

Carmel Donnelly
Chair
Independent Pricing and Regulatory Tribunal
PO Box K35
Haymarket Post Shop
Sydney NSW 1240

Re: IPART Water Regulatory Review

By email: [REDACTED]

23 September 2022

Dear Ms Donnelly

NRAR Response to IPART's Draft Water Regulatory Framework

The Natural Resources Access Regulator (NRAR) welcomes the opportunity to provide comment on the IPART draft report "Delivering Customer Value: Draft Water Regulatory Framework", which proposes changes to the price regulation of water services in NSW.

NRAR is responsible for the enforcement of water laws in New South Wales. IPART currently regulates pricing for NRAR's compliance services via the Water Administration Ministerial Corporation (WAMC) regulatory process. NRAR understands that the Department of Planning and Environment (DPE) and WaterNSW (partner agencies in WAMC) are making separate submissions in relation to IPART's draft report.

NRAR broadly supports the direction of the IPART draft report. In particular, NRAR supports:

- the widening of IPART's regulatory focus from cost efficiency to broader measures of value, and
- the increased flexibility which the proposed regulatory framework provides regulated entities.

Our more detailed comments are in the Attachment for IPART's consideration.

If you wish to discuss this NRAR response, please contact NRAR Principal Project Economics Stuart Ronan at [REDACTED].

Yours sincerely

[REDACTED]

Tim Gilbert
Acting Chief Regulatory Officer
Natural Resources Access Regulator

Attachment
NRAR Comments on the IPART Draft Report
“Delivering Customer Value: Draft Water Regulatory Framework”

While NRAR broadly supports the direction of the Draft Report, NRAR makes the following comments for IPART’s consideration.

Customer Focus in Proposed Regulatory Framework

The Draft Report is heavily focused on service providers undertaking extensive customer engagement and reflecting the findings of this engagement in their price and service proposals.

NRAR was established to be an independent regulator free from political and individual water user influence. NRAR’s primary role is to enforce compliance with water legislation set by the NSW Parliament, thus water user preferences may not always be the primary driver of services and expenditures in NRAR’s regulatory proposal. Indeed, NRAR risks regulatory capture, or broader community perceptions of regulatory capture, if it were to establish its business proposal primarily on licensee feedback.

NRAR’s legislated objective (NRAR Act 2017 Section 10b) is to “maintain public confidence in the enforcement of natural resources management legislation”. Given this objective, NRAR’s role as a regulator should be to promote improved community confidence and outcomes expected by the public, rather than primarily promote outcomes preferred by licensed water users.

We request that IPART consider addressing this matter in its Final Report to differentiate between customer and the broader notion of community, especially as it relates to compliance services protecting the public good. For example, the guiding principles in the report could include the notion of community, in addition to customer:

- services and expenditures are customer and community centric
- services and expenditures reflect customer and community engagement
- services and expenditures promote better customer and community outcomes

Proposed Increase Use of Benchmarking

NRAR welcomes the proposed increased use of benchmarking, where the benchmarking is based on a like-for-like assessment. However, NRAR strongly opposes inappropriate use of benchmarking, particularly interstate comparisons which are not like-for-like.

Comparisons of water compliance costs and activities between jurisdictions are problematic as there is a lack of legitimate comparators. This is due to substantial differences between legislative frameworks, compliance history and therefore the selection and design of compliance approaches, water industry structure, water use, geography, and climate.

NRAR is currently working with the Commonwealth Inspector General Water Compliance (IGWC) to develop a compliance reporting framework, which may allow some like-for-like comparisons in the future. However, at this stage NRAR strongly suggests that any comparisons made by IPART be undertaken with high caution to understand and contextualise differences between the jurisdictions.

NRAR requests that IPART discuss this issue with NRAR prior to using benchmarking of compliance activity as part of any price determination for WAMC compliance services.

Proposal Assessments

The Draft Report proposes financial incentives for proposals assessed as “leading”, “advanced” or “standard”.

NRAR seeks further information from IPART about the criteria that IPART will use to deem a proposal as leading, advanced, or standard, and how this assessment will be undertaken. This will inform our preparation of our WAMC compliance services business case for the 2025 WAMC determination process,

NRAR is the NSW water regulator. We are responsible for enforcing water laws throughout the state with targeted compliance programs that ensure water is used lawfully and shared fairly.

 1800 633 362  nrar.nsw.gov.au  nrar.enquiries@nrar.nsw.gov.au  Locked Bag 5022, Parramatta NSW 2124