

IPART Review of the WaterNSW Operating Licences – NSW Government Submission

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Introduction

The NSW Government supports the Independent Pricing and Regulatory Tribunal's (IPART's) first principles approach to the design of the terms and conditions for the new operating licence(s) for WaterNSW¹ and its recognition of the diverse functions of the former State Water Corporation (State Water) and Sydney Catchment Authority (SCA). We anticipate this approach will deliver a contemporary regulatory framework for WaterNSW that is consistent with the NSW Government's intention to create a modern and responsive service provider and a centre of excellence for bulk water management and catchment protection in NSW².

This review provides a timely opportunity to take a holistic view of what should be required in the operating licence for the major bulk water supply utility in NSW. The NSW Government also supports IPART's aim of introducing greater consistency in the licensing approach across the major public water utilities³.

The NSW Government supports IPART's intention that *'Designing an appropriate new operating licence(s) for Water NSW, with reference to the Water NSW Act, will clarify WaterNSW's regulatory obligations and reduce any regulatory burden resulting from duplicative or conflicting obligations in the existing State Water and SCA operating licences'*⁴.

In this context, a number of questions posed in IPART's Issues Paper (particularly in Chapters 5 and 6) could be interpreted as potentially leading to the duplication in the operating licence matters which are already subject to regulation under the *Water Management Act 2000* and/or *Water Act 1912*.

The NSW Government supports IPART's approach of seeking to identify areas of potential regulatory duplication or gaps. It is important for the operating licence to set appropriate customer service obligations and performance measures for WaterNSW (except for health related activities⁵), as these are not regulated by any other instrument.

Expertise within WaterNSW relating to catchment management should be applied more consistently across NSW. For example, s2 of the WaterNSW (SCA) Operating Licence on water quality should be retained and adapted for the state. The intention is not to apply the same monitoring requirements in Greater Sydney to the whole of the state but to facilitate discussion on which characteristics would be useful to monitor based on the risk and end use. The new operating licence should set the requirements to achieve this outcome.

The NSW Government has addressed the questions specified in the Issues Paper that are relevant to the roles and responsibilities of DPI Water, NSW Health and the Environment Protection Authority (EPA).

¹ *Review of the WaterNSW Operating Licences, Water – Issues Paper* (IPART, June 2016), page 5

² Media release issued by Minister Hodgkinson on 4 March 2014, available at <http://www.statewater.com.au/About%20us/News%20and%20events/Media-releases-2014/New%20world-class%20water%20delivery%20provider%20for%20NSW>

³ *Review of the WaterNSW Operating Licences, Water – Issues Paper* (IPART, June 2016), page 4

⁴ *ibid*, page 5

⁵ A preventive risk management approach as set out in the Australian Drinking Water Guidelines is the most effective way of assuring drinking water quality and the protection of public health as it cover all steps in water production from catchment to consumer.

General comments on the Issues Paper

DPI Water Transformation Project

Following the merging of the SCA with State Water to form WaterNSW in 2014, consideration was given to the roles and responsibilities of WaterNSW and DPI Water.

This DPI Water Transformation Project reviewed and reallocated functions between DPI Water and WaterNSW to reduce duplication and improve services to customers. As part of the DPI Water Transformation Project, the Governor issued WaterNSW two new operating licences that conferred on WaterNSW additional functions from 1 July 2016.

DPI Water consulted with WaterNSW on these substitute licences as required under s13 of the *Water NSW Act 2014*. Both parties continue to work together to ensure that the DPI Water Transformation Project is successful and delivers benefits to water users across NSW.

Catchment management is closely linked to catchment water quality monitoring. As the responsibilities for catchment water quality monitoring have moved from DPI Water to WaterNSW, the operating licence should include a requirement to regulate this function.

Possible future amendments to the operating licences resulting from the DPI Water Transformation Project are outside the scope of this review and are not discussed within this submission.

Declared catchments

The NSW Government supports the development of a single operating licence for WaterNSW with additional specific functions and requirements in the declared catchment/s, as defined under the *Water NSW Act 2014*.

The purpose of declared catchment/s is to ensure that protection of public health remains paramount. The conditions of the WaterNSW (SCA) Operating Licence should be maintained in the state wide licence to ensure that public health functions continue to be carried out to NSW Health's satisfaction. Although there is currently only one declared catchment, the Sydney Drinking Water Catchment, other catchments can be declared if required.

Water quality in the declared catchment is managed under a water quality management system consistent with the requirements of the operating licence and audited to the satisfaction of NSW Health (clause 2.1.1 of the WaterNSW (SCA) Operating Licence). This should be maintained. The water quality management systems should address the Framework for Management of Drinking Water Quality, a preventive risk management approach set out in the Australian Drinking Water Guidelines.

8.1 Management of the declared catchment area

The NSW Government wishes to clarify that the EPL issued to WaterNSW under the *Protection of Environment Operations Act 1997* (EPL3743) (referred to on page 70 on IPART's Issues Paper) does not allow WaterNSW to undertake any 'scheduled development', 'scheduled activities', and other activities that may pollute water in the Sydney catchment area. Rather, this EPL has been issued to WaterNSW specifically to regulate discharges from the Duckmaloi Water Clarification Plant. Should WaterNSW wish to carry out any 'scheduled development', 'scheduled activities', and other activities that may pollute water in the Sydney catchment area, they are required to apply to the EPA for an EPL relevant to the specific activity.

Responses to questions in the Issues Paper

Configuration of licences

Question 2: What is the optimal design of the WaterNSW operating licence(s), when considering the licensing objective, Best Practice Regulation principles and organisational/administrative goals? What are the pros and cons of the optimal design?

The NSW Government supports the concept of a single operating licence as the optimal design, reflecting the NSW Government's rationale for integrating the former SCA and the State Water into one organisation. The new operating licence should facilitate the integration of the former organisations administratively, structurally, and where appropriate, in their functions.

However, the licence should also recognise that the former SCA and State Water organisations did have significantly different functions relating to catchment management and protection of water quality in the Sydney catchment. Those differences continue to be reflected in the objectives and listed functions of WaterNSW in the *Water NSW Act 2014* that are specific to declared catchment areas. Those differences should also be reflected in the licence.

A single licence should be structured and formatted to support a clear differentiation between functions carried out in the Sydney catchment area and in the rest of NSW. For example, the new operating licence could be organised in parts e.g. Part A (specific to the former State Water), Part B (specific to the former SCA) and Part C (common conditions e.g. asset management, environmental management, customer rights, monitoring, reporting, conferred functions, etc).

The advantages of a single operating licence include a more streamlined and integrated approach, simpler and more efficient administration, consistency and avoidance of duplication for elements that apply across NSW.

Question 4: Are the proposed definitions of the key terms capture, store, release, supply, deliver, take and water management works appropriate for inclusions in the WaterNSW operating licence(s)? If not, how can they be amended or should they not be included at all?

The NSW Government does not consider it necessary to include definitions of these terms in the operating licence. The water supply work approvals issued to WaterNSW under the *Water Management Act 2000* (WMA) by DPI Water specify conditions that relate to these functions.

Capture, store and release water

Question 5: Should the operating licence(s) authorise WaterNSW to capture, store and release water to persons entitled to take the water? If authorised, what terms and conditions should the operating licence include that require WaterNSW to undertake this function?

The licences and approvals issued by DPI Water authorise WaterNSW to ‘capture, store, [extract]⁶ and release water’ and define the locations of specific authorised works⁷. Hence the NSW Government considers it unnecessary for the operating licence to duplicate the existing regulatory framework with terms and conditions in another regulatory instrument.

For comparison, DPI Water regulates similar functions under the WMA for other major water utilities, such as the Hunter Water Corporation. IPART has recognised DPI Water as the primary regulator for these activities and has not duplicated these requirements in Hunter Water’s operating licence⁸.

Further, section 7(5) of the *Water NSW Act 2014* recognises that the authorisation of an operating licence is not required for WaterNSW to exercise a function that is conferred or imposed on Water NSW by or under any other Act.

Question 6: What other terms and conditions should be included in the operating licence(s) to regulate how Water NSW captures, stores and releases water to persons entitled to take water? Should they constrain where WaterNSW undertakes this function (ie, if not in all of NSW)?

See above comments at Question 5 about avoiding duplication in the operating licence.

Question 7: Should the water balance information, currently required under clause 3.3 of the State Water operating licence, be retained in the WaterNSW operating licence(s) or will it duplicate other regulatory instruments? Should the water balance reporting be limited to rural NSW or all of NSW?

The water balance information currently required to be reported to IPART under clause 3.3 of the WaterNSW (State Water) Operating Licence and section 3.1 of the Reporting Manual, ‘*must be prepared consistently for each Valley and must include an annual account of:*

- *water delivery, including sources and distribution of water;*
- *breakdown of the distribution of water by each major category of water user;*
- *the percentage of time that planned environmental water delivery requirements were met; and*
- *water that is unaccounted for.’*

These requirements appear to duplicate at least some of the requirements of the works approvals issued by DPI Water to the former State Water and SCA:

- State Water is required to submit annual compliance reports to DPI Water that include ‘*an annual water balance in a manner set out by the Minister*’; and

⁶ Water supply work approvals issued to the former State Water Corporation generally authorise the approval holder to ‘capture, store and release water’ for environmental and other purposes as required by relevant water sharing plans, while the work approvals issued to the former Sydney Catchment Authority generally authorise the approval holder to ‘capture, store, extract and release water’.

⁷ See, for example, Sydney Catchment Authority Water Licences and Approvals Package (May 2012)

⁸ *Review of the Hunter Water Corporation Operating Licence – Issues Paper* (IPART, May 2016), page 10

- The SCA work approvals specify that a logbook must record extractions, inflows and releases for each source, and the annual compliance report must include *‘analysis of all environmental and any other flow releases, and water extractions, banked environmental flows and transfers made, and comparisons with data from previous years, and an interpretation of the results’*.

The NSW Government suggests that IPART discusses the water balance reporting arrangements further with DPI Water to ensure that regulatory needs are met in a way that is consistent and avoids unnecessary duplication and regulatory burden. The water balance information provided in accordance with clause 3.3 of the WaterNSW (State Water) Operating Licence should be compared with that required by the relevant condition of each of the water supply work approvals. It is possible that there is some duplication.

Question 8: Is there benefit in increasing WaterNSW’s responsibilities to monitor and provide information on the quality of bulk raw water supplied to local water utilities?

The current WaterNSW (State Water) Operating Licence has some requirements for water quality monitoring that the NSW Government recommends are carried over. There may also be benefit in increasing WaterNSW’s responsibility to monitor and provide information on bulk water quality to downstream water utilities. These should be determined according to risk and could be defined in the Reporting Manual. The NSW Government suggests that IPART discuss this further with NSW Health.

Refer to responses to questions 30, 51 and 72 in relation to additional water quality monitoring requirements that relate to aquatic ecosystem health.

Question 10: Are there “other lawful purposes” for which water could be released, other than environmental flows?

‘Other lawful purposes’ for water releases could include releases for flood mitigation and management – this issue is discussed at Question 32.

The work approvals issued by DPI Water to WaterNSW include conditions relating to reporting and responding to an incident or emergency that has affected or is likely to affect the management of water resources in accordance with the conditions of approval, and may result in water being released for other purposes. An incident may include an accident or equipment failure outside the approval holder’s control, while an emergency may include major infrastructure failure (potential or actual), natural disasters, etc. The approval holder must comply with any requirements or actions specified by the Minister to manage the incident or emergency.

Question 11: Is the release of water for other lawful purposes (including environmental flows) fundamentally different from other types of releases? Should these functions be regulated differently?

As discussed at Question 5, the licences and work approvals issued by DPI Water under the WMA authorise WaterNSW to release water (including environmental flows), and the operating licence should not duplicate the existing regulatory framework for releases of water.

Question 12: Do you agree with our preliminary view that WaterNSW is already authorised to release environmental water throughout NSW under the Water Management Act 2000 (WMA) and the Water Act 1912 (WA1912)? Is it still necessary to authorise WaterNSW to undertake the function in the operating licence(s), for example to enable the application of additional terms and conditions associated with these releases?

The NSW Government agrees that WaterNSW is already authorised to release environmental water throughout NSW under the WMA and WA 1912. It is not necessary to duplicate this regulation through the operating licence.

Supply water

Question 13: Should the operating licence(s) authorise WaterNSW to supply water to its customers? If authorised, what terms and conditions should the operating licence include that require WaterNSW to undertake this function?

The operating licence does not need to authorise WaterNSW to supply water to its customers, as the work approvals issued to WaterNSW by DPI Water under the WMA already authorise this function.

Question 14: What other terms and conditions should be included in the operating licence(s) to regulate WaterNSW's supply of water to its customers? Should they constrain where WaterNSW undertakes this function (ie, if not in all of NSW)?

The operating licence should include customer service requirements similar to clause 3.1 of the current WaterNSW (State Water) Operating Licence. These requirements include processing orders promptly and efficiently, taking all reasonable steps to ensure timely delivery of water to customers, and minimising water losses from its operations.

WaterNSW operations apply to all of NSW.

Question 15: Should all water supplied, including the Fish River Water Supply Scheme, be subject to a water quality management system depending on the risk level of the customer's end use?

All water supplied by WaterNSW should be subject to a water quality management system, including water supplied from storages owned and operated by WaterNSW in rural catchments. A number of these storages supply water for town water supply.

NSW Health is responsible for regulating the quality and safety of drinking water in NSW under the *Public Health Act 2010*. WaterNSW has several supplies where drinking water is delivered directly to customers, including Fish River, that are required to have Quality Assurance Programs under the *Public Health Act 2010* and *Public Health Regulation 2012*. The NSW Government is satisfied that these supplies are appropriately regulated under the *Public Health Act 2010*.

Question 18: What are the linkages between the catchment management functions and the water supply functions and how should these be reflected within the operating licence(s)?

Good catchment management practices improve water quality which improves the health of both upstream and downstream aquatic ecosystems and provides higher quality drinking water. This is desirable for both urban and rural water supplies as rural storages often supply drinking water to local water utilities. An operating licence requirement to develop a Water Quality Management System could be framed to drive an appropriate level of catchment management in rural catchments. Further, catchment management

powers in declared catchment/s, covered under clause 4.1 of the WaterNSW (SCA) Operating Licence, should be maintained.

Question 21: Should there be any specific terms and conditions or constraints about supplying water to WICA licensees?

Under the current WaterNSW operating licences, the terms and conditions governing WaterNSW's relationship with its public water utility customers (aside from Sydney Water) also generally apply to *Water Industry Competition Act 2006* (NSW) (WICA) licensees. This is the case across the entire state, not only in Sydney Water and Hunter Water areas of operation.

For example, the terms and conditions in clause 2 of the current WaterNSW (State Water) Operating Licence, which apply to local water utilities, also apply to a holder of a network operator's licence under WICA by virtue of the definition of 'local water utility' under that operating licence (being the same meaning as under the WMA). However, these terms are limited to maintaining a register of local water utilities and providing information to inform the utility's drinking water quality assurance program. The conditions in 5.4 regarding agreements with Fish River Water Scheme customers (including water quality, continuity of supply, costs and other terms) may also be relevant to apply to WICA licensees.

The terms and conditions under clause 6 of the WaterNSW (SCA) Operating Licence requiring WaterNSW to establish terms and conditions for supplying raw water to customers other than Sydney Water also apply to WICA licensees. The former WaterNSW (SCA) Operating Licence defined 'small customers' as including a licensed network operator or licensed retail supplier within the meaning of the WICA.

The NSW Government considers that it is important that relevant terms and conditions continue to apply to WICA licensees in the new operating licence to ensure that WICA licensees can operate on an equal footing with public water utilities, e.g. by having access to similar information for any drinking water quality assurance program as a public utility. It would also be useful to explicitly identify in the operating licence, where appropriate, that certain terms and conditions apply both to public local water utilities and WICA licensees, as it may not be immediately apparent to important stakeholders that clauses that apply to local water utilities also apply to WICA licensees.

The NSW Government notes that a network operator's licence granted under WICA generally requires the licensee to negotiate a code of conduct with any public water utility supplying them with Water, and clause 5.8 of Sydney Water's Operating Licence includes a corresponding provision requiring Sydney Water to use best endeavours to cooperate with WICA licensees to establish a code of conduct. The codes of conduct required under Sydney Water's Operating Licence and WICA licences include items comparable to those listed in clause 6 of the current WaterNSW (SCA) Operating Licence, i.e. including provisions relating to water quality, availability of water / continuity of supply, costs and dispute resolution.

The appropriate terms and conditions may be sufficiently covered by consolidating and clarifying the terms and conditions that relate to WICA licensees under the new WaterNSW operating licence. Recognising this, DPI Water would like to explore with IPART whether a condition comparable to clause 5.8 in the Sydney Water Operating Licence is required to cover any gaps.

Question 22: Is long-term planning and supply sufficiency appropriately informed by the obligations to calculate water supply system yield? Is the water supply system yield appropriately defined and calculated? Are the design criteria appropriately defined and weighted?

The obligation to calculate the water supply system yield for Greater Sydney supply system should be maintained. However, it should be updated in light of the approach adopted in the next Metropolitan

Water Plan (MWP). The new plan will include both a ‘target supply’ and a ‘maximum supply’ from the approved portfolio of supply and drought response measures.

Separate yields should be calculated and reported for both ‘target supply’ and ‘maximum supply’ from the MWP portfolio. The additional work required for a second yield calculation is minimal (a couple of days at most). This is due to the majority of work in model development and hydrological data processing being required for the first yield calculation, with little additional work required for a second yield calculation. The benefits of two calculations are that the:

- operating licence will align with the new MWP (due for release in late 2016)
- ‘Target supply’ estimate will be used as an indicator for medium term supply sufficiency and referenced in the MWP Monitoring Evaluation and Reporting and Improvement (MERI) plan
- ‘Maximum supply’ estimate will continue to act as an indicator of long term planning supply sufficiency.

Construct, operate and maintain water management works

Question 23: Should the operating licence(s) authorise WaterNSW to construct, operate and maintain its water management works? If authorised, what terms and conditions should the operating licence(s) include that require WaterNSW to undertake this function?

A water supply work approval issued to WaterNSW by DPI Water under the WMA authorises WaterNSW to construct and use a specified water supply work at a specified location to capture, store and release water. This does not need to be duplicated in the operating licence.

However, the NSW Government supports IPART’s view that there is scope for the operating licence to include conditions requiring an asset management system without duplicating existing regulatory instruments. In this context, an asset strategy addresses the service delivery - asset relationship and provides a platform for detailed planning for capital investment, maintenance and disposal. These activities are outside the regulatory framework under the WMA.

Question 25: Should WaterNSW be required to develop, implement and maintain an Asset Management System (AMS)? Is there benefit in requiring certification of the AMS to ISO 55001 (or other relevant standards)?

As discussed at Question 23, the NSW Government supports the requirement for WaterNSW to develop, implement and maintain an asset management system as an important element of the operating licence.

WaterNSW has recently been vested a large number of assets from DPI Water, including meters and monitoring sites. To ensure these assets continue to be maintained the operating licence should set minimum standards for asset management. Further, an asset management system should also differentiate between critical assets in the declared catchment/s and assets in other areas.

An asset management condition supports continuity of supply (hence can be considered a service delivery/customer protection condition).

Catchment management

Question 28: Should the WaterNSW operating licence(s) authorise WaterNSW to undertake its listed declared catchment management functions, under the Water NSW Act, in the Sydney catchment area? If authorised, do you agree with our preliminary view that the operating licence(s) can include terms and conditions that require WaterNSW to undertake these functions?

Yes, the requirements to perform catchment management functions under the current WaterNSW (SCA) Operating Licence should be maintained in the new operating licence to protect water quality and avoid, where possible, water quality incidents that could disrupt supplies.

Question 30: Are there any catchment management functions currently being undertaken in the Sydney catchment area that should be performed in the rest of NSW, or vice versa? If so should they be authorised and / or required by terms and conditions in the operating licence(s)?

There are important differences between the catchment management functions of WaterNSW in greater NSW and the Sydney catchment area relating to the differences in managing catchments for drinking water supplies for a major metropolitan area and management catchments for water supply for multiple purposes.

The Australian Drinking Water Guidelines recognise that drinking water should be managed 'from catchment to tap', meaning that the management of a drinking water catchment should be undertaken with public health as the priority. As stated in response to question 28, the requirements to perform catchment management functions specific to the Sydney catchment area should be maintained in the operating licence, and the special circumstances in this catchment should continue to be recognised.

Regardless of the above differences, the functions that are currently being conducted in the Sydney catchment that should also be performed in the rest of NSW include research in catchments, catchment protection works, and environmental management both upstream and downstream of dams. These functions should be conducted at a management intensity appropriate to the catchment. This is particularly important in relation to minimising nutrient input into the storages to help minimise the occurrence of blue green algal blooms. When algal blooms occur, water is released from lower levels to avoid releasing algae. However, the water temperature at lower water levels is much colder resulting in cold water pollution downstream of storages. Blue green algae can also release toxins that may require a higher level of treatment of water extracted for town water supplies.

The NSW Government recommends that the expertise developed by WaterNSW in managing the Sydney catchment area be adapted to apply an appropriate level of risk management to 'foreshore land' for dam catchments in the rest of NSW. This may include, for example, contributing to managing water quality health risks through multiple barriers in accordance with the Australian Drinking Water Guidelines. This requirement currently applies to Sydney catchments but other dams also supply raw water to local water utilities to treat for drinking water purposes.

Question 31: Could the interaction between WaterNSW and Local Land Services be improved and if so, how?

A MoU with Local Land Services in catchment areas may be beneficial and could expand current partnerships. The NSW Government suggests that a MoU with WaterNSW and Local Land Services be discussed further.

Flood mitigation and management

Question 32: Should the WaterNSW operating licence(s) authorise WaterNSW to undertake flood mitigation and management or is this more appropriate for other regulatory instruments (eg, the water supply work approvals under the Water Management Act 2000 [WMA])? If authorised, do you agree with our preliminary view that the operating licence(s) can include terms and conditions that require WaterNSW to undertake this function?

The WaterNSW operating licence(s) should not be amended to include flood mitigation and management functions. Current flood mitigation and management functions outside of the Sydney catchment are regulated under works approvals issued under the WMA. Any potential future flood functions required within the Sydney catchment are not anticipated to occur within the term of the next WaterNSW operating licence.

In regional NSW, the water supply work approvals issued by DPI Water for the Macquarie (Burrendong Dam and Burrinjuck Dam), the Hunter (Glenbawn Dam), the Lachlan (Wyangala Dam), and the Murrumbidgee (Blowering Dam) include conditions regarding airspace operations for flood mitigation and management. The water supply work approval for the NSW Murray Lower Darling includes conditions regarding flood operations for Menindee Lakes. Hume Dam flood operations are subject to direction by the Murray Darling Basin Authority.

All of the approvals for works in regional NSW (including those referred to above) specify general conditions in relation to dam operation during floods and spills. These conditions mainly relate to dam safety, minimising risks to public safety, lessening downstream flood damage where possible, and maintaining full supply level at the end of the flood.

The NSW Government announced in June 2016 that it will prepare a business case for Warragamba Dam to be raised around 14 metres to significantly reduce the flood risk to life and property in the Hawkesbury Nepean Valley⁹. As discussed in IPART's Issues Paper, WaterNSW is currently not authorised to undertake flood mitigation and management in the Sydney catchment area under the existing regulatory arrangements¹⁰. Options to enable the Warragamba Dam to be raised are still being considered.

However, it is unlikely that the completion of the augmentation of Warragamba Dam will occur during the term of the operating licence currently being developed. Any flood operations required during construction would need to be specified in the conditions of consent of the Planning approval under State Significant Infrastructure. If required, any authorisation could then be included in the operating licence for the following term.

Question 33: What terms and conditions should be included in the operating licence(s) to regulate how WaterNSW undertakes its listed flood mitigation and management functions?

Any flood mitigation or management functions should result in neutral or beneficial effects on water quality and on the ability to manage the catchment to protect public health for declared catchment areas.

⁹ <https://www.nsw.gov.au/media-releases-premier/reducing-flood-risk-western-sydney>

¹⁰ *Review of the WaterNSW Operating Licences, Water – Issues Paper* (IPART, June 2016), page 79-80

Education of the community

Question 36: Should the WaterNSW operating licence(s) authorise WaterNSW to undertake an educative role within the community? If authorised, do you agree with our preliminary view that the operating licence(s) can include terms and conditions that require WaterNSW to undertake this function?

Educating and informing the customers should be a normal and expected part of running the business of WaterNSW. It may be sufficient to include in the licence a broad requirement to do so, but the NSW Government does not consider it advisable to dictate specific methods or requirements. For example, community involvement and awareness Element 8 of the Framework for Management of Drinking Water Quality in the Australian Drinking Water Guidelines and, as such, is supported as part of the water quality management system required by the operating licence. Formal regulation does not seem appropriate for 'an educative role.'

Environmental management

Question 38: Should WaterNSW be required to develop, implement and maintain an Environmental Management System (EMS)? Is there benefit in requiring certification of the EMS to ISO 14001 (or other relevant standard)?

Yes, WaterNSW should be required to develop, implement and maintain an Environmental Management System, validated and audited by a third party.

Question 39: For which services or classes of customers should the operating licence(s) prescribe performance standards, if any?

The NSW Government considers that standards should not be prescribed in the operating licence for health related activities. The terms and conditions of the operating licence should not interfere with the primary objective of the former SCA to protect public health.

The NSW Government believes that setting of minimum standards is inconsistent with the preventive risk management approach set out in the Australian Drinking Water Guidelines, which is called up in the Licence. This preventive approach aims to maintain the supply of water at the highest practicable quality by encompassing all steps in water production from catchment to consumer.

Performance standards

Question 40: What is the scope to convert any of the existing performance indicators of the SCA and State Water operating licences and Reporting Manuals to standards?

The performance indicators specified in Appendix A of the State Water Corporation Reporting Manual could be converted to performance standards as they specify the desired performance level for service delivery to customers. These performance indicators are relevant to section 12(2)(a)(ii) of the *Water NSW Act 2014* as they relate to water delivery and service interruptions.

It is not appropriate to convert the National Water Initiative indicators specified in Table B.1 of the Sydney Catchment Authority Reporting Manual to standards as they were developed as indicators by the National Water Commission as part of the National Benchmarking Framework for Urban Water Utilities and may

vary from year to year. These indicators relate to water resources (volumes), environment (greenhouse gas emissions), and finance.

It is not recommended that the water quality indicators specified in Table B.2 of the Sydney Catchment Authority Reporting Manual be changed to standards. In some cases it may be difficult to meet the Australian and New Zealand Environment and Conservation Council Guideline levels due to upstream catchment management practices - for example, nutrient levels may be high due to upstream land use. Regardless of indicator or standard status, monitoring of water quality in catchment waterways should be consistent throughout the state.

It would be difficult to adopt a standard/s in relation to the occurrence of *Cryptosporidium* and *Giardia* cysts or oocysts in catchment waterways.

A number of the catchment health indicators specified in Table B.3 of the Sydney Catchment Authority Reporting Manual are variables that are difficult to control/influence so cannot be changed to standards (e.g. macroinvertebrate AUSRIVAS scores).

Conferral of functions

Question 42: How could the operating licence(s) regulate WaterNSW's relationship with DPI Water?

It is essential for WaterNSW and DPI Water to work together effectively and collaboratively. The operating licence could regulate WaterNSW's relationship with DPI Water via a Memorandum of Understanding (refer to response to question 51).

Question 43: What limitations, if any, should be included in the operating licence(s) in relation to the audit requirements of any conferred functions on WaterNSW?

On and from 1 July 2016 two substitute operating licences conferred on WaterNSW a vastly increased number of functions. A majority of these functions were conferred subject to the condition that they be exercised in accordance with specified Manuals and Guidelines where it is reasonable and practicable to do so.

The increased scope of the conferred functions, in conjunction with these new conditions, has greatly increased the scope of work required for IPART to conduct an audit of WaterNSW's compliance with its conferred functions. The NSW Government recognises that imposing conditions on the exercise of functions which are subject to subjective tests such as 'reasonableness' present an added complexity to the audit role which IPART is required to perform.

On this basis, where the exercise of a conferred function is subject to an assessment of 'reasonableness' or 'practicability' the NSW Government recognises that the audit requirements in the operating licence may be amended to ensure that IPART is able to exercise its audit function in a meaningful way.

The substitute operating licences also enable DPI Water to set 'mandatory conditions' on the exercise of certain conferred functions. Such mandatory conditions are not subject to the test of 'reasonable and practicable' and as such the current auditing framework could continue to apply assessing compliance with these conditions.

Area of operations

Question 45: Should WaterNSW be authorised to undertake its functions outside the state of NSW? What operating licence(s) terms and conditions are appropriate to regulate (and/or limit) how WaterNSW performs these functions?

Yes, WaterNSW should be authorised to undertake its functions outside the state of NSW.

The Dumaresq-Barwon Border Rivers Commission (the BRC) was constituted under the provisions of the New South Wales-Queensland Border Rivers Agreement made on 27 August 1946. [The Agreement is a Schedule of the *New South Wales-Queensland Border Rivers Act 1947*.]

The BRC was established by the New South Wales and Queensland Governments to operate and maintain jointly “owned” water infrastructure and implement agreed water sharing arrangements in the Queensland-New South Wales border region. Under the *New South Wales-Queensland Border Rivers Act*, WaterNSW acts as the water manager for the BRC (including the use of the Border Rivers weirs in Queensland).

The Border Rivers weirs will be included on the Water Supply Work Approval for the NSW Borders Rivers Regulated River Water Source.

Question 47: When and why should WaterNSW be required to obtain other entities’ agreement before operating in their areas of operations?

Section 15(5) of the *Water NSW Act 2014* requires WaterNSW to obtain agreement from the Sydney Water Corporation, Hunter Water Corporation and water supply authorities before operating in those entities’ areas of operations.

Memoranda of understanding

Question 49: Is there benefit in the operating licence(s) prescribing a Memorandum of Understanding (MoU), or the matters to be included in the MoUs, between WaterNSW and the EPA and or NSW Health?

Question 50: Should the operating licence(s) require WaterNSW to enter into MoUs with the EPA and NSW Health for all of NSW? Or, should it be constrained to parts of NSW (eg, the Sydney catchment area)?

The existing requirement to enter into a MoU with NSW Health is valuable and should be maintained. The MoU should not be constrained geographically. Conditions of the MoU would be set by both parties and should not be defined in the operating licence.

WaterNSW is already required to enter into a MoU with the EPA under the *Water NSW Act 2014*. As the legislation states that the MoU needs to be of the nature referred to in an operating licence, the licence should include this requirement. The current reference to the MoU in the WaterNSW (SCA) Operating Licence is adequate and should be included in any new licence. The EPA considers that the operating licence does not need to prescribe the matters to be included in a MoU between the EPA and WaterNSW as this is a matter for these parties.

WaterNSW and the EPA are currently preparing a new MoU. It is intended that this MoU will apply to all of NSW. There is benefit for WaterNSW and EPA in having a MoU which addresses the way that the organisations interact with each other on these key operating matters.

Question 51: Should the operating licence(s) include a requirement to have a MoU with any other entity and if so, for what purpose? What would be the appropriate terms and conditions requiring such a MoU?

The NSW Government recommends that a MoU between WaterNSW and DPI Water be developed and the operating licence should include a requirement for this MoU. A similar requirement to that specified in the WaterNSW (State Water) Operating Licence is considered appropriate.

The MoU needs to include revised terms that were specified in the previous MoU, for example, responsibilities for water quality monitoring (including water temperature). It is also recommended that a MoU contains provision for liaison groups between the two organisations. Additional terms may also need to be included in the future as (any) issues arise.

Metering

Questions 52 - 54

The Metering sections of the operating licences were amended on 1 July 2016 so that metering functions may be undertaken by WaterNSW across the whole of NSW, superseding these questions. DPI Water can provide further information to IPART if needed.

Question 55: What terms and conditions should be included in the WaterNSW operating licence(s) in relation to its operational audits?

Operational audits should be maintained and carried out by an independent auditor to the satisfaction of NSW Health. Terms and conditions from the WaterNSW (SCA) Operating Licence (part 2) should be retained for audits and part b 1.1.1 of the WaterNSW (State Water) Operating Licence should also be retained, but not at any detriment to water quality.

Retail services

Question 57: Should the WaterNSW operating licence(s) contain an obligation requiring compliance with the pricing determinations?

The NSW Government supports the operating licence containing an obligation for WaterNSW to comply with the pricing determinations, consistent with requirements in operating licences for Sydney Water Corporation and Hunter Water Corporation.

Question 59: Should WaterNSW be required through the operating licence(s) to establish customer contracts with all categories of customers (including licence holders under the WMA and the WA1912)? What operating licence(s) terms and conditions are appropriate to regulate this (eg, a standard licence contract or prescription of minimum requirements for contracts)?

WaterNSW should not be required or authorised to establish customer contracts with all categories of customers as this would be a regulatory duplication for licence holders under the WMA and the WA 1912. The function of WaterNSW to supply water to customers would be authorised across NSW under the new operating licence unless constrained. Authorised functions under the current WaterNSW (SCA) Operating Licence may inadvertently be applied state wide.

Metropolitan Water Plan

Question 67: Should WaterNSW be required to meet specific requirements of the Metropolitan Water Plan? What operating licence(s) terms and conditions are appropriate to regulate this?

The NSW Government recommends that the operating licence for WaterNSW strengthen the relationship between the operating licence and the MWP with a condition requiring WaterNSW to comply with its obligations to implement the MWP and contribute to its periodic review. As IPART noted in its Issues Paper for the review of Hunter Water’s operating licence, ‘Placing an obligation in the operating licence reinforces its importance and ensures it is independently audited during the term of the operating licence’¹¹. While some requirements of the MWP are given effect through work approvals and Water Sharing Plans, not all are achieved in this way. A condition in the operating licence could clarify WaterNSW’s obligations under the MWP.

Question 68: Should the operating licence(s) require WaterNSW to develop a protocol with the Metropolitan Water Directorate, outlining WaterNSW’s roles and responsibilities in developing and implementing the Metropolitan Water Plan? If so, what constraints or parameters should be put around this requirement?

The NSW Government supports including a requirement in the operating licence for WaterNSW to develop a roles and responsibilities protocol with DPI Water to facilitate the ongoing review and implementation of the MWP. This would be consistent with IPART’s aim to achieve greater consistency in the licensing approach adopted between the major public water utilities.

If a similar approach was adopted to the protocol with Hunter Water Corporation to implement the Lower Hunter Water Plan, the protocol could include WaterNSW and DPI Water’s roles and responsibilities in terms of governance, implementation responsibilities, modelling and data sharing, monitoring and evaluation, adapting and reviewing the plan, communications and engagement, liaison with government stakeholders, financial responsibilities and dispute resolution. This would cover model and data sharing and meeting the requirements of the Monitoring Evaluation Reporting Improvement (MERI) Plan for the 2016 MWP.

Synergies with price regulation

Question 70: Is there merit, or otherwise, in ongoing sequencing of the operating licence(s) reviews and the price reviews, such that operating licence(s) review immediately informs the price review?

Different terms to those currently in place for price reviews and operating licence reviews should be considered. The rational sequencing of operating licence reviews and price reviews, and reviews of water security and infrastructure plans such as the MWP will assist in achieving least cost outcomes.

¹¹ Independent Pricing and Regulatory Tribunal, *Review of the Hunter Water Corporation Operating Licence – Issues paper* (May 2016), p 38

Reporting manual

Question 71: Should reporting obligations be imposed on WaterNSW by the reporting manuals through the operating licence(s)? What term(s) and condition(s) are appropriate to regulate this? What type of information should be reported?

The NSW Government supports the operating licence requiring WaterNSW to comply with reporting obligations as set out in the reporting manual. DPI Water anticipates using some of these performance indicators for annual monitoring and evaluation of the MWP implementation and performance, leveraging existing reporting requirements where feasible in order to minimise any impact on WaterNSW's regulatory burden. To ensure water security for Greater Sydney a number of additional monitoring and reporting requirements are likely to be included in the MERI Plan associated with the MWP. These requirements would be included in the roles and responsibilities protocol discussed at Question 68.

Further, requirements for reporting from WaterNSW (SCA) Operating Licence in declared catchments should be maintained, and applied outside declared catchments based on risk.

Ancillary functions

Question 73: Should WaterNSW be authorised to undertake any functions other than those discussed in this Issues Paper, under the operating licence(s)?

WaterNSW should be authorised to undertake additional water quality monitoring functions. It is important that water quality is monitored both upstream and downstream of each of the storages so that the impacts on water quality can be assessed. This is particularly important in relation to water temperature monitoring. Now that the responsibilities and functions for catchment water quality monitoring have moved from DPI Water to WaterNSW the requirements should be set in the new operating licence.

A number of other customers would benefit from water quality monitoring. These include DPI Water (in relation to aquatic ecosystem health), DPI Fisheries (aquatic ecosystem health), DPI Agriculture (appropriate land use), local councils (catchment management), landholders (appropriate land use) and other stakeholders.