



Independent Pricing and Regulatory Tribunal

Review of the 2005 - 2008 Operating Licence for State Water Corporation

Issues Paper

Water - Issues Paper DP91
September 2007



Independent Pricing and Regulatory Tribunal

Review of the 2005-2008 Operating Licence for State Water Corporation

Water — Issues Paper DP91
October 2007

© Independent Pricing and Regulatory Tribunal of New South Wales 2007.

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

ISBN 978-1-921328-03-9 DP91

The Tribunal members for this review are:

Dr Michael Keating, AC, Chairman

Mr James Cox, Full Time Member

Ms Sibylle Krieger, Part Time Member

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

Greg Dodd (02) 9113 7726

Bob Burford (02) 9290 8408

Michael Seery (02) 9290 8421

Independent Pricing and Regulatory Tribunal of New South Wales

PO Box Q290, QVB Post Office NSW 1230

Level 2, 44 Market Street, Sydney NSW 2000

T (02) 9290 8400 F (02) 9290 2061

www.ipart.nsw.gov.au

Invitation for submissions

The Tribunal invites written comment on this document and encourages all interested parties to provide submissions addressing the matters discussed.

Submissions are due from State Water Corporation by 16 November 2007 and submissions are due from Stakeholders by 14 December 2007.

We would prefer to receive them by email <ipart@ipart.nsw.gov.au> with Subject “Review of Operating Licence for State Water Corporation”.

You can also send comments by fax to (02) 9290 2061, or by mail to:

Review of Operating Licence for State Water Corporation
Independent Pricing and Regulatory Tribunal
PO Box Q290
QVB Post Office NSW 1230

Our normal practice is to make submissions publicly available on our website <www.ipart.nsw.gov.au>. If you wish to view copies of submissions but do not have access to the website, you can make alternative arrangements by telephoning one of the staff members listed on the previous page.

We may choose not to publish a submission – for example, if it contains confidential or commercially sensitive information. If your submission contains information that you do not wish to be publicly disclosed, please indicate this clearly at the time of making the submission. IPART will then make every effort to protect that information, but it could be subject to appeal under freedom of information legislation.

If you would like further information on making a submission, the Tribunal’s submission policy is available on our website.

Contents

Invitation for submissions	iii
1 Introduction	1
1.1 Review process	1
1.2 Scope of the review	2
1.3 Tribunal's considerations	2
1.4 Purpose of this issues paper	4
2 Overview of State Water's functions and area of operations	5
2.1 State Water's functions	6
2.2 Area of operations	7
3 Regulatory framework	9
3.1 Role of the Operating Licence	9
3.2 Commonwealth Water Act	10
3.3 Water Sharing Plans	11
3.4 Price regulation	12
4 Memoranda of Understanding	13
5 Customer protection and community engagement	14
5.1 Code of practice and procedure on debt management	14
5.2 Complaint handling procedures	15
5.3 Community Consultative Committee and valley-based Customer Service Committees	16
6 Water delivery operations	17
6.1 Supply constraints	17
6.2 Water Metering	18
7 Performance indicators	19
8 Operational Audits	20
9 Issues	21

1 Introduction

The Independent Pricing and Regulatory Tribunal of NSW (IPART) is conducting a review of State Water Corporation's (State Water) Operating Licence. The current licence will expire on 23 June 2008.¹ IPART is required to review this licence and recommend to the Minister the terms of an amended or new Operating Licence, effective from 24 June 2008.²

1.1 Review process

In conducting its review, IPART will consult with key stakeholders, including State Water and environmental, community and water user advocacy groups. IPART invites all interested parties, including members of the public, to make submissions to the review on the issues highlighted in this paper, as well as any other matter they consider relevant to State Water's current Operating Licence.

IPART also plans to hold a public workshop to provide further opportunities for stakeholders to present their views. Arrangements for this workshop will be publicised closer to the date.

The timetable for the review is provided in Table 1.1. Details on how to make a submission can be found at the front of this paper.

Table 1.1 Timetable for review

Action	Timeframe
Release issues paper	8 October 2007
Receive submission from State Water	16 November 2007
Receive submissions from other stakeholders	14 December 2007
Hold public workshop (in Sydney)	February 2008
Provide recommended new or amended Operating Licence to Minister	April 2008

The new or amended Operating Licence will be gazetted in May 2008, and come into operation on 24 June 2008.

¹ State Water Corporation Operating Licence 2005-2008, cl 1.2.

² State Water Corporation Operating Licence 2005-2008, cl 1.3.

1.2 Scope of the review

At the commencement of this review the current operating licence had only been in operation for two years, as it only commenced in June 2005. This means that there has been limited experience with many aspects of the current operating licence and the impact on State Water. There is therefore some uncertainty about the regulation of some aspects for State Water in the future.

IPART also understands that the Commonwealth Government's National Plan for Water Security³ has the potential to affect the regulatory environment of water utilities that operate within the Murray-Darling Basin. The most important impacts are likely to be associated with the implementation of the Commonwealth *Water Act 2007* (Commonwealth Water Act) and subsequent Basin Plan. Since State Water is the principal water utility within the NSW area of the Murray Darling Basin, the implementation of this Act has the potential to affect many aspects of State Water's operations, including its Operating Licence.

With this in mind, IPART has decided to focus its review on those areas of the Operating Licence that require immediate attention against the backdrop of this changing regulatory environment. Therefore, the review will primarily examine potential improvements in the following aspects of State Water's Operating Licence:

- ▼ The alignment of State Water's activities and functions with its statutory powers under the Operating Licence.
- ▼ The definition of State Water's area of operations, and the functions it undertakes outside this area.
- ▼ Recognition of the Commonwealth Water Act within the Operating Licence, and the consistency of State Water's regulatory functions with this Act.
- ▼ The effectiveness and appropriateness of State Water's Memoranda of Understanding (MoU) with NSW Government departments.
- ▼ The adequacy of the provisions and procedures State Water has established for consumer protection and stakeholder engagement.
- ▼ The adequacy of State Water's efforts to minimise supply interruptions and improve meter accuracy.
- ▼ The approach to auditing State Water's compliance with its Operating Licence.

1.3 Tribunal's considerations

IPART is authorised to undertake this review by clause 30(2) of the *State Water Corporation Act 2004*. This clause provides that IPART has the functions of making recommendations to the Minister with respect of the granting, amendment or cancellation of State Water's Operating Licence.

³ The Federal Government announced on 25th January 2007 a \$10 billion National Plan for Water Security and to establish a national framework for the management of the Murray Darling Basin.

IPART will conduct this review under Part 4B of the *Independent Pricing and Regulatory Tribunal Act 1992*. This Part includes a requirement that IPART must take account of Government policy that is communicated to it. Part 4B also provides that the Minister is not bound by IPART's recommendations.

Section 1.3 of the current Operating Licence provides the objectives for this review, these are:

- a) to determine whether the Operating Licence is fulfilling its objectives,
- b) to review any matter required to be reviewed by this Operating Licence,⁴ and
- c) to determine the terms of any renewal of this Operating Licence.⁵

During the review, IPART will consider any matters it considers to be relevant to these objectives, including all the submissions it receives. It will also consider the findings of State Water's first Operational Audit (covering the period 2005-2006) to assess opportunities for improvement.

Fundamentally, IPART is interested in stakeholders' views about the extent to which the current Operating Licence fulfils its objectives. The role and objectives of the Operating Licence are further explored in Chapter 3.

State Water has a monopoly in the supply of certain services within its area of operations. The Operating Licence, along with other regulatory instruments, is intended to protect the community from abuse of that market power by State Water. IPART will consider how effectively the Operating Licence fulfils this intent.

IPART is mindful of concerns about the burden of regulation, and the costs that regulation imposes on 'doing business' which must ultimately be passed to customers. Therefore, IPART intends to prepare a Regulatory Impact Statement (RIS) as part of its review. This will involve assessing the expected impacts of options to amend the Operating Licence, and their scale and incidence across stakeholders. IPART will take the RIS into account when making its recommendations for the amended operating licence. This process is intended to minimise the likelihood of unnecessary regulatory burden and maximise the potential benefits to customers, the community and the environment. IPART expects that submissions to this issues paper will help to inform the RIS. IPART encourages stakeholders to include information on the costs and benefits of any proposals they make in their submissions.

IPART is also mindful that it is just one of several agencies involved in regulating State Water. Therefore, it will consider whether any regulation imposed by the Operating Licence is consistent with the regulatory framework and avoids unnecessary overlap.

⁴ There are no matters required to be reviewed by this Operating Licence.

⁵ State Water Corporation Operating Licence 2005-2008, cl 1.3.1.

1.4 Purpose of this issues paper

This issues paper is intended to assist stakeholders in preparing submissions to the review. It provides background information about State Water, and identifies the key issues on which IPART particularly seeks comment:

- ▼ Chapter 2 provides an overview of State Water, its functions and area of operations
- ▼ Chapter 3 outlines the regulatory framework that State Water operates in, and explains the role of the Operating Licence and how the new Commonwealth Water Act might affect some of the components of this framework, including the Water Sharing Plans under the *Water Management Act 2000*, and price regulation
- ▼ Chapters 4 to 6 discuss the requirements under the current Operating Licence in relation to:
 - the establishment of MoU with NSW Government Departments
 - customer protection and community engagement
 - water delivery operations
- ▼ Chapter 7 outlines the aspects of performance standards and indicators that IPART will examine as part of this review
- ▼ Chapter 8 discusses the current approach to auditing State Water's compliance with its Operating Licence, and possible changes to this approach
- ▼ Chapter 9 lists the issues that IPART would like stakeholder feedback on.

2 Overview of State Water's functions and area of operations

State Water was established as a State Owned Corporation (SOC)⁶ under the *State Water Corporation Act 2004* on 1 July 2004. The key objective of corporatising State Water was to separate the Government's commercial water delivery functions from its policy and regulatory functions, in line with National Competition Policy requirements⁷ and the National Water Initiative (NWI). This separation was intended to increase transparency and cost recovery in water delivery and resource management, and reduce potential conflicts of interest.

State Water maintains, owns and operates approximately \$2.7 billion of assets⁸, which enables it to deliver water to irrigation corporations, country town water supply authorities, farms, mines and electricity generators – primarily by releasing flows from its dams and using natural streams as conduits. It also provides water for stock and domestic users, and is responsible for delivering environmental flows on regulated rivers.⁹

Prior to corporatisation, State Water was an agency of the Department of Energy, Utilities and Sustainability (DEUS) and before that, Department of Land and Water Conservation. In April 2007 the Department of Water and Energy (DWE) was created, which incorporates most of the functions of the former Department of Energy, Utilities and Sustainability (DEUS) and the water-related functions of the former Department of Natural Resources as well as the Metropolitan Water Directorate from the former NSW Cabinet Office. State Water has a close association with DWE, as DWE maintains a role in regulating water access, use and management. DWE sets the overall policies for ensuring NSW water resources are sustainable, and licences the extraction and use of water.

⁶ A corporatised entity remains in government ownership and is accountable to its shareholder, the Government. It operates as a single legal entity at arm's length from the government. This enables it to focus on commercial objectives, while operating in a framework that replicates the disciplines and incentives that lead non-government businesses towards efficient commercial practices.

⁷ As a signatory to the National Competition Policy, the NSW Government was committed to implementing the Water Reform Framework, which was endorsed by the Council of Australian Governments (COAG) in 1994. The Framework (Attachment A, item 6(c)) requires the structural separation of water delivery functions from water resource management and regulation functions. NSW signed the National Water Initiative on 24th June 2004.

⁸ State Water Corporation communication to IPART, 9 October 2007.

⁹ Regulated rivers are rivers where flows are regulated by dams or weirs as proclaimed by the New South Wales Government.

Specifically, the role of DWE in water management includes:

- ▼ Water licensing – issuing and monitoring licences to extract surface and ground water.
- ▼ Water management – working with Catchment Management Authorities on local water management issues.
- ▼ Water sharing plans – sharing water between the environment and water users.
- ▼ Natural resource assessment – monitoring the impact of water use on our rivers, lakes, wetlands, and groundwater.
- ▼ Water trading – promoting water trading through permanent water licences and other measures.
- ▼ Water compliance – ensuring fair and equitable access to water for all users, including the environment.

State Water and DWE have complementary roles in water management and delivery which necessitates a cooperative approach to water management in NSW. State Water's customers are required to hold a water access licence, issued by DWE (on behalf of the Minister for Climate Change, Environment and Water). The quantity of water available to an access licence holder in any year depends on the water available to the area in which the access licence holder is situated. Customers are also required to obtain a water use approval and a water supply work approval from DWE for irrigation activities.

2.1 State Water's functions

State Water's main role is to deliver water to customers and for environmental benefit, to manage water infrastructure assets, and to deliver commercial services.

Section 6 of the *State Water Corporation Act 2004* states the principal functions of State Water are:

- ▼ to capture, store and release water
- ▼ to construct, maintain and operate water management works
- ▼ undertake any other functions conferred or imposed on it by the Operating Licence, the *State Water Corporation Act 2004* or any other Act or law.

State Water may also:

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

In addition, State Water is responsible for operating the Fish River Water Supply Scheme, so has the functions of a water supply authority in relation to this scheme.¹⁰

State Water has advised IPART¹¹ that it would like the alignment of its actual activities with statutory powers conferred by the Operating Licence considered as a part of this review. For example, State Water is concerned that it undertakes functions in the Border Rivers area and Lowbidgee without having clear statutory power to do so. This could be rectified if it was included in the Operating Licence. That is, the operating licence could reflect these functions or State Water could enter into contractual arrangements with the relevant bodies to undertake the functions of those bodies.

IPART seeks comment on the following:

- 1 How should State Water's Operating Licence be amended to better align its current activities and the statutory powers conferred by the Operating Licence?

2.2 Area of operations

Section 11.4 of the current Operating Licence enables State Water to exercise its functions within or outside the area of operations.¹² State Water's area of operations covers the whole of NSW, except for the areas of operations of Sydney Water Corporation, Sydney Catchment Authority, Hunter Water Corporation and other water supply authorities (other than the Fish River Water Supply Scheme). Figure 2.1 (page 8) illustrates State Water's area of operation, and indicates the location of its major dams and customer service areas.

State Water has told IPART¹³ that in its view, there is some overlap between its operations and those of Hunter Water, and this is causing confusion. State Water considers that Section 11.4 of the Operating Licence could be reworded to expressly allow it to continue to perform its functions in the area of operations of another water authority, where those functions do not conflict. The Act provides that the operating licence may authorise State Water to carry out its functions in the area of operations of other water corporations and water supply authorities with the agreement of those bodies.

IPART seeks comment on the following:

- 2 How can the Operating Licence be modified to accommodate any functions that State Water undertakes outside its area of operations?

¹⁰ *State Water Corporation Act 2004*, section 15 (2).

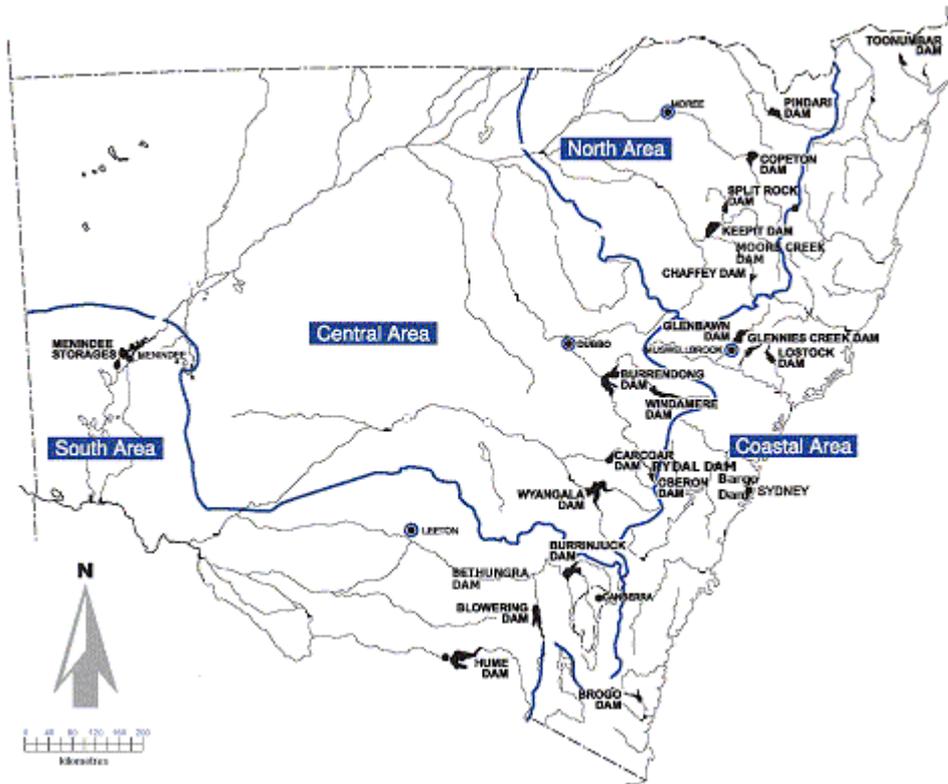
¹¹ State Water email communication 13 July 2007.

¹² *State Water Corporation Operating Licence 2005-2008*, cl 11.4.

¹³ State Water email communication 13 July 2007.

2 Overview of State Water's functions and area of operations

Figure 2.1 State Water's area of operations



Source: State Water Corporation.

3 Regulatory framework

State Water operates within a complex regulatory framework. This framework imposes constraints on the prices it can charge for its services, how much water it can supply, and to whom. Apart from the Operating Licence, other key components of the regulatory framework include:

- ▼ NSW legislation, including the *State Water Corporation Act 2004*, the *Water Management Act 2000* and *Water Act 1912* (NSW)
- ▼ IPART pricing functions
- ▼ regulation of operations by other NSW agencies or organisations, including the Dam Safety Committee, the Catchment Management Authorities, and the Natural Resources Commission
- ▼ Council of Australian Governments initiatives, particularly the National Water Initiative (NWI).

In addition, the newly developed Commonwealth *Water Act 2007* is a component of State Water's regulatory framework. The following sections outline the role of the Operating Licence and discuss the Commonwealth Water Act and how it might affect the existing regulatory framework – particularly Water Sharing Plans developed under the *Water Management Act 2000* and price regulation.

3.1 Role of the Operating Licence

The main role of the Operating Licence is to ensure that State Water¹⁴:

- ▼ Meets the objectives and requirements of the *State Water Corporation Act 2004*.¹⁵
- ▼ Operates its business of capturing, storing and releasing water in an effective, efficient and commercially viable manner.
- ▼ Recognises the rights of customers and communities in which it operates.
- ▼ Undertakes certain functions of the Minister administering the *Water Management Act 2000* or the Ministerial Corporation.

¹⁴ State Water Operating Licence 2005-2008, cl 1.1.

¹⁵ Clause 5 (1) of the *State Water Corporation Act 2004* provides that the principle objective of State Water is to capture, store and release water in an efficient, effective, safe and financially responsible manner. Clause 5 (2) of the Act sets out other objectives relating to conducting a successful business, social responsibility, compliance with principles of ecologically sustainable development and responsibility towards regional development and decentralisation.

The Operating Licence does this by:

- ▼ stipulating the terms and conditions of operation
- ▼ establishing quality and performance standards, and
- ▼ ensuring compliance with Operating Licence obligations, through an audit program.

IPART needs to ensure that the Operating Licence meets the requirements set out for the operating licence in the *State Water Corporation Act 2004*,¹⁶ and is consistent with regulatory best practice.

In addition, IPART considers that the Operating Licence should complement, and be consistent with, other regulatory requirements imposed on State Water. Importantly, the Operating Licence should not duplicate other regulatory instruments, such as those imposed by DWE in relation to water management.

3.2 Commonwealth Water Act

On January 25 2007, the Prime Minister announced the National Plan for Water Security. Following this announcement, the Commonwealth Government worked with States and Territories to negotiate a referral of powers to ensure implementation of the plan.¹⁷ All states with responsibility for part of the Murray Darling Basin except Victoria agreed to a referral of constitutional powers.

Subsequent negotiations between Victoria and the Commonwealth failed to reach a compromise. On 24 July 2007, the Prime Minister announced the Commonwealth Government's decision to proceed with legislation giving effect to the National Plan for Water Security using the Commonwealth's powers under the Constitution.¹⁸ This legislation, the Commonwealth *Water Act 2007*, was passed by the Senate on 17 August 2007 and received royal assent on 3 September 2007.

The Commonwealth Water Act gives effect to a number of key elements of the National Plan for Water Security. The principle elements of this Act include:

- ▼ the establishment of a Murray Darling Basin Authority (MDBA)
- ▼ introduction of basin-wide planning through a Basin Plan to be developed by the MDBA within 2 years of the establishment of the MDBA
- ▼ a role for the ACCC in water trading and pricing, and
- ▼ the expansion of the Bureau of Meteorology's functions in relation to water information and standards.

¹⁶ Specifically s12 of the *State Water Corporation Act 2004*.

¹⁷ The Senate Standing Committee on Environment, Communications, Information Technology and the Arts. Report on the *Water Bill 2007 [Provisions]* and *Water (Consequential Amendments) Bill 2007 [Provisions]*, August 2007 (Senate Report), p 6.

¹⁸ Ibid.

The Commonwealth Water Act is important to this Operating Licence review because it has the potential to affect the regulatory regime of State Water. In addition, while State Water will continue to perform its functions, the Commonwealth Water Act requires it to do so in a way that is consistent with the Basin Plan.

Section 35 of the Commonwealth Water Act provides that:

... an operating authority...must not:

- a) do an act in relation to basin water resources if the act is inconsistent with the Basin Plan; or
- b) fail to do an act in relation to Basin Water resources if the failure to do that act is inconsistent with the Basin Plan.

IPART needs to take account of the Commonwealth Water Act in conducting this review to ensure that State Water operates consistently with the Basin Plan. It also considers it important that the Operating Licence makes this consistency clear, to ensure that State Water is operating under a firm and stable regulatory framework.

IPART seeks comment on following:

- 3 How should the Operating Licence be amended to reflect an obligation for decisions made by State Water to have regard to the Commonwealth *Water Act* 2007 and be consistent with the Basin Plan under this Act?

3.3 Water Sharing Plans

Under the *Water Management Act 2000*, Water Sharing Plans set out the rules to share water between the environment and extractive users in specified areas and to determine how much water will be available for extraction by users in those areas.¹⁹ These plans can also include:

- ▼ mandatory conditions that must be included in access licences and Water Supply Work Approvals²⁰, and
- ▼ monitoring and reporting requirements that must be imposed as conditions of approvals issued under the *Water Management Act 2000*.²¹

Water Sharing Plans have a life of 10 years, and can be amended by the Minister for Water and Energy during this period. Each plan must be reviewed by the Minister within the fifth year of its term, and must be audited at least every 5 years by an audit panel appointed by the Minister. Each plan must contain performance indicators that are monitored throughout the term and reported on as part of the review or audit. The Minister may establish an implementation program that sets out the means by which the provisions of a Water Sharing Plan are to be achieved. DWE must review this program annually and include the results in its annual report.

¹⁹ Information from the DWE website, http://www.dnr.nsw.gov.au/water/sharing_plans.shtml.

²⁰ *Water Management Act 2000* section 17 (c).

²¹ *Id* at section 17 (b).

Under the Commonwealth Water Act, state water agencies will continue to manage storages, river flows, and water deliveries. They will also continue to manage any water sharing arrangements that were in place prior to the announcement of the National Plan for Water Security on 25 January 2007 for the duration of each plan. Schedule 4 of the Commonwealth *Water Act 2007* includes details of NSW Water Sharing Plans²². These plans will become transitional water resource plans with nominated dates of expiry as defined in this schedule. The impact on DWE and State Water with regard to Water Sharing Arrangement is expected to be minimal for the purposes of this review, as most changes will occur post 2014 when the current plans expire and new plans are adopted which are consistent with the format set out in the Basin Plan, under the Commonwealth Water Act.

3.4 Price regulation

The Council of Australian Governments Agreement, the National Competition Principles and the NWI principles all specify that the prices charged for water-related services must recover the costs of providing these services to customers. Currently, IPART is responsible for determining bulk water prices, and has regard to these principles while complying with the requirements set out under the *Independent Pricing and Regulatory Tribunal Act 1992*.

However, under the Commonwealth Water Act, rules related to water charges are to be determined by the Commonwealth Minister for the Environment and Water Resources in consultation with the Australian Competition and Consumer Commission (ACCC).²³ IPART may still make pricing determinations for State Water; however IPART would make determinations under arrangements that are accredited by the ACCC. Alternatively, the NSW Government may choose to refer its constitutional powers under an inter-governmental agreement currently being negotiated. If it did so, the ACCC and the Commonwealth Minister would be responsible for determining State Water's prices.

Although the future roles and responsibilities for bulk water pricing are uncertain at this stage, IPART wishes to consider whether it should make amendments to the licence to accommodate these uncertainties. For example, it could impose a general obligation that State Water complies with the determinations of the relevant pricing regulator. Alternatively, it may be that such an obligation is unnecessary at this stage or may do no more than duplicate State Water's obligations under other legislation.

IPART seeks comment on the following:

- 4 Should the requirement in the Operating Licence for pricing compliance be expanded, for example to include a reference to any other relevant regulator?

²² Water Act (Cth) 2007, s 241.

²³ Water Act (Cth) 2007, Part 4.

4 Memoranda of Understanding

The existing Operating Licence requires State Water to enter into a Memorandum of Understanding (MoU) with each of the Directors-General of:

- ▼ the Department of Environment and Climate Change (DECC) (formerly DEC)
- ▼ the Department of Primary Industries (DPI), and
- ▼ the Department of Water and Energy (DWE) (formerly DNR).²⁴

These memoranda are intended to form the basis for cooperative relationships between these departments and State Water. They should recognise the roles of the different government agencies in regulating water access, use and management, and the role of State Water in delivering water and managing assets. They should also address the coordination of functions and associated responsibilities between the agencies and State Water in undertaking their respective roles, including arrangements for information sharing, and for making and announcing available water determinations and controlled flows.

IPART is aware that State Water and DWE have not yet agreed how some functional responsibilities are to be allocated between them. This issue needs to be resolved, since an effective partnership between DWE and State Water is necessary for the efficient management of NSW water resources. In addition, since DNR has recently been restructured to form DWE, State Water and DWE need to review the current MoU in light of this change.

IPART also notes that State Water's 2005-2006 Operational Audit²⁵ was critical of the existing relationship between State Water and DNR (now DWE). However, IPART made no recommendations to the Minister to impose additional requirements on State Water.

IPART intends to consider the effectiveness and appropriateness of State Water's MoU with other government agencies, particularly DWE, as part of this review.

IPART seeks comment on the following:

- 5 Should the Operating Licence include an obligation on State Water to use its best endeavours to negotiate a new MoU with DWE reflecting the allocation of functional responsibilities to each agency?

²⁴ State Water Corporation Operating Licence 2005-2008, cl 2.3.

²⁵ IPART, *State Water Corporation Operational Audit, Report to The Minister*, May 2007, Halcrow Report, Section 4.

5 Customer protection and community engagement

State Water provides services to customers on the 'regulated rivers'²⁶ that it manages. These services include providing water allocations from dams, billing and metering. State Water also provides billing and metering services for unregulated river and groundwater users on behalf of DWE, the agency responsible for managing water use in unregulated rivers and groundwater systems.

One of the roles of the Operating Licence is to protect the rights of customers. It does this by establishing minimum customer service levels that State Water is required to meet, and by requiring State Water to take the views of its customers and the community into account in its decision-making. Some of the specific Operating Licence requirements related to customer protection include:

- ▼ establishing and maintaining a code of practice and procedure on debt management (clause 4.6);
- ▼ establishing and maintaining complaint handling procedures (section 5);
- ▼ establishing a state-wide Community Consultative Committee and valley-based Customer Service Committees (clauses 4.1 and 4.2).

5.1 Code of practice and procedure on debt management

To ensure that it assists customers facing genuine financial hardship, the Operating Licence requires State Water to establish and maintain a code of practice and procedure on debt management. Under cl 4.6.2 of the Operating Licence this code must:

- (a) provide for deferred payment by instalment options, and
- (b) provide that payment options are advised in bills.

The code must also be made publicly available.²⁷

State Water has established such a code, and made it publicly available via its website. However, the 2005 - 2006 Operational Audit identified that although the code provides for at least two forms of alternative payment plans, State Water has not effectively communicated the availability of these plans to customers. In particular, it has not met the Operating Licence requirement that information about

²⁶ Regulated rives are rivers where water flow is controlled by structures such as dams or weirs.

²⁷ State Water Corporation Operating Licence 2005-2008, cl 4.6.3.

payment options be provided in customer bills.²⁸ In response to the auditor's findings, State Water stated that they did not want to advertise the alternative payment options in customer bills as the alternative options are reserved for those customers who are truly experiencing hardship. State Water stated that they advise payment options once a customer has been established as experiencing hardship paying their bills. The auditors accepted the stance of State Water and made the recommendation that clause 4.6.2 of the Operating Licence, could be reviewed to reflect the stance of State Water on alternative payment plans. State Water has subsequently advised IPART that it would like the requirements on alternative payment plans to be reviewed during the current Operating Licence review²⁹.

IPART seeks comment on the following:

- 6 How can the Operating Licence requirements in relation to alternative payment plans be revised to facilitate operational improvement while ensuring that those customers that need them have access to alternative payment plans?

5.2 Complaint handling procedures

Complaint handling procedures provide a way for customers to seek and obtain information and redress from State Water. They also provide a way to highlight systemic faults and the views of customers on system performance, which can be factored into asset management and planning processes.

The Operating Licence requires State Water to establish and maintain internal complaint handling procedures based on AS4269-1995 *Complaint Handling*. It also requires State Water to provide information to customers on how to use these procedures, and to record and report annually on the number and types of complaints it receives and how these complaints were resolved.

In addition, the Operating Licence requires State Water to establish and maintain a dispute resolution scheme for a dispute resolution body, or be a member of an industry-based dispute resolution scheme, to which it can refer disputes that have not been resolved through its internal procedures. State Water has established this scheme with the Energy and Water Ombudsman NSW (EWON). The scheme complies with AS4608 *Prevention, Handling and Resolution of Disputes*. State Water must record and report annually to IPART on the functioning of this scheme, and the number and type of complaints made to the scheme or to other bodies (such as courts or tribunals) and any systemic problems identified.

Standards Australia recently released an updated Australian Standard for complaint handling, AS/ISO 10002-2006 *Customer satisfaction - Guidelines for Complaints Handling in Organisations*. It may be necessary for State Water to update its complaint and dispute handling arrangements to be consistent with this new standard.

²⁸ IPART, *State Water Corporation Operational Audit, Report to The Minister*, May 2007, Halcrow Report, Section 5.4.2, p 5.18.

²⁹ State Water email communication 13 July 2007.

IPART seeks comment on the following:

- 7 Is it necessary for State Water to update its complaint and dispute handling schemes in line with the updated Australian Standard for complaint handling?

5.3 Community Consultative Committee and valley-based Customer Service Committees

The Operating Licence requires State Water to establish a state-wide Community Consultative Committee and valley based Customer Service Committees (CSC). These committees are intended to provide a strategic forum through which State Water can engage with its stakeholders and understand issues that may be common to a number of valleys and regions.

State Water is required to provide the CSCs with information within its possession or under its control to enable the CSCs to discharge the tasks assigned to the CSCs. The implementation of State Water's new Financial Management System has caused some delays in providing financial data to the CSCs and was identified as an outstanding issue from the 2005-2006 Operational Audit.³⁰ The CSCs are reliant on adequate information and involvement from State Water in order to be effective. The current Operating Licence review presents an opportunity to review the flow of information from State Water to the CSCs to ensure adequate information is being delivered.

IPART seeks comment on the following:

- 8 Are changes required to the Operating Licence so that State Water adequately satisfies the information requirements of the Customer Service Committees (CSCs) and effectively engages the CSCs in consultation?

³⁰ IPART, *State Water Corporation Operational Audit, Report to The Minister*, May 2007, Halcrow Report, Section 5.4.1, page 5.18.

6 Water delivery operations

Under the current Operating Licence, State Water must operate its water management works in a way consistent with any Operating Licences or approvals granted by the Minister for Water and Energy and must only release water from those works consistent with any relevant Water Management Plan under the *Water Management Act 2000*.

Drought conditions experienced in recent years have served to highlight the value of water. Low rainfall and population growth have placed considerable pressure on existing water sources in a number of centres, forcing water supply authorities to undertake new supply augmentation and demand management initiatives.

6.1 Supply constraints

The Operating Licence requires that State Water endeavour to manage its water resources in a way that conserves water, takes account of any physical supply constraints, and ensures the timely availability of water to its customers to minimise supply interruptions.

State Water has indicated to IPART that the main physical supply constraint is the size of water delivery channels. However, these channels are controlled by the Water Sharing Plans (controlled by DWE), and so are outside its control. When State Water identifies supply constraints, it advises the customers concerned of the times when water will not be available.

State Water has also advised that it has implemented actions to improve the timely delivery of water, including temporary increases in weir pool height in periods of higher demand, and the implementation of a SCADA (Supervisory Control and Data Acquisition) system to more accurately measure flows and volumes.³¹

IPART intends to consider whether any change in the Operating Licence could help State Water improve its performance in relation to supply constraints.

IPART seeks comment on the following:

- 9 How can the Operating Licence improve performance in coordinating accurate water releases to provide timely delivery of water whilst taking into account physical supply constraints?

³¹ IPART, *State Water Corporation Operational Audit, Report to The Minister*, May 2007, Halcrow Report, Section 7, p 7.7.

6.2 Water Metering

The Operating Licence requires State Water to report to IPART annually on action it undertakes to address the issue of metering accuracy.

State Water finalised a set of NSW Water Extraction Monitoring Standards³² (Standards) in November 2005, which it developed in consultation with the Customer Service Committees, peak water user groups, Catchment Management Authorities, and meter suppliers and retailers. These Standards will need to be reviewed in light of the proposed national standards being developed under the National Water Initiative (NWI). It is expected that these national standards will be released before the new Operating Licence commences.

IPART seeks comment on the following:

10 How can the Operating Licence ensure that metering performance measures are appropriately in line with National Water Initiative standards?

³² IPART, *State Water Corporation Operational Audit, Report to The Minister, May 2007*, Halcrow Report, Section 7, p 7.9.

7 Performance indicators

The *State Water Corporation Act 2004* requires that State Water's Operating Licence specify the performance standards that State Water's systems and services must meet in relation to water delivery and other functions.

IPART is mindful that obligations to meet higher standards and measure and report on additional indicators could potentially increase the cost of business for State Water, which could impose higher costs to customers. Therefore it will aim to ensure that the benefit provided by any higher standard or additional indicator exceeds the associated cost.

The 2005-2006 Operational Audit identified concerns about some of the information systems of State Water and individual performance indicators specified in Schedule 1 of the Operating Licence, such as the indicator requiring "water delivery within +/- one day of scheduled delivery time".³³ State Water has advised IPART that it would like the appropriateness of these performance indicators reviewed as a part of the current Operating Licence review.³⁴

Under the National Water Initiative, IPART is responsible for the collection, audit and collation of certain data to be included in the National Rural Performance Reports. In IPART's view, the power to undertake these data collection and auditing functions should be formalised in the Operating Licence.

IPART seeks comment on the following:

- 11 In addition to the requirements imposed under the NWI Rural Benchmarking, what performance measures need to be incorporated into the operating licence?

³³ IPART, *State Water Corporation Operational Audit, Report to The Minister*, May 2007, Halcrow Report, Section 9.

³⁴ State Water email communication 13 July 2007.

8 | Operational Audits

Operational Audits inform the Government about State Water's compliance with its Operating Licence. They also inform stakeholders and the community of State Water's performance in a range of areas.

Section 12 of the Operating Licence requires IPART to undertake a comprehensive audit of State Water's compliance with its Operating Licence once every two years.

For other water agencies, IPART has adopted a more targeted, risk-based approach to auditing. Under this approach, an independent audit of high-risk areas of the Operating Licence is undertaken every year, while lower risk or less critical areas are monitored by IPART based on reports by the agencies.

For example, IPART recently adopted a risk-based approach to defining the scope of Operational Audits for Sydney Water Corporation and the Sydney Catchment Authority. Under this approach, the first Operational Audit of a new Operating Licence will involve a comprehensive audit of all aspects of the Operating Licence. The subsequent auditing and reporting arrangements may be less onerous, depending on:

- ▼ the nature of the risks involved in the particular Operating Licence area.
- ▼ levels of compliance achieved during the initial audit, where applicable
- ▼ auditor recommendations as part of the initial audit.

IPART intends to consider whether this approach is appropriate for State Water. In doing so, IPART will be mindful of the provisions placed on State Water under the Commonwealth Water Act concerning audits conducted by the National Water Commission for the implementation of the Basin Plan and Water Resource Plans. Where possible, IPART will endeavour to avoid the duplication of reporting requirements for audits.

At this stage, IPART considers that a risk-based approach to auditing would be better suited to State Water's changing regulatory framework, as the importance of auditing compliance with particular clauses and conditions could be assessed on a year-by-year basis, helping to minimise any overlap with the reporting requirements of the Commonwealth Water Act.

IPART seeks comment on the following:

12 Should State Water's Operating Licence adopt a risk based auditing framework?

9 | Issues

IPART has identified the following issues as being important to this review and seeks comment on them.

- 1 How should State Water’s Operating Licence be amended to better align its current activities and the statutory powers conferred by the Operating Licence? 7
- 2 How can the Operating Licence be modified to accommodate any functions that State Water undertakes outside its area of operations? 7
- 3 How should the Operating Licence be amended to reflect an obligation for decisions made by State Water to have regard to the Commonwealth *Water Act* 2007 and be consistent with the Basin Plan under this Act? 11
- 4 Should the requirement in the Operating Licence for pricing compliance be expanded, for example to include a reference to any other relevant regulator? 12
- 5 Should the Operating Licence include an obligation on State Water to use its best endeavours to negotiate a new MoU with DWE reflecting the allocation of functional responsibilities to each agency? 13
- 6 How can the Operating Licence requirements in relation to alternative payment plans be revised to facilitate operational improvement while ensuring that those customers that need them have access to alternative payment plans? 15
- 7 Is it necessary for State Water to update its complaint and dispute handling schemes in line with the updated Australian Standard for complaint handling? 16
- 8 Are changes required to the Operating Licence so that State Water adequately satisfies the information requirements of the Customer Service Committees (CSCs) and effectively engages the CSCs in consultation? 16
- 9 How can the Operating Licence improve performance in coordinating accurate water releases to provide timely delivery of water whilst taking into account physical supply constraints? 17
- 10 How can the Operating Licence ensure that metering performance measures are appropriately in line with National Water Initiative standards? 18
- 11 In addition to the requirements imposed under the NWI Rural Benchmarking, what performance measures need to be incorporated into the operating licence? 19
- 12 Should State Water’s Operating Licence adopt a risk based auditing framework? 20

