Regulatory Framework design – Discussion paper

Proposed reforms to *Water Supply and Sewerage Services Act 2000*

Acronyms	Full form
ACCC	Australian Competition and Consumer Commission
DCCEEW	Department of Climate Change, Energy, the Environment and Water
DHLGC	Department of Housing, Local Government and Community Development
ESC	Essential Services Commission
ESCOSA	Essential Services Commission of South Australia
ID	information disclosure
IES	Indigenous Essential Services Pty Ltd
IPART	Independent Pricing and Regulatory Tribunal
NSW	New South Wales
NTPSR	Northern Territory Power System Performance Review
OTTER	Office of the Tasmanian Economic Regulator
PWC	Power and Water Corporation
UC	Utilities Commission
UC Act	*Utilities Commission Act 2000*
WACC	weighted-average cost of capital
WIC Act	*Water Industry Competition Act 2006* (NSW)
WSSS Act	*Water Supply and Sewerage Services Act 2000*

Contents

1. Introduction

Water and sewerage services are essential to households, businesses and economic development, and support the amenity and liveability of communities. Customers and the community expect and rely on safe, reliable and affordable water and sewerage services.

The Northern Territory Government is undertaking a review to identify opportunities to improve economic regulation of water and sewerage services to:

- enhance the long-term interests of customers and the community
- support the long-term sustainability of providing these essential services.

The purpose of this paper is to present proposed reforms to the economic regulatory framework, including changes to the *Water Supply and Sewerage Services Act 2000* (WSSS Act) that would be required to enact the reforms.

The reforms presented in this paper are based on the Reform Directions released to the public in February 2025 and will assist the Department of Treasury and Finance in consulting with stakeholders prior to preparing drafting instructions for the reformed WSSS Act.

The following diagram shows the stages in the reform process. Following the introduction of the reformed Act, further consultation with key stakeholders[1] will be required to assist with developing detailed regulatory requirements in subordinate instruments, particularly relating to regulatory requirements for small service providers currently not subject to the regulatory framework.

Current stage

In the sections below, for each reform area we present:

- the high-level policy intent
- proposed approach to achieve this policy intent, including elements to be addressed in primary or subordinate legislation
- potential alternative options, and an evaluation of these options relative to the proposed approach
- any outstanding issues or questions to resolve for each reform area.

[1] These will include service providers, land councils and peak bodies such as Northern Territory Council of Social Services, Local Government Association of the Northern Territory and National Indigenous Australians Agency.

2. Overview of current Territory economic regulation

The WSSS Act is the Territory's primary legislative instrument for economic regulation of water and sewerage services. It applies to licensed supply areas declared by the regulatory minister (a role performed by the Treasurer). These areas currently include Darwin, Alice Springs, Katherine, Tennant Creek, Yulara and 12 minor urban areas.[2] Power and Water Corporation (PWC) is the exclusive service provider in these areas and is the sole licensed provider of water and sewerage services in the Territory, which means it is currently the only service provider subject to economic regulation.

Under the WSSS Act, the regulatory minister (Treasurer) regulates PWC's prices through a pricing order. Separate to the role of regulatory minister for water supply and sewerage services, the Treasurer is also PWC's shareholding minister and monitors PWC's financial performance.

Under the WSSS Act, the Utilities Commission (UC) is responsible for licensing providers of water and sewerage services, compliance monitoring and enforcement, and providing oversight of some service provider activities such as asset management planning.

Outside of declared licence supply areas, service providers in other towns and remote communities are not subject to economic regulation and the customer protections that it provides. Services are supplied by various providers under a range of different arrangements:

- PWC's subsidiary, Indigenous Essential Services, provides services in remote communities and some homelands. Oversight of service provision is provided through a contractual arrangement with the Territory Government through the Department of Housing, Local Government and Community Development (DHLGC).
- DHLGC administers the Homelands Program, which funds service providers to deliver municipal and essential services, and housing maintenance in homelands. Service providers include Aboriginal corporations, regional councils, private contractors and Aboriginal community associations.
- Local governments can also provide water and sewerage services, notably the West Arnhem Regional Council is responsible for production, treatment and mains reticulation of water for Jabiru.
- Private water suppliers can provide drinking water in mining communities. For example, Nhulunbuy Corporation provides services to the town of Nhulunbuy, with a population of over 3,000.

3. The objectives and approach to regulatory reform

3.1. High-level policy intent

The objectives of proposed enhancements to the economic regulatory framework are to:

- serve the long-term and evolving interests of customers and communities
- ensure efficiency and affordability of services
- drive independence, transparency and accountability in decision-making
- ensure security and resilience of water supply and sewerage services

[2] PWC's service areas listed in PWC's licences at: https://utilicom.nt.gov.au/water-and-sewerage/licensing/register-of-water-and-sewerage-licences-and-exemptions.

- contribute efficiently and appropriately to liveability, economic, environmental and health outcomes.

To achieve these objectives, the Territory Government is proposing to:

- expand the coverage of the economic regulatory framework to service areas (towns and communities) across the Territory
- apply a consistent, transparent and tiered methodology to determine the form and level of regulation appropriate to different locations and scales of service delivery.

The benefits of this reform include ensuring:

- customers receive the benefits of economic regulation across the Territory regardless of their service provider
- economic regulation is fit-for-purpose for the service provision arrangements and scales of service delivery across the Territory, and is applied on a consistent and transparent basis.

3.2. Overview of proposed approach

Key elements of the Government's proposed reform to economic regulation include that:

- all service providers are to be regulated, unless they are excluded by the regulatory framework or granted an exemption
- tiered levels of economic regulation should be applied based on scale of service provision
- customers in service areas of a similar scale should receive similar levels of customer protections, rights and transparency of service provision.

This seeks to ensure appropriate service levels are provided to all customers, while avoiding undue regulatory costs.

Licensing of all service providers

Under the WSSS Act, economic regulation is currently applied when the regulatory minister declares a licence area (a geographic area) and the service provider in that licence area is licensed by the UC. However, as outlined above, PWC is the only licensed supplier of water and wastewater services and hence the only service provider subject to economic regulation.

Under the proposed reforms, all water and sewerage service supply providers will be required to apply for a licence and be regulated.

Licensing of water and sewerage utilities is common in other jurisdictions due to the high risks associated with water and sewerage service provision on customer welfare, health and the environment. Licensing is an effective way to set performance requirements, and monitor and enforce compliance with those requirements.

Notably, the requirements of licences can be tailored to reflect the scale, capacity, operating environment and circumstances of each service supplier. For example, in New South Wales (NSW) the Independent Pricing and Regulatory Tribunal (IPART) administers licences for a broad cross-section of water and sewerage service providers, ranging from very large utilities such as Sydney Water, serving several million customers, to very small privately owned water utilities supplying a discrete development, with licence requirements and auditing regimes tailored to reflect the circumstances of each utility.

The economic regulatory framework will also include a provision for service providers to seek an exemption from being subject to economic regulation or particular regulatory requirements. This will provide flexibility to appropriately manage non-standard or unforeseen service provision arrangements, and is a common feature of regulatory frameworks.

A tiered approach to economic regulation

A tiered approach to economic regulation ensures customers are appropriately protected while avoiding unnecessarily high regulatory costs. It recognises that larger service providers can absorb compliance costs through economies of scale, whereas smaller providers may face disproportionately high costs per customer.

Accordingly, while all service providers would be licensed, the level of economic regulation would be proportionate to the scale of service provision:

- large service providers (supplying greater than 50,000 connections) would be subject to full economic regulation (as set out in section 4 of this paper)
- small service providers (supplying less than 50,000 connections) would be subject to proportionate economic regulation (as set out in section 5 of this paper).

In practice, this means PWC would be subject to full economic regulation, and all other service providers would be subject to proportionate economic regulation.

Some service provison arrangements that do not involve large scale common monopoly infrastructure to provide services would be excluded from economic regulation, including:

- self-supply of water and sewerage services on land or adjoining land commonly owned or occupied, where services are supplied through infrastructure owned by the landowner or occupier (for example, self-supplied homelands with Aboriginal land trusts and roadhouses with reticulated infrastructure for accommodation, where the community or landowner has primary responsibility for managing water supply infrastructure)
- on-supply of services provided by a licensed service provider to other people or entities (for example, a body corporate on-supplying to owners and residents in an apartment block)
- a person who does not provide services through water and sewerage infrastructure (for example, a community bore or water tanks, where people access and transport water for consumption).

4. Full economic regulation for the large service provider

The following section outlines the proposed reforms to the regulatory framework that will apply to PWC, being the Territory's only large service provider. Proposed regulatory requirements for smaller service providers are outlined in section 5.

4.1. Strengthening customer protections

High-level policy intent

Water and sewerage customers generally do not get to choose their service provider, which means the service provider does not face competitive incentives to attract and retain customers by providing high quality services. Therefore, the economic regulatory framework should provide protections to customers to ensure they receive satisfactory services and have avenues of recourse if this is not the case.

Customer protections tailored for the water supply and sewerage services sector primarily relate to retail services, where the service provider and customer directly interact with each other (such as billing and customer financial hardship arrangements). Protections can also relate to minimum or guaranteed performance standards (such as for planned and unplanned supply outages or water quality) delivered through a service provider's reticulated system.

Customer protections within an economic regulatory framework are intended to:

- ensure customers receive satisfactory water supply and sewerage services
- provide transparent and accessible information to customers about the respective rights and responsibilities of customers and the service provider to support customers, and the service provider interacting in a fair and reasonable manner.

Current requirements in the Territory

Currently, the main forms of customer protection in the regulatory framework are the service provider's licence conditions and the customer contract.

The licence

Under section 42 of the WSSS Act, licences authorising the supply of water and sewerage services include requirements to:

- meet minimum standards of customer service as determined by the minister
- develop and publish a customer contract setting out the rights and responsibilities of customers and the licensee regarding water supply and sewerage services
- develop and maintain an asset management plan to ensure optimal long-term management and investment in the licensee's infrastructure for the benefit of customers
- develop and publish codes that are required by the WSSS Act to confirm the rights and responsibilities of customers and the licensee regarding matters including land development, asset protection, new connections and trade waste approvals
- monitor and report to the UC on the licensee's levels of compliance with the licence, particularly the minimum standards of service.

Currently, PWC has separate water supply and sewerage service licences, with the term of each licence due to expire by 31 December 2027. However, review and oversight of these licences in practice do not provide the same degree of transparency and accountability of performance and customer protection as is the case in other jurisdictions.

The UC has issued Compliance Framework and Reporting Guidelines, which applies to PWC's water-related activities (and to PWC's and other licensees' energy services). These set out the utility's reporting obligations, including to establish a compliance process, report on material breaches, undertake compliance audits, and submit an annual compliance report and licence return.

The UC publishes an Annual Compliance Monitoring Report, which provides a summary of the breaches of compliance obligations reported by PWC and electricity supply licensees for the year, and provides the UC's assessment of and any enforcement action it has taken in relation to those breaches.

The customer contract

Under the WSSS Act, a licensee must develop a customer contract within the time specified by the UC. The customer contract is to:

- set out the rights and responsibilities of customers regarding the supply of water and sewerage services
- include arrangements for dealing with complaints and resolving disputes
- be published in the Gazette.

A licensee can enter into a special agreement with a person to provide water and sewerage services to that person on terms different to those provided for in the customer contract, on receiving an application from the person.[3]

The customer contract is legally binding. However, there is currently no guidance, public consultation, oversight or approval of PWC's customer contract to ensure the terms and conditions included in the contract are fair and reasonable to customers.

Overview of proposed approach

There is a strong case to enhance protections for consumers of water and wastewater services in the Territory. Water and wastewater services are critically important to customers and the community. Service providers are generally monopolies, which means in the absence of regulatory intervention they lack a strong incentive to be highly responsive to the needs of customers. Protections for water and wastewater service customers in the Territory are not as strong as other jurisdictions.

The proposal is to enhance review and oversight of PWC's licences and customer contract. This could involve the UC:

- periodically reviewing (for example, every 5 years) the terms and conditions of PWC's licences and customer contract, through a public process that involves consultation with PWC, its customers and other stakeholders
- determining (or recommending to the minister for approval) the terms and conditions of PWC's licences and contract through this review

[3] Section 47 of the WSSS Act.

- applying a risk-based approach in annually auditing and reporting on PWC's compliance with its licences.

PWC's separate water and sewerage service licences would also be consolidated into one licence, to enhance transparency and promote an integrated approach to water cycle management.

This approach is applied in NSW, where the NSW IPART reviews and regulates Sydney Water's and Hunter Water's operating licences and customer contracts (on behalf of the minister). IPART's concurrent review of a utility's licence and customer contract follows a similar process to its review and determination of utility prices, with the utility submitting its proposed licence and customer contract, IPART seeking stakeholder comments on the utility's proposed licence and customer contract (and potential alternatives to these) via responses to Issues Papers, Public Hearings and a Draft Report, and IPART then presenting its recommendations to the minister on the licence and customer contract in its Final Report.

Over time, requirements in these licences and customer contracts have evolved to reflect emerging issues of concern or interest to customers and stakeholders. For Sydney Water's and Hunter Water's licences, this includes some of the issues considered in the sections below – such as requirements related to long-term planning, investment decision-making and water conservation.

This approach of conducting periodic public reviews of PWC's licence and customer contract would complement an expanded role for the UC in reviewing PWC's prices and service standards – as outlined in sections below.

It would also bring the Territory closer to the approaches applied in other jurisdictions, where regulators often have a role in determining or approving customer contracts (or their equivalent), with minimal change to the regulatory framework.

The development, review and approval of PWC's customer contract concurrently with the development, review and approval of PWC's licence and service standards would ensure transparency and consistency in approach and minimise duplication and gaps between the customer contract, the licence and service standards.

Alternative options

An alternative option would be to focus reform (enhanced oversight and review processes) on PWC's customer contract only, rather than on both its licence and customer contract. The basis for this would be that, even though the customer contract is a key customer protection measure, there is currently no guidance, public consultation, oversight or approval of PWC's customer contract to ensure the terms and conditions included in the contract are fair and reasonable to customers. On the other hand, PWC's licences have been subject to UC review and approval, and they are higher-level documents (with less direct 'touch points' with customers).

However, to optimise customer outcomes at lowest cost, there is likely to be value in holistically reviewing PWC's licence, customer contract and service standards.

Another alternative option would be to amend the WSSS Act to:

- allow the UC to issue a code, which PWC must use as a basis for developing a customer charter, and
- require PWC to develop a customer charter, in consultation with its customers, and submit this to the UC for review against the code and for approval.

This would be similar to the framework in Victoria, where the Essential Services Commission (ESC) issues standards, codes and guidelines and water utilities must develop customer charters in consultation with customers and submit these to the ESC for review against its standards or codes.[4] The customer charters govern the relationship between the utility and its customers, including the rights and responsibilities of parties and the terms and conditions of supply.

However, it is questionable what additional benefits this would achieve relative to the proposal to strengthen oversight of (and review processes around) the customer contract, which is an existing instrument. Customer contracts can include very similar provisions to customer charters. Therefore, the proposed approach of strengthening oversight of, and review processes around, the customer contract (and licence and service standards) seems to be a more streamlined way of achieving the same outcome.

Legislative requirements/implementation

To implement the proposed approach, the WSSS Act would need to be amended to allow for the UC to review and approve PWC's customer contract (or review it and make recommendations to the minister regarding its approval).

The WSSS Act currently contains provisions allowing the UC to consider licence applications, set licence conditions (subject to approval from the minister) and assess compliance with these conditions. Nevertheless, once the preferred licence review and audit process is confirmed, there would be merit in reviewing the WSSS Act to ensure there are no impediments to implementing this enhanced process (including allowing the UC to conduct a comprehensive public review of PWC's licences, and the consolidation of PWC's separate water and sewerage service licences into one licence).

Issues to resolve

Issues to resolve include the details of the customer contract and licence review, approval and audit processes to be followed, including timeframes and the respective roles and responsibilities of the UC, the minister and PWC in these processes.

As outlined above, this will inform what amendments may be required to the WSSS Act, and when and how the preferred approach would be implemented.

Any changes to the WSSS Act should not be too prescriptive (focusing on removing any impediments to the preferred approach rather than prescribing how it should be implemented), to allow for flexibility in implementation. Detailed guidance on implementation should be determined administratively by the UC, allowing for changing circumstances and stakeholder consultation in developing and finalising such guidance.

4.2. Formalising standards of service

High-level policy intent

Standards of service include long-term reliability objectives (the level of supply required to meet demand and avoid the need for frequent water restrictions) and day-to-day service performance standards (such as planned and unplanned outages or sewerage blockages, among other things).

Service standards should reflect customers' preferences regarding the trade-off between the level of service they receive and the cost of providing services. For example, high long-term reliability objectives may ensure customers in severe drought receive water supply without a need for any water restrictions,

[4] For example, see Essential Services Commission (ESC), Water Industry Standard – Urban Customer Service, September 2022.

however delivering services to this standard may require water supply infrastructure investment at an unacceptably high cost to consumers.

In the absence of regulation, a monopoly service provider, without the pressure of competing with alternative service providers for market share, would be unlikely to face sufficient incentives to deliver optimal service levels to customers.

Further, service standards may also have broader economic, social and environmental impacts that require consideration from a broader community perspective – which may be beyond the usual commercial focus and interests of a service provider.

Service standards within an economic regulatory framework are intended to:

- Ensure appropriate service levels are provided to customers, informed by an understanding of customers' expectations and the costs and benefits of varying service levels.
- Provide clarity and certainty to all parties, including:
  - service providers to inform their medium to long-term planning and investment decision-making to ensure service standards are met
  - customers and the community about the service levels they should expect, and
  - regulators in monitoring and enforcing compliance with standards and in assessing the prudence and efficiency of service providers' costs when regulating their prices.

Current requirements in the Northern Territory

The UC Act provides for the UC to perform licensing functions under relevant industry regulation Acts; and to develop, monitor and enforce compliance with and promote improvement in standards and conditions of service and supply under relevant industry regulation Acts.[5] The relevant industry Act, the WSSS Act, provides that the minister may specify the minimum standards that a licensee must meet in supplying water or sewerage services to customers, which may include (but not be limited to):

- water quality standards
- standards of supply (including water pressure and flow), and
- reliability of service.

The minimum standards are to:

- be at least equivalent to the service standards prevailing during the year before the WSSS Act commenced
- take into account relevant national benchmarks
- take into account the cost of service delivery in the licence area.[6]

PWC's existing licence (last amended in 2009) states that:

> "In accordance with sections 49 and 50 of the Water Supply and Sewerage Services Act the licensee must monitor and report to the Utilities Commission on its compliance with the minimum standards in

[5] Section 6(1)(b) and (c) of the WSSS Act.
[6] Section 45 of the WSSS Act.

providing water supply services to customers which may include water quality, standards of supply and reliability of service".

However, in practice, such standards have never been set by the minister. This means that PWC effectively determines the standards of services it delivers to customers, which guide investment and expenditure decisions to maintain, replace and augment its infrastructure. There is currently limited transparency regarding these decisions from the perspective of customers, the regulator and government. Accordingly, these stakeholders are reliant on PWC to make decisions regarding trade-offs between service cost and quality. In this sense, one of the key objects of the WSSS Act, namely to "establish and enforce standards of service in water supply and sewerage services", is not being achieved.

Overview of proposed approach

There is a strong case for establishing a framework for transparently setting and reviewing service standards, including 'day to day' service standards and longer-term 'level of service' objectives (e.g., relating to the likelihood, duration and severity of water restrictions) – given the importance of water and sewerage services to customers and the broader community, and the relationship between service standards, costs and prices.

Such a framework should ensure that the:

- service standards are informed by customer and community consultation (including customer willingness to pay), and proportionate cost benefit analysis (that is, assessment of the economic, financial, and social costs and benefits of viable options)
- service standards are clearly specified, well defined, measurable and meaningful
- service provider's performance against the standards is regularly assessed and publicly reported
- service standards are periodically reviewed via a transparent and public process, informed by customer and community consultation and proportionate cost benefit analysis.

It is envisaged that, consistent with the approach adopted in other jurisdictions, these service standards would address day-to-day service performance standards (such as planned and unplanned supply outages or sewerage blockages) and long-term supply reliability objectives.

Examples in other jurisdictions include:

- In NSW, Sydney Water and Hunter Water's operating licences include service standards for water quality and service interruptions (amongst a range of other terms and conditions aimed at ensuring customers receive appropriate standards of water and wastewater services). For instance:
    - Sydney Water and Hunter Water are each required to maintain a water quality management system for drinking water consistent with the Australian Drinking Water Guidelines and any additional health-based requirements relating to drinking water specified by the State Health department.[7]
    - Sydney Water must, in each financial year, ensure at least 98% of properties to which it supplies drinking water are unaffected by an unplanned water interruption. At least 99.99% of properties are affected by fewer than 12 water pressure failures and 99.28% of

[7] For example, as per clause 15 of the Hunter Water Operating Licence 2022-2027 and clause 12 of the Sydney Water Operating Licence 2024-2028.

properties are unaffected by an uncontrolled wastewater overflow. Hunter Water has similar water continuity, water pressure and overflow standards.[8]

- In Victoria, the ESC's Water Industry Standard requires utilities to specify targets for a range of service standards and periodically review these service standard targets with their customers. The service standards include minimum water pressure a customer should receive, average time taken to attend bursts and leaks, average time of planned and unplanned water supply interruptions, maximum number of sewerage blockages a customer may experience in any 12-month period, average time taken to attend sewer spills and blockages, average time taken to rectify a sewer blockage, and maximum time taken to contain a sewer spill.[9]

Typically, regulatory frameworks provide for licences (or similar instruments) to set minimum standards for key aspects of water and wastewater services. For some aspects of service, there is little discretion when setting minimum service standards. For example, in relation to water quality, compliance with the Australian Drinking Water Guidelines and requirements of the State Health department are generally considered 'non-negotiable' – given the potential health impacts of water that does not meet quality standards. However, standards around other, potentially discretionary levels of service, such as response times to supply interruptions or bursts and leaks, can often be informed by cost-benefit analysis, drawing on customers' willingness to pay for various service levels (or some other measure of the benefit of service outcomes) and comparing this to the cost of achieving those services levels.

The proposal is to build on the existing provisions in the WSSS Act that allows the minister to specify minimum standards and for these standards to be reflected in the utility's licence, by developing a framework that allows the UC to:

- recommend service standards to the minister, following a public review process, including consideration of stakeholder views and the utility's proposed service standards
- require the utility to periodically report on its performance against the service standards, to enhance transparency for customers and other stakeholders
- audit the utility's performance against, or compliance with, the service standards and other requirements of its licence, and report to the minster on this performance/compliance
- periodically review service standards (as part of periodic reviews of all licence conditions), to recommend any proposed changes to the minister.

Legislative requirements and implementation

In principle, the above framework could be implemented without legislative change:

- section 45 of the WSSS Act states the minister may specify minimum service standards that a licensee must meet in providing water supply or sewerage services to customers, which may include (but not be limited to) water quality standards, standards of supply (including water pressure and flow) and reliability of service
- section 42 of the WSSS Act states the UC must, on granting a licence, make the licence subject to conditions approved by the minister requiring the licensee to, among other requirements:
    - meet minimum standards of customer service as determined by the minister

[8] Clauses 14, 15 and 16 of the Sydney Water Operating Licence 2024–2028; and clauses 17, 18 and 19 of the Hunter Water Operating Licence 2022–2027.
[9] Essential Services Commission, Water Industry Standard – Urban Customer Service, 2024, clause 18.2.

- monitor and report to the UC on the licensee's levels of compliance with the licence and in particular the minimum standards of service
- procure an audit, if required by the UC, of the licensee's compliance with the terms and conditions of the licence

- section 6 (1)(c) of the *Utilities Commission Act 2000* (UC Act) provides a general function of the UC 'to develop, monitor and enforce compliance with and promote improvement in standards and conditions of service and supply under relevant industry regulation Acts'.

However, the minister has not set minimum standards as envisaged under the WSSS Act, nor does it appear the UC has recommended minimum standards to the minister.

One option would be to amend section 45 of the WSSS Act to state the minister 'must' rather than 'may' specify the minimum standards a licensee must meet in providing water supply or sewerage services to customers. This approach applies, for example, in NSW where under section 14(1)(c) of the *Sydney Water Act 1994* (the Sydney Water Act), Sydney Water's operating licence determined by the governor (on the recommendation of the minister, after tabling in parliament) must include terms and conditions under which Sydney Water is required to ensure its systems and services meet the quality and performance standards specified in the operating licence in relation to water quality, service interruptions, pricing and other matters determined by the governor (on the recommendation of the minister) and set out in the operating licence.

Further, to support the minister, there is a case to formally impose legislative requirements on the UC to recommend minimum standards to the minister, to periodically review these standards and the licence more generally, and to regularly audit and report on the utility's performance against its licence conditions including the minimum service standards. This would help to ensure minimum standards are set as envisaged under the WSSS Act, they are transparently reviewed over time and the utility's performance against these standards (and other conditions of the licence) is regularly assessed and publicly reported.

In NSW, the Sydney Water Act provides that IPART has the functions of making recommendations to the minister on granting, amending or cancelling the operating licence, and imposing, amending or cancelling conditions in relation to the operating licence.[10] Under the Sydney Water Act, IPART is also responsible for auditing and reporting on Sydney Water's compliance with the conditions of its operating licence.

Similar provisions are in place in the *Hunter Water Act 1991* and in the *Water Industry Competition Act 2006* (which provides for the licensing of smaller, privately owned water and wastewater utilities). This has resulted in a regulatory framework in NSW where IPART, as economic regulator, plays a significant role in assisting the minister regulating the performance of water utilities by:

- recommending the terms and conditions of operating licences, including minimum service standards, to the minister. IPART's recommendation follows a public review process that provides an opportunity for the utility to submit its proposed licence terms and conditions to IPART, and for other stakeholders, including customer and community groups, to have their say
- annually auditing the utility's performance against its operating licence, taking a risk-based approach to ensure these audits are suitably targeted and providing a report to the minister
- periodically conducting a public review of the terms and conditions of each operating licence (for example, over the 12 months before the conclusion of the 5-year term of an operating licence), and providing recommendations to the minister on the terms and conditions of the new 5-year operating licence.

[10] *Sydney Water Act 1994*, section 28.

Alternative options

Maintain the status quo

Maintaining the status quo is unlikely to promote socially optimal service standards.

Assign responsibility for setting service standards to the UC

Rather than the UC recommending standards to the minister, assign the UC the responsibility to set service standards. This would recognise that setting standards is a key component of economic regulation (particularly given the relationship between service standards, costs and prices), and that there are advantages of having an independent body, separate from day-to-day political pressures, regulating service standards (and prices).

However, the current proposed approach of the UC recommending service standards rather than setting them leaves the ultimate responsibility of service outcomes for customers and the community to the minister.

Issues to resolve

The main issue is the detail of the framework for setting, reviewing and assessing service standards, and reporting performance against standards. Subject to the minister's approval, this should be determined administratively by the UC to allow for flexibility and stakeholder consultation (including with PWC) in developing this framework.

4.3. Transparent planning and investment decision-making

High-level policy intent

Sound planning and investment decision-making is critical to ensuring prudent and efficient costs are incurred in delivering services to appropriate standards over time. In the absence of such planning and decision-making, there is a risk customers pay more than necessary or services do not meet customers' expectations due to inadequate investment.

Sound long-term planning is necessary to determine the maintenance and augmentation needs for water and sewerage infrastructure. In addition to considering asset condition (and the need for maintenance, repairs and replacement), a service provider needs to consider long-term determinants of expenditure including forecasts of climate change, population growth, consumer behaviour and other regulatory requirements (for example, requirements of environmental regulators). Further, to ensure expenditure is prudent and efficient, the whole-of-life costs and benefits of all viable options (including non-infrastructure solutions) to deliver targeted service outcomes should be assessed.

The high-level policy intent of planning and investment decision-making requirements is to:

- introduce strengthened regulatory obligations that improve transparency and accountability of PWC regarding medium to long-term planning
- require PWC to demonstrate it has considered all options (infrastructure and non-infrastructure solutions) when making long-term investment decisions and identified the most prudent and efficient options
- ensure PWC has sufficient information to allow the UC to assess prudency and efficiency of investments for the purpose of making regulatory determinations.

Current requirements in the Territory

Current planning and investment decision-making requirements do not provide the UC with sufficient information to assess the prudency and efficiency of PWC's investment decisions.

Under the WSSS Act, licences authorising the supply of water and sewerage services include the requirement to develop and maintain an asset management plan to ensure optimal long-term management and investment in the licensee's infrastructure for the benefit of customers. In response to this requirement, PWC prepares annual asset management plans for the UC that typically relate to the condition of existing assets rather than forward-looking planning. These plans are not required to be approved by the UC and are not published.

There are limited other legislated requirements for medium to long-term planning and investment decision-making, with no oversight by the UC of planning processes. PWC publishes planning strategies such as the Darwin Region Water Supply Strategy from time to time, however these are not guided or required by the economic regulatory framework.

PWC's investment decisions have some oversight by the Treasurer, as shareholding minister, noting the shareholding minister's primary role is to monitor PWC's financial performance as a government owned corporation.

Overview of proposed approach

A flexible approach is proposed whereby:

- PWC's licence requires it to undertake sound long-term planning and other measures consistent with prudent and efficient investment decision-making
- the UC provides guidance and sets expectations for undertaking planning and investment decision-making, including consideration of:
    - growing the network and customer connections
    - water supply needs, including adapting to climate change and ensuring the water supply system is suitably resilient
    - changing community expectations or regulatory requirements for performance standards and environmental outcomes
    - managing ageing assets
    - processes for regularly updating the long-term plans with new information and risks
    - collaboration with government agencies and other stakeholders
- as part of a pricing review and auditing performance against the licence, the UC assesses whether PWC:
    - has robust long-term planning informed by external factors, such as climate variability, population and other demand drivers, to optimise maintenance, replacement and augmentation of its infrastructure
    - adequately considers all reasonable infrastructure and non-infrastructure investment options
    - has operated prudently and efficiently, informed by appropriate standards of services
    - has invested in, and operated infrastructure in the long-term interests of customers

  - has investment decision-making processes and practices consistent with prudent and efficient expenditure decisions (for example, it undertakes sound business case and option analysis, where appropriate).

There is precedent in other jurisdictions for this approach. For example, Sydney Water's operating licence (administered by IPART) includes requirements related to planning and investment decision-making, covering:

- climate-related planning and risk management
- long-term strategic water supply planning (including water supply augmentation planning)
- drought response planning
- long-term capital and operational planning.

At the same time, IPART's Water Regulation Handbook outlines its expectations of water utilities' pricing proposals to IPART, including what utilities need to do to demonstrate their proposed expenditure allowances are prudent and efficient. This includes, for example, extensive guidance on IPART's expectations for sound long-term investment plans.

Legislative requirements and implementation

It is not proposed that a specific requirement for transparent planning and investment decision-making be included in the WSSS Act. Rather:

- such requirements are reflected in the service provider's licence issued by the UC
- the UC provides guidance on its expectations for planning and investment decision-making to assist the service provider in demonstrating its proposed expenditure allowances are prudent and efficient as part of a price review, and it is compliant with its licence requirements. This guidance can then evolve in line with the service provider's regulatory maturity.

Alternative options

Alternative options include amendments to the WSSS Act to include:

- **specific provisions in the WSSS Act requiring PWC to develop and maintain certain planning and investment decision-making processes**. This is a less flexible option than the proposed approach, as changes in expectations around planning and investment decision-making could require legislative charges (rather than amendments to PWC's licence or the UC's guidance material).
- **high-level principles that should be considered in long-term planning and investment decision-making** – for example, consistency with broader planning processes and any level of service objective, customer and community consultation requirements, and specific requirements for business cases for investments that meet certain criteria or thresholds. This level of detail is not normally in legislation but can be provided through licence requirements or, more commonly, guidance issued by the economic regulator. This provides necessary flexibility and allows more targeted guidance of planning and investment decision-making practices and processes.

Issues to resolve

Key issues include:

- confirmation of the specific planning and investment decision-making requirements to include in PWC's licence(s)
- the content and form of the UC's guidance to PWC on its expectations for planning and investment decision-making, to assist PWC in demonstrating that its proposed expenditure allowances are prudent and efficient as part of a price review and it has complied with relevant provisions of its licence.

4.4. Transparent cost of service provision

It is in customers' long-term interests that prices are set to recover the efficient costs of delivering services. This ensures customers pay no more than necessary, and the service provider receives sufficient revenue to deliver services to required standards. It also promotes socially optimal levels of consumption of and investment in water and sewerage services.

Therefore, a clear understanding of the efficient costs of providing services should form the basis of price decisions. If prices are too high relative to efficient costs, customers will pay prices that are higher than necessary. On the other hand, if prices are too low, a service provider will not be able to recover its efficient costs, which could result in sub-standard services to customers over time. Neither outcome is in customers' long-term interests.

However, the relationship between prices and efficient costs of delivering services is currently not transparent in the Territory. The WSSS Act allows the minister to issue a pricing order to set regulated prices that PWC is permitted to charge customers, but the economic regulatory framework does not establish a clear or transparent process or methodology to assess efficient costs to inform regulated prices.

High-level policy intent

The high-level policy intent of transparent cost of service provision is to:

- increase transparency around the efficient costs of supplying water supply and sewerage services
- develop a transparent, consistent and incentive-based methodology for assessing efficient and prudent expenditure to inform decisions on the prices the service provider is permitted to charge customers.

Current requirements in the Territory

The WSSS Act allows the minister to issue a pricing order to set regulated prices that PWC is permitted to charge customers. It specifies that a pricing order may regulate prices in any way the minister considers appropriate.[11] The current pricing order sets out the precise prices that must apply to various services over the forthcoming 12-month period.

The WSSS Act also provides for several potential roles for the UC in the price regulation process. For example, section 60 (3) states a pricing order may provide that a calculation be performed or a matter is to

[11] Under section 60(2) of the WSSS Act, this includes (amongst other approaches listed in this section of the WSSS Act): fixing a price or the rate of increase or decrease in a price; fixing a maximum price or maximum rate of increase or minimum rate of decrease in a maximum price; fixing a maximum revenue or maximum rate of increase or minimum rate of decrease in maximum revenue; and specifying pricing policies or principles.

be determined by the UC in a manner specified by the pricing order. The WSSS Act also outlines the UC must perform any functions that a pricing order contemplates will be performed by the UC (as specified in the order).[12]

However, the WSSS Act makes clear the UC's powers under the WSSS Act and the UC Act are restricted to that specified in a pricing order. To date, this role has been limited in pricing orders to enforcing the pricing order. The UC has not had any formal role in determining or recommending prices, even though such a role would be consistent with the legislation.

Overview of proposed approach

The proposed approach involves first formalising the role of the UC in assessing PWC's efficient costs and recommending or determining prices through either:

- confirming the UC's role in assessing PWC's efficient costs and recommending PWC's prices to the minister under the pricing order
- or providing the UC with powers to determine PWC's water and sewerage prices, subject to considering government policy transparently specified in regulatory instruments (see below).

Second, under either approach, the UC would outline its principles, methodologies and processes for assessing efficient costs and recommending or determining prices in a way that aligns with best practice approaches of economic regulators in other jurisdictions. This would involve the UC developing guidelines on its approach to determining expenditure allowances and prices that are consistent with good regulatory practice. These guidelines would inform the information the service provider must provide as part of a pricing review and determination. The guidelines would cover:

- the approach to determining the revenue requirement over the determination period, based on the building block methodology
- the approach to determining each of the building block cost allowances, including allowances for efficient operating expenditure, return on regulatory assets, return of assets (allowance for depreciation), working capital allowance and tax, for example, this could be:
    - efficient operating expenditure to be determined using the base-step-trend method or similar
    - capital expenditure to be justified through business cases that meet Territory Government guidelines
    - the method for calculating the weighted-average cost of capital (WACC) for the return on regulatory assets to be based on an established methodology used by another economic regulator (for example, the AER or IPART)
    - the method for regulatory depreciation, working capital and tax allowances (if any) to be described in the guidelines and demonstrated in a proforma building block model in MS Excel
- the initial regulatory asset base (RAB) is to be determined by the Territory Government and provided to the UC for the first determination of PWC's prices and form a 'line in the sand' for future determinations
- forecast demand and customer numbers, with the methodology used to derive these forecasts, to be provided by the service provider for consideration by the UC

[12] Section 60 of the WSSS Act.

- the service provider proposing appropriate forms of price control consistent with the promotion of efficiency and other regulatory, commercial and customer interests
- pricing structures to be consistent with best practice principles, including the National Water Initiative's Pricing Principles (although price structures may be left largely unchanged for the first determination, unless there is a strong case otherwise)
- how the UC would consider the potential impact of its price decisions or recommendations on customers and the business as a 'sense check' (including using a finance-ability test)
- the UC's expectations regarding PWC's engagement with its customers to inform its expenditure and service decisions, and its price proposal.

The guidelines would be periodically reviewed and updated by the UC, commensurate with the capabilities, resourcing and regulatory maturity of the service provider. The UC would undertake a transparent and consultative price review process, including clear specification of the rationale underlying regulatory decisions.

Legislative requirements and implementation

The extent of legislation changes required depends on whether the UC recommends to the minister or determines PWC's prices. The UC Act provides for either option, as it includes a provision for the UC to have a broad range of functions, including to:

- regulate prices charged by government and other businesses to provide certain monopoly services and services in regulated industries as required under relevant industry regulation Acts
- advise the minister on any matter referred by the minister
- perform any other function assigned by or under this or any other Act, or conferred by the minister.

However, if the UC is to have a determination role, it will require changes to division 8 of the WSSS Act, which is currently premised on the minister issuing a Pricing Order and the UC enforcing this order. In doing so, a 'minimalist' approach could be adopted, by largely taking the existing provisions relating to price determinations set out in section 60 of the WSSS Act and linking these to a determination by the UC rather than a Pricing Order issued by the minister.

Regardless, whether recommending or determining PWC's prices, it is not proposed the methodology applied by the UC be prescribed in legislation. Such a prescriptive approach could unnecessarily constrain the UC as best practice methodologies to economic regulation evolve over time.

Rather, it is proposed the framework in which the UC makes its price recommendations or determinations be largely governed by the high-level objectives and guidance specified in the UC Act and WSSS Act (outlined in Box 1).

Box 1: Factors to consider under the UC Act and the objectives of the WSSS Act

Under section 6(2) of the UC Act, in performing its functions, the UC must consider the need to:

- promote competitive and fair market conduct
- prevent misuse of monopoly or market power
- facilitate entry into relevant markets
- promote economic efficiency
- ensure consumers benefit from competition and efficiency
- protect the interests of consumers with respect to reliability and quality of services and supply in regulated industries
- facilitate maintenance of the financial viability of regulated industries
- ensure an appropriate rate of return on regulated infrastructure assets.

Under section 21(2) of the UC Act, the UC must consider the following when making a determination under the UC Act:

- the costs of making, producing or supplying the goods or services
- the costs of complying with laws or regulatory requirements
- the return on assets in the regulated industry
- any relevant interstate and international benchmarks for prices, costs and return on assets in comparable industries
- the financial implications of the determination
- any factors specified by a relevant industry regulation Act or by regulations under this Act
- any other factors the Utilities Commission considers relevant.

Under section 3 of the WSSS Act, the objects of the WSSS Act are to:

- promote the safe and efficient provision of water supply and sewerage services
- establish and enforce standards of service in water supply and sewerage services
- facilitate the provision of financially viable water supply and sewerage services
- protect the interests of customers.

The specified objectives and factors in the existing UC Act and WSSS Act appear appropriate and provide a clear focus on efficiency and the long-term interests of customers to guide the UC in making its price recommendations or determinations (and undertaking its other proposed functions). They are also consistent with the Productivity Commission's best practice principles for independent economic regulation (see Box 2).

Supplementing these existing provisions with additional objectives or factors to consider risks compromising this clear focus and may give rise to unclear or conflicting objectives, which would undermine the UC's role.

Box 2: Principles for best-practice independent economic regulation

The following national best-practice principles would improve the quality and consistency of independent economic regulation of water service providers:

- regulatory decisions are guided by the objective of promoting the long-term interests of customers
- utilities have incentives to innovate and improve their efficiency
- regulatory decision-making processes include effective customer and community engagement
- prices reflect the full efficient cost of service provision
- regulatory decisions consider the long-term financial viability of utilities
- regulatory processes facilitate effective competition in potentially contestable parts of the industry
- regulatory processes are transparent to allow scrutiny
- regulatory frameworks are adaptable and flexible.

Source: Productivity Commission, National Water Reform 2020, Inquiry Report. p. 153.

Alternative option

The option to legislate the methodology for assessing prudent and efficient expenditure, and determining or recommending prices would not provide sufficient flexibility to adapt and change over time if or as required. In other jurisdictions, legislation usually only includes high-level principles or matters to consider in reviewing and determining regulated revenue allowance prices, with the detailed methodology left to the discretion of the economic regulator.

Issues to resolve

Issues to resolve include:

- the detail and form of guidance material to be developed by the UC (in either its role in recommending or determining prices or elements of the pricing methodology)
- the detail of the process to be followed in a price review – in terms of expectations regarding PWC's price proposal or submission and steps in the process, including customer and community engagement
- whether the UC will have a price determination or recommendation role, including how this may change over time (for example, this could potentially evolve from a recommendation to a determination role).

4.5. Water conservation

High-level policy intent

The high-level policy intent of water conservation measures in the economic regulatory framework is to:

- ensure water conservation initiatives are routinely considered as part of the service providers' planning and investment decision-making processes
- promote efficient investment in water conservation initiatives to minimise the costs of service supply to customers over the long term
- improve governance and regulatory arrangements for planning compulsory water restrictions to increase transparency and ensure planning for restrictions supports standards of service.

Water conservation initiatives can include recycling (such as stormwater harvesting and wastewater recycling), and leakage and demand management to encourage more efficient consumer behaviour. Demand management includes incentive-based or voluntary measures (such as education campaigns, and water use audits and rebates) and compulsory restrictions (including water efficiency rules, commonly used temporarily in response to emerging water security risks).

Water conservation initiatives can defer or avoid the need to invest in water supply augmentation. A water conservation initiative will be efficient where the benefits of the initiative (as measured by the value of avoided supply augmentation) exceed its costs. The socially optimal level of water conservation would occur where the marginal social benefit of water conservation activity equals its marginal social cost.

In the absence of regulatory oversight, a monopoly supplier of water services may not have sufficient incentives to adequately consider water conservation initiatives.

The benefits of regulatory measures promoting enhanced consideration of and transparency around water conservation include:

- reducing pressure on customer bills by requiring the service provider to consider water conservation options as a business-as-usual practice
- ensuring plans for compulsory water restrictions are transparent, made in consultation with customers and consistent with long-term service reliability standards.

Current arrangements in the Territory

There are currently no formal regulatory requirements regarding water conservation in the WSSS Act. PWC has independently introduced several water conservation measures, including PWC's Living Water Smart programs in Darwin and Alice Springs. PWC has also detailed a long-term reliability objective for the Darwin region through its Darwin Region Water Supply Strategy 2013. This is defined as ensuring there is sufficient supply that stage 1 water restrictions are only required once in every 20 years, and stage 4 water restrictions once in every 100 years.

Overview of proposed approach

The approach is to require:

- water conservation initiatives be considered as part of the service provider's planning and investment decision-making (for example, consideration of the economic level of leakage or recycled water schemes) as a licence condition or part of the above-mentioned guidance on expectations for prudent and efficient expenditure

- efficient and transparent water conservation planning, governance arrangements and initiatives as a licence condition. For example, this could include licence requirements for PWC to develop and periodically update a water conservation plan and water shortage response plan that outlines:
    - how PWC ensures appropriate consideration of and efficient investment in water conservation initiatives
    - when restrictions may apply in response to water shortages, and the process for implementing and applying such restrictions
- engage and collaborate with other governance bodies or agencies in considering water recycling options and water shortage response measures.

Over time, the UC would also review the structure of PWC's water prices to ensure (in either a recommendation or determination role) the water usage price is set at a level that promotes efficient investment and consumption decisions. As per the National Water Initiative's Pricing Principles, this would involve setting the water usage price with reference to estimates of the long run marginal cost (LRMC) of supply. LRMC is commonly defined as the cost of supplying an additional unit assuming all factors of production can be varied (that is, the incremental capital and operating costs of supplying a unit of water).

Developing sound estimates of PWC's LRMC of water supply (and even LRMC of wastewater service supply) is important to determine the optimal level of water conservation activity, as LRMC provides a benchmark against which the costs of water conservation measures can be compared.

The LRMC of water supply is estimated relative to a specific water supply reliability level of service, with reference to the accepted or targeted frequency, level and duration of water restrictions. The LRMC also relies on an understanding of supply system yield relative to forecast demand. Therefore, reviewing and confirming this targeted level of service, as well as system yield and forecast demand, will be important in enabling PWC (and ultimately the UC) to estimate the LRMC of water supply and assess the costs and benefits of potential water conservation measures.

The UC's guidance on prudent and efficient expenditure could also include guidance on how to derive estimates of the LRMC of water and wastewater services (potentially including template models) and how to assess the efficiency of potential water conservation schemes or initiatives. This could include, for example, recycled water schemes and targeted levels of leakage reduction, considering the potential for such measures to avoid or defer water and wastewater augmentation costs.

Much of the information required to develop LRMC estimates would be collected as part of sound long-term water supply planning, however such estimates would not necessarily be developed for smaller water supply systems (rather proxy values or alternative means of estimating the value of water saved could be applied).

In any supply system with current or forecast supply capacity constraints relative to demand, it will be important to embed water conservation initiatives into the regulatory framework, as these are the areas where water conservation will be most valuable.

Legislative requirements/implementation

Given the proposed enhancements to PWC's licence review and approval process, including the framework to determine service standards, and development of guidance material by the UC on the expenditure and price review process (which are discussed in sections above), there should be no additional requirements for legislative amendment.

Alternative option

While a potential option, it is not recommended that water conservation obligations be prescribed in legislation. Rather, to allow for flexibility and changing circumstances, and to promote optimal levels of water conservation, such obligations are best expressed as a licence condition or through the UC's guidance material on its expectations to demonstrate proposed expenditure is prudent and efficient.

Issues to resolve

Issues to resolve include:

- the detail of licence requirements and UC guidance relating to water conservation, which can be developed by the UC in consultation with PWC and other stakeholders
- the status of key inputs and information that PWC and UC will require to determine optimal levels of water conservation, and to assess the merits of potential water conservation initiatives and projects including water supply level of service, supply system yield relative to forecast demand, and LRMC of water (and potentially wastewater) supply. Notably, this also will likely inform the above-mentioned licence requirements and guidance material
- confirming the government's position on permitted uses of recycled water, and hence the potential role of recycled water as a water supply source
- whether there is sufficient clarity on roles, responsibilities and protocols around water restrictions if or when these are required.

5. Proportionate regulation for small service providers

5.1. High-level policy intent

The high-level policy intent is to extend regulation to the whole of the Territory and introduce a tiered system with smaller service providers (or smaller service areas) subject to a subset of regulatory requirements. The specific requirements will be developed in consultation with stakeholders and introduced later.

The objective is to ensure the form and level of regulation is flexible to be fit-for-purpose for different locations and scales of service delivery across the Territory.

The benefits of this reform direction include:

- ensuring customers and communities currently serviced by unregulated service providers are afforded customer protections through economic regulation
- enhancing transparency and accountability of service by small service providers where currently there may be limited arrangements to inform government, customers, the community and other stakeholders about service provision including the challenges of small scale and remote service delivery and how they are managed by small service providers
- providing arrangements to support small service providers in their decision-making to improve service provision in line with good industry practice
- ensuring consultation and engagement with relevant stakeholders to inform new regulation.

5.2. Current arrangements in the Territory

Currently, economic regulation of the water sector in the Territory is only applied to PWC regarding certain licensed supply areas it services, including Darwin, Alice Springs, Katherine, Tennant Creek and 12 minor urban areas. Under the WSSS Act, the regulatory minister (Treasurer) regulates PWC's prices through a pricing order while the UC is responsible for licensing providers of water and sewerage services, compliance monitoring and enforcement, and providing oversight of some service provider activities such as asset management planning. Outside declared licence supply areas, service providers in other towns and remote communities are not subject to economic regulation and the customer protections it provides.

5.3. Overview of proposed approach

A flexible and tiered approach to economic regulation is proposed to encompass:

- full economic regulation for large service providers (PWC), as discussed above
- proportionate economic regulation for small service providers, focusing on key protections and requirements to deliver the most benefits to customers and the community at least regulatory cost.

There are precedents for this tiered approach to economic regulation. For example:

- in New Zealand, under the new economic regulatory framework to apply to the water industry, full economic regulation is only applied to Watercare, the largest water utility in New Zealand, while all other service providers will be subject to a lighter form of regulation known as information disclosure (ID).
- In South Australia, the Essential Services Commission of South Australia (ESCOSA) has effectively created two tiers of licensees: major retailers with over 50,000 customers, and minor and intermediate retailers with 50,000 or fewer connections, which are subject to differing approaches to price regulation and licence conditions.
- In NSW, there is effectively three tiers of regulation governing the water sector:
    - local water utilities are subject to light-handed reporting and planning requirements administered by the NSW Department of Climate Change, Energy, the Environment and Water (DCCEEW)
    - privately owned water utilities are subject to licence conditions administered by IPART under the NSW *Water Industry Competition Act 2006* (WIC Act) and there is also provision under the WIC Act for IPART to regulate their prices (at the direction of the minister) however, apart from the Sydney Desalination Plant, this is yet to occur
    - large water utilities (for example, Sydney Water, Hunter Water and WaterNSW) are subject to IPART price regulation, with IPART (on behalf of the minister) also regulating the performance of most of these utilities through their operating licences.
- The Australian Competition and Consumer Commission's (ACCC) Water Charge Rules provide for a tiered approach to regulate irrigation infrastructure operators, where larger operators are subject to full economic regulation and smaller member-owned operators are subject to transparency requirements regarding their schedule of charges.

A small service provider will be defined as a service provider with less than 50,000 service connections. All service providers that operate in the Territory except PWC will be considered small service providers.

Small service providers have small-scale operations and customer bases, and often operate in remote areas of the Territory. They include:

- PWC's subsidiary, Indigenous Essential Services Pty Ltd (IES), which is the second largest service provider, delivering services across 72 geographically dispersed remote Aboriginal communities. While service delivery is largely funded by the Territory Government and overseen through a services agreement with the Department of Housing, Local Government and Community Development, IES bills some customers, such as businesses, for services. In 2023-24, IES had revenue of about $165 million (about $117 million was grant revenue, $36 million from electricity customers and almost $10 million from water and wastewater customers). It supplied 5,580 water connections across the Territory, with 3,018 of these in Greater Darwin, 850 in Big Rivers, 279 in Barkly and 1,433 in Central Australia. It also serviced a total of 2,470 wastewater connections, with 1,772 of these in Greater Darwin, 393 in Big Rivers, 82 in Barkly, and 523 in Central Australia.
- The West Arnhem Regional Council provides water supply and sewerage services in Jabiru and Nhulunbuy Corporation provides services to Nhulunbuy, with both subject to the *Local Government Act 2019*. Water supply and sewerage service provision is one of a range of functions these entities perform for their communities. In 2023-24, the West Arnhem Regional Council generated around $2.7 million in water and wastewater rates revenue.

While the final approach to regulating these small service providers will be determined following consultation with key stakeholders, the following outlines a starting point for what is envisaged under proportionate regulation.

It is proposed that all small service providers will be required to be licensed by the UC (except for certain self-supply, including Homelands and on-supply arrangements such as body corporates) but would not be subject to formal price regulation by the UC.

The licensing provisions in the WSSS Act will apply to small service providers and be tailored to reflect their individual circumstances and scales of service delivery. This would be given effect through the WSSS Act requiring the UC to consider the nature and scale of operations of water service providers when determining or recommending licence conditions.

As noted in the Reform Directions paper, developing proportionate economic regulation will be guided by the principles that regulation should:

- increase transparency of service provision and outcomes for customers and the community
- be targeted to maximise benefits for customers and the community at least regulatory cost
- be flexible to accommodate different service delivery models and existing good practice
- support service providers to improve their service provision in line with good industry practice.

Drawing on these principles, it is proposed that the approach to proportionate regulation focus at least initially on information disclosure and transparency, and ensuring basic customer protections are in place. The key instruments for doing so will be the granting and enforcement of licences by the UC, with appropriately targeted licence conditions.

For small service providers, it is envisaged some regulatory requirements (mainly in the form of licence conditions) will apply uniformly across all service areas (or operations) to all service providers, while some may be applied in a tiered approach based on the scale of service areas (measured by number of connections per service area).

The two key elements of the proposed proportionate regime are:

- enhanced transparency of service provision and outcomes for customers and the community
- key customer protections.

These are discussed in more detail below.

In addition, it is proposed that provision be made in the WSSS Act for additional regulatory requirements to be applied should targeted regulation fail to achieve the desired objectives in terms of ensuring water supply and sewerage services serve the long-term and evolving interest of customers and communities. Such an approach applies in the new regulatory framework for the New Zealand water sector whereby there is scope to switch to more active regulation of service providers to allow consumer protections to be strengthened if information gathered by the regulator reveals that issues exist for certain suppliers. This could include the power for the regulator to set, for specific suppliers, maximum/minimum revenues and prices, as well as minimum quality standards and performance requirements.

It is also proposed that the existing fallback provisions in division 7 of the WSSS Act conferring powers on the UC to take over operations of a licensee would remain, noting this could now apply to a larger number of licensees. Under division 7 (section 32) the take-over provisions apply if, in the UC's opinion, a licensee has contravened a material condition of their licence or any other requirement of the WSSS Act, or a licensee's licence ceases and it is necessary to take over the licensee's operations (or some of them) to ensure water supply and sewerage services are provided to customers.

Enhanced transparency of service provision and outcomes for customers and the community

The first key element of the proposed approach is to enhance transparency by requiring the UC to publicly report to the minister on the performance of service providers in the Territory, to identify any problems requiring close attention and remedial action, and priority areas for improvement.

This reporting should focus on key risks to customers by looking at service outcomes such as:

- water quality and supply reliability and security – including, for example, compliance with Australian drinking water guidelines, number and duration of planned and unplanned supply interruptions, duration and severity of water restrictions, and number of complaints about the water service
- wastewater service reliability and quality – including, for example, compliance with environmental regulatory requirements, number of sewage overflows and sewer main breaks, and odour (and other) complaints.

It is envisaged the report could be similar to the annual Northern Territory Power System Performance Review (NTPSPR) published by the UC, which focuses on overall power system, generation and network performance in the Darwin-Katherine, Alice Springs and Tennant Creek power systems. Where possible and relevant, the NTPSPR compares current performance with historical data to identify trends and industry benchmarks to provide context to the results:

> *The NTPSPR is intended to inform a broad range of stakeholders, including the responsible minister, government, electricity licensees and industry participants, about the key outcomes in the Territory's electricity supply industry. By assessing performance in 2024-25, the review highlights any areas of concern, trends, and emerging issues, enabling better planning, investment decisions, and value-for-money assessments for consumers. This regular reporting plays a critical role in promoting transparency and accountability, ensuring electricity licensees are held accountable for operational decisions and*

performance that ultimately affect customers.[13]

Similar public performance reporting by regulators of water utilities occurs in other jurisdictions. For example:

- the Office of the Tasmanian Economic Regulator (OTTER) publishes an annual *State of the Industry Report*.[14] As noted in the latest report, the purpose is to make TasWater accountable for its performance by providing stakeholders with relevant information. It includes an overview of the performance of the Tasmanian water and sewerage industry, and identifies key priorities for improved performance by TasWater. The report is prepared in consultation with other industry regulators and with input from TasWater, and covers the key areas of pricing and customer service; compliance with drinking water quality, dam safety and environmental obligations; network reliability; and financial performance. The report fulfils a legislative obligation imposed on OTTER in the *Water and Sewerage Industry Act 2008*. This reporting requirement is in addition to OTTER's regulation (determination) of TasWater's prices
- under the new economic regulation framework to be applied in New Zealand, the Commerce Commission will oversee an information disclosure regime, which will include the Commission reporting publicly on the performance of water service providers (see Box 3)
- In NSW, DCCEEW collects and publishes information on local water utilities' operating and financial performance. This includes a publicly accessible online performance monitoring data dashboard that provides a comparison of all local water utilities in regional NSW.

[13] Northern Territory Utilities Commission, Northern Territory Power System Performance Review 2024-25,
[14] Office of the Tasmanian Economic Regulator, June 2025, Report on the State of the Tasmanian Water and Sewerage Industry 2023-24

Box 3: New Zealand water reforms: Approach to proportionate regulation

Full economic regulation is only being applied to Watercare, the largest water utility in New Zealand. This will involve full price and service regulation by the New Zealand Commerce Commission.

All other service providers will be subject to a lighter form of regulation known as information disclosure. This regime will require water service providers to publish robust information on planning, investment and performance. The Commerce Commission will then provide a range of analysis of this information to help the public understand how their water service provider is performing individually and compared to others, and to track changes over time.

The Commission has just published its proposed information disclosure requirements. It is a staged introduction, with initial focus on:

- investment and asset management – understanding how regulated suppliers plan for and maintain water infrastructure to ensure reliable services over time
- financial sustainability – assessing whether regulated suppliers are financially positioned to deliver services now and into the future
- ring-fencing – making sure money collected for water services is used for water services.

The information required will include details about actual and forecast capital investment plans and expenditure, operating costs, revenue, tariffs/charges, financing plans, service quality, customer engagement and asset management.

While information disclosure will be its initial focus, the Commission has other tools available to it, should they be required.

It is proposed the UC determine, in consultation with the water service providers, the precise information to be collected and published. It is envisaged this will need to be tailored to the entities involved and may evolve over time, but at a minimum should focus on key risks to customers relating to water and wastewater service quality, reliability and security. It is proposed the requirement to provide such information to the UC would be one of the licence conditions imposed on the water service providers.

Key customer protections

Another key element of the proposed proportionate regulation is to ensure customers of the small service providers have similar basic customer protections as those afforded to customers of PWC.

It is proposed that small service providers be required, as a licence condition, to develop a customer contract approved by the UC, setting out the rights and responsibilities of customers and licensee regarding water and sewerage services, including arrangements for dealing with complaints and resolving disputes.

A customer contract should be written in easily accessible language with fair and reasonable terms, and conditions of service.

It is also proposed that small service providers be required to prepare a summary of the customer contract in a form approved by the UC and distribute a copy of the summary to each of the licensee’s customers.

5.4. Legislative requirements and implementation

To implement the above proportionate regulatory approach, the key legislative change required to the WSSS Act is for small water service providers to be subject to licensing by the UC.

The existing licence condition provisions under section 42 of the WSSS Act appear broadly appropriate for small (as well as large) service providers, but a more detailed review of the appropriateness of these and other elements of the licensing provisions of the Act (for example, the requirement for licensees to prepare an asset management plan under section 48) would need to be undertaken.

In order to provide for the annual public reporting by the UC of water service providers' performance as set out above, it is proposed to include an obligation in the WSSS Act similar to section 45 (b) of the *Electricity Reform Act 2000*, which requires the UC to 'review and report to the minister on the performance of the Territory's power system'.

5.5. Alternative options

One alternative to the proposed approach would be to apply full economic regulation to all service providers (including small service providers) similar to those proposed for PWC as set out earlier in this paper. However, the application of full economic regulation, including formal price reviews to small service providers, would likely impose costs greater than the benefits, given the resourcing required and the capacity of small service providers to participate effectively in such processes.

Another alternative would be for regulatory oversight of small service providers be undertaken by government, rather than the UC. However, there are likely to be economies and other benefits in concentrating responsibility for economic regulation of all water utilities within the one body (UC), and there is nothing from the experience of other jurisdictions (such as NSW and Queensland) to suggest this alternative option would be more effective in promoting improved performance.

5.6. Issues to resolve

Issues to resolve include the detail of small service providers' licence conditions and requirements related to the content of their customer contracts and information/performance reporting.