



24 April 2024

Xanthe Smith
The Independent Pricing and Regulatory Tribunal
PO Box K35
Haymarket Post Shop
NSW 1240

Dear Xanthe,

RE: WaterNSW submission to the 2024 Paper on 'Designing a levy for regulating dam safety in NSW'

WaterNSW welcomes the opportunity to discuss and provide feedback on IPART's Issues Paper for the proposed design for a dam safety levy to recover Dams Safety NSW's efficient costs. I attach our formal submission for IPART's consideration, and to inform future engagement on the design of the proposed levy.

WaterNSW is the largest dam-owner in NSW, with 41 of the approximately 400 dams regulated by Dams Safety NSW belonging to WaterNSW. As such, it is important to WaterNSW that IPART determine a fair, affordable, and appropriate dam safety levy that considers the following:

- an appropriate cost-share of the dam safety levy between the government and dam owners upfront at a Dams Safety NSW organisational level
- affordability for dam owners and their customers
- options in the design of an equitable yet simple dam safety levy
- periodic and independent review of the efficient costs underlying a dam safety levy
- timing of introducing a dam safety levy

WaterNSW look forward to continuing to participate in this review and in IPART's proposed stakeholder workshops to discuss our submission further.

If you have any further questions in relation to this submission, please contact Rob O'Neill, Manager Regulatory Strategy [REDACTED]

Yours sincerely,

[REDACTED]
Andrew George
Chief Executive Officer

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WaterNSW Submission on ‘Designing a levy for regulating dam safety in NSW’

1. Cost-share between dam owners and the government should be set upfront

WaterNSW recommend that IPART determine the appropriate government cost-share for all of Dam Safety NSW's regulatory costs at an organisational level and exclude these costs from the levy. The remaining share would then be attributable to the proposed levy and paid for by dam-owners, subject to an appropriate mechanism to recover these costs from their customers. Noting that the mechanism for cost recovery will differ between dam owners, as some are not subject to economic price regulation, or do not have customers per se (e.g. mining companies).

By calculating the appropriate and affordable cost-share upfront, IPART will minimise complexity of the levy calculation by determining the government cost share at an organisational level. It will also avoid the need for individual determinations between dam owners regarding the customer cost-share. This will ensure simplicity of design whilst also considering the equitable cost-share of Dams Safety NSW's regulatory costs between all stakeholders who benefit from dam safety. It would also ensure consistency with other cost share and affordability decisions undertaken by IPART and avoid significant administration costs such as in the scenario where all dam owners are required to consult separately with customers and IPART on the appropriate cost shares.

The determination of the appropriate customer share should not be left to the pricing determination process, especially considering many dam owners do not have such processes. Nor should it be left to other bilateral processes in which dam owners and IPART determine cost-share on a case-by-case basis.

1.1 Benefits of dams extend beyond the customer and into the community

The community recognises the multifaceted benefits of dams and therefore dam safety. Indeed, a high proportion of customer and community members in WaterNSW's Customer Advisory Groups and the Water Working Groups (the latter established to inform our 2025-30 pricing proposal) agree that the value and benefit of dam safety is a value and benefit that is shared by customers and the community alike.

Dams are not only there to provide a catchment and water storage for the benefit of customers who use that water for irrigation or drinking water purposes. Dams also provide:

- Significant flood management benefits for downstream communities and their roads, infrastructure, residential or commercial landholdings through either active or passive flood management.

- Important recreational benefits, providing areas for recreational water sports, camping, picnicking and fishing.
- Important environmental benefits, by regulating major river systems through the provision of regular environmental releases during periods of drought or when there is high environmental value water, and by reducing the impact on downstream flora and fauna due to flooding.

IPART has long recognised that the costs of providing bulk water infrastructure and the associated activities, including dam safety activities, should be shared between rural bulk water customers and the community. However, the user-share of these costs has changed significantly over time.

In recent stakeholder engagement, WaterNSW customers expressed concern around the gradually increasing user-share of cost allocations between water customers and the NSW Government. A recurring question heard by WaterNSW was, “why are customers being required to pay for activities that are substantially for the greater public benefit?”. Noting that the activities they questioned included dam safety and compliance activities.

For example, in 1997, the dam owners' costs for activities that ensured the safety of their dams were fully recoverable from government, with a 100% government share of dam safety costs. Twenty-years later in the 2017 Cost Share Review, IPART determined that 50% of the costs for dam owners to ensure dam safety would be recoverable from customers, with the remaining 50% to be recovered through government funding. More recently, however, in their 2019 Cost Share Review, IPART determined the customer share should increase to 80%, reducing the government share of WaterNSW's dam safety costs to 20%.

WaterNSW understands the cost shares determined between customers and the community (i.e. government) will vary over time and are specific to the costs and activities of WaterNSW. However, this variation gives rise to concern that there could be potential disparity in outcomes between dam owners and their customers if IPART were to calculate the user share for each individual dam owner. It could also result in significant inefficiencies if IPART were to undertake multiple reviews for each dam owner. In other words, it would be inefficient for IPART to determine the appropriate cost share for each dam owner that is regulated by Dams Safety NSW.

WaterNSW understands that the current WaterNSW user-cost share may be reviewed, and could be revised, as part of our 2025 Determination, although this does not apply to other dam owners. WaterNSW note that this user-share is the user-cost share of a dam owner's activities for dam safety and do not include or represent the appropriate cost-share for the regulator's costs.

WaterNSW also notes that the regulator's costs have been a 100% government share since the creation of the Dams Safety Committee and now, Dams Safety NSW. Therefore, WaterNSW recommends that IPART determine an appropriate user share of the regulator's costs at the organisational level, for all dam owners, upfront. This requires IPART to calculate an appropriate cost share, as opposed to adopting the 80% user cost share that is currently set for WaterNSW's dam safety activities.

By assessing a government cost-share at the Dams Safety NSW organisational level, it would better reflect the multi-faceted benefits of dams and the broad range of dam safety beneficiaries. It would also ensure that IPART does not pass on all the costs of administering dam safety to the customers of dam-owners when non-paying customers, the community and the environment also benefit from dam safety.

1.2 Affordability for the customers of dam owners

WaterNSW also recommends that IPART consider affordability when determining the dam owner cost-share.

WaterNSW understands that many dam-owners will be impacted by and are uneasy about the additional costs of a dam safety levy. With the cost-of-living pressure at an all-time high and significant cost increases for water infrastructure being signalled by water utilities, affordability is a major source of concern for many WaterNSW customers. That concern is not limited to regional areas. Rising interest rates have also affected communities living in the Greater Sydney catchments, as well as along the Fish River, and Broken Hill pipelines.

WaterNSW customers have already expressed apprehension around the financial difficulties they anticipate with further cost increases expected in the next regulatory pricing period. WaterNSW customers have advised us that three years of consecutive flooding, uncertainty in weather predictions, and increasing pressure on farmers to reduce their costs to help combat the rising cost of living pressures mean that further price hikes could force some vulnerable WaterNSW customers out of the market altogether, particularly in regional NSW. Of the 959 community surveys conducted by WaterNSW in 2024, affordability was the most common theme, with the top priority being to either reduce or prevent increases to current water prices.

WaterNSW recommends that IPART consider customer (i.e. end-user) affordability when IPART assign the appropriate dam owner share of that levy. Specifically, whether customers have the capacity to pay the dam owner share calculated and if not, that IPART reconsider what is an appropriate, fair, and affordable cost allocation between dam owners (and their end-users) and the government.

2. Calculation of the levy

WaterNSW understand there are numerous means by which IPART can calculate a dam safety levy. WaterNSW recommends that IPART take a principled approach and consider the methods used to calculate levies in other jurisdictions. Comparison could be made to dam safety regulation in Tasmania, Victoria and Queensland as well as overseas jurisdictions, such as Portugal, Norway, Sweden and Argentina. In doing so, IPART should also consider the differences between NSW and these other jurisdictions which might drive different costs and levy structures.

WaterNSW recommend that IPART design a levy which considers the following three drivers of cost to Dams Safety NSW as options for incorporating into the calculation of a levy:

1. What is the consequence category rating of a dam? Reflect this in the pricing structure.
2. What is the number of dams owned by a dam owner? Reflect this in the pricing structure via a sliding cost scale that decreases the costs payable on each additional dam owned by a dam owner. Noting that many of Dams Safety NSW's activities are aimed at regulating a single entity for its entire portfolio of dams, not individual dams. With 41 WaterNSW dams, the cost to Dams Safety NSW of regulating WaterNSW are unlikely to be 41 times higher than their cost to regulate a dam owner with a single dam.
3. A variable component to the levy based on dam safety compliance performance standards. This component of the levy would be calculated on a periodic basis as part of a long-term incentive. It would operate to incentivise good and/or improved dam safety by reducing financial and/or administrative cost for dam owners who meet the performance standards.

3. Revision of levy via periodic review

WaterNSW recommend that all levy costs are subject to a periodic and independent review. Without IPART's regulatory oversight of Dams Safety NSW, the costs passed through to customers may not be the prudent or efficient costs for the activity. IPART's oversight will ensure that the costs recovered by Dams Safety NSW remain both prudent and efficient.

Periodic independent review will ensure that as Dams Safety NSW matures as an organisation and regulator, the efficiency gains associated with organisational maturity are also reflected in their efficient costs.

A key component of that periodic review would be to compare cost estimates with actual cost data to better determine Dams Safety NSW's costs. The use of cost-codes or activity codes within Dams Safety NSW can assist IPART to track actual costs against Dams Safety NSW's activities. By collecting meaningful data, IPART can better assess the prudent and efficient costs of Dams Safety

NSW. It also aligns with the recommendation in CIE's 2020 Report on *Proposed funding model for Dams Safety NSW* that cost recovery should be applied to specific activities rather than whole agencies. The collection of this data could also inform future reviews of the design of the levy and the relevant cost drivers to Dams Safety NSW's activities, which in turn would inform better disaggregation of the levy to dam owners.

This periodic assessment could be conducted every five years in line with the regulatory pricing cycle of WaterNSW.

4. Reasonable opportunity to recover the imposed cost of a new levy

As a monopoly supplier of bulk water, WaterNSW is regulated by IPART on the provision and pricing of these monopoly services. At present, IPART regulates WaterNSW's bulk water service by way of a price cap. These price caps remain in place for the length of the regulatory period.

Importantly, if a new levy is introduced, WaterNSW would seek to ensure that it is able to recover the associated costs through regulated charges. This could be achieved through several mechanisms, including a 'regulatory change event' cost pass through. A regulatory change event could be used to accommodate regulatory or legislative changes and the associated costs during a regulatory determination period if the costs are unable to be forecast at the time of the determination. IPART has indicated in their Handbook that they would be open to considering pass-throughs as part of forthcoming regulatory determinations and the introduction of a levy for the costs of Dams Safety NSW would appear to satisfy any relevant principles.

For WaterNSW to be able to recover the additional costs associated with a dam safety levy, the forecast costs must therefore be included in and approved by IPART as part of a regulatory determination process. Otherwise, a pass-through for a regulatory change event would need to be introduced to ensure WaterNSW is able to recover the efficient costs of the levy.

It is worth noting that WaterNSW is in the final stages of developing the next five-year Pricing Proposal which will run from 2025 until 2030. It will be submitted to IPART in September 2024.

If IPART were to introduce a dam safety levy after the regulatory determination is made, WaterNSW will be unable to recover these additional costs until the next determination (i.e. beyond 2030) unless:

- A pass-through mechanism is provided for the introduction of a dam safety levy (or a more general regulatory change event); or

- IPART pre-empts the likelihood of such a decision by including an allowance for a dam safety levy in the regulatory determination (and subsequently aligns the actual levy to that allowance); or
- IPART sets WaterNSW's levy to zero for the 2025-2030 regulatory period.

In the absence of IPART adopting one of these options, WaterNSW will not have a reasonable opportunity to recover the cost of a dam safety levy if it is applied before 2030.

IPART must therefore consider the time and date from which levy charges are intended to commence and avoid the introduction of a levy until such time as dam owners (including WaterNSW) are able to recover the costs accordingly.

WaterNSW therefore recommends that IPART consider the ability for dam owners to recover costs associated with a dam safety levy as a pre-condition before any such levy is imposed.