

Submission
No 5

**INQUIRY INTO INQUIRY INTO PFAS CONTAMINATION
IN WATERWAYS AND DRINKING WATER SUPPLIES
THROUGHOUT NEW SOUTH WALES**

Organisation: Independent Pricing and Regulatory Tribunal
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IPART submission to Select Committee Inquiry into PFAS contamination in waterways and drinking water supplies throughout New South Wales

18 November 2024

This submission provides information about IPART's role in regulating NSW public water utilities and provides contextual information about the regulatory framework for managing drinking water quality in NSW in relation to PFAS.

1 IPART's role in regulating drinking water quality in NSW

The Independent Pricing and Regulatory Tribunal is responsible for making recommendations to the Minister for Water on licensing Sydney Water, WaterNSW and Hunter Water (public water utilities) including the imposition of licence conditions relating to drinking water quality. We monitor and enforce public water utilities' compliance against the conditions of their operating licences through reporting and annual operational audits.

We also independently set maximum prices for water supplied by public water utilities to reflect the efficient cost of providing safe and efficient services. Sydney Water, Hunter Water and WaterNSW greater Sydney, and WaterNSW regional and rural bulk water have recently submitted pricing proposals. Each of the water businesses is proposing cost and price increases over the period 2025 to 2030.

We will conduct a detailed and consultative process to examine costs and impacts for customers and thoroughly examine the proposed costs and prices. We will carefully consider the impacts of the price proposals on household budgets, service standards, the environment, and the economy more broadly. We will also consider the implications of any National Health and Medical Research Council proposed updates to the health-based drinking water guidelines. Our review will include examining how water businesses propose to invest in and maintain critical infrastructure, so long term customer needs are delivered.

The maximum prices will apply from 1 July 2025.

1.1 Drinking water quality and public water utility operating licence conditions

All three public water utilities have licence obligations to manage the quality of source water or drinking water they produce or supply. Drinking water must be produced using processes and systems consistent with those set out in the Australian Drinking Water Guidelines (Australian Guidelines) and meet all health based drinking water standards set in the Guidelines, including limits for PFAS. Although the Guidelines state that they are not mandatory standards, in NSW the operating licences of the PWUs create a legal obligation for the public water utilities to operate in a way that is consistent with the Australian Guidelines.

Drinking water supply

Under their operating licences, the PWUs must maintain, implement and comply with a drinking water quality management system that is consistent with the Australian Guidelines and any health-based requirements specified by NSW Health. A compliant water quality system must address all elements of the Australian Guidelines including hazard identification and risk assessment for contaminants such as PFAS, preventative measures to manage drinking water quality and monitoring and verification to ensure the drinking water quality produced meets the relevant standards. The costs of producing drinking water that complies with the standards for PFAS as well as other potential contaminants is considered by us in our pricing determinations. Where the costs are necessary and efficient we incorporate them into drinking water prices and these costs are passed through to customers.

The drinking water quality systems of the public water utilities have the capacity to adapt to changing standards. Hunter Water's licence applies the latest version of the Australian Guidelines at any given time. Sydney Water and WaterNSW's licences apply either the current Guidelines, an updated version nominated by the PWU and approved by IPART or an updated version if specified by NSW Health as a health-based requirement.

Where additional processes and technologies are required, drinking water quality systems will need to reflect these additional measures and costs may increase.

Source water management

The Australian Guideline advocates a catchment to tap approach to managing drinking water quality that includes proactive catchment management as an effective barrier against threats to water quality.

Both Hunter Water and WaterNSW have responsibility for management of water intended for drinking water from the catchment to consumer under their licence. That is, unlike Sydney Water, Hunter Water and WaterNSW's water quality management systems apply to the management of source water in the catchments as well as the production of drinking water.

Hunter Water's operating licence requires Hunter Water to apply its drinking water quality management system to the drinking water system under its control, having regard to the entire drinking water supply system – from water catchment to the Consumer

WaterNSW's operating licence requires WaterNSW to implement its water quality management system for the declared catchments and non-declared catchment areas for water with a final end use as drinking water. The Licence also requires WaterNSW to manage and protect declared catchment areas in a way that is consistent with its water quality management system.

Additionally, WaterNSW's new licence (2024-2028) requires it to develop and publish a policy on raw water quality for drinking water suppliers that details WaterNSW roles and responsibilities in monitoring water quality, identifying and reducing hazards and risks to end users, and improving water quality. WaterNSW is also required to consult with NSW Health and drinking water suppliers to determine water quality and quantity parameters necessary for improving water quality monitoring across the state.

Finally, the WaterNSW Licence requires WaterNSW to implement a strategy for an ongoing research program on catchment and river health from 30 November 2025. WaterNSW's research strategy should consider opportunities to improve water security, water quality and biodiversity in priority catchments and downstream rivers.

The cost of managing risks to source water in the catchment through water quality management systems and potentially through additional research reflects the risk posed to water quality in different catchments from known and emerging threats. As standards for PFAS limits in drinking water from catchment sources evolve, the public water utilities will need to respond, and costs may increase. In determining whether this reflects the efficient costs of operation IPART will consider whether the response of the public water utilities is proportionate, efficient and reflects the obligations set out in its operating licence.

1.2 IPART undertakes annual audits to assess compliance with licence obligations

IPART audits all three PWUs annually to assess the extent to which they have complied or not complied with their operating licences. We report to the Minister on our findings and publish the report on our website.

While the scope of our audits varies from year to year, every audit tests the key elements of the public water utility drinking water quality management systems and their implementation. Our auditors are drinking water quality experts with experience assessing compliance with the Australian Guidelines. Our audits are thorough, and we hold the PWUs to a high standard. It is usual for auditors to make recommendations where full compliance may not have been achieved or where they identify opportunities for improvement. However, it is rare for audits to find that drinking water quality has been compromised or has failed to meet standards. We follow-up on all recommendations for remedial actions identified in our audits to ensure a high standard of compliance and ongoing process improvement.

1.3 PWUs should update their water quality management systems to continue to ensure safe drinking water

The Australian Guidelines require that drinking water suppliers understand the hazards that can compromise drinking water quality and the measures that are necessary to assure safe drinking water. We expect that the PWUs will respond to new information about the previously unknown presence of PFAS in source water in NSW by updating their risk assessment and adjusting their preventative measures if necessary.

Similarly, a change to the PFAS limits in the Australian Guidelines will trigger the need for appropriate review and adjustment drinking water quality management systems by all PWUs. Subsequent IPART audits will ensure that drinking water quality management systems continue to respond to changes to standards for PFAS and other emerging contaminants and that they are implemented to assure safe drinking water.

1.4 We can consider the impact of changing standards and increased risk in our pricing determinations

We will closely review the public water utility businesses' pricing proposals to determine whether they promote value for money, are in the interests of customers, and deliver the outcomes customers need and want. We do this by thoroughly examining the costs and carefully considering impacts of the water businesses' pricing proposals on household budgets, service standards, the environment, and the economy more broadly. Under the IPART Act, when setting water prices, we are required to consider a range of matters including:

- the cost of providing the service
- consumer protection against abuse of monopoly power by a water utility
- the need to promote competition in the supply of the service
- the need for greater efficiency in the supply of the service to reduce costs to consumers and taxpayers.
- appropriate rates of return on public sector assets
- the social impact of our determinations
- the need to maintain ecologically sustainable development and protect the environment.

We will also consider the implications of the National Health and Medical Research Council's proposed updates to the health-based drinking water guidelines for PFAS when they are settled. The National Health and Medical Research Council released its draft guidelines in October 2024. It will finalise these guidelines in 2025.

1.5 We work with co-regulators to ensure safe drinking water

We work closely with NSW Health and the NSW Department of Climate Change, Energy, the Environment and Water to inform our review of PWU operating licences and recommendations to the Minister for targeted, health-based licence conditions. We seek input from these agencies, amongst others to inform our audit scopes and to address any risks to public health that may be identified as a result.

We will continue to liaise with NSW Health in relation to PFAS and the public water utilities and any future changes to PFAS limits in the Australian Guidelines. We will seek their input and advice on the production of drinking water by PWUs in NSW for future compliance monitoring and response.

We have also formed and chair a Water Regulators Advisory Panel (RAP) comprising IPART, the Department of Climate Change, Energy, the Environment and Water – Water Group, the Environment Protection Authority, NSW Health and the Natural Resource Regulator to promote stronger collaboration between the members for the benefit of customers and water businesses. We will actively work with these co-regulators as decisions are made on regulation of drinking water to embed and enforce new standards through the relevant regulatory mechanisms.