counterfactual case, it would likely be in the commercial interest of the incumbent to refuse to deal with potential competitors who are trying to win business from them.

We came to a similar conclusion in the 2022 Hunter Water operating licence review.

Our recommended operating licence conditions

We recommend retaining the current operating licence condition requiring Sydney Water to make services available on request to WIC Act licensees (currently the only competitors to Sydney Water in its area of operations).¹⁴ Sydney Water is only able to refuse to connect requested services if it can demonstrate that a connection is not available.

To ensure that the obligations placed on Sydney Water are fair and reasonable, we recommend retaining the allowance available in the current operating licence for Sydney Water to impose any reasonable conditions for the safe, reliable and financially viable supply of its services.

Box 7.4 Recommended Licence requirements for making services available to competitors

11 Obligation to make Services available

(1) Sydney Water must provide Services for the supply of Drinking Water and the disposal of Wastewater on request to:

(a) [...]

(b) WIC Act Licensees that operate water industry infrastructure connected to, or for which a connection is available to, Sydney Water's water supply system.

(2) Sydney Water must provide Services for the disposal of Wastewater on request to:

(a) each Property in the Area of Operations for which a connection is available to Sydney Water's Wastewater system, and

(b) WIC Act Licensees that operate water industry infrastructure connected to, or for which a connection is available to, Sydney Water's Wastewater system.

(3) In complying with the obligations under clause 11(1) and clause 11(2), Sydney Water may impose reasonable conditions to ensure the safe, reliable and commercially viable supply of water and disposal of Wastewater.

7.3.2 Engaging with competitors in good faith



Cost-benefit analysis for operating licence conditions requiring Sydney Water to negotiate in good faith

We consider that there would likely be net economic benefits to requiring Sydney Water to negotiate with WIC Act utilities in good faith.

The counterfactual is the absence of a requirement to negotiate in good faith, in which case Sydney Water could not be relied upon to negotiate fairly with its competitors who seek to win business from it. This may lead to less vigorous competition from WIC Act licensees and those intending to commence activities that would require a WIC Act licence for parts of Sydney Water's customer base.

The cost of a good faith requirement would be modest. While Sydney Water might lose some business, that would be offset in a whole of society sense by the gains to competitors. The principal benefit of the good faith requirement is that, over time, the water supply industry in the Sydney Water area of operations would become more competitive. One way this would happen is that good faith negotiations would give competitors more confidence to invest in rival supply facilities because their business uncertainties would be reduced. With a more competitive industry, the deadweight loss would be reduced.

Our recommended operating licence conditions

We recommend retaining the current operating licence condition requiring Sydney Water to act in 'good faith' when negotiating with competitors (existing WIC Act licensees or potential new competitors) who are seeking connections to Sydney Water's services.

Box 7.5 Recommended licence conditions for negotiating in good faith

33 Negotiations with WIC Act licensees and Potential Competitors

Sydney Water must negotiate the provision of Services to WIC Act Licensees and Potential Competitors in Good Faith.

7.3.3 Establishing a code of conduct with WIC Act utilities

We recommend retaining the current operating licence condition requiring Sydney Water to use its best endeavours to cooperate with WIC Act licensees seeking to establish a code of conduct required by a WIC Act licence, where Sydney Water has received a written request from the WIC Act licensee to establish such a code. Establishing a code of conduct is intended to encourage ongoing cooperation and fair competition between Sydney Water and WIC Act licensees.

We recommend removing the condition in the current operating licence which states that, where the Minister has established a code of conduct under the WIC Regulation, Sydney Water will be taken to have entered into a code of conduct with a WIC Act licensee by applying that code of conduct to that WIC Act licensee.¹¹⁵ As most of the WIC Act licences require codes of conduct and do not rely on one being established by the Minister, we consider that this requirement is unnecessary. We will consider stakeholder feedback about whether this condition should be retained in the operating licence.



Cost-benefit analysis for the operating licence condition requiring a code of conduct with WIC Act licensees

The benefits and costs of this operating licence condition are each very modest. However, the condition causes little or no harm and it helps to promote a more competitive industry structure in the future.

The benefit of this condition is tied to the benefit more broadly of the WIC Act, which aims to promote competition in the water industry. The immediate costs of the recommended licence condition would be administrative in nature. An efficient organisation should be able to meet the licence requirement at modest cost.

We came to a similar conclusion in the 2022 Hunter Water operating licence review.

Our recommended operating licence conditions

Box 7.6 Recommended licence condition for establishing a code of conduct with WIC licensees

35 Code of conduct

Sydney Water must use its best endeavours to cooperate with each WIC Act Licensee to establish a code of conduct required by a licence granted under the WIC Act where Sydney Water has received a written request from the WIC Act Licensee to establish such a code.

7.4 Publishing servicing information



Review principle

Setting minimum protections



Our draft recommendation

We recommend retaining the current operating licence conditions for Sydney Water to publish servicing information about its water and wastewater systems specified in the operating licence, unless already provided in Developer Service Plans.

The current operating licence requires Sydney Water to publish servicing information for each of its major water and wastewater systems.¹¹⁶ This must include servicing information covering at least 10 years' worth of data and must include, at minimum:

- current and projected demand
- current and projected capacity constraints
- indicative costs of alleviating or deferring capacity constraints
- locations where further investigation is needed
- key sources of information used to develop the servicing information where those sources are publicly available.

In the 2019 review of the operating licence, we recommended this operating licence condition in response to the findings of the 2018 independent review of "Economic regulatory barriers to cost-effective water recycling" (2018 Review) by Frontier Economics which identified that there was a lack of information available to market participants about public water utilities' systems. As a result, this 2018 review recommended that the operating licences for WaterNSW, Sydney Water and Hunter Water should require the utilities to develop and publish an annual 'system limitation report' that makes key information on long-term growth servicing plans and system constraints publicly available. The recommendation was supported by the NSW Government.

Sydney Water has published a [5-year Growth Servicing Plan](#) to meet these requirements. Sydney Water updates this plan every year.

We recommended the current operating licence requirements for publishing servicing information before developer charges were re-introduced. With the re-introduction of water, wastewater and stormwater developer charges, both Sydney Water and Hunter Water will publish their Developer Service Plans (DSPs) and review them every 5 years. Content requirements for the DSPs are set out in Schedule 4 to IPART's [Determination](#) on the maximum charges levied by metropolitan water utilities. Sydney Water has published its [DSPs](#) for exhibition.

We consider that the DSPs include the content required to address the asymmetry in available servicing information that was identified by the 2018 Review. Therefore, we consider that Sydney Water should only be required to publish any information required by the operating licence that is not available in their DSPs.

While this may duplicate IPART's [Determination](#) on the maximum charges levied by metropolitan water utilities to some extent, it ensures that some requirements for publishing servicing information remain if developer charges were to be re-set to zero in future.



Cost-benefit analysis for requiring the publication of servicing information

We consider that there would likely be a net benefit to retaining these operating licence conditions (while enabling flexibility for Sydney Water to provide the information through DSPs where appropriate).

The counterfactual is the absence of this obligation, in which case Sydney Water could not be relied upon to publish commercially sensitive servicing information that could help its competitors win business from it. This may lead to less vigorous competition from WIC Act licensees and potential competitors for parts of Sydney Water's customer base.

The cost of a requirement to publish servicing information would be modest, given that the required information should already be available to Sydney Water. While Sydney Water might lose some business, that would be offset in a whole of society sense by the gains to competitors. With a more competitive industry, the deadweight loss would be reduced.

We came to a similar conclusion in the 2022 Hunter Water operating licence review.

7.4.1 Our recommended operating licence conditions

We seek stakeholders' feedback on our proposed draft recommendations for the operating licence. In particular we seek feedback from WIC Act utilities about whether the information contained in the DSPs is adequate.

Box 7.7 Recommended licence condition for publishing servicing information

34 Publications of servicing information

- (1) Subject to clause 34(4), Sydney Water must, for each major water system and Wastewater system, publish at least ten years of servicing information Publicly Available.
- (2) The servicing information must include, at a minimum:
 - (a) current and projected demand,
 - (b) current and projected capacity constraints,
 - (c) indicative costs of alleviating or deferring capacity constraints, and
 - (d) locations where further investigation is needed.
- (3) Sydney Water must review and update the servicing information at least once before:
 - (a) 30 June 2028, or
 - (b) another date nominated by Sydney Water and approved by IPART in writing.
- (4) Sydney Water is not required to comply with clauses 34(1) and 34(3) in relation to a particular major water system or Wastewater system to the extent that all servicing information provided for in clause 34(2) is included in a Development Servicing Plan.



Reporting Manual: Reporting on competitor engagement

We propose to retain the current requirements for Sydney Water to report to IPART about its performance in providing information and services to licensees under the WIC Act and potential competitors in section 6.1 of Sydney Water's 2019-2024 Reporting Manual.

Under these requirements, Sydney Water must report on the following information and make it publicly available:

- the number of agreements for the provision of Services established with WIC Act licensees and potential competitors
- the number of negotiations for the provision of Services commenced with WIC Act licensees potential competitors that did not eventuate in an agreement and, where known to Sydney Water, the reasons for this outcome
- the type of information WIC Act licensees and potential competitors requested in addition to information that is publicly available
- the time taken for Sydney Water to respond to requests for provision of information or services.¹¹⁷

We also propose that Sydney Water should be required to publish a timeline of each negotiation Sydney Water undertook with WIC Act licensees and potential competitors (both successful and those that did not eventuate in an agreement) and reasons for any significant delays to those negotiations.

While the reporting requirements come at a cost, they will support the operating licence conditions in protecting WIC Act licensees and potential competitors trying to enter the market and when dealing with Sydney Water. The reporting requirements will assist us in our compliance monitoring and enforcement function, particularly given that these are new Licence conditions. We can reassess their value in the next review.

We will set out our proposed reporting requirements in the draft Reporting Manual.

Chapter 8 >>

Administration

This chapter discusses the operating licence objectives, term of the licence, requirements to comply with pricing determinations and other administrative matters.



We seek your feedback on our draft recommendations below.

Draft recommendations for the operating licence

32. Include objectives in the operating licence that:
- are linked to Sydney Water's principal functions under the Act.
 - provide clarity about Sydney Water's objective to supply or provide services in a way that does not prevent or hinder competition.
 - reflect the social, economic and environmental objectives outlined in section 8 of the *State Owned Corporations Act 1989* (NSW).
 - promote the sustainable supply of services with the long-term interests of the community in mind
 - encourage Sydney Water to conduct its activities in a manner that considers the impacts of climate change and equity within and between generations in its activities.
33. Prescribe a 4-year operating licence term.
34. Retain the current operating licence condition requiring Sydney Water to set prices consistent with any relevant price determinations and include clarification that Sydney Water's prices can be below the set price.
35. Retain the current operating licence conditions imposing requirements or making clarifications about the following matters, with no material changes:
- requirements for Sydney Water to make copies of the operating licence publicly available
 - requirements for Sydney Water to provide services to customers, where there is a connection available
 - Sydney Water's responsibilities with regards to performance (compliance audits) and monitoring
 - authorisations to Sydney Water under the operating licence
 - making amendments to the operating licence
 - non-exclusivity of the operating licence
 - end of term review of the operating licence
 - notices or communication to specified stakeholders required by the operating licence.

We also seek your feedback on our draft proposed change to the Reporting Manual requirement to report on compliance with these operating licence requirements, as set out below.



Reporting Manual: Reporting on Sydney Water's compliance

We propose to retain requirements in the Reporting Manual for Sydney Water to:

- provide a report on its progress towards completing recommendations from the previous operational audits
- report annually on its performance against performance indicators (including environmental indicators)
- provide an annual statement of compliance (of Sydney Water's compliance during the previous financial year).

8.1 Operating licence objectives

Any licence (or other regulatory instrument) should clearly set out its objectives which describe the outcomes that the operating licence is intended to achieve. This helps people understand why specific conditions have been included in the operating licence.

We have recommended some changes to the objectives for the operating licence as shown below. Our changes aim to link the objectives more closely to Sydney Water's principal functions, as prescribed in the Act and the *State Owned Corporations Act 1989*.^{cc}

The current objectives of the current operating licence include setting efficient terms and conditions that require Sydney Water to provide its services to customers in a way that supports its principal objectives under the Act. We recommend making it clear in the operating licence that Sydney Water must consider the operating licence objectives when doing anything authorised or required by the licence.

8.1.1 Making explicit reference in the operating licence objectives for climate change

Sydney Water's principal objectives under the Act are to protect public health, environment, show social responsibility by having regard to the interest of the community.¹¹⁸ The current licence objectives require Sydney Water to provide its service in a way that supports these objectives.

We consider that the objectives of the current operating licence already implicitly address a need to consider climate change risks and actions. However, the licence objectives could be amended to provide greater certainty and establish clear expectations for Sydney Water.

Our draft recommendations for updating the operating licence objectives are intended to be clear about public and government expectations for Sydney Water to:

^{cc} Clause 1.1.1 of the current operating licence.

- conduct its activities in a manner that considers the impacts of climate change
- provide or consider 'equity within and between generations. This will require Sydney Water to engage with customers and the wider community, stakeholders and regulators about future challenges and promote conversations that balance risk, costs and interests in both the short and longer term.

In their responses to the Issues Paper, Sydney Water, DPE and the Office of Environment and Climate Change (OECC) expressed their support for including explicit reference to climate change within the operating licence objectives.

8.1.2 Our recommended operating licence conditions

Box 8.1 Recommended licence conditions on the objective of the licence

1 Objective of this Licence

- (1) The objectives of this Licence are to:
- (a) authorise and require Sydney Water, within its Area of Operations, to provide, construct, operate, manage and maintain efficient, co-ordinated and commercially viable systems and Services for:
 - (i) storing and supplying water that is fit for purpose,
 - (ii) providing Wastewater services
 - (iii) providing Stormwater Drainage Systems, and
 - (iv) disposing of Wastewater and supporting the treatment and use of Wastewater.
 - (b) require Sydney Water to conduct these activities in a manner that:
 - (i) is resilient, reliable and sustainable,
 - (ii) supports the long-term interests of Customers, Consumers and the community,
 - (iii) considers the impacts of climate change, and
 - (iv) considers equity within and between generations.
 - (c) set efficient and effective terms and conditions, including quality and performance standards, that Sydney Water must meet when supplying or providing Services in a way that:

Box 8.1 Recommended licence conditions on the objective of the licence

(i) supports its principal objectives under the *Sydney Water Act 1994* (NSW) (Act) and the *State Owned Corporations Act 1989* (NSW), and

(ii) does not prevent or hinder competition.

(2) Sydney Water must consider the objectives in clause 1(1) when doing anything authorised or required by this Licence.

8.2 Term of the operating licence



Review principle

Supporting the pricing framework



Our draft recommendation

We recommend the term for the new operating licence be for 4 years from 1 July 2024 to 30 June 2028.

The 4-year operating licence term will allow a 2-year gap between operating licence and pricing reviews. Our intention is for this gap to be retained in future with a return to 5-year terms for the operating licence. The 2-year gap between the licence and pricing reviews will allow for better customer engagement and resourcing for Sydney Water to inform both reviews. Sydney Water supported this approach in its response to the Issues Paper.

8.3 Requirements to comply with IPART pricing determinations



Review principle

Supporting the pricing framework



Our draft recommendation

We recommend retaining the current operating licence condition requiring Sydney Water to set prices subject to the terms of the operating licence, the Act and IPART determinations and extend this obligation to require Sydney Water to impose these prices.¹¹⁹ We recommend a minor change only to clarify that Sydney Water's prices can be set below the price set by IPART's price determination (just not above).

The Act requires the operating licence to include terms and conditions about pricing.¹²⁰ The pricing clause in the current operating licence aims to protect customers by ensuring that prices are not excessive. In general, we consider that the current operating licence condition is clear and well-aligned to the Act and IPART's price determinations and requires minimal change. We have recommended a minor change only to clarify that Sydney Water's prices can be below the prices set by IPART's price determinations (but not above).

Our CBA concludes that as long as IPART's price determinations maximise the overall economic welfare of Sydney Water's customers, then net benefits are maximised by enforcing the price determination.

8.3.1 Our recommended operating licence conditions

Box 8.2 Recommended licence condition for the pricing framework

7 Pricing

(1) Sydney Water must fix, and impose, fees and charges payable for its Services in accordance with:

- (a) the terms of this Licence,
- (b) the Act, and
- (c) maximum prices or methodologies for fixing maximum prices determined for its Services under the IPART Act.

(2) Sydney Water may fix, and impose, fees and charges for its Services that are lower than the maximum prices determined under the IPART Act:

- (a) with the approval of the Treasurer under section 18 of the IPART Act, or
- (b) in accordance with concessions provided for by the Customer Contract.

8.4 Operational audits



Review principle

Focusing on outcomes



Our draft recommendation

We recommend retaining the current operating licence conditions for operational audits.¹²¹

We regularly undertake operational audits of the 3 public water utilities that we regulate (that is, Sydney Water, Hunter Water and WaterNSW) as part of our function to monitor the utilities' compliance with their operating licences. Together with reviewing any information that the utilities report and any non-compliances utilities notify to us, operational audits are an important part of our compliance monitoring function.

The Act states that IPART must ensure that Sydney Water's operational audits are prepared in accordance with the operating licence.¹²² This means that the operating licence must include terms and conditions for the operational audits. We recommend retaining the current operating licence conditions in the operating licence for the operational audits, not only because they are required by the Act, but because monitoring utilities' compliance with their operating licence obligations helps ensure that the utility is on track to deliver on its objectives, which are primarily to protect customers, public health and the environment.

8.4.1 Our recommended operating licence conditions

The recommended operating licence conditions for operational audits are shown in Box 8.3 below. We have recommended minor changes to the current operating licence to reflect that since the COVID-19 pandemic commenced, we have in some instances been undertaking the operational audits remotely, including the field verification visits.

Box 8.3 Recommended Licence conditions for performance monitoring (operational audits)

40 Operational Audits

- (1) Sydney Water must cooperate with an audit undertaken by IPART or an Auditor of Sydney Water's compliance with any of the following:
 - (a) this Licence (including the Customer Contract), and
 - (b) the Reporting Manual,
 (the **Operational Audit**).
- (2) For the purpose of any Operational Audit or verifying a report on an Operational Audit, Sydney Water must:
 - (a) provide IPART or the Auditor with any information in Sydney Water's possession or control that is:
 - (i) necessary to conduct the Operational Audit, and

Box 8.3 Recommended Licence conditions for performance monitoring (operational audits)

- (ii) reasonably requested by IPART or an Auditor,
- (b) subject to clause 40(3), permit IPART or the Auditor to:
 - (i) access any works, premises or offices occupied by Sydney Water,
 - (ii) carry out inspections, measurements and tests on, or in relation to, any such works, premises or offices,
 - (iii) take on to any such premises or offices any person or equipment necessary for the purpose of performing the Operational Audit or verifying any report on an Operational Audit,
 - (iv) inspect and make copies of, and take extracts from, any books and records of Sydney Water that are maintained in relation to the performance of Sydney Water's obligations under this Licence (including the Customer Contract and the Reporting Manual), and
 - (v) discuss matters relevant to the Operational Audit or any report on the Operational Audit with Sydney Water's Personnel.
- (3) The activities in clause 40(2)(b) may be carried out remotely:
 - (a) with IPART's written approval, or
 - (b) where state or federal government restrictions:
 - (i) prohibit access to any works, premises or offices occupied by Sydney Water, or
 - (ii) limit the movement of IPART staff, the Auditor or Sydney Water's Personnel.

8.5 Reporting and providing information



Review principle

Focusing on outcomes



Our draft recommendation

We recommend retaining the current operating licence condition to:

- comply with the Reporting Manual to ensure that Sydney Water meets its reporting requirements¹²³
- provide information for performance reporting.¹²⁴

The Reporting Manual sets out the information that Sydney Water must report to IPART. These reporting requirements support IPART's function in monitoring Sydney Water's compliance with its operating licence (together with the operational audits discussed in the section above). We recommend retaining the current operating licence condition to comply with the Reporting Manual to ensure that Sydney Water complies with the Reporting Manual.

The current operating licence also requires Sydney Water to provide information to IPART, NSW Health, or auditors acting on IPART's behalf. We recommend retaining these requirements in the operating licence to support the audit and review processes. The information that Sydney Water is required to provide could be reporting information, compliance and performance information to support the operational audit process, water quality information to NSW Health, or other information that IPART may request to support our reviews under the operating licence.

We discuss reporting requirements for environmental performance indicators in section 8.6 below.

8.6 Environmental Performance Indicators



Review principle

Focusing on outcomes



Our draft recommendation

- Retaining the current operating licence condition requiring Sydney Water to compile indicators on the direct impact of Sydney Water's activities on the environment (environmental performance indicators)¹²⁵, as this is a requirement of the Act¹²⁶.
- Retaining the current requirements for Sydney Water to monitor and compile data on its environmental performance indicators, including data that allows a year-to-year comparison of these indicators.
- Retaining the current requirements for Sydney Water to report on its environmental performance indicators in accordance with the Reporting Manual, with minor amendments to clarify that Sydney Water's environmental performance indicators must, at minimum, include the performance indicators specified in the Reporting Manual but Sydney Water are not restricted to only these indicators.
- Amending the current operating licence condition on Environmental Performance Indicator reporting to enable Sydney Water to compile and report on environmental indicators prescribed in the Reporting Manual but not restrict Sydney Water to only these indicators

8.6.1 Our recommended operating licence conditions

Our proposed amendments to the operating licence will allow Sydney Water flexibility to maintain environmental performance indicators beyond what is prescribed in the Reporting Manual. Sydney Water have sought this flexibility in its response to the Issues Paper.

Box 8.4 Recommended amendment to Environmental Indicators in the operating licence

41 Reporting

(1) Sydney Water must comply with all of its reporting obligations set out in the Reporting Manual.

(2) Sydney Water must:

(a) compile environment performance indicators of the direct impact on the environment of Sydney Water's activities. The performance indicators must be consistent with the performance indicators specified in the Reporting Manual with an indicator number starting with 'E',

(b) monitor and compile data on the environment performance indicators, including data that allows a year-to-year comparison of the environment performance indicators,

Box 8.4 Recommended amendment to Environmental Indicators in the operating licence

- (c) report on the environment performance indicators in accordance with the Reporting Manual,
 - (d) maintain sufficient record systems to enable Sydney Water to report accurately in accordance with this clause 41,
 - (e) ensure that all reports required under the Reporting Manual are approved by Sydney Water's Managing Director, and
 - (f) ensure that the annual statement of compliance required under the Reporting Manual is approved by Sydney Water's Managing Director and a Board member.
- (3) In the case of any disagreement between IPART and Sydney Water regarding the interpretation or application of any requirements of the Reporting Manual, IPART's interpretation or assessment of the application of the requirements will prevail.

8.6.2 Our recommended operating licence conditions

The recommended operating licence conditions for providing performance information are shown in Box 8.5 below.

Box 8.5 Recommended Licence conditions for performance monitoring (reporting)

43 Provision of information for performance monitoring

(1) Sydney Water must provide IPART or an Auditor any information reasonably requested by IPART or an Auditor:

(a) relating to the performance of any of Sydney Water's obligations under clause 41 (including physical and electronic access to the records required to be kept under clause 41(2)(d)), and

(b) to enable IPART or an Auditor to review or investigate Sydney Water's compliance with its obligations under this Licence.

(2) If Sydney Water engages any person (including a subsidiary) to undertake any activities on its behalf, it must take all reasonable steps to ensure that such persons:

(a) provide information to IPART or an Auditor on request, and

(b) do the things specified in clauses 40 and 41 as if that person were Sydney Water.

(3) If IPART or an Auditor requests information from Sydney Water that is confidential, Sydney Water must provide that information, subject to entering into reasonable confidentiality arrangements with IPART or an Auditor.

(4) Sydney Water must provide NSW Health with information relating to water quality in the manner and form specified by NSW Health.

Note: Under section 19 of the *Public Health Act 2010* (NSW), the Secretary of NSW Health may require Sydney Water to produce certain information.

8.7 Other parts of the operating licence

We recommend retaining the following parts of the Licence, with no significant changes, as we consider they are working effectively. We did not receive any submissions from stakeholders seeking changes to these parts of the operating licence:

- Licence authorisation¹²⁷ – this condition specifies what the operating licence authorises, and in some cases requires, Sydney Water to do. Including the licence authorisation clause in the operating licence meets the requirements of the Act.¹²⁸ We have only recommended changes to the authorisations to enable Sydney Water to undertake its expanded stormwater management role, discussed in section 2.4 of this report.
- Licence amendment¹²⁹ – this condition specifies how the operating licence may be amended by the Governor. The Act states that the operating licence may include terms and conditions about how the operating licence may be amended.¹³⁰ We have recommended removing clause 1.4.2 of the current operating licence which states that the Minister must provide reasonable notice of a proposed amendment to allow Sydney Water time to comply with the amendment. We consider that the provisions in the Act provide adequate notice of any amendments for Sydney Water. The Act specifies that a proposed amendment will not take effect until the Minister has laid written notice of the proposed amendment before both Houses of Parliament and 15 sitting days of each House of Parliament has passed without a notice of motion to disallow the proposed amendment being given. We have proposed clarifying that the procedures specified in the Act should be followed before the Governor gives notice of an amendment or substitution in the gazette.
- Non-exclusive Licence¹³¹ – this condition states that the operating licence does not prohibit another person from providing services in Sydney Water’s area of operations that are the same as, or similar to, Sydney Water’s services, if the person is lawfully entitled to do so. We have not recommended any recommended change to the existing operating licence condition.
- Availability of Licence¹³² – this condition requires Sydney Water to make a copy of the operating licence available to any person free of charge, on its website and upon request. We have not recommended any substantive change to the existing operating licence condition.
- End of Term Review¹³³ – this clause clarifies when IPART intends to begin the next review of the operating licence and the purpose of the review. We have not recommended any change to the existing operating licence condition.

8.8 Reporting requirements



Reporting Manual: Annual report on audit recommendations

We propose to retain the requirements in the current Reporting Manual for Sydney Water to report on its progress with completing recommendations from the annual IPART operational audits.¹³⁴ This includes:

- the most recent operational audit
- any previous operational audit where the recommendations identified in IPART's audit report to the Minister had not been fully implemented at the time of the last audit recommendations status report.

We consider that there is benefit in retaining this requirement as it provides important compliance monitoring information to IPART and informs the following year's operational audits.

Our proposed reporting requirements can be viewed in full in the draft Reporting Manual.



Reporting Manual: Annual report on performance indicators

We propose to retain the requirements in the current Reporting Manual for Sydney Water to report on its performance against the IPART and National Performance Reporting (NPR) indicators (including environmental indicators).¹³⁵ We consider that there is benefit in retaining this requirement as these reports provide us with important performance information. We can request additional information or explanation if we observe concerning trends in performance.

Our proposed reporting requirements can be viewed in full in the draft Reporting Manual.

We have proposed including some additional environmental indicators for Sydney Water to report on its progress towards net zero. This is discussed in section 4.4 of this report.



Reporting Manual: Annual statement of compliance and exception reporting

We propose to retain the requirements in the current Reporting Manual for Sydney Water to provide an annual statement of compliance.¹³⁶ The statement of compliance is an exception-based report of instances where Sydney Water has not complied with its operating licence requirements in the reporting year. We consider that this statement of compliance includes some of the most critical compliance information that Sydney Water must provide. Sydney Water's self-reported non-compliances inform our operational audits.

Our proposed reporting requirements can be viewed in full in the draft Reporting Manual.

Chapter 9 >>

Recommendations

This chapter includes a full list of our recommendations made in this report for the operating licence.



9.1 Our draft recommendations for the licence

9.1.1 Water quality, system performance standards and asset management

1. Retain the current water quality standards in the operating licence, which require Sydney Water to maintain and implement water quality management systems consistent with:
 - the Australian Drinking Water Guidelines and the Australian Guidelines for Water Recycling
 - any reasonable health-based requirements specified by NSW Health in writing.
2. Remove the current operating licence conditions requiring Sydney Water to comply with the *NSW Code of Practice for Fluoridation of Public Water Supplies*.
3. Retain the current system performance standards for water continuity, water pressure and dry weather wastewater overflows in the operating licence with no changes to the service levels specified by these system performance standards.
4. Remove the optimal level and tolerance band in the current operating licence for the water continuity standard.
5. Increase the rebates that Sydney Water provides to customers for service interruptions in line with inflation.
6. Retain the current operating licence conditions requiring Sydney Water to maintain and implement an asset management system consistent with *Australian Standard AS ISO 55001:2014* (or another standard approved by IPART in writing).

9.1.2 Water conservation, efficiency and long-term planning

7. Include new operating licence conditions requiring Sydney Water to:
 - maintain and implement its 5-year water conservation plan
 - review and update the plan annually
 - submit a copy of the updated plan to DPE and IPART and publish it on Sydney Water's website by 30 November every year
 - engage in water strategy planning consistent with Greater Sydney Water Strategy
 - cooperate with Water NSW to review the Greater Sydney drought response plan
 - engage in ongoing water supply augmentation planning for Greater Sydney
 - maintain a Long-term capital and operational plan.
8. Retain an economic approach to water conservation consistent with the NSW Government's Water Efficiency Framework which allows Sydney Water to also consider other social and environmental factors in identifying and deciding on water conservation programs and projects to implement.
9. Retain operating licence conditions requiring Sydney Water to publish its current economic method as well as a plain English summary of the method.
10. Include operating licence conditions requiring Sydney Water to update the economic level of water conservation using the current economic method but removing current requirements for Sydney Water to publish the economic level of water conservation on its website.
11. Retain operating licence conditions requiring Sydney Water to review and update its economic method and include a new condition requiring Sydney Water to seek the Minister's approval if it seeks to initiate changes to the current economic method.
12. Include a new operating licence condition requiring Sydney Water to comply with the Decision Framework when submitting production requests to the Sydney Desalination Plant.

9.1.3 Climate risk readiness

- ✓ 13. Include a new operating licence condition requiring Sydney Water to:

 - engage in an ongoing climate risk assessment and management process that is consistent with the NSW Government's Climate Risk Ready Guide
 - achieve a climate-risk maturity level of 'embedded', as defined in the Guide, by 30 June 2027 or another date nominated by Sydney Water and approved by IPART in writing and make reasonable progress to achieving a climate-risk maturity level of 'advanced' by 30 June 2028, or another date nominated by Sydney Water and approved by IPART in writing.
- ✓ 14. Include a new operating licence condition for Sydney Water to publish annual climate-related disclosures consistent with the IFRS S2 climate-related disclosures standard, or an Australian equivalent, from FY2025-26 onwards, if not already required by other legislation.

9.1.4 Sydney Water's obligations to its customers

- ✓ 15. Retain the current operating licence conditions requiring Sydney Water to maintain and fully implement payment assistance options for its customers and consumers.
- ✓ 16. Retain the current operating licence conditions requiring Sydney Water to publish information about the payment assistance options available to its customers and consumers.
- ✓ 17. Define 'family violence' in the operating licence to align with the definition in the *Family Act 1975* (Cth).
- ✓ 18. Retain the current operating licence conditions requiring Sydney Water to have a family violence policy and to implement it and include new operating licence conditions to publish information about the family violence policy.
- ✓ 19. Retain the current operating licence conditions requiring Sydney Water to maintain, implement and publish information about its internal complaints handling procedure but update the current condition to require this procedure to be consistent with *AS 10002:2022 – Guidelines for complaint management in organizations* (and not the 2014 version in the current operating licence).
- ✓ 20. Retain the current operating licence conditions requiring Sydney Water to be a member of the Energy and Water Ombudsman NSW (EWON) and publish information about EWON's services and how to contact EWON.

21. Retain the current operating licence conditions for Sydney Water to make its customer contract publicly available on its website and on request through its customer centre.
22. Include new operating licence conditions for Sydney Water to make the customer contract available to customers immediately after it has been varied.
23. Retain the current operating licence conditions that extend protections under the customer contract to consumers but include a new condition requiring Sydney Water to produce a separate explanatory document specifically for consumers which sets out their rights.
24. Retain the current operating licence conditions for Sydney Water to publish up-to-date information about the protections under the customer contract available to both customers and consumers on its website.
25. Retain the current operating licence conditions requiring Sydney Water to maintain and consult with its customer council (known as the Customer and Community Reference Group) and removing prescription in the current operating licence about how Sydney Water is to use this Customer and Community Reference Group.
26. Retain the current operating licence conditions requiring Sydney Water to engage its customers to understand customer preferences about service levels provided by Sydney Water and to better inform Sydney Water's systems and processes and IPART reviews of the operating licence and price determination.

9.1.5 Critical infrastructure security

27. Retain the following operating licence conditions, until 18 August 2024, requiring Sydney Water to maintain:
 - and implement a cyber security management system
 - a critical infrastructure compliance manager responsible for implementing the cyber security management system
 - security clearances for select employees participating in classified discussions with government agencies.

9.1.6 Stakeholder cooperation and competition

- ✓ 28. Include operating licence conditions requiring Sydney Water to:
 - maintain memoranda of understanding (MoU) with the Water Administration Ministerial Corporation (WAMC), NSW Health and the Environment Protection Authority (EPA)
 - use its best endeavours to comply with its MoUs with WAMC, NSW Health, and the EPA.
- ✓ 29. Include operating licence conditions regulating Sydney Water's relationship with Fire and Rescue NSW (FRNSW), requiring Sydney Water to:
 - use its best endeavours to maintain a MoU with FRNSW
 - comply with its MoU with FRNSW
 - provide water pressure, flow rate and other information about all fire hydrants in its water supply network to FRNSW within specified timeframes.
- ✓ 30. Retain the current operating licence conditions for Sydney Water to engage with and provide information to its competitors, including requirements for Sydney Water to:
 - engage with licensees under the *Water Industry Competition Act 2006* (NSW) (WIC Act) and potential competitors in good faith
 - publish the servicing information about its water and wastewater systems specified in the operating licence, unless already provided in Developer Service Plans
 - use its best endeavours to establish a code of conduct with WIC Act licensees if sought by the WIC Act licensee in writing.
- ✓ 31. Remove the current operating licence condition which assumes Sydney Water has entered into a code of conduct with a WIC Act licensee where it applies to an industry code established by the Minister, under the WIC Regulation.

9.1.7 Administration

- 32. Include objectives in the operating licence that:
 - are linked to Sydney Water's principal functions under the Act
 - provide clarity about Sydney Water's objective to supply or provide services in a way that does not prevent or hinder competition
 - reflect the social, economic and environmental objectives outlined in section 8 of the *State Owned Corporations Act 1989* (NSW)
 - promote the sustainable supply of services with the long-term interests of the community in mind
 - encourage Sydney Water to conduct its activities in a manner that considers the impacts of climate change and equity within and between generations in its activities.
- 33. Prescribe a 4-year operating licence term.
- 34. Retain the current operating licence condition requiring Sydney Water to set prices consistent with any relevant price determinations and include clarification that Sydney Water's prices can be below the set price.
- 35. Retain the current operating licence conditions imposing requirements or making clarifications about the following matters, with no material changes:
 - requirements for Sydney Water to make copies of the operating licence publicly available
 - requirements for Sydney Water to provide services to customers, where there is a connection available
 - Sydney Water's responsibilities with regards to performance (compliance audits) and monitoring
 - authorisations to Sydney Water under the operating licence
 - amendments to the operating licence
 - non-exclusivity of the operating licence
 - end of term review of the operating licence
 - notices or communication to specified stakeholders required by the operating licence.

- ¹ *Sydney Water Act 1994* (NSW), s 14(1)(c).
- ² 2019-2024 Sydney Water Operating Licence, cl 4.1.1 and 4.2.1.
- ³ 2019-2024 Sydney Water Operating Licence, cl 4.1.3 and 4.2.3.
- ⁴ WHO, *Health-Based Targets*, Geneva, Switzerland (2010), accessed 26 September 2023.
- ⁵ WHO, *WHO Global Status Report on Water Safety Plans: A Review of Proactive Risk Assessment and Risk Management Practices to Ensure the Safety of Drinking-Water*, Geneva, Switzerland (2017), accessed 26 September 2023.
- ⁶ *Public Health Act 2010* (NSW), s 5(1), definition of 'supplier of drinking water'.
- ⁷ *Public Health Act 2010* (NSW), ss 25(1) and (1A); *Public Health Regulation 2022* (NSW), cl 45(b).
- ⁸ *Public Health Act 2010* (NSW), s 25(3).
- ⁹ 2019-2024 Sydney Water Operating Licence, cl 4.3.1.
- ¹⁰ *Fluoridation of Public Water Supplies Act 1957* (NSW), s 1.
- ¹¹ *Fluoridation of Public Water Supplies Regulation 2022*, cl 5.6 and 8.
- ¹² Email from NSW Health, A/Manager, Water Unit on 14 April 2022.
- ¹³ 2019-2024 Sydney Water Operating Licence, cl 5.14.
- ¹⁴ PIAC, *Submission to IPART's Sydney Water Operating Licence Review 2023-24 Issues Paper*, September 2023
- ¹⁵ IPART, *Sydney Water 2020 Operational Audit: Report to the Minister*, March 2021.
- ¹⁶ IPART, *Sydney Water 2021 Operational Audit: Report to the Minister*, February 2022.
- ¹⁷ IPART, *Sydney Water 2022 Operational Audit: Report to the Minister*, February 2023.
- ¹⁸ IPART, *Review of the Sydney Water Corporation Operating Licence Issues Paper*, June 2018, p70.
- ¹⁹ NSW Environment Protection Authority, *Media release: Sydney Water to pay over \$865k after huge sewage overflow*, 11 July 2023.
- ²⁰ NSW Environment Protection Authority, *Media release: Sydney Water to pay over \$1.2 million after sewage damages homes*, 6 April 2022.
- ²¹ NSW Department of Planning and Environment, *Greater Sydney Water Strategy*, August 2022, p 10.
- ²² NSW Department of Planning and Environment, *Greater Sydney Water Strategy*, August 2022, p 10.
- ²³ NSW Department of Planning and Environment, *Greater Sydney Water Strategy, Implementation Plan 2022-2025*, August 2022.
- ²⁴ NSW Department of Planning and Environment, *NSW Water Strategy, Implementation Plan 2022-2024*, September 2022, p 24.
- ²⁵ NSW Department of Planning and Environment, *NSW Water Efficiency Framework*, September 2022.
- ²⁶ 2019-2024 Sydney Water Operating Licence, cl 3.2.5.
- ²⁷ 2019-2024 Sydney Water Operating Licence, cl 3.2.4(a).
- ²⁸ 2019-2024 Sydney Water Operating Licence, cl 3.2.4(b).
- ²⁹ *State Owned Corporations Act 1989*, section 7A..
- ³⁰ 2019-2024 Sydney Water Operating Licence, cl 3.2
- ³¹ Sydney Desalination Plant Pty Ltd, *Variation of Network Operator Licence*, section 2, p 4.
- ³² Sydney Desalination Plant Pty Ltd, *Network Operator Licence*, sch A, condition 1.2
- ³³ Sydney Desalination Plant Pty Ltd, *Network Operator Licence*, sch A, condition 2.2
- ³⁴ NSW Department of Planning and Environment, *Greater Sydney Water Strategy, Implementation Plan 2022-2025*, August 2022, p 5.
- ³⁵ IPART, *Final Report - Sydney Desalination Plant Pty Ltd Review of prices to apply from 1 July 2023 - June 2023*, p 8.
- ³⁶ IPART, *Final Report - Sydney Desalination Plant Pty Ltd Review of prices to apply from 1 July 2023 - June 2023*, p 8.
- ³⁷ 2019-2024 Sydney Water Operating Licence, cl 3.3.
- ³⁸ *Developer charges and backlog sewerage charges for metropolitan water agencies 2018* | IPART (nsw.gov.au)
- ³⁹ 2019-2024 Sydney Water Operating Licence, sch B.
- ⁴⁰ United Nations, *What is Climate Change?* accessed 13 November 2023.
- ⁴¹ United Nations, *What is Climate Change?* accessed 13 November 2023.
- ⁴² NSW Department of Planning, Industry and Environment, *Climate Risk Ready NSW Guide, Practical guidance for NSW Government sector to assess and manage climate change risks*, 2021, p7.
- ⁴³ Sydney Water, *Energy management and climate change*, accessed 1 November 2023.
- ⁴⁴ *Climate Change (Net Zero Future) Bill 2023*, accessed 22 November 2023.
- ⁴⁵ NSW Department of Planning and Environment, *Net Zero Plan Stage 1:2020-2030*, March 2020.
- ⁴⁶ NSW Department of Planning and Environment, *Greater Sydney Water Strategy, Implementation Plan 2022-2025*, August 2022.
- ⁴⁷ Sydney Water, *Our path to net carbon zero and beyond*, accessed 13 June 2023.
- ⁴⁸ NSW Environment Protection Authority, *Climate Change Action Plan 2023-26, the NSW Environment Protection Authority's plan to address climate change and protect the environment*, p 18.
- ⁴⁹ NSW Environment Protection Authority, *Climate Change Action Plan 2023-26, the NSW Environment Protection Authority's plan to address climate change and protect the environment*.
- ⁵⁰ NSW Department of Planning and Environment, *Greater Sydney Water Strategy, Implementation Plan 2022-2025*, August 2022.
- ⁵¹ Sydney Water Long Term Capital and Operational Plan Summary Document. May 2023, p 5-34.
- ⁵² NSW Department of Planning, Industry and Environment, *Climate Risk Ready NSW Guide, Practical guidance for NSW Government sector to assess and manage climate change risks*, 2021, p 10.
- ⁵³ *Security of Critical Infrastructure (Critical infrastructure risk management program) Rules (LIN 23/006) 2023*, accessed 30 June 2023.
- ⁵⁴ Sydney Water responses to IPART Request for Information on Climate Change Abatement, Climate Risks and Resilience, 21 April 2023.

- ⁵⁵ NSW Department of Planning, Industry and Environment, *Climate Risk Ready NSW Guide, Practical guidance for NSW Government sector to assess and manage climate change risks*, 2021.
- ⁵⁶ NSW Department of Planning, Industry and Environment, *Climate Risk Ready NSW Guide, Practical guidance for NSW Government sector to assess and manage climate change risks*, 2021, p 10.
- ⁵⁷ NSW Department of Planning, Industry and Environment, *Climate Risk Ready NSW Guide, Practical guidance for NSW Government sector to assess and manage climate change risks*, 2021, p 74.
- ⁵⁸ IFRS Foundation, *Supporting materials for IFRS Sustainability Disclosure Standards*, accessed 29 June 2023.
- ⁵⁹ International Sustainability Standards Board, *IFRS S2 Climate-related Disclosures*, June 2023, p 5.
- ⁶⁰ IFRS S1, IFRS S2, ISSB and the future of TCFD, 9 August 2023, accessed 6 November 2023.
- ⁶¹ Federal Treasury, *Sustainable Finance Strategy Consultation paper*, November 2023, page 11.
- ⁶² NSW Treasury, *Policy and Guidelines – Annual Reporting Requirements TPG23-10*, August 2023, p 21-22.
- ⁶³ NSW Treasury, *Annual Reporting Framework*, February 2023, p f.
- ⁶⁴ Australian Account Standards Board (October 2023) 'Australian Sustainability Reporting Standards – Disclosure of Climate-related Financial Information' (ED SR1), October 2023, p 5.
- ⁶⁵ Australian Account Standards Board, 'Australian Sustainability Reporting Standards – Disclosure of Climate-related Financial Information' (ED SR1), October 2023, p 5.
- ⁶⁶ Sydney Water, *Help with your bill*, accessed 25 September 2023.
- ⁶⁷ Draft Sydney Water Customer Contract, Appendix A.2, cl (15)(a).
- ⁶⁸ Sydney Water, *Help with your bill*, accessed 25 September 2023.
- ⁶⁹ 2019-2024 Sydney Water Operating Licence, cl 6.4.2.
- ⁷⁰ 2019-2024 Sydney Water Operating Licence, cl 6.5.
- ⁷¹ *Family Law Act 1975* (Cth), s 4AB(1).
- ⁷² Thriving Communities Partnership, *What We Do, Family Violence Report, People impacted by family violence*, accessed 25 September 2023.
- ⁷³ Essential Services Commission, *Moving Towards Better Practice, Implementing family violence in the Victorian water sector*, May 2017.
- ⁷⁴ Domestic Violence NSW, *Domestic Violence Strategic Plan 2021-24*.
- ⁷⁵ Sydney Water, *Waterwrap* (various), accessed 26 September 2023.
- ⁷⁶ *Residential Tenancies Act 2010*, ss 40 (1) (e) and (f).
- ⁷⁷ *Residential Tenancies Regulation 2019* (NSW), sch 1.
- ⁷⁸ *Residential Tenancies Act 2010*, s 39.
- ⁷⁹ *Residential Tenancies Regulation 2019* (NSW), sch 1, cl 13.
- ⁸⁰ 2019-2024 Sydney Water Operating Licence, cl 6.3, and the 2019-2024 Sydney Water Customer Contract, cl 5.1.
- ⁸¹ *Residential Tenancies Act 2010*, s 39(5).
- ⁸² *Sydney Water Act 1994* (NSW), s 62.
- ⁸³ 2019-2024 Sydney Water Operating Licence, cl 6.7.
- ⁸⁴ *Sydney Water Act 1994* (NSW), s 54(1)
- ⁸⁵ 2019-2024 Sydney Water Operating Licence, cl 6.7.
- ⁸⁶ *Sydney Water Act 1994*, s 59.
- ⁸⁷ *Sydney Water Act 1994*, s 59(5).
- ⁸⁸ *Sydney Water Act 1994* (NSW) s 55.
- ⁸⁹ 2019-2024 Sydney Water Operating Licence, cl 6.6.
- ⁹⁰ Sydney Water, *Customer and Community Reference Group*, accessed 26 September 2023.
- ⁹¹ Sydney Water, *Customer and Community Reference Group*, accessed 26 September 2023.
- ⁹² *Sydney Water Act 1994* (NSW), s 15.
- ⁹³ 2019-2024 Sydney Water Operating Licence, cl 6.6.1.
- ⁹⁴ Sydney Water, *Customer engagement journey – talk to us*, accessed 26 September 2023.
- ⁹⁵ Sydney Water, *Customer engagement journey – talk to us*, accessed 26 September 2023.
- ⁹⁶ IPART, *Delivering customer value: Our water regulatory framework*, November 2022.
- ⁹⁷ IPART, *Delivering customer value: Our water regulatory framework*, November 2022, Customer principles, p 18.
- ⁹⁸ 2019-2024 Sydney Water Operating Licence, cl 9.
- ⁹⁹ *Security Legislation Amendment (Critical Infrastructure Protection) Act 2022* (Cth).
- ¹⁰⁰ *Security of Critical Infrastructure Act 2018* (Cth), ss 30AC, 30AD.
- ¹⁰¹ *Security of Critical Infrastructure Act 2018* (Cth), s 30AG.
- ¹⁰² *Security of Critical Infrastructure (Critical infrastructure risk management program) Rules (LIN 23/006) 2023*, accessed 30 June 2023.
- ¹⁰³ *Security of Critical Infrastructure (Critical infrastructure risk management program) Rules (LIN 23/006) 2023*.
- ¹⁰⁴ *Security of Critical Infrastructure (Critical infrastructure risk management program) Rules (LIN 23/006) 2023* (Cth), s 4(1)(m).
- ¹⁰⁵ *Security of Critical Infrastructure (Critical infrastructure risk management program) Rules (LIN 23/006) 2023* (Cth), s 7(2)(c).
- ¹⁰⁶ Cyber and Infrastructure Security, *AusCheck background checking under the Security of Critical Infrastructure Act 2018*, p 6, accessed 26 October 2023.
- ¹⁰⁷ 2019-2024 Sydney Water Reporting Manual, cl 7.1.
- ¹⁰⁸ *Security of Critical Infrastructure Act 2018* (Cth), ss 30AG(2), 30BB.
- ¹⁰⁹ *Sydney Water Act 1994* (NSW), s 35.
- ¹¹⁰ *Water Management Act 2000* (NSW), s 371.
- ¹¹¹ *Protection of the Environment Operations Act 1997*, s 42.

-
- ¹¹² Fire and Rescue NSW, [Welcome to Fire and Rescue NSW](#), accessed 16 October 2023.
- ¹¹³ *Sydney Water Act 1994* (NSW), s 21(1)(iii).
- ¹¹⁴ 2019-2024 Sydney Water Operating Licence, cl 2.2.2.
- ¹¹⁵ 2019-2024 Sydney Water Operating Licence, cl 8.3.2.
- ¹¹⁶ 2019-2024 Sydney Water Operating Licence, cl 8.2.
- ¹¹⁷ 2019-2024 Sydney Water Reporting Manual, s 6.1.
- ¹¹⁸ *Sydney Water Act 1994*, s 21(1).
- ¹¹⁹ 2019-2024 Sydney Water Operating Licence, cl 1.7.
- ¹²⁰ *Sydney Water Act 1994*, s 14(1)(c).
- ¹²¹ 2019-2024 Sydney Water Operating Licence cl 10.1
- ¹²² *Sydney Water Act 1994*, s 31(1).
- ¹²³ 2019-2024 Sydney Water Operating Licence cl 10.2.
- ¹²⁴ 2019-2024 Sydney Water Operating Licence cl 10.3.
- ¹²⁵ 2019-2024 Sydney Water Operating Licence cl 10.2.3.
- ¹²⁶ *Sydney Water Act 1994* (NSW), s 14(1)(d).
- ¹²⁷ Draft Sydney Water Operating Licence, cl 10.
- ¹²⁸ *Sydney Water Act 1994*, s 14(1).
- ¹²⁹ Draft Sydney Water Operating Licence, cl 4.
- ¹³⁰ *Sydney Water Act 1994*, s 16.
- ¹³¹ Draft Sydney Water Operating Licence, cl 5.
- ¹³² Draft Sydney Water Operating Licence, cl 6.
- ¹³³ Draft Sydney Water Operating Licence, cl 8.
- ¹³⁴ 2019-2024 Sydney Water Reporting Manual, s 8.1.
- ¹³⁵ 2019-2024 Sydney Water Reporting Manual, s 8.1.
- ¹³⁶ 2019-2024 Sydney Water Reporting Manual, s 8.1.

© Independent Pricing and Regulatory Tribunal (2023).

With the exception of any:

- a. coat of arms, logo, trade mark or other branding;
- b. photographs, icons or other images;
- c. third party intellectual property; and
- d. personal information such as photos of people.

this publication is licensed under the Creative Commons Attribution-NonCommercial-NoDerivs 3.0 Australia Licence.



The licence terms are available at the [Creative Commons website](#)

IPART requires that it be attributed as creator of the licensed material in the following manner: © Independent Pricing and Regulatory Tribunal (2023).

The use of any material from this publication in a way not permitted by the above licence or otherwise allowed under the Copyright Act 1968 (Cth) may be an infringement of copyright. Where you wish to use the material in a way that is not permitted, you must lodge a request for further authorisation with IPART.

Disclaimer

Nothing in this document should be taken to indicate IPART's or the NSW Government's commitment to a particular course of action.

This document is published for the purpose of IPART fulfilling its statutory or delegated functions as set out in this document. Use of the information in this document for any other purpose is at the user's own risk, and is not endorsed by IPART.

ISBN 978-1-76049-697-5