



NSWIC
NEW SOUTH WALES
IRRIGATORS'
COUNCIL

PO Box R1437
Royal Exchange NSW 1225
Tel: 02 9251 8466
Fax: 02 9251 8477
info@nswic.org.au
www.nswic.org.au
ABN: 49 087 281 746

7 March 2017

Review of the Operating Licence for WaterNSW
C/o Jessica Hanna
Independent Pricing and Regulatory Tribunal
PO Box K35
Haymarket Post Shop NSW 1240

Dear Ms Hanna,

RE: NSWIC SUBMISSION TO THE DRAFT WATERNSW OPERATING LICENCE REVIEW PACKAGE

The NSW Irrigators' Council (NSWIC) appreciates the opportunity to provide additional comments to the Independent Pricing and Regulatory Tribunal (IPART) on the Draft WaterNSW Operating Licence package. As the Council outlined in its previous submission to IPART, we acknowledge that the NSW bulk water supplier, WaterNSW, has undergone significant operational and legislative changes over the last two years as a result of the merger between the Sydney Catchment Authority and State Water Corporation, as well as the more recent transfer of functions between DPI Water and WaterNSW.

OVERVIEW

NSWIC appreciates that a review of WaterNSW's two operating licences is essential to enable WaterNSW to fulfil its licence obligations and to conduct its operations under its legislative provisions, and to an equivalent service level prior to the NSW water reform process. Importantly, NSWIC would like to emphasise that this water reform journey is not complete and further adjustments to the operating licence and/or other legislative instruments governing WaterNSW operations may be required. For that reason, NSWIC reiterates its call for caution before embarking on wide-scale amendments to WaterNSW operating licence before the reform process is complete, and there is a common understanding of the potential impacts from the proposed amendments. In broad, NSWIC continues to hold the view that significant uncertainty and confusion remains as to which direction WaterNSW should take under the provisions of a new operating licence.

Reviewing IPART's draft recommendations for WaterNSW's Operating Licence package, NSWIC is concerned that IPART is unnecessarily pushing for a standardisation of the two operating licences (including the functions and obligations imposed on WaterNSW's urban and rural water supply) without acknowledging and accounting for the obvious differences in the two operating environments. NSWIC considers it highly inappropriate that IPART has apparently chosen the more *onerous* urban water supply standards and obligations for WaterNSW's draft operating licence without an adequate assessment of any unintended consequences and the likely costs (i.e. audit costs) that will result from the proposed changes, which NSWIC believes will ultimately be passed on to WaterNSW customers in the form of higher water charges.

As outlined in our previous submissions to IPART and in light of the WaterNSW submission to the operating licence review, it appears to NSWIC that WaterNSW intends to fundamentally change the operation of its business, its interaction with customers, and its approach to future service delivery. While NSWIC continues to support customer choice and the intent of WaterNSW to transform into an efficient and customer-centric business, there is still no clarity around the exact detail of what the WaterNSW proposed approach is, and what it will mean for irrigator customers and Irrigation Infrastructure Operators. NSWIC is also unclear what legislative amendments and executive directions will be necessary to achieve

WaterNSW's proposed new operating model. The lack of information and data about WaterNSW's proposed approach makes it extremely difficult for NSWIC to adequately review and respond to IPART's Draft Operating Licence package, which raises concerns within NSWIC and its membership about potential future impacts - including unintended reductions in service provision and/or greater costs to customers.

As highlighted in our previous submission, WaterNSW and its customers have only had preliminary discussions about tailored service delivery and, as such, it is premature to consider major amendments to the current operating licences until discussions have progressed further and stakeholders are clear and comfortable about the future WaterNSW direction and its implications. Having said this, NSWIC welcomes WaterNSW's efforts to provide greater choice to customers and better service delivery, and we look forward to further engagement with WaterNSW and IPART on these issues.

KEY PRINCIPLES

By way of broad response, NSWIC supports the following key principles around the setting of WaterNSW revised Operating Licence provisions:

- The amalgamation of the two operations licences (i.e. for the Sydney Catchment Authority and State Water Corporation) and an emphasis on the need to avoid duplication between the two licence obligations.
- The continuation of State Water's operating licence obligation to deliver water to its customers - recognising the important role WaterNSW plays in NSW's food and fibre production.
- The removal of regulatory overlap between legislation, WaterNSW's operating licence, and its work approvals.
- The closing of a regulatory gap in the operating licence where the services required by the environment are not captured adequately and consequently the cost of these services are being inappropriately paid by all water access licence holders. NSWIC believes this is a significant oversight and it should be addressed in the operating licence review.
- IPART ensuring that WaterNSW is legally enabled to conduct the expanded functions due to the transfer of management responsibilities from DPI Water to WaterNSW.

SPECIFIC RECOMMENDATIONS

NSWIC provides the following specific comments and recommendations on IPART's Draft Operating Licence package:

Water Charge Review

NSWIC welcomes IPART's acknowledgement of the concurrent IPART review of WaterNSW's regulated water charges. While NSWIC insists that parallel pricing and operating licence reviews are less than ideal, the Council is pleased that IPART has proposed the inclusion of a specific requirement on WaterNSW to comply with the pricing determination. However, NSWIC reiterates that a staggered approach to the licence review and the price determination is preferable to ensure that future regulated water charges reflect WaterNSW's operating licence requirements and obligations.

Despite our support for its inclusion, NSWIC seeks clarity around s.1.6.1 of the draft operating licence which states that 'WaterNSW must ensure that the level of fees, charges and other amounts payable for its services are applied subject to the terms of this Licence, the Act and any maximum prices or methodologies for fixing maximum prices determined from time to time by IPART under the IPART Act or under any other lawful determination or instrument'. As NSWIC outlined in its previous submission to IPART, it is critical that extra care is taken when amending WaterNSW's operating licence as it could trigger changes in WaterNSW's obligations, functions and service delivery to customers, which would ultimately

flow through to changes in regulated water charges. This is NSWIC's overriding concern with the outcomes of the WaterNSW Operating Licence review.

The interaction between the WaterNSW Operating Licence review and the regulated water charge review must be carefully assessed and further information must be provided to stakeholders to understand the implications of any change to WaterNSW's operating licence. NSWIC urges IPART to be especially diligent in ensuring that changes in the WaterNSW Operating Licence do not result in unintended price shifts for WaterNSW customers or reductions in service level delivery.

Transparency around WaterNSW's obligations under its operating licence is critical so that WaterNSW customers can clearly assess the link between WaterNSW functions and service level delivery and valley specific bulk water charges. As the most recent water reform process has shown, the transfer of functions between DPI Water and WaterNSW has complicated the issue of cost transparency further, as the price determination for the Water Administration Ministerial Corporation no longer reflects the current operating environment for the Department.

Recommendation 1:

NSWIC submits that IPART must provide clarity on whether amendments to WaterNSW's operating licence would trigger amendments to WaterNSW's regulated water charge determination.

Economic Level of Water Conservation

NSWIC is deeply concerned about IPART's proposed obligation for WaterNSW to develop an Economic Level of Water Conservation methodology and associated reporting obligations.

The Council understands that the previous State Water Corporation operating licence included an explicit water conservation obligation, requiring WaterNSW to take all reasonable steps to conserve water and minimise losses that result from undertaking its operation under the licence. We also understand that in most recent review of Sydney Water and Hunter Water's operating licences, IPART has introduced the concept of an Economic Level of Water Conservation requirement. While NSWIC understands the rationale for the introduction of an economic assessment of water conservation in a highly engineered (piped) operating environment (i.e. Sydney Water and Hunter Water), such an approach is inappropriate in a rural water supply operating environment that covers vast distances and open river channels.

In addition, the proposed methodology could carry significant risk for irrigators in rural NSW in the context of the NSW Government's obligations under the Water Act 2007 (Cth) and the Murray-Darling Basin Plan 2012. From a practical perspective, NSWIC is not confident that WaterNSW could (or should) develop a methodology that seeks to accurately 'measure' the level of water conservation, as it is far from clear whether this is feasible under the operating vagaries of rural water distribution. Nor do we understand how IPART intends to audit WaterNSW's compliance with this new approach. NSWIC seeks WaterNSW's input on the feasibility and costs associated with developing such a methodology.

From a risk assessment viewpoint, NSWIC urges extreme caution, as such an approach could potentially obligate NSW to utilise 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. It is critical that IPART does not insist on new methodologies that contradict these key components of the Murray-Darling Basin Plan and the Water Act 2007.

Recommendation 2:

NSWIC recommends the removal of the draft obligation to develop and implement an Economic Level of Water Conservation methodology in regard to WaterNSW rural water management.

Definitions – Supply, Capture, Store and Release

NSWIC is seeking further detail from IPART on its concerns around ‘ambiguity between the terms ‘supply water’ and ‘capture, store and release’ water.

It is NSWIC’s understanding that under the previous State Water Corporation operating licence (s.1.1.1 (b)), the bulk water operator was required to “provide, construct, operate, manage and maintain efficient, coordinated and commercially viable systems and services to capture, store and release water”. As such, a supply function was only relevant in the context of ‘water utilities’. The inclusion of a ‘supply’ function in the rural water context could therefore lead to confusion. A definition that clearly articulates the differences and differentiates urban water supply from rural water supply is required.

NSWIC is also concerned that IPART seems to be proposing the removal of Part 3.1 from the previous State Water Corporation operating licence (delivery of water to customers). It has always been NSWIC’s understanding that the State Water Corporation operating licence is the only regulatory instrument that obligated State Water Corporation to operate its infrastructure in a way that its customers can access water made available under their water entitlement. As NSWIC outlined to IPART in 2012, the State Water Corporation was and WaterNSW is now the most crucial component in the water delivery process through the releasing of water from its storage infrastructure. The connection between State Water Corporation’s activities and its function was, in the opinion of NSWIC, accurately reflected in the previous operating licence obligations and the associated definition of ‘water delivery’. The amalgamation of two operating licences could create unnecessary ambiguity over WaterNSW’s functions and responsibilities, and it is NSWIC’s view that these functions should be clearly defined.

Recommendation 3:

NSWIC recommends that IPART clarify the apparent ambiguity in the terms ‘supply’ and ‘capture, store, and release’.

Water Quality Provisions

NSWIC is concerned about IPART’s proposed push for a ‘water quality’ assessment in ‘non-declared catchments’ in WaterNSW’s operating licence. We understand from IPART’s draft report and the recent Public Hearing in Sydney, that IPART considers it adequate that WaterNSW should be authorised to ‘protect and enhance the quality and quantity of water in declared catchments’. In ‘non-declared’ catchments, it is NSWIC’s understanding that IPART proposes to impose ‘Water Quality Management Systems’ in relation to ‘water supply activities in rural areas’.

Without a clear understanding of how IPART defines ‘supply’ in the proposed new operating licence, it is not clear to NSWIC whether this additional requirement could impose an additional ‘obligation’ on WaterNSW in their rural water service functions. In particular, NSWIC is unclear about IPART’s assessment that ‘In relation to managing water quality in non-declared catchments we consider a water quality management system is not appropriate unless water is also supplied within the area.’ If ‘supply’ is not a function for WaterNSW’s rural water services, NSWIC questions why it is needed as a licence requirement. If there are ‘supply’ functions in regional NSW, NSWIC and its members need to understand the extent of this proposed obligation and whether the new Water Quality Management System could obligate WaterNSW to fulfil a function it has ultimately no real control over (i.e. due to its operating environment in rural NSW). There is a real risk that under the second scenario, WaterNSW could find itself in a situation where it is in breach of its legislative requirements under the Operating Licence. In addition, the potential cost of enforcing the obligation could be unacceptably high for water access licence holders.

Recommendation 4:

NSWIC recommends that IPART clarifies and provides an assurance that any requirement for water quality assessment does not impose an unattainable obligation on WaterNSW or additional costs to water access licence holders. Should any risk remain after a further assessment of the clause 2.1.2, NSWIC recommends the removal of this requirement from WaterNSW's Operating Licence.

Education and Research

NSWIC acknowledges IPART's preferred approach to authorise WaterNSW to undertake research and education programs in all of WaterNSW managed catchments. While NSWIC does not, in principle, object to this approach, we are concerned that the cost of these programs could be passed back to irrigators in form of higher regulated water charges. However, should the cost for these programs be funded through the NSW Government – for the benefit of the wider community – NSWIC would be supportive of IPART's proposed amendment.

Recommendation 5:

NSWIC recommends that IPART's proposal to authorise WaterNSW to conduct research and educational programs also includes a provision that clarifies that these programs are funded exclusively through the NSW Government on behalf of the wider community and not through higher charges on water access licence holders.

Terms and Conditions

After careful assessment of the IPART draft report, NSWIC concurs with WaterNSW that the operating licence should authorise WaterNSW to operate outside NSW in order to allow WaterNSW to continue its interaction with the Commonwealth and other States when undertaking certain functions and activities under the Murray-Darling Basin Agreement.

Recommendation 6:

NSWIC recommends that IPART impose reporting and public disclosure requirements on WaterNSW around its functions and activities under the Murray Darling Basin Agreement, including WaterNSW's functions as a State Constructing Authority for River Murray Operations and its Joint Functions under the Agreement - assisting irrigators in the NSW Murray and Murrumbidgee Valleys to gain greater clarity around proposed Murray Darling Basin Authority costs that are currently passed on to water access licence holders through WaterNSW regulated water charges.

Transparency

In light of WaterNSW's ongoing consultation with customers around its 'level of service' provisions, NSWIC still considers it critical that stakeholders are provided with greater transparency and clarity around WaterNSW's legislative requirements, including how much of WaterNSW services are negotiable and hence can be tailored. Previous discussions between NSWIC and WaterNSW suggest that the majority of WaterNSW operations are non-negotiable due to WaterNSW's complex legislative requirements. Should this be the case, NSWIC raises its concern as to the real or perceived benefits of IPART's proposal to make the operating licence even more prescriptive.

Recommendation 7:

NSWIC recommends that IPART provide clarity around all of WaterNSW's legislative requirements to allow an assessment of how much of WaterNSW services could potentially be tailored.

Metering Functions

NSWIC continues to urge caution with regard to the introduction of proposed amendments to WaterNSW's operating licence (and with WaterNSW's proposal) to authorise the operation, replacement, repair, maintenance, removal, connection and disconnection, and modification of any metering equipment it does not own. NSWIC reiterates that such functions should apply to government funded meters only, but not to customer-owned meters.

Recommendation 8:

NSWIC recommends that WaterNSW's operating licence should only authorise WaterNSW to operate, replace, repair, maintain, remove, connect, disconnect and modify Government owned water meters. A blanket meter management function over all meters (including customer owned meters) should not be permitted.

Planned Environmental Water

As mentioned in NSWIC's submission to the Issues Paper, the Council and its members seek greater transparency around WaterNSW's time, effort and cost of delivering planned environmental water. This not only includes the physical storage and delivery of planned environmental water but also the additional time spent attending and participating in water management committees and calculating planned environmental deliveries. NSWIC and its members have for a long time been extremely concerned that licence holders have paid more than their fair share of these costs. As the Government 'held environmental water' portfolio increases, the complexity of delivering this water for the environment and associated increased costs are becoming more apparent and reasonably should lie with Government – not with other water access licence holders.

Recommendation 9:

NSWIC recommends that WaterNSW must be obligated under its 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.

Customer Advisory Groups

NSWIC reiterates the importance of the current Customer Service Committees as a highly valuable vehicle for discussion, provision of irrigation sector feedback, and information distribution around bulk water delivery in NSW.

Given the increased functions and responsibilities WaterNSW has acquired since the WaterNSW Amendment (Staff Transfer) Bill 2016, these local forums are an even more important cornerstone for interaction between the NSW bulk water operator and its customers. As such, NSWIC stresses the need to maintain these forums and to ensure that all types of WaterNSW customers are adequately represented.

NSWIC acknowledges that IPART has aimed to capture the wide variety of WaterNSW 'customers' (under s.6.5.3 (b)) however we are concerned that IPART suggests a specific 'environmental user or groups' as a separate category - in particular since 'environmental water holder' is already a specified group under section v. NSWIC is concerned that this will leave the door open for 'non-customers', including environmental advocacy groups (who are not paying customers of WaterNSW), to be included in the proposed Customer Advisory Groups while other representative groups are not represented.

In addition, NSWIC seeks assurance from IPART that the important functions of the existing Customer Service Committees are not diluted and that the function of the CAGs should be 'advisory' only. NSWIC is concerned that the proposal around CAG structure and membership will act to dilute and diminish irrigation sector input to WaterNSW at catchment level, and NSWIC believes it is not acceptable that WaterNSW should use the CAGs as a proxy to reflect the sentiment of the entire valley (for example in relation to the question of tariff structures for regulated water charges).

Recommendation 10:

- a) **NSWIC recommends the removal of the 'environmental users or groups' in the proposed CAG structure and suggests that the environmental licence holders are adequately represented through point 6.5.3(b)(v).**
- b) **NSWIC recommends that IPART provide assurance that an adequate cross section of customers will be represented through the individual Customer Advisory Groups (for instance to take account of the large number of groundwater customers in the coastal valleys).**
- c) **NSWIC recommends that the current Coastal Valley CSC not be broken into a North and South Coast Customer Advisory Group, with the Hunter Valley separately amalgamated with the Greater Sydney area.**
- d) **NSWIC recommends that the proposed CAGs have an advisory function only.**

DEFERRAL OF FULL OPERATING LICENCE REVIEW

Murray Darling Basin Plan Operational Implications

As highlighted in our last submission to IPART, NSWIC notes with concern that WaterNSW is highly likely to be subject to further operational changes through the implementation of the Murray-Darling Basin Plan and/or the development of NSW Water Resource Plans. Examples include implementation of the Pre-Requisite Policy Measures and the Constraints Management Strategies relating to the management of environmental water flows in the Southern Basin. These proposed measures and management changes are far from resolved and, as such, IPART should consider whether the benefits of amending the WaterNSW operating licence at this stage is appropriately timed rather than waiting until the Basin Plan operational implications are fully known.

North Coast Pilot

NSWIC believes that the current WaterNSW North Coast Pilot is an ideal opportunity to gauge potential changes to WaterNSW's service delivery and to assess the feasibility around proposed changes to its range of services. As this pilot has still not progressed substantially, NSWIC urges IPART to consider shifting the final determination of WaterNSW's operating licence review to a later date to enable this North Coast Pilot to be completed and its implications for WaterNSW service delivery fully assessed.

Therefore, NSWIC holds the view that a full review of the WaterNSW Operating Licence would be better deferred, and the current review be limited to the minimum licence changes required to give legislative effect to WaterNSW operations.

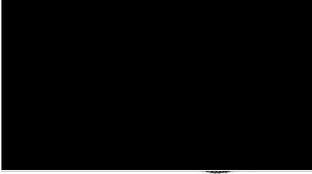
Recommendation 11:

In view of the potentially significant impacts that WaterNSW's proposals may have for many customers, NSWIC recommends that IPART review the WaterNSW Operating Licence but consider only minimal changes at this time.

In conclusion, NSWIC is open to further discussions with WaterNSW and IPART on WaterNSW's proposed operating licence framework – particularly in regard to whether the proposed changes are feasible and likely to lead to a positive impact on WaterNSW customers.

If you have any questions or require clarification on the issues we have raised or the Recommendations made to IPART in this Letter of Submission, please do not hesitate to contact us.

Yours Sincerely



Mark McKenzie
Chief Executive Officer