

21 April 2022

Ms Maria Morahan
Principal Analyst
Independent Pricing and Regulatory Tribunal
PO Box K35
Haymarket Post Shop NSW 1240

WaterNSW draft proposed operating licence

Dear Ms Morahan

Thank you for the opportunity to provide comment on the draft proposed operating licence for Water NSW.

In general, we have no major concerns with the proposed licence, or the three-year term proposed for the interim licence. This seems sensible in light of the ongoing NSW Government reviews and policy processes that may affect Water NSW in the near future. The proposed timing may however mean that the next end-of-term review could occur concurrently with the next scheduled price review in 2024-25. This could cause challenges in terms of accurately forecasting costs to meet any anticipated new or amended licence obligations.

We would however like to request the inclusion of a number of clauses to provide some clarity around the consultation required regarding system yield, and the information required to enable Sydney Water to carry out the supply augmentation planning function. Accordingly, we propose the inclusion of the following clauses:

- 1) *WaterNSW must consult with Sydney Water regarding any changes to system yield, the methodology and/or method of calculation, and*
- 2) *WaterNSW must also provide Sydney Water with necessary system yield information and support to enable Sydney Water to carry out the Supply Augmentation Planning Function.*

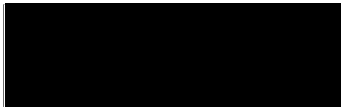
We have also included for your consideration a definition of 'Supply Augmentation Planning Function'.

We also note that The 'Emergency Drought Response Plan' is a joint Sydney Water and WaterNSW response plan. As a result, it is imperative that the requirements within both the Sydney Water and WaterNSW Operating Licences align.

Our comments on the draft licence are included in Attachment A.

If you would like to discuss these matters further, please contact Michael English, Competition & Licensing Manager at michael.english@sydneywater.com.au.

Yours sincerely



Philip Davies
Head of Economics & Regulation

Attachment A - Summary of changes

Reasons for proposed changes to WaterNSW Licence Clause1	Requirement	Revised clause ₂	Proposed revised requirement	IPART's comments/reasons for change	Sydney Water comments
1.3.1	The term of this Licence is 5 years from the Commencement Date.	1.3.1	The term of this Licence is 3 years from the Commencement Date.	In September 2021, we advised stakeholders and the public of our preliminary position, i.e. to recommend a 2-year licence on the same (or similar) terms to the current licence. The revised licence would act as an interim licence. We now propose a 3-year licence, to provide flexibility around the timing of the comprehensive review. That does not preclude us from starting the review earlier. However, it provides contingency, should the policy and governance environments shift.	No comment, although it is noted that the revised licence term may result in a clash with the next Price Review.
1.6.1	It is anticipated that a review of this Licence will commence in the first quarter of 2021 to investigate: a. whether this Licence is fulfilling its objectives; and b. any issues which have arisen during the term of this Licence, which may reduce the effectiveness of this Licence. (End of Term Review).	1.6.1	It is anticipated that a review of this Licence will commence in the first quarter of 2024 to investigate: a. whether this Licence is fulfilling its objectives; and b. any issues which have arisen during the term of this Licence, which may reduce the effectiveness of this Licence. (End of Term Review).	This is consistent with our approach to commencing licence reviews. Noting – this clause would not prevent us from starting the review earlier.	No comment, although it is noted that the revised licence term may result in a clash with the next Price Review.
2.1.1	Water NSW must maintain a Water Quality Management System in accordance with this clause 2.1.	NA	Delete	Cause 2.1.1 is only activated by the operation of clauses 2.1.2-2.1.5. We consider that there is no additional obligation under this clause.	No comment
NA (new clause)	NA	2.5.4 (TBC)	WaterNSW must consult with Sydney Water regarding any changes to system yield, the methodology and/or method of calculation.		Inclusion of new clause requested to ensure Sydney Water is consulted with regarding any changes to system yield and the methodology and/or method of calculation.

NA (new clause)	NA	2.5.5 (TBC)	WaterNSW must also provide Sydney Water with necessary system yield information and support to enable Sydney Water to carry out the Supply Augmentation Planning Function.		Inclusion of new clause requested to ensure Sydney Water has all necessary information to carry out the Supply Augmentation Planning Function.
2.6.1	By the first quarter of 2021, Water NSW must engage a suitably qualified independent expert to: a. review its modelling and procedures for calculating the System Yield to ensure that it reflects good industry practice; b. test the robustness of the modelling, the key assumptions used in the modelling, and the process for calculating the System Yield, including the appropriate frequency of yield re-calculation and the appropriateness of the trigger events in clause 2.5.1; and c. advise Water NSW on whether it should re-calculate the System Yield based on the findings of the test conducted under clause 2.6.1(b).	NA	Remove clause	Historically, WaterNSW has been required to review its System Yield model, once every licence term, approximately every 5 years. The most recent review was undertaken in 2021. WaterNSW would not be required to undertake its next review until after the licence expires. The condition will be reconsidered at the comprehensive end of term licence review.	No comment. Sydney Water however does request that it is consulted with regarding any changes to system yield and the methodology and/or method of calculation. (Refer above)
2.6.2	Water NSW must consult with: a. Customers who are Supplied water from the Declared Catchment Area, including Sydney Water; b. stakeholders and regulators as agreed with, or directed by, IPART; and c. any other persons that Water NSW reasonably expects to have an interest in the review of the modelling under clause 2.6.1, regarding the review of the modelling under clause 2.6.1 and provide the results of the consultation to the suitably qualified independent expert.	NA	Remove clause	Same reason for removing clause 2.6.1.	No comment. Sydney Water however does request that it is consulted with regarding any changes to system yield and the methodology and/or method of calculation. (Refer above)

2.6.3	The review of the model for the System Yield must be completed by 30 June 2021 and reported to IPART in accordance with the Reporting Manual.	NA	Remove clause	Same reason for removing clause 2.6.1	No comment. Sydney Water however does request that it is consulted with regarding any changes to system yield and the methodology and/or method of calculation. (Refer above)
2.7.1	By 1 November 2018, or by a later date as approved by IPART, Water NSW must submit to IPART, a report outlining Water NSW's water conservation strategy in relation to its operations under this Licence (Water Conservation Strategy).	2.6.1	Water NSW must maintain and implement a water conservation work program in relation to its operations under this Licence in accordance with the Water Conservation Strategy.	WaterNSW submitted a Water Conservation Strategy in 2018 and a water conservation works program in 2019. We propose the strategy and program be maintained.	No comment.
2.7.2	The Water Conservation Strategy must include: a. identification and documentation of existing water conservation activities; b. a process for identifying additional options for conserving water; c. a process for comparing these options; and d. a process for selecting options for implementation.	NA	Remove	The Water Conservation Strategy has been completed and does not require updating.	No comment.
2.7.3	By 1 September 2019, or by a later date as approved by IPART, Water NSW must develop and submit to IPART a water conservation work program using the process set out in the Water Conservation Strategy.	2.6.3	By 1 September 2023, or by a later date as approved by IPART, Water NSW must review, update and submit to IPART a further water conservation work program using the process set out in the Water Conservation Strategy.	The works program developed in 2019 has a program of works from 2019 to 2023. We propose that the program of works should be updated and submitted in 2023, extending the program a further 5 years.	No comment.
2.9.1	By 1 December 2021 (or another date approved by the Minister in writing), Water NSW must develop and submit to the Minister: a. a long-term capital and operational plan; and b. an emergency drought response plan.	2.8.1	By 1 July 2023 (or another date approved by the Minister in writing), Water NSW must develop and submit to the Minister a long-term capital and operational plan.	The Minister granted an extension to the delivery of this requirement on 29 November 2021	No comment.
		2.8.4	Water NSW must maintain and deliver on actions specified in its Emergency Drought Response Plan.	WaterNSW has submitted its emergency drought response plan. We have updated the requirement so WaterNSW is required to	No comment. It should however be noted that the 'Emergency Drought Response Plan' is a joint Sydney Water/WaterNSW response

				maintain its plan and review it annually.	plan. As a result, it is imperative that the requirements within both the Sydney Water and WaterNSW Operating Licences align.
		2.8.5	Water NSW must review and update its Emergency Drought Response Plan: a. within 6 months of the publication of the Greater Sydney Water Strategy (or another date approved by the Minister in writing); and b. annually thereafter by the anniversary of the date specified in paragraph 2.8.5(a)	We have removed this requirement from clause 2.9.1 as WaterNSW has submitted its emergency drought response plan. We have updated the requirement so WaterNSW is required to maintain its plan and review it annually.	No comment. It should however be noted that the 'Emergency Drought Response Plan' is a joint Sydney Water/WaterNSW response plan. As a result, it is imperative that the requirements within both the Sydney Water and WaterNSW Operating Licences align.
2.9.8	Water NSW must, within 60 days of the commencement of this clause (or a later date approved by the Minister in writing), develop and enter into a data sharing agreement with DPIE to assist in the development and review of the Metropolitan Water Plan (the MWP Data Sharing Agreement).	NA	Delete and replace with a similar clause – Water NSW must: a. use its best endeavours to maintain a data sharing agreement with DPE to assist in the development and review of the Metropolitan Water Plan (MWP Data Sharing Agreement); and b. comply with the MWP Data Sharing Agreement referred to in clause 2.8.7(a).	We have included a new clause requiring Water NSW to maintain and comply with the Data Sharing Agreement (to replace 2.8.8). It's best endeavours to maintain as maintenance of the agreement is dependent on both DPE and Water NSW.	No comment.
3.4.6	By 31 December 2018, Water NSW must, in consultation with NSW Health, the Local Water Utility Customers on the LWU Register and its customer advisory groups established under clause 6.5, complete a review of its water quality monitoring, of water released by Water NSW to Local Water Utilities.	NA	Delete	This requirement has been met. LWUs can currently access information held by WaterNSW through clauses 3.4.3 and 3.4.5.	No comment.
3.4.7	By 30 June 2019, Water NSW must provide IPART with a report detailing the outcomes of the review referred to in clause 3.4.6. The report should describe measures that were identified and the timing by which they could be	NA	Delete	Same reason as clause 3.4.6.	No comment.

	implemented. Any barriers to immediate implementation of identified measures, including limitations to funding, should be outlined in the report.				
4.3.2	Water NSW must ensure that: a. 99% of Customers who place a Non-complying Water Order are contacted within one working day to rectify that order; and b. this is calculated as a percentage of all Non-complying Water Orders placed in the financial year. CSR Water Delivery Performance Standard B	4.3.2	Water NSW must ensure that in each financial year no more than 5 Customers who place a Non-Complying Water Order are contacted more than one working day after Water NSW receives that order to rectify that order.	We understand that WaterNSW recently updated its system and processes for receiving Water Orders. The new (digital) system does not accept non-complying water orders and only a handful of customers continue to submit water orders via the old system. We consider that limiting this standard to no more than 5 occurrences will drive WaterNSW to continue to process the non-complying water orders efficiently. However, we propose to review the appropriateness of this performance standard in the full licence review, once we have more data on how many non-complying water orders WaterNSW receives over the licence period.	No comment.
NA (new clause)	NA	4.3.4	The Performance Standard referred to in clause 4.2.3 does not apply where Water NSW is subject to a direction or order given under any law that requires Water NSW to reduce or cease the Supply of water in a manner that prevents Water NSW from Delivering a Water Order within the timeframe required by clause 4.2.3	We have included a new licence condition to clarify that clause 4.2.3 does not apply where WaterNSW received a direction or order, to restrict flows, under any law.	No comment.
4.3.3 (note)	<i>Note: The scheduled day of Delivery takes into account the period of required notice specified in Water Management Work approvals, licences, or entitlements. This is measured by Complaints and/or if Water NSW identifies a Delivery delay.</i>	4.3.4 (note)	<i>Note: The scheduled day of Delivery takes into account the period of required notice specified in Water Management Work approvals, licences, or entitlements. This is measured by Complaints and/or if Water NSW identifies</i>	In addition to the new clause, we have updated the note to add further clarity around directions that may lead to the deferral of water orders.	No comment.

	<i>e.g. through its staff, systems or otherwise identifies or becomes aware of a Delivery delay.]</i>		a Delivery delay, e.g. through its staff, systems or otherwise identifies or becomes aware of a Delivery delay. This clause does not apply to the deferral of Water Orders due to Water NSW complying with a direction or order under any law (e.g. from the Minister, DPE or NSW Police.)		
5.1.1	<i>Water NSW must at all times maintain a Management System for carrying out its functions authorised under this Licence that is consistent with the Australian Standard AS ISO 55001:2014 Asset management – Management systems – Requirements or other standard approved by IPART on request by Water NSW (the Asset Management System)</i>	5.1.1	Water NSW must at all times maintain a Management System in relation to Water NSW's assets that is consistent with the Australian Standard AS ISO 55001:2014 Asset Management – Management systems – Requirements or other standard approved by IPART on request by Water NSW (Asset Management System).	Amendment to make it clearer what the management system is for.	No comment.
5.2.1	<i>Water NSW must at all times maintain an Environmental Management System for carrying out the functions authorised under this Licence that is consistent with the Australian/New Zealand Standard AS/NZS ISO 14001:2016: Environmental management systems – Requirements with guidance for use or other standard approved by IPART, on request by Water NSW (the Environmental Management System).</i>	5.2.1	Water NSW must at all times maintain a Management System for managing its environmental responsibilities and the environmental impacts of its services and activities that is consistent with the Australian/New Zealand Standard AS/NZS ISO 14001:2016: Environmental management systems – Requirements with guidance for use or other standard approved by IPART, on request by Water NSW (Environmental Management System).	Amendment to make it clearer what the management system is for.	No comment.
6.3.1	<i>Water NSW must determine the volume of water Extracted by, or Supplied to, each of its Customers, at least annually, for the purpose of accurate account management, billing and reporting.</i>	6.3.1 (note)	[Note: The purpose of the determination in clause 6.3.1 is to support WaterNSW's commercial business activities, and provide customers with usage, billing and amounts outstanding.]	We have added a note to clarify the purpose of the determination in clause 6.3.1.	No comment.
6.5.1	<i>Water NSW must establish and maintain area-based advisory groups representing a broad</i>	6.5.1	Water NSW must establish and maintain advisory groups for Customers in different regions	We have updated this clause to make it clearer what	No comment.

	<i>cross-section of its Customers for those areas (Customer Advisory Group).</i>		of its Area of Operations that include representation from a broad cross-section of its Customers for each region (Customer Advisory Groups). Water NSW has discretion to determine those regions, provided collectively the regions encompass all of its Area of Operations.	'areas' the clause is referring to.	
6.15	<p><i>Memorandum of Understanding with Department of Planning and Environment</i></p> <p><i>6.15.1 Water NSW must: a. use its best endeavours to establish and maintain a memorandum of understanding with the Department of Planning and Environment; and b. comply with the memorandum of understanding maintained under clause 6.15.1(a).</i></p> <p><i>[Note: Clause 6.15.1 does not limit the persons with whom Water NSW may enter into a memorandum of understanding.]</i></p> <p><i>6.15.2 The purpose of the memorandum of understanding referred to in clause 6.15.1(is to form the basis for a cooperative relationship between the parties to the memorandum regarding the role of Water NSW for the review and implementation of the Metropolitan Water Plan. [Note: Clause 6.15.2 does not limit the matters which may be included in the memorandum of understanding with the Department of Planning and Environment.]</i></p>	NA	Delete	The existing clause relates to the MoU between WaterNSW and the former DPE Metropolitan Water Unit (a function that has since transferred to DPE). The objective of this clause was to ensure that WaterNSW and DPE would work together for the review and implementation of the Metropolitan Water Plan. We consider that this clause is adequately covered by clauses 2.9.4/2.9.5.	No comment.
6.16.1	<i>Roles and Responsibilities with Department of Industry Water NSW must: a. agree in writing with the Department of Industry the roles and responsibilities regarding the conduct of</i>	6.15.1	Roles and responsibilities with Department of Planning and Environment Water NSW must: a. agree in writing with the Department of Planning and Environment the roles and	We have added a second sentence to the note that clarifies that the clause only relates to the conduct of Conferred Functions, per Schedule A of the licence.	No comment.

	<p><i>Conferred Functions specified in Schedule A of this Licence; and b. comply with the agreement established under clause 6.15.1(a).</i></p> <p><i>[Note: Clause 6.15.1 does not limit the persons with whom Water NSW may enter into an agreement or the matters which may be contained in the agreement.]</i></p>		<p>responsibilities regarding the conduct of Conferred Functions specified in Schedule A of this Licence; and b. comply with the agreement established under clause 6.15.1(a).</p> <p>[Note: Clause 6.15.1 does not limit the persons with whom Water NSW may enter into an agreement or the matters which may be contained in the agreement. Clause 6.15.1(b) applies only to those parts of the agreement that relate to the conduct of Conferred Functions specified in Schedule A of this Licence]</p>		
6.16.2	<p><i>By 30 June 2018, Water NSW must publish on its website, for downloading by any person, a statement setting out the roles and responsibilities required under clause 6.15.1(a).</i></p> <p><i>[Note: The statement may also include roles and responsibilities agreed with the Ministerial Corporation or any other relevant Government departments or agencies.]</i></p>	6.15.2	<p>Water NSW must publish a statement setting out the roles and responsibilities required under clause 6.15.1(a) on its website for downloading by any person.</p> <p>[Note: The statement may also include roles and responsibilities agreed with the Ministerial Corporation or any other relevant Government departments or agencies.]</p>	<p>We have removed the reference to a date as the condition has been met. Changed to require WaterNSW to keep the statement on its website.</p>	No comment.
NA	<p><i>NA (new clause)</i></p>	6.16.3	<p>6.16.3 By 1 September 2023, Water NSW must use its best endeavours to agree with NRAR amendments to the memorandum of understanding referred to in clause 6.16.1 to specify:</p> <ul style="list-style-type: none"> a. consultation and engagement principles for engagement between the parties ; b. information technology and system access, where this is not already addressed under other arrangements between the parties; and c. terms for initiating review of, or amendment to, the 	<p>We propose that the MOU should be updated to include in the matters specified in the new licence condition. We note that the MOU is currently under review.</p>	No comment.

			<p>memorandum of understanding and documents prepared by the parties under the terms of that memorandum of understanding (if any). [Note: Clauses 6.16.2 and 6.16.36.16.2 does not limit the matters which may be included in the memorandum of understanding with the Natural Resources Access Regulator.]</p>		
6.18.1	<p>Water NSW must develop, operate and maintain an on-line portal to allow for the electronic lodgement of the following: a. a certificate provided under clause 237(1) or (2) of the Water Management (General) Regulation 2018, as required by clause 238(2) of that Regulation, b. a report by a person who intends to rely on clause 8 of Schedule 8 of the Water Management (General) Regulation 2018 setting out the steps taken in relation to the metering equipment, as required by clause 8(3) of that Regulation, c. written certification as to the matter set out in clause 9(2)(b) of Schedule 8 of the Water Management (General) Regulation 2018, d. a report from a person who intends to rely on clause 9 of Schedule 8 of the Water Management (General) Regulation 2018, setting out the steps taken in relation to the metering equipment, as required by clause 9(5) of that Regulation.</p>	6.17.1 (note)	<p><i>[Note: In maintaining the portal, Water NSW should reasonably consider requests made by the NRAR to provide functionality that is fit for the NRAR's compliance functions.]</i></p>	<p>We do not propose any changes to the wording of the clause but propose to include a note to the end to aid interpretation.</p>	No comment.
6.18.2	<p>The portal must be operational by 1 December 2020.</p>	NA	Delete	<p>The date (one-off) for this clause has lapsed and the portal is operational.</p>	No comment.
6.18.3	<p>Water NSW must ensure that certificates, reports and other</p>	6.17.2	<p>By 31 August 2023, Water NSW must:</p>	<p>The drafting of this clause is lacking specificity. The revised clause provides</p>	No comment.

	documents lodged in the portal are retained.		a. develop, in consultation with NRAR and DPE, and maintain a data retention protocol to ensure that data, certificates, reports and other documents lodged in the portal are retained for the period required by the <i>State Records Act 1998</i> (NSW) and any other applicable law; and b comply with the data retention protocol maintained under clause 16.18.2(a).	further clarity around the intention of the clause. We understand that WaterNSW is reviewing its data retention protocol with NRAR and DPE.	
6.18.4	Water NSW must provide DPIE and NRAR with access to the portal, all data held in the portal and any systems related to the portal.	6.17.4	Water NSW must provide DPE and NRAR with access to the portal and data and systems within the portal that are relevant to DPE and the NRAR's functions.	We propose to clarify what data WaterNSW must provide NRAR with access to. The extent of the access should be limited to data and systems related to DPE and NRAR's functions.	No comment.
6.19.3	All such data must be entered into and retained in Water NSW's data systems. Prior to 1 December 2021, Water NSW, DPE and NRAR are to agree on protocols for requests for data to which this clause applies	6.18.3 6.18.4	All such data must be entered into Water NSW's data systems and retained in accordance with the data retention protocol maintained under clause 6.17.2(a). 6.18.4 Water NSW must use its best endeavours to maintain protocols with DPE and NRAR for requests for data to which this clause 6.18 applies.	We propose amending this licence condition to clarify that WaterNSW must retain all relevant data. As the protocol has been developed and is operational, we have amended the clause so that the protocol is to be maintained.	No comment.
6.19.6	The obligations imposed by this clause take effect from 1 December 2021.	NA	Delete	The deadline (one-off) for this clause has lapsed. The clauses apply to the licence.	No comment.
6.20.1	Water NSW must use its best endeavours to develop and enter into a data sharing and services agreement with DPIE and NRAR as soon as practicable after 1 July 2020 or by a date approved by the Minister in writing (the Metering Data Sharing and Services Agreement). If such an agreement has been	6.19.1	Water NSW must: a. use its best endeavours to maintain a data sharing and services agreement with DPE and the NRAR (Metering Data Sharing and Services Agreement); b. comply with: i the Metering Data Sharing and Services Agreement maintained under clause 6.19.1(a); and	The data sharing agreement commenced on 3 December 2020. As the agreement has been developed, we recommend the clause now require the agreement to be maintained. The requirement to comply with any cure plans has been moved up from 6.20.3 as the	No comment.

	entered into before 1 July 2020, this subclause does not apply.		ii any cure plan that applies to Water NSW under that Agreement . <i>[Note: The Metering Data Sharing and Services Agreement is in addition to the MWP Data Sharing Agreement described in clause 2.8.7.]</i>	rest of the clause is no longer required.	
NA	NA (new clause)	6.19.3	By 1 September 2023, Water NSW must use its best endeavours to agree with DPE and the NRAR amendments to the Metering Data Sharing and Services Agreement maintained under clause 6.19.1(a) to specify: a. requirements and expectations for data quality, including metrics for measuring data quality; b. frequency of performance reviews of the Metering Data Sharing and Services Agreement; and c. terms for initiating review of, or amendment to, the Metering Data Sharing and Services Agreement.	We consider there is benefit in clarifying what the agreement should (at a minimum) include.	No comment.
6.20.3	Water NSW must: a. provide access to the data and services under that Agreement to DPIE and NRAR, in accordance with that Agreement, and b. comply with any cure plan that applies to Water NSW under that Agreement.	6.19.3	delete	We have deleted part a of this clause as WaterNSW is required to comply with the data sharing agreement under clause 6.20.1 which would imply they are to provide access to data and services. We have moved part b of this clause to clause 6.20.1.	No comment.
6.20.4	If by 1 July 2020, Water NSW, DPIE and NRAR have entered into an agreement as required by this clause, clause 6.20.3 applies to that agreement.	NA	Delete	WaterNSW, DPE and NRAR have entered into the agreement required under this clause. This clause no longer applies.	No comment.
8.1	<i>New definition</i>	NA	Supply Augmentation Planning Function means the water supply augmentation planning function for Greater		Inclusion of new definition requested to support new clause 2.5.5.

			<p>Sydney which consists of the following:</p> <ol style="list-style-type: none"> 1. assessment of the need for water supply augmentation; 2. identification of water supply augmentation options, including capital and non- capital options; 3. whole of system assessment of the water supply augmentation options and prioritisation to support strategic business cases; 4. concept development and feasibility studies for preferred water supply augmentation options to support strategic business cases; and 5. costings of preferred water supply augmentation options to support strategic business cases. 		
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