



Statutory Review - Water NSW Act 2014

Issues Paper

September 2020



Published by NSW Department of Planning, Industry and Environment
dpie.nsw.gov.au
Title: Statutory Review - Water NSW Act 2014
Subtitle: Issues Paper
First published: September 2020

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Key terms

Term	Meaning
Conferred functions	Functions conferred on WaterNSW in Schedule A of the Operating Licence 2017-2022
DPIE or the Department	Department of Planning, Industry and Environment
IPART	Independent Pricing and Regulatory Tribunal
IPART Review	Water NSW operating licences review Final Report, May 2017
NorBE	Neutral or beneficial effect (on water quality)
NRAR	Natural Resources Access Regulator
Operating Licence	Water NSW Operating Licence
SCA	Sydney Catchment Authority
SOC	State Owned Corporation
Statutory review	Statutory review of the <i>Water NSW Act 2014</i>
Sydney Water	Sydney Water Corporation
The Act	<i>Water NSW Act 2014</i>
The Government	NSW Government
The Minister	Minister for Water, Property and Housing
WaterNSW	Water NSW Corporation
WMA	<i>Water Management Act 2000</i>

Scope of the review

The *Water NSW Act 2014* (the Act) establishes the statutory State Owned Corporation (SOC) Water NSW to operate the state's rivers and water supply systems, build, maintain and operate essential infrastructure and protect water quality in declared areas.

The Act is administered by the Minister for Water, Property and Housing. A current version of the Act is available [here](#).¹

Section 115 of the Act requires a statutory review as soon as possible after the period of five years from its assent. The review will be tabled in Parliament in November 2020. The aims of this review are to:

- Review the Act's policy objectives to see whether they remain valid and if the Act remains appropriate to secure those objectives.
- Consider making recommendations to the Minister relating to:
 - a. Objectives and functions of WaterNSW, including its roles in water supply to Sydney Water, local council water utilities and to regional customers, catchment management and infrastructure planning, construction and management
 - b. Management of declared catchment areas and special and controlled areas
 - c. Regulatory functions of WaterNSW and its regulatory relationship with IPART
 - d. The need for any legislative and regulatory amendments
 - e. Timeline for the implementation of any proposed recommendations.

The Department of Planning, Industry and Environment (DPIE) has released this Issues Paper to assist individuals and organisations to prepare submissions to the review. It outlines:

- How to make a submission, via the Department's website and NSW Government's *Have Your Say* website
- Background to the Act
- Key themes and issues.

The review may also contribute to the development of broader reforms in the water sector to improve the sector's strategic planning, delivery of infrastructure and lift operational performance by the NSW Government, including the development of a NSW State Water Strategy.

¹ <https://www.legislation.nsw.gov.au/#/view/act/2014/74/full>

How to make a submission

DPIE values your views and encourages all interested parties to make a submission.

This Issues Paper includes questions to prompt consideration. Stakeholders are also invited to comment on any other issues relevant to the objectives of this review. The questions in this Paper are intended to promote discussion and are not indicative of a proposed course of action.

We are seeking submissions by 30 September 2020.

Submissions can be lodged online

Visit <http://www.dpie.nsw.gov.au/waternswactreview> or <http://www.nsw.gov.au/have-your-say/water-nsw-act-2014-statutory-review>

Contacts

If you have any questions regarding the review, please contact Olia Koudrina on water.relations@dpie.nsw.gov.au, or John Madden, Director Water Reform on 0421 274 076.

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1. Context and structure of the review

1.1 Background

In 2013, the NSW Government merged the Sydney Catchment Authority (SCA) and the State Water Corporation (State Water) into a single statutory State Owned Corporation (SOC) to establish Water NSW (WaterNSW). The new entity was tasked with the management of bulk water and infrastructure in New South Wales as well as the protection of water quality in the Sydney catchment.

The *Water NSW Act 2014* (the Act) focusses on the role and functions of WaterNSW. The Act has seven parts which cover:

- the constitution, functions and powers of WaterNSW (Parts 2 and 3)
- declared catchment areas, special and controlled areas and provisions for Warragamba Dam (Parts 4 and 5A)
- regulatory, compliance and enforcement functions (Parts 5 and 6)
- various administrative processes (Parts 1 and 7).

The Act links to a number of other Acts including:

- the *Water Management Act 2000* (WMA) – which governs the management of water in NSW. WaterNSW holds a number of licences and approvals, and supplies water to its customers in accordance with those customers' WMA entitlements
- the *Independent Pricing and Regulatory Tribunal Act 1992* (IPART Act) – which establishes IPART and provides for its review and determination of maximum prices that can be charged for bulk and retail water by major water utilities including WaterNSW
- the *Dam Safety Act 2015* – which establishes Dams Safety NSW as an independent regulator responsible for auditing compliance of declared dams with safety regulations
- the *State Owned Corporations Act 1989* – which governs the establishment and governance of State owned corporations.

The Act requires WaterNSW to carry out its functions in accordance with an operating licence and specifies some of the terms and conditions that must be included in the operating licence. The relationships between key legislation, the operating licence, various agreements and arrangements with other agencies are outlined in Figure 1.

A concise overview of assets, customers, water sales and key financial information is provided in Table 1.

This review is focused on the *Water NSW Act 2014*.

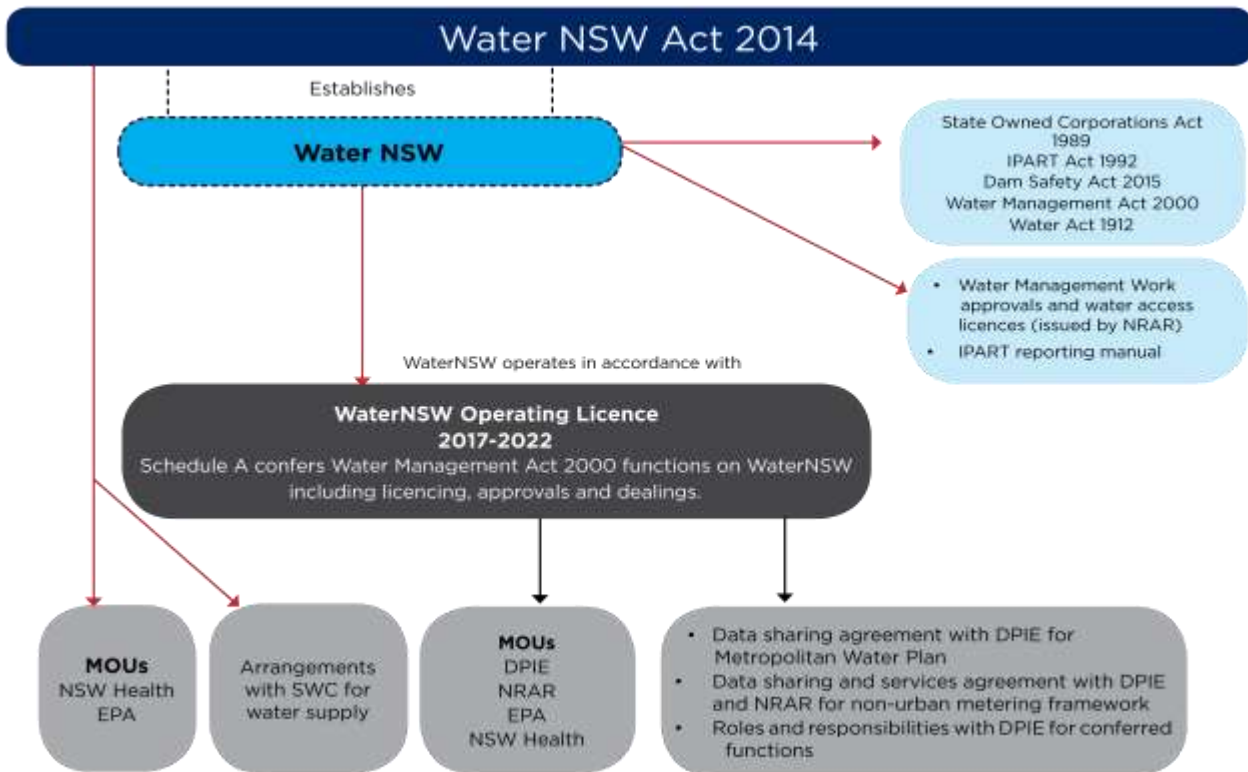


Figure 1- The legislative and regulatory context of WaterNSW

Table 1- Snapshot of WaterNSW

Customers	<ul style="list-style-type: none"> Sydney Water Corporation provides water to around 5 million people Wingecarribee Council, Goulburn-Mulwaree Council, and Shoalhaven Council Approximately 6,300 rural customers in 14 regulated river systems Approximately 60 raw and unfiltered water customers Approximately 40,000 rural licences including local councils and irrigators 																				
Revenue and profit (\$'000s)	<p>Revenue:</p> <table border="1"> <thead> <tr> <th></th> <th>FY16</th> <th>FY17</th> <th>FY18</th> <th>FY19</th> </tr> </thead> <tbody> <tr> <td></td> <td>338,989</td> <td>380,938</td> <td>395,232</td> <td>416,377</td> </tr> </tbody> </table> <p>Net profit after tax:</p> <table border="1"> <thead> <tr> <th></th> <th>FY16</th> <th>FY17</th> <th>FY18</th> <th>FY19</th> </tr> </thead> <tbody> <tr> <td></td> <td>53,626</td> <td>100,062</td> <td>83,337</td> <td>68,584</td> </tr> </tbody> </table>		FY16	FY17	FY18	FY19		338,989	380,938	395,232	416,377		FY16	FY17	FY18	FY19		53,626	100,062	83,337	68,584
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Capital expenditure (\$'000s)	<table border="1"> <thead> <tr> <th></th> <th>FY16</th> <th>FY17</th> <th>FY18</th> <th>FY19</th> </tr> </thead> <tbody> <tr> <td></td> <td>57,923</td> <td>63,252</td> <td>298,367</td> <td>291,520</td> </tr> </tbody> </table>		FY16	FY17	FY18	FY19		57,923	63,252	298,367	291,520										
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Water sales	Rural Valleys (GL):	FY15	FY16	FY17	FY18	FY19
		3,776	2,904	5,119	4,988	2,784
	Greater Sydney (GL):	FY15	FY16	FY17	FY18	FY19
		516	526	557	608	563
Infrastructure	<ul style="list-style-type: none"> • 42 dams across NSW • 280+ weirs and regulators 					
Declared areas	<ul style="list-style-type: none"> • Sydney catchment area – 16,000 square kilometres • Special Areas – 364,000 hectares • Controlled areas such as Warragamba Pipelines and Upper Canal 					

1.2 Structure of the review and list of key questions

The Issues Paper outlines the main areas for the review and the questions in each area are provided below. Stakeholders are also encouraged to identify any other issues that are relevant to the objectives of this review.

Policy objectives

1. Do the policy objectives of WaterNSW remain fit for purpose?

Objectives and functions of WaterNSW

2. Do the legislated principal and other objectives of WaterNSW need to be updated, amended or expanded to include any other matters?
3. Do the functions of WaterNSW need to be updated, amended or expanded to include other matters?
4. Are the legislative functions of WaterNSW adequately specified in the Act to enable WaterNSW to deliver its objectives, i.e. is a greater level of flexibility required?

Operations

5. Does the Act need to be more or less prescriptive about WaterNSW's operations? Key areas to consider include: linking performance standards between the operating licence and the functions of the Act, the conferred functions, the purpose of the operating licence, the area of operations, or other processes such as amending the licence?
6. Does the Act clearly enable coordination between WaterNSW and Government departments or other agencies?

WaterNSW as a State Owned Corporation

7. Are changes to the Act required to improve the economic regulation of WaterNSW?
8. Should there be more consistency in the approach to setting performance standards between the major NSW water authorities?
9. Are the current governance arrangements for WaterNSW appropriate, i.e. do they enable the objectives of the Act to be met?

WaterNSW as a bulk water supplier

10. Are the provisions in the Act regarding bulk water supply fit for purpose?
11. Does the Act allow for effective management of water supplies and assets during times of drought and flood?
12. Does the Act provide sufficient protections and rights for WaterNSW customers including Sydney Water, irrigators, regional local water utilities, mines and energy companies, environmental water holders and other licensees?
13. Do the institutional and administrative settings in the Act provide WaterNSW with the necessary authority to effectively supply bulk water to customers?

Water quality management by WaterNSW

14. Does the Act provide adequate direction to WaterNSW to deliver sound environmental management and water quality outcomes, including the protection of public health, in declared areas?
15. Does the Act specify the environmental and water quality outcomes clearly enough to guide WaterNSW's management actions, monitoring and accountability for delivering the outcomes?
16. Do the Act's institutional and administrative settings provide WaterNSW with the necessary authority to effectively deliver environmental and water quality outcomes?

Performance and reporting

17. Does the Act allow and encourage transparency and continuous improvement of processes and operations?
18. Should there be more consistency in the requirements for auditing between the major NSW water supply corporations?
19. Does the Act provide sufficient transparency through reporting and auditing arrangements?

Other

20. Are there other issues relevant to the objectives of this review that should be considered?

2. Policy objectives

[Section 115](#) of the Act requires the Minister to review the Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.

The second reading speech for the Act outlines the rationale for establishing WaterNSW. An overarching aim was to create a State-based centre of excellence which promotes sharing and deepening of skills, knowledge and expertise to the highest standard and a culture of, and opportunities for, cross-fertilisation².

The policy objectives of the Act described in the second reading speech are:

- the efficient and first-class management of storage and supply of bulk water across NSW
- greater clarity in the operation of dam and bulk water infrastructure
- responsive and appropriate management of catchments for improved water quality and public health outcomes
- establishing a single entity to deliver efficiency of service delivery, improved dam safety and sharing of skills and knowledge.

The second reading speech is available [here](#).

Questions:

1. Do the policy objectives of WaterNSW remain fit for purpose?

² *Water NSW Bill 2014*, second reading, 16 October 2014.

3. Principal objectives and functions of WaterNSW

The *Water NSW Act 2014* (the Act) created WaterNSW through merging the Sydney Catchment Authority (SCA) and the State Water Corporation into a single State Owned Corporation.

3.1 Principal objectives

The Act creates WaterNSW and sets out the principal objectives for the corporation (Section 6) which are shown in Table 2.

Table 2- Principal objectives of WaterNSW

Section 6: The principal objectives of WaterNSW under the Act are:

- (a) to capture, store and release water in an efficient, effective, safe and financially responsible manner, and
- (b) to supply water in compliance with appropriate standards of quality, and
- (c) 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, and
- (d) to provide for the planning, design, modelling and construction of water storages and other water management works, and
- (e) to maintain and operate the works of WaterNSW efficiently and economically and in accordance with sound commercial principles.

Section 6 (2) contains the other objectives of WaterNSW, these include:

- to be a successful business
- to exhibit a sense of social responsibility having regard to the interests of the community
- to exhibit a sense of responsibility towards regional development and decentralisation in the way in which it operates
- where its activities affect the environment, to conduct its operations in compliance with the principles of ecologically sustainable development contained in Section 6 (2) of the *Protection of the Environment Administration Act 1991*.

These other objectives are of equal importance but are not as important as the principal objectives of WaterNSW.

3.2 Functions

Section 7 Act sets out the functions of WaterNSW and describes how WaterNSW should deliver its objectives. These functions include:

- capture and store water and to release water
- supply water to the Sydney Water Corporation and to local councils or county councils
- construct, maintain and operate water management works (including providing or constructing systems or services for supplying water)
- protect and enhance the quality and quantity of water in declared catchment areas
- manage and protect declared catchment areas and water management works vested in or under the control of WaterNSW that are used within or for the purposes of such areas
- undertake flood mitigation and management

- undertake research on catchments generally, and in particular on the health of declared catchment areas
- undertake an educative role within the community.

The current legislated functions were derived from the functions and activities of the two former organisations, the SCA and State Water. In 2017 IPART reviewed the operating licence of WaterNSW. Chapter 12 of IPART’s review notes areas “*which could benefit from regulatory reform for greater clarity or flexibility*” and highlights that the previous primary Acts for Sydney Water and SCA defined their functions in different ways, and these differences have been carried through in the Act. Some functions, such as ‘to capture and store water and to release water’ and ‘to supply’ water are not described in further detail in the Act, which creates potential risks arising from different interpretations and potential issues for operations.

The functions in Section 7(1) and 7(2) may only be exercised under the authority of, and in accordance with, an operating licence.

A function that is conferred or imposed on WaterNSW under another provision of the Water NSW Act or under any other Act or law does not require the authorisation of an operating licence for the exercise of the function.

Conferred functions – general

Other functions can be conferred or imposed on WaterNSW (Section 7 (4)). Also, under Section 12(4), the terms and conditions of an operating licence may confer on Water NSW any specified functions of:

- (a) the Minister administering the *Water Management Act 2000* under that Act or the *Water Act 1912*, or
- (b) the Ministerial Corporation under any Act or law.

WaterNSW has over 200 functions conferred on it in Schedule A of the WaterNSW Operating Licence, including functions under the WMA and associated regulations and instruments. Review of the conferred functions are not part of this review. The Operating Licence is discussed in 4.1.

Murray River to Broken Hill Pipeline

In 2016 and 2017, the Government directed WaterNSW to construct, operate and maintain the Murray River to Broken Hill Pipeline under Section 20P of the *State Owned Corporations Act 1989*, and to secure the long-term water supply for Broken Hill and surrounding communities. The Pipeline consists of 270 kilometres of pipeline, pumping stations and bulk water storage facility for transporting, storing and delivering bulk water from the Murray River at Wentworth to Broken Hill.

In April 2018, the NSW Government directed IPART under section 16A of the *IPART Act* to set maximum prices that reflect the efficient cost of the Pipeline, considering the Government’s directions to WaterNSW. These arrangements currently sit outside of the framework of the *Water NSW Act 2014*.

Questions:

2. Do the legislated principal and other objectives of WaterNSW need to be updated, amended or expanded to include any other matters?
3. Do the functions of WaterNSW need to be updated, amended or expanded to include any other matters?
4. Are the legislative functions of WaterNSW adequately specified in the Act to enable WaterNSW to deliver its objectives, i.e. is a greater level of flexibility required?

4. Operations

4.1 The Act and the operating licence

The Act outlines the requirements for [WaterNSW's Operating Licence](#) and specifies that the Governor may, on the recommendation of the Minister, grant one or more operating licences to WaterNSW to authorise it to carry out functions specified in the licence, and other functions conferred or imposed on it by the licence.

Part 2 – Division 4 of the Act specifies matters that must be addressed in operating licences, including:

- the areas and circumstances in which WaterNSW is authorised to carry out the specified listed functions and conferred functions
- terms and conditions which apply to the carrying out of the functions authorised by the operating licence, including in relation to commercially viable systems and services, performance standards and performance indicators
- provisions for the preparation of operational audits
- other requirements as required and allowed for under the Act.

Purpose of the licence

An operating licence is a more flexible regulatory instrument than legislation as it allows for regular review and amendment to reflect changes in public expectations, policy, best practice and external circumstances. For example, the operating licence was amended on 1 July 2020 to include provisions that enable implementation of this Government's non-urban metering framework and adaptive management of environmental water.

Currently, the Act does not expressly specify the objectives or purpose of the operating licence.

Amending

The process for amending operating licences is specified in the Act ([section 13](#)). IPART's 2017 review noted that this section contains different requirements and levels of prescription for WaterNSW compared to Sydney Water (section 16 of the *Sydney Water Act 1994*)³ and Hunter Water (section 14 of the *Hunter Water Act 1991*).

Performance standards – conferred functions

The operating licence confers other functions on WaterNSW (see 3.2 above) in addition to listed functions. The Act does not specify conditions or performance standards with respect to conferred functions, although a power to do so may be inferred. Currently the operating licence does not specify how those functions are to be performed or to what standard.

4.2 Working with other agencies

The Act specifies arrangements that WaterNSW needs to put in place (Table 3). In addition to the arrangements specified in the Act, other arrangements are specified in the operating licence.

³ The Sydney Water operating licence is tabled in the Parliament for 15 business days and is subject to disallowance. The WaterNSW operating licence may be amended by the Governor on recommendation of the portfolio Minister.

Table 3 - Arrangements with other departments and agencies

Water NSW Act 2014 specifies arrangements WaterNSW must make	MOU (Memorandum of understanding) Environmental Protection Authority (section 21)
	MOU NSW Health (section 21)
	Arrangement with Sydney Water for water supply (section 25)
	Other (Minister has the option to develop other MOUs)
Water NSW Act 2014 specifies terms and conditions for the operating licence	IPART (e.g. pricing and audits)
The Operating licence can and does contain requirements for other agreements and MOUs between WaterNSW and other agencies	Agreement with DPIE regarding conferred functions
	MOU NRAR
	MOU DPIE
	Data and information sharing agreement with DPIE in relation to Metropolitan Water Plan
	Data sharing and services agreement with DPIE for non-urban metering framework

Questions:

5. Does the Act need to be more or less prescriptive about WaterNSW's operations?
Key areas to consider include: linking performance standards between the operating licence and the functions of the Act, the conferred functions, the purpose of the operating licence, the area of operations, or other processes such as amending the licence?
6. Does the Act clearly enable coordination between WaterNSW and Government departments or other agencies?

5. WaterNSW as a State Owned Corporation

Section 6 (2a) of the Act requires WaterNSW to be a successful business, operate at least as efficiently as any comparable business and to maximise the net worth of the State's investment in WaterNSW. It is regulated by IPART which sets bulk water prices and undertakes performance audits of WaterNSW.

5.1 Price regulation

Within the Murray Darling Basin, WaterNSW is subject to Commonwealth price regulation under various Acts and the Australian Competition and Consumer Commission (ACCC) Pricing Principles. For the remainder of NSW outside the Basin, WaterNSW is subject to price regulation under the *IPART Act*⁴. IPART determines the maximum prices WaterNSW can charge its customers for both its regulated services for services within the Basin under the *Water Charge (Infrastructure) Rules 2010 (WCIR)* and also its monopoly services to the rest of NSW under the *IPART Act*⁵.

The 2013 Bulk Water Review that contributed to the establishment of WaterNSW recommended that the costs of the operational and regulatory functions of the former SCA be kept separate to the cost of those functions outside the Sydney area. The rationale for this separation was to reduce the potential for cross-subsidisation.

IPART determinations cover services to:

- Greater Sydney (Sydney Water, three council customers - Wingecarribee Shire, Shoalhaven City and Goulburn Mulwaree and 59 retail bulk water end use customers)
- irrigators, regional local water utilities, mines, energy companies and environmental water holders for rural bulk water services
- the Water Administration Ministerial Corporation (WAMC) (conferred functions).

The IPART 2017 review found that the Act does not contain a performance standard for pricing or the requirement for the operating licence to include performance standards relating to 'Pricing' and 'Pricing Levels.' This is inconsistent with the Acts governing other major water authorities such as Sydney Water and Hunter Water.

In April 2018 the Government directed IPART, under Section 16A of the *IPART Act*, to set maximum prices that reflect the efficient cost of the Murray River to Broken Hill Pipeline considering the Government's directions to WaterNSW (see also Section 3.2 above).

5.2 Governance

WaterNSW is governed by a board of directors ([section 8](#)) appointed by the voting shareholders, having consulted with the portfolio Minister. The chief executive officer is appointed by the board after consultation with the voting shareholders and the portfolio Minister ([section 9](#)) and is a director of the board. The persons appointed to the board are, between them, to have the necessary expertise, skills and knowledge that will enable WaterNSW to meet its objectives. Details of director liability are outlined in [sections 95-97](#) of the Act, and other specific governance requirements are in the [WaterNSW Constitution](#). WaterNSW's chief executive officer is responsible for overseeing day-to-day management activities and the implementation of board decisions.

⁴ Rural valleys outside of the Murray Darling Basin, the Broken Hill pipeline and the Greater Sydney catchment.

⁵ Under the new Water Charge Rules that took effect on 1 July 2020, economic regulation of the MDB valleys will revert to ACCC regulation following WaterNSW's transitional determination, unless the ACCC determines that WaterNSW is no longer subject to Commonwealth legislation.

Questions:

7. Are changes in the Act required to improve the economic regulation of WaterNSW?
8. Should there be more consistency in the approach to setting performance standards between the major NSW water authorities?
9. Are the current governance arrangements for WaterNSW appropriate, i.e. do they enable the objectives of the Act to be met?

6. WaterNSW as a bulk water supplier

WaterNSW owns and operates 42 dams across the state and supplies two thirds of the water used in NSW, supplying regional towns, irrigators, Sydney Water, environmental water holders and local council water utilities. To supply water to customers, WaterNSW maintains and, when required, constructs water storages and infrastructure.

Figure 2- WaterNSW area of operations



WaterNSW operates the State's surface and groundwater resources through operation of the state's river systems and bulk water supply systems. For the River Murray system, WaterNSW works in collaboration with the Murray-Darling Basin Authority.

WaterNSW's [2018-19 Annual Report](#) notes that drought is an issue of substantial concern for customers and that it undertook a range of emergency works and amended the ways that water is stored, ordered and delivered to maximise its availability. WaterNSW also undertook research into, and an assessment of infrastructure in, rural valleys through the *20 Year Infrastructure Options Study for Rural Valleys*.

WaterNSW is a bulk water provider for Sydney Water, which supplies water to retail customers such as households and business in the Sydney area.

Section 7(1) of the Act enables WaterNSW⁶ to supply water to Sydney Water and section 25 requires it to enter into arrangements with Sydney Water in relation to this supply. These arrangements include the standard of water quality, continuity of supply and maintenance of adequate reserves.

Section 7 also enables WaterNSW to supply water to holders of water entitlements such as council local water utilities and other persons and bodies such as irrigators and environmental water holders.⁷

6.1 Compliance under the *Water Management 2000 Act (WMA)*

In April 2018, compliance and enforcement functions in the WMA were transferred from the former Department of Industry and WaterNSW to the Natural Resource Access Regulator (NRAR). WaterNSW now works with NRAR through an MOU and supporting protocols for information sharing so that NRAR can deliver its functions. An MOU with NRAR is a requirement of the operating licence.

6.2 Customer contracts

The Act does not include provisions for, or require that the operating licence includes provisions for, standards for customer contracts, including customer protections for unfair contracts. The Acts governing major NSW water utilities, such as Hunter Water and Sydney Water, include provisions that require the operating licence to include standards for customers contracts. The IPART 2017 Review discusses this issue and recommended that this 5-year review of the Act consider whether the Act should include customer protections such as for unfair contracts.

Questions:

10. Are the provisions in the Act regarding bulk water supply fit for purpose?
11. Does the Act allow for effective management of water supplies and assets during times of drought and flood?
12. Does the Act provide sufficient protections and rights for WaterNSW's customers including Sydney Water, irrigators, regional local water utilities, mines and energy companies, environmental water holders and other licensees?
13. Do the institutional and administrative settings in the Act provide WaterNSW with the necessary authority to effectively supply bulk water to customers?

⁶ Noting this needs to be done under the authority of an operating licence (Section 7(3)(a)).

⁷ WaterNSW run the Fish River Water Supply Scheme. WaterNSW is a "water supply authority" under the WMA for the purpose of the Fish River Water Supply Scheme. WaterNSW's functions extend to the Scheme under the Operating Licence.

7. Water quality management by WaterNSW

A principal objective of WaterNSW is to ensure that declared areas and water management works in such areas are managed and protected in order to promote water quality, ensure the protection of public health and public safety, and to protect the environment. WaterNSW uses a multi-barrier approach to water quality and establishes and manages barriers such as:

- catchment areas – the Sydney catchment is managed to protect water quality
- special areas – which act as a buffer around water storages
- controlled areas – which surround and contain key WaterNSW water supply assets such as canals and pipelines.

These areas are managed to deliver the multiple benefits of source water protection, water quality and environmental protection.⁸

Figure 3- Declared areas



⁸ All proposed developments in this catchment are required by the State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011 to have a neutral or beneficial effect on water quality (NorBE). Councils carry out NorBE assessments for development applications (DAs) that have a lower risk to water quality and refer more complex DAs to WaterNSW for concurrence. All public authorities are also required to consider whether the activity would have a NorBE. WaterNSW has no legislated powers to control or stop mining in the declared catchments, but as the partial owner and joint manager of the Special Areas, provides advice to regulators, agencies and the companies.

7.1 Catchment areas

Part 4, Division 1 of the Act includes provisions for declaration of catchment areas. Currently, the Sydney catchment area is the only area that is declared. It covers almost 16,000 square kilometres with:

- over one-third agricultural land
- just under one-third national park and bushland
- a population of approximately 125,000 people.

The Act includes provisions for catchment health indicators, catchment auditing and the publishing of information. The aim of these provisions is to ensure WaterNSW manages these areas to promote water quality, the protection of public health and public safety, and the protection of the environment.

7.2 Special areas

Special Areas ([section 47](#)) cover approximately 364,000 hectares of mostly native bushland around the water storages and infrastructure that supply Sydney, the Illawarra, Blue Mountains, Southern Highlands and Shoalhaven regions. Public access and activities are restricted to protect water quality in these areas.

7.3 Controlled areas

Controlled areas ([section 54](#)) include lands which surrounds key assets such as Warragamba Dam, the Warragamba Pipelines and the Upper Canal. These controlled areas are closed to the public to protect water quality and supply and to protect the water supply infrastructure.

7.4 Compliance

Part 6 of the Act contains a range of compliance and enforcement powers in declared areas. Authorised officers can be appointed by the Minister ([section 65](#)) and have powers to enter, search and investigate. Additionally, information and records must be provided to the regulatory authority if requested ([sections 71](#) and [72](#)). Penalties may apply in cases of non-compliance with the requests of authorised officers ([section 102](#)).

7.4 Warragamba Dam

In addition to declared areas, [Part 5A](#) of the Act contains provisions about the Warragamba Dam project and temporary inundation of national park land. It provides for an exemption for a plan of management under the *National Parks and Wildlife Act 1974* if an environmental management plan is in place. The National Parks Minister, with the concurrence of the Minister for Water, Property and Housing can direct WaterNSW in writing to undertake certain activities in relation to temporary flooding including monitoring of risks.

Questions:

14. Does the Act provide adequate direction to WaterNSW to deliver sound environmental management and water quality outcomes, including the protection of public health, in declared areas?
15. Does the Act specify the environmental and water quality outcomes clearly enough to guide WaterNSW's management actions, monitoring and accountability for delivering the outcomes?
16. Do the Act's institutional and administrative settings provide WaterNSW with the necessary authority to effectively deliver environmental and water quality outcomes?

8. Performance and reporting

Performance reviews and reporting requirements for WaterNSW are specified in the Act and in WaterNSW's operating licence. Performance reviews and reporting requirements are part of regulatory functions such as IPART's pricing determinations and are undertaken as part of good commercial practice. These include:

- catchment audits ([section 42](#))
- efficiency (pricing determinations)
- operational audits ([section 57](#))
- various reporting requirements in the Reporting Manual issued by IPART
- internal reporting including customer satisfaction (conducted by WaterNSW, noting 'customer service' is in the operating licence).

8.1 Catchment audits

Section 42 of the Act specifies that an auditor, appointed by the Minister, must conduct a catchment audit at least every three years. These audits assess the state of the declared catchment areas ([section 41](#)) and WaterNSW must provide all data which informs the catchment health indicators to the auditor. The catchment audit report is an audit of the entire catchment, not only WaterNSW's role in the catchment. It is tabled in both Houses of Parliament. For actions that WaterNSW is responsible for, it must:

- incorporate the findings of a catchment audit into their risk framework and catchment management programs and activities within six months of the catchment audit being received by the Minister
- report back to the Minister regarding progress in achieving improvements in catchment health.

The most recent audit addresses the period 2013-2016 and found '*variable conditions in different parts of the Catchment, with trends improving, worsening or stable in response to local land use changes, as well as Catchment-wide pressures such as climate change*'.⁹

8.2 Efficiency of operations

IPART assesses the efficiency of WaterNSW through its process of setting maximum prices by reviewing the efficiency of operating and capital expenditures that WaterNSW undertake to deliver its services.

In its recent review of prices for WaterNSW Greater Sydney customers, IPART set prices from 1 July 2020 that are 8.3% lower than 2019-20 prices.¹⁰ Prices were lower in large part due to a lower weighted cost of capital and also lower operating expenditures. IPART's prices include a capital expenditure allowance of \$373.0 million over the 2020-2024 period, which is a 33.2% increase in WaterNSW's efficient capital expenditure relative to the previous determination.

The most recent pricing review of WaterNSW's rural bulk water services is for the 4-year period, 1 July 2017 to 30 June 2021. IPART found WaterNSW could deliver its services with a lower operating cost allowance and passed these cost reductions on to customers as lower prices from 1 July 2017. IPART has recently commenced the next review of rural bulk water prices which will take effect from 1 July 2021.

⁹ Volume 1 – Main Findings 2016 Audit of the Sydney Drinking Water Catchment, June 2017.

¹⁰ Review of prices for WaterNSW Greater Sydney from 1 July 2020, IPART 2020.

In its proposal to IPART, WaterNSW has indicated that while lower interest rates are putting downward pressure on prices, the overall cost of providing bulk water services has increased above the current regulatory allowances. In recognition of the impacts that drought has had and the COVID-19 global pandemic will continue to have on its customers, WaterNSW is proposing to not pass on these cost increases in 2021-22. However, WaterNSW anticipates seeking a 4-year rural bulk water determination period from 1 July 2022 that reflects the increase in costs it faces to supply its rural bulk water customers.

8.3 Performance audits

[Section 57](#) of the Act specifies operational and other audits and provides for IPART to monitor and report to the Minister on compliance with the operating licence. IPART also has the power to impose monetary penalties if an operating licence is contravened.

IPART undertakes annual operational audits of WaterNSW. The most recent audit found:

Given the challenging context of widespread drought, WaterNSW has demonstrated commendable efforts to improve its operations in a number of areas.....

At the 2019 audit, WaterNSW demonstrated that it has made significant progress towards integrating its systems and has responded to its regulatory framework. In particular, we consider that WaterNSW improved its performance in relation to the adequacy of its WQMS¹¹, catchment management, catchment infrastructure works management, construction, maintenance and operation of Water Management Works, management of service interruptions in accordance with the AMS, and maintenance and implementation of the AMS.¹² While we identified some compliance matters in the 2019 audit, we consider these matters and their associated risks to be relatively minor in nature.¹³

In the review of the WaterNSW operating licence in 2017, IPART found inconsistencies between the way that the various public water utility Acts in NSW describe the requirements for audits and the requirements of the audit report. This includes the process for and frequency of 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.

8.4 Reporting obligations

While the Act does not specify reporting requirements, it is a condition of WaterNSW's operating licence (Clause 17.2) that WaterNSW must comply with detailed reporting obligations set out in the [Reporting Manual](#) issued by IPART.

Reporting requirements cover areas such as catchment management, incident reporting, system changes, system yield and conservation. Most reports are submitted to IPART and NSW Health. The following must be made public:

- the Annual Report on Water Quality Monitoring – to IPART and NSW Health
- the Annual Report on Catchment Management – to IPART
- Annual Report on Water Conservation Work Program – to IPART.

¹¹ Water Quality Management System.

¹² Asset Management System.

¹³ WaterNSW Operational Audit 2019 Report to the Minister, IPART, December 2019.

WaterNSW must also submit reports on:

- the Implementation of the Water Quality Management System – to IPART and NSW Health
- the Annual report on Environmental Indicators – to IPART
- the Annual report on National Water Initiative Indicators – to IPART
- Routine Water Quality Monitoring – to customers and NSW Health
- Dam Safety standards – to Dams Safety (Section 26 of the Dams Safety Regulation 2019).

8.5 Internal non-financial performance indicators

WaterNSW also reports on a range of non-financial performance indicators such as safety, customers, culture and assets.¹⁴

WaterNSW has developed targets and measures of progress for customer satisfaction with the service WaterNSW provides. Table 4 shows the targets and performance for the years 2016-17 to 2020-21. It should be noted that for the period 2017-18, WaterNSW had around 6,000 regulated customers and customer satisfaction was 63-65.

From 2018-19 onwards, customer numbers moved to around 45,000 (as unregulated and groundwater customers were added) and customer satisfaction dropped. With the endorsement of its Board, WaterNSW subsequently adjusted the targets to reflect a materially different customer mix. Between 2018-19 to 2019-20 there was an improvement in customer satisfaction.

Table 4- WaterNSW customer satisfaction

Customer Satisfaction		
	<i>Target</i>	<i>Actual</i>
2016/17		63.2
2017/18	64.9	65.7
2018/19	66.0	48.0
2019/20	52.3	53.0
2020/21	54.3	-

Questions:

17. Does the Act allow and encourage transparency and continuous improvement of processes and operations?
18. Should there be more consistency in the requirements for auditing between the major NSW water supply corporations?
19. Does the Act provide sufficient transparency through reporting and auditing arrangements?

Other Questions:

20. Are there any other issues relevant to the objectives of this review that should be considered?

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¹⁴ For example, see page 29 WaterNSW Annual Report 2018-19, WaterNSW, 2019.