

8 November 2021

Ms Liz Livingstone
Chief Executive Officer
IPART

By email:

CC:

Dear Liz

2021 End-of-term operating licence review for WaterNSW

I thank you for the opportunity to provide WaterNSW's views to the Tribunal regarding the end-of-term review of our Operating Licence.

In light of the timing of this process, WaterNSW supports IPART's approach in undertaking a truncated and targeted process to issue WaterNSW with a short-term operating licence for two years.

WaterNSW is mindful that this timing does not allow for a fulsome review of the existing operating licence, and therefore matters that are not urgent, administrative in nature, or have not been previously socialised are appropriately deferred to the anticipated review in 2023.

In undertaking our review of the current operating licence WaterNSW has focused on ensuring that:

- WaterNSW is appropriately empowered to undertake the statutory functions of WaterNSW and comply with directions received;
- service and performance standards within the operating licence reflect the evolution in service provision;
- the operating licence clauses are targeted to the specific matters to be addressed and are as free from ambiguity as practicable; and
- clauses are removed where they are duplicative or are no longer required to reduce compliance costs, and better reflect annual compliance performance.

More broadly WaterNSW is an advocate for an operating licence that aligns with the NSW Better Regulation principles such that it:

- delivers accountability to support public confidence through the achievement of tangible outcomes;
- minimises the cost of compliance borne by customers and provides value for money oversight of matters valued by stakeholders;
- supports relationship building, innovation and operating efficiency by focusing on the expected outcomes rather than specifying the means;
- avoids coverage of matters where other instruments, agreements or arrangements exist;
- creates alignment to the coverage and funding envelope of economic regulatory determinations; and
- provides a framework (in conjunction with economic regulatory decisions) within which areas of future reform may be addressed in a timely and efficient manner.

D2021/118259

WaterNSW ABN 21 147 934 787
169 Macquarie Street Parramatta NSW 2150
PO Box 398, Parramatta NSW 2124

T 1300 662 077 E Customer.Helpdesk@waternsw.com.au

waternsw.com.au

Attachment 1 sets out WaterNSW's considerations and suggestions covering the themes of our review set out above. WaterNSW is mindful of the relatively short period of time to prepare this submission whilst also preparing for, and undertaking, the annual licence compliance audit process. As a result, we anticipate that further information or supplementary submission may be required to assist the Tribunal in its deliberations on the matters presented by WaterNSW and other stakeholders.

Yours sincerely,



Andrew George
Chief Executive Officer

Attachment 1: WNSW submission to IPART on 2021 End-of-term operating licence review for WaterNSW

1 Service and performance standards within the operating licence reflect the evolution in service provision

4.3.2 CSR Water Delivery Performance Standard A (calculating the measure)

Since the CSR performance standards were established WaterNSW has implemented a range of process changes. Some of these process changes has meant that the existing approach to measuring performance, specifically CSR Water Delivery Performance Standard A, is dated and no longer reflects how services are provided.

The current measure was relevant where processes meant that a material volume of non-complying water orders could be received by WaterNSW, and therefore anticipated accommodating a small number (by volume) of responses to customers outside of the specified timeframe. This was a reasonable and considered approach that sought to manage the costs that would otherwise be imposed on water users by requiring 100% compliance.

WaterNSW has transitioned the primary means of receiving water orders to an online portal. This portal has inbuilt validation capabilities that, at the time of placing the order, checks whether the order placed by the customer is valid. If invalid, the portal does not allow the customer to proceed with the order.

As a mathematical consequence of the current performance standard drafting, WaterNSW would essentially need to achieve perfect conformance with response times and incur the resultant costs that would ultimately be borne by customers. Based on the volumes from the previous audit period any more than one non-conformance will result in a non-compliance with 4.3.2. On face value, such an extreme outcome is clearly contrary to the intent of the performance standard.

To bring the application of the performance standard up to date with current processes, WNSW recommends that the performance measure in clause 4.3.2 be changed from a percentage value to a fixed number. This adjustment will provide clear transparency of expectations and auditability, while preserving the balance of strong customer service and economic efficiency.

WaterNSW therefore submits that clause 4.3.2 be amended to read:

4.3.2 Water NSW must ensure that:

- a) ~~99% of~~ No more than 5 Customers who place a Non-complying Water Order are contacted more than 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.~~

2 The operating licence clauses are targeted to the specific matters to be addressed and are as free from ambiguity as practicable

6.16 Roles and Responsibilities with Department of Industry

Clause 6.16.1 of the operating licence requires that WaterNSW must agree in writing with DPIE-W the delineation and assignment of activities required to undertake Conferred Functions set out in Schedule A to the operating licence.

On 30 June WaterNSW, NRAR, DPIE-W and WAMC entered into a legally binding agreement that covers a range of matters, including the roles and responsibilities for the conferred functions. As a

consequence, WaterNSW is concerned that a literal interpretation of clause 6.16.1 (b) could result the clause being extended to matters outside of the stated purpose in clause 6.16.1 (a).

Therefore, WaterNSW seeks to expand the note to clause 6.16.1 to clarify that 6.16.1 (b) applies only to those aspects of the agreement that address the roles and responsibilities of the conferred functions described in 6.16.1 (a).

[Note: Clause 6.16.1 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 6.16.1 (b) applies only to those parts of the agreement that relate to the conduct of Conferred Functions specified in Schedule A of this Licence]

6.3.1 Water metering and monitoring

WaterNSW Customers are billed for water provided and other services under a number pricing and tariff arrangements. To ensure that this billing is accurate WaterNSW is required to determine the volume of water extracted by, or supplied, to each of its customers at least annually. Making this determination allows WaterNSW to manage customers' accounts with WaterNSW, including billing and account statements and support WaterNSW's financial reporting.

Additionally, WaterNSW interacts with a number of stakeholders and regulators, including the provision of information to support them in undertaking their respective mandates. Noting the similarities of certain data types there is a concern that WaterNSW's activities under this clause for commercial and customer management purposes may be conflated with other activities.

As a result, WaterNSW submits that a note be added to clause 6.3.1 to promote clarity and manage stakeholder expectations.

[Note: The purpose of the determination in clause 6.3.1 is to support WaterNSW's commercial business activities, and providing customers with usage, billing and amounts outstanding]

4.2.3 and 4.3.4 - CSR Water Delivery

One mechanism for controlling water releases and take in regulated rivers is a requirement for holders of certain water access licences to lodge water orders with WaterNSW. WaterNSW's operating licence imposes requirements and standards as to how WaterNSW must respond to water orders.

WaterNSW's experiences over the past couple of years, such as drought, have identified challenges with the operation of clauses 3.3.1, 4.3.3 and 4.3.4 in some specific circumstances. The most recent example being DPIE-W issuing WaterNSW with a Direction to reduce flows in the Gwydir River below Boolooroo Weir to assist with the search for a missing person near Moree. While WaterNSW communicated these changes to our customers, via a customer notice in a timely manner; it is unclear that complying with the direction will not result in a non-compliance with the operating licence.

On face value such a risk arises due to the absence of any safe harbour or reasonable excuse provision within the relevant sections of the operating licence.

WaterNSW therefore recommends that the note for clause 4.3.3 be amended, and a new note to 4.3.4 be created, to clarify that compliance with a lawful direction would not result in a non-compliance with the operating licence.

4.3.3 Water NSW must ensure that:

- a) 99% of Water Orders are Delivered within one day of the scheduled day of Delivery; and
- b) this is calculated as a percentage of all complying Water Orders placed in the financial year.

[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, 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 WaterNSW complying with a direction received from a relevant authority such as DPIE, NSW Police, SES, or RFS]

4.3.4 Water NSW must ensure that:

- a) 100% of Water Orders rescheduled, are rescheduled in consultation with an affected Customer within one working day of an expected water shortage, or other delivery delay; and
- b) this is calculated as a percentage of all Water Orders rescheduled in the financial year due to an expected shortage or Delivery delay.

[Note: Where WaterNSW is operating under a direction received from a relevant authority, such as DPIE, NSW Police, SES, or RFS, clause 4.3.4(a) is to apply from the date the direction ceases or is no longer effective.]

3 Clauses are removed where they are duplicative or are no longer required to reduce compliance costs and better reflect annual compliance performance

2.1.1 Water Quality Management System

WaterNSW has reviewed the Operating Licence and our recent audit experiences. This has identified that clause 2.1.1 of the Operating Licence does not appear to offer substantive public benefit or demonstrable outcome.

When reviewing previous licence compliance audit reports the operation of clause 2.1.1 would appear to primarily be to duplicate findings arising from clauses 2.1.2, to 2.1.5. That being that a failure to comply with clauses 2.1.2, to 2.1.5 will result in a secondary related non-compliance with 2.1.1. Further, clause 2.1.1 is only activated by the by the operation of clauses 2.1.2, to 2.1.5 and has no separate function.

WaterNSW also notes that clauses 2.1.2, to 2.1.5 all include the relevant elements of clause 2.1.1 of being compulsive (through the use of the word "must") and relate to the maintenance or operation of a Water Quality System.

Therefore, WaterNSW submits that clause 2.1.1 could be deleted without any deleterious impact on the operation or utility of clause 2.1 as it does not add any additional obligation; and would result in a more streamlined compliance assessment and one that better reflects the performance of WaterNSW.

6.12 Code of Conduct with WIC Act Licensees

The Water Industry Competition Act 2006 (NSW) (WICA) provides a framework for innovation and competition in the delivery of water infrastructure and services, most notably in urban or industrial developments. As result it is to be expected that such developments will be imbedded within existing water distribution network areas. Such network areas are beyond the point at which WaterNSW would expect to have any direct supply or contractual relationship.

In light of this, it is WaterNSW's view that there would be no foreseeable circumstances where WaterNSW would be required to interact with parties covered by the WICA, and therefore be required to develop a requisite code of conduct. WaterNSW can confirm that it has no current or previous enquiries regarding this issue.

In considering this issue, we examined IPART's 2017 Cost Benefit Analysis of WaterNSW's Operating Licence, in particular chapter 7. While the WICA is mentioned in the chapter introduction, is not explicitly discussed in any of the related cost benefit assessments or elsewhere within the report. As a result, WaterNSW is unclear of IPART's views of the relative value and merit for the inclusion of clause 6.12 within WaterNSW's operating licence.

WaterNSW therefore submits that based on the available information, IPART remove clause 6.12 from the WaterNSW operating licence as a redundant obligation within the scope of this current review.

6.14 Memorandum of Understanding with Environment Protection Authority EPA MOU

WaterNSW and the Environment Protection Authority (EPA) are in regular operational contact and maintain a Strategic Liaison Group. In preparing for the forthcoming Strategic Liaison Group meeting, IPART's review of the operating licence has been discussed.

Of specific interest is clause 6.14 of the operating licence which requires that WaterNSW must maintain and comply with the memorandum of understanding with the EPA. Both WaterNSW and the EPA are of the view that this clause is no longer required in light of the maturity of the relationship and enduring cooperation on matters of common interest. We were unable to identify any substantive benefit from retaining clause 6.14 that would outweigh the compliance costs associated with its retention.

It is our understanding that the EPA will separately confirm to IPART their views on this topic directly.

WaterNSW therefore submits that IPART remove clause 6.14 from the WaterNSW operating licence on the basis of regulatory efficiency within this current review as a non-controversial change.

6.15 Memorandum of Understanding with Department of Planning and Environment

This clause relates to a proposed MoU between WaterNSW and the former DPE Metropolitan Water Unit (a function that has since transferred to DPIE-W). 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 (6.15.2).

Considering the level of engagement and the creation of other fora; it was agreed by DPE on 12 February 2018 that a formal memorandum of understanding is not required. Evidence of this agreement has been previously provided to IPART.

Since then, a new clause (2.9) has been included in WaterNSW's Operating Licence that requires WaterNSW to contribute to the development of the Metropolitan Water Plan, and other actions relating to data sharing and the development of long-term capital and operating plans.

Regarding the Metropolitan Water Plan, the clause requires:

2.9.4 Water NSW must implement any action that:

- a) Water NSW is responsible for delivering under the Metropolitan Water Plan; or

b) the Minister directs, in writing, Water NSW to implement

2.9.5 Water NSW must participate cooperatively in any review of the Metropolitan Water Plan.

Given clause 2.9 both encompasses and expands upon the requirements of clause 6.15, WaterNSW submits that IPART remove clause 6.15 from the WaterNSW operating licence as a redundant obligation and non-controversial change within the scope of this current review.

Removing clause 6.15 merely corrects a duplication within the operating licence, and therefore does not diminish any regulatory obligations on WaterNSW to work with the DPIE in relation to Greater Sydney.



Attachment 2: Summary Table of Recommendations

Operating Licence Clause	Commentary	Marked-up or proposed changes
2.1.1	Operation of clause 2.1.1 duplicates the operation of clauses 2.1.2, to 2.1.5, without adding substantive benefit.	Deletion of clause 2.1.1
4.3.2	Performance standard measure was set with a larger total number of potential transactions not meeting the designated measure. Changes to systems and process have materially reduced the number of potential non-complying orders and as a result the formula for assessing compliance is outdated.	<p>4.3.2 Water NSW must ensure that:</p> <p>a) 99% of No more than 5 Customers who place a Non-complying Water Order are contacted more than within one working day to rectify that order; and</p> <p>b) this is calculated as a percentage of all Non-complying Water Orders placed in the financial year.</p>
4.3.3	Compliance with a direction from a relevant authority could place WaterNSW in breach of its operating licence.	<p>[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, 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 WaterNSW complying</p>

D2021/118259

WaterNSW ABN 21 147 934 787
 169 Macquarie Street Parramatta NSW 2150
 PO Box 398, Parramatta NSW 2124

T 1300 662 077 E Customer.Helpdesk@waterNSW.com.au

waterNSW.com.au



		with a direction received from a relevant authority such as DPIE, NSW Police, or RFS]
4.3.4	Compliance with a direction from a relevant authority could place WaterNSW in breach of its operating licence.	[Note: Where WaterNSW is operating under a direction received from a relevant authority, such as DPIE, NSW Police, or RFS, clause 4.3.4(a) is to apply from the date the direction ceases or is no longer effective.]
6.3.1	Potential for ambiguity as to the use and purpose of the data created in accordance with clause 6.3.1.	[Note: The purpose of the determination in clause 6.3.1 is to support WaterNSW's commercial business activities, and providing customers with usage, billing and amounts outstanding]
6.12	Unused and redundant clause	Deletion of clause 6.12
6.14	Redundant clause	Deletion of clause 6.14
6.15	Redundant clause	Deletion of clause 6.15
6.16.1	Potential extension of the operation of this clause to matters outside of the purpose of this clause as stated in 6.16.1 (a).	[Note: Clause 6.16.1 does not limit the persons with whom WaterNSW may enter into an agreement or the matters which may be contained in the agreement. Clause 6.16.1 (b) applies only to those parts of the agreement that relate to the conduct of Conferred Functions specified in Schedule A of this Licence]