



Independent Pricing and Regulatory Tribunal
New South Wales

Water NSW operating licences review

Final Report

Final report
Water Licensing

May 2017



© Independent Pricing and Regulatory Tribunal of New South Wales 2017

This work is copyright. The *Copyright Act 1968* permits fair dealing for study, research, news reporting, criticism and review. Selected passages, tables or diagrams may be reproduced for such purposes provided acknowledgement of the source is included.

ISBN 978-1-76049-078-2

The Tribunal members for this review are:

Dr Peter J Boxall AO, Chair

Mr Ed Willett

Ms Deborah Cope

Inquiries regarding this document should be directed to a staff member:

Erin Cini (02) 9113 7778

Jessica Hanna (02) 9113 7715

Mamata Titus (02) 9113 7750





Contents

1	Executive summary	1
1.1	The review process	2
1.2	Structure of this Report	3
1.3	Recommendations for the operating licence	4
2	Introduction	9
2.1	What is Water NSW?	9
2.2	What is an operating licence?	9
2.3	Why are we reviewing Water NSW's operating licences?	10
2.4	Our objectives for this review	10
2.5	Our approach to the review	11
3	Licence structure	12
3.1	One or more operating licences?	12
3.2	What should be the structure of the single operating licence?	14
4	Licence context and authorisations	18
4.1	What is the objective and purpose of the operating licence?	18
4.2	What should the operating licence authorise and where?	22
4.3	Definition of key terms	27
4.4	How will the term of the operating licence be defined?	31
4.5	Compliance with pricing determinations	33
5	Water source protection and conservation	36
5.1	How should Water NSW protect and enhance the quality and quantity of water in catchment areas?	37
5.2	Water quality management system	38
5.3	System Yield	41
5.4	Water Conservation Strategy	44
5.5	Manage and protect Declared Catchments	49
5.6	Research on catchments	52
6	Bulk water storage and transmission	56
6.1	Construct, operate and maintain water management works	56
6.2	Water Supplied	59
6.3	Capture and store water and release water	62
6.4	Obligation to provide services	68
6.5	Flood mitigation and management	72
7	Performance standards	78
7.1	Types of performance standards	79
7.2	Performance standards in relation to the capture and store of water and release of water	81
7.3	Performance standards in relation to Supplying water	83
8	Organisational systems management	87

8.1	Asset management	87
8.2	Environmental management	91
9	Customer and stakeholder relations	94
9.1	Customer protection terms and conditions	95
9.2	Educative role within the community	115
9.3	Memoranda of Understanding	119
9.4	Department of Planning and Environment	124
9.5	Agreement of roles and responsibilities with DPI Water	127
9.6	Security risks to critical water infrastructure	129
10	Performance monitoring	133
10.1	Operational audits	133
10.2	Reporting obligations in the operating licence	135
10.3	Provision of information to IPART and the Auditor	137
11	Conferred functions	139
12	Other recommendations	140
	Glossary	144
	Appendices	149
A	Summary of submissions to Issues Paper	151
B	Summary of submissions to draft operating licence package	169

1 Executive summary

The Independent Pricing and Regulatory Tribunal of NSW (IPART) has completed a review of Water NSW's operating licences.

Water NSW currently operates under two operating licences: the 2013-2018 State Water Corporation (State Water) operating licence and the 2012-2017 Sydney Catchment Authority (SCA) operating licence. These operating licences were granted to Water NSW's former constituent organisations, State Water and SCA, and cover Water NSW's functions throughout the State of NSW, both outside of, and within, the declared Sydney Catchment Area.¹ On 1 July 2016, the operating licences were amended by the then Minister administering the *Water NSW Act 2014* (NSW) (Water NSW Act)² and issued as the Water NSW (State Water) and Water NSW (SCA) operating licences.

The operating licences are the main regulatory instruments that authorise Water NSW to undertake its functions within a defined area of operations. These functions are listed in the Water NSW Act.³ The operating licences also set out the terms and conditions that regulate how Water NSW should operate to enable the protection of public health, consumers, and the environment, and meet other policy objectives of the NSW Government.

We have completed a review of the existing operating licences with the aim of recommending a new single operating licence to the Minister for Regional Water (the Minister). The recommended operating licence will commence on 1 July 2017 with a maximum term of five years.

The existing Water NSW (SCA) operating licence is due to expire on 30 June 2017, at the end of its five-year term. The Water NSW Act specifies that Water NSW can only undertake its 'listed functions' under the authority of an operating licence.⁴ Therefore, to continue its operations within the Sydney Catchment Area, Water NSW requires a new operating licence to commence on 1 July 2017. The existing Water NSW (State Water) operating licence is due to expire on 30 June 2018. As part of this review we have reviewed both licences to inform our recommendations for the new operating licence and to reflect the effective merger of State Water and SCA on 1 January 2015. We recommend that, pursuant to section 11 of the Water NSW Act, a single operating licence is granted to Water NSW⁵.

We have recommended a single operating licence because it reflects the structure of the new entity, removes duplication and in some cases the conflicting requirements of the two existing operating licences.

¹ The Sydney Catchment Area means the declared catchment area referred to in clause 17 of Schedule 2 of the *Water NSW Act 2017* (NSW) (Water NSW Act).

² At the time, the Minister for Lands and Water.

³ Water NSW Act, section 7.

⁴ Water NSW Act, section 7(3).

⁵ The Water NSW operating licence(s) is granted under the Water NSW Act, section 11. Section 11(1) of the Water NSW Act allows the Governor to grant more than one operating licence to Water NSW if each operating licence specifies the functions to which it relates and the area or circumstances in which those functions may be exercised.

The operating licence package consists of this report, the recommended operating licence, the reporting manual and a cost-benefit analysis (CBA). The operating licence is an instrument that requires endorsement by the Minister and is granted by the Governor of New South Wales. The reporting manual is an instrument issued by IPART.

This report sets out our recommendations for the operating licence and explains the analysis that supports these recommendations.

1.1 The review process

The review has been informed by public consultation. As part of this process, we:

- ▼ Released an Issues Paper⁶ in June 2016 that introduced the review. Further, it raised preliminary issues for consideration and sought submissions from Water NSW and other stakeholders on these and any other issues and options that we should consider for inclusion in the operating licence (and accompanying reporting manual). We received nine submissions to our Issues Paper.⁷ These submissions are summarised in Appendix A to this report and are discussed within the body of this report.
- ▼ Considered the submissions to the Issues Paper to develop a set of options for inclusion in the draft operating licence and associated reporting manual.
- ▼ Conducted a draft CBA of the options with input from Water NSW. The costs and benefits of the various options were assessed relative to a 'Base case' representing the requirements of the existing Water NSW operating licences.
- ▼ Considered the results of the draft CBA, including qualitative and quantitative net benefits to develop options for the draft operating licence and reporting manual.
- ▼ Released our draft operating licence package in February 2017, which included the Draft Report and the draft operating licence, draft reporting manual and the draft CBA.⁸ We received 13 submissions to the draft package.⁹ These submissions are summarised in Appendix B to this report and are discussed within the body of this report.
- ▼ Facilitated a public workshop to discuss the proposed draft operating licence package.
- ▼ Considered submissions to the draft operating licence package and conducted a final CBA to develop the recommended operating licence and reporting manual.
- ▼ Where necessary, discussed recommended final amendments to the operating licence package with Water NSW and other key stakeholders.

⁶ IPART, *Review of the WaterNSW Operating Licences - Issues Paper*, June 2016.

⁷ From WaterNSW, Australian Modern Dairy, Department of Environment and Energy (Commonwealth Environmental Water Holder), NSW Department of Planning and Environment (DP&E), a combined response from certain NSW Government agencies (referred to in this report as the submission from the NSW Government), Sydney Water, NSW Irrigators' Council, Tamworth Regional Council, and a confidential anonymous submission.

⁸ The draft operating licence package is available from our website at <https://www.ipart.nsw.gov.au/Home/Industries/Water/Reviews/Licensing-WaterNSW/Review-of-the-WaterNSW-operating-Licences?qDh=2>

⁹ From Water NSW, a combined response from certain NSW Government agencies and DPI Water and NSW Health (referred to in this report as the submission from the NSW Government), Sydney Water, the NSW Irrigators' Council, Department of Environment and Energy (Commonwealth Environmental Water Holder), Central NSW Councils (Centroc), Gwydir Valley Irrigators Association, Lachlan Valley Water, Murrumbidgee Irrigation, Namoi Water, NSW Aboriginal Land Council, Oberon Council, and the Commonwealth Critical Infrastructure Centre (CIC)

- ▼ Submit our recommendation to the Minister on the recommended operating licence package.

The Minister will consider our recommendations and publish a final operating licence for Water NSW.

Table 1.1 sets out the major milestones timetable for this review.

Table 1.1 Review timetable

Key task	Date
IPART released Issues Paper and invited submissions	23 June 2016
Water NSW's submission on Issues Paper received	30 August 2016
Other stakeholders' submissions on Issues Paper received	13 September 2016
IPART released draft report, operating licence, reporting manual and cost benefit analysis (draft operating licence package) for comment	28 February 2017
Stakeholder workshop on draft operating licence package conducted	21 March 2017
Stakeholders' submissions on draft operating licence package received	7 April 2017
IPART provides the Minister with final recommendations with operating licence, supporting reporting manual, report and CBA	30 May 2017
IPART releases final reporting manual and final operating licence commences	1 July 2017

1.2 Structure of this Report

The rest of this report explains the terms and conditions that we have recommended in the operating licence, reasons for these recommendations and their associated costs and benefits. Each chapter briefly discusses the issues, relevant stakeholder comments (in response to our Issues Paper and the draft operating licence package), options assessed in developing the recommended operating licence, and our recommendations.

The structure of the report reflects our recommended structure for the proposed licence and is as follows:

- ▼ Chapter 3 explains the proposed structure of the licence.
- ▼ Chapter 4 discusses our proposed inclusions for the "Licence context and authorisations" chapter of the operating licence.
- ▼ Chapter 5 discusses our proposed inclusions for the "Water source protection and conservation" chapters of the operating licence and reporting manual.
- ▼ Chapter 6 discusses our proposed inclusions for the "Bulk water storage and transmission" chapters of the operating licence and reporting manual.
- ▼ Chapter 7 discusses our proposed inclusions for the "Performance Standards" chapters of the operating licence and reporting manual.
- ▼ Chapter 8 discusses our proposed inclusions for the "Organisational systems management" chapters of the operating licence and reporting manual.
- ▼ Chapter 9 discusses our proposed inclusions for the "Customer and stakeholder relations" chapters of the operating licence and reporting manual.

- ▼ Chapter 10 discusses our proposed inclusions for the “Performance Monitoring and Reporting” chapters of the operating licence and reporting manual.
- ▼ Chapter 11 discusses our approach for including the conferred functions in the operating licence.
- ▼ Chapter 12 discusses our comments on the Water NSW Act, with suggestions for possible improvement or clarity to inform the next review of the Act.
- ▼ Appendix A of this report contains a summary of the stakeholder submissions to the Issues Paper and Appendix B contains a summary of the stakeholder submissions to the draft operating licence package (the full submissions are available on our [website](#)).

1.3 Recommendations for the operating licence

Our recommendations for inclusion in the operating licence are set out in Chapters 3 to 10. These recommendations, together with the pages that they appear on, are listed below.

Recommendations for the Operating Licence:

Licence structure

- | | | |
|---|---|----|
| 1 | The Governor grants Water NSW a single consolidated operating licence regulating all of Water NSW’s activities for the whole of its area of operations. | 12 |
| 2 | The operating licence is structured to reflect the water supply chain. | 12 |

Licence context and authorisations

- | | | |
|---|---|----|
| 3 | The operating licence includes an ‘objective’ clause with a note outlining the ‘purpose’ of the operating licence. | 18 |
| 4 | <p>The operating licence authorises Water NSW to undertake its functions and activities to the fullest extent possible, as described under the <i>Water NSW Act 2014</i> (Water NSW Act), as follows:</p> <ul style="list-style-type: none"> – all listed functions with the exception of the flood mitigation and management function 18 – ancillary facilities and services or other activities which further the objectives 18 – certain conferred functions of the <i>Water Management Act 2000</i> (NSW), the <i>Water Act 1912</i> (NSW), the Water Management (General) Regulation 2011, and the Access Licence Dealing Principles Order 2004 18 – functions of certain other water corporations or water supply authorities, as allowed under the Water NSW Act but only in agreement with the relevant organisation, and 18 – the operation, repair, maintenance, removal, connection, disconnection or modification of metering equipment it does not own. 18 | |
| 5 | The operating licence authorises Water NSW to undertake its functions throughout the State of NSW, and outside of NSW, as permissible under any applicable laws. | 18 |

- | | | |
|---|--|----|
| 6 | The operating licence defines key terms to differentiate between the conditions applicable to the listed functions “to capture and store and to release” and “to supply” water. The definitions apply only to the terms and conditions within the operating licence and not in the authorisations. | 18 |
| 7 | The operating licence specifies a term of five years, the maximum allowable term under the Water NSW Act. | 18 |

Water source protection and conservation

- | | | |
|----|---|----|
| 8 | The operating licence authorises Water NSW to protect and enhance the quality and quantity of water in Declared Catchment Areas. | 36 |
| 9 | The operating licence includes terms and conditions requiring Water NSW to maintain a Water Quality Management System (WQMS) to manage the water quality in Declared Catchment Areas. | 36 |
| 10 | The operating licence includes terms and conditions requiring Water NSW to maintain a WQMS to manage Supplied water quality from Non-Declared Catchment Areas, where Supply activities occur. | 36 |
| 11 | The operating licence retains the existing terms and conditions relating System Yield for Declared Catchment Areas, with minor updates. | 36 |
| 12 | The operating licence requires Water NSW to develop, document and report on its Water Conservation Strategy. | 36 |
| 13 | The operating licence requires Water NSW to manage and protect the Declared Catchment Areas to the extent that it is consistent with the objectives of the Water NSW Act, the Water Quality Management System, the Asset Management System and Environmental Management System.. | 36 |
| 14 | The operating licence includes terms and conditions, similar to those in the existing Water NSW (SCA) operating licence, to publish information relevant to the Declared Catchment Areas (ie, water quality, data in relation to Catchment Health Indicators, and data in relation to Environmental Indicators), in accordance with the Reporting Manual. | 36 |
| 15 | The operating licence authorises Water NSW to undertake research on catchments generally and in particular on the health of the Declared Catchment Areas. It also requires Water NSW to undertake this function in the Declared Catchment Areas. | 37 |

Bulk water storage and transmission

- | | | |
|----|---|----|
| 16 | The operating licence authorises Water NSW to construct, operate and maintain water management works throughout its area of operations. | 56 |
| 17 | The operating licence requires Water NSW to construct, operate and maintain water management works consistent with an Asset Management System. | 56 |
| 18 | The operating licence authorises Water NSW to undertake its listed Supply functions in section 7(1)(b) – (e) of the Water NSW Act, throughout its area of operations. | 56 |

- 19 The operating licence requires Water NSW to undertake the Supply functions in accordance with a relevant Water Quality Management System and customer supply agreement. 56
- 20 The operating licence authorises Water NSW to capture and store water and to release water to persons entitled to take the water, including release to regional towns and for any other lawful purpose, as well as including the release of environmental water. 56
- 21 The operating licence includes terms and conditions to regulate how Water NSW captures, stores and releases water, and provides information in relation to the water released, to customers. 56
- 22 The operating licence does not include any additional obligations to provide services to customers. 56
- 23 The operating licence does not authorise Water NSW to undertake flood mitigation and management under the Water NSW Act. Water NSW can only undertake flood mitigation and management activities under the authority of other regulatory instruments. 56

Performance standards

- 24 The operating licence requires Water NSW to ensure that its systems and services meet the performance standards specified in the operating licence. 78
- 25 The operating licence specifies water delivery and service interruptions performance standards in relation to water that is captured, stored and released. These performance standards were developed from performance indicators in the existing Water NSW (State Water) reporting manual. 78
- 26 The operating licence prescribes system based performance standards, based on the Water Quality Management System and Asset Management System, to act for water quality and service interruptions performance standards, in relation to water that is Supplied. 78

Organisational systems management

- 27 The operating licence includes terms and conditions for maintenance and implementation of an Asset Management System (AMS). The operating licence requires consistency with the relevant standard, but does not require certification of the AMS. 87
- 28 The operating licence includes terms and conditions for maintenance and implementation of an Environmental Management System (EMS). The operating licence requires consistency with the relevant standard, but does not require certification of the EMS. 87

Customer and stakeholder relations

- 29 The operating licence includes requirements for Water NSW to enter into supply agreements with all customers to whom it Supplies water, other than Sydney Water, throughout its area of operations. The operating licence will not regulate Water NSW's arrangements with Sydney Water under section 25 of the Water NSW Act. 94
- 30 The operating licence includes requirements for Water NSW to maintain water allocation accounts for each customer that holds a water licence for extraction of water released to it, and a notification system in relation to changes in flow release patterns. 94
- 31 The operating licence authorises Water NSW to operate, replace, repair, maintain, remove, connect, disconnect, or modify metering equipment that it does not own, but only by agreement with the owner, including where these are Government funded meters. 94
- 32 The operating licence requires Water NSW to determine the volume of water extracted by, or Supplied to, its customers. 94
- 33 The operating licence includes requirements for Water NSW to establish and maintain representative customer advisory groups, consisting of customers only, and a customer advisory group charter. 94
- 34 The operating licence includes requirements for Water NSW to establish and maintain a customer service charter, a code of practice on payment difficulties, and processes for handling customer complaints and escalating unresolved disputes with customers. 94
- 35 The operating licence includes requirements for Water NSW to use its best endeavours to cooperate with any licensed network operator, or retail supplier under the *Water Industry Competition Act 2006*, that seeks to establish a code of conduct with it. 94
- 36 The operating licence authorises Water NSW to undertake an educative role within the community throughout its area of operations, and includes terms and conditions requiring Water NSW to undertake this function in Declared Catchment Areas and consistent with the objectives of the Water NSW Act. 94
- 37 The operating licence includes terms and conditions that require Memoranda of Understanding (MoUs) with NSW Health and the NSW Environment Protection Authority, prescribe the nature of these MoUs, and require Water NSW to comply with these MoUs. 95
- 38 The operating licence includes terms and conditions requiring Water NSW to use its best endeavours to enter into an MoU with the Department Planning and Environment to agree on Water NSW's role in the review and implementation of the Metropolitan Water Plan, and to comply with this MoU. 95
- 39 The operating licence includes terms and conditions requiring Water NSW to agree with DPI Water their respective roles and responsibilities regarding the conduct of the conferred functions specified in Schedule A of the operating licence. 95

-
- 40 The operating licence will not include a new requirement for collaboration between Water NSW and relevant Commonwealth agencies on matters of national security. 95

Performance monitoring and reporting

- 41 The operating licence includes terms and conditions in relation to the operational audits. 133
- 42 The operating licence includes terms and conditions requiring Water NSW to comply with its obligations in the reporting manual, and maintain adequate records to allow it to comply with these obligations. 133
- 43 The operating licence includes terms and conditions requiring Water NSW to provide IPART or an auditor with information relating to its performance and any information that IPART or an auditor may require to conduct a review of investigation. 133

Conferred functions

- 44 The operating licence includes a schedule of the functions conferred on Water NSW under other acts as agreed between DPI Water and Water NSW. 139

Other Recommendations

- 45 The development of an operating licence is dependent on the constraints of the Water NSW Act. The 5-year review of the Water NSW Act, which is due to commence in November 2019, could benefit from considering the Issues that we have identified during this operating licence review, to improve the effectiveness of a review. 140

2 Introduction

2.1 What is Water NSW?

Water NSW is a public water utility that manages dams and water infrastructure across the State of NSW. It provides water supply and delivery services to a range of customers.

Water NSW is a statutory State Owned Corporation.¹⁰ It was established on 1 January 2015 under the *Water NSW Act 2014* (NSW) (Water NSW Act) by the effective merger of two former organisations, State Water Corporation (State Water) and the Sydney Catchment Authority (SCA).¹¹

2.2 What is an operating licence?

An operating licence is an enforceable regulatory instrument that authorises a water utility to carry out its functions, and regulates how it undertakes these functions through its terms and conditions.

Under the transitional arrangements of the Water NSW Act,¹² Water NSW operates under two existing operating licences: the 2013-2018 State Water operating licence and the 2012-2017 SCA operating licence. On 1 July 2016, the operating licences were amended by the Governor and reissued as Water NSW (State Water and SCA) operating licences.

The existing two operating licences contain:

- ▼ authorisation for conduct of functions
- ▼ terms and conditions that specify the way in which Water NSW is to carry out its functions
- ▼ quality and system (performance) standards that Water NSW must achieve, and
- ▼ requirements for monitoring and reporting on Water NSW's operational performance.

The two operating licences are supported by reporting manuals issued by IPART, which contain the details, deadlines and definitions of Water NSW's reporting requirements. These licences and reporting manuals will continue to remain in effect until a new operating licence is granted.

¹⁰ Section 20(A) and Schedule 5 of the *State Owned Corporations Act 1989*.

¹¹ Section 4(1) of the Water NSW Act renamed the former State Water Corporation "Water NSW". The Water NSW Act also abolished the former Sydney Catchment Authority and conferred its functions on Water NSW. In this Report, we refer to that process as the former State Water Corporation and the former Sydney Catchment Authority being "effectively merged", as a shorthand.

¹² Water NSW Act, Division 4 of Schedule 2.

2.3 Why are we reviewing Water NSW's operating licences?

The Water NSW Act provides that Water NSW requires an operating licence to undertake its listed functions unless authorised to undertake those functions by and under another Act.¹³ We consider that Water NSW needs an operating licence as our analysis has shown that not all of Water NSW's functions under the Water NSW Act are authorised or adequately regulated by other instruments. While Water NSW currently has two operating licences, the Water NSW (SCA) operating licence is due to expire on 30 June 2017, at the end of its five year term. To continue its operations within the Sydney Catchment Area, Water NSW requires a new operating licence to commence on 1 July 2017.

To develop the recommended operating licence, we have completed a review of both of the existing Water NSW operating licences. This review was the first opportunity to consider what form of operating licence best reflects the current merged organisation as well as any potential changes over the next five years. We therefore reviewed both licences at the same time even though the Water NSW (State Water) operating licence is not due to expire until 30 June 2018.

An operating licence is a more flexible regulatory instrument than legislation. It is regularly reviewed for currency and to check that it reflects changes in public expectations, best practice and changing circumstances.

2.4 Our objectives for this review

We have aimed to develop an operating licence that:

- ▼ provides transparent and auditable terms and conditions for Water NSW to lawfully undertake its activities at industry good-practice
- ▼ recognises the interests of stakeholders within its area of operations, and
- ▼ imposes the minimum regulatory burden on Water NSW by avoiding duplication or conflict with other regulatory instruments.

Furthermore, as part of this review, we have aimed to

- ▼ increase the consistency in the licensing approach to the major public water utilities in NSW, of which Water NSW is one, and
- ▼ implement a system-based approach to licensing.

We have aimed to recommend an operating licence (and accompanying reporting manual) that meets the objectives, as set out above, and provides a net benefit to society but without imposing unnecessary compliance and administration costs on Water NSW.

Further, we have aimed to design an operating licence which authorises Water NSW to continue to undertake its current functions and activities within a regulatory framework similar to its current one. That is, we have sought to avoid increasing Water NSW's regulatory burden without justification.

¹³ Water NSW Act, section 7.

The Water NSW Act also opens up opportunities for Water NSW to expand its activities beyond its current operations, to the extent authorised within the operating licence. Our review has considered possible future scenarios and we have aimed to design a flexible operating licence capable of authorising and regulating those scenarios, so that it does not hinder the ability of Water NSW to undertake these functions and activities.

2.5 Our approach to the review

Our approach for this review reflects Stages 2 to 4 of the Licensing Framework¹⁴ that we developed as part of our review of licensing schemes in NSW.

Broadly speaking, this approach includes the following main steps:

1. Developing a set of options for inclusion in the operating licence (and accompanying reporting manual) after considering:
 - a) the regulatory framework that applies to Water NSW, including the requirements in the Water NSW Act and other regulatory instruments
 - b) the performance of Water NSW under its current operating licence
 - c) developments in best-practice operation and regulation, including issues raised and changes that we made in the recent review of Sydney Water's operating licence, and
 - d) the issues raised by stakeholders in our review consultation process.
2. Conducting cost benefit analysis (CBA) on these options for inclusion in the operating licence and reporting manual. This analysis compares the costs and benefits of each potential inclusion, comparing with the 'Base case' of the current operating licence/reporting manual requirements (ie, including terms and conditions in the new operating licence that reflect the current licensing regime exactly, with no change). As this is a new operating licence, strictly speaking, the Base case for comparison is no operating licence or terms and conditions. However, for practical reasons, we have assumed the base case option to represent a new operating licence that will emulate the existing operating licence regime.
3. Deciding on our recommended inclusions in the operating licence and reporting manual, based on the results of our CBA and further consultation.
4. Drafting a new operating licence and reporting manual.

We make recommendations to the Minister on our preferred options for an operating licence which both authorises and regulates Water NSW's functions and activities as outlined in the Water NSW Act. The Minister may accept or reject our recommendations before endorsing a new operating licence for approval by the Governor of NSW, in accordance with the Water NSW Act.

¹⁴ PricewaterhouseCoopers (PwC), *A best practice approach to designing and reviewing licensing schemes*, March 2013 developed for IPART's review of licence rationale and design "Reforming Licensing in NSW" September 2014.

3 Licence structure

Water NSW currently operates under the obligations of two operating licences, previously granted to its former constituent organisations, SCA and State Water. Under the *Water NSW Act 2014* (NSW) (Water NSW Act), an option exists to retain the current arrangement (two licences) or to consolidate all licence authorisations and conditions into one operating licence.¹⁵

In addition to considering whether one or more licences should be granted to Water NSW, we also considered how to arrange the terms and conditions of the new licence.

Our recommendations for the operating licence structure are listed below. Our analysis and reasoning for the recommendations are discussed in more detail in the remaining sections of this chapter.

Recommendations for the operating licence

- 1 The Governor grants Water NSW a single consolidated operating licence regulating all of Water NSW's activities for the whole of its area of operations.
- 2 The operating licence is structured to reflect the water supply chain.

3.1 One or more operating licences?

We recommend one combined operating licence which contains all the applicable authorisations relating to Water NSW's functions under the Water NSW Act. The operating licence would authorise Water NSW's relevant functions throughout its area of operations (ie, the State of NSW), and would replace the two existing Water NSW (State Water and SCA) operating licences. A single operating licence would reflect Water NSW's combined organisation since the merger of the previous State Water and SCA on 1 January 2015.

The operating licence needs to authorise Water NSW to undertake a listed function under section 7 of the Water NSW Act, unless it is already authorised to do so under another Act or a different part of the Water NSW Act. This is discussed further in the next chapter of this report.

3.1.1 Issues raised

In the Issues Paper we sought comment from stakeholders on proposed options for the configuration of the operating licence. If there is more than one operating licence, each individual operating licence would have to specify the functions that it authorises and regulates, and the area or circumstances in which those functions may be exercised.¹⁶

¹⁵ Water NSW Act, section 11.

¹⁶ As per the provisions of section 11(2) of the Water NSW Act.

In both rounds of consultation, stakeholders, including Water NSW, expressed a preference for a single operating licence for reasons of increasing efficiency, removing duplication and reflecting the rationale and structure of the combined organisation. Stakeholders expressed a number of concerns including how functions would be differentiated in a combined operating licence, and how standards would be maintained, particularly within the existing Sydney Catchment Area.

We discuss below the options we considered for the configuration of the new operating licence.

3.1.2 Options assessed

Table 3.1 Licence configuration options

Options	Description
Option A	One operating licence consolidating all relevant authorisations and conditions
Option B	Two (or more) operating licences

No quantifiable costs or benefits were identified for these options.

The single operating licence option (Option A) authorising all, or most, of Water NSW's listed functions is our preferred option as it offers a simpler model for authorising and regulating the listed and other functions of Water NSW. This model is consistent with that used for the other State Owned Corporation water utilities in NSW (eg, Sydney Water Corporation and Hunter Water Corporation) and avoids applying duplicative terms and conditions within the individual operating licences. It also allows the changing organisation maximum flexibility to undertake all functions throughout the area of operations, even where this has not historically been the case (See also section 4.2). Water NSW supported Option A.

The option for maintaining two operating licences (Option B) offers some administrative and regulatory benefits because it could be more easily distinguished if some of Water NSW's functions only applied within a particular area. For example, currently Water NSW only undertakes some functions within the Sydney Catchment Area and it may be appropriate to continue to maintain this distinction, as discussed further within this report. We consider that this issue is best addressed on a case by case basis within the Terms and Conditions themselves, as relevant.

3.1.3 Preferred option

We prefer Option A, ie, a single operating licence that consolidates all relevant authorisations and conditions relating to Water NSW's functions under the Water NSW Act.

We recommend that when the new combined operating licence is granted, the existing Water NSW (State Water) Operating Licence should end. This would allow the recommended operating licence to commence without any conflict of duplication with the Water NSW (State Water) Operating Licence.

Recommendation

- 1 The Governor grants Water NSW a single consolidated operating licence regulating all of Water NSW's activities for the whole of its area of operations.

3.2 What should be the structure of the single operating licence?

We recommend that the new operating licence is structured differently from the existing Water NSW (State Water and SCA) operating licences. In preparing the operating licence, we considered how to best group licence conditions for clarity and accessibility for the utility, customers and other stakeholders and auditors.

We recommend that the terms and conditions of the operating licence reflect the supply chain of Water NSW's business operations. We have also proposed a similar structure for Hunter Water's operating licence, as relevant to its operations, which was reviewed at the same time as the Water NSW licence. We consider there are benefits from having consistent operating licence structures for the public water utilities that IPART regulates.

3.2.1 Issues raised

The structure of the existing Water NSW operating licences was not specifically raised as an issue in the Issues Paper. Water NSW subsequently proposed that the business functions of the new organisation could be better reflected in a new structure of a single operating licence.

We presented the proposed operating licence structure as a draft for consultation on 28 February 2017. We received no further formal feedback on the proposed structure.

We discuss below the options we considered in determining the most appropriate structure for the single operating licence.

3.2.2 Options assessed

Table 3.2 Licence structure options

Options	Description
Option A	Simple merge of the two existing operating licences, retaining all existing chapter headings
Option B	Modify operating licence structure to reflect the supply chain of Water NSW's business operations (See Table 3.3).

In relation to these options, no quantifiable costs or benefits were identified.

We found potential improvements to the existing operating licence structures when we encountered difficulties in drafting the proposed licence.

The existing operating licences contain terms and conditions relating to the functions of the former constituent entities (ie, State Water and SCA). We consider that simply retaining all the existing chapter headings and combining these terms and conditions under those headings, as we could do under Option A, does not provide the general public or relevant

stakeholders with a clear understanding of the scope of Water NSW's operations, or provide a logical sequencing and grouping of related clauses. Further, all three public water utilities (ie, Water NSW, Sydney Water and Hunter Water) have differing operating licence structures, making it difficult to retain an existing structure without being inconsistent between the operating licences. Sometimes these differences arise from differences in operations, circumstances or legislative differences, but this is not always the case.

We prefer Option B as the new structure for the licence, as it would:

- ▼ Allow stakeholders to better understand Water NSW's operations and enable a more straightforward way of identifying which part of the business is the subject of their interest, and to locate the relevant licence clauses.
- ▼ Provide a better grouping of operating licence requirements into similar activity areas with these areas being based around the general water supply chain of 'catchment to tap', where applicable.
- ▼ Better align with the responsibility areas within Water NSW, thus making compliance more efficient.
- ▼ Enable a licence structure that can (as a general rule) be applied to all public water utility operating licences.

The proposed structural changes will not have an impact on the content of the obligations, only on the grouping of similar obligations. For this reason, we consider that Option B will have qualitative benefits and minimal dis-benefit.

3.2.3 Preferred option

We prefer Option B and recommend that the operating licence is structured as follows:

- ▼ **Part 1: Licence context and authorisations** including provisions on licence objective, purpose, licence authorisations, the term of the licence, the non-exclusivity of the licence, availability of the licence, compliance with pricing determinations, end of term review and notices.
- ▼ **Part 2: Water source protection and conservation** including provisions relating to the water quality management system, catchment management, information on the declared catchment area, catchment infrastructure management, calculation and review of water supply system yield, the Water Conservation Strategy, and research on catchments.
- ▼ **Part 3: Bulk Water storage and transmission** including provisions on water management works, water supplied, bulk water released to local water utilities for drinking water purposes, and dam operation during floods and spills.
- ▼ **Part 4: Performance Standards** in relation to Water NSW's functions to supply water and to capture and store and release water.
- ▼ **Part 5: Organisational systems management** including asset management and environmental management systems requirements.

- ▼ **Part 6: Customer and stakeholder relations** including provisions in relation to customer supply agreements and service charter, water accounting, metering, notifications, customer advisory groups, payment difficulties, complaints handling education programs, codes of conduct with WICA licensees and memoranda of understanding and protocols with various Government agencies.
- ▼ **Part 7: Performance monitoring and reporting** including provisions in relation to audits, reporting and provision of information.
- ▼ **Part 8: Definitions and interpretation.**
- ▼ **Schedule A: Conferral of functions.**
- ▼ **Schedule B: Indicative map of operations.**

Table 3.3 presents our proposed licence structure and lists the major obligations under each of the above parts of the licence.

Recommendation

- 2 The operating licence is structured to reflect the water supply chain.

Table 3.3 Recommended operating licence structure

Licence context and authorisation	Water source protection and water conservation	Bulk Water storage and transmission	Performance standards	Organisational systems management	Customer and stakeholder relations	Performance monitoring and reporting	Schedules
<ul style="list-style-type: none"> ▼ Licence objective and purpose ▼ Licence authorisations ▼ Term of licence ▼ Non-exclusive licence ▼ Licence availability ▼ Pricing ▼ End of term review ▼ Notices 	<ul style="list-style-type: none"> ▼ Water quality management system ▼ Catchment and infrastructure management ▼ Information on the Declared Catchment Areas ▼ System Yield ▼ Water Conservation Strategy ▼ Research on catchments 	<ul style="list-style-type: none"> ▼ Construct, maintain and operate water management works ▼ Water Supply Capture and Store and Release Water 	<ul style="list-style-type: none"> ▼ Water Supply ▼ Capture and Store and Release Water 	<ul style="list-style-type: none"> ▼ Asset Management System ▼ Environmental Management System 	<ul style="list-style-type: none"> ▼ Customer Supply Agreements ▼ Accounting for water ▼ Water metering and monitoring ▼ Advance notification of changes to flow release patterns ▼ Customer advisory groups & charter ▼ Customer Service Charter ▼ Code of practice on payment difficulties ▼ Internal complaints handling procedure ▼ External dispute resolution scheme ▼ Educative role ▼ Code of Conduct with Water Industry Competition Act licensees ▼ Memoranda of Understanding and Roles and Responsibilities Agreement with NSW Health, EPA, DP&E and DPI Water 	<ul style="list-style-type: none"> ▼ Operational audits ▼ Reporting ▼ Provision of information to IPART and auditor ▼ Performance indicators 	<ul style="list-style-type: none"> ▼ Conferred functions ▼ Indicative map of operations

4 Licence context and authorisations

The first part of the recommended operating licence includes clauses relating to the licence as a whole, rather than particular operational activities, and provides context for the rest of the licence. It contains items such as the objectives, authorisations of listed functions and activities, term of the operating licence, and the end of term review.

The most substantial recommendations for the operating licence are listed below. We have provided explanation and background on how we developed each of these recommendations within this chapter.

Recommendations for the operating licence

- 3 The operating licence includes an 'objective' clause with a note outlining the 'purpose' of the operating licence.
- 4 The operating licence authorises Water NSW to undertake its functions and activities to the fullest extent possible, as described under the *Water NSW Act 2014* (Water NSW Act), as follows:
 - all listed functions with the exception of the flood mitigation and management function
 - ancillary facilities and services or other activities which further the objectives
 - certain conferred functions of the *Water Management Act 2000* (NSW), the *Water Act 1912* (NSW), the Water Management (General) Regulation 2011, and the Access Licence Dealing Principles Order 2004
 - functions of certain other water corporations or water supply authorities, as allowed under the Water NSW Act but only in agreement with the relevant organisation, and
 - the operation, repair, maintenance, removal, connection, disconnection or modification of metering equipment it does not own.
- 5 The operating licence authorises Water NSW to undertake its functions throughout the State of NSW, and outside of NSW, as permissible under any applicable laws.
- 6 The operating licence defines key terms to differentiate between the conditions applicable to the listed functions "to capture and store and to release" and "to supply" water. The definitions apply only to the terms and conditions within the operating licence and not in the authorisations.
- 7 The operating licence specifies a term of five years, the maximum allowable term under the Water NSW Act.

4.1 What is the objective and purpose of the operating licence?

The first clause of each of the two existing licences contains a similar listing of the aims of each operating licence. The Water NSW (SCA) operating licence lists these aims under the

heading, 'Objectives of this Licence', whereas the Water NSW (State Water) operating licence lists them under 'Purpose of this Licence'.

In selecting an appropriate opening statement for the recommended operating licence, we reviewed:

- ▼ the function of the licence
- ▼ whether either an objective and/or purpose statement would help to clarify what the licence intends to achieve, and
- ▼ why the licence was necessary.

The objective and purpose of the operating licence is not explicitly described in the Water NSW Act. We consider that there is a subtle difference between the 'objective' of the operating licence, which is to explain what the licence aims to do and which distinguishes the licence from other regulatory instruments, and the 'purpose', which is to establish the reason or basis for the licence.

Water NSW operates under the requirements of numerous legislative and regulatory instruments. We considered the provisions of the Water NSW Act and best-practice regulation in developing the objective of the operating licence. By including an 'objective' statement in the operating licence, we aim to improve clarity about the distinction between the operating licence and other regulatory instruments. Another benefit is to guide the development of appropriate terms and conditions that apply to Water NSW. That is, to assess whether the terms and conditions are consistent with the objective of the operating licence as part of deciding whether or not to include them. In this way, the objective statement will serve as a test for all other provisions of the operating licence.

We consider that the 'purpose' statement in the Water NSW licence outlines the requirements of the *Water NSW Act 2014* (Water NSW Act) with regard to the operating licence. The Water NSW Act outlines what the operating licence *must* and *may* contain. In preparing the recommended licence, we have considered the requirements and provisions of the Water NSW Act¹⁷ in relation to the operating licence. References to the operating licences are distributed throughout the Water NSW Act, creating difficulty for the reader when navigating or interpreting the operating licence. The purpose statement in the operating licence will aid users of the licence in understand why certain clauses have been included. We have presented a summary of the references in the Water NSW Act, below.

The Water NSW Act states that the listed functions *may only* be exercised under the authority of an operating licence.¹⁸ We understand that for Water NSW to be able to undertake a function, the operating licence must contain the authorisation for that function,¹⁹ unless

¹⁸ Water NSW Act, section 7(3)(a).

¹⁹ The functions of Water NSW that may only be exercised under the authority of, and in accordance with, an operating licence are:

- (a) its listed functions (being those functions set out in s 7(1) of the Water NSW Act)
- (b) the provision of facilities or services that are necessary, ancillary or incidental to its listed functions and
- (c) the conduct of any business or activity (whether or not related to its listed functions) that it considers will further its objectives. (Section 7 of the Water NSW Act, 2014)

Section 7(5) of the Water NSW Act provides that the Act does not require the authorisation of an operating licence for Water NSW to exercise a function conferred on it under a provision of the Water NSW Act, other than s 7, or by another Act or law.

already authorised by another regulatory instrument.²⁰ The operating licence should also specify the areas and circumstances in which Water NSW is able to exercise its authorised functions.²¹ We understand that if a listed function is not authorised by the operating licence, or any other instrument, Water NSW must not undertake that function or it would be in breach of the Water NSW Act.

In relation to some of the listed functions,²² the Water NSW Act specifies that if those functions are authorised in the operating licence, the operating licence *must* also contain certain terms and conditions regulating how these functions are to be carried out. These terms include quality and performance standards which Water NSW must achieve.²³ The Water NSW Act does not specify any mandatory terms and conditions in relation to the other listed functions.

Even if already authorised by another instrument, we consider that it is appropriate to authorise a function in the operating licence where we seek to include additional terms and conditions related to that function that are not included within the other instrument. This is because we consider that the Water NSW Act can only impose conditions on the exercise of those functions which it also authorises.

In general, terms and conditions are intended to impose responsibilities on Water NSW which are enforceable and auditable. They provide transparent obligations particularly where customers rely on Water NSW to deliver services and improve accountability. The terms and conditions of an operating licence (including the standards), must be reflective of any legislative provisions, and customer expectations and willingness to pay. These requirements set the priorities of Water NSW's operations within the term of the operating licence.

Accordingly, we consider that the purpose of the operating licence is to:

- ▼ specify the listed functions and other functions conferred upon Water NSW to which the licence relates
- ▼ authorise Water NSW to carry out the listed and conferred functions specified in the operating licence
- ▼ specify the areas and circumstances where Water NSW is authorised to carry out the specified listed functions and conferred functions
- ▼ set out terms and conditions which apply to the conduct of the functions authorised by the operating licence, including in relation to commercially viable systems and services, performance standards and performance indicators
- ▼ make provisions for the preparation of operational audits, and
- ▼ specify other requirements as required and allowed for under the Water NSW Act.

²⁰ Water NSW Act, sections 7(3) and (5).

²¹ Water NSW Act, section 11.

²² These are the functions to capture, store, release or supply water (sections 7[1][a]-7[1][e] of the Water NSW Act), and the declared catchment area functions (sections 7[1][g], [h] and [j] of the Water NSW Act).

²³ Water NSW Act, section 12.

4.1.1 Issues raised

We did not discuss the objective and purpose of the operating licence in the Issues Paper, nor did any stakeholder submissions specifically make comment on the objective.

We received input from Water NSW and Sydney Water when on the provisions of the draft operating licence. Neither stakeholder opposed the idea of the objective and purpose but suggested some drafting changes to the specific words used in the draft operating licence.²⁴ Sydney Water also requested further clarification of the distinction between the ‘objective’ and ‘purpose’ of the licence.²⁵

We discuss below the options we considered in determining the objective and purpose of the operating licence.

4.1.2 Options assessed

Table 4.1 Licence objective and purpose options

Options	Description
Option A	Simple merge of all items under the ‘objective’ and ‘purpose’ headings of the existing operating licences
Option B	New objective statement (as an operating licence clause) with a note articulating the purpose
Option C	New objective statement and purpose statements (as separate operating licence clauses)
Option D	New objective statement (as an operating licence clause) and no purpose statement
Option E	No objective or purpose statements

No quantitative costs were identified relating to any of these options.

The existing Water NSW (State Water) operating licence lists its objectives, whereas the Water NSW (SCA) operating licence explains its purpose. In these operating licences, the terms ‘objective’ and ‘purpose’ had been used interchangeably. We consider that a simple merge of the contents of these two clauses, as proposed in Option A, is not preferable. Instead, having separate objective and purpose statements provides more clarity to the operating licence reader.

As explained above, the objective distinguishes the operating licence from other regulatory instruments, and provides a basis for developing other operating licence terms and conditions which should be consistent with the objective. Whereas the purpose of the operating licence explains what it will do based on references to it from the Water NSW Act. With Option A, both the objective and purpose, as we have distinguished it, would be merged together, which we consider would be less clear than having two distinct statements.

²⁴ Water NSW, *WaterNSW submission to the Independent Pricing and Regulatory Tribunal Review of the WaterNSW Operating Licences*, page 11.
Sydney Water, *Submission to IPART on Water NSW’s Draft Operating Licence 2017-2022*, April 2017, page 14.

²⁵ Sydney Water, *Submission to IPART on Water NSW’s Draft Operating Licence 2017-2022*, April 2017, page 14.

The difference between options B and C options is subtle. With Option B, we would only include the purpose statement as a note to the objective which would be an operating licence clause. Whereas with Option C, the objective and purpose statements would be separate standalone clauses.

We consider that Option C has some legal risk because the purpose statement represents our understanding of the requirements of the Water NSW Act. Further, it poses a risk of inconsistency between the operating licence and the Act, given that we have consolidated and summarised the Act. A note regarding the purpose, as proposed in Option B, would have no regulatory effect, and only aims to assist the licence user in navigating the licence. A note therefore minimises the risk of inconsistency with the Water NSW Act.

To avoid the inconsistency entirely, the purpose statement could be omitted from the operating licence, as per Option D. However, we consider that the purpose statement is valuable to the user (ie, Water NSW, regulators, auditors, and any other interested stakeholders) in improving readability and understanding. We therefore consider that Option D is not preferable.

Similarly, we consider that Option E is not preferable as the objective and the purpose statements provide valuable information to the operator licence user. Further, including an objective statement, at a minimum, is consistent with the approach we take with licensing other public water utilities. No stakeholders objected to including an objective or purpose statement when presented in the draft operating licence.

4.1.3 Preferred Option

We prefer Option B, ie, to include an objective statement in the operating licence as clause 1.1 of the operating licence, with a purpose statement included as a note to this clause. The note has no regulatory effect and thus avoids any risk of inconsistency with the Water NSW Act.

The wording of the objective and note in the recommended operating licence differ slightly from what was presented in the draft.

Recommendation

- 3 The operating licence includes an 'objective' clause with a note outlining the 'purpose' of the operating licence.

4.2 What should the operating licence authorise and where?

The Water NSW Act outlines a number of functions and activities which Water NSW may exercise *only* if authorised by the operating licence.²⁶ This includes Water NSW's listed functions of section 7(1) of the Water NSW Act. In drafting the operating licence, we considered which functions and activities were appropriate for the licence to authorise and the areas and circumstances²⁷ in which it should be authorised to conduct these activities.

²⁶ Water NSW Act, sections 7(1), 7(2), 7(4), 15(4), 31(1).

²⁷ In accordance with the Water NSW Act, section 11.

Further we considered if other instruments already adequately authorised and placed conditions on certain functions. It is not necessary to include authorisations within the operating licence for such functions.

As a general principle for clarity, certainty and consistency within the operating licence, if the operating licence applies terms and conditions to a particular function we consider it is appropriate to also authorise the function within the operating licence.

4.2.1 Issues raised

Our Issues Paper asked whether each of the listed functions should be authorised and conditioned in the operating licence. The existing operating licences implicitly authorised all of the functions of each of the constituent entities (now termed the 'listed functions'). Stakeholders had mixed views in relation to each of the listed and other functions of the Water NSW Act.²⁸

In many cases, stakeholders identified functions which were authorised in other instruments. However, they still considered further terms and conditions were necessary in the operating licence.

In relation to flood mitigation and management,²⁹ Water NSW raised concerns about potential unintended consequences of authorisation of this listed function in the operating licence. Some of these unintended consequences might include the legal liability for Water NSW associated with authorising this function and the subsequent effective obligation to undertake this function, even though there is no actual obligation in the operating licence. Regulation of flood mitigation and management is discussed in further detail in section 6.5.

The Issues Paper also discussed whether the 'other functions' of section 7(2)³⁰ of the Water NSW Act should be authorised in the operating licence. Some stakeholders responded with examples of specific activities that should be authorised within the operating licence. No stakeholders objected to the authorisation of the section 7(2) functions.

The Issues Paper sought comment on whether the operating licence should authorise Water NSW to undertake other utilities' functions within their areas of operations, as allowed for by section 15(2) of the Water NSW Act. Water NSW agreed with the proposed inclusion but considered that it should not be *obliged* to undertake any functions of the utilities or water supply authorities. The NSW Government did not object to this inclusion as long as Water NSW was required to obtain agreement from the utilities or water supply authorities, as required by the Water NSW Act.

Our Issues Paper also questioned whether Water NSW should be authorised to undertake activities on water meters it does not own, as allowed for within section 31(1) of the Water NSW Act. Stakeholders offered mixed views on the option to authorise this activity.

²⁸ See Appendix A for more detailed information on stakeholder responses to the Issues Paper.

²⁹ Listed function under the Water NSW Act, section 7(1)(i).

³⁰ Section 7(2) of the Water NSW Act states that Water NSW may:

- (a) provide facilities or services that are necessary, ancillary or incidental to its listed functions, and
- (b) conduct any business or activity (whether or not related to its listed functions) that it considers will further its objectives.

Water NSW and Sydney Water were in favour of authorisation, whereas the NSW Irrigators' Council considered that it should only apply to Government funded meters and not to customer owned meters. The NSW Government submission stated that it considered that the existing operating licences dealt with the questions of authorisation adequately.

With respect to the area of operations within which each of the functions and activities should be undertaken, stakeholders were generally in favour of authorising all functions throughout the whole area of operations, ie, the whole of the State as defined in the Water NSW Act.

Our Issues Paper also discussed whether Water NSW should be authorised within the operating licence to undertake its functions outside New South Wales. Water NSW supported including this provision in the new operating licence as it would allow Water NSW to continue to interact with the Commonwealth and other states when undertaking certain of its operations. It currently undertakes these operations under the existing Water NSW (State Water) operating licence. In particular, Water NSW is required to undertake activities under the Murray Darling Basin Agreement. The NSW Government³¹ and the NSW Irrigators' Council³² supported this approach when presented in the draft operating licence (subject to any terms and conditions or areas and circumstances specified in the operating licence, and to the maximum extent permissible by law).

We discuss below the options we considered in authorising Water NSW in the operating licence to undertake its functions under the Water NSW Act, and in specifying the areas and circumstances.

4.2.2 Options assessed

Table 4.2 Operating licence authorisation options

Options	Description
Option 1A (Base case)	No explicit authorisations
Option 1B	Authorise only selected functions and activities (because others are either authorised elsewhere or should not be undertaken)
Option 1C	Authorise all functions and activities allowed for by the Act within the licence

In relation to these options, no quantifiable costs or benefits were identified.

We understand that Water NSW cannot undertake its listed functions under section 7(1) of the Water NSW Act unless authorised by the operating licence. However, the Water NSW Act does not prescribe what this authorisation must look like.

It can be argued that explicit authorisations are not necessary if terms and conditions regulating the listed functions are included in the operating licence, as the authorisation can be perceived to be implied. In this way, Option 1A considers an operating licence without

³¹ NSW Government, *Review of the draft WaterNSW Operating Licence – NSW Government submission*, March 2017, page 4.

³² Letter to IPART, Mr Mark McKenzie, Chief Executive Officer, New South Wales Irrigators' Council, 7 March 2017, page 5.

explicit authorisations, or a general authorisation referencing ‘its functions under the Act’. However, we consider that this is not preferable and that if terms and conditions are to be applied relating to a listed function, then that function should also be explicitly stated as being authorised in the operating licence. Clear, explicit authorisations of the functions Water NSW can undertake will assist with clarity for Water NSW, regulators and auditors, and other stakeholders. Further, we consider that it is consistent with section 11(1) of the Water NSW Act.

Under Option 1B, we identified other instruments which contain some similar authorisations which could be relied on for the listed functions “to capture and store water and to release water”, “to supply” water to various customers, and “to undertake flood mitigation and management”. However, we did not find an overarching authorisation for the whole State. Rather, these authorisations existed at an infrastructure level within individual water supply work approvals under the *Water Management Act 2000*. Further, we seek to apply terms and conditions to the majority of the functions and therefore consider that it is appropriate to also authorise these functions in the operating licence. We consider that a duplication of ‘authorisation’ alone (and not the terms and conditions), does not present a cost to Water NSW in relation to undertaking these functions. Under this option where a function is not authorised in the operating licence, we have made it clear whether it that was because we considered that the authorisation existed elsewhere or because it was deliberately intended for Water NSW to not be authorised to undertake the activity. We have not authorised Water NSW to undertake the flood mitigation and management function in the operating licence as we do not seek to apply general terms and conditions in the operating licence, as discussed further in section 6.5. For all other functions, an explicit authorisation is included in the operating licence.

As we identified authorisations that would not be included in the operating licence Option 1C was not appropriate.

Table 4.3 Area of operations authorisations options

Options	Description
Option 2A (Base case)	Selectively authorise functions within parts of the whole area of operations similar to existing licenses
Option 2B	Authorise functions throughout the whole area of operations.

In relation to these options, no quantifiable costs or benefits were identified.

We consider that there is no reason to constrain any particular function to a subset of the area of operations, as considered in Option 2A. Even if historically and currently some functions only take place within smaller areas, the operating licence should not impose this constraint. For this reason, Option 2B is our preferred option.

In the recommended operating licence, we have only geographically constrained some of the terms and conditions. This is discussed further within this report, when discussing the regulation of individual listed functions.

Table 4.4 Options for authorising Water NSW to undertake functions outside its area of operations

Options	Description
Option 3A (Base case)	Authorise Water NSW to undertake functions outside its area of operations
Option 3B	Do not authorise Water NSW to undertake functions outside its area of operations

We also considered whether the operating licence should allow Water NSW to undertake its authorised functions *outside* its defined area of operations. In relation to these options, no quantifiable costs or benefits were identified.

We consider that it is appropriate to allow this, as presented in Option 3A, because, as stakeholders have noted, Water NSW needs to interact with the Commonwealth and other jurisdictions to undertake certain of its functions. In particular, Water NSW is required to undertake activities under the New South Wales-Queensland Border Rivers Agreement and the Murray Darling Basin Agreement. Water NSW currently does this under the authority of its Water NSW (State Water) licence. Option 3A is therefore as similar as possible to the base case. The difference is that the authorisation relates to all the Water NSW listed functions authorised under the operating licence (including the former Sydney Catchment Area functions).

We are not proposing to define Water NSW's area of operations to be greater than the State of NSW. Rather, we are proposing to include a provision that allows Water NSW to undertake any of its functions outside its area of operations, if it so requires (and as permissible under law). For this reason, we consider that while this provision does not currently exist in the Water NSW (SCA) operating licence, including it in a combined operating licence does not have a material impact on the costs and benefits in comparison to the base case.

4.2.3 Preferred option

The preferred model of authorisations for the licence is the combination of options 1B, 2B and 3A.

This model would authorise the relevant functions of Water NSW to the fullest extent possible under the Water NSW Act and allow it to continue its current operations. We consider this to be appropriate and consistent with the intention of the Water NSW Act. This will allow the operating licence maximum flexibility to regulate the activities of an evolving organisation and maximise the longevity of the licence throughout its term. This is particularly relevant for an organisation such as Water NSW which is continuing to undergo significant change to its structure and operations. We also consider that this is the simplest and clearest model of authorisation and will maximise efficiency of administering the operating licence.

Recommendation

- 4 The operating licence authorises Water NSW to undertake its functions and activities to the fullest extent possible, as described under the *Water NSW Act 2014* (Water NSW Act), as follows:

- all listed functions with the exception of the flood mitigation and management function
- ancillary facilities and services or other activities which further the objectives
- certain conferred functions of the *Water Management Act 2000* (NSW), the *Water Act 1912* (NSW), the Water Management (General) Regulation 2011, and the Access Licence Dealing Principles Order 2004
- functions of certain other water corporations or water supply authorities, as allowed under the Water NSW Act but only in agreement with the relevant organisation, and
- the operation, repair, maintenance, removal, connection, disconnection or modification of metering equipment it does not own.

4.3 Definition of key terms

The Water NSW Act includes the terms ‘to supply water’ and ‘to capture and store water and to release water’. These terms are not defined in the Act. This means we would rely on the dictionary definition of the terms which does not provide sufficient distinction for the purpose of applying and auditing the operating licence.

In a single operating licence which authorises all or most of Water NSW’s listed functions under the Water NSW Act across its whole area of operations, there is risk of confusion between the functions relating to the ‘supply’ of water and ‘capture and store water and release’ of water. The terms used in these functions risk being used interchangeably, but we consider them to be referring to different activities. Identifying when and where the functions occur, and the terms and conditions which apply to them, is an important consideration in the drafting of the operating licence, particularly in ensuring that the licence is auditable.

We therefore consider that it is important to define the terms ‘to supply water’ and ‘to capture and store water and to release water’ to allow the terms and conditions within the operating licence to be clearly and unambiguously applied to the appropriate Water NSW functions.

4.3.1 Issues raised

When the issue of not having specific definitions for the key terms was raised in the Issues Paper, we received feedback from Water NSW and the NSW Government who considered that it was not necessary to include definitions. However, the NSW Government’s reasoning was based on its view that Water NSW’s water supply work approvals under the *Water Management Act 2000* include terms and conditions that relate to these activities, providing an indication of the differences between the terms.

We consider that we cannot rely on distinctions between key terms made in other regulatory instruments to explain those terms in the operating licence. If these other regulatory instruments cease to exist, so will the distinction between terms. Further, we consider that any distinctions made in the other regulatory instruments are not sufficiently clear to avoid

the consequences we have described above. We therefore proposed definitions in the draft operating licence.

Water NSW did not fully support the definitions that we proposed in the draft operating licence because it considered that the definitions should be based on the end-purpose of water that Water NSW provides its customers. Water NSW suggested a set of alternative definitions which it considered is more reflective of how it operates as a business. Water NSW also opposed the use of definitions in the list of explicitly authorised functions in the operating licence (discussed in section 4.2 above). Water NSW expressed concern that using defined terms in the list of authorisations risked limiting Water NSW’s authorisation under the operating licence to be less than authorising the ‘natural meaning’ of the listed functions as set out in the Water NSW Act. This could create a risk that Water NSW may not be authorised to undertake parts of its functions as intended by the Act. However, Water NSW recognised the need for defined terms in the terms and conditions ³³ and therefore provided input on the definitions we proposed.

We have considered Water NSW’s concerns with defining terms in the list of authorised functions when discussing regulation of the individual functions in the licence, in the remaining sections of this report.

The NSW Irrigators’ Council considered that definitions that differentiated urban and rural water supply provided value and they could reduce any ambiguity over Water NSW’s functions and responsibilities.³⁴ Murrumbidgee Irrigation noted the benefits of defining the proposed terms to differentiate the associated listed functions.³⁵

4.3.2 Options assessed

Table 4.5 Options for defining key terms

Options	Description
Option A (Base case)	No definitions for key terms within the licence
Option B	Define the terms ‘supply’ and ‘to ‘CSR Water’

In relation to these options no quantifiable costs or benefits were identified.


Under the option to authorise all functions within a single operating licence, there is a risk of ambiguity between the terms ‘to supply water’ and ‘to capture and store water and to release water’. Relying solely on dictionary definitions of these terms will not provide the necessary distinction for clarity of the licence and for auditing purposes.

If it is not clear how Water NSW’s functions differ, there is a risk that all of the terms and conditions in the operating licence could be interpreted to apply to all of Water NSW’s functions, or that the terms and conditions could be applied inappropriately where not intended. To clarify where and how a function is to be conducted, and to clarify which

³³ Water NSW, *WaterNSW submission to the Independent Pricing and Regulatory Tribunal Review of the WaterNSW Operating Licences*, page 11.

³⁴ Letter to IPART, Mr Mark McKenzie, Chief Executive Officer, New South Wales Irrigators’ Council, 7 March 2017, page 4.

³⁵ Letter to IPART, Mr Brett Jones, Managing Director, Murrumbidgee Irrigation, 7 April 2017, page 1.



terms and conditions apply to which functions, we consider that it is preferable to define the key terms of these functions, as proposed in Option B. This will allow us to provide transparent and auditable terms and conditions for regulating Water NSW's listed functions, consistent with the licence objective.

We can see some merit in tying the definitions to the end-uses of the water as proposed by Water NSW. However, we consider that it is important to specifically link the definitions to the terms used and the listed functions within the Water NSW Act to minimise ambiguity about which terms and conditions in the licence refer to which authorised listed functions. We also consider there could be challenges in situations where the water in a single transmission carrier has multiple end-uses. For these reasons, we have maintained the definitions that we proposed in the draft operating licence, with some amendments incorporating feedback from Water NSW.

We acknowledge that defining the terms creates a risk that the definitions may be wrong, inconsistent with the Water NSW Act, or exclude a function that Water NSW undertakes because it does not fit the definition. To reduce this risk, we have recommended using the natural definition of the terms in the list of authorised functions in the licence. Throughout the rest of the licence (ie, the terms and conditions for regulating the authorised functions), we have referred to the defined terms to address the issues of potential ambiguity described above. These definitions would only be relevant for the purposes of the operating licence (and associated reporting manual).

4.3.3 Preferred Option

In one combined operating licence, we consider that it is necessary to differentiate between the 'capture, store and release' and 'supply' functions. We recommend that the definitions do not apply to the authorised listed functions in the licence, but only apply for the purposes of the terms and conditions within the operating licence and reporting manual. This minimises the risk of conflicting with definitions that might be used elsewhere in the sector.

The proposed definitions of the key terms are shown in Box 4.1.

Box 4.1 Definitions of key terms

Supply means the supply by Water NSW of water taken from the State's water rights under its water access licences to a Customer (in accordance with a relevant water supply agreement) by means of Water Management Works owned and/or controlled by Water NSW.

[Note: Water NSW may supply water to a downstream Customer by using active or passive management or operating actions. Such downstream Customers do not have their own water access licences for that water.]

CSR Water means the capture, store and release (but not Supply) of water by Water NSW:

- a) to persons entitled to take water; and
- b) for any other lawful purpose, including the release of environmental water,

by means of Water Management Works owned and/or controlled by Water NSW.

[Note: Water NSW may undertake such functions by using active or passive management or operating actions to enable passage of CSR Water into a river or channel system. Downstream customers have their own access licences to take the CSR Water in the river or channel system.]

Box 4.2 How do these functions relate to existing customers?

These definitions will mean that not all customers of Water NSW are receiving services under the same functions. This Box provides some examples of customers who will receive services under the '**Supply**' and the '**Capture and Store water and Release water (CSR Water)**' functions.

Examples of Supply Customers:

Supply customers do not extract water under their own Water Access Licences rather they receive water which is provided by Water NSW through its own infrastructure. These customers have supply agreements with Water NSW. Examples of these types of customers include:

- ▼ large water utilities such as Sydney Water Corporation
- ▼ Water Industry Competition Act licensees
- ▼ a small customer with a connection to a pipeline
- ▼ one of the water supply authorities, local councils or county councils prescribed by the regulations (there are currently only 3 prescribed entities).

Examples of CSR Water Customers:

CSR Water customers hold their own Water Access Licences which allow them to extract water from a regulated river using nominated water supply works (eg, a pump) according to other certain conditions (eg, metering requirements or extraction rate). Water NSW maintains water allocation accounts for each of these customers. Upon receiving complying water orders from customers, Water NSW releases water which the customer extracts, upon arrival of this water at the authorised work. The water is debited against the customer's allocation account. Examples of these types of customers include:

- ▼ irrigators
- ▼ irrigation corporations
- ▼ regional towns, and
- ▼ environmental water holders and environmental releases.

Recommendation

- 5 The operating licence authorises Water NSW to undertake its functions throughout the State of NSW, and outside of NSW, as permissible under any applicable laws.
- 6 The operating licence defines key terms to differentiate between the conditions applicable to the listed functions “to capture and store and to release” and “to supply” water. The definitions apply only to the terms and conditions within the operating licence and not in the authorisations.

4.4 How will the term of the operating licence be defined?

We recommend a 5-year period for the operating licence, which is the maximum term allowed for by the Water NSW Act.³⁶

4.4.1 Issues raised

Theoretically, the ideal sequence of the operating licence review may be that it always precedes the relevant price review by two years. This would allow the price implications of operating licence obligations to be more certain before input into the price proposals. Currently, the operating licence is granted for a term of five years, while the price determinations are generally made for four years.

Water NSW is currently subject to three price determinations:

- ▼ IPART 2010 determination – applied to coastal valleys and some Fish River Water Supply Scheme customers
- ▼ ACCC 2014 Decision for MDB valleys and some other Fish River Water Supply Scheme customers, and
- ▼ IPART 2016 Greater Sydney determination.

In response to the draft operating licence, Water NSW presented an option of having a 2-year term for the operating licence. Water NSW considered that a 2-year operating licence would allow the operating licence to precede Water NSW’s Greater Sydney pricing determinations so that any additional costs and savings arising from deregulation can be reflected in its prices set in the next pricing determination for Greater Sydney, due in 2020.

Further, a 2-year term could allow Water NSW time to provide better performance standards to those proposed for Water NSW’s ‘Supply’ function in the draft operating licence (this is discussed further in Chapter 7 of this report) and further feedback on the proposed operating licence requirements in general.³⁷

Sydney Water noted that it had concerns with a 2-year term (rather than the proposed 5-year term) being adopted for this licence, as suggested by Water NSW. Sydney Water suggested that going forward; it may be useful for IPART to establish a set pattern for licence reviews

³⁶ Water NSW Act, section 14(1).

³⁷ Water NSW submission, page 15.

and pricing determinations. Sydney Water supported a move towards sequencing pricing and operating licence reviews.³⁸

4.4.2 Options considered

Table 4.6 Licence term options

Options	Description
Option A (Base Case)	Recommend maximum licence term of five years
Option B	Recommend licence term of two years

When developing the draft operating licence, we only considered one option for recommending the term of the licence, ie, a term of five years which is the maximum allowable under the Water NSW Act.³⁹ Setting the maximum licence term minimises the administrative costs associated with a more frequent review period. This approach is consistent with the IPART Licensing Framework,⁴⁰ which recommends that the operating licence term is set for the maximum allowed period.

We have considered Option B, ie, a 2-year term for the operating licence. Within our CBA Report we compared the costs and benefits of each option using Multi-Criteria Analysis (MCA).

We consider that with multiple price determinations applicable to Water NSW there is, at present, no clear timeframe in which an appropriate Licence-Pricing sequence can be achieved.

Further, the sequencing of pricing and licensing reviews is an issue relevant to all utilities that we regulate. We have previously considered this, and while there are conceptual benefits, we consider that at this time, maintaining the sequence would be challenging. This is because the frequency of pricing determinations can be variable, which would mitigate any benefits. We do, however, still consider there is merit in sequencing operating licence reviews and pricing determinations generally, and we will look for further opportunities to do so in the future for all the public water utilities.

There are substantial costs arising from a 2-year licence term as it may result in an additional operating licence review (relative to the five year term considered in the CBA). A 2-year term would require a full review of all licence conditions. As a full review takes between 15-18 months we consider this would need to commence within the first quarter of 2018. For a full review to be meaningful we also consider that the compliance history of conditions being reviewed would assist the review. For a 2-year term, the licence review would commence prior to any audits being undertaken of the new licence. Further, as the Water NSW Act is not due for review until November 2019,⁴¹ it would be prudent to await

³⁸ Sydney Water, *Submission to IPART on Water NSW's Draft Operating Licence 2017-2022*, April 2017, page 14.

³⁹ Water NSW Act, Section 14.

⁴⁰ PwC, *A best practice approach to designing and reviewing licensing schemes – Guidance material*, March 2013.

⁴¹ Water NSW Act, Section 115

the outcome of the Act review before another operating licence review. We consider that the Act review is the trigger with the most potential to change the terms and conditions of the operating licence.

With regard to the other benefits that Water NSW raised, the Governor of NSW, on recommendation of the portfolio Minister, may amend an operating licence⁴² at any time during the term of the licence. Even if a term of five years is specified in the licence, in the event that material changes to circumstances occur within the term of the operating licence, including changes as proposed by Water NSW, the Governor may amend the operating licence at any time.

The CBA assessment indicated (on the basis of CBA and MCA alone) that Option A (ie, the base case) is preferred. We consider that specifying a 2-year licence term will not achieve an adequate net benefit and it is therefore not our preferred option.

4.4.3 Preferred option

Option A is our preferred option, ie, we propose a maximum term of five years with the new operating licence effective 1 July 2017 to 30 June 2022.

Recommendation

- 7 The operating licence specifies a term of five years, the maximum allowable term under the Water NSW Act.

4.5 Compliance with pricing determinations

4.5.1 Issues raised

Our Issues Paper noted that unlike the Sydney Water and Hunter Water operating licences, neither of the existing Water NSW licences contains an explicit obligation requiring consistent application of the relevant pricing determinations. We asked stakeholders whether a similar obligation requiring compliance with the price determinations should be included in the new operating licence.

Water NSW considered that a similar obligation should not be included for reasons of duplication with the obligations to comply with price determinations contained within both the IPART and Commonwealth Water Acts. Water NSW expressed a view that duplication would result in confusion. However, other stakeholders, including Sydney Water, considered that it is appropriate to include such an obligation for clarity and consistency with other licences. We proposed an obligation in the draft operating licence for consultation with stakeholders. We received responses from Water NSW, Sydney Water and the NSW Irrigators' Council in response to these proposed obligations.

Water NSW maintained its concerns that the proposed obligation in the operating licence duplicated Water NSW's legal obligations under the *Independent Pricing and Regulatory Tribunal Act 1992* (IPART Act) and the *Water Act 2007* (Cth). Further, Water NSW

⁴² Water NSW Act, Section 13

considered that IPART has sufficient powers under the IPART Act to monitor Water NSW's compliance with its pricing determinations, and does not need to include a clause in the operating licence to allow for IPART to undertake audits in this regard.⁴³

In contrast, Sydney Water maintained that a pricing obligation would provide value. It is consistent with the approach we take for licensing other utilities and it increases transparency and accountability.⁴⁴

The NSW Irrigators' Council supported the obligation in principle but sought clarity it would not result in unintended price shifts for Water NSW customers, or reductions in service level delivery.⁴⁵

4.5.2 Options considered

Table 4.7 Pricing options

Options	Description
Option A (Base case)	The operating licence includes no pricing obligation
Option B	The operating licence includes an obligation that requires compliance with relevant pricing determinations.

We considered whether to retain the status quo arrangement with no operating licence condition relating to the pricing obligation, or to include a new obligation relating to pricing.


In addition to consistency with the other public water utility operating licences, the main benefit of including this obligation is auditability and enforceability of the application of Water NSW's pricing determinations under an operating licence. Furthermore, it would enable the making of recommendations in relation to the application of the Water NSW price determinations if audited and found to be incorrectly applied within a price determination period. We therefore preferred Option B when preparing the draft operating licence.

However, on consideration of Water NSW's submission to the operating licence, we accept Water NSW's concerns about duplication with other legislation, in particular the *Water Act 2007* (Cth) and the IPART Act, are valid and could result in confusion in enforcement responsibilities. Further, while we consider that our monitoring powers under the IPART Act are not equivalent to an audit under the operating licence, they are extensive in the ability to request information for the purposes of monitoring compliance. We consider that enabling an audit of Water NSW's compliance with its pricing determinations under the operating licence does not provide adequate benefit to negate the risk of duplication of enforcement responsibilities.

⁴³ Water NSW, *WaterNSW submission to the Independent Pricing and Regulatory Tribunal Review of the WaterNSW Operating Licences*, page 15.

⁴⁴ Sydney Water, *Submission to IPART on Water NSW's Draft Operating Licence 2017-2022*, April 2017, page 15.

⁴⁵ Letter to IPART, Mr Mark McKenzie, Chief Executive Officer, New South Wales Irrigators' Council, 7 March 2017, page 2.



Although the operating licence is inconsistent from the Sydney Water and Hunter Water operating licences, the inconsistency stems from differences in the Acts of the three utilities. For Sydney Water and Hunter Water, both require conditions for pricing within the operating licences. This is not the case in the Water NSW Act. For this reason, we recommend Option A.

4.5.3 Preferred option

We prefer Option A, ie, the operating licence will not include any obligations to comply with pricing determinations.

4.5.4 Other licence context and authorisation conditions

Other provisions included in this chapter of the operating licence are the provisions of the non-exclusivity of the licence, making copies of the licence available, the end of term review and Notices. These are largely the same as one or both of the previous licences with minor updates as relevant.

5 Water source protection and conservation

Chapter 2 of the operating licence relates to the first step of the water supply chain, which we consider is water source protection and conservation. A water utility is expected to maximise the quality and quantity of the water that it provides to customers, to the extent that it has control over these aspects of the water provided.

For Water NSW, the obligations contained within this chapter of the operating licence are consistent with the principal objectives of the *Water NSW Act 2014* (Water NSW Act), and in particular section 6(1)(c)⁴⁶ of the Water NSW Act and the listed functions in sections 7 (1)(g), (h) and (j).⁴⁷

Our recommendations for the operating licence are listed below.

Recommendations for the operating licence:

- 8 The operating licence authorises Water NSW to protect and enhance the quality and quantity of water in Declared Catchment Areas.
- 9 The operating licence includes terms and conditions requiring Water NSW to maintain a Water Quality Management System (WQMS) to manage the water quality in Declared Catchment Areas.
- 10 The operating licence includes terms and conditions requiring Water NSW to maintain a WQMS to manage Supplied water quality from Non-Declared Catchment Areas, where Supply activities occur.
- 11 The operating licence retains the existing terms and conditions relating System Yield for Declared Catchment Areas, with minor updates.
- 12 The operating licence requires Water NSW to develop, document and report on its Water Conservation Strategy.
- 13 The operating licence requires Water NSW to manage and protect the Declared Catchment Areas to the extent that it is consistent with the objectives of the Water NSW Act, the Water Quality Management System, the Asset Management System and Environmental Management System..
- 14 The operating licence includes terms and conditions, similar to those in the existing Water NSW (SCA) operating licence, to publish information relevant to the Declared

⁴⁶ Section 6(1)(c) of the Water NSW Act states that one of Water NSW's principal objectives is: "to ensure that declared catchment areas and water management works in such areas are managed and protected so as to promote water quality, the protection of public health and public safety, and the protection of the environment".

⁴⁷ Section 7(1) of the Water NSW Act states that Water NSW's listed functions, in relation to catchments including declared catchments are:
"(g) to protect and enhance the quality and quantity of water in declared catchment areas
(h) to manage and protect declared catchment areas and water management works vested in or under the control of Water NSW that are used within or for the purposes of such areas
(j) to undertake research on catchments generally, and in particular on the health of declared catchment areas."

Catchment Areas (ie, water quality, data in relation to Catchment Health Indicators, and data in relation to Environmental Indicators), in accordance with the Reporting Manual.

- 15 The operating licence authorises Water NSW to undertake research on catchments generally and in particular on the health of the Declared Catchment Areas. It also requires Water NSW to undertake this function in the Declared Catchment Areas.

5.1 How should Water NSW protect and enhance the quality and quantity of water in catchment areas?

We consider that Water NSW should be authorised to protect and enhance the quality and quantity of water in Declared Catchment Areas. The Water NSW Act states that this is one of Water NSW's listed functions.⁴⁸ Water NSW currently undertakes this function under the authority of its Water NSW (SCA) operating licence. It is important that Water NSW is able to continue to undertake this function because it has an impact on Water NSW's capacity to Supply water to customers within the Sydney Catchment Area for drinking water purposes. The function is consistent with the principal objective of section 6(1)(c) of the Water NSW Act.⁴⁹ A number of sections of the operating licence relate to this function, as discussed within the remainder of this chapter.

We consider that it is important for Water NSW to undertake its functions as efficiently as possible in Non-Declared Catchment Areas. This includes both operational efficiency and resource management efficiency. The former is addressed through a systems-based approach (see Chapter 8). The latter can be managed by including terms and conditions in the operating licence for managing water quality and in relation to how Water NSW captures, stores and releases water, which is a state-wide function. We have therefore proposed to enhance the current water conservation obligations in the Water NSW (State Water) operating licence to make them transparent, objective and consistent with other NSW water utilities.

We also propose that Water NSW continues to be responsible for calculating the System Yield as it has done previously.

In this chapter, we discuss the terms and conditions that we consider are appropriate for inclusion in the operating licence, to regulate how Water NSW undertakes the above functions. We propose conditions relating to the Water Quality Management System (WQMS), System Yield, and a Water Conservation Strategy. These are discussed individually below (in sections 5.2, 5.3 and 5.4 respectively).

While these terms and conditions primarily relate to the listed function 7(1)(g) of the Water NSW Act, they are also relevant to the 'supply' and 'capture, store and release' functions.

⁴⁸ Water NSW Act, section 7(1)(g).

⁴⁹ Principal objective 6(1)(c) of the Water NSW Act is: "to ensure that declared catchment areas and water management works in such areas are managed and protected so as to promote water quality, the protection of public health and public safety, and the protection of the environment".

5.2 Water quality management system

The WQMS relates to Water NSW's function to protect and enhance the *quality* of water in Declared Catchment Areas. We consider that the WQMS therefore relates to the Declared Catchment Areas, but it is also linked to Water NSW's Supply functions in general (which goes beyond the Declared Catchment Areas).

The existing Water NSW (SCA) operating licence requires Water NSW to maintain a WQMS that is consistent with the Australian Drinking Water Guidelines (ADWG) but it does not specify the location where the WQMS applies. However, the area of operations of that operating licence was the Sydney Catchment Area so it is understood that the WQMS applies to that area. The Water NSW (State Water) operating licence does not include water quality management requirements in relation to any of the functions that it authorises.

Under the Water NSW (SCA) operating licence, the WQMS is required to incorporate any amendments or additions to the ADWG required by the NSW Ministry of Health (NSW Health). The WQMS uses a holistic 'catchment-to-tap' approach to managing water quality.

5.2.1 Issues raised

As the WQMS is linked to Water NSW's Supply functions which are not constrained to just the Declared Catchment Areas, the Issues Paper asked whether *all* water 'Supplied'⁵⁰ under the recommended (combined) operating licence should be subject to a WQMS. This would be without geographical constraint.

We received submissions to the Issues Paper from Water NSW, the NSW Government and Sydney Water, all of which supported a requirement to maintain a WQMS in the operating licence. Sydney Water stated that the WQMS maintained by Water NSW helps it to supply drinking water to its customers which is subject to a "catchment to tap" management system.⁵¹

The majority of other stakeholders considered that the WQMS was mostly relevant to the Declared Catchment Areas.

We therefore included terms and conditions in the draft operating licence requiring a WQMS consistent with the ADWG for Declared Catchment Areas with stakeholders. We also included a WQMS for managing the quality of water 'Supplied' from Non-Declared Catchment Areas that could be consistent with other standards approved by IPART or NSW Health. We received responses from Water NSW, NSW Government, Sydney Water, Gwydir Valley Irrigators, Lachlan Valley Water, the NSW Irrigators' Council and Centroc.

Water NSW considered that instead of linking the WQMS requirements with a geographical area (ie, Declared vs Non-Declared Catchment Areas), they should be linked with the ultimate end-use of the water that it provides. Water NSW proposed suggestions on how this could be achieved, linking its suggestions with its proposed definitions (discussed in

⁵⁰ Including all water Supplied to customers under Water NSW's listed functions in the Water NSW Act, sections 7(1)(b)-(e).

⁵¹ Clause 2.1 of the Sydney Water operating licence requires it to maintain a Drinking Water Quality Management system consistent with the ADWG.

section 4.3 of this report). Water NSW has suggested that only water that is ultimately intended to be provided for consumption should have a WQMS requirement, consistent with the ADWG. Water NSW suggests that the quality of water supplied for any other end-use does not need to be managed, neither does the quality of water that is captured, stored or released.⁵²

The NSW Government (ie, NSW Health) supported the WQMS requirements proposed for both Declared and Non-Declared Catchment Areas.⁵³

Sydney Water supported including requirements to maintain a WQMS for managing the quality of water Supplied in the Declared Catchment Areas. This is an essential requirement for water to be Supplied to customers within the Sydney Catchment Area, consistent with the ADWG.

Sydney Water did not comment on a WQMS for water Supplied outside the Declared Catchment Areas. It did, however, suggest some changes to the draft operating licence terms and conditions to more clearly recognise the significance of Water NSW's infrastructure's role when managing the quality of water Supplied.⁵⁴

Gwydir Valley Irrigators' Association did not support the WQMS requirements for Non-Declared Catchment Areas as it exceeds the current obligations of the Water NSW operating licences.⁵⁵ Lachlan Valley Water also did not support the WQMS requirements for Non-Declared Catchment Areas. It was concerned that additional obligations could result in additional costs which may be ultimately transferred to Water NSW's customers.⁵⁶ The NSW Irrigators' Council had similar concerns as Gwydir Valley Irrigators' Association and Lachlan Valley about the proposed requirements.⁵⁷

Centroc generally supported the operating licence requiring Water NSW to Supply its customers with water to an agreed standard.⁵⁸

We discuss below the options we considered for requiring a WQMS in the operating licence. These options take into consideration the comments we received from stakeholders in response to the draft operating licence.

⁵² Water NSW, *WaterNSW submission to the Independent Pricing and Regulatory Tribunal Review of the WaterNSW Operating Licences*, page 16.

⁵³ NSW Government, *Review of the draft WaterNSW Operating Licence – NSW Government submission*, March 2017, page 5.

⁵⁴ Sydney Water, *Submission to IPART on Water NSW's Draft Operating Licence 2017-2022*, April 2017, pages 1 and 3.

⁵⁵ Letter to IPART, Ms Zara Lowien, Executive Officer, Gwydir Valley Irrigators Association, 10 April 2017, page 2.

⁵⁶ Letter to IPART, Mr Mark Ewing, Executive Officer, Lachlan Valley Water Inc, 7 April 2017, page 1.

⁵⁷ Letter to IPART, Mr Mark McKenzie, Chief Executive Officer, New South Wales Irrigators' Council, 7 March 2017, page 4.

⁵⁸ Central NSW Councils, *Independent Pricing and Regulatory Tribunal WaterNSW operating licences review*, April 2017, page 4.

5.2.2 Options assessed

Table 5.1 Options for regulating water quality management for water Supplied, under the operating licence

Options	Description
Option A (Base case)	Retain existing WQMS obligation (updated to specify Declared Catchment Areas)
Option B	Retain existing WQMS for Declared Catchment Areas and include additional WQMS for Non-Declared Catchment Areas

We considered two options in relation to the WQMS obligation.

Option A is similar to the status-quo obligation of the existing Water NSW (SCA) operating licence. It would be updated to include reference to the Declared Catchment Area. Currently, the Sydney Catchment Area is the only Declared Catchment Area, but broadening this requirement would allow longevity of the operating licence if more catchment areas were to become declared in future. We consider that requiring a WQMS for all Declared Catchment Areas is appropriate as the function relates to protecting quality and quantity of water in Declared Catchment Areas.

Our cost benefit analysis considered that the updated component relating to Declared Catchment Areas generally, instead of just the Sydney Catchment Area, represented a drafting change only and had no related cost or benefit. The costs could become more apparent if, in the future, more catchment areas are declared, but this is difficult to assess as this stage.

Option A is appropriate and the requirements discussed in this option should be maintained in the new operating licence. However, we acknowledge Water NSW's proposition that WQMS requirements should be linked to end-use as appropriate. We have therefore proposed drafting for the operating licence, under Option B, which allows flexibility for the choice of the standard a WQMS is developed to. Water NSW could maintain the WQMS consistent with the ADWG, or any alternative standard agreed with NSW Health or IPART, if water is Supplied at a scheme for end-uses that are not consumptive. We have been careful to avoid regulatory duplication in the proposed terms and conditions. For instance, if a particular Supply activity is already regulated under the Public Health Act, the Quality Assurance Plan required under that Act will satisfy the condition.

Further, we consider that a WQMS for Declared Catchment Areas only is not adequate for the merged organisation. As a result of the formation of Water NSW under the Water NSW Act, the authorisations for the water Supply functions have expanded and can now apply outside the Declared Catchment Areas.⁵⁹ It is therefore appropriate for Water NSW to also manage the quality of water that it Supplies from Non-Declared Catchment Areas. Option B contains a secondary obligation for a WQMS to be maintained in relation to any water Supplied in Non-Declared Catchment Areas.⁶⁰

⁵⁹ Except for the Fish River Water Supply Scheme we understand that this activity does not currently occur outside of the declared catchment area.

⁶⁰ Note that this condition relates only to the specific meaning of the term "Supply" as described in the defined term in the licence as distinct from water "captured stored and released" which has historically occurred in "non-declared catchment" areas without a WQMS.

Water NSW does not currently undertake any Supply activities, according to the proposed definition of Supply, in Non-Declared Catchment Areas, apart from the Fish River Scheme. The additional component to the WQMS requirements in Option B is proposed to allow longevity of the operating licence, ie, to accommodate for any future expansion to Water NSW's operations. Consequently, it would only result in a cost if Water NSW undertakes new Supply activities in Non-Declared Catchment areas in the future and will be proportional to the risk of the specific nature of the activities proposed. Stakeholders raised concerns about a potential qualitative cost of duplicative regulation. Our drafting of the condition is intended to avoid such an outcome. The benefit identified is derived from the assurance that a WQMS will be required for all water Supplied within the area of operations.

Where Water NSW takes responsibility for Supply of water under its own water access licences, Option B also places responsibility for managing the quality of that water. Under this option the level of water quality management required is flexible and can be tailored depending on the risk of the scheme.

A WQMS is not intended to apply to Water NSW's function 'to capture and store water and to release water' in Non-Declared Catchment Areas, which (under our definitions) relate to the majority of activity in Non-Declared Catchments Areas. For example, the WQMS is not intended to apply to water captured, stored and released to irrigators or local towns.

5.2.3 Preferred option

Our preferred option is Option B, ie, to include two components to the WQMS: one for Declared Catchment Areas and the other for Non-Declared Catchment Areas. Drafting of the preferred option is shown in clause 2.1 of the licence.

Recommendations

- 8 The operating licence authorises Water NSW to protect and enhance the quality and quantity of water in Declared Catchment Areas.
- 9 The operating licence includes terms and conditions requiring Water NSW to maintain a Water Quality Management System (WQMS) to manage the water quality in Declared Catchment Areas.
- 10 The operating licence includes terms and conditions requiring Water NSW to maintain a WQMS to manage Supplied water quality from Non-Declared Catchment Areas, where Supply activities occur.

5.3 System Yield

The existing Water NSW (SCA) operating licence and previous versions of it have contained a longstanding provision for the calculation of System Yield on the occurrence of a number of trigger events. Further, the existing licence includes a requirement to regularly review the model for calculating System Yield. These requirements are currently only in the existing licence which means that they are only applicable to the Sydney Catchment Area.

We consider it important to retain these requirements in the new operating licence, but clarify that it applies to any Declared Catchment area and relates to Water NSW's listed function to protect the quantity of water in declared catchment areas

5.3.1 Issues raised

In our Issues Paper, we sought feedback from stakeholders about whether long-term planning and supply sufficiency were appropriately informed by the obligations to calculate System Yield, and if the System Yield and the design criteria were appropriately defined and calculated.

Water NSW considered the concept of the System Yield to be sufficiently defined within the existing obligations of the Water NSW (SCA) operating licence. The design criteria form part of the Water NSW levels of service which are developed during consultation with customers and should not be detailed in the new operating licence.

Sydney Water similarly considered the existing provisions appropriate. However, it suggested that the assumptions underlying the System Yield, the design criteria, and the triggers for reviewing the System Yield model should be made publicly available.

The NSW Government submission stated that the existing requirements should be maintained in the new operating licence but an additional System Yield definition should be included to match the approach adopted in the 2017 Metropolitan Water Plan which would include medium and long-term indicators of supply sufficiency.

We presented terms and conditions on the System Yield, largely similar to the existing conditions of the Water NSW (SCA) operating licence. The draft licence did not include additional definitions to directly match the approach adopted in the Metropolitan Water Plan, as suggested by the NSW Government.

We received submissions to these draft terms and conditions from Water NSW, the NSW Government, Sydney Water and Centroc.

Water NSW sought amendment of the draft operating licence requirement to review the model for calculating the System Yield by the first quarter of 2021, or an earlier occurrence of one of the recalculation trigger events to the System Yield,⁶¹ to reflect what it considered was the intended outcome of the clause. That is, for the model to remain accurate by requiring periodic reviews or reviews required by the occurrence of a *significant* change that impacted the System Yield.⁶²

Further, the draft operating licence required Water NSW to consult with customers widely when reviewing the model.⁶³ Water NSW requested that this be amended so that only customers who are impacted by the System Yield need to be consulted with, as the current wide requirement would create undue burden on Water NSW.⁶⁴

⁶¹ Water NSW draft operating licence clause 2.6.1.

⁶² Water NSW, *WaterNSW submission to the Independent Pricing and Regulatory Tribunal Review of the WaterNSW Operating Licences*, pages 17-18.

⁶³ Water NSW draft operating licence clause 2.6.2.

⁶⁴ Water NSW, *WaterNSW submission to the Independent Pricing and Regulatory Tribunal Review of the WaterNSW Operating Licences*, pages 17-18.

Sydney Water generally supported the terms and conditions proposed in the draft operating licence. However, it raised concern that linking the review of the System Yield model to the System Yield recalculation trigger events specified in the operating licence was overly prescriptive and could create unintended consequences.⁶⁵

The NSW Government suggested that calculation of System Yield should take account of the two calculations of water supply yield defined within the 2017 Metropolitan Water Plan.⁶⁶

The options discussed below take into consideration the comments we received from stakeholders in response to the draft operating licence.

5.3.2 Options assessed

Table 5.2 System Yield options

Options	Description
Option A (Base case)	Existing clauses updated to clarify scope within the Declared Catchment Area
Option B	Existing clauses, applied to any Declared Catchment Area, with some edits to the terms and conditions
Option C	Inclusion of two types of System Yield calculation: 'fixed' and 'time varying' yields

We considered three options for the System Yield obligation.

Option A is as close to the existing operating licence obligations as possible, updated to clarify its application to any Declared Catchment Area (and not to Non-Declared Catchment Areas).

In response to stakeholder comments to specify which customers should be consulted during the model review, in Option B, we have proposed that the condition in the draft operating licence be updated to “customers who are Supplied water from the Declared Catchment Area”. We consider that this is a more auditable requirement than Water NSW’s suggestion of “customers who are impacted by the system yield. Further, it allows longevity of the operating licence while achieving the same desired outcome.

We have not proposed a requirement to “review the model at an occurrence of the recalculation trigger events”. Instead, the model must be reviewed once by 2021, to ensure it maintains currency while allowing Water NSW to determine the frequency of model reviews, as appropriate.

We consider that Option B represents drafting changes only, in comparison with Option A, and the intent of the existing condition remains the same. Consequently, there is no additional cost in comparison to the Base Case.

In response to the NSW Government’s suggestions, we also considered Option C, which includes the modified version of the System Yield obligations from Option B, but introduces

⁶⁵ Sydney Water, *Submission to IPART on Water NSW’s Draft Operating Licence 2017-2022*, April 2017, page 4.

⁶⁶ NSW Government, *Review of the draft WaterNSW Operating Licence – NSW Government submission*, March 2017, page 3.

a second definition of System Yield. The two definitions are termed the “fixed” and “time varying” System Yield.

However, the CBA identified the cost of the additional modelling over the five year term of the operating licence would be between \$0.85 million-1.049 million.⁶⁷ This might have reflected the relative uncertainty regarding specific detail relating to the alternate System Yield calculation, since the 2017 Metropolitan Water Plan had not been publicly released at the time that Water NSW estimated these costs.

The benefits identified were not quantifiable but were recognised as improved modelling capacity which may lead to better decision making.

We have chosen not to introduce an additional definition of System Yield at this time. We prefer to wait until the benefits of such a definition can be better identified and quantified and the detail associated with the new type of System Yield is finalised between Water NSW and the relevant agencies. We consider this could be a matter dealt with between Water NSW and the Department of Planning and Environment (DP&E, Metropolitan Water Directorate) as part of a Memorandum of Understanding (MoU) that we have proposed specifically for the review and implementation of the Metropolitan Water Plan (which is discussed in section 9.4). In relation to the definitions included in the 2017 Metropolitan Water Plan we consider Water NSW can use both definitions proposed by DP&E, if it considers appropriate, and as negotiated with DP&E under the proposed MoU, but this is not required by the operating licence.

We consider that these terms and conditions facilitate Water NSW’s planning and relate to its function to protect and enhance the *quantity* of water in Declared Catchment Areas. We therefore also need to authorise this function in the operating licence.

5.3.3 Preferred option

Our preferred option is Option B for the System Yield obligations. The proposed terms and conditions are included in operating licence clauses 2.5 and 2.6.

Recommendation

- 8 The operating licence authorises Water NSW to protect and enhance the quality and quantity of water in Declared Catchment Areas.
- 11 The operating licence retains the existing terms and conditions relating System Yield for Declared Catchment Areas, with minor updates.

5.4 Water Conservation Strategy

Water conservation is an important consideration for efficient, modern and good-practice water utilities. We consider that it relates to Water NSW’s listed function to protect and enhance the quality and quantity of water in Declared Catchment Areas. Further, we

⁶⁷ These costs are based on Net Present Value (NPV) over the term of the proposed operating licence (ie, five years) using discount rates recommended by NSW Treasury, *pp 07-5, NSW Government Guidelines for Economic Appraisal*, July 2007, p 52.

consider that an obligation related to water conservation in the operating licence will contribute to fulfilling the required terms and conditions described by section 12(2)(a)(i) of the Water NSW Act.⁶⁸

In the past, regulatory approaches to water conservation have been mixed. The existing Water NSW (SCA) operating licence has no explicit water conservation obligation beyond the Environmental Management System. In contrast, the Water NSW (State Water) licence has an explicit water conservation obligation requiring Water NSW to take all reasonable steps to conserve water and minimise water losses that result from undertaking operations under the licence. In our most recent review, we have introduced the concept of an Economic Level of Water Conservation (ELWC) in the Sydney Water operating licence.

We proposed introducing the ELWC in the draft Water NSW operating licence, but after considering submissions from stakeholders and in particular Water NSW, we have recommended a Water Conservation Strategy requirement rather than an ELWC in the final operating licence.

5.4.1 Issues raised

Our Issues Paper did not specifically discuss water conservation measures and we received no specific submissions on the issue.

As above, we included an ELWC requirement in the draft licence as we considered that it related to Water NSW's function to protect and enhance the *quantity* of water in Declared Catchment Areas. Further, it is related to the efficient, co-ordinated and commercially viable conduct of the capture, store, release and supply of water in Water NSW's whole area of operations.

We received responses to the draft ELWC requirements from Water NSW, Sydney Water, Gwydir Valley Irrigators' Association, Murrumbidgee Irrigation, Namoi Water and Lachlan Valley Water.

Water NSW was concerned that ELWC was not appropriate or practical for Water NSW's operations. Unlike Sydney Water or Hunter Water, Water NSW does not operate a 'closed' network. Rather, it provides water through networks of rivers and channels in natural systems which are subject to natural water losses such as evaporation and seepage into the soil. For this reason, Water NSW considered that application of the proposed ELWC requirement was not practical for its circumstances. Water NSW considered that the ELWC requirements are most appropriate for measuring and minimising closed-system losses, as in the Sydney Water licence.⁶⁹

Water NSW also considered that it already operates within a regulatory framework that incorporates an ELWC type mechanism. That is, the Murray Darling Basin Plan provides for a Sustainable Diversion Limit adjustment mechanism which will either allow equivalent

⁶⁸ The operating licence must include terms or conditions under which Water NSW is required: '(a) in connection with an operating licence that authorises Water NSW to capture, store, release or supply water:

(i) to provide, construct, operate, management and maintain efficient, co-ordinated and commercially viable systems and services to capture, store, release or supply water,...

⁶⁹ Water NSW, *WaterNSW submission to the Independent Pricing and Regulatory Tribunal Review of the WaterNSW Operating Licences*, pages 18-21.

environmental outcomes to be achieved with less water, or increase the volume of water available for environmental use with neutral or improved socio-economic impact.⁷⁰

To avoid duplication and potential cost implications, Water NSW suggested that the existing requirements of the Water NSW (State Water) licence to “take all reasonable steps to conserve water and minimise losses that result from undertaking operations”⁷¹ could be updated to also require Water NSW to document those steps and any rationale or methodology in taking those steps.⁷²

Sydney Water supported the proposed ELWC requirements, particularly with respect to the Sydney Catchment Area, but noted that there is potentially a limited scope of water conservation activities that are within Water NSW’s control. Instead of requiring the ELWC requirements, a broader clause, such as the existing requirements of the Water NSW (State Water) operating licence, could be expanded to also apply to the Sydney Catchment Area. Sydney Water considered that this would achieve the same desired outcomes as the proposed ELWC requirements.⁷³ Murrumbidgee Irrigation also considered that this would be a reasonable approach and did not support inclusion of the ELWC requirements in the operating licence.⁷⁴

Sydney Water also notes that if an ELWC methodology is required in the licence, it should not be unduly prescriptive and should allow for any work done by Water NSW to meet the operating licence requirements to complete work done under the Metropolitan Water Plan to achieve a sustainable water supply, rather than duplicate it.⁷⁵

The NSW Irrigators’ Council,⁷⁶ Gwydir Valley Irrigators’ Association,⁷⁷ Namoi Water⁷⁸ and Lachlan Valley Water⁷⁹ did not support including ELWC requirements in the operating licence. Lachlan Valley Water was concerned about the costs involved with implementing the ELWC requirements and the risk of this cost being transferred to Water NSW’s customers.⁸⁰

Informed by stakeholder feedback, we considered alternative options for the water conservation obligations. We discuss below the options we considered for the recommended operating licence.

70 *ibid*

71 Water NSW (State Water) licence, clause 3.1.4.

72 *ibid*

73 Sydney Water, *Submission to IPART on Water NSW’s Draft Operating Licence 2017-2022*, April 2017, page 5.

74 Letter to IPART, Mr Brett Jones, Managing Director, Murrumbidgee Irrigation, 7 April 2017, page 1.

75 Sydney Water, *Submission to IPART on Water NSW’s Draft Operating Licence 2017-2022*, April 2017, page 5.

76 Letter to IPART, Mr Mark McKenzie, Chief Executive Officer, New South Wales Irrigators’ Council, 7 March 2017, page 3.

77 Letter to IPART, Ms Zara Lowien, Executive Officer, Gwydir Valley Irrigators’ Association, 10 April 2017, page 2.

78 Namoi Water, *Namoi Water Submission to IPART Water NSW Draft Operating Licence*, April 2017, page 3.

79 Letter to IPART, Mr Mark Ewing, Executive Officer, Lachlan Valley Water Inc, 7 April 2017, page 2.

80 *Ibid*.

5.4.2 Options considered

Table 5.3 Water conservation options

Options	Description
Option A (Base case)	Retain existing wording of the Water NSW (State Water) licence
Option B	Include an obligation for an Economic Level of Water Conservation methodology
Option C	Include an obligation for a Water Conservation Strategy

We have considered the costs and benefits of each of the options. We also compared the options using Multi-Criteria Analysis (MCA).

We consider that the intention of all options is the same. That is, to ensure that Water NSW undertakes a level of water conservation activity in relation to its operations, where the activities are practical and beneficial. Clause 3.1.4 of the existing Water NSW (State Water) operating licence requires water conservation. We consider this to be the base case and the proposed requirement for either a Water Conservation Strategy or an ELWC methodology to be an extension and refinement of this requirement, and one that provides greater clarity and auditability.

In reviewing the operating licence, we considered whether to retain the existing licence requirements for Water NSW to:

‘take all reasonable steps to conserve water and minimise water losses that result from undertaking its operations under this licence’.⁸¹

We also considered if it should apply only to Water NSW’s function ‘to capture and store water and to release water’, or to all of Water NSW’s functions. Further, we considered the auditability of the clause and consistency with other similar requirements in other operating licences.

The wording of the existing operating licence clause is difficult to audit because there is no requirement for a documented methodology or thorough consideration of water conservation options. Thus, while Water NSW undertakes activity in the area of water conservation, it is difficult to assess whether it has taken all reasonable steps to conserve water and minimise water losses.

We therefore proposed Option B in the draft operating licence. The benefits of moving to an ELWC methodology obligation included potential greater efficiency of activities, transparency and objectivity around the selection of water conservation projects and improved documentation and rigour of water conservation programs which will facilitate simpler auditing of the clauses. The form of the operating licence obligation would change, and would incur some initial set up costs. However, the level and nature of the water conservation programs and activities may not necessarily change unless the methodology suggested previously unidentified potential improvements or identified new projects that have a net social benefit.

⁸¹ Water NSW (State Water) licence, clause 3.1.4.

We considered that an obligation for an ELWC methodology was an opportunity for Water NSW to change its approach towards identifying potential water conservation projects from 'all reasonable steps' which could be broadly interpreted, to only those projects that can demonstrate that savings or advantages can outweigh the costs. This would enhance the transparency in the decision making process and the certainty in auditability of this clause in the future.

By designing an ELWC appropriate for Water NSW's circumstances, using cost benefit analysis for deciding on the ELWC methodology design and using existing procedures, the costs relating to development of the methodology could be minimised.

Although the form of the obligation was very similar to that included in the Sydney Water operating licence, the ELWC methodology developed by Water NSW could vary substantially from that developed by Sydney Water. For example, the three elements that apply to Sydney Water's methodology do not apply to Water NSW,⁸² instead, for water conservation measures, a different fourth element could be developed; 'water storage and transmission'. This variation alone could justify significant differences in an appropriate strategy or methodology.

However, we acknowledge Water NSW's and other stakeholders' concerns with Option B and have considered alternative approaches to address these concerns.

We therefore developed a new Option C. Under this option, Water NSW would be required to submit its Water Conservation Strategy which must include its processes for:

- ▼ identification and documentation of existing water conservation activities
- ▼ identifying additional options for conserving water
- ▼ comparing options, and
- ▼ selection of processes for implementation.

A Water Conservation Strategy (ie, Option C) may assist Water NSW to realise substantial benefits arising from more efficient resource allocation in water conservation activities. These benefits may be greater using an ELWC methodology (ie, Option B). However, we considered carefully Water NSW's statement that there are variations in losses from natural systems (eg, evaporation and seepage from rivers and dams) that make an ELWC methodology, similar to Sydney Water's, more complex. Further with the relative lack of data, the costs of estimating these variations in losses may become disproportionately larger than the related benefits.

The costs relating to a Water Conservation Strategy are likely to be substantially less than the development and maintenance of an ELWC strategy. A Water Conservation Strategy would likely provide greater benefits than the related cost. It is consistent with Water NSW's suggestion to expand on its existing water conservation obligations to document steps that it has taken in relation to water conservation, and any rationale or methodology in taking those steps. It also improves the auditability and transparency of water conservation obligations within the licence while reducing Water NSW's regulatory burden as IPART's approval of this Strategy is not required.

5.4.3 Preferred option

Our preferred option is Option C, ie, to include a requirement for Water NSW to report on its Water Conservation Strategy in line with the requirements of the operating licence. The proposed terms and conditions are included in licence clause 2.7.

Recommendation

- 12 The operating licence requires Water NSW to develop, document and report on its Water Conservation Strategy.

5.5 Manage and protect Declared Catchments

We consider that Water NSW should be authorised to “manage and protect declared catchment areas and water management works vested in or under the control of Water NSW that are used within or for the purposes of such areas”. The Water NSW Act states that this is one of Water NSW’s listed functions.⁸³ Water NSW currently undertakes this function under the authority of its Water NSW (SCA) operating licence.

It is important that Water NSW is able to continue to undertake this function because it has an impact on Water NSW’s capacity to Supply water to customers for drinking water purposes within the Sydney Catchment Area. Further, it is related to Water NSW’s other Declared Catchment functions. The function is consistent with Water NSW’s principal objective in section 6(1)(c) of the Water NSW Act.

In the operating licence, we have recommended terms and conditions that require Water NSW to undertake this function but only to the extent set out in Water NSW’s WQMS, Asset Management System (AMS) and Environmental Management System (EMS).

We have also recommended terms and conditions in the operating licence specifying which information Water NSW must publish or report on with respect to the Declared Catchment Areas that it manages and protects.

5.5.1 Issues raised

Our Issues Paper discussed all of the Declared Catchment functions together⁸⁴. The NSW Government, Sydney Water and Water NSW submissions were in favour of retaining the existing conditions of the Water NSW (SCA) licence to manage and protect Declared Catchment Areas and water management works.

The existing Water NSW (SCA) operating licence contains two ‘catchment management’ specific obligations and two ‘catchment infrastructure management’ obligations.⁸⁵ These conditions specify requirements in relation to information that Water NSW collects on water quality relevant to the (Declared) Catchment Area and on the Catchment Health

⁸³ Water NSW Act, s 7(1)(h).

⁸⁴ The other Declared Catchment functions being “to protect and enhance the quality and quantity of water in declared catchment areas” and “to undertake research on catchments generally, and in particular on the health of the declared catchment areas”.

⁸⁵ Clauses 4.1.1 and 4.2.1 and clauses 3.1.1 and 3.1.2 of the Water NSW (SCA) operating licence respectively.

Indicators under section 41 of the Water NSW Act. Information on the Catchment Health Indicators is provided to the Appointed Auditor.

In the draft operating licence we proposed to include the above existing requirements. Further, we linked the catchment management requirements with Water NSW’s WQMS, AMS and EMS. We received responses from Water NSW and Sydney Water.

Water NSW did not support the draft terms and conditions as it was concerned that they duplicated the Water NSW Act and other parts of the operating licence. Further, as it only owns a small percentage of the Sydney Catchment Area, it considered that the AMS and EMS are not material to its catchment management.⁸⁶

Water NSW did not support publishing all information that it collects on water quality relevant to the Declared Catchment Areas, as was implied by the draft operating licence. Water NSW considered that by providing the required information to the Appointed Auditor, it is already making information on the Declared Catchment Areas publicly available.

Sydney Water supported maintaining the existing requirements of the Water NSW (SCA) operating licence for the Sydney Declared Catchment Area. This is an important part of the ‘catchment to tap’ preventative risk management approach to water quality protection, established by the ADWG.⁸⁷

We discuss below the options we considered for the recommended operating licence, informed by stakeholder submissions to the draft.

5.5.2 Options considered

Table 5.4 Catchment management and protection options

Options	Description
Option A (Base case)	Retain existing conditions of the Water NSW (SCA) operating licence
Option B	Update existing conditions to clarify that the requirement to manage and protect catchments relates to Declared Catchment Areas, to the extent set out in the , WQMS, AMS and EMS. Retain existing obligation for reporting on and publishing information.

Note: The cost benefit analysis discusses the obligations under two separate headings as they were formerly contained within two separate chapters of the Water NSW (SCA) operating licence. Due to their inter-related nature and the new structure of the operating licence they have been co-located within the draft operating licence. Clause 3.1.2 of the existing licence was moved to the reporting manual and clause 4.2.1 of the existing licence was combined with the information provision clause as explained below.

Under Option A, we could retain the existing authorisation and requirement of the Water NSW (SCA) operating licence to manage and protect the Sydney Catchment Area, consistent with Water NSW’s objectives and functions under the Water NSW Act. However, we consider that this would not be adequate in the new operating licence because

⁸⁶ Water NSW, *WaterNSW submission to the Independent Pricing and Regulatory Tribunal Review of the WaterNSW Operating Licences*, page 17.

⁸⁷ Sydney Water, *Submission to IPART on Water NSW’s Draft Operating Licence 2017-2022*, April 2017, pages 1 and 3.

Water NSW's listed function under the Water NSW Act is to manage and protect Declared Catchment Areas generally. It is not specific to the Sydney Catchment Area.

Under Option B, Water NSW would be required to manage and protect *all* Declared Catchment Areas (but not Non-Declared Catchment Areas). However, this requirement would only apply to the extent set out in Water NSW's WQMS, AMS and EMS. Option B recognises the inter-related nature of multiple sections of the operating licence to the Declared Catchment management and protection function. The intent is consistent with the existing operating licence clauses and thus no additional costs or benefits were identified.

Both options A and B place a requirement on Water NSW to undertake Declared Catchment management activities. This obligation is not contained in any other instruments. We consider that Option B has the added benefit that it provides clarity about the inter-related nature of the operating licence, which Option A does not. This focus on the interconnected nature of the operating licence obligations reflects the interrelated nature of the functions, activities and operations of Water NSW. Further, Option B provides guidance on the scope of the activities that should be undertaken, improving the auditability of the condition.

Both options would retain the existing operating licence clause on providing information on (Declared) Catchment Areas (clause 4.2 of the Water NSW (SCA) operating licence). This includes water quality information and information on Catchment Health Indicators. Under Option B, we have also proposed that Water NSW report on some new environmental indicators. We consider that this is necessary to satisfy the requirements of section 12(2)(b) of the Water NSW Act^{88,89} and consequently Option B is preferred in this regard as well. We propose co-location of these clauses in the new operating licence for ease of use.

We have addressed Water NSW's concerns about public sharing of information by only requiring Water NSW to make its Declared Catchment Area water quality monitoring information publicly available. It would not need to do so for the information it collects in relation to the environmental indicators or on the Catchment Health Indicators that Water NSW provides directly to the Catchment Auditor.⁹⁰

5.5.3 Preferred option

Our preferred option is Option B, ie, to retain the intention of the existing operating licence clauses but include the updates described above.

The terms and conditions are included in licence clauses 2.2 and 2.3.

⁸⁸ 'The operating licence must include terms or conditions under which Water NSW is required: In connection with an operating licence that authorises Water NSW to exercise functions with respect to a Declared Catchment Area – to compile indicators of the direct impact of Water NSW's activities (including but not limited to, the impact of energy used and waste generated) on the environment so as to provide information about its performance and enable reports to be prepared.

⁸⁹ Clause 7.2 of the existing Water NSW (SCA) operating licence requires reporting on NWI environmental indicators but we consider that it is not appropriate to apply this to all Declared Catchment Areas in the new operating licence as NWI indicators are 'urban' indicators. Consequently, they are not adequate to meet the requirements of section 12(2)(b) of the Act. We have however, retained reporting requirements against the NWI indicators in the reporting manual, for the Sydney Catchment Area only..

⁹⁰ The operating licence links all reporting and information publishing requirements to the reporting manual.

Recommendation

- 13 The operating licence requires Water NSW to manage and protect the Declared Catchment Areas to the extent that it is consistent with the objectives of the Water NSW Act, the Water Quality Management System, the Asset Management System and Environmental Management System..
- 14 The operating licence includes terms and conditions, similar to those in the existing Water NSW (SCA) operating licence, to publish information relevant to the Declared Catchment Areas (ie, water quality, data in relation to Catchment Health Indicators, and data in relation to Environmental Indicators), in accordance with the Reporting Manual.

5.6 Research on catchments

We consider that Water NSW should be authorised, in the operating licence, to “undertake research on catchments generally and in particular on the health of the declared catchment areas”. The Water NSW Act states that this is one of Water NSW’s listed functions.⁹¹ Water NSW currently undertakes this function under the authority of its Water NSW (SCA) operating licence.

It is important that Water NSW is able to continue to undertake this function because it has an impact on Water NSW’s capacity to Supply water to customers within the Sydney Catchment Area for drinking water purposes. Further, it supports Water NSW’s other Declared Catchment functions. The function is consistent with Water NSW’s principal objective in section 6(1)(c) of the Water NSW Act.

The operating licence will authorise Water NSW to undertake this function throughout its area of operations, but will only *require* Water NSW, by means of the operating licence terms and conditions, to undertake this function in Declared Catchment Areas.

The existing Water NSW (SCA) operating licence authorises Water NSW to undertake this function, but only in the Sydney Catchment Area, and it contains no specific terms and conditions regulating how it undertakes the function.

5.6.1 Issues raised

Our Issues Paper discussed the Declared Catchment Area functions together, but we did not specifically raise any issues related to the catchment research function. The NSW Government submission to the Issues Paper however suggested that there could be benefit in Water NSW undertaking research on catchments generally, outside the Sydney Catchment Area.

In the draft operating licence, we proposed to authorise Water NSW to undertake this function throughout its area of operations. We also proposed a new condition requiring a Water NSW to maintain a program of research on catchments. This condition was not constrained to any particular area and it was designed to allow Water NSW to implement research activities as it considered fit.

⁹¹ Water NSW Act, s 7(1)(j).

In response, we received submissions from Water NSW, Sydney Water, Centroc, Murrumbidgee Irrigation, the NSW Irrigator’s Council and Gwydir Valley irrigators’ Association.

Water NSW raised concern with being *required* to undertake this function outside Declared Catchment Areas, as it perceived the operating licence to require. It did not however oppose *authorising* Water NSW to undertake this function generally.⁹² Gwydir Valley Irrigators’ Association also opposed expanding the requirement to undertake this function outside the Sydney Catchment Area, stating that this research is already being undertaken by other entities.⁹³

Sydney Water supported the new condition of the operating licence. However, it did not have a view on expanding this function outside the Sydney Catchment Area.⁹⁴ Centroc supported obligations related to research in all catchments but encouraged engagement with local government to ensure alignment with the region’s priorities and to avoid any duplication of effort.⁹⁵

Murrumbidgee Irrigation⁹⁶ and the NSW Irrigators’ Council⁹⁷ raised concerns with how the function would be funded if expanded outside the current Sydney Catchment Area. However, NSW Irrigators’ Council supported expanding the authorisation outside the Sydney Catchment Area. It suggested that any additional costs could be funded by the NSW Government on behalf of the wider community.

We discuss the options we considered for the recommended operating licence, informed by stakeholder submissions to the draft.

5.6.2 Options considered

Table 5.5 Research on catchments options

Options	Description
Option A (Base case)	Authorise Water NSW in the operating licence to undertake catchment research in the Sydney Catchment Area only, and no specific terms and conditions
Option B	Authorise Water NSW to undertake catchment research throughout its area of operations generally, and include general conditions (i.e., not constrained to the Declared Catchment Areas)
Option C	Authorise Water NSW to undertake catchment research throughout its area of operations generally, and include a new obligation constrained to only the Declared Catchment Areas

We used Multi-Criteria Analysis (MCA) to compare each option.

⁹² Water NSW, *WaterNSW submission to the Independent Pricing and Regulatory Tribunal Review of the WaterNSW Operating Licences*, page 21.

⁹³ Letter to IPART, Ms Zara Lowien, Executive Officer, Gwydir Valley Irrigators Association, 10 April 2017, page 2.

⁹⁴ Sydney Water, *Submission to IPART on Water NSW’s Draft Operating Licence 2017-2022*, April 2017, page 3.

⁹⁵ Central NSW Councils, *Independent Pricing and Regulatory Tribunal WaterNSW operating licences review*, April 2017, page 6.

⁹⁶ Letter to IPART, Mr Brett Jones, Managing Director, Murrumbidgee Irrigation, 7 April 2017, page 2.

⁹⁷ Letter to IPART, Mr Mark McKenzie, Chief Executive Officer, New South Wales Irrigators’ Council, 7 March 2017, page 5.

We consider Option A to be the Base Case because it most similarly replicates the status quo. It would authorise Water NSW to undertake research on catchments generally, and in particular on the health of Declared Catchment Areas, but the operating licence would not include a specific condition on the conduct of this function. However, with this option, Water NSW would only be authorised to undertake this function in the Sydney Catchment Area.

The CBA identified no incremental costs or benefits in implementing Option A.

Most stakeholders generally supported authorising this function outside the Sydney Catchment Area, as proposed in options B and C. Further, as the function is one of Water NSW's 'listed functions', we see benefit in including an obligation in the operating licence corresponding to the authorisation, for transparency and auditability of the listed function. This is proposed in options B and C.

Option B was presented in the draft operating licence. We proposed that, the obligation would not be constrained to only the Sydney Catchment Area, or any other Declared Catchment Area. However, Water NSW identified a net cost of around \$750,000 per year relative to the base case to demonstrate compliance with this condition. This estimate assumes that a large increase in research activity will be required outside the Declared Catchment Area.

While we consider that the draft terms and conditions did not require this and were intended to be non-prescriptive, we acknowledge the concerns of stakeholders that this may have been ambiguous. This could therefore make the terms and conditions open to interpretation and potentially lead to higher costs. Further, we acknowledge that Gwydir Valley Irrigators' Association noted that other entities already undertake research outside the (declared) Sydney Catchment Area. We therefore considered Option C.

Option C includes authorising Water NSW to undertake this function outside the Sydney Catchment Area (ie, throughout Water NSW's area of operations). It also includes a specific obligation to maintain a program of research on the Declared Catchment Areas and report on its program.

Water NSW has forecast substantial cost attached to options B and C. Given that we do not propose to specify research requirements or scope in Non-Declared Catchments for Option C, we anticipate forecast costs would be substantially less, and less likely to occur, for this option.

There are also substantial benefits under both options relating to an expansion of research scope to catchments generally for both options, which is greater under Option B (as it may be required under this option) than under Option C (as it is clearly discretionary under this option). Both options B and C would meet the requirements of the Water NSW Act and have benefits that are greater than the related costs. The MCA indicated that Option C had the greatest net social benefit.

5.6.3 Preferred option

Our preferred option is Option C, ie, to authorise Water NSW to undertake research on catchments generally and in particular on the health of the declared catchment areas, and to

include a condition in the operating licence specifically relating to research on Declared Catchment Areas. The proposed wording is presented in the operating licence clause 2.8.

Recommendation

- 15 The operating licence authorises Water NSW to undertake research on catchments generally and in particular on the health of the Declared Catchment Areas. It also requires Water NSW to undertake this function in the Declared Catchment Areas.

6 Bulk water storage and transmission

The third part of the recommended operating licence includes clauses relating to the construction, operation and maintenance of water management works, Supply of water to customers, and Water NSW's function to capture and store water and to release water to customers.

The significant recommendations for the operating licence are listed below. This chapter explains and provides background on how we developed each of these recommendations.

Recommendations for the operating licence:

- 16 The operating licence authorises Water NSW to construct, operate and maintain water management works throughout its area of operations.
- 17 The operating licence requires Water NSW to construct, operate and maintain water management works consistent with an Asset Management System.
- 18 The operating licence authorises Water NSW to undertake its listed Supply functions in section 7(1)(b) – (e) of the Water NSW Act, throughout its area of operations.
- 19 The operating licence requires Water NSW to undertake the Supply functions in accordance with a relevant Water Quality Management System and customer supply agreement.
- 20 The operating licence authorises Water NSW to capture and store water and to release water to persons entitled to take the water, including release to regional towns and for any other lawful purpose, as well as including the release of environmental water.
- 21 The operating licence includes terms and conditions to regulate how Water NSW captures, stores and releases water, and provides information in relation to the water released, to customers.
- 22 The operating licence does not include any additional obligations to provide services to customers.
- 23 The operating licence does not authorise Water NSW to undertake flood mitigation and management under the Water NSW Act. Water NSW can only undertake flood mitigation and management activities under the authority of other regulatory instruments.

6.1 Construct, operate and maintain water management works

We consider that Water NSW should be authorised to construct, operate and maintain water management works. The *Water NSW Act 2014* (Water NSW Act) states that this is one of Water NSW's listed functions.⁹⁸ Water NSW currently undertakes this function throughout the State of NSW under the authority of both of its existing operating licences. For

⁹⁸ Water NSW Act, s 7(1)(f).

Water NSW to be able to continue to undertake this function, the new operating licence must also authorise it.

Further, we consider that the operating licence should require Water NSW to undertake this function consistent with an Asset Management System (AMS). Terms and conditions regulating maintenance and implementation of the AMS are discussed further in section 8.1.

6.1.1 Issues raised

The Issues Paper asked stakeholders if Water NSW should be authorised to construct, operate and maintain its water management works, as it currently does so, throughout the State of NSW. Three stakeholders (Water NSW, the NSW Government and DP&E) responded supporting authorisation of this function in the new operating licence. Water NSW considered that the operating licence should only include terms and conditions that required a certified AMS.

The draft operating licence authorised Water NSW to construct, operate and maintain its water management works throughout the State of NSW. Further, it included terms and conditions for Water NSW to construct, operate and maintain its water management works consistent with an AMS. We received no specific responses to this proposal. We have therefore proposed no changes in the final recommend operating licence. We discuss below the options we assessed in developing our draft and final positions.

Stakeholders provided specific feedback on the requirements of the operating licence proposed in relation to the AMS. This is discussed further in section 8.1.

6.1.2 Options assessed

Table 6.1 Options for authorising and regulating construction, operation and maintenance of assets by Water NSW

Options	Description
Option A (Base case)	Authorise Water NSW to construct, operate and maintain its assets (throughout NSW) and include terms and conditions requiring an AMS but there is no obvious link between the authorisation and the AMS
Option B	Authorise Water NSW to construct, operate and maintain its assets (throughout NSW) and include terms and conditions to clearly link this function with the AMS
Option C	Do not authorise Water NSW to construct, operate and maintain its assets and do not include any terms and conditions

Currently, Water NSW is authorised to construct, operate and maintain its assets throughout the State of NSW under its existing operating licences.

With Option A, we could maintain this authorisation in the new operating licence allowing us to include terms and conditions to regulate how it undertakes this function. The existing operating licences include terms and conditions requiring an AMS, which none of Water NSW's other regulatory instruments currently do. Therefore, to avoid losing these requirements when the existing licences are replaced, they could be replicated in the new operating licence. If the AMS requirements are not maintained in the new operating licence, there will no longer be any obligation on Water NSW to maintain an AMS, which we

consider would be a significant gap. All other public water utilities are required to maintain an AMS to an appropriate industry standard. This allows us to more uniformly regulate the management of assets across the utilities to a consistent, acceptable and approved standard, while retaining flexibility for utilities to build processes and procedures which are relevant for their operations.

We understand that Water NSW's water supply work approvals under the *Water Management Act 2000* authorise it to construct, operate and maintain certain individual assets (dams and weirs) only. They also include some terms and conditions regulating how Water NSW undertakes the construction, operation and maintenance activities at the associated approved assets. However, these terms and conditions do not require Water NSW to maintain or implement an AMS.

We consider that duplicating the authorisation of this function in the operating licence, so that we can subsequently establish a condition to maintain the AMS requirements will not negatively impact on Water NSW's regulatory burden as we do not intend to duplicate the terms and conditions of the water supply work approvals. Further, the operating licence provides an overarching authorisation for this function which would relate to all of Water NSW's assets, including any new ones were they to be constructed in future, unlike the infrastructure specific water supply work approvals. We consider that an overarching authorisation is appropriate and allows longevity of the operating licence.

We consider that options A and B are similar, but Option B is preferable. In Option A, it is not clear that the AMS terms and conditions regulate how Water NSW undertakes its listed function to construct, operate and maintain water management works. In Option B, we have attempted to clarify this link by including a condition that requires Water NSW to construct, operate and maintain its assets in accordance with its AMS. This would assist to increase auditability and usability of the operating licence, as well as transparency for stakeholders.

Further, we consider that Option B more closely fulfils the requirements of section 12 of the Water NSW Act. The Water NSW Act requires that in connection with an operating licence that authorises Water NSW to capture, store, release or supply water, Water NSW must provide, construct, operate, manage and maintain efficient, co-ordinated and commercially viable systems and services to capture, store, release or supply water.⁹⁹ We consider that a term or condition linking the AMS to construction, operation and maintenance of water management works achieves this requirement.

We understand that including this requirement will not impact on Water NSW's existing costs.

Option C is largely theoretical and would not authorise Water NSW to undertake this function in the operating licence. This may not preclude Water NSW from undertaking this function entirely as it could still undertake activities at certain of its assets under its individual water supply work approvals. However, if construction, operation or maintenance was required at an asset not covered by a work approval, it would not be authorised. Further, additional terms and conditions, for example those related to the AMS, would not be applicable. As explained above, we consider that this would result in a

⁹⁹ Water NSW Act, section 12(2)(a)(i).

significant regulatory gap. It is also not supported by stakeholder views. Because of this lack of clarity and the regulatory gaps identified, this option did not proceed to a formal CBA.

6.1.3 Preferred option

Option B is our preferred option. It will allow us to include terms and conditions in the operating licence requiring Water NSW to undertake this function in accordance with an AMS, and will fulfil the mandatory obligation of the operating licence under section 12(2)(a)(i) of the Water NSW Act.

The proposed condition for inclusion in the operating licence is presented in clause 3.1.

Recommendations

- 16 The operating licence authorises Water NSW to construct, operate and maintain water management works throughout its area of operations.
- 17 The operating licence requires Water NSW to construct, operate and maintain water management works consistent with an Asset Management System.

6.2 Water Supplied

We consider that Water NSW should be authorised to undertake its listed functions in relation to Supply to customers, namely:

- ▼ to supply water to Sydney Water Corporation
- ▼ to supply water to water supply authorities and to local councils or county councils prescribed by the regulations
- ▼ to supply water to licensed network operators or licensed retail suppliers within the meaning of the *Water Industry Competition Act 2006* (WIC Act), and
- ▼ to supply water to other persons and bodies, but under the terms and conditions that prevent that person or body concerned from supplying the water for consumption by others within the State unless the person or body is authorised to do so by or under an Act.¹⁰⁰

Water NSW currently undertakes these functions within the Sydney Catchment Area only, under the authority of its Water NSW (SCA) operating licence. Historically, the now repealed *State Water Corporation Act 2004* did not include these Supply functions as a function of the previous State Water. As a result, these functions are not authorised under the existing Water NSW (State Water) operating licence.

For Water NSW to be able to continue to undertake these Supply functions, we understand that the new operating licence must authorise them. We consider that the new operating licence should authorise these functions, but should not constrain the execution of these functions to within a geographic area. This allows longevity of the licence, if in future Water NSW intends to Supply to customers outside the Sydney Catchment Area.

¹⁰⁰ Water NSW Act, section 7(1)(b)-(e).

To avoid any terms and conditions of the operating licence, intended to be related to only the Supply functions, being inappropriately applied across all of Water NSW's activities, we have proposed to define "Supply", as previously discussed in section 4.2, and refer to the defined term in the terms and conditions. As previously discussed, we have also proposed that the list of explicitly authorised functions will not be constrained to the defined term but rather, Water NSW will be more broadly authorised to "supply" as per the dictionary definition.

We consider that the operating licence should require that when Water NSW undertakes its Supply functions, it does so in accordance with a relevant Water Quality Management System (WQMS) and a relevant customer supply agreement (or, in the case of Sydney Water, in accordance with its arrangements under section 25 of the Water NSW Act). Specific requirements for the WQMS and customer supply agreement are discussed in sections 5.2 and 9.1.1 respectively.

We also separately discuss other terms and conditions regulating how Water NSW undertakes Supply of water to customers, including, but not limited to, performance standards, asset management, environmental management, and customer protection clauses.

6.2.1 Issues raised

The Issues Paper asked if Water NSW should be authorised to Supply water to its customers, as allowed under the Water NSW Act. Three stakeholders (Water NSW, the NSW Government and Sydney Water) responded.

Water NSW and Sydney Water supported authorising Supply of water to customers in the operating licence. Water NSW considered that the Supply functions should not be constrained to a geographical area as it Supplies water to regional, local and county councils and to certain persons in 'rural NSW' (ie, outside the Sydney Catchment Area) who are prevented from further on-selling that water.

The NSW Government submission considered that authorisation of this function could potentially duplicate the *Water Management Act 2000* as the water supply work approvals already authorise this function at certain assets.

In general, the stakeholders considered that the operating licence should include terms and conditions regulating how Water NSW undertakes retail services to Supply to customers (such as customer agreements, debt recovery processes) and to include requirements for a WQMS for all water Supplied.

The stakeholders' responses informed the option we presented in the draft operating licence. Sydney Water responded supporting the authorisation of the Supply functions and the proposed link with the WQMS and customer supply agreements in the draft operating licence.

Water NSW did not oppose the proposals either but requested that when listing the Supply functions in the explicitly authorised functions, the term ‘supply’ should retain its natural meaning to avoid limiting or constraining Water NSW’s authorisation.¹⁰¹

We have recommended minimal changes to the operating licence inclusions that were presented in the draft. We discuss below the options we considered when developing the recommended operating licence.

6.2.2 Options assessed

Table 6.2 Options for authorising and regulating water supply by Water NSW

Options	Description
Option A (Base case)	Authorise Water NSW to Supply water to customers in the Sydney Catchment Area without clearly linking this function to a relevant WQMS and customer supply agreement
Option B	Authorise Water NSW to Supply water to customers throughout NSW, and include terms and conditions to clearly link this function to a relevant WQMS and customer supply agreement. The term “supply” is defined so that any terms and conditions associated to distinguish between the ‘capture, store and release of water’ functions.
Option C	Do not authorise Water NSW to Supply water to customers

Currently, Water NSW is authorised to Supply water to its customers in the Sydney Catchment Area under its existing Water NSW (SCA) operating licence.

With Option A, we could maintain the current authorisation in the new operating licence thereby allowing us to also include terms and conditions to regulate how Water NSW undertakes this function. These terms and conditions would include a WQMS, as discussed in section 5.2, and customer related functions as discussed in Chapter 9.

We acknowledge that the NSW Government was concerned with authorising the Supply functions in the operating licence as it could duplicate Water NSW’s water supply work approvals under the *Water Management Act 2000*. However, we consider that duplicating the authorisation to retain the WQMS and customer related requirements in the operating licence will not negatively impact on Water NSW’s regulatory burden as we do not intend to duplicate any terms and conditions of the water supply work approvals.

As with the construct, operate and maintain water management works function, the operating licence would provide an overarching authorisation for Water NSW’s Supply functions which is not linked to any particular asset. The water supply work approvals only authorise Supply at specific assets. We consider that an overarching authorisation is appropriate and allows longevity of the operating licence.

Under Option A, authorisation of the Supply functions would be constrained to apply only within the Sydney Catchment Area. We consider that this is not a flexible approach and it would unnecessarily constrain this function. It does not allow longevity of the operating licence. If, for example, Water NSW wishes to expand its business operations in future to ‘Supply’ water to customers outside of the Sydney Catchment Area, as the Water NSW Act allows for, it will be inhibited from doing so by this option.

¹⁰¹ Water NSW, *WaterNSW submission to the Independent Pricing and Regulatory Tribunal Review of the WaterNSW Operating Licences*, page 11.

Under Option B, we propose to authorise Water NSW to Supply customers without geographically constraining where it undertakes this function. Water NSW will therefore be authorised to undertake this function throughout NSW. To avoid the unintended consequences previously discussed, we propose to define “Supply” as described in section 4.2. However, this definition will only be used in the terms and conditions of the operating licence and not in the explicit list of authorised functions. Further, the operating licence will include a condition that links Water NSW’s Supply of water to its customers to the WQMS and customer supply agreements. We consider that an explicit link of this sort will improve our regulation and audit process. Similar to the AMS requirements, this is another of the terms or conditions which fulfil the mandatory conditions required under section 12(2)(a)(i) of the Water NSW Act.

The CBA did not identify any incremental costs with this option, and identified a number of potential efficiencies (although they were not quantifiable).

Option C is largely theoretical and would not provide authorisation within the operating licence for Water NSW to Supply to customers. Water NSW would still be authorised to undertake Supply functions under its water supply work approvals, but this would be infrastructure-specific, and constrained to within the Sydney Catchment Area. Further, the water supply work approvals do not include the WQMS and customer requirements that are contained in the operating licence, to regulate how Water NSW Supplies water from its catchments. For these reasons this option did not proceed to the formal CBA.

6.2.3 Preferred option

Option B is our preferred option. It will allow us to include terms and conditions in the operating licence requiring Water NSW to Supply water to its customers in accordance with a relevant WQMS and customer supply agreement.

Recommendation

- 18 The operating licence authorises Water NSW to undertake its listed Supply functions in section 7(1)(b) – (e) of the Water NSW Act, throughout its area of operations.
- 19 The operating licence requires Water NSW to undertake the Supply functions in accordance with a relevant Water Quality Management System and customer supply agreement.

6.3 Capture and store water and release water

We consider that Water NSW should be authorised to capture and store water and to release water to persons entitled to take the water, including release to regional towns and for any other lawful purpose, including release of environmental water. The Water NSW Act states that this is one of Water NSW’s listed functions.¹⁰²

¹⁰² Water NSW Act, s 7(1)(a). This function has two components which were discussed separately in the Issues Paper. Stakeholders made comments on the separate components; however, we have not sought to separate this function in either authorisation or terms and conditions.

Water NSW currently undertakes its capture, store and release function across most of its area of operations except within the Sydney Catchment Area, under the authority of its Water NSW (State Water) operating licence. Historically, the now repealed *Sydney Water Catchment Management Act 1998* did not include the capture, store and release of water function. Accordingly, this function is not authorised under the existing Water NSW (SCA) operating licence.

For Water NSW to be able to continue to undertake this function, we consider that the new operating licence must authorise it. However, we consider that the new operating licence should not constrain where, within its area of operations, Water NSW undertakes this function. Instead, the operating licence should authorise Water NSW to capture, store and release water throughout its area of operations, both within and outside the Sydney Catchment Area.

Further, the operating licence should include terms and conditions regulating how it undertakes this function. Within this chapter, we recommend including a condition requiring Water NSW to maintain a register of all Local Water Utilities (LWUs) for which it maintains a Water Allocation Account and to which it captures, store and releases water for drinking water purposes. A requirement to maintain water allocation accounts is discussed separately in section 9.1.2. Other conditions relating to this function are also included in the Customers section (see Chapter 9).

We also consider that the operating licence should include terms and conditions requiring Water NSW to implement a procedure for providing information to LWUs that could inform the LWUs' drinking water quality assurance programs, when requested. The operating licence will include specific requirements related to the procedure for an information request.

These requirements are similar to those currently included in the Water NSW (State Water) operating licence. We also propose some new requirements for Water NSW (in consultation with relevant stakeholders) to complete a review of its monitoring of water quality monitoring of water released to LWUs and provide IPART with a report detailing the outcomes of the review. A consultative review will allow Water NSW to undertake water quality monitoring that is useful to its customers. We consider that Water NSW is best placed to collect and provide this water quality information, as the provider of the water released. Once a report on the review into monitoring of water quality has been provided to IPART, we could consider whether updates should be made to the reporting manual, and in what timeframe.

6.3.1 Issues raised

The Issues Paper asked stakeholders if Water NSW should be authorised to 'capture and store water and to release water' to persons entitled to take the water, including regional towns, and for any other lawful purposes, including release of environmental water as allowed under the Water NSW Act.¹⁰³

Water NSW, Sydney Water and the NSW Irrigators' Council considered that it would be appropriate for the new operating licence to authorise Water NSW to undertake the first

¹⁰³ Water NSW Act 2014, section 7(1)(a).

component of this listed function.¹⁰⁴ However, the NSW Government considered that this authorisation was not necessary because Water NSW's water supply work approvals under the *Water Management Act 2000* and water management licences under the *Water Act 1912* already authorise this function at all of Water NSW's storage assets, both within and outside the Sydney Catchment Area.

In relation to the second component¹⁰⁵ of this function, the response to authorisation was also mixed. Water NSW considered only authorisation was appropriate. However, the NSW Government and NSW Irrigators' Council were not in favour of authorisation. The NSW Government submission was concerned about duplication with the infrastructure specific water supply work approvals. Whereas the NSW Irrigators' Council raised concerns about the potential for price increases if costs related to environmental water were passed on to all customers. The Commonwealth Environmental Water Holder submission sought an operating licence which neither diminished nor enhanced licensed entitlements held for environmental use relative to like entitlements for other purposes.

Most stakeholders considered that new additional obligations beyond the existing Water NSW (State Water) operating licence conditions were unnecessary. Water NSW considered that clauses 2 and 3 of the existing Water NSW (State Water) operating licence should be retained in the new operating licence.

Informed by the stakeholders' comments, we proposed a draft operating licence which authorised Water NSW to undertake the entire listed function, based on our defined term, to reflect the Water NSW Act. The draft operating licence also included terms and conditions similar to the existing Water NSW (State Water) operating licence regulating how Water NSW released water to LWUs. It also included a new obligation for reviewing Water NSW's water quality monitoring, in consultation with specific stakeholders and for implementing the outcomes of the review. While the authorisation may duplicate the water supply work approvals, we considered that this was appropriate because we proposed to include terms and conditions in the operating licence to regulate the function. Further, the operating licence authorisation provides an overarching authorisation which the water supply work approvals do not.

The draft operating licence included no terms and conditions related to releases for 'other lawful purposes, including release of environmental water'.

We received responses on the draft operating licence from Water NSW, the NSW Government, Centroc, Namoi Water, NSW Irrigators' Council and Gwydir Valley Irrigators' Association.

Water NSW raised no concerns with the authorisation of the function or inclusion of the existing terms and conditions from the Water NSW (State Water) licence. However, it was concerned about defining the term in the authorisations section. It also raised concerns with the proposed requirements for implementing outcomes from a review of water quality monitoring for LWUs, particularly if Water NSW were obliged to implement outcomes for which it is not funded to implement. Water NSW therefore proposed that instead of

¹⁰⁴ The first component of the capture, store and release function is to: "...release water to persons entitled to take the water including release to regional towns".

¹⁰⁵ The second component of the capture, store and release function is to: "...release water for any other lawful purpose, including the release of environmental water."

requiring implementation of outcomes, the operating licence could allow the review to be managed and negotiated through its Memorandum of Understanding (MoU) with NSW Health.¹⁰⁶

The NSW Government submission supported the draft operating licence obligations with some minor proposed amendments. It considered that there was no duplication with the water supply work approvals.¹⁰⁷

Centroc¹⁰⁸ and Namoi Water¹⁰⁹ generally supported the draft operating licence consultative process for the LWU water quality monitoring review.¹¹⁰ It considered that there is benefit in Water NSW being required to monitor and provide information on the quality of bulk water supplied to LWUs. Timely access to this information is vital to enabling LWUs to manage and treat the drinking water that they supply effectively and efficiently.¹¹¹ Centroc also considered that an MoU with LWUs to whom it releases water for drinking water purposes could be beneficial to address matters of public health, water quality standards for water that is released to the LWUs and emergency coordination.

The NSW Irrigators' Council,¹¹² Gwydir Valley Irrigators' Association¹¹³ and Namoi Water¹¹⁴ requested that the operating licence include obligations for Water NSW in relation to delivery of planned environmental water to ensure that cost implications would be allocated to Water NSW instead of other water access licence holders. These stakeholders were concerned that Water NSW's 'held environmental water' portfolio was increasing and the cost continued to be transferred to other water access licence holders.

We discuss below the options we considered when developing the recommended operating licence.

¹⁰⁶ Water NSW, *WaterNSW submission to the Independent Pricing and Regulatory Tribunal Review of the WaterNSW Operating Licences*, page 22.

¹⁰⁷ NSW Government, *Review of the draft WaterNSW Operating Licence – NSW Government submission*, March 2017, pages 4-6.

¹⁰⁸ Central NSW Councils, *Independent Pricing and Regulatory Tribunal WaterNSW operating licences review*, April 2017, page 5.

¹⁰⁹ Namoi Water, *Namoi Water Submission to IPART Water NSW Draft Operating Licence*, April 2017, page 2.

¹¹⁰ Central NSW Councils, *Independent Pricing and Regulatory Tribunal WaterNSW operating licences review*, April 2017, page 5.

¹¹¹ Central NSW Councils, *Independent Pricing and Regulatory Tribunal WaterNSW operating licences review*, April 2017, page 4.

¹¹² Letter to IPART, Mr Mark McKenzie, Chief Executive Officer, New South Wales Irrigators' Council, 7 March 2017, page 6.

¹¹³ Letter to IPART, Ms Zara Lowien, Executive Officer, Gwydir Valley Irrigators Association, 10 April, page 2.

¹¹⁴ Namoi Water, *Namoi Water Submission to IPART Water NSW Draft Operating Licence*, April 2017, page 4.

6.3.2 Options assessed

Table 6.3 Options for authorising and regulating capture, store and release of water

Options	Description
Option A (Base case)	Authorise Water NSW to capture, store and release water outside the Sydney Catchment Area only, and include terms and conditions similar to clauses 2 and 3 of the Water NSW (State Water) operating licence
Option B	Authorise Water NSW to capture, store and release water to persons entitled to take the water throughout NSW, and include terms and conditions similar to clauses 2 and 3 of the Water NSW (State Water) operating licence, with some new obligations as well
Option C	Do not authorise Water NSW to capture, store or release water to persons entitled to take the water

Currently, Water NSW is authorised to undertake its listed function to capture and store water and to release water outside the Sydney Catchment Area (but within the State of NSW) under its Water NSW (State Water) operating licence.

With Option A, we could maintain this authorisation in the new operating licence which would allow us to retain the existing terms and conditions to regulate how it undertakes this function. The existing terms and conditions include maintaining a register of all LWUs for which Water NSW maintains a Water Allocation Account and to which it 'Captures and Stores water and Releases water' for drinking water purposes. It requires implementation of a procedure for providing information to LWUs if requested. The existing terms and conditions also include requirements for Water NSW to process and manage water orders received from customers promptly and efficiently.

Also relevant to the 'Capture and Store Water and to Release Water' function are other conditions such as the Water Conservation Strategy, performance standards, management systems and some of the customer related conditions. These conditions (or their predecessors) are included in other sections of the operating licence, consistent with the new structure, and are therefore discussed in the relevant sections of the report.

We consider that Option A does not promote longevity of the operating licence as it would not authorise Water NSW to undertake the capture, store and release function in the Sydney Catchment Area. Option B is a more flexible approach.

Under Option B, Water NSW would be authorised to capture, store and release water to customers throughout its area of operations, consistent with how we have proposed to authorise Water NSW's other listed functions. Further, the authorised function would use the natural meaning of the term 'to capture and store water and to release water', and not our proposed definition. Under this option, we propose to include the terms and conditions discussed under Option A, in addition to the requirement for a review of water quality monitoring.

As discussed above, stakeholders including NSW Health (through the NSW Government submission) and Centroc supported the proposed review. They considered that information that may be available to Water NSW, or that Water NSW may be best placed to collect may assist the LWUs to more effectively treat drinking water, if this information is communicated to the LWUs in a timely manner.

We have recommended a review be undertaken during this operating licence term to address the concerns of some stakeholders about cost implications and practicality of implementation. The review must be undertaken in consultation with NSW Health, LWUs and the customer advisory groups and will assist to determine the scale of issues relevant to water quality monitoring and release of this information to the LWU. Further, the review will allow potential solutions to be developed for the identified issues. The operating licence will require Water NSW to report the outcomes of the review to us at its conclusion so that it can be used for future licence requirements or updates to the reporting manual.

We considered Water NSW's proposal for the review to be agreed through an MoU with NSW Health but consider that the review should be broader than a bilateral discussion between these agencies. Under the proposed condition, Water NSW would be required to report on the outcomes of the review including timing for planned implementation and any barriers to implementation.

We acknowledge Centroc's suggestion about an MoU with LWUs. While the operating licence will not preclude LWUs from establishing MoUs with Water NSW, we will not require it at this time. We consider that the LWU register, consultative review of water quality monitoring and the Customer Advisory Groups (discussed in Chapter 9) will provide sufficient opportunity to engage with Water NSW. Audits of relevant sections of the operating licence and a future review may consider the effectiveness of these mechanisms in achieving the required relationship and information sharing requirements.

We understand this option will not substantially increase Water NSW's current costs. Water NSW stated that it was not possible to quantify the costs related to the new obligations for the water quality monitoring review.¹¹⁵

Option C, would not authorise Water NSW to capture, store and release water to customers in the operating licence. Water NSW may still be authorised to undertake components of this function under its infrastructure-specific water supply work approvals but without authorising it in the operating licence, we would not be able to include the terms and conditions discussed above. We consider that this would result in a gap as similar conditions are not included in the water supply work approvals. These terms and conditions facilitate the efficient and co-ordinated release of water, and provision of information about that water, to customers, which meets their requirements. For this reason, Option C is not preferred.

We have not considered new terms and conditions in the operating licence for regulation of other lawful releases including environmental water. However, as indicated by the NSW Government submission to the Issues Paper, the water supply work approvals under the *Water Management Act 2000* already regulate environmental releases and any further terms and conditions in the operating licence may result in unjustifiable duplication. However, we note that under our reporting manual, Water NSW will be required to make its water balance reports publicly available. These reports typically include information on environmental releases as well as all other releases.

¹¹⁵ Water NSW reply to IPART request for information, 21 December 2016, p 53.

6.3.3 Preferred option

Option B is our preferred option. That is, to authorise Water NSW throughout its area of operations to capture and store water and to release water, using the natural meaning of this term. Further, the operating licence will include terms and conditions regulating how Water NSW undertakes this function, using the defined term.

We set out the proposed terms and conditions in clauses 3.3 and 3.4 of the operating licence. Other terms and conditions relating to this function are discussed in the following chapters on Performance Standards, Organisational systems management, and Customer and stakeholder relations (Chapters 7, 8 and 9 respectively).

Recommendation

- 20 The operating licence authorises Water NSW to capture and store water and to release water to persons entitled to take the water, including release to regional towns and for any other lawful purpose, as well as including the release of environmental water.
- 21 The operating licence includes terms and conditions to regulate how Water NSW captures, stores and releases water, and provides information in relation to the water released, to customers.

6.4 Obligation to provide services

We have discussed below, our consideration of including obligations to provide services in relation to both, the *capture, store and release water* function and *Supply* of water functions, as we have defined these terms.

We consider that the existing Water NSW (SCA) operating licence does not require Water NSW to Supply water to its customers. We consider that it is appropriate to maintain this approach and have not proposed any obligations to Supply water to customers in the operating licence.

In contrast, we the existing Water NSW (State Water) operating licence *effectively* requires Water NSW to capture, store and release water to its customers. If the terms and conditions that create this effective requirement are retained, further obligations to provide capture, store and release services are not necessary.

We did not seek stakeholder comment in the Issues Paper on the inclusion of an obligation to provide services in the operating licence but raised the issue in the draft report. We received no responses from stakeholders.

6.4.1 Supplying water

Table 6.4 Options for obliging Water NSW to supply water

Options	Description
Option A (Base case)	Do not include terms and conditions obliging Water NSW to Supply water to its Supply customers
Option B	Include terms and conditions to oblige Water NSW to make Supply of water services available on request to any Supply customer.

We considered two options, ie, whether or not to include terms and conditions in the operating licence, obliging Water NSW to Supply water to its customers.

Option A does not require, or effectively require, Water NSW to Supply water to its potential new Supply customers. Four of the Water NSW Act listed functions relate to 'Supply of water to various categories of customer. The customers are Sydney Water, prescribed water authorities or councils, WIC Act licensees and any other person. In considering whether an obligation to Supply WIC Act licensees, similar to the one in the Hunter Water operating licence, should be included, we also considered if the obligation should be applied to *all* categories of Supply customers. We could not prioritise one type of Supply customer over others.

The Supply functions occur when a water sharing plan, under the *Water Management Act 2000*, allocates a given volumetric or share component entitlement to Water NSW, which it can take from the State's water rights under a major utility water access licence (WAL). Water from this entitlement is then provided to Water NSW's Supply customers under the conditions of a water supply agreement,¹¹⁶ or, in the case of Sydney Water, arrangements established under section 25 of the Water NSW Act.¹¹⁷ Once a supply agreement is in place, Water NSW is required to Supply in accordance with the agreement (or arrangements with Sydney Water).

Given that the water sharing plans fix the allocations to maximum levels of water available to Water NSW for Supply to its customers, including a new obligation in the operating licence requiring Water NSW to make Supply services available on request to any customer could result in lower security for other Supply customers. This may mean renegotiation of Supply agreement when new Supply customers are required to be serviced. When a major utility allocation is exhausted, or in an area where no major utility allocation has been assigned, Water NSW will be unable to Supply any further customers without third party impacts unless the relevant water sharing plan is amended.

Because of the potential conflict between the two obligations (ie, an obligation to Supply, and the requirement to Supply in accordance with the upper limits set within a water sharing plan), we consider that an obligation to Supply might be limited in its applicability.

¹¹⁶ The operating licence requires the establishment of customer supply agreements with each of the customers to which it supplies water, as discussed above in section 6.2.

¹¹⁷ Note that section 27 of the Water NSW Act prescribes a Role of IPART with respect to the arrangements with Sydney Water, which requires consultation with IPART, public consultation prior to entering into, amending or replacing an arrangement and IPART presenting a report to the Minister on the proposed arrangements.

While there may be some benefits in including an obligation to Supply water to customers in the operating licence, there could also be risks of conflict with other regulatory instruments.

Preferred option

We propose to maintain the existing approach of the Water NSW (SCA) operating licence and not include obligations for Water NSW to supply water to customers in the recommended operating licence.

We consider that the risk of potentially undermining the availability of water for Supply to other customers within the Water NSW entitlement could potentially impact on Water NSW's capacity to comply with its existing supply agreements, or arrangements with Sydney Water, and creates potential for conflict between regulatory instruments. These risks outweigh any potential benefits of including obligations to Supply in the operating licence.

6.4.2 Capture, store and release water.

Options assessed

Table 6.5 Options for obliging Water NSW to capture, store and release water

Options	Description
Option A (Base case)	Do not include any new terms and conditions in the operating licence obliging Water NSW to capture, store and release of water to its customers, beyond those from the existing Water NSW (State Water) operating licence
Option B	Include additional terms and conditions to obligate Water NSW to make capture, store and release of water services available on request to any customer.

Similar to Supply, we considered two options on whether or not to include terms and conditions in the operating licence obliging Water NSW to capture, store and release water to its customers.

We consider that while Option A does not propose any new obligations for Water NSW to capture, store and release water to customers, including some of the existing terms and conditions of the Water NSW (State Water) licence effectively achieves the same outcome.

Currently, to extract water from a regulated river, Water NSW's customers must hold a WAL under the *Water Management Act 2000* or a water management licence under the *Water Act 1912*. DPI Water regulates this licensing regime¹¹⁸ and water extractors are given access to particular shares or entitlements, which attract "allocations" of water, as allowed under the respective Acts. If the licensed water extractors require more water than they have been allocated, they can trade entitlements (permanent trades) or water allocations (temporary trades), if available.

¹¹⁸ Some of the licensing functions have been conferred to Water NSW through the conferred functions schedule of the operating licence.

Water NSW holds water supply work approvals under the *Water Management Act 2000* and two water management licences under the *Water Act 1912*.¹¹⁹ These approvals and licences allow it to capture, store and release water from specific storage assets into the rivers for the licensed users to extract under their own work approvals. Water NSW releases this water in response to water orders that the users/customers make to Water NSW. A customer can make these water orders once it has a Water Allocation Account with Water NSW.

While Water NSW's water supply work approvals *allow* it to capture, store and release water, they do not *require* Water NSW to undertake this activity. Nor do they hold Water NSW accountable for delivery of any of the water to its customers. However, the following clauses 3.1.1 and 3.1.2 of the Water NSW (State Water) operating licence do effectively require Water NSW to manage release and delivery of water to these customers:

Water NSW must take all reasonable steps to process all water orders promptly and efficiently

Water NSW must take all reasonable steps to manage water orders so as to ensure the timely delivery of water to its customers.

Inclusion of these terms and conditions in the operating licence was discussed and recommended in the previous section 6.3. However, these conditions only require Water NSW to deliver water to its *existing* customers. To allow *prospective* customers similar rights, the following clause 3.1.3 of the Water NSW (State Water) operating licence is relevant:

Water NSW must maintain a Water Allocation Account for each access licence issued under the *Water Management Act 2000* (NSW) and each licence issued under the *Water Act 1912* (NSW) held by a customer.¹²⁰

Inclusion of a similar condition (with some amendments) is discussed further in section 9.1.2. The operating licence also includes performance standards in relation to the delivery and service interruptions of water orders, as discussed in Chapter 7.

Preferred option

We consider that the combination of operating licence conditions discussed above will effectively oblige Water NSW to capture, store and release water to any customer (new or existing), subject to the customer *first* obtaining a relevant WAL or water management licence. Therefore, no further terms and conditions are required to oblige Water NSW to capture, store and release water to its customers.

Recommendation

- 22 The operating licence does not include any additional obligations to provide services to customers.

¹¹⁹ DPI Water, *State Water*, <http://www.water.nsw.gov.au/water-licensing/corporate-licences/major-utilities/state-water>, accessed on 3 May 2017.

DPI Water, *Sydney Catchment Authority*, <http://www.water.nsw.gov.au/water-licensing/corporate-licences/major-utilities/sydney-catchment-authority>, accessed on 3 May 2017.

¹²⁰ Draft Water NSW operating licence, clause 6.2.1. (This is based on the existing licence clauses of the Water NSW (State Water) licence).

6.5 Flood mitigation and management

We consider that the operating licence should not authorise Water NSW to undertake flood mitigation and management which is one of its listed functions under section 7(1)(i) of the Water NSW Act.

The operating actions taken by Water NSW when a dam approaches its maximum capacity, or during times of flood, are the flood mitigation and management actions. During the review, Water NSW indicated that it considers 'flood mitigation' is different from 'flood management'.¹²¹ Water NSW also stated that its 'flood mitigation' role is only relevant to two of its dams.¹²²

Currently, the Water NSW (State Water) operating licence authorises Water NSW to undertake this function but the Water NSW (SCA) licence does not. Neither operating licence includes terms and conditions relating to the conduct of this function.

Water NSW's water management work approvals, under the *Water Management Act 2000*,¹²³ also authorise Water NSW to undertake flood mitigation and / or management activities, but only at certain dams. These approvals include terms and conditions regulating how Water NSW is to undertake the flood activities at the approved dams.

Historically, the now repealed *Sydney Water Catchment Management Act 1998* did not include flood mitigation and management as a function. Conversely, the repealed *State Water Corporation Act 2004* specified flood mitigation and management as the third component of the 'capture, store and release' function. With the Water NSW Act, this has become a separate 'listed function' (ie, not a component of the capture, store and release' function) which is relevant to Water NSW's whole area of operations. For this reason, currently, only the Water NSW (State Water) operating licence authorises this function and the Water NSW (SCA) operating licence does not.

In the draft operating licence, we proposed authorising Water NSW to undertake flood mitigation and management to allow Water NSW to undertake this function at all of its dams in its area of operations, including where not already authorised under the *Water Management Act 2000*. We also proposed draft terms and conditions relating to this function requiring the function occur at the direction of the Minister.

However, the final recommended operating licence does not contain any authorisations or conditions relating to the flood mitigation and management function. Under this approach, because 'flood mitigation and management' is a listed function under the Water NSW Act, Water NSW must be authorised by, or under another Act or law, to undertake any of its flood mitigation and management activities. We consider that the water management work approvals are sufficient for this purpose. The Minister can amend the relevant water management work approval for any dams where Water NSW is not currently authorised to undertake flood mitigation or management, as appropriate. We consider that any amendments should be based on individual circumstances for each dam and the

¹²¹ IPART, Review of WaterNSW Operating Licences and Reporting Manuals Public Workshop – Tuesday 21 March at 10:00am Transcript, page 31 lines 5-13

¹²² Water NSW, *WaterNSW submission to the Independent Pricing and Regulatory Tribunal Review of the WaterNSW Operating Licences*, page 22.

¹²³ *Water Management Act 2000*, section 90(1) states that there are three kinds of water management work approvals, namely water supply work approvals, drainage work approvals and flood work approvals.

information available at the time of making that decision. This may be particularly relevant for the dams in the Sydney Catchment Area for both flood mitigation and management.

The role of these dams is also the subject of an ongoing discussion within Government. The Government recently announced that it will invest \$58 million in a study of Warragamba Dam augmentation options that might enable it to have enhanced flood mitigation capability in the future.

6.5.1 Issues raised

The Issues Paper asked stakeholders if Water NSW should be authorised to undertake flood mitigation and management at any dam in NSW, as allowed under the Water NSW Act. We received responses from Water NSW and the NSW Government, neither of which supported authorisation in the operating licence. However, Sydney Water did.

Water NSW and the NSW Government were concerned that authorising the function in the operating licence would duplicate Water NSW's water management work approvals. If, in future, Water NSW was required to undertake the function within the Sydney Catchment Area (or any dams where Water NSW is not currently authorised to undertake flood mitigation and management activities under Water NSW's water management work approvals), the operating licence could be amended at the time to authorise flood mitigation and management. The NSW Government considered that any requirement to undertake this function at Warragamba Dam was not likely to occur during the first five-year term of the operating licence. Accordingly, the issue could be dealt with during the next five-yearly review of the operating licence.

Water NSW also had concerns that authorising this function in the operating licence would contradict the transitional provisions contained within Division 4 of Schedule 2 (Existing operating licences) of the Water NSW Act which does not authorise this function within the Sydney Catchment Area.

For the draft operating licence, we considered that authorising the function with the condition that Water NSW undertakes the function at the direction of the Minister ensured maximum flexibility and longevity for the licence. We received submissions from Water NSW, the NSW Government, Sydney Water and Namoi Water to the draft operating licence.

Water NSW stated that it was now generally comfortable for the operating licence to authorise flood mitigation and management, but any terms and conditions should not apply where Water NSW can undertake this function under another Act. It considered that the terms and conditions proposed in the draft operating licence regulating how Water NSW undertakes this function were not appropriate. Instead, the terms and conditions should require Water NSW to undertake flood mitigation and management in accordance with its relevant water management work approvals.¹²⁴

The NSW Government considered that no change should be made to the level of authorisation given by the existing Water NSW operating licences. We understand this to

¹²⁴ Water NSW, *WaterNSW submission to the Independent Pricing and Regulatory Tribunal Review of the WaterNSW Operating Licences*, page 22.

mean that Water NSW should continue to only be authorised to undertake this function outside the Sydney Catchment Area. The NSW Government has not commented on the terms and conditions that we proposed in the draft operating licence, but urged that regulatory duplication be avoided.¹²⁵

Sydney Water had no specific view on whether the operating licence should authorise Water NSW to undertake flood mitigation and management. However, it indicated that it is important that downstream customers are made aware of any changes to the normal operation of water management works for the purposes of flood mitigation and management. Sydney Water acknowledged that this notification did not need to occur through the operating licence.¹²⁶

Namoi Water expressed concern that dams that are not purpose built to undertake flood mitigation are not differentiated, in the draft operating licence, from those that do.¹²⁷

We considered the responses to the draft licence in formulating our final recommendations for regulating flood mitigation and management in the licence. This is discussed below.

6.5.2 Options assessed

Table 6.6 Options for authorising and regulating flood mitigation and management under the operating licence

Options	Description
Option A (Base case)	Make no change to the authorisations included in the existing Water NSW operating licences; do not include any terms and conditions
Option B	Authorise Water NSW to undertake flood mitigation and management at all storages throughout NSW; do not include any terms and conditions
Option C	Authorise Water NSW to undertake flood mitigation and management at all storages throughout NSW; and include terms and conditions that limit this function to being triggered by direction from the Minister
Option D	Authorise Water NSW to undertake flood mitigation and management at all storages throughout NSW; and include terms and conditions that require activity in accordance with existing approvals
Option E	Do not authorise Water NSW to undertake flood mitigation and management at any storages in NSW in the operating licence (ie, only the water management work approvals will authorise flood mitigation and management activities).

We considered these options using a CBA. We also compared the benefits of each option using Multi-Criteria Analysis (MCA).

Currently, only the Water NSW (State Water) operating licence authorises Water NSW to undertake flood mitigation and management under the Water NSW Act, at Water NSW's storages outside the Sydney Catchment Area. The existing Water NSW (SCA) operating licence does not authorise this function.

¹²⁵ NSW Government, *Review of the draft WaterNSW Operating Licence – NSW Government submission*, March 2017, page 5.

¹²⁶ Sydney Water, *Submission to IPART on Water NSW's Draft Operating Licence 2017-2022*, April 2017, page 6.

¹²⁷ Namoi Water, *Namoi Water Submission to IPART Water NSW Draft Operating Licence*, April 2017, page 2.

Under Option A, we could continue to maintain the current approach for authorisation in the operating licence (outside the Sydney Catchment Area). The operating licence would not include any terms and conditions to regulate this function. This minimises any risk of duplication with the water management work approvals. If, in future, Water NSW needs to undertake the flood mitigation and management function at a dam in the Sydney Catchment Area, the operating licence could be amended at the time to authorise this function.

While Option A is consistent with the NSW Government's submission to the draft operating licence, this option is not preferred. This model of authorisation is administratively unclear for a new organisation which is now a single entity. Further, it does not add any additional authorisation from those we understand already exist in other instruments (for infrastructure outside the Sydney Catchment Area). The Water NSW Act also does not indicate any distinction with respect to this function. We consider that the Water NSW Act may have intentionally separated flood mitigation and management from the "capture, store and release" function to clarify that it should be undertaken throughout the State.

Under Option B, Water NSW would be authorised to undertake this function at all of its storages in NSW under the operating licence, without geographical constraint. We consider that this option is more consistent with the Water NSW Act than Option A. Further, this option would allow longevity of the operating licence, reducing the need to potentially amend it mid-term if Water NSW is required to undertake this function at an asset where it is not currently authorised to do so. Duplication of the authorisation alone, without duplicating any terms and conditions of the water management work approvals, does not negatively impact on Water NSW's regulatory burden.

Under Option B, the operating licence would not include any terms and conditions regulating how Water NSW is to undertake the authorised function. We consider that if the operating licence is to authorise the function, it should also include terms and conditions to increase transparency, accountability and auditability. Further, without terms and conditions to clarify otherwise, under this option, Water NSW would be authorised on the licence commencement date to undertake flood mitigation and management. Water NSW has stated that authorisation may be perceived to inappropriately impose social obligations to undertake this function.¹²⁸

Under Option C, as with Option B, Water NSW would be authorised to undertake this function at all of its storages in NSW. However, the difference is that the operating licence would include terms and conditions that limit where Water NSW can undertake this function to only those assets where it has been given an express direction from the Minister to do so. The terms and conditions would also limit the authorisation to only apply to assets where Water NSW is not otherwise authorised under other instruments. In this way, Water NSW would not be obliged to commence flood mitigation and management activities at any asset on commencement of the operating licence, either through the licence or socially, unless directed to do so by the Minister. This option could enable future decisions of Government without having to amend the licence mid-term, enabling longevity of the licence. It could also enable efficient implementation of a Ministerial decision regarding if and when Water NSW should undertake this function in the Sydney Catchment Area.

¹²⁸ Water NSW, WaterNSW Submission to the IPART operating Licence Review, August 2016

When we developed the draft operating licence, Option C was preferred, particularly because it allowed longevity of the licence. However, Water NSW and other stakeholders did not support the conditions proposed to limit the authorisations. As each work and location is unique, it would be appropriate to apply specific conditions to the conduct of this function according to the circumstances. However, the operating licence does not generally provide infrastructure specific conditions as it applies generically state-wide. Therefore, in its submission, Water NSW proposed an alternative option.

We considered Water NSW's proposed option under Option D. In this option, the operating licence would authorise the function throughout the State but require that flood mitigation and/or management activities be undertaken "only in accordance with a Water NSW water supply work approval",¹²⁹ or, more generally, a water management work approval. However, we consider that authorising flood mitigation and management within the operating licence but including a condition that links to the water management work approval is in effect the same as the authorisation under the *Water Management Act 2000*. This would result in unnecessary regulatory duplication. Further, the conditions would become subject to audit and may result in two regulators regulating the same activity, potentially with different outcomes. This is not only duplicative but unclear for the utility, stakeholders and regulators about which agency or legislative framework is responsible for the function. For this reason, this option did not proceed to a formal CBA and we did not adopt Option D.

Option E is the final option we considered. It would not authorise or condition the flood mitigation and management function in any areas or circumstances under the operating licence. To be able to undertake this function, Water NSW would have to be sufficiently authorised under another Act or law, such as its infrastructure-specific water management work approvals.

If the need arises in future for Water NSW to undertake flood mitigation or management at any location without such an approval, the relevant water management work approval would need to be amended. We consider this is a more appropriate way to regulate these functions on a case by case basis, enabling individual infrastructure specific authorisations, terms and conditions to be developed and applied, rather than a State-wide operating licence. It would also be consistent with the approach taken thus far by the NSW Government in using the water management work approvals as the preferred instrument for setting terms and conditions relating to flood mitigation and management. If a water management work approval does not authorise any of these activities, then we consider that the Government has intentionally not approved the activity.

We do not have any role in recommending changes to water management work approvals. If the NSW Government considers that Water NSW should undertake flood mitigation or management activities at a particular asset, for example within the Sydney Catchment Area, the relevant water supply work approval or water management licence would need to be amended.

¹²⁹ Water NSW, *WaterNSW submission to the Independent Pricing and Regulatory Tribunal Review of the WaterNSW Operating Licences*, page 23, response to draft recommendation 22.

6.5.3 Preferred option

Option E is our preferred option. That is, the operating licence will not authorise Water NSW to undertake flood mitigation and management, under the Water NSW Act. Water NSW will only be able to undertake flood mitigation and management activities under its water management work approvals, under the *Water Management Act 2000*. If the Minister decides that Water NSW should undertake these activities at a dam where it is not currently authorised to do so, the relevant water management work approval for that dam will need to be amended to allow this.

This approach differs from our recommended approach to authorising Water NSW's other listed functions where Water NSW may already be authorised under its water management work approvals, or, in some cases, water management licences under the *Water Act 1912*,¹³⁰ to undertake some of these functions. This is because for flood mitigation and management we consider that it is appropriate that these activities be constrained to particular assets and how they are managed, and expansion of Water NSW's ability to undertake flood mitigation and management activities should be considered on an individual asset basis, as enabled by the water management work approvals.

Recommendation

- 23 The operating licence does not authorise Water NSW to undertake flood mitigation and management under the Water NSW Act. Water NSW can only undertake flood mitigation and management activities under the authority of other regulatory instruments.

¹³⁰ We understand that Water NSW currently only holds two water management licences and neither of these include terms and conditions in relation to flood mitigation and management.

7 Performance standards

The fourth part of the recommended operating licence includes performance standards. These performance standards apply when Water NSW captures and stores and releases water, and also when it Supplies water.

The *Water NSW Act 2014* (Water NSW Act) requires that an operating licence which authorises Water NSW to capture, store, release or supply water must specify terms and conditions to ensure that Water NSW's systems and services meets the performance standards in the operating licence in relation to water delivery, water quality, service interruptions or any other matters.¹³¹

We consider that the Water NSW Act does not require all of the water delivery, service interruptions and water quality performance standards to be applied to capture, store and release of water *and* Supply of water. Rather, the relevant performance standards can be specified in relation to the function to which they best apply.

For the capture, store and release of water, we have recommended performance standards based on performance indicators that are currently included in the State Water reporting manual. These performance indicators are for the categories of water delivery, service interruptions and account processing standards.

In relation to the Supply of Water, we have recommended systems based standards for water quality and service interruptions. That is, the operating licence sets performance standards that link to the Water Quality Management System (WQMS) for managing the quality of water Supplied, and to the Asset Management System (AMS) for managing service interruptions.

The significant recommendations for inclusion of performance standards in the operating licence are listed below. This chapter explains and provides background on how we developed these recommendations.

Recommendations for the operating licence:

- 24 The operating licence requires Water NSW to ensure that its systems and services meet the performance standards specified in the operating licence.
- 25 The operating licence specifies water delivery and service interruptions performance standards in relation to water that is captured, stored and released. These performance standards were developed from performance indicators in the existing Water NSW (State Water) reporting manual.
- 26 The operating licence prescribes system based performance standards, based on the Water Quality Management System and Asset Management System, to act for water quality and service interruptions performance standards, in relation to water that is Supplied.

¹³¹ Water NSW Act, section 12(2).

7.1 Types of performance standards

Setting performance standards depends on the services and systems provided as well as customers' expectations of level of service. Some customers, particularly larger organisations, are able to enter into negotiations with water utilities regarding the level of service required and the cost for that service. Smaller organisations or individuals may not have the capacity to negotiate as effectively.

7.1.1 Issues raised and options available

Our Issues Paper identified the following four potential types of performance standards. It sought feedback from stakeholders about including one, or a combination of, these performance standards in the operating licence:

- ▼ **Type 1: Prescriptive standards** which instruct licensees precisely on what measures to take and require little interpretation on their part. These standards identify 'inputs', ie, the specific actions required of licensee in a particular situation.
- ▼ **Type 2: Performance standards** which specify the desired performance level, but leave the concrete measures to achieve this level open for licensees to adapt to varying local circumstances.
- ▼ **Type 3: Goal-setting standards** which set out goals that licensees must aim to accomplish, such as ensuring the protection of public health. These standards leave it to the discretion of the licensees as to how they achieve those goals.
- ▼ **Type 4: Systems standards** which identify a particular framework, or series of steps, to be followed in the pursuit of a goal, ranging from the requirement to identify hazards and assess and control risks (found in many national standards), to the more ambitious requirement to engage in a particular systemic approach at an organisational level.

As the term "performance standards" is not defined in the Water NSW Act, we consider that any of the options presented above would meet the requirements of the Water NSW Act.

Water NSW, the NSW Government and Sydney Water provided comment on the types of performance standards described and the appropriateness of prescribing them in the operating licence.

Water NSW considered that it was appropriate to prescribe minimum performance levels for customers who have been Supplied with, or captured, stored and released water (ie, Type 2). Water NSW also provided input into the types of performance standards that could be set in the operating licence. The NSW Government and Sydney Water cautioned that any performance standards set should not impact on any health related activities or the quality or continuity of water supplied.

Further issues raised by stakeholders in response to the Issues Paper are discussed below, in relation to performance standards for water captured, stored and released (section 7.2) or water Supplied (section 7.3). We also discuss comments from stakeholders in response to the performance standards presented in the draft operating licence.

7.1.2 Options assessed

We considered each of the types of standards in formulating performance standards for each of the categories identified in section 12(2)(a)(ii) of the Water NSW Act. The following options were assessed in relation to setting performance standards for each category.

Table 7.1 Options for performance standards (generally)

Option	Description
Option A (Base case)	Rely on the service levels identified within the Management Systems (in particular the WQMS and AMS), ie, use Type 4 performance standards
Option B	Include specific 'Type 2 performance standards' within the operating licence relating to water delivery, water quality and service interruptions

We did not consider an option where the operating licence did not include any performance standards as it is a requirement of the Water NSW Act.

The existing operating licences rely solely on the Management Systems (ie, AMS and EMS) required within the licence. This is similar to the Type 4 option. This approach is well suited to circumstances where there are large uncertainties, diverse operational conditions and diverse customer types and sizes. However, the disadvantage of Type 4 performance standards is that they provide less certainty for customers about a level of service than Type 2 performance standards. Further, it is difficult to audit the utility to determine if the performance standards have been met. There could also be room for error both when being implemented by Water NSW and when being regulated and audited. Therefore, where possible, we have considered whether performance standards can be otherwise defined according to the categories described above.

In formulating alternative options for performance standards to satisfy the criteria, we sought to use existing performance indicators where possible, to minimise set up costs for Water NSW to measure and report on parameters not previously recorded.

7.1.3 Preferred option

We consider that the operating licence should clarify that Water NSW must comply with the performance standards set out in the operating licence, to clearly reference the requirements of section 12(a)(ii) of the Water NSW Act.

Where possible, we have attempted to introduce Type 2 performance standards in the operating licence, which are more prescriptive than goal setting (Type 3) or system standards (Type 4) and therefore provide more certainty for customers about a level of service. However, if our proposed Type 2 performance standards are not practicable to implement, we can continue to rely on Type 4 performance standards, as per the approach of the existing operating licences.

We have not recommended prescriptive standards (Type 1) in the operating licence because it would not be practical to design highly prescriptive standards for an organisation with the diverse customer base, operations and functions that Water NSW has. While some level of prescription may be useful, we consider that it is unnecessary in the context of public water utilities that have experience providing services in the water industry.

Recommendation

- 24 The operating licence requires Water NSW to ensure that its systems and services meet the performance standards specified in the operating licence.

In the next two sections we discuss the specific performance standards we have recommended, in relation to water that is captured, stored and released, and those for water that is Supplied, as required by the Water NSW Act.

7.2 Performance standards in relation to the capture and store of water and release of water

We consider that the operating licence should include water delivery and service interruptions performance standards for water that is captured, stored and released. However, water quality performance standards are not relevant to this water. The existing operating licences include requirements to comply with an AMS, which is similar to Type 4 performance standards, but they do not clarify that this is a performance standard which must be met.

We propose to set Type 2 performance standards in relation to water delivery by converting the performance indicators in the existing Water NSW (State Water) reporting manual. These indicators currently only relate to water that Water NSW captures, stores and releases to customers outside the Sydney Catchment Area. The proposed performance standards, however, would relate to all water captured, stored and released by Water NSW throughout its area of operations.

The Water NSW (State Water) reporting manual currently requires Water NSW to report on:

1. the percentage of customers, who after placing a non-complying water order, are contacted within 1 working day to rectify that order
2. the percentage of complying water orders delivered outside +/- 1 day of the scheduled day of delivery, as measured by complaints
3. the percentage of complying water orders rescheduled in consultation with an affected customer within 1 working day of an expected water shortage or delivery, and
4. the percentage of complying intra-valley transfers processed within 5 working days of Water NSW's receipt of a correct application and fee.

We consider that these performance indicators also relate to service interruptions as they measure when complying water orders are delivered, and when they are rescheduled if not delivered within the required time.

The performance standards that we have proposed are based on Water NSW's reported historical performance in relation to these performance indicators. These performance indicators have not been included in the new reporting manual to avoid duplication with the proposed performance standards.

7.2.1 Issues raised

In response to the Issues Paper, Water NSW and the NSW Government considered that the existing performance indicators from the Water NSW (State Water) reporting manual could be converted to performance standards relevant to water delivery and service interruptions.

Water NSW considered that there may also be scope for converting the performance indicators in the Water NSW (SCA) reporting manual into performance standards. However, the NSW Government considered that this may not be appropriate or relevant to water delivery and service interruptions for water that is captured, stored and released.

Informed by these views, we presented the proposed performance standards in the draft operating licence. They were supported by Namoi Water.¹³² Other stakeholders did not identify any issues. Further, Centroc suggested that minimum standards could also be prescribed for cost, quality, volume, timing and customer service.¹³³

We assessed the following options to develop our final recommendations for inclusion in the licence.

7.2.2 Options assessed

Table 7.2 Options for performance standards (in relation to the capture and store of water and release of water)

Option	Description
Option A (Base case)	Rely on the service levels identified within the Management Systems, (in particular the AMS), ie Type 4 performance standards
Option B	Include specific 'Type 2 performance standards' within the operating licence relating to water delivery and service interruptions

With Option A, the operating licence would rely on Type 4 performance standards, representing the Base case. The existing Water NSW (State Water and SCA) operating licences do not prescribe performance standards but rely on the AMS to set water delivery performance levels (ie, system performance standards). However, the link between the AMS and performance levels is not explicit in the licences. As explained in section 7.1.2 above, where possible, we have sought to develop Type 2 performance standards within the operating licence. This represents a more transparent and certain level of service for customers.

Therefore, in the draft operating licence we proposed Option B, ie, to convert the performance indicators in the existing Water NSW (State Water) reporting manual to Type 2 performance standards. The performance indicators in the Water NSW (SCA) reporting manual do not relate to delivery or service interruptions and could not be used to develop performance standards.

Water NSW considered that Option B would not substantially impact on its current operational costs because its operational performance already exceeds the standards

¹³² Namoi Water, *Namoi Water Submission t*, in response to draft recommendation 25.

¹³³ Central NSW Councils, *Independent Pricing and Regulatory Tribunal WaterNSW operating licences review*, April 2017, page 5.

proposed. Water NSW provided some edits to the performance indicators of the Water NSW (State Water) reporting manual to convert them to performance standards, and set the minimum performance levels, which we incorporated in developing the performance standards.

We have noted Centroc's suggestion for additional performance standards in relation to Water NSW's capture, store and release function. While the Water NSW Act allows this, we consider that it would not be appropriate to include additional standards without further information about appropriate performance levels.

7.2.3 Preferred option

We consider that specifying Type 2 performance standards in the operating licence (Option B) is appropriate in relation to water delivery and service interruptions performance standards for the capture, store and release functions. These provide some certainty to customers about expected service levels and will allow auditability.

The recommended performance standards are included in clause 4.3 of the operating licence.

Recommendation

- 25 The operating licence specifies water delivery and service interruptions performance standards in relation to water that is captured, stored and released. These performance standards were developed from performance indicators in the existing Water NSW (State Water) reporting manual.

7.3 Performance standards in relation to Supplying water

We consider that the operating licence should include water quality and service interruptions performance standards in relation to water that is Supplied.

We consider that the performance indicators in the existing Water NSW reporting manuals cannot be converted to performance standards that relate to water that is Supplied. The performance indicators of the Water NSW (State Water) reporting manual relate to water that is captured, stored and released. The performance indicators of the Water NSW (SCA) reporting manual do not relate to water quality, water delivery or service interruptions.

In the draft operating licence we proposed some Type 2 performance standards which were developed by consultation with Water NSW. However, we were not able to establish performance standards that were defined well enough to enable implementation and audit. We have therefore now proposed that for water that is Supplied, Water NSW should be required to comply with its WQMS and AMS (ie, Type 4 performance standards), similar to the status quo.

7.3.1 Issues raised

In response to the Issues Paper, Water NSW suggested four potential Type 2 performance standards that could be set in relation to water Supply.

However, the NSW Government raised a concern that setting minimum performance standards in the operating licence in relation to water quality may be inconsistent with the risk management approach set out in the *Australian Drinking Water Guidelines 2011* (ADWG). The ADWG sets out a framework for supplying water at the highest practical quality (as opposed to a quality set in an operating licence).

The NSW Government further commented that it may not be appropriate to convert the performance indicators in the existing Water NSW (SCA) reporting manual into water quality performance standards. It considered that these performance standards may not be able to be met in all circumstances due to varying upstream catchment management practices. Further, it considered that a number of catchment health indicators specified in the Water NSW (SCA) reporting manual are variables that are difficult to control. This could reduce their capacity to be converted to performance standards.

Sydney Water expressed concerns that water quality standards prescribed in the operating licence may not be stringent enough to meet Sydney Water's needs. It could be more appropriate for the quality of water supplied to be negotiated through the raw water supply agreement between Water NSW and Sydney Water, rather than for quality standards to be prescribed in the operating licence.

While we acknowledged the NSW Government's and Sydney Water's concerns, we considered that it was valuable to seek input on the performance standards proposed by Water NSW in the draft operating licence. We received responses from Water NSW, the NSW Government, Sydney Water, and the NSW Irrigators' Council.

Water NSW proposed alternative standards linked to the end-use based definitions for water that it provides customers that it suggested in its submission. Water NSW suggested relying on system based standards, and, where relevant, standards agreed in customer supply agreements.¹³⁴

The NSW Government did not support the performance standards set out in the draft operating licence. However, it considered that if Type 2 standards were to be included in the operating licence, alternatives could be developed based on discussions between NSW Health Water NSW, IPART and other relevant stakeholders (eg, Sydney Water) to establish standards that are consistent with the ADWG.¹³⁵

Sydney Water did not support the performance standards proposed in the draft operating licence as it considered that they are not practical to implement for Supply to Sydney Water. It did not support the operating licence specifying minimum performance standards as it considers that this could create inconsistencies with the standards specified in its raw water supply agreement with Water NSW.

Finally, the NSW Irrigators' Council expressed concern that including new performance standards in the operating licence could create costs that have the risk of being transferred to

¹³⁴ Water NSW, *WaterNSW submission to the Independent Pricing and Regulatory Tribunal Review of the WaterNSW Operating Licences*, page 23.

¹³⁵ NSW Government, *Review of the draft WaterNSW Operating Licence – NSW Government submission*, March 2017, page 6.

customers. Particularly if urban water supply standards are also applied to water that is captured, stored and released.¹³⁶

We considered stakeholders' concerns when arriving at our final recommendations, discussed below.

7.3.2 Options assessed

Unlike the standards recommended for the capture and store water and release water function, no existing indicators were suggested to be suitable as the supply standards.

Table 7.3 Options for performance standards (in relation to Supplying water)

Option	Description
Option A (Base case)	Rely on the service levels identified within the Management Systems (in particular the WQMS and AMS), ie, Type 4 performance standards
Option B	Include specific 'Type 2 performance standards' within the operating licence relating to water quality, water delivery and service interruptions

With Option A, the operating licence would rely on Type 4 performance standards. We consider that this represents the Base case. The existing Water NSW (State Water and SCA) operating licences do not prescribe standards but rely on the AMS and WQMS to set water delivery and water quality performance levels, respectively (ie, system performance standards).

In the draft operating licence we proposed some Type 2 performance standards under Option B. However, we consider that the Supply performance standards proposed in the draft operating licence are not sufficiently defined and therefore not practical to implement or audit. Further, the NSW Government noted that the water quality standards may not be consistent with the ADWG.

We therefore consider that Option A, ie, to specify system based performance standards, is preferred. We acknowledge Water NSW's and Sydney Water's suggestions to allow performance standards to be negotiated through relevant customer supply agreements, however, we consider that this does not meet the requirements of section 12(a)(ii) of the Water NSW Act. We consider that linking the performance standards with the WQMS (which needs to be consistent with the ADWG in some cases), and AMS is similarly non-prescriptive, and it achieves the requirements of the Water NSW Act.

When presented with these options, Water NSW preferred Option A because it did not impact on its operational costs as much as Option B. Option B presented a cost of 0.2 FTE for additional collection and reporting of information not currently reported. The CBA estimated this to represent a cost of approximately \$37,000 each year or between \$127,000 and \$158,000 over the five-year term of the licence.

¹³⁶ Letter to IPART, Mr Mark McKenzie, Chief Executive Officer, New South Wales Irrigators' Council, 7 March 2017, page 1.

7.3.3 Preferred option

We recommend option A, ie, the operating licence prescribes system based performance standards which link managing the quality of water Supplied to Water NSW's customers with its WQMS and managing service interruptions with its AMS.

These performance standards are outlined in clause 4.2 of the operating licence.

Recommendation

- 26 The operating licence prescribes system based performance standards, based on the Water Quality Management System and Asset Management System, to act for water quality and service interruptions performance standards, in relation to water that is Supplied.

8 Organisational systems management

The fifth part of the recommended operating licence includes clauses relating to Water NSW's Asset Management System (AMS) and Environmental Management System (EMS).

The recommendations that we have used to develop the operating licence are listed below. We provide explanation and background about how we developed each of these recommendations within this chapter.

Recommendations for the operating licence:

- 27 The operating licence includes terms and conditions for maintenance and implementation of an Asset Management System (AMS). The operating licence requires consistency with the relevant standard, but does not require certification of the AMS.
- 28 The operating licence includes terms and conditions for maintenance and implementation of an Environmental Management System (EMS). The operating licence requires consistency with the relevant standard, but does not require certification of the EMS.

8.1 Asset management

As discussed in section 6.1, we consider that it is necessary to include terms and conditions requiring Water NSW to maintain and implement an AMS in the Water NSW operating licence. This would satisfy the requirement of section 12(2)(a) of the Water NSW Act which requires that "in connection with an operating licence that authorises Water NSW to capture, store, release or supply water, the operating licence must include terms or conditions under which Water NSW is required to provide, construct, operate, manage and maintain efficient, coordinated and commercially viable systems and services to capture, store release or supply water".¹³⁷

Further, as discussed in the previous chapter, we have proposed Supply performance standards that link to the proposed AMS requirement of the operating licence.

The existing Water NSW (State Water and SCA) operating licences include terms and conditions regulating how Water NSW manages its assets. Similar terms and conditions are not included in any other instrument applying to Water NSW. Therefore to maintain the requirements of the existing licences, they need to be included in the new operating licence.

We have also proposed that Water NSW ensure that its AMS is consistent with the relevant Australian Standard. We have not included a recommendation to require certification to this standard. With this approach, Water NSW can determine whether the most efficient way to demonstrate consistency is through certification.

¹³⁷ Note that our proposed draft operating licence authorises all of capture, store, release and supply of water.

8.1.1 Issues raised

The Issues Paper sought feedback on the terms and conditions that should be included to regulate how Water NSW constructs, operates and maintains water management works. We received responses from Water NSW, the NSW Government and Sydney Water.

The NSW Government stated that there would be benefit in requiring Water NSW to develop, implement and maintain an AMS, particularly since Water NSW has recently been vested a large number of assets from DPI Water, including flowmeters and monitoring sites. Setting minimum standards for asset management in the operating licence would facilitate appropriate maintenance and operation of these assets.

Water NSW and Sydney Water considered that there would also be benefit having that AMS certified. Water NSW and Sydney Water considered that by requiring a certified system, IPART's audit and regulatory surveillance process could be minimised by relying more on the certification and review process. Further, it would allow consistency with other water utilities that have similar requirements in their operating licences.

We presented terms and conditions in the draft operating licence informed by these stakeholder submissions. Subsequently, we received submissions from Water NSW, Sydney Water, and the NSW Government.

While Water NSW supported certification in its response to the Issues Paper, after viewing our proposed terms and conditions in the draft licence, Water NSW requested that the licence should not require Water NSW to maintain certification as it considered that this should be a business decision. Water NSW did not object, however, to being required to have a certified system on commencement date of the licence.¹³⁸

In contrast, Sydney Water¹³⁹ continued to support certification requirements, as did the NSW Government.¹⁴⁰ Sydney Water noted a preference for public water utility licences to require management systems consistent with International Standards (ISO), rather than their Australian equivalents (AS), as they are not always updated at the same time.¹⁴¹

We discuss below the options we considered in developing our final recommendations in relation to AMS requirements in the operating licence.

¹³⁸ Water NSW, *WaterNSW submission to the Independent Pricing and Regulatory Tribunal Review of the WaterNSW Operating Licences*, page 24.

¹³⁹ Sydney Water, *Submission to IPART on Water NSW's Draft Operating Licence 2017-2022*, April 2017, page 9.

¹⁴⁰ NSW Government, *Review of the draft WaterNSW Operating Licence – NSW Government submission*, March 2017, page 4.

¹⁴¹ Sydney Water, *Submission to IPART on Water NSW's Draft Operating Licence 2017-2022*, April 2017, page 10.

8.1.2 Options assessed

Table 8.1 Options for regulating Water NSW's management of assets

Options considered	Description
Option A (Base case)	Include terms and conditions in the operating licence, similar to those in existing operating licences which includes terms and conditions related to developing and maintaining an AMS
Option B	Include terms and conditions similar to Clause 4 of the existing Water NSW (State Water) operating licence only (and not the Water NSW [SCA] licence), with updates for consistency of standard, flexibility, removal of certification

We consider Option A to be the Base case because it represents the status quo, ie, terms and conditions in the operating licence that replicate those in the existing Water NSW (State Water and SCA) licences. Maintaining all of the clauses of the existing two licences in a new operating licence is not a feasible option under a new Act and new structure of licence (ie, a combined operating licence). Some of these terms and conditions duplicate each other and in other instances, they are inconsistent. For example, both licences require Water NSW to develop an AMS. However, the Water NSW (State Water) operating licence requires the AMS to be consistent with the *International Standard ISO 55001:2013 Asset Management – Management systems – Requirements* but the Water NSW (SCA) operating licence requires the AMS to be consistent with *BSI PAS 55:2008 (PAS 55) Asset Management standard*. It is therefore not practical to include both of these terms and conditions in the new operating licence.

Because Water NSW has already developed an AMS based on 55001, the CBA identified no incremental costs or benefits from the AMS-related obligations proposed in Option A.

Option B requires maintenance and implementation of an AMS consistent with the *Australian Standard AS ISO 55001:2014 Asset Management – Management systems – Requirements* (or any other standard as agreed by IPART and as requested by Water NSW). This is consistent with the standard proposed in the Hunter Water operating licence.

The operating licence condition specifies the Australian Standard rather than the International Standard because we aim to specify Australian Standards rather than International Standards, where available. We understand the standards to be currently identical, and have allowed flexibility for Water NSW to request an alternative standard to be approved by IPART.

Water NSW does not need a requirement to *develop* the AMS because we understand that Water NSW has already developed an AMS that it will use to manage all of its assets since the effective merger of the previous State Water and SCA. This was confirmed at the 2015-16 operational audit.¹⁴²

When developing the draft operating licence, we considered that it would also be necessary to include requirements for the AMS to be certified and for Water NSW to maintain and implement the certified AMS. Implementation of a certified AMS is industry good practice

¹⁴² Letter to IPART, Cobbitty Consulting Engineering and Advisory Services, 2015/16 Operational Audit of WaterNSW, Assessment of WaterNSW progress in development of its management systems, 21 November 2016.

and provides a framework for an organisation to identify and target its objectives for managing its assets. However, we have considered Water NSW's view that a requirement for certification does not need to be mandated by the operating licence and Water NSW should be allowed the flexibility to consider the need to be certified through its business decisions. We therefore now propose to only require Water NSW to maintain the AMS consistent with the relevant Australian standard, and to also implement it, in this option. We have also included this flexibility in the Hunter Water operating licence. The requirement to maintain the system consistent with the Australian Standard means that Water NSW will need to demonstrate in an audit that the AMS is consistent with the required standard. Certification is a straightforward way of demonstrating this. In the absence of certification, a more detailed audit may be required. Therefore, we consider that the removal of the obligation has not significantly changed the intent or costs to the utility. Water NSW can determine the most effective and efficient approach to demonstrate consistency.

These recommended requirements would be effective on the commencement date of the operating licence. This is a reasonable requirement because we understand that Water NSW has already implemented an AMS. If Water NSW has developed this AMS consistent with the *International Standard ISO 55001:2013 Asset Management – Management systems – Requirements*, as was required by the Water NSW (State Water) licence, Water NSW can still meet the proposed requirements of the operating licence, even though we have specified the Australian Standard, by requesting approval from IPART.

Water NSW did not object to the operating licence requiring it to have a certified AMS on the commencement date, but we consider that this is not valuable without a requirement for maintenance or implementation of a certified system.

The revised CBA on this option with the requirement for certification removed shows that the difference between the base case and removal of the requirement for certification is marginal. There is a small net benefit of between \$2,700 and \$4,200 over the five year term of the licence. On balance, we have removed the requirement for certification from the operating licence, allowing Water NSW to determine if it wishes to pursue certification.

8.1.3 Preferred option

Option B is our preferred option. Under the new organisational and operating licence structure, Option A is administratively complex. Costs marginally outweigh benefits of certification and will be left to the utility to determine.

The proposed wording is presented in the operating licence clause 5.1.

Recommendation

- 27 The operating licence includes terms and conditions for maintenance and implementation of an Asset Management System (AMS). The operating licence requires consistency with the relevant standard, but does not require certification of the AMS.

8.2 Environmental management

We consider that it is important to include terms and conditions requiring Water NSW to maintain and implement an EMS in the Water NSW operating licence.

The existing Water NSW (State Water and SCA) operating licences include similar terms and conditions requiring an EMS. Such terms and conditions are not included in any other of Water NSW's regulatory instruments. It is important to maintain these requirements, because, together with other environmental obligations that are imposed on Water NSW, they help to manage the impact of Water NSW's activities on the environment, consistent with Water NSW's objectives under the Water NSW Act.

We have also proposed that Water NSW ensures that its EMS is consistent with the relevant Australian Standard. We have not proposed a requirement for certification to this standard. With this approach, Water NSW can determine whether the most efficient way to demonstrate consistency is through certification.

8.2.1 Issues raised

The Issues Paper, sought feedback on the terms and conditions that should be included in the operating licence in relation to an EMS. We received responses from Water NSW, the NSW Government and Sydney Water.

Water NSW supported EMS related terms and conditions as this could reduce the scope for audits by relying on the certification audit process. However, Water NSW considered that the operating licence did not need to address implementation and maintenance of the EMS.

The NSW Government stated that there would be benefit in requiring Water NSW to develop, implement and maintain an EMS that is validated and audited by a third party. Sydney Water considered that such requirements are already included in the existing Water NSW operating licences and it was important that these requirements be maintained. The EMS is a valuable tool for catchment protection to maintain water quality to a standard suitable for drinking water supply. Further, Sydney Water considered that the most recent version of the ISO 14001 standard (released in 2015) should be referred to in the new Water NSW operating licence.

We developed terms and conditions in the draft operating licence informed by these stakeholder submissions. We then received submissions to the draft operating licence package from Water NSW,¹⁴³ Sydney Water,¹⁴⁴ and the NSW Government.¹⁴⁵ The stakeholders made similar comments in relation to the EMS as they did for the AMS. In addition, Water NSW requested that the operating licence should allow time for development of an EMS consistent with the most up-to-date version of the standard

¹⁴³ Water NSW, *WaterNSW submission to the Independent Pricing and Regulatory Tribunal Review of the WaterNSW Operating Licences*, page 24.

¹⁴⁴ Sydney Water, *Submission to IPART on Water NSW's Draft Operating Licence 2017-2022*, April 2017, page 9.

¹⁴⁵ NSW Government, *Review of the draft WaterNSW Operating Licence – NSW Government submission*, March 2017, page 4.

specified in the draft operating licence, as Water NSW has currently developed an EMS consistent with the 2004 version.¹⁴⁶

We discuss below the options we considered in developing the recommended operating licence.

8.2.2 Options assessed

Table 8.2 Options for regulating Water NSW’s management of the impact of its activities on the environment

Options considered	Description
Option A (Base case)	Include terms and conditions in the operating licence, similar to those in the existing operating licences which includes terms and conditions related to developing and maintaining an EMS
Option B	Include terms and conditions similar to Clause 6 of the existing Water NSW (State Water) operating licence/Clause 7 of the Water NSW (SCA) operating licence only , with some changes

We consider Option A to be the Base case because it represents the status quo, ie, the terms and conditions included in the existing Water NSW (State Water and SCA) operating licences. However, we consider that maintaining all of the clauses of the existing two licences in a new operating licence is not a feasible option under a new Act and new structure of operating licence (ie, a combined operating licence). As explained in relation to the AMS, some of these terms and conditions duplicate each other whereas in some instances, they are inconsistent.

We have therefore considered Option B, which includes requiring maintenance and implementation of an EMS consistent with the Australian *Standard AS/NZS ISO 14001:2016 Environmental management –Requirements with guidance for use* (or any other standard as agreed by IPART and as requested by Water NSW). This is consistent with the standard proposed in the Hunter Water operating licence.

As with the AMS, Water NSW does not need a requirement to *develop* the EMS because we understand that Water NSW has already developed an EMS that it will use since the effective merger of the previous State Water and SCA. This was confirmed at the 2015-16 operational audit.¹⁴⁷

The 2016 version of *AS/NZS ISO 14001* is different to the standard currently specified in the Water NSW (State Water) operating licence which requires the 2004 version. Accordingly, Water NSW has implemented an EMS consistent with the 2004 version. We have proposed some flexibility in the operating licence for Water NSW to request a different standard for its EMS, as approved with IPART. This would allow Water NSW to request approval of an alternative standard and avoid being non-compliance with the operating licence

¹⁴⁶ Water NSW, *WaterNSW submission to the Independent Pricing and Regulatory Tribunal Review of the WaterNSW Operating Licences*, page 24.

¹⁴⁷ Letter to IPART, Cobbitty Consulting Engineering and Advisory Services, 2015/16 Operational Audit of WaterNSW, Assessment of WaterNSW progress in development of its management systems, 21 November 2016.

As with the AMS, we consider that consistency with the Australian standard is the important outcome, rather than the approach to achieve this. Therefore, we have maintained the consistency requirement, but removed the certification requirement. Again, it will be up to Water NSW to determine the most effective and efficient way to demonstrate consistency with the relevant standard. We have proposed to not require certification of the EMS in the operating licence.

The proposed requirements would be effective on the commencement date of the operating licence.

We acknowledge that in its response to the Issues Paper, Water NSW considered that the operating licence should not include requirements related to maintenance and implementation of the EMS. However, we consider that obligations requiring maintenance and implementation of the EMS are critical to ensuring the objectives of the EMS are achieved. These conditions enable monitoring and auditing of the activities undertaken under the EMS and test the effectiveness of the EMS. Further, these conditions in part replace the more prescriptive obligations of the existing operating licences to “maintain programs to manage risks to the environment from carrying out its activities; and ensure that all its activities are carried out in accordance with those programs”. We consider that these conditions should not be removed without introducing a corresponding obligation relating to the EMS. Water NSW did not object to inclusion of these terms and conditions in the draft operating licence.

We consider that Option B presents no incremental costs or benefits.

8.2.3 Preferred option

Option B is our preferred option as Option A is not a viable one under the new Act and licence structure. The proposed wording is presented in the operating licence clause 5.2.

Recommendation

- 28 The operating licence includes terms and conditions for maintenance and implementation of an Environmental Management System (EMS). The operating licence requires consistency with the relevant standard, but does not require certification of the EMS.

9 Customer and stakeholder relations

The sixth part of the recommended operating licence includes clauses designed to protect customers when being Supplied water by Water NSW, or when customers extract water that Water NSW captures, stores and releases. Further, it includes clauses requiring Water NSW to undertake an educative role of the community in Declared Catchment Areas, and relates to Memoranda of Understanding (MoU) and agreement of roles and responsibilities with different entities.

The recommendations that we have used to develop the operating licence are listed below. We have provided explanation and background on how we developed each of these recommendations within this chapter.

Recommendations for the operating licence:

- 29 The operating licence includes requirements for Water NSW to enter into supply agreements with all customers to whom it Supplies water, other than Sydney Water, throughout its area of operations. The operating licence will not regulate Water NSW's arrangements with Sydney Water under section 25 of the Water NSW Act.
- 30 The operating licence includes requirements for Water NSW to maintain water allocation accounts for each customer that holds a water licence for extraction of water released to it, and a notification system in relation to changes in flow release patterns.
- 31 The operating licence authorises Water NSW to operate, replace, repair, maintain, remove, connect, disconnect, or modify metering equipment that it does not own, but only by agreement with the owner, including where these are Government funded meters.
- 32 The operating licence requires Water NSW to determine the volume of water extracted by, or Supplied to, its customers.
- 33 The operating licence includes requirements for Water NSW to establish and maintain representative customer advisory groups, consisting of customers only, and a customer advisory group charter.
- 34 The operating licence includes requirements for Water NSW to establish and maintain a customer service charter, a code of practice on payment difficulties, and processes for handling customer complaints and escalating unresolved disputes with customers.
- 35 The operating licence includes requirements for Water NSW to use its best endeavours to cooperate with any licensed network operator, or retail supplier under the *Water Industry Competition Act 2006*, that seeks to establish a code of conduct with it.
- 36 The operating licence authorises Water NSW to undertake an educative role within the community throughout its area of operations, and includes terms and conditions requiring Water NSW to undertake this function in Declared Catchment Areas and consistent with the objectives of the Water NSW Act.

- 37 The operating licence includes terms and conditions that require Memoranda of Understanding (MoUs) with NSW Health and the NSW Environment Protection Authority, prescribe the nature of these MoUs, and require Water NSW to comply with these MoUs.
- 38 The operating licence includes terms and conditions requiring Water NSW to use its best endeavours to enter into an MoU with the Department Planning and Environment to agree on Water NSW's role in the review and implementation of the Metropolitan Water Plan, and to comply with this MoU.
- 39 The operating licence includes terms and conditions requiring Water NSW to agree with DPI Water their respective roles and responsibilities regarding the conduct of the conferred functions specified in Schedule A of the operating licence.
- 40 The operating licence will not include a new requirement for collaboration between Water NSW and relevant Commonwealth agencies on matters of national security.

9.1 Customer protection terms and conditions

In this section, we discuss the terms and conditions that we propose to include in the Water NSW operating licence to protect the interests of customers, to whom Water NSW captures, stores and releases or Supplies water.

9.1.1 Customer supply agreements

As discussed in section 6.2, we consider that Water NSW should Supply water in accordance with a relevant customer supply agreement, or any relevant arrangements with Sydney Water under section 25 of the *Water NSW Act 2014* (Water NSW Act), to allow water to be Supplied to customers in accordance with agreed protocols. Customer supply agreements set out the responsibilities of Water NSW towards its customers for the Supply of water.

We propose that the operating licence should prescribe some minimum terms and requirements for these customer supply agreements, similar to those currently in the Water NSW (SCA) operating licence and the Water NSW (State Water) operating licence (with respect to supply of water to the Fish River Water Supply Scheme). These requirements will not apply to the arrangements with Sydney Water, as the operating licence does not regulate these arrangements. The arrangements with Sydney Water are regulated under the Water NSW Act instead, which both requires these arrangements and prescribes the minimum terms and conditions for inclusion in them.¹⁴⁸

Issues raised

The Issues Paper asked stakeholders if the existing customer related terms and conditions of the Water NSW (State Water and SCA) operating licences were adequate to protect customers' interests when being Supplied services by Water NSW.

In its response, Water NSW considered that the existing terms and conditions of the Water NSW operating licence were adequate and no stakeholders contested this view.

¹⁴⁸ Water NSW Act, Part 2, Division 7.

We subsequently received submissions from the NSW Government¹⁴⁹ and Centroc¹⁵⁰ to the terms and conditions proposed in the draft operating licence. Neither of these stakeholders, or any other stakeholder, raised any concerns. Sydney Water separately requested that the operating licence should clarify where references to customer supply agreements include the arrangements with Sydney Water.¹⁵¹ We have made this clarification in the recommended licence (and also clarify further where the operating licence requirements do not apply to the arrangements with Sydney Water).

We discuss below the options that we considered when developing the final operating licence.

Options assessed

Table 9.1 Options for regulating Water NSW’s customer supply agreements (with all Supply customers except Sydney Water)

Options considered	Description
Option A (Base case)	Include Clause 6.1 of the Water NSW (SCA) operating licence and clause 5.4 of the Water NSW (State Water) operating licence in the new operating licence for specific categories of customers
Option B	Include clause 6.1 of the Water NSW (SCA) operating licence, with some edits to reflect the wording of the Water NSW Act and to incorporate relevant aspects of clause 5.4 of the Water NSW (State Water) operating licence applicable to all categories of customers (except Sydney Water)

Currently, Water NSW is required to Supply water to its customers in the Sydney Catchment Area, except for Sydney Water, in accordance with clause 6.1 of the Water NSW (SCA) operating licence. It also Supplies water to customers of the Fish River Water Supply Scheme in accordance with clause 5.4 of the Water NSW (State Water) operating licence.

We consider that maintaining all of these clauses in the new operating licence is not a preferable option, as many of them are similar. Therefore to avoid duplication and inconsistencies between clauses, having a combined set of requirements related to all customers to whom Water NSW Supplies water is a preferable option. For this reason, we considered Option B.

With Option B, we propose to include in clause 6.1 of the existing Water NSW (SCA) operating licence in the new licence, but with some changes to incorporate the relevant aspects of clause 5.4 of the Water NSW (State Water) operating licence. Further, it has been updated to be consistent with the wording of the listed function 7(1)(e) of the Water NSW Act. This minimises the risk of duplication between clauses in the same operating licence.

The requirements are applicable to all of Water NSW’s Supply customers, throughout NSW, except Sydney Water. Water NSW has confirmed that this option will not result in any

¹⁴⁹ NSW Government, *Review of the draft WaterNSW Operating Licence – NSW Government submission*, March 2017, page 5.

¹⁵⁰ Central NSW Councils, *Independent Pricing and Regulatory Tribunal WaterNSW operating licences review*, April 2017, page 6.

¹⁵¹ Sydney Water, *Submission to IPART on Water NSW’s Draft Operating Licence 2017-2022*, April 2017, page 6.

additional costs from current operations. However, Water NSW considered that customer supply agreements did not need to be regulated as they were negotiated individually with customers. We consider that it is important to continue to regulate the customer supply agreements to protect the interests of customers. We have proposed conditions that are not prescriptive as to how Water NSW is to achieve or agree them. This still allows Water NSW and its customers the flexibility to negotiate on the expected levels of each of the terms of the customer supply agreements.

We did not consider an option to remove existing terms and conditions requiring and regulating customer supply agreements in the operating licence. We consider that it is important that Water NSW Supplies water in accordance with a relevant customer supply agreement to protect the interests of the customers.

Preferred option

Option B is our preferred option. It will allow us to include terms and conditions requiring and regulating customer supply agreements for all Supply customers except Sydney Water, without creating a risk of duplication or inconsistencies.

The proposed terms and conditions are included in clause 6.1 of the operating licence.

Recommendation

- 29 The operating licence includes requirements for Water NSW to enter into supply agreements with all customers to whom it Supplies water, other than Sydney Water, throughout its area of operations. The operating licence will not regulate Water NSW's arrangements with Sydney Water under section 25 of the Water NSW Act.

9.1.2 Water allocation accounts and flow release patterns change notifications

We consider that the operating licence should include requirements for Water NSW to maintain a water allocation account for each customer that holds a water licence under the *Water Management Act 2000* or the *Water Act 1912*. As we propose to authorise Water NSW to capture and store water and release water to customers, it is appropriate to include terms and conditions regulating how it undertakes this listed function.

We understand that Water NSW releases water to customers who hold water licences when they place a water order. For billing and water management purposes, these customers must have water allocation accounts to place these water orders and receive the water. Further, as discussed in section 6.4, we consider that requiring Water NSW to maintain water allocation accounts, in combination with other proposed terms and conditions for the draft operating licence, effectively requires Water NSW to capture, store and release water to its existing, and any interested prospective, customers. This is a regulatory gap that is important for the operating licence to bridge for the protection of Water NSW's customers.

The operating licence should include requirements to maintain an effective system to provide advance notification of any significant changes to flow patterns from its water management works to stakeholders who have registered to be notified of such changes.

Issues raised

We did not seek specific feedback in the Issues Paper on the management of water allocation accounts or a notification system for flow release patterns. However, we generally sought feedback about the existing terms and conditions of the Water NSW (State Water) operating licence relating to the capture, store and release of water, which includes these requirements. Stakeholders commented that it was valuable to include these terms and conditions in the new operating licence.

We received no specific feedback to the terms and conditions presented in the draft operating licence with respect to managing water allocation accounts or a notification system for changes in flow release patterns. This suggests that stakeholders have no concerns with these proposed terms and conditions.

We discuss below the options we considered in developing our final recommendations.

Options assessed

Table 9.2 Options for regulating how Water NSW manages water allocation accounts and a notification system for changes in flow release patterns

Options considered	Description
Option A (Base case)	Include clauses 3.1.2 and 3.2 of the existing Water NSW (State Water) operating licence in the new operating licence, applicable outside the Sydney Catchment Area only
Option B	Include clauses 3.1.2 and 3.2 of the existing Water NSW (State Water) operating licence in the new operating licence, with some minor changes, applicable throughout Water NSW's area of operations
Option C	Do not include clauses 3.1.2 and 3.2 of the existing Water NSW (State Water) operating licence in the new operating licence

Currently, Water NSW is required, under its Water NSW (State Water) operating licence, to maintain a water allocation account for each access licence held by a customer under the *Water Management Act 2000* and each management licence under the *Water Act 1912*. Further, Water NSW must maintain an effective system to provide advance notification of any significant changes to flow release patterns from its water management works, to customers and other stakeholders that have registered to be notified of such changes. These requirements are only applicable outside the Sydney Catchment Area.

With Option A, we could retain the existing approach in the new operating licence. However, we consider Option B is preferable because the same requirements proposed in Option A will be applicable throughout Water NSW's area of operations, ie, wherever it captures, stores and releases water.

We consider that Option C is not preferred. As we propose to authorise Water NSW to capture and store water, and release water to its customers, it is important to have appropriate terms and conditions to regulate how it undertakes this function. By requiring Water NSW to maintain water allocation accounts for customers that hold water licences, Water NSW must maintain a system by which customers' water orders are tracked and water is released in response to these orders. Further, the notification system provides

valuable flow release information to stakeholders and assists to improve transparency of Water NSW's operations.

Preferred option

Option B is our preferred option. The proposed terms and conditions are included in clauses 6.2 and 6.4 of the licence.

Recommendation

- 30 The operating licence includes requirements for Water NSW to maintain water allocation accounts for each customer that holds a water licence for extraction of water released to it, and a notification system in relation to changes in flow release patterns.

9.1.3 Water metering and monitoring

We consider that the operating licence should authorise Water NSW to operate, replace, repair, maintain, remove, connect, disconnect, or modify metering equipment that it does not own. The Water NSW Act states that the operating licence can make provisions to allow this activity.¹⁵²

We understand that without this authorisation in the operating licence, Water NSW cannot undertake any of the proposed work at metering equipment it does not own, even on request by the meter owner. We therefore consider that the authorisation is necessary. To protect the interests of the owner of the metering equipment, we have proposed that the operating licence also requires Water NSW to obtain the consent of the metering equipment owner before it can undertake any of the authorised metering activities.

Where Water NSW cannot obtain the agreement of the customer, but the meter is considered faulty, Water NSW has been conferred functions under the *Water Management Act 2000* to direct a landholder or person to take specified measures to install, replace or to properly maintain metering equipment. Unless the direction otherwise specifies, the direction is taken to include that the equipment is to be properly maintained and that it is to not be used unless it is properly sealed.¹⁵³ In effect, this allows Water NSW to withhold provision of services until the faulty meter is fixed.

Issues raised

In the Issues Paper, we sought feedback from stakeholders on whether it was appropriate to authorise Water NSW to operate, replace, repair, maintain, remove, connect, disconnect, or modify metering equipment that it does not own, as allowed in the Water NSW Act. We received responses from Water NSW, the NSW Government, Sydney Water and the NSW Irrigators' Council.

Water NSW and Sydney Water considered that there was benefit in authorising this activity as Water NSW may sometimes be contracted by customers to undertake the activity for

¹⁵² Water NSW Act section 31(1).

¹⁵³ *Water Management Act 2000*, section 326.

customer-owned meters. However, Sydney Water considered that it was important that the agreement of the customer was first obtained before any works were undertaken.

The NSW Irrigators' Council considered that Water NSW should not be authorised to undertake this activity for customer-owned meters; only for government-funded meters. However, it did not provide further reasoning for this position.

The NSW Government stated that on 1 July 2016 the Water NSW (State Water) operating licence had been updated to allow Water NSW to undertake this activity for any metering equipment installed under a government funded meter program. Further, Water NSW could undertake this activity, or part of it, for metering equipment where provided for in an agreement between Water NSW and the Minister, or DPI Water.

Informed by the feedback from stakeholders in response to the Issues Paper, in the draft operating licence, we proposed to authorise Water NSW to undertake these activities with a requirement to first obtain the consent of the metering equipment owner. We received responses from Water NSW, Sydney Water, the NSW Irrigators' Council, the Commonwealth Environmental Water Holder and Namoi Water.

Water NSW considered that the intent of the Water NSW Act with regard to these provisions is to allow Water NSW to undertake the proposed activities at metering equipment it does not own *without* needing the consent of the equipment owner. Water NSW considered that it can already undertake these activities with owner consent under its listed functions.¹⁵⁴ This is contrary to our understanding of the provisions of the Act.

However, Water NSW primarily sought the ability to undertake the proposed activities without owner consent at Government owned meters or meters owned by customers but installed under a Government-funded meter program. Water NSW did not object to needing consent for other customer owned meters.¹⁵⁵

Sydney Water did not support the operating licence authorising Water NSW to undertake the proposed activities at meters used to supply water to Sydney Water.¹⁵⁶ Sydney Water explained that some of the meters used to Supply water to Sydney Water are owned, maintained and operated by private operators, with three-party commercial arrangements in place between Sydney Water, Water NSW and the private operator. Sydney Water considered that giving Water NSW authority, even with the consent of the asset owner, would not be appropriate given the three-party arrangements in place.¹⁵⁷

Accordingly, Sydney Water suggested that the proposed terms and conditions of the operating licence should either exclude meters used to Supply Sydney Water or include an additional condition to obtain the agreement of Sydney Water, if the meter is used to Supply water under the Water NSW's raw water supply agreement with Sydney Water.¹⁵⁸

¹⁵⁴ Water NSW, *WaterNSW submission to the Independent Pricing and Regulatory Tribunal Review of the WaterNSW Operating Licences*, p25.

¹⁵⁵ *Ibid.*

¹⁵⁶ Sydney Water, *Submission to IPART on Water NSW's Draft Operating Licence 2017-2022*, April 2017, page 15.

¹⁵⁷ *Ibid.*

¹⁵⁸ *Ibid.*

The NSW Irrigators' Council suggested that Water NSW should only be authorised to undertake the proposed activities at Government owned water meters.¹⁵⁹

Namoi Water did not support authorising these activities where a customer owned meter is in place as it considered that Water NSW's role in relation to these meters was only to read them and ensure customer compliance with the *Water Management Act 2000* to have a functioning meter installed. It did not however oppose authorising these activities for government-funded (and not customer owned) meters.¹⁶⁰

The Commonwealth Environmental Water Holder did not support authorising the proposed metering activities at all. Instead, it suggested that maintenance of meters not owned by Water NSW could be more effectively managed by enforcing metering standards. Meter owners could then be required to provide evidence that the meter is accurate in accordance with these metering standards. If not, the onus would then be on the meter owner to fix the meter and provide assurance of meeting the standards to Water NSW.¹⁶¹

We discuss below the options we considered in recommending the final terms and conditions of the operating licence that take the stakeholders' concerns into consideration.

Options assessed

Table 9.3 Options for regulating Water NSW's water metering and monitoring functions, in relation to meters that it does not own

Options considered	Description
Option A (Base case)	Maintain clause 4.2 of the existing Water NSW (State Water) operating licence and 5.2 of the Water NSW (SCA) operating licence Do not include an explicit authorisation for Water NSW to operate, replace, repair, maintain, remove, connect, disconnect, or modify metering equipment that it does not own
Option B	Explicitly authorise Water NSW to operate, replace, repair, maintain, remove, connect, disconnect, or modify metering equipment that it does not own, and include new terms and conditions regulating how it undertakes this function
Option C	Do not authorise Water NSW to operate, replace, repair, maintain, remove, connect, disconnect, or modify metering equipment that it does not own, and do not include any terms and conditions regulating how it undertakes this function

Under its existing operating licences, Water NSW is only authorised to operate, replace, repair, maintain, remove, connect, disconnect, or modify metering equipment that it does not own if it has been installed under a government-funded meter program.

For customer-owned meters, Water NSW is only authorised (and required) to *read* the meters. For other meters, Water NSW is required to read the metering equipment, determine water extraction, and carry out any other specified water monitoring functions but only if set out in an agreement between Water NSW and the Minister or DPI Water.

¹⁵⁹ Letter to IPART, Mr Mark McKenzie, Chief Executive Officer, New South Wales Irrigators' Council, 7 March 2017, page 6.

¹⁶⁰ Namoi Water, *Namoi Water Submission to IPART Water NSW Draft Operating Licence*, April 2017, page 3.

¹⁶¹ Commonwealth Environmental Water Holder, *Submission in response to the Water NSW Operating Licences Review: Draft Report and Draft Operating Licence*, page 1.

Both of the Water NSW (State Water and SCA) operating licences include the same provisions so that they are applicable across the whole of Water NSW's area of operations.

With Option A, we could maintain the requirements of the existing operating licences in the new operating licence. However, Option A does not explicitly authorise Water NSW to operate, replace, repair, maintain, remove, connect, disconnect, or modify metering equipment that it does not own, however it is implied. We consider that an explicit authorisation provides clarity.

With Option B, we propose to include an explicit authorisation for Water NSW to undertake the proposed activities at metering equipment that it does not own with a requirement to first obtain the agreement of the owner of the meter. While we acknowledge Water NSW's view that this goes against the intention of the Water NSW Act in relation to these activities, it is contrary to our understanding.

We do not propose any exemptions to these requirements as suggested by Water NSW. We consider the term "Government funded meters" difficult to identify clearly and could be open to interpretation. Therefore, we have not adopted this wording and require Water NSW to obtain prior consent even for any customer-owned meters that have been Government funded. We have not been prescriptive about what form this consent may take to enable Water NSW to best determine the form and frequency of this consent with its customers. We consider that it is important to maintain the requirement for owner consent to protect the interests of the owner.

Further, we have not proposed to require Water NSW to obtain Sydney Water's consent for undertaking the proposed activities at meters that measure water supplied to Sydney Water (unless a meter is owned by Sydney Water). We consider that communications regarding these meters can be managed between Sydney Water, Water NSW and the meter owner, through their agreements. It is not our intention to override these agreements in the operating licence.

Option B as it aims to simplify the existing terms and conditions for regulating how Water NSW operates, replaces, repairs, maintains, removes, connects, disconnects, or modifies metering equipment that it does not own. It allows Water NSW to be contracted by customers to undertake the proposed activities at customer-owned meters. It also allows Water NSW to undertake the activity of its own initiative for customer-owned meters where it considers that it is necessary if it has obtained the agreement of the customer. As previously explained, where it cannot obtain the agreement of the customer, but the meter is considered faulty, Water NSW has been conferred functions under the *Water Management Act 2000* to direct a landholder or person to take specified measures to install, replace or to properly maintain metering equipment. In effect this approach is consistent with the Commonwealth Environmental Water Holder's view to implement metering standards when a meter is found to be faulty.

The CBA identified no net costs for Option B.

We do not prefer Option C as Water NSW needs to continue to be able to undertake this activity for some of the meters that it does not own, such as the government-funded meters. Further, restricting the authorisation to only government-funded meters is not a flexible

approach and does not allow Water NSW and a customer to agree agreed for Water NSW to undertake this activity on a customer meter.

Preferred option

Option B is our preferred option. It will allow Water NSW to operate, replace, repair, maintain, remove, connect, disconnect, or modify all metering equipment that it does not own, subject to agreement from the customer owner (including relevant government departments in the case of government owned meters).

The proposed terms and conditions are included in clause 6.3 of the operating licence.

Recommendation

- 31 The operating licence authorises Water NSW to operate, replace, repair, maintain, remove, connect, disconnect, or modify metering equipment that it does not own, but only by agreement with the owner, including where these are Government funded meters.

Other Metering functions

We have proposed to not include the existing requirement for Water NSW to *read* its customer meters. Instead, we have proposed that Water NSW should “determine the volume of water extracted by, or Supplied to, its customers for the purpose of accurate account management billing and reporting”. We consider that this is a more flexible approach that better reflects advances in technology and other circumstances such as remote collection of metered data, and not just physical meter readings by operational staff. Water NSW confirmed that this option would not substantially impact on its current operational costs and would likely enable savings in terms of removing the requirement for physical meter reading.

Finally, we have proposed to not include the existing requirements to read/determine extractions at meters where agreed with the Minister or DPI Water. We consider that if an agreement is in place for a particular meter, the terms and conditions of that agreement will require all parties to ensure the agreement is adhered to and this does not need further regulation in the operating licence.

Recommendation

- 32 The operating licence requires Water NSW to determine the volume of water extracted by, or Supplied to, its customers.

Customer advisory groups and charter

We consider that the operating licence should include requirements for Water NSW to establish and maintain area-based customer advisory groups. The objective of the advisory groups is to allow customer involvement in issues relevant to Water NSW’s performance and provision of services (ie, *release* and *supply* of water to customers). These groups provide a platform for customers to provide feedback to Water NSW about its services.

Inclusion of these requirements protects customers' interests. These customer advisory groups are relevant to all of Water NSW's customers, to whom it both *releases* and *Supplies* water.

The proposed requirements for the customer advisory groups are similar to those in the existing Water NSW (State Water) operating licence which relates to customer service committees (for customers outside the Sydney Catchment Area to whom water is *released* only) and a customer council for the Fish River Water Supply Scheme. However, the existing requirements do not cover *Supply* customers in the Sydney Catchment Area. This is a gap that can be addressed in the new operating licence.

Further, we consider that the operating licence should require a customer advisory group charter. This is consistent with similar requirements of other public water utility operating licences.¹⁶² Water NSW can choose to maintain one charter for all customer advisory groups or have multiple charters for the different groups. The operating licence will include the minimum requirements for the customer advisory group charter including, for example, the role of the customer advisory group, membership and how these members and the chair will be appointed, the term for which members are appointed, and information on how the customer advisory group will operate. This will allow clarity and transparency in how the customer advisory groups function.

Issues raised

The Issues Paper sought feedback on the appropriateness of including terms and conditions in the new operating licence, with respect to customer advisory groups.

We received responses from Water NSW and the NSW Irrigators' Council. Both the stakeholders generally considered that specifying customers or groups of customers to be invited to the customer advisory groups in the operating licence is beneficial. This would allow for different types of customers to be represented, ideally including all types of customers, making Water NSW aware of different customers' issues and needs. Water NSW observed that currently the customer service committees had large representation from Government agencies and not enough from customers.

We proposed groups of customers to be invited to the customer advisory groups in the draft operating licence and sought feedback from stakeholders. We received responses from Water NSW, the NSW Irrigators' Council, the Commonwealth Environmental Water Holder, Centroc, Namoi Water, Murrumbidgee Irrigation, Gwydir Valley Irrigators' Association, Lachlan Valley Water, Oberon Council and NSW Aboriginal Land Council.

Water NSW generally supported the proposed groups but considered that inclusion of environmental users or groups may not be appropriate for Customer Advisory Groups as they are not Water NSW's customers.¹⁶³ The NSW Irrigators' Council raised the same issue.¹⁶⁴

¹⁶² For example, Sydney Water operating licence clause 5.5 which requires a customer council charter.

¹⁶³ Water NSW, *WaterNSW submission to the Independent Pricing and Regulatory Tribunal Review of the WaterNSW Operating Licences*, page 25.

¹⁶⁴ Letter to IPART, Mr Mark McKenzie, Chief Executive Officer, New South Wales Irrigators' Council, 7 March 2017, page 6.

The NSW Irrigators' Council also sought assurances that an adequate cross-section of customers will be represented in the customer advisory groups, that the current Coastal Valley Customer Service Committee is not broken into a North and South Coast Customer Group with the Hunter Valley separately amalgamated with the Greater Sydney area, and that the proposed Customer Advisory Groups have an advisory function only.¹⁶⁵

The Commonwealth Environmental Water Holder requested that both State and Commonwealth Environment Water holders be represented in customer advisory groups if they manage environmental water in the catchment.¹⁶⁶

Centroc supported the inclusion of local water utilities on the customer advisory groups, and the proposed new inclusion for a customer advisory group charter.¹⁶⁷

Gwydir Valley Irrigators' Association suggested removal of "environmental users or groups" from the mandatory list of invitees on the customer advisory groups, as it considered that this would duplicate environmental water holders. Gwydir Valley Irrigators' Association also queried the requirement for inclusion of Indigenous Australians and recommended that this be amended to be Aboriginal water holders.¹⁶⁸ Lachlan Valley Water noted that the existing customers involved in Water NSW's customer service committees have, to date, worked well because the members represented paying customers. Lachlan Valley Water expressed concerns that by including users such as environmental users or groups, it will dilute the focus of the meetings as these are not paying customers.¹⁶⁹ Murrumbidgee Irrigation also expressed similar concerns about the membership of the customer advisory groups.¹⁷⁰

Oberon Council expressed concern with removing the requirement for the specific Fish River Council which currently names with Oberon Council as a specific member. The submission expressed concern that the new condition may result in the former Fish River Council being integrated into a larger area group and fewer existing members being included in the group.¹⁷¹

The NSW Aboriginal Land Council sought details about how Aboriginal representatives would be appointed. It considered that Local Aboriginal Land Councils would be well placed to provide appropriate Aboriginal representation on the Customer Advisory Group mandatory invitee list.

Finally, Namoi Water requested that the Customer Advisory Group Charter should be able to reflect the relevant area's specific need to focus on Water NSW's primary service functions, similar to how the operating licence allows for individual customer service charters.¹⁷²

¹⁶⁵ Ibid.

¹⁶⁶ Commonwealth Environmental Water Holder, *Submission in response to the Water NSW Operating Licences Review: Draft Report and Draft Operating Licence*, page 2, response to draft recommendation 37.

¹⁶⁷ Central NSW Councils, *Independent Pricing and Regulatory Tribunal Water NSW operating licences review*, April 2017, page 7.

¹⁶⁸ Letter to IPART, Ms Zara Lowien, Executive Officer, Gwydir Valley Irrigators Association, 10 April 2017, page 2.

¹⁶⁹ Letter to IPART, Mr Mark Ewing, Executive Officer, Lachlan Valley Water Inc, 7 April 2017, page 2.

¹⁷⁰ Letter to IPART, Mr Brett Jones, Managing Director, Murrumbidgee Irrigation, 7 April 2017, page 2.

¹⁷¹ Letter to IPART, Mr Chris Schumacher Works and Engineering Director, Oberon Council, 5 April 2017

¹⁷² Namoi Water, *Namoi Water Submission to IPART Water NSW Draft Operating Licence*, April 2017, page 4.

We discuss below the options we considered in recommending the final terms and conditions in the operating licence, that take the stakeholders' concerns into consideration.

Options assessed

Table 9.4 Options for regulating Water NSW's customer advisory groups

Options considered	Description
Option A (Base case)	Include clauses 5.1 and 5.3 of the Water NSW (State Water) operating licence for customers outside the Sydney Catchment Area only
Option B	Include clause 5.1 of the Water NSW (State Water) operating licence, with some edits to incorporate relevant aspects of clause 5.3 of the Water NSW (State Water) operating licence, (eg, revised membership of customer committees, include a new requirement for Water NSW to maintain a customer advisory group charter(s), apply requirements to all of Water NSW's customers throughout NSW)
Option C	Do not include any terms and conditions related to customer advisory groups

Currently, under the Water NSW (State Water) operating licence, Water NSW is required to maintain customer service committees and a customer council for its customers outside the Sydney Catchment Area. Water NSW is not required to maintain any customer committees for its customers in the Sydney Catchment Area.

We consider that maintaining the existing requirements in the new operating licence, under Option A, is not preferred. It would be preferable to combine the requirements of clauses 5.1 and 5.3 of the existing Water NSW (State Water) operating licence, as appropriate, and make changes so that they apply to all of Water NSW's *Supply* and *release* customers, throughout its area of operations.

It is not necessary to maintain all of the requirements of clause 5.3 in the new operating licence as these relate specifically to the membership of the Fish River Water Supply Scheme Customer Council. Retaining two sets of similar requirements for different categories of customer councils within one operating licence is unnecessary. Rather, one more generic requirement for conditions applying to all customer advisory groups is preferable.

With Option B, we propose to modify the terms and conditions based on those currently included in clause 5.1 of the Water NSW (State Water) operating licence for greater consistency with other public water utility licences. We also propose revised membership of the customer advisory groups to include more generic groups of customers. In proposing the final list for membership, we have considered stakeholders' views and concerns.

Specifically, we consider that requiring customers who are Aboriginal cultural heritage water users clarifies which indigenous Australians would be required to be represented on the group, as these users would hold the relevant water licences and are also customers of Water NSW. Oberon Council's concerns were addressed by including a requirement that the membership of the group be representative of the customers in that area. We also removed members who were not otherwise customers of Water NSW. Water NSW can choose to set up other forums to discuss issues with stakeholders who are not customers per se, but this is not an operating licence requirement.

Not specifying particular stakeholders will minimise the risk that all customers are not being fairly represented at the advisory groups and will allow broad representation of customer groups. We have required that the list represents minimum requirements but that the membership also be representative customers in the area covered by the group. There is no assurance that all or any individual customers are represented. However, the process for membership of the groups to be formalised in accordance with a customer advisory group charter will assist in providing fairness, transparency and uniformity in the appointing of members of the customer council.

In revising the membership of the customer advisory groups, we have not changed the intent to have a representative sample of customers in each group. We have aimed to ensure that customers that were previously specifically named in the operating licence can continue to be represented by being effectively included within one or more of the customer categories. Where we have removed a Government agency which is not a customer (eg, DPI Water), we have proposed alternative arrangements to regulate the relationship with Water NSW (such as an agreement of roles and responsibilities). This will allow customer advisory groups to better represent the needs of customers as they relate to Water NSW.

Further, we propose to include requirements related to the customer advisory group charter to promote uniformity as to how the advisory groups are managed. The CBA identified no net costs for Option B.

Option C is not preferred. We consider that customer advisory groups are important for considering and discussing customers' interests in relation to the services provided by Water NSW. They allow customers the opportunity to interface with Water NSW to discuss issues. We understand that currently, no other instrument requires such groups.

Preferred option

Option B is our preferred option with membership limited to customers only. It will allow us to include terms and conditions in the operating licence requiring customer advisory groups, and an associated charter for running these groups, for all customers to whom Water NSW *captures, stores and releases water* and those to whom it *Supplies water*.

The proposed terms and conditions are included in clauses 6.5 and 6.6 of the operating licence. They allow Water NSW to maintain one or more charters as it deems appropriate.

Recommendation

- 33 The operating licence includes requirements for Water NSW to establish and maintain representative customer advisory groups, consisting of customers only, and a customer advisory group charter.

9.1.4 Customer service charter

We consider that the operating licence should include requirements for Water NSW to establish and maintain a customer service charter. The purpose of the charter will be to set out the mutual responsibilities of Water NSW and its customers.

We propose that *Supply* customers should be excluded from this requirement. The purpose of the customer service charter is similar to the customer supply agreement, ie, to protect the interests and rights of the customers being provided services by Water NSW. Our proposal that there be a customer supply agreement for all customers who are Supplied water negates the need for a customer service charter for this category of customer. Similarly, for Sydney Water, there is no need for a customer service charter as Water NSW is required to enter into supply arrangements with it under section 25 of the Water NSW Act.

The customer service charter is only required for customers to whom Water NSW *captures, stores and releases* water.

Issues raised

In the Issues Paper, we sought feedback on the appropriateness and value of the existing requirements of the Water NSW (State Water) operating licence related to the customer service charter. The Water NSW submission considered that these requirements were adequate and valuable. Further, with respect to customer contracts, Water NSW considered that the Water NSW Act is not structured in the same way as the Sydney and Hunter Water Acts which include deeming provisions. Therefore, formal customer contracts were not feasible under the Water NSW Act. We have not further considered a customer contract for Water NSW during this review.

The NSW Aboriginal Land Council responded to the draft operating licence provisions which allow for more than one customer service charter for different categories of customer, as WaterNSW deems appropriate. It sought to liaise with Water NSW to develop a customer service charter specifically catering to Aboriginal peoples.¹⁷³

We discuss below the options we considered in recommending the final terms and conditions for inclusion in the operating licence.

Options assessed

Table 9.5 Options for regulating Water NSW’s customer service charter

Options considered	Description
Option A (Base case)	Include Clause 5.2 of the Water NSW (State Water) operating licence in the new operating licence for customers outside the Sydney Catchment Area only
Option B	Include Clause 5.2 of the Water NSW (State Water) operating licence in the new operating licence, updated, for all of Water NSW’s capture, store and release customers throughout NSW
Option C	Do not include terms and conditions requiring a customer service charter

Currently, under the Water NSW (State Water) operating licence, Water NSW is required to maintain a customer service charter that sets out the mutual responsibilities and obligations of Water NSW and its customers. These requirements only relate to the customers outside the Sydney Catchment Area to whom Water NSW *captures and stores water and releases water*.

¹⁷³ Letter to IPART, Mr Malcolm Davis, Acting Chief Executive Officer, NSW Aboriginal Land Council, 10 April 2017, page 3.

We do not favour maintaining these requirements in the new operating licence, under Option A is because it excludes possible capture, store and release customers within the Sydney Catchment Area. While there may not be such customers currently, there could be in future. All of Water NSW's customers receiving the same function throughout its area of operations should be protected by the customer service charter.

Under Option B, we propose to include the same terms and conditions as in Option A, but we will not constrain where these requirements apply. However, we propose that Water NSW will not need to have customer service charters covering customers with whom it has already established customer service agreements, as they serve a similar purpose. In effect, Water NSW's customer service charter will cover customers to whom it *releases* water. However, it will not cover *Supply* customers, because we have proposed that the operating licence require Water NSW to enter into a relevant customer supply agreement with these customers.

We also propose some other minor edits to allow consistency with similar requirements of other public water utility operating licences. Water NSW has confirmed that this option will not result in additional costs relative to current operations.

We have considered the NSW Aboriginal Land Council's request. The recommended operating licence allows for this type of customer service charter to be developed but we have not proposed an obligation for charters to be developed specifically catering to Aboriginal peoples.

Option C is not preferred. A customer service charter is important for protecting customers' interests when receiving services from Water NSW. It provides clarity, transparency, and information to mitigate any issues with the provision of services. We understand that currently, no other instrument requires Water NSW to have a customer service charter.

Preferred option

Option B is our preferred option, in combination with a requirement to have customer supply agreements for all Supply customers. The customer service charter seeks to protect the interests of customers by establishing the mutual responsibilities of Water NSW and the customer, in providing and receiving services. In this way, it acts similarly to a customer supply agreement.

The proposed terms and conditions are included in clause 6.7 of the operating licence.

9.1.5 Handling payment difficulties

We consider that the operating licence should include requirements for Water NSW to maintain and implement a code of practice on payment difficulties and to make this code, or information on the code, easily accessible for customers.

A code of practice on payment difficulties is to protect the interests of customers facing financial hardship. The operating licence will set out some minimum requirements for the code including methods of repayment available to the customers and the circumstances under which Water NSW may restrict provision of services to the customers. These

circumstances must be reasonable giving the customer opportunities to repay any outstanding debts.

We propose that these requirements should be similar to the existing requirements of the Water NSW (State Water) operating licence but they should apply to all customers to whom Water NSW provides services, including the capture, store and release, and Supply of water.

Issues raised

In the Issues Paper, we sought feedback about whether the existing requirements of the Water NSW (State Water) operating licence were fair and adequate to protect customers experiencing financial hardship.

We only received a response from Water NSW which considered that its existing code of practice was fair and adequate. Further, it is adequately communicated as it is available on Water NSW's website. Water NSW also provides information about the code in its customer service charter.

We received no submissions from stakeholders in response to the draft operating licence terms and conditions which suggests that stakeholders had no concerns with our proposal.

We discuss below the options we considered in recommending the final operating licence.

Options assessed

Table 9.6 Options considered for regulating how Water NSW handles customers' payment difficulties

Options considered	Description
Option A (Base case)	Include Clause 5.5 of the Water NSW (State Water) operating licence in the new operating licence for customers outside the Sydney Catchment Area only.
Option B	Include Clause 5.5 of the Water NSW (State Water) operating licence in the new operating licence, with some updates, to apply to all of Water NSW's customers throughout NSW.
Option C	Do not include terms and conditions related to a code of practice on payment difficulties

Currently, under the Water NSW (State Water) operating licence, Water NSW is required to maintain a code of practice on payment difficulties for its customers outside the Sydney Catchment Area, to whom it *releases* water.

We do not favour maintaining the existing requirements in the new operating licence, under Option A. All of Water NSW's customers throughout its area of operations should be protected by the code of practice on payment difficulties, if they experience difficulty paying for services at any time, including both customers who obtain water that is Supplied or released.

With Option B, we propose to include the same terms and conditions as in Option A, but we will not constrain where these requirements apply. We also propose some other minor edits to allow consistency with similar requirements of other public water utility operating

licences. Water NSW has confirmed that this option will not result in additional costs relative to current operations.

Option C is not a preferred. A code of practice on payment difficulties is important for protecting customers' interests when receiving services from Water NSW. We understand that currently, no other instrument requires Water NSW to adopt such a code.

Preferred option

Option B is our preferred option. It will allow us to include terms and conditions in the operating licence requiring Water NSW to establish a code of practice on payment difficulties.

The code of practice seeks to protect the interests of customers by articulating assistance that customers can receive to pay debts. It also explains the circumstances in which Water NSW may restrict customers' access to services.

The recommended terms and conditions are included in licence clause 6.8.

9.1.6 Handling customer complaints

We consider that the operating licence should include requirements for Water NSW to maintain and implement a procedure for receiving, responding to and resolving complaints. Further, Water NSW must make information on the procedure easily available to customers.

The operating licence should also include requirements for Water NSW to be a member of the Energy and Water Ombudsman NSW (EWON) to allow external resolution of disputes between Water NSW and its customers. Water NSW should prepare information on the dispute resolution service provided by EWON and make it easily available to its customers.

Similar terms and conditions are included in the existing Water NSW operating licences. These requirements protect the interests of customers, providing mechanisms for customers to make complaints about services Water NSW provides and to escalate any unresolved issues.

The benefit of the proposed conditions is that they are transparent and subject to audit. Further, these requirements complement the other customer obligations proposed, including the requirements for customer advisory groups, in protecting the interests of customers.

Issues raised

The Issues Paper, sought feedback about the practicality for Water NSW to be able to maintain one internal complaints handling procedure for all of its customers, following the merger of the previous State Water and SCA. Water NSW responded that it considered it appropriate to adopt the previous State Water's customer complaints handling procedure to cover Water NSW's entire customer base.

We further asked stakeholders whether EWON was the appropriate external dispute resolution scheme to specify in the operating licence. Water NSW confirmed it considered that EWON was appropriate. Water NSW currently makes information about the EWON

scheme available to customers on its website, and annually through customer bills, as currently required by the Water NSW (State Water) operating licence.

We received no submissions to the draft operating licence about this issue.

We discuss below the options we considered in recommending the operating licence.

Options assessed

Table 9.7 Options for regulating how Water NSW manages complaints

Options considered	Description
Option A (Base case)	Include clauses 5.6 and 5.7 of the Water NSW (State Water) operating licence for Water NSW's customers outside the Sydney Catchment Area and clause 6.2 of the Water NSW (SCA) operating licence in the new operating licence for customers within the Sydney Catchment Area
Option B	Include clauses 5.6 and 5.7 of the Water NSW (State Water) operating licence in the new operating licence, with some updates, for all of Water NSW's customers throughout NSW
Option C	Do not include terms and conditions related to complaints handling and external dispute resolution

Currently, for customers outside the Sydney Catchment Area, Water NSW is required to manage complaints in accordance with clause 5.6 of the Water NSW (State Water) operating licence and escalate any unresolved disputes to EWON in accordance with clause 5.7 of the Water NSW (State Water) operating licence. For customers within the Sydney Catchment Area, Water NSW must manage complaints in accordance with clause 6.2 of the Water NSW (SCA) operating licence. The Water NSW (SCA) licence does not require Water NSW to escalate any unresolved disputes to an external resolution body.

We do not favour maintaining all of the existing clauses in the new operating licence, under Option A. The complaints handling terms and conditions are similar, yet there is a gap in resolving disputes externally for customers in the Sydney Catchment Area. Therefore, to avoid duplication and inconsistencies between clauses, we prefer to have a combined set of requirements for all Water NSW's customers.

Under Option B, we could retain the existing clauses 5.6 and 5.7 of the Water NSW (State Water) operating licence but revised to incorporate the relevant aspects of clause 6.2 of the Water NSW (SCA) operating licence. This minimises the risk of duplication and inconsistencies between clauses in the same operating licence, or of any gaps. The combined requirements would apply to all of Water NSW's customers across NSW.

We have also proposed some minor changes to the existing clauses for consistency with similar requirements of other public water utility operating licences. Water NSW has confirmed that this option will not result in any additional costs from current operations.

Option C is not preferred. Complaints handling and external dispute resolution processes are important for protecting customers' interests when receiving services from Water NSW. We understand that currently, no other instrument requires Water NSW to adopt such processes.

Preferred option

Option B is our preferred option. It will allow us to include terms and conditions in the operating licence requiring Water NSW to establish and implement processes for dealing with customer complaints and for escalation of unresolved disputes. The complaints handling procedure must be consistent with the *Australian Standard AS/NZS 10002-2014: Guidelines for complaints management in organizations (AS/NZS 10002:2014)*. Water NSW must make information on this process available to its customers.

Water NSW must be a member of the EWON scheme and provide information on EWON's dispute resolution service to its customers.

The proposed terms and conditions are included in operating licence clauses 6.9 and 6.10.

Recommendation

- 34 The operating licence includes requirements for Water NSW to establish and maintain a customer service charter, a code of practice on payment difficulties, and processes for handling customer complaints and escalating unresolved disputes with customers.

9.1.7 Code of conduct with Water Industry Competition Act licensees

We consider that the operating licence should include requirements for Water NSW to use its best endeavours to cooperate with licensees under the *Water Industry Competition Act 2006* (WIC Act) that seek to establish a code of conduct under their licences. Where the Minister administering the WIC Act has established a code of conduct under clause 25 of the *Water Industry Competition (General) Regulation 2008*, Water NSW will be taken to have satisfied its obligation under the proposed requirements by applying the water industry code of conduct established by the Minister to the relevant WIC Act licensee.

Water NSW is not currently required to enter into a code of conduct with WIC Act licensees under its Water NSW (State Water or SCA) operating licences. However, we consider that this is a gap. As a standard requirement of WIC Act licences, where the Minister has not established a code of conduct under clause 25 of the WIC Regulation, licensees are required to establish a code of conduct with any other WIC Act licensee or public water utility that supplies it water (or other services).

To facilitate this, we consider that any public water utility that supplies WIC Act licensees with water should be required to use its best endeavours to cooperate with the WIC Act licensees to establish the code of conduct with them. We propose that this requirement should apply to WIC Act licensees anywhere within Water NSW's area of operations.

Issues raised

In the Issues Paper we sought feedback from stakeholders on any terms and conditions that could be included in the new operating licence to regulate Supply of water to WIC Act licensees.

We received responses from Water NSW and Sydney Water. Both indicated that the existing terms and conditions of the Water NSW operating licences were sufficient to regulate

Supply of water to customers in general, which could include WIC Act licensees. This suggested that new terms and conditions were not necessary.

However, the NSW Government noted that other public water utilities, such as Sydney Water, are required to use their best endeavours to establish codes of conduct with WIC Act licensees, under their operating licences. The NSW Government considered that the new operating licence should ensure that WICA licensees can operate on an equal footing with all public water utilities.¹⁷⁴

In the draft operating licence we considered that it was of benefit to test terms and conditions requiring Water NSW to use its best endeavours with regard to codes of conduct with WIC Act licensees.

We received a response from Sydney Water which considered that the proposed terms and conditions in the draft operating licence were appropriate. Particularly because the onus is on the WIC Act licensee to seek to establish such a code, and not on Water NSW, and it is a best endeavours requirement.¹⁷⁵ Sydney Water noted that it is not aware of any current circumstances where this is currently necessary for Water NSW. However, the draft clause provided an appropriate obligation if the situation arose in future.¹⁷⁶

We received no other submissions to the draft operating licence which suggested that the other stakeholders had no concerns with the proposed terms and conditions.

We discuss below the options we considered in recommending the final operating licence.

Options assessed

Table 9.8 Options for regulating a code of conduct with WIC Act licensees

Options considered	Description
Option A (Base case)	Do not include any terms and conditions related to a code of conduct with licensees under the WIC Act
Option C	Include terms and conditions requiring Water NSW to use its best endeavours to cooperate with any licensed network operator or retail supplier under the WIC Act that seeks to establish a code of conduct with it.

Currently, Water NSW is not required to establish any codes of conduct with WIC Act licensees.

With Option A, the operating licence could also be silent on a code of conduct with WIC Act licensees. However, we do not favour this option because WIC Act licensees are required to enter into a code of conduct with water suppliers under their licences. This can be difficult to do without the cooperation of the public water utility.

¹⁷⁴ NSW Government, IPART Review of the WaterNSW Operating Licences – NSW Government Submission, September 2016, page 9.

¹⁷⁵ Sydney Water, *Submission to IPART on Water NSW's Draft Operating Licence 2017-2022*, April 2017, page 11.

¹⁷⁶ *Ibid.*

In Option B, we propose to include a condition in the operating licence requiring Water NSW to use its best endeavours to cooperate with any WIC Act licensee that seeks to establish a code of conduct with Water NSW. This is similar to our approach for the recent Sydney Water and Hunter Water operating licences. Water NSW's cooperation would facilitate the code of conduct that WIC Act licensees are required to establish. Water NSW considers that this new requirement will not result in substantial costs relative to its existing operations.

Prior to release of the draft operating licence, Water NSW queried if this clause was necessary, as it has not historically been approached by WIC Act licensees to establish any codes of conduct. We acknowledged this position. While other stakeholders also queried the necessity of this inclusion, we consider that including the requirement will allow longevity of the operating licence. It will be able to accommodate the event that Water NSW commences Supply of water to WIC Act licensees and the WIC Act licensee is required to establish such a code of conduct with Water NSW. The existing Water NSW (State Water and SCA) operating licences do not address such a code of conduct.

We received no stakeholder submissions identifying concerns with the draft terms and conditions.

Preferred option

Option B is our preferred option. It will facilitate the establishment of a code of conduct with a WIC Act licensee, where Water NSW Supplies water to the licensee and where the licensee is required to establish such a code.

The proposed terms and conditions are included in the operating licence clause 6.12.

Recommendation

- 35 The operating licence includes requirements for Water NSW to use its best endeavours to cooperate with any licensed network operator, or retail supplier under the *Water Industry Competition Act 2006*, that seeks to establish a code of conduct with it.

9.2 Educative role within the community

We consider that Water NSW should be authorised, in the operating licence, “to undertake an educative role within the community”. The Water NSW Act states that this is one of Water NSW's listed functions.¹⁷⁷

Currently, Water NSW is authorised to undertake this function under the Water NSW (SCA) operating licence, but this is restricted to within the Sydney Catchment Area only. This is because, historically, the now repealed *Sydney Water Catchment Management Act 1998* included it as a function of the previous SCA.

It is important that Water NSW is able to continue to undertake this function as no other instrument currently authorises it. By authorising this function, Water NSW is able to educate the community on its role and activities, such that the community can interact with

¹⁷⁷ Water NSW Act, s 7(1)(k).

Water NSW and participate effectively. This is particularly relevant with regard to catchment management as the community can have an impact on the health of a catchment. However, the Water NSW Act does not specifically define or constrain this function to its catchment management activities, and for this reason, we have not sought to do so either.

We propose that Water NSW should be authorised to undertake an educative role within the community, widely, as we have proposed with the authorisation of other listed functions. This will mean that educational activities not currently undertaken *can* be expanded by Water NSW, if desired, but this is not *required* by the operating licence.

We have, however, also proposed terms and conditions *requiring* Water NSW to undertake educative activities but only in Declared Catchment Areas. This acknowledges the importance of education in relation to the management of these catchments.

9.2.1 Issues raised

The Issues Paper asked whether Water NSW should be authorised to undertake an educative role in the community.

We received responses from Water NSW, Sydney Water and the NSW Government. These three stakeholders considered that the operating licence should authorise Water NSW to undertake an educative role in the community, as it is a normal and expected part of running a State owned corporation. However, Sydney Water and the NSW Government considered that no terms and conditions were necessary to regulate *how* Water NSW undertakes an educative role within the community.

Informed by these comments, the draft operating licence authorised Water NSW to undertake an educative role in the community, throughout its area of operations. While we acknowledged Sydney Water's and the NSW Government's views that specific terms and conditions were not required regulating this function, we proposed a condition in the draft operating licence because the function is a 'listed function' of Water NSW, which can only be exercised under the authority of, and in accordance with, an operating licence. We therefore see merit in including an obligation within the operating licence, corresponding to the authorisation, for transparency and auditability of the listed function.

In the draft operating licence, the condition was deliberately non-prescriptive and did not relate specifically to the declared catchment areas. The conditions were intended to allow Water NSW to undertake its educative role as it saw fit, consistent with the objectives of the Water NSW Act.

We received submissions on the draft operating licence package from Water NSW, Sydney Water, Centroc, Murrumbidgee Irrigation, Lachlan Valley Water, the NSW Irrigators' Council, Gwydir Valley Irrigators' Association, and NSW Aboriginal Land Council.

Water NSW was comfortable with being generally authorised to undertake an educative role in the community. However, it considered that the terms and conditions requiring this

function, and regulating how Water NSW undertakes it, should only relate to its activities in Declared Catchment Areas.¹⁷⁸

Sydney Water supported authorising Water NSW to undertake this role in the Sydney Catchment Area, but had no view on extending the function outside this area. It expressed concerns that any additional expenses incurred by Water NSW if it extended its current educational activities could be passed on to customers. Murrumbidgee Irrigation,¹⁷⁹ Lachlan Valley Water¹⁸⁰ and the NSW Irrigators' Council¹⁸¹ had similar concerns. Some of these stakeholders suggested that any additional costs could be funded by the NSW Government, on behalf of the wider community.¹⁸²

Centroc generally supported authorising Water NSW to undertake this function, as well as the terms and conditions proposed in the draft operating licence.¹⁸³

Gwydir Valley Irrigators' Association suggested that any education programs should be specifically matched back to Water NSW's listed functions under the Water NSW Act.¹⁸⁴

The NSW Aboriginal Land Council suggested that the education activities of Water NSW could be expanded to improve awareness amongst Aboriginal peoples, businesses and communities about the Aboriginal-specific classes of water licence that they are entitled to apply for.¹⁸⁵

We considered the stakeholders' views in developing the recommended operating licence. We have discussed below the options we considered in developing these recommendations.

¹⁷⁸ Water NSW, *WaterNSW submission to the Independent Pricing and Regulatory Tribunal Review of the WaterNSW Operating Licences*, page 25.

¹⁷⁹ Letter to IPART, Mr Brett Jones, Managing Director, Murrumbidgee Irrigation, 7 April 2017, page 2.

¹⁸⁰ Letter to IPART, Mr Mark Ewing, Executive Officer, Lachlan Valley Water Inc, 7 April 2017, page 3.

¹⁸¹ Letter to IPART, Mr Mark McKenzie, Chief Executive Officer, New South Wales Irrigators' Council, 7 March 2017, page 5.

¹⁸² Sydney Water, *Submission to IPART on Water NSW's Draft Operating Licence 2017-2022*, April 2017, page 11.

¹⁸³ Central NSW Councils, *Independent Pricing and Regulatory Tribunal WaterNSW operating licences review*, April 2017, page 7.

¹⁸⁴ Letter to IPART, Ms Zara Lowien, Executive Officer, Gwydir Valley Irrigators' Association, 10 April 2017, page 2.

¹⁸⁵ Letter to IPART, Mr Malcolm Davis, Acting Chief Executive Officer, NSW Aboriginal Land Council, 10 April 2017, page 5.

9.2.2 Options assessed

Table 9.9 Options for authorising and regulating Water NSW’s educative role in the community

Options considered	Description
Option A (Base case)	Authorise Water NSW to undertake an educative role in the community, in the Sydney Catchment Area, but do not include any terms and conditions
Option B	Authorise Water NSW to undertake an educative role in the community, throughout its area of operations (NSW), but do not include any terms and conditions
Option C	Authorise Water NSW to undertake an educative role in the community throughout its area of operations, and include terms and conditions regulating how Water NSW undertakes this function
Option D	Do not authorise Water NSW to undertake an educative role in the community

Currently, Water NSW is authorised under the Water NSW (SCA) operating licence to educate the community in the Sydney Catchment Area only. This is because previously, only the *Sydney Water Catchment Management Act 1998* (now repealed) included community education as a function of the SCA. The repealed *State Water Corporation Act 2004* (NSW) did not include a similar function for State Water.

With Option A, the operating licence could continue to authorise Water NSW to only undertake this function in the Sydney Catchment Area. We consider that this is not preferable because it constrains the authorisation of the function, which we consider is not consistent with the Water NSW Act. Further, as the function is not defined, some existing activities of Water NSW may be considered to be an ‘educative role’ and there could be uncertainty about the ability of Water NSW to undertake them outside the Declared Catchment Area.

Under Option B, Water NSW would be authorised to undertake its educative role more widely than just within the Sydney Catchment Area. This would allow Water NSW to undertake an educative role in all aspects of Water NSW’s operations, if it chose to do so, and facilitate better community to interact with Water NSW. However, Water NSW would not be *required* to undertake educative programs outside the Sydney Catchment Area. The extent of the community education would be at Water NSW’s discretion. We consider that this option is reasonable, however, we have not proposed it in the operating licence because it does not include terms and conditions regulating how Water NSW undertakes an educative role, whether in the Sydney Catchment Area or outside it. In relation to a listed function, terms and conditions are beneficial as they provide auditability, transparency and accountability.

Under Option C Water NSW would be authorised undertake an educative role of the community widely, similar to Option B. However, the operating licence would also include a condition requiring Water NSW to undertake education activities in the declared catchment areas consistent with the objectives of the Water NSW Act.

When we presented this option in the draft operating licence, we did not constrain the terms and conditions requiring Water NSW to undertake its educative role to be limited to only the Declared Catchment Areas. The intention of this option was to allow Water NSW to consider the most appropriate educational programs without being obliged to expand their

additional programs. However, Water NSW was concerned that the draft terms and conditions could require Water NSW to undertake an educative role extensively, and create a risk substantial costs for Water NSW, in the order of \$14 million annually (between \$48 million - \$60 million over the five-year term of the licence). Other stakeholders were also concerned that these costs could arise and be transferred to customers. We therefore now propose terms and conditions clarifying that Water NSW is only required to undertake educative activities in Declared Catchment Areas.

In relation to NSW Aboriginal Land Council's submission, although it is not appropriate for the operating licence to include specific requirements for Water NSW's educational programs, this proposal is not prevented by the operating licence. We consider that this is more appropriately agreed between Water NSW and the Aboriginal Land Council.

Option D is not a desirable position and we consider that this is not the intention of the Water NSW Act. If Water NSW is not authorised to undertake community education practices in the operating licence, it will not be able to undertake this function at all, or any other activities which could be considered part of an 'educative role'. This may result in certain of its existing activities becoming unauthorised. Community education is an important risk mitigation measure for protection of the catchments. We understand that Water NSW is not authorised to undertake an educative role in the community under any other legislative instrument.

Neither Option B nor D proceeded to a formal CBA as they do not achieve the objectives of the operating licence.

9.2.3 Preferred option

Option C is our preferred option. It will allow Water NSW to undertake an educative role in the community, consistent with the objectives of the Water NSW Act. It will also *require* Water NSW to undertake this role in the Declared Catchment areas, recognising the importance of community education in the management of these catchments and providing a level of transparency around these activities.

The proposed terms and conditions are presented in the operating licence clause 6.11.

Recommendation

- 36 The operating licence authorises Water NSW to undertake an educative role within the community throughout its area of operations, and includes terms and conditions requiring Water NSW to undertake this function in Declared Catchment Areas and consistent with the objectives of the Water NSW Act.

9.3 Memoranda of Understanding

9.3.1 NSW Health and the EPA

Water NSW is currently required to enter into memoranda of understanding (MoUs) with NSW Health and the NSW Environment Protection Authority (EPA) under the Water NSW

(SCA) operating licence, for its activities in the Sydney Catchment Area. The Water NSW (State Water) operating licence does not include similar obligations. This is because this was a requirement of the now repealed *Sydney Water Catchment Management Act 1998* but not the *State Water Corporation Act 2004* (NSW).

The Water NSW Act requires Water NSW to “enter into MoUs with NSW Health and the EPA...of the nature referred to in the operating licence”.¹⁸⁶ We propose that under this provision, the operating licence should include terms and conditions requiring Water NSW to *maintain* the MoUs with NSW Health and the EPA. The Water NSW Act requires Water NSW to enter into these MoUs but does not require maintenance of the MoUs. Further, the operating licence should also require Water NSW to make these MoUs publicly available for downloading from its website as this information is valuable to stakeholders. As the Water NSW Act requires that Water NSW must arrange for public exhibition of these MoUs during their preparation,¹⁸⁷ it would follow that the public should also be informed on the final version of the MoUs.

We consider that the new operating licence should not constrain to which area the MoUs apply. Water NSW’s MoUs with NSW Health and the EPA should cover all of its activities where it interacts with these entities. The content of these MoUs is a matter for the respective signatories to agree and we have therefore not prescribed this in the operating licence.

9.3.2 Issues raised

In the Issues Paper, we sought feedback from stakeholders on whether the operating licence should prescribe the matters to be included in the MoUs and whether the MoUs should cover Water NSW’s activities throughout NSW or, only in the Sydney Catchment Area (as per the existing requirements).

We received responses from Water NSW, Sydney Water and the NSW Government. The stakeholders considered that the operating licence should regulate the nature of the MoUs, as allowed by the Water NSW Act. However, Water NSW and the NSW Government considered that terms and conditions similar to those in the existing Water NSW (SCA) operating licence were sufficient to regulate Water NSW’s relationship with NSW Health and the EPA. Further prescription was not necessary.

Sydney Water noted that while the Water NSW Act requires Water NSW to enter into MoUs with these entities, it does not require it to maintain them, so this could be a potential role for the operating licence.

We consulted on the draft operating licence conditions informed by these submissions to the Issues Paper. We received submissions to the draft licence from Sydney Water, the NSW Government, and Centroc.

Water NSW did not comment on the terms and conditions proposed for regulating its MoUs with NSW Health and the EPA but made a general comment that the operating licence should not include a requirement to comply with any MoUs prescribed by the operating

¹⁸⁶ Water NSW Act, section 21.

¹⁸⁷ Water NSW Act, section 23.

licence. Water NSW was concerned that the operating licence can only place obligations on Water NSW, whereas an MoU represents a relationship with two entities, creating asymmetric obligations which are difficult to work in practice.¹⁸⁸

The NSW Government submission supported the requirements of the MoUs set out in the draft operating licence. It noted that the MoU with NSW Health would cover Water NSW's functions to both Supply water to customers and to capture and store water and to release water.¹⁸⁹

Sydney Water also considered that a compliance requirement was unnecessary in the operating licence as this is implicit in establishing an MoU. However, Sydney Water suggested that if it is retained, the operating licence could allow Water NSW to 'use best endeavours' to comply with the MoUs, rather than requiring it to comply.¹⁹⁰

We considered the stakeholders' views in developing our final recommendations for the terms and conditions to be included in the operating licence. We have discussed below the options we considered in developing these recommendations.

9.3.3 Options assessed

Table 9.10 Options for regulating Water NSW's MoUs with NSW Health and the EPA

Options considered	Description
Option A (Base case)	Include clause 9.1 of the Water NSW (SCA) operating licence in the new operating licence, regulating Water NSW's relationships with NSW Health and the EPA but covering its activities in the Sydney Catchment Area only
Option B	Include clause 9.1 of the Water NSW (SCA) operating licence in the new operating licence, with some edits, regulating Water NSW's relationships with NSW Health and the EPA and covering its activities throughout its area of operations
Option C	Do not include any terms and conditions in relation to MoUs with NSW Health and the EPA

With Option A, we could maintain similar terms and conditions in the new operating licence as clause 9.1 of the Water NSW (SCA) operating licence. The existing operating licence requires Water NSW to maintain the MoUs with NSW Health and the EPA, and it recognises the purpose of these MoUs to recognise the roles of NSW Health and the EPA. We consider that by specifying the purpose of these MoUs, the existing operating licence adequately specifies the nature of the MoUs without being unduly prescriptive. The purpose of the MoUs establishes a strong basis for the entities negotiating the details of the MoUs.

Option A would limit the MoU to covering Water NSW's operations in the Sydney Catchment Area. We consider that this is not the intention of the Water NSW Act. The Act simply requires Water NSW to enter into MoUs with NSW Health and the EPA. It does not

¹⁸⁸ Water NSW, *WaterNSW submission to the Independent Pricing and Regulatory Tribunal Review of the WaterNSW Operating Licences*, page 26.

¹⁸⁹ NSW Government, *Review of the draft WaterNSW Operating Licence – NSW Government submission*, March 2017, page 6.

¹⁹⁰ Sydney Water, *Submission to IPART on Water NSW's Draft Operating Licence 2017-2022*, April 2017, page 11.

indicate that these requirements should apply only within the Sydney Catchment Area. We have therefore considered Option B.

With Option B, the MoUs would cover Water NSW's relationship with the entities with respect to its activities throughout its area of operations, and not just in the Sydney Catchment Area. This is appropriate because Water NSW's activities outside the Sydney Catchment Area can also have the potential to impact on the environment and public health. With this option, we also propose some minor changes to the clauses for consistency with other public water utilities, including a requirement to comply with the MoUs. We acknowledge Water NSW's and Sydney Water's concerns about asymmetric obligations on Water NSW, however, we consider that there is no value in requiring an MoU without a requirement for compliance with it.

With this option, we also propose a new obligation for the MoU with NSW Health to include arrangements for Water NSW to report to NSW Health on events that may impact on public health. While we have sought to minimise prescription, we consider that the new reporting obligation is necessary to protect public health. Finally, we also propose that the operating licence should require Water NSW to make both MoUs (with NSW Health and the EPA) available for downloading from its website as this information is valuable to stakeholders.

Water NSW has not identified any costs related to implementing Option B, and we consider that there are substantial benefits.

Option C is not preferred. While we seek to avoid unnecessary prescription in the operating licence, we consider that there is value in the operating licence requiring the MoUs to be maintained, as the Water NSW Act does not do this, and to recognise the purpose of the MoUs. This establishes a basis for negotiation of the content of the MoUs between the entities.

9.3.4 Preferred option

Option B is our preferred option. With this option, the operating licence would require Water NSW to maintain the MoUs with NSW Health and the EPA, and it would recognise the purpose of the MoUs. The requirements relating to MoUs will be auditable Water NSW would be required to demonstrate to an auditor that it has used its best endeavours to enter into, maintain and comply with the protocol. This approach is consistent with other public water utility licences. We consider this option to be the most consistent with the relevant sections of the Water NSW Act, namely section 21.

The proposed terms and conditions are set out in clauses 6.13 and 6.14 of the operating licence.

Recommendation

- 37 The operating licence includes terms and conditions that require Memoranda of Understanding (MoUs) with NSW Health and the NSW Environment Protection Authority, prescribe the nature of these MoUs, and require Water NSW to comply with these MoUs.

9.3.5 Local Land Services

We propose that the operating licence should not include terms and conditions requiring an MoU between Water NSW and with Local Land Services (LLS). The existing Water NSW operating licences do not require this. It was an option that was proposed in the draft operating licences, but we now consider that it is not necessary.

Currently, Water NSW is required by its Water NSW (State Water) operating licence to involve LLS in a customer service committee.¹⁹¹ In the recommended operating licence, we have not required that Water NSW needs to invite LLS to be a member of its customer advisory groups as the LLS is not a customer. Rather, it provides services to Water NSW. Water NSW explained that there are regulatory and contractual arrangements in place governing its relationship with LLS.¹⁹² An MoU would therefore duplicate these arrangements.

9.3.6 Issues raised

The Issues Paper sought feedback on whether the operating licence could improve the interaction between Water NSW and LLS. We received responses from Water NSW and the NSW Government. We received no submissions from LLS.

Water NSW considered that the operating licence did not need to regulate its relationship with LLS as it was already working effectively. However, the NSW Government considered that an MoU between the agencies could be beneficial and had the potential to expand current partnerships. Water NSW was generally concerned with the operating licence requiring MoUs with other parties (ie, other than NSW Health and the EPA as these are required by the Water NSW Act) creating 'asymmetric obligations'. That is, the operating licence would only apply to Water NSW and not to the other party.

In the draft operating licence, we proposed terms and conditions requiring Water NSW to *use its best endeavours* to establish an MoU with LLS to test during consultation. This was instead of mandatory LLS representation on the customer service committees.

Water NSW was concerned that a requirement for an MoU with LLS in the operating licence may inappropriately suggest to Water NSW's other stakeholders the operating licence is necessary for them to have a relationship. Water NSW further raised that there are already legislative and contractual requirements that require a relationship between Water NSW and LLS.¹⁹³

We have discussed below the options we considered in developing the recommended operating licence.

¹⁹¹ Water NSW (State Water) operating licence, clause 5.1.2.

¹⁹² Water NSW, *WaterNSW submission to the Independent Pricing and Regulatory Tribunal Review of the WaterNSW Operating Licences*, page 27.

¹⁹³ Water NSW, *WaterNSW submission to the Independent Pricing and Regulatory Tribunal Review of the WaterNSW Operating Licences*, page 26.

9.3.7 Options assessed

Table 9.11 Options for regulating Water NSW's relationship with LLS

Options considered	Description
Option A (Base case)	Do not include any terms and conditions regulating Water NSW's relationship with LLS
Option B	Include terms and conditions requiring Water NSW to use best endeavours to establish and maintain an MoU between Water NSW and LLS and to comply with this MoU

Currently, Water NSW's operating licences do not require it to enter into an MoU with LLS. With Option A, we could retain this approach in the new operating licence and not regulate Water NSW's relationship with LLS. This is the approach that Water NSW prefers.

When drafting the operating licence, we did not favour Option A because we removed LLS in the customer advisory group mandatory invitees list that is currently required by the Water NSW (State Water) operating licence. We considered that without an MoU or a requirement to be included in the customer advisory groups, there would be no regulatory requirement for Water NSW and LLS to work together cooperatively.

Under Option B, the operating licence could include terms and conditions requiring Water NSW to use its best endeavours to establish and maintain an MoU with LLS, and also comply with the MoU. However, Water NSW stated that this option will result in additional costs of \$161,000 in the first year, and an ongoing annual future cost of \$115,000 (between \$434,000 and \$535,000 over the five-year term of the licence).

Given the costs and the fact that Water NSW's relationship with LLS is already mandated by other regulatory and contractual requirements, we no longer consider that a requirement for an MoU in the operating licence is necessary. We also received no submissions from LLS throughout the review period and there have been no concerns raised regarding the two parties' working relationship.

9.3.8 Preferred option

Option A is our preferred option. That is, the operating licence will not include terms and conditions requiring an MoU with LLS.

9.4 Department of Planning and Environment

We propose that the operating licence should include terms and conditions requiring Water NSW to use its best endeavours to enter into an MoU with the Department of Planning and Environment (DP&E) regarding Water NSW's role for the review and implementation of the Metropolitan Water Plan. This could be the 2017 Metropolitan Water Plan or any future versions of the plan. If such an MoU is established, the operating licence will require Water NSW to comply with it. Compliance with the MoU is not a 'best endeavours' condition.

We did not consult on this proposal specifically, either in the Issues Paper or in the draft operating licence because at the time, the Metropolitan Water Plan was being managed

within DPI Water. We therefore consulted on the appropriateness of the operating licence requiring an MoU with DPI Water, which, amongst other things, addressed the Metropolitan Water Plan. We consider that it would follow that the comments received from stakeholders, and our findings, can be applied to an MoU with DP&E, now that DP&E is managing the Metropolitan Water Plan.

9.4.1 Issues raised

We received responses from Water NSW, NSW Government and Sydney Water to the Issues Paper, with regard to including a requirement in the operating licence to develop a protocol, or similar, with DPI Water for the review and implementation of the Metropolitan Water Plan. Water NSW did not support including such a requirement but the NSW Government and Sydney Water did. The NSW Government and Sydney Water considered that this would be appropriate as it is consistent with the requirements placed on other public water utilities. A protocol would facilitate the ongoing review and implementation of the Metropolitan Water Plan.

We also sought feedback from stakeholders on whether an alternative to an MoU or protocol could be for the operating licence to prescribe specific requirements or responsibilities for Water NSW to provide input to any review and implementation of the Metropolitan Water Plan.

We received responses to this option from Water NSW, NSW Government and Sydney Water. Water NSW and Sydney Water did not support including prescriptive requirements in the operating licence. Water NSW advised that there are already requirements in Water NSW's water supply work approvals, under the *Water Management Act 2000*, in relation to the Metropolitan Water Plan. Further, the Metropolitan Water Plan is reviewed and amended at regular intervals. Specific requirements in the operating licence may not anticipate these changes and it is not a flexible approach. In contrast, the NSW Government considered that there could be merit in including specific requirements in the operating licence as it considered that not all of the objectives of the Metropolitan Water Plan are currently required by Water NSW's water supply work approvals.

Informed by the stakeholders' views, we developed draft operating licence conditions for Water NSW to maintain an MoU with DPI Water. We only received one submission from the NSW Government, which noted that the Metropolitan Water Directorate and the Metropolitan Water Planning role have moved from DPI Water to the DP&E. Therefore, the operating licence should reference the DP&E.¹⁹⁴ No stakeholders explicitly supported or rejected the draft operating licence conditions.

¹⁹⁴ NSW Government, *Review of the draft WaterNSW Operating Licence – NSW Government submission*, March 2017, page 5.

Options assessed

Table 9.12 Options for regulating Water NSW's role in the review and implementation of the Metropolitan Water Plan

Options considered	Description
Option A (Base case)	Do not include any terms and conditions in the operating licence regulating Water NSW's role in relation to the Metropolitan Water Plan
Option B	Include prescriptive terms and conditions regarding Water NSW's role in the review and implementation of the Metropolitan Water Plan
Option C	Include terms and conditions requiring Water NSW to use best endeavours to establish and comply with an MoU with DP&E regarding its role in the review and implementation of the Metropolitan Water Plan

Currently, the Water NSW operating licence does not require Water NSW to enter into an MoU with DP&E. Option A would replicate the status quo. We do not favour this option because, as stakeholders have acknowledged, a mechanism to facilitate the ongoing review and implementation of the Metropolitan Water Plan, and in particular to understand Water NSW's role, is beneficial.

Under Option B, prescriptive conditions could be included in the operating licence outlining Water NSW's role in relation to the Metropolitan Water Plan. However we do not favour this option because prescriptive obligations do not allow flexibility, particularly if the Metropolitan Water Plan, and consequently Water NSW's role in its review and implementation, were to change. The CBA identified that Option B would result in costs in the range of \$623,000 - \$796,000 to implement.

Option C is preferred as an MoU would allow Water NSW and DP&E to negotiate appropriate responsibilities. This is consistent with the approach that we have adopted in licensing other public water utilities (such as Sydney Water and Hunter Water). While no stakeholders explicitly expressed support for an MoU with the agency responsible for reviewing and implementing the Metropolitan Water Plan, no stakeholders rejected the proposal either. We consider that the comments regarding yield calculation and alignment with the Metropolitan Water Plan, raised by the NSW Government,¹⁹⁵ can be accommodated within this MoU.

It is difficult to quantify the costs associated with Option C but we consider them to be equivalent to the costs identified for other MoUs.

9.4.2 Preferred option

Option C is our preferred option. That is, the operating licence will include terms and conditions requiring Water NSW to use its best endeavours to establish and maintain an MoU with DP&E regarding its role in the review and implementation of the Metropolitan Water Plan. If such an MoU is established, then Water NSW will be required to comply with it.

¹⁹⁵ NSW Government, Review of the draft WaterNSW Operating Licence – NSW Government submission, March 2017, pages 3-4.

The MoU will be an auditable requirement and Water NSW would be required to demonstrate to an auditor that it has used its best endeavours to enter into and maintain the MoU. This approach is consistent with other public water utility licences.

Water NSW would not be required to make this MoU publicly available.

The proposed terms and conditions are set out in clause 6.15 of the operating licence.

Recommendation

- 38 The operating licence includes terms and conditions requiring Water NSW to use its best endeavours to enter into an MoU with the Department Planning and Environment to agree on Water NSW's role in the review and implementation of the Metropolitan Water Plan, and to comply with this MoU.

9.5 Agreement of roles and responsibilities with DPI Water

We propose that the operating licence includes terms and conditions requiring Water NSW to agree on its shared roles and responsibilities with DPI Water, and any other relevant government agencies, for undertaking its conferred functions in Schedule A of the operating licence. Further, it must publish a statement explaining the agreed roles and responsibilities. This is similar to the current requirements of the Water NSW (State Water) operating licence.

We consider that the new operating licence should not constrain the area to which the roles and responsibilities agreement applies. It should cover all of Water NSW's conferred functions, wherever it may interact with DPI Water.

9.5.1 Issues raised

In the Issues Paper, we sought feedback from stakeholders on how the operating licence could regulate the relationship between Water NSW and DPI Water.

We received responses from Water NSW and the NSW Government. Water NSW considered that it was not necessary for the operating licence to regulate Water NSW's relationship with DPI Water as it already had a prescriptive Deed that regulates the relationship. Water NSW generally did not support MoUs with entities other than NSW Health and the EPA. It noted that section 22 of the Water NSW Act allowed the Minister to require Water NSW to enter into MoUs with other entities if the Minister considered it necessary.

In contrast, the NSW Government considered that an MoU could be beneficial, similar to the roles and responsibilities protocol required by the existing Water NSW (State Water) operating licence for Water NSW to undertake the conferred functions in the operating licence. Further, the MoU could discuss shared responsibilities for water quality monitoring (such as for cold water pollution) and liaison groups between the two organisations.

Acknowledging Water NSW's concerns, we proposed terms and conditions in the draft operating licence regulating Water NSW's relationship with DPI Water to obtain stakeholder

feedback. We received responses from Water NSW, Sydney Water and the NSW Government.

Water NSW considered that an MoU with DPI Water was not necessary because the Water NSW Act already defines Water NSW's and DPI Water's roles and responsibilities.¹⁹⁶

Further, considered Water NSW has a comprehensive Deed developed between the two parties to explain their roles and responsibilities. An MoU would therefore be unduly replicative of the Deed. Sydney Water did not explicitly support or reject the draft terms and conditions. However, it noted that the Sydney Water operating licence and draft Hunter Water operating licences specify a 'roles and responsibilities protocol' with DPI Water for the review and implementation of the Metropolitan Water Plan. So if a roles and responsibilities protocol with DPI Water in the Water NSW operating licence is specified but with regard to conferred functions, it could create confusion amongst stakeholders.¹⁹⁷

9.5.2 Options assessed

Table 9.13 Options for regulating Water NSW's relationship with DPI Water

Options considered	Description
Option A (Base case)	Include a requirement for Water NSW to agree on its roles and responsibilities with DPI Water for undertaking the conferred functions and publish a statement explaining these agreed roles on its website
Option B	Do not include any terms and conditions regulating Water NSW's relationship with DPI Water
Option C	Include a requirement for an MoU or roles and responsibilities protocol between Water NSW and DPI Water

Currently, the Water NSW (State Water) operating licence requires Water NSW to publish a statement setting out its agreed roles and responsibilities with DPI Water (or the Ministerial corporation or any other relevant government departments or agencies) to undertake the functions conferred on it in the Schedule to the operating licence.

With Option A, we could maintain the existing approach in the new operating licence, noting that in a combined operating licence, the agreement would include the entities' respective roles to undertake the conferred functions without geographical constraint.

The existing requirement of the Water NSW (State Water) operating licence only applies outside the Sydney Catchment Area. However, when the existing operating licences were amended on 1 July 2016, an updated schedule of conferred functions was included in *both* operating licences, which we understand is to reflect that the conferred functions apply throughout Water NSW's area of operations (ie, throughout the state of NSW). Therefore, an agreement of roles and responsibilities for undertaking the conferred functions that is not geographically constrained is consistent with the existing licences.

¹⁹⁷ Sydney Water, *Submission to IPART on Water NSW's Draft Operating Licence 2017-2022*, April 2017, page 11.

Under this option, we propose to clarify in the operating licence that Water NSW must agree its roles and responsibilities with DPI Water *in writing*. Water NSW will be able to use any document it considers appropriate to satisfy compliance. Water NSW's Deed would be adequate if it covers the roles and responsibilities associated with the conferred functions. Further, The operating licence will flexible enough to allow a minimalist agreement if necessary, depending on the extent of DPI Water's role in enabling Water NSW to undertake the conferred functions.

Under Option B, the operating licence would not regulate Water NSW's relationship with DPI Water. This would be a reduction from the existing operating licence requirements. We do not favour this option because we consider that an agreement with DPI Water will allow Water NSW to effectively complete its conferred functions. We also consider that there should be clarity about the agreed roles and responsibilities associated with undertaking the conferred functions for Water NSW's customers and stakeholders.

We considered Option C when developing the draft operating licence. However, we no longer consider that a specific requirement for an MoU or roles and responsibilities protocol is necessary as it is not flexible enough to accommodate a Deed or any other agreement that Water NSW already has in place with DPI Water. We therefore prefer Option A which allows this flexibility.

9.5.3 Preferred option

Option A is our preferred option. With this option, the operating licence would require Water NSW to agree its roles and responsibilities with DPI Water for undertaking the conferred functions in Schedule A of the operating licence and to publish a statement on its website explaining these agreed roles and responsibilities.

The proposed terms and conditions are set out in clause 6.16 of the operating licence.

Recommendation

- 39 The operating licence includes terms and conditions requiring Water NSW to agree with DPI Water their respective roles and responsibilities regarding the conduct of the conferred functions specified in Schedule A of the operating licence.

9.6 Security risks to critical water infrastructure

We propose that the operating licence should not include specific clauses relating to managing security risks to critical water infrastructure. This was considered in response to a submission from the Commonwealth Government's Critical Infrastructure Centre (CIC). The CIC was launched on 23 January 2017, by the Australian Government, in response to the complex and evolving national security risks to critical infrastructure. The CIC forms part of the Government's strategy to build the resilience of our critical infrastructure.¹⁹⁸

¹⁹⁸ Critical Infrastructure Centre, *Submission to the Review of the WaterNSW Operating Licences*, page 4.

9.6.1 Issues Raised

The CIC notes that a disruption to water supplied or released by Water NSW could have major consequences for Water NSW's customers, with a large proportion of the water provided by Water NSW being used for agricultural purposes. Power stations that use water from dams managed by Water NSW include: Mount Piper, Liddell, Bayswater, Blowering, Hume and Shoalhaven. Together, these power stations account for approximately 43% of NSW scheduled installed capacity.¹⁹⁹

The CIC is concerned with national security risks of sabotage, espionage and coercion to critical infrastructure, particularly in regard to outsourcing of services such as maintenance, design and construction of new facilities and equipment, and operational activities.²⁰⁰

In relation to espionage, water companies hold detailed customer usage data. Such holdings of data represent attractive targets for foreign intelligence services to target particular individuals or gain insights into particular customers and their activities (eg., Defence operations), or inform the potential sabotage of other critical infrastructure sectors.

In relation to sabotage, a hostile actor could take advantage of operational access through outsourcing, offshoring and supply chain arrangements to disrupt water supply, damage other critical infrastructure assets, and erode public trust in government services.

The CIC considered that there are a number of 'potential mitigations' for these issues as follows:

- ▼ key personnel to hold security clearances,
- ▼ information about operational technology (such as SCADA systems) and associated ICT (Information and Communication Technology) infrastructure be held solely within Australia,
- ▼ appropriate security controls implemented to prevent the export of personal data records, and
- ▼ limitations on remote access to operational systems.

ASIO and the Australian Federal Police also have key roles in managing national security matters.

9.6.2 Options assessed

We consider that there are a number of potential strategies for addressing the CIC's concerns in the operating licence. These include, in order of increasing regulatory oversight:

1. make no changes to the operating licence - this effectively presumes that national security matters relating to this infrastructure are adequately dealt with through the AMS and no additional regulatory requirements are necessary.
2. add a requirement for Water NSW to have an Information Security Management System in the licence;

¹⁹⁹ Critical Infrastructure Centre, *Submission to the Review of the WaterNSW Operating Licences*, page 2.

²⁰⁰ Critical Infrastructure Centre, *Submission to the Review of the WaterNSW Operating Licences*, page 2.

3. include a condition in the licence that requires Water NSW to participate in a working group established by the CIC, dealing with critical infrastructure;
4. include a condition in the operating licence for ‘best endeavours to develop and maintain an MoU with the CIC dealing with critical infrastructure’, with or without prescription on the content of an MoU.
5. include a condition in the operating licence that mirrors the ‘potential mitigations’ provided by the CIC in its submission.²⁰¹
6. include a condition in the operating licence that the ‘utility must address matters of national security for their critical infrastructure to the satisfaction of the CIC’, similar to the health-related conditions.
7. include multiple prescriptive conditions in the operating licence (in a similar manner to the electricity network licences), noting that these effectively deal with the four major points made by the CIC, but in a more detailed/prescriptive manner.²⁰²

Through subsequent discussions with Water NSW, Sydney Water and Hunter Water, we reduced the potential options from seven to the practical options indicated below.

Existing mechanisms for managing security risks include the Trusted Information Sharing Network for Critical Infrastructure Resilience – Water Services Sector Group, which is managed by the Attorney-General’s Department. CIC is also part of the Attorney-General’s Department.

Table 9.14 Options for regulating security risks to Water NSW’s critical infrastructure

Options considered	Description
Option A (Base case)	Do not include any requirements in the operating licence in relation to critical infrastructure (Option 1 in the list above)
Option B	Include a requirement in the operating licence for WaterNSW to use its best endeavours to establish a constructive working relationship with the CIC and/or other relevant government agencies or departments (similar to options 3 and 4 above, combined)

Option B could potentially give rise to a benefit of enhanced safety and security of water supply to the broader community resulting from a collaborative relationship between Water NSW and the appropriate security agencies at a state and federal level. However, in this early stage we encourage a collaborative relationship to develop outside the operating licence and we have not been advised of any problems in that regard to date.

9.6.3 Preferred option

Any level of prescription in the operating licence at this early stage would appear to be premature.

There may be potential for cyber security to be managed through the AMS. It requires additional information to be held regarding the nature, configuration and vulnerabilities of

²⁰¹ Critical Infrastructure Centre, *Submission to the Review of the WaterNSW Operating Licences* page 3.

²⁰² See clauses 9, 10 and 11 of the Distributor’s Licence under the *Electricity Supply Act 1995 (NSW)*, granted to Ausgrid Operator Partnership, 28 November 2016.

the hardware and software assets to add support to situational awareness and threat assessment for new vulnerabilities.

We do not support prescriptive controls in the licence at this stage, given that the discussion around national security risks to critical infrastructure is still in its early stages with respect to the water industry.

We have considered adding a non-prescriptive clause into the operating licence such as Option B. However, this type of non-prescriptive operating licence clause would be difficult to assess for compliance without the inclusion of specific requirements.

Our assessment is that, at this early stage of investigating the appropriate mitigation measures for potential national security risks, the relationship between Water NSW and the relevant security agencies should be developed independently of the operating licence. The development of a 'working party' or similar vehicle to establish a collaborative relationship between the relevant parties, and to tailor the appropriate mitigation measures to Water NSW's processes, would be beneficial. However, we prefer that, initially, the relevant agencies discuss the way forward voluntarily and proactively without the potential constraints of an operating licence condition.

We recommend that no new operating licence conditions related to national security issues be included in the operating licence at this stage. Water NSW has participated constructively and cooperatively in recent discussions on this matter. We anticipate that Water NSW will continue to meet separately with the relevant security agencies to gain a deeper understanding of the issues and develop actions to address them. We consider that a gradual maturation of the relationship may provide an agreement (eg an MoU) which may then be considered in future operating licence reviews.

Recommendation

- 40 The operating licence will not include a new requirement for collaboration between Water NSW and relevant Commonwealth agencies on matters of national security.

10 Performance monitoring

The seventh part of the recommended operating licence includes clauses relating to Water NSW's performance monitoring and reporting obligations, in relation to its compliance with the operating licence.

The recommendations that we have used to develop the operating licence are listed below. We have provided explanation and background on how we developed each of these recommendations within this chapter.

Recommendations for the operating licence:

- 41 The operating licence includes terms and conditions in relation to the operational audits.
- 42 The operating licence includes terms and conditions requiring Water NSW to comply with its obligations in the reporting manual, and maintain adequate records to allow it to comply with these obligations.
- 43 The operating licence includes terms and conditions requiring Water NSW to provide IPART or an auditor with information relating to its performance and any information that IPART or an auditor may require to conduct a review of investigation.

10.1 Operational audits

We consider that it is appropriate for the operating licence to include terms and conditions outlining the respective responsibilities of Water NSW and IPART in relation to operational audits, similar to those in the existing Water NSW (State Water and SCA) operating licences. The Water NSW Act requires IPART to ensure that we prepare operational audits in accordance with the Water NSW operating licence(s).²⁰³

The *Water NSW Act 2014* (Water NSW Act) also allows the operating licence to include terms and conditions relating to the determination of the cost of carrying out the operational audit.²⁰⁴ However, we consider that doing this would be unnecessarily prescriptive. The existing Water NSW operating licences do not include such terms and conditions. We undertake a competitive process in the selection of auditors, in line with the NSW Government procurement requirements. Audits are then undertaken in accordance with an audit scope and the audit guidelines that we prescribe. Further, we oversee the audit process for uniformity across audits and auditors.

²⁰³ Water NSW Act, section 57(3).

²⁰⁴ Water NSW Act, section 60(2).

10.1.1 Issues raised

The Issues Paper asked stakeholders what terms and conditions should be included in the Water NSW operating licence in relation to its operational audits, and also in relation to the determination of the cost of carrying out these audits.

We received submissions from Water NSW and the NSW Government. Both were supportive of the operating licence including terms and conditions in relation to operational audits.

The NSW Government did not express a view in relation to the determination of the costs of carrying out the audits. However, Water NSW considered that there was benefit in clarifying in the operating licence that the scope of the audit matched only that which is required by the operating licence. Further, it considered that IPART should be required to follow a competitive process in determining the fees for the audit and to select a suitably qualified independent auditor.

We proposed a draft operating licence which presented the proposed responsibilities for Water NSW in relation to the audits. We only received a submission from Namoi Water, which supported the proposed terms and conditions.²⁰⁵ No other stakeholders provided comments.

We have discussed below the options we considered when developing the final operating licence.

10.1.2 Options assessed

Table 10.1 Options for provisions regarding operational audits

Options considered	Description
Option A (Base case)	Include Clause 7.1 of the existing Water NSW (State Water) operating licence and Clause 8.1 of the Water NSW (SCA) operating licence in relation to operational audits
Option B	Combine clauses 7.1 and 8.1 of the existing Water NSW operating licences in the new operating licence, with minor changes
Option C	Combine clauses 7.1 and 8.1 of the existing Water NSW operating licences in the new operating licence, with minor changes, and include prescriptive terms and conditions for determining the cost of the audit

Currently, Water NSW is expected to adhere to clause 7.1 of the existing Water NSW (State Water) operating licence and clause 8.1 of the Water NSW (SCA) operating licence in relation to the operational audits. These requirements set out the information that Water NSW must provide and other responsibilities of Water NSW.

With Option A, we could maintain the requirements of clause 7.1 of the existing Water NSW (State Water) operating licence and clause 8.1 of the Water NSW (SCA) operating licence in the new operating licence. However, we consider that maintaining all of the clauses of the two existing operating licences in a new one is not a feasible option under a new Act and

²⁰⁵ Namoi Water, *Namoi Water Submission to IPART Water NSW Draft Operating Licence*, April 2017, page 4.

new structure of licence (ie, a combined operating licence). Some of these terms and conditions are duplicative, whereas in some instances, they are inconsistent.

We have therefore suggested Option B, which would retain the terms and conditions currently contained in the existing Water NSW (State Water and SCA) licences, with some minor changes. The proposed minor changes are to allow better consistency with similar requirements we place on other utilities. Water NSW noted that there would be no additional costs to imposing these minor changes in comparison with existing operations.

Water NSW considered that there was benefit in clarifying in the operating licence that the scope of the audit should match only that which is required by the operating licence. However, we consider that the existing requirement of the operating licences which state that the audit will cover Water NSW's compliance with the licence, the reporting manual, or any other matters required by the Minister, already sets the scope of the audit. Further, IPART's functions are outlined within Part 5 of the Water NSW Act.

Option C is not preferred. We acknowledge that Water NSW supported including terms and conditions in the operating licence in relation to the determination of the cost of the audit, requiring IPART to follow a competitive process to determine this cost. However, we consider that this level of prescription is unnecessary in the operating licence. We already undertake a competitive process to select auditors for audits, and the cost of the audit is one of the criteria we use to select the appropriate auditor. We select the auditors consistent with the State Government Procurement procedures. As these procedures are in place for the whole organisation, specific requirements in the operating licence would be duplicative and potentially reduce flexibility. The cost of the audit charged to Water NSW is the sum of the costs incurred by IPART and the auditors in relation to the audits.

Review of the audit scopes, auditor procurement and costing decisions should continue to be reviewed, in consultation with the utilities.

10.1.3 Preferred option

Option B is our preferred option as Option A is not feasible under the Water NSW Act and the new operating licence structure. Further, Option C is unduly prescriptive which could result in duplication with other processes and potentially reduce flexibility.

The proposed terms and conditions are set out in clause 7.1 of the operating licence.

Recommendation

41 The operating licence includes terms and conditions in relation to the operational audits.

10.2 Reporting obligations in the operating licence

We consider that it is appropriate for the operating licence to include terms and conditions requiring Water NSW to comply with its reporting obligations in the reporting manual. Further, Water NSW must maintain sufficient record systems to comply with its reporting obligations.

10.2.1 Issues raised

In the Issues Paper we asked stakeholders what terms and conditions should be included in the Water NSW operating licence to regulate how Water NSW's reports information, including the type of information that it should report on.

We received responses from Water NSW, the NSW Government and Sydney Water. All these stakeholders considered that the operating licence should include similar reporting obligations to those currently imposed by the Water NSW (State Water and SCA) reporting manuals.

We received no submissions on the draft operating licence. We consider that the stakeholders did not provide submissions as they had no concerns.

We have discussed below the options we considered when developing our final recommendations for the operating licence.

10.2.2 Options assessed

Table 10.2 Options for regulating Water NSW's reporting requirements

Options	Description
Option A (Base case)	Include Clause 7.2 of the existing Water NSW (State Water) operating licence and Clause 8.2 of the Water NSW (SCA) operating licence in relation to operational audits
Option B	Combine clauses 7.2 and 8.2 of the existing Water NSW operating licences in the new operating licence, with minor updates

Currently, Water NSW must comply with clause 7.2 of the existing Water NSW (State Water) operating licence and clause 8.2 of the Water NSW (SCA) operating licence in relation to its obligations to meet its requirements as set out in the reporting manual. We take this approach to allow flexibility, as the reporting manual can be more easily updated than the operating licence. We prefer not to specify reporting obligations in the operating licence as these may need to evolve with the business.

With Option A, we could maintain the existing requirements in the new operating licence. However, we consider that maintaining all of the clauses of the existing two operating licences in a new one is not a feasible option under a new Act and new structure of operating licence (ie, a combined operating licence). Some of these terms and conditions duplicate each other, whereas in some instances, they are inconsistent.

We therefore recommend Option B, which retains the intent of the existing terms and conditions but with some minor updates. The proposed minor changes are to allow better consistency with similar requirements we place on other utilities. Water NSW noted that there would be no additional costs to imposing these minor changes in comparison to existing operations.

Preferred option

Option B is our preferred option as Option A is not feasible under the Water NSW Act and the new operating licence structure.

The proposed terms and conditions are set out in clause 7.2 of the operating licence.

Recommendation

- 42 The operating licence includes terms and conditions requiring Water NSW to comply with its obligations in the reporting manual, and maintain adequate records to allow it to comply with these obligations.

10.3 Provision of information to IPART and the Auditor

We consider that it is appropriate for the operating licence to include terms and conditions requiring Water NSW to provide IPART or an auditor with information relating to its performance and any information that IPART or an auditor may require to conduct a review of investigation. These requirements will apply to any of Water NSW's contractors, if it contracts out any of its activities to any person. We expect that the information must be provided to IPART or an auditor even if it is confidential.

10.3.1 Issues raised

The Issues Paper did not seek feedback on the inclusion of terms and conditions in the operating licence in relation to provision of information to IPART and the auditor, as we do not propose substantial changes to the terms and conditions of the existing Water NSW operating licences.

We received no submissions on the draft operating licence. We consider that the stakeholders did not provide submissions as they had no concerns.


We have discussed below the options we considered when developing the final operating licence.

10.3.2 Options assessed

Table 10.3 Options for regulating the provision of information to IPART and Auditor

Options	Description
Option A (Base case)	Include Clause 7.3 of the existing Water NSW (State Water) operating licence and Clause 8.3 of the Water NSW (SCA) operating licence in relation to operational audits
Option B	Combine clauses 7.3 and 8.3 of the existing Water NSW operating licences in the new operating licence, with minor updates

Currently, Water NSW is required to comply with clause 7.3 of the existing Water NSW (State Water) operating licence and clause 8.3 of the Water NSW (SCA) operating licence. With Option A, we could maintain the existing requirements in the new operating licence. However, we consider that maintaining all of the clauses of the two existing operating licences in a new one is not a feasible option under a new Act and new structure of operating licence (ie, a combined operating licence). Some of these terms and conditions duplicate each other, and in some other instances, they are inconsistent.



We therefore recommend Option B, which retains the terms and conditions currently contained in the existing Water NSW (State Water and SCA) licences, with some minor changes. The proposed minor changes are to allow better consistency with similar requirements we place on other utilities. Water NSW noted that there would be no additional costs to imposing these minor changes in comparison to existing operations.

Preferred option

Option B is our preferred option as Option A is not feasible under the Water NSW Act and the new operating licence structure.

The proposed terms and conditions are set out in clause 7.3 of the operating licence.

Recommendation

- 43 The operating licence includes terms and conditions requiring Water NSW to provide IPART or an auditor with information relating to its performance and any information that IPART or an auditor may require to conduct a review of investigation.

11 Conferred functions

Recommendation:

- 44 The operating licence includes a schedule of the functions conferred on Water NSW under other acts as agreed between DPI Water and Water NSW.

On 1 July 2016 the Minister amended the previous State Water and SCA operating licences and issued these as the Water NSW (State Water and SCA) operating licences. In the amended operating licences, the Minister included an extensive list of functions conferred on Water NSW under other acts, and in particular the *Water Management Act 2000* and the *Water Act 1912*.

In May 2017, we received an updated list of conferred functions from DPI Water. We have included this updated list in the operating licence for currency.

We understand that the schedule has been agreed between DPI Water and Water NSW and we have not proposed any changes to this list, nor have we reviewed the schedule. In relation to some of the terms used in the schedule we have included some definitions in the clause 8 of the operating licence that relate to the conferred functions.

12 Other recommendations

During the course of the operating licence review, we identified issues which could benefit from regulatory reform for greater clarity or flexibility in the identification of solutions. These issues are outlined below.

The first opportunity to consider these issues may be the five-year review of the *Water NSW Act 2014* (Water NSW Act), as required under section 115 of the Water NSW Act. We understand that the review is due to commence around November 2019 and subsequently tabled within 12 months after this time. We could provide further input to the review at that time.

Recommendation:

- 45 The development of an operating licence is dependent on the constraints of the Water NSW Act. The 5-year review of the Water NSW Act, which is due to commence in November 2019, could benefit from considering the Issues that we have identified during this operating licence review, to improve the effectiveness of a review.

12.1.1 Purpose and objective of the operating licence

While the Water NSW Act contains multiple references to what the operating licence must or may contain, we consider that there would be benefit if the Water NSW Act clearly outlined the objective and / or purpose of the operating licence or of the objectives of terms and conditions of the licence.

The recommended operating licence contains an objective against which we have tested recommended inclusions for the licence.

During the consultation process, stakeholders expressed a variety of views about what types of conditions should be included in the operating licence. Clarity within the legislation about the objective or purpose of the operating licence may assist future reviews' ability to test proposed terms and conditions (eg, how the terms and conditions may apply to the listed functions in section 7 of the Water NSW Act).

We would also recommend a consistent approach for the purposes of licensing of the other public water utilities.

12.1.2 Listed functions

Section 7(1) of the Water NSW Act contains Water NSW's listed functions which may only be exercised under the authority of the operating licence. This list resembles the functions that were assigned to Water NSW's former constituent entities: the Sydney Catchment Authority and the State Water Corporation.

While the functions and activities of the two former organisations were similar, the overarching Acts defined their functions in different ways. This difference has been carried through in the Water NSW Act. However, the distinction between the function 'to capture and store water and to release water' to various persons and the functions 'to supply' water to various persons has not been defined.

As the operating licence is required to authorise and condition these functions, clarity is required between these functions to identify them and distinguish which conditions apply to them. The operating licence has sought to make this distinction for terms and conditions but not the authorisations. To enable a future operating licence to better identify and distinguish these functions, the Water NSW Act could define the terms used in listed functions 7(1)(a) – (e), or potentially redraft the listed functions themselves.

In addition, the listed functions of Water NSW may only be exercised under the authority of and consistently with the operating licence. A review of the listed functions could be carried out in a future review of the Water NSW Act to determine if all of the listed functions should have the regulatory oversight of the operating licence, or alternatively if the functions could be regulated in another way, if at all.

Further, the listed functions appear to overlap with functions and activities authorised by other regulatory instruments and Acts. A review of the listed functions could also consider if it is appropriate to have this potential for duplication and / or to clarify the purpose of the duplication with respect to the operating licence.

12.1.3 Performance Standards

The Water NSW Act requires the operating licence to specify performance standards in some circumstances. A future review of the Water NSW Act could clarify the purpose or intent of the performance standards required under section 12(2)(a)(ii) of the Water NSW Act, and to which functions they should apply (if at all).

Further, the requirement for performance standards in the operating licence is also made more complex when there are arrangements with Sydney Water, established under section 25 of the Water NSW Act, or other customer agreements also specifying standards of service.

We would be willing to provide input to a future review on appropriate wording for this section.

12.1.4 Inconsistencies between the public water utility Acts

During the operating licence review, we identified other inconsistencies between the Water NSW Act and the Acts of the other public water utilities. This can result in different conditions within the utilities' operating licences, or differing ways of regulating or administering the utilities for otherwise similar functions or activities.

Those identified during this review are as follows:

Pricing performance standard

The Sydney Water and Hunter Water Acts contain a requirement for the operating licence to include a performance standard relating to Pricing and Pricing Levels respectively. There is no such requirement within the Water NSW Act. This results in a different way of enforcing the pricing determinations between the utilities and differences in the operating licences.

A future review could consider the benefits of alternative approaches, and should seek to bring some consistency between the utilities. IPART can provide input into a future review about the preferred model and the practical issues of implementing each of these models.

Area of operations

The Water NSW Act does not define the term 'area of operations' but states that it is the whole of the area of the State. The intent seems to be consistent with the objective of the area of operations described for other public water utilities, which is the area to which the operating licence applies (Sydney Water Act section 10 and Hunter Water Act section 16). However, this is not explicit. .

A future review should consider bringing some consistency between the Acts about the use of the term 'area of operations'. IPART could provide some input to a future review about the practical issues around implementing various options.

Process for amendment of operating licence

The process for amending operating licences differs between the Acts. Section 13 of the Water NSW Act, section 16 of the Sydney Water Act, section 14 of the Hunter Water Act, and section 35 of the Central Coast Water Corporation Act all contain different requirements and level of prescription for the amendment of operating licences.

A future review of the Water NSW Act (and other Acts) should consider the requirements of these Acts and attempt to bring some consistency with the amendment process. IPART can provide input into a future review about the preferred model and the practical issues of implementing each of these models.

Audit process

We have identified inconsistencies in the way that the Acts describe the requirements for audits and the requirements of the audit report. This includes the process for audit, frequency of audit, the timing of providing the audit report to the responsible Minister, and the requirement for the report to be tabled in Parliament.

We consider that there consistency can be achieved in a future review of the Water NSW Act.

Customer Contracts

The Water NSW Act does not contain the same provisions for establishing customer contracts within the operating licence as the other public water utilities' Acts. That is, it does not include the deeming provisions in relation to contracts and other legislative provisions allowing for customer protections for unfair contracts. This currently allows for contracts to be individually negotiated and variations to the customer contract to be made.

During the review Water NSW expressed its interest in establishing customer contracts. However, without legislative change, creating these customer contracts would be premature. A future operating licence could include a standard customer contract if the legislation were amended with respect to customer contracts.

Glossary

Adaptive environmental water condition	A condition imposed on a water access licence of a type referred to in section 8(1)(b)(i) of the <i>Water Management Act 2000</i> (NSW)
ADWG	Australian Drinking Water Guidelines
AGWR	Australian Guidelines for Water Recycling
AMS	Asset Management System
Appointed Auditor	the person appointed by the Minister under section 42 of the <i>Water NSW Act</i> to carry out functions under that section
BoM	Bureau of Meteorology
Bulk Water	Water which has not been treated in any way or water that has been treated to improve quality, whether by chemical treatment or otherwise, but not treated, or attempted to be treated, to Drinking Water quality
Catchment audit	An audit conducted under section 42 of the <i>Water NSW Act 2014</i>
Catchment health	In relation to a declared catchment area, means the condition of ecosystems and systems of management (such as sewerage and stormwater systems) in that catchment that protect water quality
Catchment management	Management of land and water resources in a declared catchment area
CBA	Cost benefit analysis
CIC	Commonwealth Critical Infrastructure Centre

CSR Water	<p>the capture, store and release (but not Supply) of water by Water NSW:</p> <ul style="list-style-type: none"> c) to persons entitled to take water; and d) for any other lawful purpose, including the release of environmental water, <p>by means of Water Management Works owned and/or controlled by Water NSW.</p> <p><i>[Note: Water NSW may undertake such functions by using active or passive management or operating actions to enable passage of CSR Water into a river or channel system. Downstream customers have their own access licences to take the CSR Water in the river or channel system]</i></p>
Declared Catchment Area	An area of land for the time being declared under the <i>Water NSW Act 2014</i> to be a declared catchment area
DPI Water	NSW Department of Primary Industries – Water division
DP&E	NSW Department of Planning and Environment
Drinking water	Water that is intended, or likely, to be used for human consumption, or for purposes connected with human consumption
ELWC	Economic Level of Water Conservation
EMS	Environmental Management System
EPA	NSW Environment Protection Authority
EWON	Energy and Water Ombudsman of NSW
Fish River Water Supply scheme	<p>The water management work comprising the concrete dam on Fish River on Oberon and Duckmaloi Weir, together with:</p> <ul style="list-style-type: none"> (a) its associated gravitation main, concrete reservoirs, reticulation systems and treatment works (b) the pumping station at Oberon (c) all incidental and connected works, and (d) all additions, amplifications, improvements and extensions to that scheme
IPART	Independent Pricing and Regulatory Tribunal of NSW
ISO 14001	<i>AS/NZS ISO 14001 Environmental Management Systems – Requirements with guidance for use</i>
ISO 55001	<i>ISO 55001 International Standard for Asset Management</i>

Listed function	has the meaning given in section 7(1) of the <i>Water NSW Act 2014</i>
LLS	The body corporate with that name established under the <i>Local Land Services Act 2013</i> (NSW).
LWU	Local water utility including: <ul style="list-style-type: none"> (a) a water supply authority (b) a council or county council exercising water supply functions under Division 2 of Part 3 of Chapter 6 of the <i>Local Government Act 1993</i>, or (c) a licensed network operator within the meaning of the <i>Water Industry Competition Act 2006</i>
Metering equipment	Includes any device used for or in connection with measuring the flow of water and any ancillary wiring, pipework, telemetry equipment or apparatus and any supporting structure
Metropolitan Water Plan	<i>2017 Metropolitan Water Plan</i>
Minister	Minister for Regional Water
Ministerial corporation	Water Administration Ministerial Corporation constituted by <i>Water Management Act 2000</i> (NSW) section 371
ML	One megalitre, equivalent to 1,000,000 litres
MoU	Memorandum of Understanding
Non-Declared Catchment Area	Means all areas that are not Declared Catchment Areas
NSW	New South Wales
NSW Health	NSW Ministry of Health
NWI	National Water Initiative
Operating licence	Water NSW's operating licence issued under <i>Water NSW Act 2014</i> (NSW) section 11
Regulated river	A river that is declared by the Minister, by order published in the Gazette, to be a regulated river
River	Has the same meaning as under the <i>Water Management Act 2000</i> (NSW)

Supply	<p>the supply by Water NSW of water taken from the State’s water rights under its water access licences to a Customer (in accordance with a relevant water supply agreement) by means of Water Management Works owned and/or controlled by Water NSW.</p> <p><i>[Note: Water NSW may supply water to a downstream Customer by using active or passive management or operating actions. Such downstream Customers do not have their own water access licences for that water.]</i></p>
Sydney catchment area	The declared catchment area known as the Sydney catchment area referred to in clause 17 of Schedule 2 of the <i>Water NSW Act 2014</i> , as declared under the Act
System Yield	<p>the amount of water that Water NSW estimates (using a hydrological model) can be Supplied from the Water Sources within the Declared Catchment Areas annually over the long term, subject to:</p> <ul style="list-style-type: none"> a) inflows to the Catchment Infrastructure Works in the Declared Catchment Areas a) an adopted set of operational rules; and b) the Design Criteria.
Water NSW Act	<i>Water NSW Act 2014</i> (NSW)
WA1912 or Water Act	<i>Water Act 1912</i> (NSW)
WAL	Water Access Licence which means an access licence referred to in of the <i>Water Management Act 2000</i> section 56
Water management licence	A water licence issued under the <i>Water Act 1912</i>
Water management work	A water supply work, a drainage work or a flood work, and includes any part of such a work
WMA or Water Management Act	<i>Water Management Act 2000</i> (NSW)
Water management work approval	An approval referred to in <i>Water Management Act 2000</i> section 90
Water supply work approval	An approval referred to in <i>Water Management Act 2000</i> section 90(2)
WIC Act	<i>Water Industry Competition Act 2006</i> (NSW)
WIC Reg	<i>Water Industry Competition Regulation 2008</i> (NSW)
WQMS	Water Quality Management System



Unregulated river

A river that is not a Regulated river.



Appendices



A Summary of submissions to Issues Paper

Table A.1 is a summary of the nine submissions received in response to the Issues Paper released in 2016.²⁰⁶ These submissions informed the draft operating licence and reporting manual that we released on February 2017.

The Issues Paper, including the full list of questions asked of stakeholders, is available on IPART's website: www.ipart.nsw.gov.au. The complete submissions are also posted on our website.

²⁰⁶ We have not summarised the anonymous and confidential submission.

Table A.1 Summary of submissions to Issues Paper

Stakeholder	Report Chapter	Qn No.	Summary of submission
Water NSW	Regulatory requirements	1	Functions authorised by the operating licence may also be required by means of terms and conditions (but do not have to be).
Water NSW	Configuration of licence	2	Water NSW supports one operating licence combining functions of the previous State Water Corporation (State Water) and Sydney Catchment Authority (SCA).
Sydney Water	Configuration of licence	2	Sydney Water notes Water NSW's preference for one operating licence. Sydney Water highlights that a combined operating licence should uphold the current standards related to the Sydney Catchment Area, particularly for water supply, water quality and catchment management.
NSW Government	Configuration of licence	2	The NSW Government supports one operating licence (with specific functions and requirements within the declared catchments). This reflects the NSW Government's rationale for integrating the former SCA and State Water. Further, they consider that it will assist to improve efficiency of administration and reduce duplication of elements that apply across NSW. The NSW Government highlighted that it is important that the combined clearly differentiates between functions carried out in the Sydney Catchment Area and in the rest of NSW.
NSW Irrigators' Council	Configuration of licence	2	The Council considers that the two previous State Water and SCA operating licences should be merged into one operating licence without duplication of common terms and conditions.
Water NSW	Configuration of licence	3	Water NSW does not support any other configurations of licences (eg, more than one licence).
Water NSW	Configuration of licence	4	Water NSW does not support defining the proposed key terms.
NSW Government	Configuration of licence	4	The NSW Government does not consider it necessary to include definitions of the proposed key terms in the operating licence as the water supply work approvals specify conditions that relate to these functions.
Water NSW	Capture, store and release water	5	The new operating licence should authorise Water NSW to capture, store and release water to persons entitled to take the water. The licence should include parts 2 and 3 of the existing Water NSW (State Water) licence. However, the licence should not include cl 3.1.3 (maintenance of water allocation accounts) and cl 3.3.1 (water balance reporting).
NSW Government	Capture, store and release water	5	The operating licence does not need to authorise this function. The water supply work approvals and licences issued by DPI Water already authorise Water NSW to capture, store and release water.
Sydney water	Capture, store and release water	5	The operating licence should authorise this function. However, within the Sydney catchment area, the current standards for water quality and catchment management should not be diminished in any way.
Commonwealth	Capture, store and	5	The Commonwealth Environmental Water Holder (CEWH) is not seeking changes to the existing

Stakeholder	Report Chapter	Qn No.	Summary of submission
Environmental Water Holder	release water		conditions but emphasises that they should not be advantaged or disadvantaged in the operating licence, in comparison to other licensed entitlement holders, with respect to fees and charges, access to allocations, capacity to use, trade, and carryover.
NSW Irrigators' Council	Capture, store and release water	5	The operating licence should not authorise capture, store and release of environmental water.
Water NSW	Capture, store and release water	6	No new terms and conditions are necessary (than those currently included in parts 2 and 3 of the Water NSW [State Water] licence). The function should be authorised throughout NSW, without constraint.
NSW Government	Capture, store and release water	6	No new terms and conditions are necessary.
Water NSW	Capture, store and release water	7	Water balance reporting (currently required under clause 3.3 of the State Water operating licence) should not be retained in the Water NSW operating licence. This function is already required under Water NSW's water supply work approvals (under the WMA) and water management licences (under WA1912).
NSW Government	Capture, store and release water	7	The existing water balance information required by the Water NSW (State Water) reporting manual duplicates at least some of the requirements of Water NSW's water supply work approvals. IPART should discuss the water balance information requirements with DPI Water to avoid unnecessary duplication and regulatory burden on Water NSW.
Water NSW	Capture, store and release water	8	The operating licence should not increase water quality monitoring and reporting requirements for bulk water supplied to local water utilities.
NSW Government	Capture, store and release water	8	There may be some benefit in increasing Water NSW'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.
Sydney Water	Capture, store and release water	8	The licence should not increase water quality monitoring and reporting requirements with regard to water supplied to Sydney Water.
Water NSW	Capture, store and release water	9	The operating licence does not need to require water quality monitoring and reporting for other customers that Water NSW captures, stores and release water to (other than local water utilities).
Water NSW	Capture, store and release water	10	The operating licence should not specify for which other lawful purposes Water NSW captures, stores and releases water to customers. Water NSW requests that these "other lawful purposes" be generally authorised by the operating licence without trying to articulate what these purposes are. Many of these other releases are already authorised and regulated under the <i>Water Management Act 2000</i> and <i>Water Act 1912</i> . Water NSW explains that these conditions are dynamic and change over time to suit needs.

Stakeholder	Report Chapter	Qn No.	Summary of submission
NSW Government	Capture, store and release water	10	The water supply work approvals issued to Water NSW by DPI Water include conditions relating to incidents and emergencies which may result in water being released for other purposes. This must be managed in accordance with the requirements specified by the Minister.
Water NSW	Capture, store and release water	11	Release of water for other lawful purposes (including environmental flows) should not be regulated differently to other releases.
NSW Government	Capture, store and release water	11	Release of water for other lawful purposes (including environmental flows) should not be regulated differently to other releases. These releases are already regulated under the licences and work approvals issued by DPI Water to Water NSW and should not be duplicated by the operating licence.
Water NSW	Capture, store and release water	12	The operating licence should authorise Water NSW to release environmental flows but should not include terms and conditions regulating how it undertakes this function. Terms and conditions are already included in Water NSW's water supply approvals and water management licences.
NSW Government	Capture, store and release water	12	The operating licence should not authorise release of environmental flows in the operating licence as it is already adequately regulated under the <i>Water Management Act</i> and <i>Water Act 1912</i> .
NSW Irrigators' Council	Capture, store and release water	12	The NSW Irrigators' Council is concerned that as the portfolio for planned environmental water increases, and Water NSW has to incur more expenses to store and release planned environmental water. This cost is likely being unfairly passed on to customers.
Water NSW	Supply water	13	The operating licence should authorise Water NSW to supply water to its customers. Part 2 (Water Quality Management System) and Part 6 (customer agreements and complaint management) of the existing SCA operating licence should be included in the new operating licence.
NSW Government	Supply water	13	Supply of water to customers is already authorised under the <i>Water Management Act 2000</i> so the operating licence does not need to duplicate this.
Sydney Water	Supply water	13	The operating licence should authorise Water NSW to supply water to Sydney Water. Section 25 of the Water NSW Act already requires Water NSW to enter into arrangements with Sydney Water regarding the supply of raw water (Raw Water Supply Agreement). Clause 2 of the Water NSW (SCA) operating licence should be retained in the new licence. Together with the Raw Water Supply Agreement, it satisfies the requirements of Sydney Water and provides flexibility. Monitoring and information requirements should continue to be set under the Raw Water Supply Agreement through mutual agreement of both parties, considering Sydney Water's customers' needs.
Water NSW	Supply water	14	The operating licence does not need to include additional terms and conditions to regulate how it supplies water to customers (except for those noted above). Supply functions should not be constrained to a particular geographical area. Without considering IPART's definition for "supply", Water NSW considers that it supplies water to its the

Stakeholder	Report Chapter	Qn No.	Summary of submission
			regional local and county councils and to certain persons in rural NSW who are prevented from further on-selling this water. Water NSW notes that water that is not supplied from the declared catchments or the Fish River Scheme should not be subject to a water quality management system.
NSW Government	Supply water	14	The new licence should include requirements similar to clause 3.1 of the current Water NSW (State Water) operating licence. These relate to processing water orders promptly and efficiently, taking all reasonable steps for timely delivery of water to customers, and minimising water losses from its operations. This should apply to all of Water NSW's activities across NSW.
NSW Government	Supply water	15	The NSW Government considers that all water supplied by Water NSW should be subject to a water quality management system (including water supplied from storages and operated by Water NSW in rural catchments as a number of these supply water for town water supply). The Fish River Water Supply Scheme is required to have a Quality Assurance Program under the <i>Public Health Act 2010</i> .
Sydney Water	Supply water	15	Sydney Water supports the application of a water quality management system for any water supplied by Water NSW, mimicking the existing Clause 2.1 of the Water NSW (SCA) operating licence. This aids Sydney Water to meet its responsibility to ensure that drinking water it supplies is subject to a "catchment to tap" quality management system. (Sydney Water has not commented on the Fish River Water Supply scheme).
Water NSW	Supply water	16	Terms and conditions may need to be applied differently to water supply functions in declared catchments than they are being applied to the Sydney catchment area, if new catchment areas are declared in future.
Sydney Water	Supply water	16	The existing standards for protecting declared catchment areas to maintain the current drinking water quality for customers should be upheld.
Water NSW	Supply water	17	Part 6 of the existing Water NSW (SCA) operating licence should be retained in the new licence. Further, these terms and conditions should be made consistent with the Fish River Water Supply Scheme customer contracts terms and conditions of the Water NSW (State Water) licence (further comment under "Other - Retail services").
Water NSW	Supply water	18	Part 2 of the existing SCA operating licence requiring Water NSW to maintain a water quality management system to the satisfaction of NSW Health should be retained in the new operating licence.
NSW Government	Supply water	18	Good catchment management practices improve water quality which is particularly important where the water is ultimately used as drinking water. The operating licence requirement to develop a water quality management system could be framed to drive an appropriate level of catchment management including in rural catchments. Further, declared catchment management practices in the existing Water NSW (SCA) operating licence (Part 4) should be maintained.

Stakeholder	Report Chapter	Qn No.	Summary of submission
Water NSW	Supply water	19	Terms and conditions are not necessary to enhance or require coordination between Water NSW and its customers to maximise end user benefits. Water NSW has negotiated supply agreements with its customers (eg, its Raw Water Supply Agreement with Sydney Water). These arrangements allow for commercial incentives to optimise investment.
Sydney Water	Supply water	19	Terms and conditions are not necessary to enhance or require coordination between Water NSW and its customers to maximise end user benefits. Sydney Water and Water NSW already have protocols in place in its Raw Water Supply Agreement to address this issue. Sydney Water would prefer that any terms and conditions to maximise benefits to customers to be included in the Agreement by mutual agreement.
Australian Modern Dairy	Supply water	19	<p>Diversions from Redbank North Channel, that distributes water to licensed water users in the Redbank North area, are assessed through a meter owned and maintained by Water NSW. This meter is known to be inaccurate and significant volumes of water escape from the channel prior to being diverted for productive purposes by Australian Modern Dairy. However, the total volume of water diverted, including transmission losses, is charted to licensed entitlement holders.</p> <p>The Australian Modern Dairy considers that IPART should review the role of Water NSW in the continuing operations and maintenance of infrastructure used in water supply and distribution in the Redbank North Area.</p>
Water NSW	Supply water	20	Terms and conditions related to reviews and amendments of supply arrangements with Sydney Water are not necessary. Provisions of the Water NSW Act related to these arrangements are already prescriptive (Part 2, Division 7 of the Water NSW Act). Further, Water NSW does not consider this necessary for any other customers.
Sydney Water	Supply water	20	Terms and conditions related to reviews and amendments of supply arrangements with Sydney Water are not necessary as the Water NSW Act already contains terms and conditions for the review of these arrangements. Sydney Water would prefer to continue to negotiate specific details with Water NSW.
Water NSW	Supply water	21	Terms and conditions specifically relating to supply of water to licensees under the <i>Water Industry Competition Act 2006</i> (WIC Act) are not necessary for inclusion in the operating licence.
NSW Government	Supply water	21	<p>The existing requirements of the Water NSW operating licences which apply to WIC Act licenses should be maintained in a new operating licence, but it should be made more clear that they are relevant to these licensees. This is explained below:</p> <p>Part 2 of the existing Water NSW (State Water) operating licence to provide information to local water utilities also applies to WICA licensees, based on the definition of local water utilities in the operating licence (same as under the <i>Water Management Act 2000</i>).</p> <p>Part 5 of the operating licence, relating to Fish River Water Supply Scheme customer agreements could also relate to WIC Act licensees. Similarly, Part 6 of the Water NSW (SCA) operating licence requiring Water NSW to establish terms and conditions for supplying raw water to customers other than Sydney</p>

Stakeholder	Report Chapter	Qn No.	Summary of submission
			<p>Water applies to WIC Act licensees.</p> <p>Since WIC Act network operators' licences require the licensee to negotiate a code of conduct with any public water utility supplying them with water, the NSW Government queries whether a clause similar to clause 5.8 of the Sydney Water operating licence to use best endeavours to cooperate with WIC Act licensees to establish a code of conduct is necessary. The codes of conduct required in the Sydney Water operating licence include items comparable to those listed in Part 6 of the current Water NSW (SCA) operating licence.</p>
Sydney Water	Supply water	21	<p>Specific terms and conditions relating to supply of water to WIC Act licensees may not be necessary. The existing requirements for Water NSW to enter into customer agreements with customers other than Sydney Water (ie, clause 6.1 of the existing Water NSW [SCA] operating licence) should be retained in the new operating licence. These requirements would apply to WIC Act licensees as well.</p>
Water NSW	Supply water	22	<p>Water NSW considers the water system supply yield when undertaking long term planning and considering supply sufficiency is beneficial.</p> <p>Water NSW considers that Part 3 of the existing Water NSW (SCA) operating licence should be retained in the new licence. It is adequately defined and calculated. The model and yield calculation was recently reviewed independently and found to be consistent with industry best practice.</p> <p>The Design criteria form part of the Water NSW level of service framework's range of criteria that are developed in consultation with customers.</p>
NSW Government	Supply water	22	<p>The current obligation to calculate the water supply system yield for Greater Sydney supply system should be maintained in a new operating licence. However, they should be updated to reflect the approach adopted in the next Metropolitan Water Plan. The new plan will include both a "target supply" and a "maximum supply". These two yields should be calculated. Target supply will indicate medium term supply sufficiency. Maximum supply will continue to act as an indicator of long term planning supply sufficiency.</p>
Sydney Water	Supply water	22	<p>The supply system yield calculation requirement should be maintained in the new operating licence. Sydney Water considers that it could be useful if the data and assumptions underlying calculations about yield were publicly available. Similarly, the design criteria should be made publicly available.</p> <p>Further, the operating licence could consider triggers for reviewing the model. The design criteria should be reviewed in conjunction with the Metropolitan Water Plan and be informed by community preferences.</p>
Water NSW	Construct, operate and maintain water management works	23	<p>The operating licence should authorise Water NSW to construct, operate and maintain its water management works.</p>
NSW Government	Construct, operate and maintain water	23	<p>The operating licence should authorise Water NSW to construct, operate and maintain its water management works.</p>

Stakeholder	Report Chapter	Qn No.	Summary of submission
	management works		
NSW Department of Planning and Environment	Construct, operate and maintain water management works	23	If the licence authorises construction, operation and maintenance should not do not override the provisions of the <i>Environmental Planning and Assessment Act 1979</i> (EP&A Act) or associated environmental planning instruments (EPIs). The licence should ensure that any terms or conditions applied to that licence would not conflict with the conditions of development approval or cause instances resulting in non-compliances.
Water NSW	Construct, operate and maintain water management works	24	The operating licence should not include terms and conditions regulating how it undertakes this function as this is covered by other legislation (including the <i>Water Management Act 2000</i> , <i>Water Act 1912</i> and <i>Dam Safety Act</i>). The only terms and conditions required are around certification of an Asset Management System. The operating licence should also not limit Water NSW from undertaking this function throughout NSW.
Water NSW	Construct, operate and maintain water management works	25	Water NSW should be required to have a certified Asset Management System which could reduce the scope for audits. No requirement necessary for implementation and maintenance of the Asset Management System.
NSW Government	Construct, operate and maintain water management works	25	The NSW Government supports the requirement for Water NSW to develop, implement and maintain an asset management system. Water NSW has recently been vested a large number of assets from DPI Water, including meters and monitoring sites. To ensure that these assets continue to be maintained, the operating licence should set minimum standards for asset management. The asset management system should differentiate between critical assets in the declared catchment(s) and assets in other areas. An asset management condition supports continuity of supply.
Sydney Water	Construct, operate and maintain water management works	25	Sydney Water supports a requirement for Water NSW to develop, implement and maintain an Asset Management System certified to ISO 55001. Certification and regular maturity assessments could allow for lighter regulatory surveillance to be applied in the long term. Further, this will enable consistency between all the NSW water utilities and a comparison of the effectiveness for all of the utilities.
Water NSW	Construct, operate and maintain water management works	26	It is not necessary/ appropriate to constrain Water NSW's control of water in its storage assets as this is already regulated under the WMA, WA1912 and the Murray Darling Basin Agreement.
Water NSW	Construct, operate and maintain water management works	27	The reporting manual does not need to include the existing requirements (reporting on state and performance of assets) but can rely on the reports required by certification audit and surveillance system audits.
Water NSW	Catchment management	28	The operating licence should authorise Water NSW to undertake its listed declared catchment management functions for all declared catchment areas and not just the Sydney Catchment Area (ie, currently the only declared catchment area).

Stakeholder	Report Chapter	Qn No.	Summary of submission
NSW Government	Catchment management	28	The operating licence should authorise Water NSW to undertake its listed declared catchment management functions in the declared Sydney Catchment Area.
Sydney Water	Catchment management	28	The operating licence should authorise Water NSW to undertake its listed declared catchment management functions in the declared Sydney Catchment Area to protect the quality of water supplied for drinking water purposes and avoid, where possible, water quality incidents.
Water NSW	Catchment management	29	The operating licence can include terms and conditions that regulate how these functions are undertaken and may require Water NSW to undertake these functions and/or certain activities related to these functions. Part 4 of the Water NSW (SCA) operating licence should be included in the new Water NSW operating licence but it should be constrained to apply to only the Sydney Catchment Area.
Sydney Water	Catchment management	29	No specific terms and conditions. Maintain minimum standard at least for managing declared catchment areas.
Water NSW	Catchment management	30	Water NSW does not currently undertake any catchment management functions in other catchment areas that it currently undertakes in the Sydney Catchment Area. Consequently, there does not need to be any terms and conditions in the operating licence related to these functions.
NSW Government	Catchment management	30	<p>In the declared Sydney Catchment Area, catchments are managed for maintaining quality of water supplied to customers whereas in rural catchments, catchments are managed for multiple purposes. Consequently, the existing catchment management requirements of the Water NSW (SCA) operating licence should be maintained without losing their objective.</p> <p>Research on catchments generally, catchment protection works and environmental management (both upstream and downstream of dams) could be conducted at rural catchments as well, using a risk-based approach. Managing water quality health risks through a multiple barrier approach in accordance with the Australian Drinking Water Guidelines, as required in the declared Sydney catchments, could also be relevant to rural catchments as some of them supply local water utilities for drinking water purposes.</p>
Water NSW	Catchment management	31	Further regulation between Water NSW and Local Land Services is not necessary. The two entities currently work together effectively.
NSW Government	Catchment management	31	The NSW Government considers that a Memorandum of Understanding between Water NSW and Local Land Services in catchment areas may be beneficial and could expand current partnerships.
Water NSW	Flood mitigation and management	32	<p>The operating licence should not authorise Water NSW to undertake flood mitigation and management. Water NSW considers that Division 4 of Schedule 2 of the Water NSW Act does not enable it to undertake the catchment management functions within the Sydney catchment area. As such, if Water NSW is required to undertake this function within this area, it needs sufficient legislative support to cover its risks.</p> <p>Outside the Sydney Catchment Area, Water NSW considers that it is adequately regulated under other legislation (eg, <i>Water Management Act 2000</i>, <i>Water Act 2007</i>, <i>Dam Safety Act</i> and <i>State Emergency Act</i>).</p>

Stakeholder	Report Chapter	Qn No.	Summary of submission
NSW Government	Flood mitigation and management	32	<p>The operating licence should not authorise Water NSW to undertake flood mitigation and management. For rural NSW, Water NSW's water supply work approvals (under the <i>Water Management Act 2000</i>) already include conditions related to managing the dams during floods. Therefore the operating licence does not need to include further requirements.</p> <p>In the Sydney Catchment Area, the NSW Government considers that it is unlikely that the completion of the augmentation of Warragamba Dam will occur during the term of this operating licence. Any flood operations required during construction would need to be specified in the conditions of consent of the Planning approval. If required, this function can be authorised at Warragamba Dam in the following term.</p>
Sydney Water	Flood mitigation and management	32	Water NSW should be authorised to undertake flood mitigation and management should the proposal to raise Warragamba Dam's wall proceed. Water NSW also considers that amendment of the Water NSW Act (Division 4 of Schedule 2) would be required before Water NSW could undertake flood mitigation.
Water NSW	Flood mitigation and management	33	Terms and conditions are not required as the function should not be authorised in the new operating licence.
NSW Government	Flood mitigation and management	33	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.
Sydney Water	Flood mitigation and management	33	Sydney Water does not have a view on any specific terms and conditions related to flood mitigation and management. However, if Water NSW makes investments in flood mitigation and management in the Sydney Catchment Area, IPART should consider how Water NSW is to recover the costs of these activities as it is unfair to pass the cost on to the customers.
Water NSW	Flood mitigation and management	34	Terms and conditions are not required. Therefore none are required to constrain where Water NSW undertakes this function.
Water NSW	Flood mitigation and management	35	No terms and conditions are required to regulate Water NSW's relationships with other entities such as the State Emergency Services and the Dam Safety Committee because these relationships are clear, effective and efficient.
Water NSW	Education of the community	36	The operating licence should authorise Water NSW to educate the community.
NSW Government	Education of the community	36	The operating licence should authorise Water NSW to educate the community which should be a normal and expected part of running the business. No specific terms and conditions are necessary to regulate how it undertakes this function.
Sydney Water	Education of the community	36	The operating licence should authorise Water NSW to educate the community. No further requirements related to this are necessary.
Water NSW	Education of the	37	No terms and conditions are required to regulate how Water NSW educates the community.

Stakeholder	Report Chapter	Qn No.	Summary of submission
	community		
Water NSW	Other – environmental management	38	Water NSW should be required to have a certified EMS which could reduce the scope for audits. No requirement necessary for implementation and maintenance of the Environmental Management System.
NSW Government	Other – environmental management	38	Water NSW should be required to develop, implement and maintain an Environmental Management System, validated and audited by a third party.
Sydney Water	Other – environmental management	38	The requirements to develop, implement and maintain an EMS should be retained in the operating licence. The EMS is a valuable tool to ensure the catchments are protected to maintain water quality to a standard suitable for drinking. The most recent version of ISO 14001 standard (released in 2015) should be referred to in the operating licence.
Water NSW	Other – performance standards	39	Water NSW considers that performance standards should be minimum requirements for customers who have been supplied or delivered water. Water NSW suggests the following minimum standards (for supply only): <ul style="list-style-type: none"> water supplied to customers meets raw water quality standards > 95% of the time water supplied to customers meets health standards 100% of the time water is supplied to customers on time 100% of the time water is supplied to customers in the agreed quantities 100% of the time.
NSW Government	Other – performance standards	39	The NSW Government considers that standards should not be prescribed in the operating licence for health related activities. The NSW Government considers that setting minimum standards is inconsistent with the preventative risk management approach set out in the Australian Drinking Water Guidelines which aims to supply water at the highest practicable quality.
Sydney Water	Other – performance standards	39	Sydney Water notes that any performance standards prescribed to water supply should not impact on the quality of water and continuity of supply to Sydney Water. Sydney Water prefers for minimum supply standards to be negotiated through its Raw Water Supply Agreement with Water NSW. Sydney Water considers that the minimum standards proposed by Water NSW for its operating licence do not meet Sydney Water's needs regarding water quality.
Water NSW	Other – performance standards	40	Water NSW considers that the previous State Water and SCA performance indicators can be converted to performance standards for Water NSW.
NSW Government	Other – performance standards	40	The performance indicators specified in Appendix A of the Water NSW (State Water) reporting manual can be converted into performance standards as these are relevant to water delivery and service interruptions. It is not appropriate to convert the NWI indicators in the Water NSW (SCA) reporting manual to standards as these may vary from year to year. These relate to water resources, environment and finance. The NSW Government also does not recommend converting the water quality indicators in the Water NSW (SCA) reporting manual to standards. As these may not be able to be met in all

Stakeholder	Report Chapter	Qn No.	Summary of submission
			<p>circumstances due to varying upstream catchment management practices.</p> <p>A number of catchment health indicators specified in the Water NSW (SCA) reporting manual are variables that are difficult to control so cannot be changed to standards.</p>
Sydney Water	Other – performance standards	40	Sydney Water does not support prescriptive performance standards and prefers for them to be negotiated in customer supply agreements to suit each customer.
Water NSW	Other – performance standards	41	Water NSW considers that the performance indicators should relate to minimum requirements only. Any additional requirements can be negotiated with customers.
Water NSW	Other – conferral of functions	42	The operating licence should not regulate Water NSW's relationship with DPI Water as they already have a prescriptive Deed to regulate this.
NSW Government	Other – conferral of functions	42	The NSW Government considers that the operating licence could regulate Water NSW's relationship with DPI Water via a Memorandum of Understanding.
Water NSW	Other – conferral of functions	43	The operating licence should not include limitations on the audit requirements of the conferred functions.
NSW Government	Other – conferral of functions	43	Where a conferred function is subject to an assessment of "reasonableness" or "practicability", in the July 2016 amended Water NSW (State Water and SCA) operating licences, 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.
Water NSW	Other – area of operations	44	Water NSW queries the capacity of the operating licence to constrain certain functions to only some areas of operations. Water NSW instead supports functional market distinctions in the operating licence, rather than geographical area distinctions.
Water NSW	Other – area of operations	45	<p>The operating licence should authorise Water NSW to undertake its functions outside the state of NSW, similar to the existing Water NSW (State Water) operating licence.</p> <p>Water NSW interacts with the Commonwealth and other States when undertaking its functions (particularly through Murray Darling Basin Agreement) and needs to facilitate trades of entitlements between holders within and outside NSW.</p>
NSW Government	Other – area of operations	45	The operating licence should authorise Water NSW to undertake its functions outside the state of NSW.
NSW Irrigators' Council	Other – area of operations	45	Water NSW should be able to legally undertake all the functions it has been conferred from DPI Water.
Water NSW	Other – area of operations	46	Water NSW should be authorised to exercise functions conferred or imposed on Sydney Water, Hunter Water or a water supply authority under the <i>Water Management Act 2000</i> , in their areas of operations, with their agreement.

Stakeholder	Report Chapter	Qn No.	Summary of submission
Sydney Water	Other – area of operations	46	Water NSW can be authorised to exercise functions conferred or imposed on Sydney Water in its area of operations, with its agreement.
Water NSW	Other – area of operations	47	Water NSW should always be required to seek a utility's agreement before commencing to undertake functions conferred or imposed on that utility. Water NSW should never be obliged to undertake these functions.
NSW Government	Other – area of operations	47	Water NSW should always be required to seek the relevant utility's agreement before undertaking their conferred functions as this is a requirement of section 15(5) of the Water NSW Act.
Sydney Water	Other – area of operations	47	Sydney Water considers that the current commercial arrangements with Water NSW already sufficiently address this and additional requirements are not required in the operating licence.
Water NSW	Other - contravening the operating licence	48	No further requirements are necessary in the operating licence related to contraventions of the operating licence. This is adequately covered in the Water NSW Act.
Water NSW	Other – memoranda of understanding	49	The new operating licence should include Part 9 of the existing Water NSW (SCA) operating licence. Further prescription on the matters to be included in the memoranda of understanding (MoU) is not necessary.
NSW Government	Other – memoranda of understanding	49	The existing requirement in the Water NSW (SCA) operating licence to enter into MoUs with NSW Health and the EPA should be included in the operating licence. No further prescription on the matters to be included in the MoU should be included in the operating licence. This should be agreed and set by both parties.
Sydney Water	Other – memoranda of understanding	49	Water NSW should be required to enter into an MoU with NSW Health and the EPA. The operating licence could provide some direction on the content and/or purpose of the MoUs. The legislation makes no requirement for Water NSW to maintain its MoUs with NSW Health and the EPA once entered into.
Water NSW	Other – memoranda of understanding	50	The operating licence does not need to constrain where the MoU applies in relation to Water NSW's operations. The MoUs with NSW Health and the EPA are mutually agreed upon before execution. Therefore its inclusions are self-managed effectively.
NSW Government	Other – memoranda of understanding	50	The operating licence does not need to constrain where the MoU applies in relation to Water NSW's operations.
Sydney Water	Other – memoranda of understanding	50	The operating licence does not need to constrain where the MoU applies in relation to Water NSW's operations, provided it does not reduce the stringency applied to the Sydney Catchment Area.
Water NSW	Other – memoranda of understanding	51	The operating licence should not require Water NSW to enter into MoUs with any other entities. If this becomes required in future, the Minister can require it by means of section 22 of the Water NSW Act.

Stakeholder	Report Chapter	Qn No.	Summary of submission
NSW Government	Other – memoranda of understanding	51	The NSW Government considers that the operating licence should include a requirement for an MoU between Water NSW and DPI Water. This could be similar to the requirement specified in the existing Water NSW (State Water) operating licence. The MoU could include responsibilities for water quality monitoring (including water temperature) and provision for liaison groups between the two organisations.
Sydney Water	Other – memoranda of understanding	51	The operating licence does not need to include a requirement to enter into an MoU with Sydney Water as the Raw Water Supply Agreement already prescribes a relationship protocol.
Water NSW	Other - metering	52	The operating licence should authorise Water NSW to operate, replace, repair, maintain, remove, connect, disconnect or modify metering equipment that it does not own. Water NSW may sometimes be contracted by customers to undertake these functions for customer owned meters.
NSW Government	Other - metering	52	DPI Water considers that this question is no longer relevant and clause 4.2 of the existing Water NSW (State Water) operating licence was amended to reflect this.
Sydney Water	Other - metering	52	Water NSW could be authorised to operate, replace, repair, maintain, remove, connect, disconnect or modify metering equipment that it does not own provided that these functions are only carried out with the agreement of the asset owner.
NSW Irrigators' Council	Other - metering	52	Water NSW should not be authorised to operate, replace, repair, maintain, remove, connect, disconnect or modify any meters owned by customers. This should only apply to government funded meters.
Water NSW	Other - metering	53	Water NSW should not be required to undertake this function.
Water NSW	Other - metering	54	Include clause 4.2.1 of the existing Water NSW (State Water) operating licence, but edited as follows: "Water NSW must determine the usage of each of its customers."
Water NSW	Other – operational audits	55	The operating licence should include terms and conditions similar to those in the existing Water NSW (State Water and SCA) operating licences in relation to undertaking audits. Further, Water NSW wants the scope of the Asset Management System and Environmental Management System audits to be reduced as described previously.
NSW Government	Other – operational audits	55	The operating licence should include terms and conditions similar to those in the existing Water NSW (State Water and SCA) operating licences in relation to undertaking audits. But not at any detriment to water quality (NSW Health) should be consulted.
Water NSW	Other – operational audits	56	The operating licence should be clear on any determination of cost of carrying out of the audit by IPART. This should be clear that the scope of the audit matches only that required by the operating licence. IPART should be required to follow a competitive process in determining the fees for the audit and to select a suitably qualified independent auditor.
Water NSW	Other – retail services	57	The operating licence should not contain obligations requiring compliance with pricing determinations as

Stakeholder	Report Chapter	Qn No.	Summary of submission
			this will lead to duplication with the IPART Act and the Commonwealth Water Act.
NSW Government	Other – retail services	57	The operating licence should include an obligation for Water NSW to comply with the pricing determinations, consistent with the requirements in Sydney Water's and Hunter Water's operating licences.
Sydney Water	Other – retail services	57	The operating licence should include an obligation for Water NSW to comply with the pricing determinations, consistent with the requirements in Sydney Water's and Hunter Water's operating licences, to avoid a monopoly power
Water NSW	Other – retail services	58	Clause 5.4 of the existing Water NSW (State Water) operating licence and clause 6.1 of the existing Water NSW (SCA) operating licence adequately protect customers' interests. These requirements should be combined and included in the operating licence
Water NSW	Other – retail services	59	Water NSW does not support including a customer contract in the operating licence because there is a lack of adequate legislation to support one. Unlike for Sydney Water and Hunter Water whose acts have adequate provisions including deeming provisions.
NSW Government	Other – retail services	59	Water NSW 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 <i>Water Management Act 2000</i> and <i>Water Act 1912</i> .
Water NSW	Other – retail services	60	Further terms and conditions related to customer contracts are not necessary in the new operating licence.
Water NSW	Other – retail services	61	The minimum requirements for membership of customer service committees should be expanded in the operating licence to include other groups of customers. Water NSW considers that currently, the committees have over-representation from government agencies.
NSW Irrigators' Council	Other – retail services	61	The customer service committees should be maintained in the new operating licence. It is important that all types of customers are adequately represented. Especially in light of the increased functions and responsibilities Water NSW has acquired since the conferral of new functions from DPI Water.
Water NSW	Other – retail services	62	The obligation of the existing Water NSW (State Water) operating licence requiring a customer service charter is adequate and valuable
Water NSW	Other – retail services	63	Water NSW considers that the code of practice is adequate and fair for customers experiencing hardship and it is adequately communicated.
Water NSW	Other – retail services	64	Water NSW considers that by adopting the previous State Water's customer complaints handling procedure, this will be adequate to cover all of Water NSW's customers since the merger.
Water NSW	Other – retail services	65	EWON is the appropriate external dispute resolution scheme for Water NSW. Information about the scheme is available on Water NSW's website and is communicated once a year through bills to customers.

Stakeholder	Report Chapter	Qn No.	Summary of submission
Water NSW	Other – retail services	66	Other terms and conditions related to customer protection are not necessary for inclusion in the new operating licence.
Water NSW	Other – Metropolitan Water Plan	67	The operating licence should not include specific requirements of the Metropolitan Water Plan. These are imposed on Water NSW through its water supply work approvals and the Water Sharing Plans under the <i>Water Management Act 2000</i> .
NSW Government	Other – Metropolitan Water Plan	67	The operating licence should require Water NSW to comply with the obligations of the Metropolitan Water Plan and contribute to its periodic review. This will ensure that they are independently reviewed/ audited during the period of the term of the operating licence. Not all requirements of the Metropolitan Water Plan are achieved through the work approvals and Water Sharing Plans. A condition in the operating licence could clarify Water NSW's obligations under the plan.
Sydney Water	Other – Metropolitan Water Plan	67	The operating licence should not include specific requirements of the Metropolitan Water Plan as the plan is likely to be updated soon. If the operating licence includes requirements that the amended plan recommends, this may not allow Water NSW time to consider feasibility of projects recommended by the plan.
Water NSW	Other – Metropolitan Water Plan	68	The operating licence should not require Water NSW to develop a protocol with the Metropolitan Water Directorate.
NSW Government	Other – Metropolitan Water Plan	68	The NSW Government supports including a requirement in the operating licence for Water NSW to develop a roles and responsibilities protocol with DPI Water. The protocol would facilitate the ongoing review and implementation of the Metropolitan Water Plan. This would be consistent with other major public water utilities.
Sydney Water	Other – Metropolitan Water Plan	68	The operating licence should require Water NSW to make its best endeavours to develop a protocol with the Metropolitan Water Directorate, similar to the Sydney Water and Hunter Water operating licences.
Water NSW	Other – synergies with price regulation	69	The Water NSW operating licence does not need to enhance links with IPART's pricing function. Water NSW is already regulated under federal legislation (whereas the operating licence would only be state wide). The requirements to comply with pricing determinations are set out in the IPART Act and the Commonwealth Water Act.
Water NSW	Other – synergies with price regulation	70	Ongoing sequencing with the pricing determinations would be of benefit. However, the Water NSW operating licence term should be set at the maximum of five years. Since the pricing determinations are on a 4-year cycle, they can follow the operating licence.
NSW Government	Other – synergies with price regulation	70	Different terms to those currently in place for price reviews and operating licence reviews should be considered. Rational sequencing of operating licence reviews and price reviews, and reviews of water security and infrastructure plans will assist in achieving least cost outcomes.
Sydney Water	Other – synergies with	70	The ideal sequencing will vary for each utility. Typically operating licence periods are set at the maximum

Stakeholder	Report Chapter	Qn No.	Summary of submission
	price regulation		allowable period. If licensing reviews are undertaken before pricing reviews, sufficient time for planning and budgeting relating to levels of service could be planned for.
Water NSW	Other – Reporting Manual	71	<p>The reporting obligations (through the reporting manuals) from the existing Water NSW operating licences should be included in the new operating licence.</p> <p>The obligation(s) to make reports publicly available should only relate to reports where there is a demonstrated material benefit in doing so and should not duplicate other reporting obligations.</p>
NSW Government	Other – Reporting Manual	71	The operating licence should require Water NSW to comply with reporting obligations currently set out in the reporting manual. Reporting requirements for within the declared catchment should be maintained and applied to other catchments on a risk basis.
Sydney Water	Other – Reporting Manual	71	<p>Sydney Water supports reporting obligations being imposed through a reporting manual as this is a consistent approach with other utilities regulated by IPART.</p> <p>Water NSW should be required to report on outcomes achieved by the Drinking Water Quality Management System to support transparent reporting to IPART and customers on the quality and safety of water supplied.</p>
Water NSW	Other – Reporting Manual	72	<p>Performance indicators from the existing Water NSW (State Water) reporting manual should be retained. Most of the performance indicators from the existing SCA reporting manual (including catchment health indicators) should be retained in the new operating licence.</p> <p>However, Water NSW suggests deleting two IPART indicators (Table B2 of reporting manual) as these are a subset of the water quality monitoring program developed under the WQMS and the results of this program are made available to IPART annually (in the Annual Water Quality Monitoring Report).</p> <p>For indicators relating to the impact of energy used and waste generated: Water NSW considers that data collection for energy and waste is resource intensive and is challenging to meet timeframes. Water NSW suggests new indicators for waste.</p>
Sydney Water	Other – Reporting Manual	72	Sydney Water believes there is benefit in including a requirement for Water NSW to report against NWI performance indicators as it will provide consistency with other water utility operating licences.
Water NSW	Other – ancillary functions	73	The operating licence should generally authorise Water NSW to undertake any functions ancillary to its listed and other functions.
Water NSW	Other – ancillary functions	74	Water NSW considers that the water market and associated legislation can be reformed. Water NSW considers that the operating licence should be structured according to market function.
NSW Government	Other – ancillary functions	73	Water NSW 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. Particularly in relation to water temperature monitoring. Especially now that the responsibilities and functions for catchment water quality monitoring have been

Stakeholder	Report Chapter	Qn No.	Summary of submission
			moved from DPI Water to Water NSW, the requirements should be set in the new operating licence.
Tamworth Regional Council	Other – ancillary functions	73	Tamworth Regional Council seeks postage stamp pricing for bulk water within NSW. Further, Water NSW should be authorised to administer water licences for Local Government.
Tamworth Regional Council	Other – ancillary functions	74	Tamworth Regional Council considers that the operating licence should enable Water NSW to administer licensing functions for Local Government. Council considers that there is potential duplication of regulation with DPI Water retaining licensing functions for Local Government and Water NSW administering licensing for private customers.
Tamworth Regional Council	Other – ancillary functions	75	Tamworth Regional Council has not proposed any specific terms and conditions to regulate how Water NSW should administer licensing for Local Government.
NSW Irrigators' Council	Other – ancillary functions	73	<p>NSW Irrigators' Council requests more clarity on which of Water NSW's services are negotiable and can be tailored. Previously Water NSW has stated that its operations are non-negotiable because of its complex legislative requirements. The council wants to know how Water NSW intends to offer tailored contracts to customers.</p> <p>The Irrigators' Council queries whether this is the appropriate time to undertake the review of Water NSW's operating licences. Water NSW may be subject to operational changes through the implementation of the Murray-Darling Basin Plan and the NSW Water Resource Plans. Further, the NSW Irrigators' Council considers that its current North Coast Pilot is an ideal opportunity to gauge customer interest in changes to Water NSW service delivery model.</p>
Australian Modern Dairy	Other – ancillary functions	73	<p>Diversions from Redbank North Channel, that distributes water to licensed water users in the Redbank North area, are assessed through a meter owned and maintained by Water NSW. This meter is known to be inaccurate and significant volumes of water escape from the channel prior to being diverted for productive purposes by Australian Modern Dairy. However, the total volume of water diverted, including transmission losses, is charted to licensed entitlement holders.</p> <p>IPART should review the role of Water NSW in the continuing operations and maintenance of infrastructure used in water supply and distribution in the Redbank North Area.</p>

B Summary of submissions to draft operating licence package

Table B.1 is a summary of the 13 submissions received in response to the Water NSW Draft Operating Licence released in 2017. These submissions informed the development of the final operating licence package

The Water NSW Draft Operating Licence, including the full list of licence conditions, is available on IPART's website: www.ipart.nsw.gov.au. The complete submissions are also posted on our website.

Table B.1 Summary of submissions to draft operating licence package

Stakeholder	Relevant chapter of report and licence	Draft Recommendation No.	Summary of submission	Page number of submission
WaterNSW	Licence structure	1	Water NSW supported one licence authorising all of its listed functions under the Water NSW Act, on the condition that functions conferred or imposed through another Act of law do not have terms and conditions applied through the operating licence.	11
Water NSW	Licence context and authorisations	3	Water NSW is concerned that the note to clause 1.1 does not reflect the content of sections 11 and 12 of the Water NSW Act, despite claiming to do so, using the words “in accordance with sections 11 and 12 of the Act, the purpose of the licence is to...”. Water NSW has suggested to remove IPART’s interpretation of the Water NSW Act and to simply state that the purpose of the licence is set out in sections 11 and 12.	11
Sydney Water	Licence context and authorisations	3	Sydney Water supported the recommendations, in principle but suggested some rewording. Sydney Water considered that points (b) and (c) of the draft clause 1.1.1 were not objectives of the licence but of the licence review process. Sydney Water considered that the distinction between the objective and purpose of the licence is not clear in the Draft Report and requested that this be clarified in the Final Report.	14
Water NSW	Licence context and authorisations	5	Water NSW did not support using defined terms when listing the authorised functions in the operating licence. Instead, it suggested that the list of authorisations should reflect the Water NSW Act and the natural meaning of the terms used in the listed functions should apply. Water NSW was concerned that by using IPART’s definitions in the list of authorisations, there could be a risk that Water NSW’s authorised functions are inappropriately constrained to IPART’s defined terms and consequently Water NSW may not be able to undertake parts of its listed functions as intended by the Act. Water NSW acknowledged the benefits of using definitions in the <i>terms and conditions</i> of the operating licence which regulate how Water NSW is to undertake its listed functions. Water NSW suggested alternate definitions for the key terms to those proposed by IPART, reflecting the outcome or purpose of the water that it provides. Water NSW considered that this is more aligned with its operations than IPART’s proposal which defines the key terms used in the listed functions in the Act. Consequently, Water NSW suggested deleting a number of terms in the draft operating licence related to IPART’s definitions. Water NSW also proposed amendments to IPART’s proposed definitions, if Water NSW’s alternate suggestions were not implemented.	11 -12 and 29

Stakeholder	Relevant chapter of report and licence	Draft Recommendation No.	Summary of submission	Page number of submission
			It was noted that the remainder of Water NSW's submission and proposals were prepared on the assumption that Water NSW's definitions would be adopted in the operating licence.	
New South Wales Irrigators' Council (NSWIC)	Licence context and authorisations	5	NSWIC supported IPART's proposal to differentiate between "capture, store and release" and "supply". It considered that definitions differentiating urban and rural water supply provided value and they could reduce any ambiguity over Water NSW's functions and responsibilities.	4
Murrumbidgee Irrigation Ltd	Licence context and authorisations	5	Murrumbidgee Irrigation Ltd noted the intent of the definitions to protect rural water users from unnecessary and costly regulatory requirements by differentiating urban catchment requirements, but it did not form a determination on the issue.	1
New South Wales Irrigators' Council (NSWIC)	Licence context and authorisations	6	NSWIC suggested that the operating licence should authorise Water NSW to operate outside of NSW to allow it to continue its interaction with the Commonwealth and other states for certain functions activities under the Murray-Darling Basin Agreement. NSWIC recommended imposing reporting and public disclosure requirements in response to this.	5
NSW Government – Department of Primary Industries-Water (DPI Water)	Licence context and authorisations	6	DPI Water suggested that Water NSW should be authorised to undertake its functions outside the state of NSW.	4
Water NSW	Licence context and authorisations	N/A	Water NSW suggested a two-year term for the operating licence. It considered that this would have the benefits of: <ul style="list-style-type: none"> ▼ aligning the operating licence to precede Water NSW's pricing determination so that any additional costs, and more importantly savings arising from deregulation, can be reflected in its prices; Water NSW's next Pricing Determination (Greater Sydney) is due in 2020 (ie, in 3 years) ▼ providing time for WaterNSW to develop and recommend to IPART a set of minimum performance standards for each of the 'market functions' that Water NSW performs, including for the Conferred Functions; and ▼ providing time for WaterNSW to develop and recommend to IPART outcome-based measures that would offer WaterNSW flexibility in how it executes its authorised functions. 	15
Sydney Water	Licence context and authorisations	N/A	Sydney Water raised no concerns with a two-year term (rather than the proposed five-year term) being adopted for this licence, as suggested by Water NSW. Sydney Water suggested that going forward; it may be useful for IPART to establish a set pattern for licence reviews and pricing	14

Stakeholder	Relevant chapter of report and licence	Draft Recommendation No.	Summary of submission	Page number of submission
			determinations. Sydney Water supported a move towards sequence pricing and operating licence reviews.	
Water NSW	Licence context and authorisations (Pricing)	7	Water NSW was concerned that the pricing obligation in the draft operating licence (clause 1.6) duplicated its legal obligations under the <i>Independent Pricing and Regulatory Tribunal Act 1992</i> (NSW) (IPART Act) and the <i>Water Act 2007</i> (Cth). Water NSW considered that IPART has sufficient powers under the IPART Act to monitor Water NSW's compliance with its pricing determinations, without the need for a clause within the operating licence (that would be subject to audits).	15
Sydney Water	Licence context and authorisations	7	Sydney Water supported including an auditable pricing obligations in the operating licence as it would enhance transparency and accountability.	15
New South Wales Irrigators' Council (NSWIC)	Licence context and authorisation	7	NSWIC noted the interaction between the Water NSW Operating Licence review and the regulated water charge review. It therefore urged diligence in ensuring that changes in the operating licence would not result in unintended price shifts for Water NSW's customers or reductions in service level delivery.	2
Central NSW Councils (Centroc)	Water source protection and conservation	8 (9 and 10)	<p>Centroc supported increasing Water NSW's responsibilities to monitor and provide information on the quality of bulk raw water supplied to local water utilities (LWUs) because timely access to this information is vital to enable LWU to manage and treat the drinking water that they supply effectively and efficiently. However, its support is subject to the associated cost. Centroc considered that</p> <p>Centroc supported terms and conditions in the operating licence that:</p> <ul style="list-style-type: none"> ▼ requires Water NSW to provide water of a quality that meets an agreed standard; and ▼ includes processes for notification of end-users when water supplied does not meet the agreed standard. 	4
Sydney Water	Water source protection and conservation	8	Sydney Water supports maintaining the current requirements of the Water NSW (SCA) operating licence which require a 'catchment to tap' preventative risk management approach to water quality.	1, 3
Water NSW	Water source protection and conservation	9 (and 10)	<p>Water NSW considered that Water Quality Management System (WQMS) requirements in the operating licence should be linked to end-use, as appropriate. This could reduce the need to specify a WQMS based on geographical distinction as proposed in the draft operating licence (ie, declared catchment and non-declared catchment).</p> <p>Water NSW proposed a requirement for a WQMS consistent with the Australian Drinking Water Guidelines for all <i>Drinking Water made available directly by Water NSW under its access licences</i></p>	16

Stakeholder	Relevant chapter of report and licence	Draft Recommendation No.	Summary of submission	Page number of submission
			<i>and Water Supplied by Water NSW under its access licences for treatment or filtration by a third party prior to consumption, but not for any other water that may be “supplied” or “captured, stored and released” under IPART’s definitions.</i>	
Sydney Water	Water source protection and conservation	9	Sydney Water supported including terms and conditions in the operating licence requiring Water NSW to maintain a Water Quality Management System (WQMS) to manage the water quality in declared catchment areas. However, Sydney Water suggested that clause 2.1.1 of the licence could be amended to more clearly recognise Water NSW’s infrastructure that plays a substantial role in the WQMS and the quality of bulk water provided to Sydney Water. Further, Sydney Water’s suggestions aim for greater consistency with other utility licences that IPART regulates, particularly with regard to adhering to NSW Health’s requirements.	3
NSW Government – NSW Health	Water source protection and conservation	9 and 10	NSW Health supported the requirements set out under clause 2.1, including the requirement for a WQMS for all water “supplied” by Water NSW (for both declared and non-declared catchment areas). Given that clause 2.1.3 requires WQMS to be implemented to the satisfaction of NSW Health, NSW Health suggested deleting the draft clause 2.1.5. The consideration of any significant changes should form part of the implementation of the management system, which must be to the satisfaction of NSW Health.	5
NSW Government – Department of Primary Industries-Water (DPI Water)	Water source protection and conservation	9 and 10	DPI Water acknowledged the proposed requirement for a certified WQMS for both Declared Catchments and Non-Declared Catchments.	4
Gwydir Valley Irrigators Association Inc. (GVIA)	Water source protection and conservation	10	GVIA suggested that the WQMS requirements proposed for non-declared catchments should be revised as it is over and above that of the existing Water NSW operating licence conditions.	2
Lachlan Valley Water (LVW)	Water source protection and conservation	10	LVW raised concern that a new obligation for a WQMS with respect to non-declared catchment areas may result in additional costs for Water NSW customers and LWUs.	1
New South Wales Irrigators’ Council (NSWIC)	Water source protection and conservation	10	NSWIC raised concerns with a new obligation for a WQMS with respect to non-declared catchment areas as Water NSW may have limited control to undertake this activity.	4
Water NSW	Water source	11	Water NSW suggested that the requirement of the draft operating licence to review the model for the	17-18

Stakeholder	Relevant chapter of report and licence	Draft Recommendation No.	Summary of submission	Page number of submission
	protection and conservation		<p>Water Supply System Yield “by the first quarter of 2021, or an earlier occurrence of one of the recalculation trigger events to the Water Supply System Yield” defined in the licence should be amended to reflect what it considered was the intended outcome of the clause. That is, for the model to remain accurate through requiring periodic reviews or by occurrence of a significant change that has impacted the yield.</p> <p>Further, Water NSW requested that the requirement of the draft licence for Water NSW to consult with “customers” widely when reviewing the model be amended so that only customers who are impacted by the yield need to be consulted with. The wide requirement creates undue burden on Water NSW.”</p>	
NSW Government – Department of Primary Industries-Water (DPI Water)	Water source protection and conservation	11	<p>DPI Water suggested that the obligations relating to calculation of water supply system yield should be updated to take account of the 2017 Metropolitan Water Plan (MWP). The MWP includes two calculations of water supply yield: one for 2017 MWP portfolio supply and one for maximum supply. DPI Water also suggested changes to clauses 2.5 and 2.6 to avoid confusion and provide benefits when Water NSW reports on Water Supply System Yield.</p>	3
Sydney Water	Water source protection and conservation	11	<p>Sydney Water generally supported the proposed supply system yield requirements. However, it requested removal of the requirement to review the model when a recalculation is triggered and inclusion of requirements for or consultation with impacted customers and relevant stakeholders.</p>	4
Central NSW Councils (Centroc)	Water source protection and conservation	11	<p>Centroc generally supported the existing obligations as it considered that engagement with local government stakeholders as early as possible in the process will ensure an optimal, fit-for-purpose process and avoid duplication of effort.</p>	6
Water NSW	Water source protection and conservation	12	<p>Water NSW raised concerns with the Economic Level of Water Conservation (ELWC) clause proposed in the draft operating licence as it considered that ELWC requirements are most appropriate for measuring system losses from ‘closed’ piped networks, such as in the case of Sydney Water.</p> <p>Water NSW therefore suggested an alternative water conservation clause that could be included in the operating licence, requiring documentation of steps taken by Water NSW to conserve water and minimise losses, and any rationale or methodology in taking those steps.</p>	18-21
Sydney Water	Water source protection and conservation	12	<p>Sydney Water supported inclusion of the proposed ELWC requirements, particularly with respect to the Sydney Catchment Area, but noted that there is potentially a limited scope of water conservation activities that are within Water NSW’s control. It considered that instead of the ELWC requirements, a broader clause, such as the existing requirements of the Water NSW (State Water) licence to</p>	5

Stakeholder	Relevant chapter of report and licence	Draft Recommendation No.	Summary of submission	Page number of submission
			<p>conserve water and minimise losses could be expanded to also apply to the Sydney Catchment Area. This could achieve the same desired outcomes as the proposed ELWC requirements.</p> <p>If an ELWC methodology is required in the licence, it should not be unduly prescriptive. Further, the methodology should allow for any work done by Water NSW under the Metropolitan Water plan, to complement existing licence requirements, rather than duplicate them.</p>	
New South Wales Irrigators' Council (NSWIC)	Water source protection and conservation	12	NSWIC did not support the proposed ELWC requirements of the draft operating licence. It considered that ELWC is not appropriate for an open river system such as the one managed by Water NSW and could result in some risks to irrigators in rural NSW. NSWIC is concerned that such an approach could potentially obligate Water NSW to implement this approach for other assessments related to the progress of NSW environmental water recovery targets under the Murray-Darling Basin Plan 2012 and the offsets against the Sustainable Diversion Limit Adjustment Mechanism within the Plan.	3
Gwydir Valley Irrigators Association Inc. (GVIA)	Water source protection and conservation	12	GVIA raised concern that EWLC requirements risked resulting in sub-standard operations if the process is too onerous.	2
Murrumbidgee Irrigation Ltd	Water source protection and conservation	12	Murrumbidgee Irrigation Ltd did not support the proposed EWLC requirements and suggested an alternative approach based on the provisions of the current Water NSW (State Water) operating licence.	1
Namoi Water (NW)	Water source protection and conservation	12	NW did not support the proposed ELWC requirements and sought further clarification about how IPART intended to test the reasonableness of steps taken to conserve water and minimise water losses that result from operations.	3
Lachlan Valley Water (LVW)	Water source protection and conservation	12	LVW did not support the proposed ELWC requirements. It considered that they could result in undue costs and it would be difficult to develop for rural catchments.	2
Water NSW	Water source protection and conservation	13	Water NSW recommended changes to IPART's proposed Catchment Management clause (clause 2.2) as it considered that the clause duplicates the Water NSW Act and other parts of the licence. Further, Water NSW was concerned that it would not be able to protect the whole declared catchment in accordance with its asset management and environmental management systems, as required by the proposed clause, when it only owns about 6% of the existing Declared Catchment Area. .	17
Water NSW	Water source protection and	13	Water NSW objected to the requirement to publish all information it collects on water quality relevant to the Declared Catchment Area. Water NSW considered that by providing the required information	17

Stakeholder	Relevant chapter of report and licence	Draft Recommendation No.	Summary of submission	Page number of submission
	conservation		to the Catchment Auditor, it is making information on the Declared Catchment Areas publicly available.	
Sydney Water	Water source protection and conservation	13	Sydney Water supported maintaining the current requirements of the Water NSW (SCA) operating licence in relation to catchment management in declared catchment areas, particularly with respect to the Sydney Catchment Area. Sydney Water considered that this is an important part of the 'catchment to tap' preventative risk management approach to water quality protection, established under the ADWG.	1, 3
Water NSW	Water source protection and conservation	14	Water NSW raised concerns with clause 2.8 of the Draft Licence (ie, research on catchments) being required outside of the Declared Catchment Area. However, Water NSW is comfortable for the licence to <i>authorise</i> Water NSW to undertake research on catchments generally.	21
Sydney Water	Water source protection and conservation	14	Sydney Water strongly supported retaining the existing Water NSW (SCA) operating licence obligations for catchment management and catchment infrastructure management, with respect to the Declared Catchment Areas. Sydney Water also supports the proposed requirement for Water NSW to research the health of Declared Catchment Areas. It is noted that there may be mutual benefit in the sharing of research outcomes, though any such arrangement does not need to be addressed in the operating licence..	3
Central NSW Councils (Centroc)	Water source protection and conservation	14	Centroc supported the proposed requirements for Water NSW to maintain a program of research on catchments generally but it encouraged engagement with local government to ensure alignment with the region's priorities and to avoid duplication of effort.	6
Gwydir Valley Irrigators Association Inc. (GVIA)	Water source protection and conservation	14	GVIA suggested that catchment research obligations in the operating licence should be limited to only declared catchment areas as research in non-declared catchment areas is already undertaken by other bodies.	2
Murrumbidgee Irrigation Ltd	Water source protection and conservation and Customer and stakeholder relations	14	Murrumbidgee Irrigation Ltd noted the preferred approach by IPART to enable, rather than oblige, Water NSW to conduct research and education activities across the State. However, it raised concerns about the potential cost of such activities and those expected to fund them.	2
New South Wales Irrigators' Council (NSWIC)	Water source protection and conservation and Customer	14	NSWIC supported authorising Water NSW to undertake research and education programs in all of Water NSW's managed catchments however it raised concern that the cost of these programs will be passed on to customers. NSWIC recommended that the research and educational programs are funded through the NSW	5

Stakeholder	Relevant chapter of report and licence	Draft Recommendation No.	Summary of submission	Page number of submission
	and stakeholder relations		Government on behalf of the wider community.	
Sydney Water	Bulk water storage and transmission	18	<p>Sydney Water supported the operating licence requiring Water NSW to undertake “supply” functions, as per IPART’s definition of ‘supply’, in accordance with a relevant WQMS and customer supply agreement.</p> <p>Sydney Water noted that the draft licence sometimes inconsistently referenced the Raw Water Supply Agreement between Water NSW and Sydney Water. That is, it is clear in some instances where references to the generic Customer Supply Agreements include the Raw Water Supply Agreement, but in other instances this clarification is missing.</p> <p>Sydney Water suggested that all references to customer supply agreements should clarify in the final licence whether they are intended to include Sydney Water’s Raw Water Supply Agreement.</p>	6
Water NSW	Bulk water storage and transmission	19 and 20	<p>Water NSW expressed a willingness to partner with NSW Health and LWUs to undertake a review of its water quality monitoring, where the review is limited to identifying gaps in the provision of water quality monitoring that is currently being undertaken.</p> <p>However, Water NSW suggested a change to clause 3.4.6 as proposed in the draft licence so that Water NSW is not required to incorporate the results of the review into its LWU Information Request Procedure. Water NSW was concerned that the results of the review could include actions for which it is not funded to undertake. Water NSW therefore suggested that the licence could allow implementation of the outcomes of the review to be negotiated with NSW Health through their Memorandum of Understanding (MoU).</p>	22
NSW Government – Department of Primary Industries-Water (DPI Water)	Bulk water storage and transmission	19	DPI Water noted that there was no duplication of the conditions of the water supply work approvals and the draft operating licence.	4
NSW Government – NSW Health	Bulk water storage and transmission	19 and 20	<p>NSW Health generally supported the requirements set out under clause 3.4 of the draft operating licence. However, it acknowledged the potential ambiguity with the draft clauses 3.4.5 and 3.4.6, particularly in relation to audit, and noted willingness to consider alternative words that supported the outcome of monitoring and reporting of risks for downstream utilities.</p> <p>NSW Health recommended minor amendments to clause 3.4.5, to reflect the multiple uses of collected data.</p>	5
Central NSW	Bulk water	19 and 20	Centroc supported the capture and store water and release of water operating licence conditions as	5

Stakeholder	Relevant chapter of report and licence	Draft Recommendation No.	Summary of submission	Page number of submission
Councils (Centroc)	storage and transmission		<p>detailed in Box 6.3 of the draft report, particularly the maintenance of a LWU Register and procedures for providing advice to LWUs.</p> <p>Centroc suggested that the operating licence should include additional performance standards, in relation to capture, store and release of water, with respect to cost, quality, reliability, volume timing and customer service.</p> <p>Centroc supported requiring Water NSW to consult with end-users to determine water quality requirements and implementation of cost effective solutions including through regional and local planning processes.</p>	
Namoi Water (NW)	Bulk water storage and transmission	19 and 20	Namoi Water supported the operating licence function to capture, store and release water to entitled licence holders.	2
Water NSW	Bulk water storage and transmission	22	Water NSW considered that it may be appropriate for the operating licence to authorise Water NSW to undertake flood mitigation and management for clarity, but it should not prescribe how Water NSW undertakes this listed function as this is already set out in the Water Sharing Plans and Work Approvals (under the <i>Water Management Act 2000</i>). Instead, the licence could set out that Water NSW is authorised to undertake the function “but only in accordance with a Water NSW works approval”.	22
NSW Government – Department of Primary Industries-Water (DPI Water)	Bulk water storage and transmission	22	DPI Water recommended that no change is made to the authorisation of flood mitigation and management included in the existing Water NSW licences.	4
Sydney Water	Bulk water storage and transmission	22	Sydney Water was neutral to the recommendation that flood mitigation and management be regulated through the operating licence. The importance of downstream customers being made aware of any changes to the normal operation of water management works, for the purposes of flood mitigation and management, is noted. However, this notification does not need to occur through the operating licence.	6
Namoi Water (NW)	Bulk water storage and transmission	22	NW raised concern that dams that are not purpose built to undertake flood mitigation are not differentiated in the draft licence from those that do.	2
Namoi Water (NW)	Performance standards	25	NW supported the performance standards for capture, store and release of water to meet customer orders.	3

Stakeholder	Relevant chapter of report and licence	Draft Recommendation No.	Summary of submission	Page number of submission
New South Wales Irrigators' Council (NSWIC)	Performance standards	25/ 26	NSWIC did not support application of any urban water supply standards and obligations for water that is captured, stored and released because it was concerned that the costs for these proposed changes would be passed on to Water NSW customers.	1
Water NSW	Performance standards	26	Water NSW proposed alternate performance standards where it "supplies" water, which reflected its proposed definitions (based on end-use of water provided by Water NSW). That is, using systems based standards, and, where relevant, standards agreed in customer supply agreements.	23
NSW Government – NSW Health	Performance standards	26	NSW Health recommended that IPART considers the ADWG Framework for the Management of Drinking Water Quality in establishing water quality performance standards. NSW Health noted the proposal to establish percentage compliance standards for 'bulk water' and 'health' characteristics and was willing to work with IPART, Water NSW and Sydney Water Corporation to consider whether such standards are appropriate in the context of the ADWG.	6
Sydney Water	Performance standards	26	Sydney Water did not support draft clause 4.2.1 (ie, the proposed performance standards in relation to the "supply" of water) applying to Sydney Water. It considered that the proposed Type 2 standards, as defined in the draft report, were not practical to implement because of the ambiguity about some of the terms used in the proposed standards. Including "relevant Bulk Water quality standards", "health standards", and "agreed quantities". Further, including <i>minimum</i> performance standards in the operating licence may lead to inconsistencies with any standards set in their Raw Water Supply Agreement with Water NSW, and could hinder future negotiations for the supply agreement. Sydney Water's preferred approach would be to allow performance standards to be negotiated with Water NSW in their Raw Water Supply Agreement. Sydney Water considered that IPART could continue to have oversight of the supply agreement and any performance standards set, through section 27 of the Water NSW Act. Alternatively, Sydney Water supported reliance on systems standards (Type 4 standards). Sydney Water also noted that using the terms "Standard A" and "Standard B" to differentiate between the standards (or number the standards) gives the false impression that Water NSW has the option to comply with either of the standards, instead of being required to comply with all of them.	7-8
Water NSW	Organisational systems management	28	Water NSW suggested minor changes to clauses 5.1 and 5.3 of the draft operating licence. Water NSW requested that the operating licence should not require it to <i>maintain</i> certification of its asset management system (AMS) and environmental management system (EMS). Instead, the decision to maintain the systems could be made by the business. It would allow Water NSW flexibility in how it demonstrates implementation and compliance of its management systems to IPART, at least cost to its customers.	24

Stakeholder	Relevant chapter of report and licence	Draft Recommendation No.	Summary of submission	Page number of submission
			Water NSW also requested that the operating licence allow until 30 December 2018 to implement an EMS consistent with AS/NZS ISO 14001:2016. It is currently consistent with the 2004 version of this standard.	
Sydney Water	Organisational systems management	28	Sydney Water supported the operating licence requiring the maintenance and implementation of a certified AMS and EMS.	9
NSW Government – Department of Primary Industries-Water (DPI Water)	Organisational systems management	28	DPI Water acknowledged the requirement for a certified EMS in the operating licence but provided no view on this matter.	4
Sydney Water	Organisational systems management	29	Sydney Water was neutral on IPART's proposal to include terms and conditions in the operating licence for maintaining programs and activities to manage risks to the assets/environment, in the absence of a certified AMS/EMS.	9
Sydney Water	Organisational systems management	30	Sydney Water supported the reporting manual including requirements for Water NSW to prepare annual compliance and performance reports on the AMS and EMS, and to make these reports publicly available on its website	9
Sydney Water	Organisational systems management	31	<p>Sydney Water supported the requirement of the reporting manual for Water NSW to provide a State of the Assets report for the Sydney Declared Catchment Area as it may contain useful information on critical assets used to supply water to Sydney Water, such as the Upper Canal and Warragamba Pipelines. However, Sydney Water was not opposed to an alternative report that achieved similar outcomes (eg, reporting on outputs from the AMS).</p> <p>Sydney Water considered that Water NSW should be able to prepare a State of the Assets report without substantial additional cost based on the assessment of the performance of its assets that it must otherwise complete for compliance of its AMS with ISO 55001.</p>	9
Sydney Water	Organisational systems management	28-32	Sydney Water noted a preference for the AMS/EMS to be consistent with ISO standards, rather than AS/NZS standards, where the two standards are consistent. Sydney Water's reasoning is that the AS/NZS is not always updated at the same time as ISO standards.	10
NSW Government – Department of Primary	Customer and stakeholder relations	33	DPI Water acknowledged that the requirements relating to customer service agreements in clause 6.1 of the draft operating licence did not duplicate any of the conditions of Water NSW's water supply work approvals under the <i>Water Management Act 2000</i> .	5

Stakeholder	Relevant chapter of report and licence	Draft Recommendation No.	Summary of submission	Page number of submission
Industries-Water (DPI Water)				
Central NSW Councils (Centroc)	Customer and stakeholder relations	33	Centroc supported the draft recommendations on customer supply agreements that will include agreements with LWUs.	6
Water NSW	Customer and stakeholder relations	35	<p>Water NSW suggested changes to clause 6.3 of the draft operating licence to better reflect its operations.</p> <p>Water NSW considered that the intent of section 31(1) of the Water NSW Act is to allow Water NSW to operate, replace, repair, maintain, remove, connect, disconnect or modify metering equipment that it does not own <i>without</i> consent of the meter owner. Water NSW considered that it can already undertake these activities at meters with the consent of the owner under its listed functions. Therefore, IPART's proposed terms and conditions allowing these metering activities, but then requiring owner consent, are redundant.</p> <p>Water NSW sought the ability to undertake these activities without owner consent particularly at government owned meters, or meters owned by customers but installed under a government-funded meter program. Water NSW did not object to needing consent for other customer owned meters.</p>	25
Sydney Water	Customer and stakeholder relations	35	<p>Sydney Water did not support authorising Water NSW to operate, replace, repair, maintain, remove, connect, disconnect or modify metering equipment that it does not own, where those meters are used to supply water to Sydney Water (even with the consent of the meter owner).</p> <p>Sydney Water noted that some of the meters used to supply water to Sydney Water are owned, maintained and operated by private operators, with three-party commercial arrangements in place between Sydney Water, Water NSW and the private operator. Giving Water NSW authority, even with the consent of the asset owner, would not be appropriate given the three-party arrangements in place.</p> <p>Accordingly, Sydney Water suggested that the operating licence clause 6.3.2 be amended to either exclude meters used to supply Sydney Water, or include an additional condition to obtain the agreement of Sydney Water, if the meter is used to supply water under Water NSW's Raw Water Supply Agreement with Sydney Water.</p>	15
New South Wales Irrigators'	Customer and stakeholder	35	NSWIC recommended that Water NSW's operating licence should only authorise Water NSW to operate, replace, repair, maintain, remove, connect, disconnect and modify <i>Government owned</i>	6

Stakeholder	Relevant chapter of report and licence	Draft Recommendation No.	Summary of submission	Page number of submission
Council (NSWIC)	relations		water meters.	
Namoi Water (NW)	Customer and stakeholder relations	35	Namoi Water did not support authorising Water NSW to undertake the proposed metering activities (under section 31[1] of the Water NSW Act) where a customer owned meter is in place as it considered that Water NSW's role in relation to these meters was only to read them and ensure customer compliance with the <i>Water Management Act 2000</i> requirement to have a functioning meter installed. It did not however oppose authorising the proposed activities for government-funded meters where these are not owned by customers.	3
Commonwealth Environment Water Holder (CEWH)	Customer and stakeholder relations	35 (and 36)	CEWH suggested that instead of authorising Water NSW to undertake maintenance activities at meters owned by customers, with their consent, a more efficient method could be to enforce metering standards. Meter owners could then be required to provide evidence that the meter is accurate in accordance with these metering standards. If not, the onus would then be on the meter owner to fix the meter and provide assurance of meeting the standards to Water NSW.	1
Water NSW	Customer and stakeholder relations	37	Water NSW generally supported clause 6.5 of the draft licence, and the changes made from the existing licences, but considered that inclusion of environmental users or groups as a mandatory invitee to the Customer Advisory Groups may not be appropriate as they are not Water NSW's customers. Rather, they are advocacy groups.	25
New South Wales Irrigators' Council (NSWIC)	Customer and stakeholder relations	37	NSWIC made the following recommendations in relation to the Customer Advisory Groups (CAGs): <ul style="list-style-type: none"> ▼ the 'environmental users or groups' should be removed ▼ an adequate cross sections of customers should be represented ▼ the current Coastal Valley CSC is not broken into a North and South Coast Customer Group, with the Hunter Valley separately amalgamated with the Greater Sydney area, and ▼ the proposed CAGs have an advisory function only. 	6
Commonwealth Environment Water Holder (CEWH)	Customer and stakeholder relations	37	CEWH suggested that both state and commonwealth environment water holders be included in the CAGs if they manage water in the catchment.	2
Central NSW Councils (Centroc)	Customer and stakeholder relations	37	Centroc supported inclusion of LWUs in the CAGs proposed in the operating licence to allow appropriate consultation on LWU matters.	7
Lachlan Valley Water (LVW)	Customer and stakeholder relations	37	LVW raised concerns that the composition of the CAGs proposed in the draft operating licence, which included those other than Water NSW's customers, could dilute the focus of the groups away from efficient operation and reduce their effectiveness. LVW proposed removal of 'environmental	2

Stakeholder	Relevant chapter of report and licence	Draft Recommendation No.	Summary of submission	Page number of submission
			users or groups' from the mandatory list of invitees on the CAGs and clarification that the inclusion of Indigenous Australians required should only be Indigenous Australians who are Water NSW's customers.	
Gwydir Valley Irrigators Association Inc. (GVIA)	Customer and stakeholder relations	37	GVIA suggested removal of 'environmental users or groups' from the mandatory list of invitees on the CAGs, as it considered that this would duplicate environmental water holders. GVIA also queried the requirement for inclusion of Indigenous Australians and recommended that this be amended to 'Aboriginal water holders'. GVIA also requested that the content of the CAG meetings remains relevant and operationally specific for customers, and valley specific as matched to those operations.	2
Murrumbidgee Irrigation Ltd	Customer and stakeholder relations	37	Murrumbidgee Irrigation Ltd supported the continuation of customer service committees at an advisory level. Murrumbidgee Irrigation raised similar concerns to GVIA and LVW about the membership of the CAGs.	2
New South Wales Aboriginal Land Council (NSWALC)	Customer and stakeholder relations	37	NSWALC sought further details as to how Indigenous representatives will be appointed. NSWALC noted the Local Aboriginal Land Councils (LALCs) as ready-made systems of democratic Aboriginal representation and recommended LALC representation within each CAG.	3
Oberon Council	Customer and stakeholder relations	37	Oberon Council expressed concern about the changes proposed to the previous customer service committees to remove the requirement for the specific Fish River Council, with Oberon Council named as a specific member, in place of the generic CAG. Oberon Council was concerned that the new condition may result in the former Fish River Council being integrated into a larger area group and fewer existing members being included in the group.	1-2
New South Wales Aboriginal Land Council (NSWALC)	Customer and stakeholder relations	38	NSWALC recommended that the operating licence should include a requirement for Water NSW to develop a Customer Service Charter specifically tailored to Aboriginal customers.	3
Sydney Water	Customer and stakeholder relations	39	Sydney Water supported the operating licence requiring Water NSW to use its best endeavours to cooperate with any licensed network operator, or retail supplier under <i>Water Industry Competition Act 2006</i> (WIC Act), that seeks to establish a code of conduct with it. Draft clause 6.12.1 appropriately limits the proposed requirement to actions within Water NSW's control. That is, the onus is on the WIC Act licensee to seek to establish such a code, where required to, and it is a best endeavours requirement. Sydney Water noted that it is not aware of any current circumstances where this is necessary for Water NSW, but the draft clause provided an appropriate	11

Stakeholder	Relevant chapter of report and licence	Draft Recommendation No.	Summary of submission	Page number of submission
			obligation if this situation should arise in future.	
Water NSW	Customer and stakeholder relations	40	Water NSW suggested changes to clause 6.11 of the draft operating licence to reflect the Water NSW Act. While Water NSW is comfortable with generally authorising it to undertake an educative role of the community, the terms and conditions should only require it to undertake this role within the Declared Catchment Area. Further, Water NSW considered that it is not necessary to develop a new annual report on its educative functions as it already reports on its community education activities part of its Catchment Protection Works Program and Annual Catchment Management Report.	25
Sydney Water	Customer and stakeholder relations	40	Sydney Water supported authorising Water NSW to undertake an educative role within the community but within the Sydney Declared Catchment Area. Sydney Water was neutral on extending this function outside the Sydney Catchment Area. However it raised concern that if this work is done outside the Declared Catchment Area, it should not be funded through prices levied on Sydney water.	11
New South Wales Irrigators' Council (NSWIC)	Water source protection and conservation and Customer and stakeholder relations	40	NSWIC supported, in principle, the approach to authorise Water NSW to undertake research and education programs in all of Water NSW managed catchments.. However, it raised concern that the cost of these programs would be passed on to customers. NSWIC recommended that the research and educational programs be funded through the NSW Government on behalf of the wider community.	5
Murrumbidgee Irrigation Ltd	Water source protection and conservation and Customer and stakeholder relations	40	Murrumbidgee Irrigation Ltd noted the intention of the operating licence to enable, rather than oblige, Water NSW to conduct research and education activities across the State. However, it still raised concerns about the potential cost of any activities undertaken outside of the current Sydney Catchment Areas, and how they are expected to be funded.	2
Lachlan Valley Water (LVW)	Customer and stakeholder relations	40	LVW supported, in principle, the approach to authorise Water NSW to undertake research and education. However, it raised concern about the cost of these programs. LVW considered that the NSW Government should fund educational programs on behalf of the community, the primary beneficiaries.	3
Central NSW Councils (Centroc)	Customer and stakeholder relations	40	Centroc generally supported the proposed authorisation and terms and conditions of the draft operating licence with respect to education of the community. It considered that education programs are most successful when conducted at the local level.	7

Stakeholder	Relevant chapter of report and licence	Draft Recommendation No.	Summary of submission	Page number of submission
Gwydir Valley Irrigators Association Inc. (GVIA)	Customer and stakeholder relations	40	GVIA suggested that education programs should be specifically matched back to Water NSW's Listed Functions under the Water NSW Act, and that any associated costs should be reimbursed by the NSW Government.	2
New South Wales Aboriginal Land Council (NSWALC)	Customer and stakeholder relations	40	NSWALC recommended that the educational functions of Water NSW are expanded to include awareness-raising amongst Aboriginal peoples, businesses and communities about the Aboriginal-specific classes of water licence that they are entitled to apply for.	4
Water NSW	Customer and stakeholder relations	42 (43 and 44)	<p>Water NSW raised concerns with IPART's proposed approach to include additional Memoranda of Understanding (MoUs) in the operating licence beyond what is required by the Water NSW Act.</p> <p>MoU with Local Land Services (LLS):</p> <p>Water NSW did not support the requirement for an MoU with LLS. It was concerned that this inclusion would give its other stakeholders the false impression that an operating licence mandate is necessary for a relationship to occur. Water NSW also noted that there are already legislative and contractual requirements in place requiring it to maintain a relationship with LLS. An operating licence requirement could therefore duplicate these other requirements.</p> <p>MoU with DPI Water:</p> <p>Water NSW considered that a Roles and Responsibilities Protocol or MoU with DPI Water was not necessary. Their roles and responsibilities are defined in the Water NSW Act and in comprehensive Deeds developed between the parties.</p> <p>Further, Water NSW understood that the requirements of the existing operating licences directing Water NSW to comply with DPI Water's guidelines and manuals when undertaking its conferred functions will be removed. Therefore, Water NSW considered that it would not have a relationship with DPI Water with regard to the conferred functions that would need to be regulated through the operating licence.</p> <p>Compliance with MoUs:</p> <p>Water NSW considered that the operating licence should not require compliance with any MoUs as this would place asymmetrical obligations on Water NSW alone (and not the other party). A possible compromise could be to frame compliance in the context of "best endeavours".</p>	26
NSW Government – DPI Water	Customer and stakeholder relations	42 (43 and 44)	<p>DPI Water noted that the Transformation Deed of Business 2016 between DPI Water and WaterNSW defines their roles and responsibilities.</p> <p>DPI Water also noted that the Metropolitan Water Directorate and the Metropolitan Water Planning role have moved from DPI Water to the Department of Planning and Environment, and therefore any</p>	5

Stakeholder	Relevant chapter of report and licence	Draft Recommendation No.	Summary of submission	Page number of submission
			requirements in the operating licence for an MoU in relation to the MWP should be with the Department of Planning and Environment, and not DPI Water.	
NSW Government – NSW Health	Customer and stakeholder relations	42	NSW Health supported clause 6.13 of the draft operating licence. NSW Health noted that the scope of the MoU would include both ‘supply’ and ‘capture, store, release’ functions as defined in the operating licence.	6
Sydney Water	Customer and stakeholder relations	42 (and 44)	<p>Sydney Water supported, in principle, the terms and conditions of the draft operating licence to regulate Water NSW’s relationship with NSW Health, EPA and DPI Water, subject to removal of the requirement for compliance with the MoUs. The compliance requirement is unnecessary as it is implicit in establishing an MoU that both parties will work together to adhere to its provisions. Sydney Water noted that compliance requirements in the operating licence place obligations on only the licence holder, which it considered was impractical and unreasonable where the ability to fulfil the objectives of the MoU requires an equal commitment from both parties.</p> <p>Sydney Water suggested that if the compliance requirement is retained, the operating licence should allow Water NSW to use “best endeavours” for maintenance and compliance with the MoUs, consistent with the approach suggested other MoUs.</p> <p>Finally, Sydney Water noted that the Sydney Water and Hunter Water operating licences require Roles and Responsibilities protocols with DPI Water with respect to the Metropolitan Water Plan. Whereas the Roles and Responsibilities Protocol suggested in the draft licence for Water NSW is to deal with the conferred functions in the schedule to the licence. Sydney Water did not oppose this but notes that this could cause some confusion for stakeholders.</p>	11
Central NSW Councils (Centroc)	Customer and stakeholder relations	42 (43 and 44)	<p>Centroc noted the benefit of prescribing MoUs in the operating licence</p> <p>Centroc suggested that the Water NSW operating licence could include a requirement to have an MoU with LWUs who are provided raw water for drinking water treatment plants, and LWUs who are part of the Fish River water Supply Scheme.</p>	7
Gwydir Valley Irrigators Association Inc. (GVIA)	Customer and stakeholder relations	42 (43 and 44)	GVIA queried the role and purpose of the requirement to implement an MoU with LLS and if this has an essential benefit to rural customers.	2
Namoi Water (NW)	Performance monitoring and reporting	45	NW supported operational audits if they resulted in improvement in customer service or compliance with the operational licence and reporting. In particular, NW sought transparency around Water NSW’s time, effort and cost of operational services through the audit process.	4

Stakeholder	Relevant chapter of report and licence	Draft Recommendation No.	Summary of submission	Page number of submission
			NW also supported additional audit functions if the cost is not transferred to the customer.	
Sydney Water	Performance monitoring and reporting	46 (47 and 50)	<p>Sydney Water generally supported the recommendations of the draft operating licence with respect to reporting on operational audits and implementation of recommendations from the audit.</p> <p>Sydney Water also supported requiring Water NSW to comply with its obligations in the reporting manual and to maintain adequate records to comply with these reporting requirements. Finally, Sydney Water also supported the reporting manual including new performance indicators in relation to water “supplied” to customers and to maintain the existing performance indicators.</p> <p>Sydney Water suggested some minor wording changes in relation to reporting on certified management systems.</p> <p>Sydney Water noted an inconsistency between the recommendation (46) in the Draft Report and wording of the Draft Reporting Manual. The recommendation in the Draft Report suggested that Water NSW is to provide an update on implementation of all opportunities for improvement identified in the audit, whereas the reporting manual only required Water NSW to provide an update on progress with any improvement opportunities that it <i>chose</i> to report on.</p> <p>Sydney Water suggested that the final operating licence should clarify that reporting on recommendations from the audit is mandatory, but reporting on opportunities for improvement is optional. .</p>	13
Water NSW	Performance monitoring and reporting	49 (and 50)	<p>Water NSW did not support inclusion of section 2.1.5 (and corresponding Table B.2) relating to reporting on IPART water quality indicators in the Reporting Manual. Water NSW noted that it currently only reports on these indicators for the Sydney Catchment Area. It considered that being required to report on these indicators beyond the declared catchment areas would result in additional costs without clear benefits.</p> <p>Water NSW did not support inclusion of the new IPART customer indicators, in the reporting manual.</p> <p>Water NSW recommended that the frequency of the reporting of the declared catchment health indicators be aligned with the frequency of the Catchment Audit under section 42 of the Water NSW Act.</p> <p>Water NSW noted that the new environmental indicators developed by IPART (E1-E4) should not be called declared catchment health indicators under section 42 of the Act, and should be listed separately as environmental indicators.</p> <p>Water NSW clarified that NWI indicators (including public health, environmental, water resource, and finance indicators) are <i>urban</i> indicators and suggested that they should not be applied outside the</p>	31-33

Stakeholder	Relevant chapter of report and licence	Draft Recommendation No.	Summary of submission	Page number of submission
			<p>Sydney Catchment Area. Water NSW requested removal of the requirement to make NWI indicators public, in the reporting manual, as they are already made public through a number of reports including the Annual Urban National Performance Report (BoM), WaterNSW Annual Water Quality Monitoring Report, and the Catchment Audit Report.</p> <p>Water NSW suggested deletion of section 6.1.2 of the reporting manual requiring reporting on Water NSW's community education programs and activities. Water NSW noted that it already reports on these activities as part of its Catchment Protection Works Program and Annual Catchment Management Report. Therefore new reporting requirements would be duplicative.</p> <p>Water NSW suggested that for a certified AMS and EMS, Water NSW should only have to submit an audit certificate to IPART rather than the additional information set out in the Draft reporting manual in relation to certified systems. Water NSW recommended an amendment to section 7.1.1 of the reporting manual as it duplicated reporting requirements set out in other chapters. Instead, it should only relate to the annual statement of compliance.</p>	
NSW Government – Department of Primary Industries-Water (DPI Water)	Performance monitoring and reporting	50	DPI Water requested that be required to report on its water quality monitoring downstream of all of its storages with respect to assessing improvements in catchment management, mitigation of cold water pollution and assessment of the potential for seeding with blue green algae.	5
Water NSW	Conferred functions	51	Water NSW noted that it would liaise with DPI Water and IPART on the progress of the updated conferred functions (in the schedule to the operating licence).	30
Gwydir Valley Irrigators Association Inc. (GVIA)	Other	N/A	GVIA raised concerns that a single operating licence for urban and rural supply operations will disadvantage rural customers. GVIA was concerned that the draft licence would amend current operations and Water NSW would be required to adopt onerous and unnecessary regulatory requirements.	1
Water NSW	Other	N/A	<p>Definitions:</p> <p>Water NSW proposed that defined terms used in the definition of “Complaints” in the draft operating licence (namely “Consumers” and “Complaints-handling process”) should be deleted, or their natural meaning should be used.</p> <p>Interpretations clause (clause 8.2 of the draft operating licence):</p> <p>Water NSW raised concerns that IPART’s interpretation prevails where there is any ambiguity or disagreement between Water NSW and IPART as to the proper application or interpretation of any term of this Licence or the Reporting Manual. Water NSW considered that this may be inappropriate</p>	29-30

Stakeholder	Relevant chapter of report and licence	Draft Recommendation No.	Summary of submission	Page number of submission
			and against the intent of the Water NSW Act (particularly sections 17 and 18). Under section 18 of the Water NSW Act, Water NSW, if aggrieved by a decision of IPART to take action under section 17, may apply to the Civil and Administrative Tribunal for an administrative review under the <i>Administrative Decisions Review Act 1997</i> of that decision.	
Namoi Water (NW)	Other	N/A	NW supported the provision in clause 6.7.1 of the draft licence for individual customer service charters and requested that this provision be extended to the Customer Advisory Group Charter, which should also be able to reflect the area's specific need to focus on primary service functions of Water NSW.	4
Murrumbidgee Irrigation Ltd	Other	N/A	Murrumbidgee Irrigation Ltd supported a licence term that is counterpoised with the pricing determination program.	2
New South Wales Irrigators' Council (NSWIC)	Other	N/A	NSWIC raised concerns with wide-scale amendments to the Water NSW operating licence as the reform process for the organisation is not yet complete. NSWIC considered that there is a lack of clarity around the detail of Water NSW's future business approach which makes IPART's draft operating licence package difficult to adequately review and respond. NSWIC queried whether the proposed changes to the existing operating licences were feasible and likely to lead to a positive impact to Water NSW customers.	1,2 and 7
New South Wales Irrigators' Council (NSWIC)	Other	N/A	NSWIC considered that it is critical for stakeholders to be provided greater transparency and clarity around Water NSW's legislative requirements; including how much of Water NSW's services are negotiable and can be tailored.	5
New South Wales Irrigators' Council (NSWIC)	Other	N/A	NSWIC recommended that Water NSW be obliged under the operating licence to report on the time, effort and cost of delivering planned environmental water, to ensure that in future price determinations, the cost impact can be allocated to the 'impactor' and not be cross subsidised by water access licence holders. This recommendation is made as a result of concerns that the 'held environment water' portfolio is increasing and that licence holders have paid for more than their fair share of the cost of delivering planned environment water.	6
Gwydir Valley Irrigators Association Inc. (GVIA)	Other	N/A	GVIA recommended that a section detailed "Planned Environmental Water Delivery" be included in Section 2 Water Source Protection and Conservation of the operating licence. Water NSW should be required to report on the quantity of water delivered as well as the time, effort and cost of delivering planned environmental water to improve transparency and accountability around environmental services provided by Water NSW to the community.	2
Namoi Water (NW)	Other	N/A	NW noted that the management and delivery of planned environmental water is a significant concern for licence holders who have born the costs associated with these activities for the last two water	4

Stakeholder	Relevant chapter of report and licence	Draft Recommendation No.	Summary of submission	Page number of submission
			determinations. As the held environmental water portfolio increases, the complexity of delivering this water for the environment would in effect increase the level of service required and therefore cost. NW requested that Water NSW should report the time, effort and cost of delivering planned environmental water. It considered that this would ensure that in future price determinations, the cost impact can be allocated to the 'impactor' and not be cross-subsidised by water licence holders.	
Critical Infrastructure Centre (the Centre)	Other	N/A	The Centre suggested provisions be included in the operating licence requiring Water NSW to collaborate with it regarding management of national security risks, as well as to implement security clearance requirements for key operating staff. Further, it is suggested that controls be implemented to reduce the likelihood of external bodies accessing or controlling Water NSW's systems and infrastructure.	2
New South Wales Aboriginal Land Council (NSWALC)	Other	N/A	NSWALC noted that Aboriginal people and communities have both cultural and commercial interests in water, and Water NSW can play a key role in facilitating 'cultural flows' as well as economic development outcomes for Aboriginal peoples in NSW. NSWALC therefore recommended that the Water NSW operating licence should: <ul style="list-style-type: none"> ▼ explicitly recognise and facilitate the objectives of the <i>Aboriginal Land Rights Act 1983</i> ▼ align with the principles embedded within the <i>United Nations Declaration on the Rights of the Indigenous Peoples</i> ▼ acknowledge Aboriginal 'cultural flows' among the list of lawful water allocation purposes, provide for water quality and environmental monitoring to ensure that Aboriginal peoples' water resources are protected from pollution; and ▼ require Water NSW to keep detailed records on Aboriginal commercial water use, so as to ensure a greater knowledge base for future water planning in the interests of Aboriginal economic development. 	1

Source:

Water NSW, WaterNSW submission to the Independent Pricing and Regulatory Tribunal Review of the WaterNSW Operating Licences.

NSW Government, Review of the draft WaterNSW Operating Licence – NSW Government submission, March 2017.

Sydney Water, Submission to IPART on Water NSW's Draft Operating Licence 2017-2022, April 2017.

Commonwealth Environmental Water Holder, Submission in response to the Water NSW Operating Licences Review: Draft Report and Draft Operating Licence.

Critical Infrastructure Centre, Submission to the Review of the WaterNSW Operating Licences.

Central NSW Councils, Independent Pricing and Regulatory Tribunal WaterNSW operating licences review, April 2017.



Namoi Water, Namoi Water Submission to IPART Water NSW Draft Operating Licence, April 2017.

Letter to IPART, Mr Christopher Schumacher, Oberon Council, 5 April 2017.

Letter to IPART, Mr Mark McKenzie, Chief Executive Officer, New South Wales Irrigators' Council, 7 March 2017.

Letter to IPART, Ms Zara Lowien, Executive Officer, Gwydir Valley Irrigators Association, 10 April 2017.

Letter to IPART, Mr Mark Ewing, Executive Officer, Lachlan Valley Water Inc, 7 April 2017.

Letter to IPART, Mr Brett Jones, Managing Director, Murrumbidgee Irrigation, 7 April 2017.

Letter to IPART, Mr Malcolm Davis, Acting Chief Executive Officer, NSW Aboriginal Land Council, 10 April 2017.

