

**Review of the Operating Licences  
for Sydney Water Corporation and  
the Sydney Catchment Authority**

**Issues Paper**

**INDEPENDENT PRICING AND REGULATORY TRIBUNAL  
OF NEW SOUTH WALES**

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for Sydney Water Corporation and  
the Sydney Catchment Authority**

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### **Submissions**

Public involvement is an important element of the Tribunal's processes. The Tribunal therefore invites submissions from interested parties to all of its investigations.

Submissions should have regard to the specific issues that have been raised. There is no standard format for preparation of submissions but reference should be made to relevant issues papers and interim reports. Submissions should be made in writing and, if they exceed 15 pages in length, should also be provided on computer disk in word processor, PDF or spreadsheet format.

#### **Confidentiality**

Special reference must be made to any issues in submissions for which confidential treatment is sought and all confidential parts of submissions must be clearly marked. *However, it is important to note that confidentiality cannot be guaranteed as the Freedom of Information Act and section 22A of the Independent Pricing and Regulatory Tribunal Act provide measures for possible public access to certain documents.*

#### **Public access to submissions**

All submissions that are not subject to confidentiality will be made available for public inspection at the Tribunal's offices immediately after registration by the Tribunal and also via the Tribunal's website. Transcriptions of public hearings will also be available.

#### **Public information about the Tribunal's activities**

A range of information about the role and current activities of the Tribunal, including copies of latest reports and submissions can be found on the Tribunal's website at [www.ipart.nsw.gov.au](http://www.ipart.nsw.gov.au)

***Submissions on the issues raised in this paper should be received no later than 16 July 1999. Comments or inquiries regarding this review should be directed to:***

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## Abbreviations

COAG	Council of Australian Government
DLWC	Department of Land and Water Conservation
EPA	Environment Protection Authority of NSW
HRC	Healthy Rivers Commission
IPART	Independent Pricing and Regulatory Tribunal
MoU	Memorandum of Understanding
REP	Regional Environment Plan
SCA	Sydney Catchment Authority
SWCM Act	<i>Sydney Water Catchment Management Act 1998</i>
SWC	Sydney Water Corporation
SWI	Sydney Water Inquiry
WAMC	Water Administration Ministerial Corporation

## **1 INTRODUCTION**

The NSW Government has established the Sydney Catchment Authority (SCA). This Authority was created to be responsible for the management of Sydney's drinking water catchments and bulk water supply. The SCA will commence operations on 2 July 1999.

In creating the SCA, the Government removed from Sydney Water Corporation (SWC) those functions it previously undertook in relation to catchment management and bulk water supply.

The *Sydney Water Act 1994* and the *Sydney Water Catchment Management Act 1998* require each organisation to have an operating licence. The Sydney Water Inquiry (SWI) recommended that the Operating Licences should be developed through a consultative and transparent process at arm's length from SWC and SCA. The Inquiry recommended that the Independent Pricing and Regulatory Tribunal (IPART) should be requested to make recommendations to Government on the terms of:

- the initial Operating Licence for SCA; and
- an Operating Licence for SWC.

Subsequently, the Premier, under Section 9(1)(b) of the *Independent Pricing and Regulatory Tribunal Act 1992*, requested that the Tribunal recommend the terms of the operating licence for the SCA and the SWC. A copy of the terms of reference is at Appendix A.

The Terms of Reference require that recommendations be made to the Premier by 30 September 1999 and that the Operating Licences come into effect on 1 January 2000. This timetable recognises that it is not feasible for the Tribunal to complete the review prior to the Sydney Catchment Authority commencing operations on 2 July 1999. The Governor will issue an initial Operating Licence for the SCA, and an amended Operating Licence for SWC, to apply from 1 July 1999 until 31 December 1999.

### **1.1 Purpose of this issues paper**

The Issues Paper is intended to help SWC, SCA and interested parties prepare submissions to the review. The paper outlines the scope of the review and identifies the main issues on which the Tribunal seeks input and public comments. However, the Tribunal welcomes submissions on any issues that interested parties feel should be addressed in response to the terms of reference (see Appendix A for the terms of reference).

### **1.2 Review process**

The Premier has requested that the Tribunal carry out public and stakeholder consultations for the review of the operating licences for SCA and SWC. The Tribunal is concerned that it recommends terms for the operating licence that have regard to community expectations and interests. The Tribunal invites public submissions and will hold a public hearing.

The timetable for this review is:

<b>Action</b>	<b>Timeframe</b>
Advertisement and release of Issues Paper	25 June 1999
Submissions due	16 July 1999
Public Hearing	30 July 1999
Report to Premier	30 September 1999

The Public Hearing will be held at IPART's offices, Level 2, 44 Market St, Sydney, 30 July 1999 commencing at 10:00am.

### **1.3 How to make submissions**

The Tribunal invites submissions from interested parties. Submissions should be sent to:

The Chairman  
Independent Pricing and Regulatory Tribunal of New South Wales  
PO Box Q290  
QVB Post Office NSW 1230  
Attention: Water Operating Licence Review

IPART may also be contacted by email at [ipart@ipart.nsw.gov.au](mailto:ipart@ipart.nsw.gov.au)

## **2 SUMMARY OF KEY ISSUES**

The Tribunal considers that the key questions relating to the operating licences for SWC and SCA are:

- What is an operating licence?
- What is the role and scope of an operating licence in the overall regulatory framework?
- What is the relationship between the operating licence and other instruments dealing with water supply, public health, environment protection and catchment management?
- How can the operating licence improve the accountability of SWC and SCA?
- How should standards be set and should they be set in the operating licence? Who is responsible for interpreting the standards?
- How should compliance with the requirements of the operating licence be monitored and enforced?
- What is the relationship between the operating licences for the SCA and SWC?

## 3 BACKGROUND

### 3.1 Industry structure

#### 3.1.1 Sydney Water Corporation

In 1995 the Sydney Water Board was corporatised via the *Water Board (Corporatisation) Act 1994*<sup>1</sup> becoming the Sydney Water Corporation (SWC). The Act provided for SWC to be a Company State Owned Corporation and hence subject to Corporation Law. Following enactment of the *Water Legislation (Drinking Water and Corporate Structure) Act 1998* it became a statutory, rather than a company, State-owned corporation under the *State Owned Corporations Act 1989*.

SWC is responsible for water supply, sewerage services and waste water disposal within metropolitan Sydney, Illawarra and Blue Mountains. The *Sydney Water Act 1994*<sup>2</sup> lists three principal objectives for SWC:

- To be a successful business and, to this end:
  - to operate at least as efficiently as any comparable businesses, and
  - to maximise the net worth of the State's investment in the Corporation,
  - to exhibit a sense of social responsibility by having regard to the interests of the community in which it operates
- To protect the environment by conducting its operations in compliance with the principles of ecologically sustainable development contained in section 6(2) of the *Protection of the Environment Administration Act 1991*;
- To protect public health by supplying safe drinking water to its customers and other members of the public in compliance with the requirements of any operating licence.

The Act gives equal importance to these objectives. In implementing these principal objectives SWC has other special objectives under the Act to meet: reducing risks to human health and preventing degradation to the environment.

#### 3.1.2 Sydney Catchment Authority

The *Sydney Water Catchment Management Act 1998* (SWCM Act) establishes the SCA to be under the control and direction of the Minister. Currently the Minister responsible for SCA is the Minister for the Environment.

The SWCM Act<sup>3</sup> lists the principal objectives of the SCA as:

- To ensure that the catchment areas and the catchment infrastructure works are managed and protected so as to promote water quality, the protection of public health and public safety, and the protection of the environment.
- To ensure that water supplied by it complies with appropriate standards of quality.
- Where its activities affect the environment, to conduct its operations in compliance with the principles of ecologically sustainable development contained in section 6(2) of the *Protection of the Environment Administration Act 1991*.

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<sup>1</sup> As part of the *Water Legislation (Drinking Water and Corporate Structure) Act 1998* the *Sydney Water Board (Corporatisation) Act 1994* was renamed the *Sydney Water Act 1994*.

<sup>2</sup> Section 21, *Sydney Water Act 1994*.

<sup>3</sup> Section 14(1), *Sydney Water Catchment Management Act 1998*.

- To manage the Authority's catchment infrastructure works efficiently and economically in accordance with sound commercial principles.

In implementing these principal objectives SCA has the same special objectives to meet under the Act as SWC, namely reducing risks to human health and preventing degradation to the environment.

### 3.1.3 Arrangements between Sydney Catchment Authority and Sydney Water Corporation

The SWCM Act<sup>4</sup> requires SCA to enter into arrangements with SWC regarding the supply of water. The arrangements are to include the following matters:

- standard of quality of the water supplied
- continuity of water supply
- maintenance of adequate reserves of water by SCA
- cost to be paid by the SWC for the supply of water to it.

These arrangements may overlap, impact, or be impacted by, the Operating Licences for SWC and SCA.

## 3.2 Regulatory environment

### 3.2.1 Sydney Water Corporation

Under the *Sydney Water Act 1994*, key elements of the regulatory framework for SWC include:

- Operating Licence – sets out the operating and customer standards to be met by the Corporation, including a customer contract.
- Licence Regulator – a body to monitor compliance with the conditions of the operating licence and other provisions, including Memoranda of Understanding as they relate to obligations in the operating licence.
- Memoranda of Understanding (MoU) to clarify Sydney Water's relationship with its primary regulators, namely the Environment Protection Authority (EPA), NSW Health and the Water Administration Ministerial Corporation (WAMC).

In addition, SWC is subject to a number of regulators. The primary regulators are:

- EPA– responsible for receiving water quality.
- NSW Health - responsible for safety and quality of drinking water.
- Department of Land and Water Conservation (DLWC) - a water abstraction licence will be required for SWC, where it owns and controls structures that fall within the ambit of the *Water Act 1912*.
- IPART – determining prices for services.

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<sup>4</sup> Section 22, *Sydney Water Catchment Management Act 1998*.

It is important to clarify the roles and responsibilities of SWC regulators in order to understand the context of the operating licence in the overall regulatory framework.

***The Tribunal seeks comments as to whether SWC obligations relating to public health, water quality and environment protection fit better in an operating licence or within other statutory instruments as they currently exist.***

### **3.2.2 Sydney Catchment Authority**

The SCA is subject to a similar regulatory framework to SWC involving an Operating Licence, auditing by the Licence Regulator and requirements to enter into memoranda of understanding with the EPA, Department of Health and the Water Administration Ministerial Corporation.

The SWCM Act provides for the development of regulations that will allow the SCA to exercise a concurrence power over development in the Inner and Outer Catchments.<sup>5</sup> The regulations may provide for concurrence and other roles in the granting of licences under other legislation, such as pollution control legislation, which affects the catchment areas. The regulations may also provide for the Authority to exercise an inspection or enforcement role under other legislation in relation to activities carried out in the catchment area.

Other regulators that have responsibilities in the catchment area include:

- NSW Health – responsible for safety and quality of drinking water
- EPA – responsible for receiving water quality
- DLWC – responsible for water allocation including the regulation of environmental flows. SCA will need a ‘water management licence’ from the Water Administration Ministerial Corporation (under Part 9 of the Water Act 1912)
- Local government – range of regulatory functions and development approvals
- National Parks and Wildlife Service (NPWS) – joint responsibility with SCA for managing Special Areas for both water quality and broader ecological considerations.

***The Tribunal seeks comments as to whether SCA obligations relating to public health, water quality, environment protection and catchment management fit better in an operating licence or within other statutory instruments as they currently exist.***

***The Tribunal seeks views on how the operating licence could clarify any overlap in regulatory responsibilities.***

## **3.3 Operating licences**

The Original SWC Operating Licence was granted on 1 January 1995.

The Amended SWC Operating Licence has been produced by removing the provisions of the Original SWC Operating Licence that become the responsibility of SCA, and making consequential amendments. The Initial SCA Operating Licence includes the requirements in SWC’s original operating licence relevant to the SCA’s functions, and the requirements of

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<sup>5</sup> If granted, the concurrence power would require that the approving authority, for example local council, to obtain the agreement of the SCA prior to granting development approval.

the SWCM Act. Both the Amended SWC Operating Licence and the Initial SCA Operating Licence are to commence on 2 July 1999 and expire on 31 December 1999.

The New Operating Licences for both SWC and SCA are expected to take effect from 1 January 2000. These licences will have been subject to the consultative review process.

The timeline distinguishes between the various operating licences for SCA and SWC, and these terms will be used in this issues paper.

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	<b>1 Jan 1995</b>	<b>2 July 1999</b>	<b>1 Jan 2000</b>
SWC	Original SWC Operating Licence	Amended SWC Operating Licence	New SWC Operating Licence
SCA		Initial SCA Operating Licence	New SCA Operating Licence

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## **4 KEY ISSUES TO BE CONSIDERED**

### **4.1 Sydney Water Inquiry**

The SWI recommended that the current Operating Licence should be replaced with a licence, which clearly outlines for both SWC and the SCA:

- the authorities' obligations in terms of customer, operating, health and environmental outcomes
- the actions to be taken and sanctions applied in the event that obligations are not met; and
- audit and review provisions clearly outlining the role of the Water Auditor and the processes, timeframes and other triggers for review, including the introduction of revised standards and future contamination events.<sup>6</sup>

The SWI recommended a strengthening of the regulatory framework controlling the operations of both SWC and the SCA to increase the accountability of these bodies to the Government and the community.<sup>7</sup>

### **4.2 Scope of the operating licence**

The *Sydney Water Act 1994*<sup>8</sup> and the SWCM Act<sup>9</sup> specify the terms and conditions of the Operating Licence for SWC and SCA respectively (see Box 1 and Box 2). However, the legislation does not specify the scope of these terms and conditions. The scope will largely be determined by the role of the Operating Licence.

### **4.3 Role of the operating licence**

The Tribunal considers that the role of the Operating Licence is of fundamental importance to this inquiry.

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<sup>6</sup> Sydney Water Inquiry, Final Report Volume 1, p 25, Recommendation 61.

<sup>7</sup> Sydney Water Inquiry, Final Report Volume 1, p 7.

<sup>8</sup> Section 14 of the *Sydney Water Act 1994*.

<sup>9</sup> Section 26 of the *Sydney Water Catchment Management Act 1998*.

At its most basic level an Operating Licence empowers the SWC and the SCA to undertake certain activities in their respective area of operations. Another perspective is that an Operating Licence should reflect reasonable public expectations of the performance requirements and outcomes to be met by SWC and SCA.

SWC has changed status from a company State Owned Corporation (SOC) to statutory SOC. In effect the Minister can now exercise the power to issue a direction in the public interest particularly on the grounds of urgency, public health or safety. It is not clear how this will change the role of SWC's Operating Licence.

***The Tribunal seeks views on the role of the Operating Licence for SCA and SWC.***

The SWI recommended that the operating licences for SWC and SCA should clearly outline obligations in terms of customer, operating, health and environmental outcomes.

***The Tribunal seeks views as to how the Operating Licences can reflect reasonable public expectations of the performance requirements and outcomes to be met by SWC and SCA.***

Under the *Protection of the Environment Operations Act 1997* (commencing on 1 July 1999) the EPA will licence SWC's waste water discharges through licences for sewage treatment plants and reticulated sewage transport systems. What is the role for the Operating Licence in setting outcomes for environment protection relating to waste water discharge?

***The Tribunal seeks comments as to whether the Operating Licence for SWC and SCA should include health and environmental outcomes regulated by EPA, DLWC and Department of Health or in other instruments?***

In order to evaluate what should be in the Operating Licence it is important to clarify the relationships between the different instruments. For example, the MoU between SWC and NSW Health requires a drinking water improvement program and a drinking water quality monitoring program. How should these requirements be reflected in the Operating Licences?

***The Tribunal seeks comments on the relationship between the different instruments including the Operating Licence, arrangements regarding water supply, MoUs, and other relevant instruments such as demand management strategy.***

#### **4.4 Terms of the operating licence for Sydney Water Corporation**

Section 14 of the *Sydney Water Act 1994* prescribes the terms and conditions that must be included within the operating licence (see Box 1). While this provides a necessary starting point, it may not represent a complete list of those items that could be included in the terms of the operating licence. The following section identifies a number of issues that may be considered.

**Box 1 Terms and conditions of SWC operating licence**

1. An operating licence is subject to the terms and conditions determined by the Governor, but (so far only as is relevant to the ambit of the operating licence) must include terms or conditions under which the Corporation is required:
  - a) to provide, construct, operate, manage and maintain efficient, co-ordinated and commercially viable systems and services for supplying water, providing sewerage services and disposing of waste water, and
  - b) to provide, operate, manage and maintain a stormwater drainage system within the capacity of the stormwater drainage system included in the business undertaking transferred under Part 3 from the Water Board to the Corporation as at the date of the transfer of the business undertaking, and
  - c) to ensure that the 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 and set out in the operating licence, and
  - d) to compile indicators of the direct impact on the environment of the Corporation's activities:
    - (i) to enable preparation of an annual report on the Corporation's performance, and
    - (ii) to provide information for a year to year comparison in relation to the Corporation's performance in this area.
2. The operating licence granted to the Corporation is to provide for the preparation of an operational audit in accordance with Division 2 of Part 6.
3. The operating licence granted to the Corporation is to provide, or (if there is more than one such licence) the operating licences granted to the Corporation are to provide collectively, for the provision of the systems and services referred to in subsection (1) (a) and (b) in the area of operations or the relevant part of the area of operations, except to the extent that:
  - a) the Governor has, by order made under section 10 (2), restricted the systems and services that the Corporation may provide in the area of operations or the relevant part of the area of operations, or
  - b) this Act otherwise provides.
4. Despite this section, the provision, operation, management or maintenance of the stormwater drainage system described in subsection (1) (b) need not be required as a term or condition of an operating licence if the Minister is satisfied that satisfactory arrangements have been made for the service to be provided by another appropriate body.
5. If it is proposed to transfer responsibility for the provision, operation, management or maintenance of the stormwater drainage system to a council or councils (within the meaning of the *Local Government Act 1993*), in order to be satisfied that satisfactory arrangements have been made for the purposes of subsection (4), the Minister:
  - a) is to cause written notice of the proposed transfer and details of the proposed new arrangements to be served on the council or councils concerned and is to invite them, by that notice, to comment on the proposal within 40 days after service of the notice, and
  - b) is to be satisfied that at least the same standard of services will be provided under the new arrangements as had been provided by the Corporation.
6. If new arrangements are entered into in pursuance of subsections (4) and (5), the Corporation must, within 14 days after the arrangements are entered into, give notice of the terms of the arrangements by notification published in the Gazette.

#### 4.4.1 Activities permitted in the operating licence

The original Operating Licence permits SWC to undertake a range of activities in the area of operations. These activities are to:

- provide, construct, operate, manage and maintain efficient, coordinated and commercially viable systems and services for:
  - storing and supplying water
  - sewerage services and disposing of waste water; and
- provide, construct, operate, manage and maintain certain stormwater drainage services, in the Area of Operations.

In the past, SWC has tended to take a narrow view on some of these permissions in the Operating Licence. For example, in its submission to the Tribunal's Stormwater inquiry, SWC stated:

Apart from the above (legislative and licence requirements) ... there are no requirements on Sydney Water in relation to stormwater service standards. Consequently, there would be no specific regulatory requirements on the Corporation other than to **maintain the hydraulic capacity of the system applying at the date of transfer**<sup>10</sup> (emphasis added)

***The Tribunal seeks comments on how the Operating Licence could give incentives to SWC to improve the level of service provided, not just maintaining existing levels.***

##### *Area of Operations*

The amended operating licence does not prevent SWC from exercising its functions outside its Area of Operations.

***The Tribunal seeks comments as to what functions SWC needs to exercise outside its Area of Operations and why.***

#### 4.4.2 Quality & performance standards

##### *Water Quality standards*

Water quality standards are currently expressed as complying with ARMCANZ<sup>11</sup> and NHMRC<sup>12</sup> guidelines. The Tribunal notes that these guidelines do not set standards for cryptosporidium and giardia. However, the United Kingdom and the United States of America have set specific standards.

***The Tribunal seeks views on the appropriate standards in the operating licence for drinking water quality and 'other' water quality (eg water re-use).***

The standards could be in the Operating Licence, MoU or other regulatory structures. For example, legislation could be used to require SWC to meet drinking water quality standards set by NSW Health.

***The Tribunal invites comments on the appropriate regulatory instruments for water quality standards.***

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<sup>10</sup> Sydney Water Corporation, submissions to IPART's Review on Stormwater 1998, p 15.

<sup>11</sup> Agriculture and Resource Management Council of Australia and New Zealand.

<sup>12</sup> National Health and Medical Research Council.

Once water quality standards are set, who is responsible for interpreting what the water quality standards mean and require? For example, who determines what action is to be taken in the event the standards are not met?

***The Tribunal seeks comments as to the role of NSW Health, EPA, Healthy Rivers Commission, and the Licence Regulator in setting and monitoring drinking water quality standards.***

Ensuring the quality of drinking water is a balance between prescriptive standards and the adoption of a risk management approach.

***The Tribunal seeks comments on how to achieve an appropriate balance between prescriptive standards and the risk management approach.***

#### *Water quality data*

The SWI<sup>13</sup> made a number of recommendations about water quality data. These include:

- greater transparency in the reporting of water quality data to restore public confidence in SWC (Rec 14)
- a system should be developed to provide on-line access to test results for regulatory agencies (Rec 15)
- greater co-ordination within Government of the collection of data on water quality for use by all relevant agencies (Rec 13)
- water quality data should be provided through a suitably qualified independent laboratory – National Association of Testing Authorities accreditation (Rec 50 & 52).

The *Water Legislation Amendment (Drinking Water and Corporate Structure) Act 1998* requires Sydney Water to produce and publish three monthly consumer confidence reports on the quality of drinking water. Summaries of the reports and details of their availability are to be provided to each customer with their water bill.

***The Tribunal seeks views as to what provisions need to be included in the operating licence regarding water quality data.***

#### *Service Interruptions*

There is a concern that the existing performance criteria for water pressure, continuity, and sewage surcharges are more relevant to system management than customer service.

***The Tribunal seeks views as to whether the existing customer service standards in the Operating Licence for water pressure, continuity, and sewage discharge are appropriate performance measures.***

Two examples of limitations of existing performance measures include:

1. the criteria for water supply continuity and sewage surcharges are based on numbers of customers rather than incidents, and customers with multiple incidents in one year are counted only once
2. the water pressure criterion can not be accurately audited, as pressure can not be measured unless there is a gauge installed for a particular reason.

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<sup>13</sup> Sydney Water Inquiry, Final Report Volume 1, p 18 & 24.

***The Tribunal seeks views as to whether customer service standards need to be developed for 'other' water (eg water re-use).***

#### **4.4.3 Indicators of Sydney Water Corporation's impact on the environment**

The *Sydney Water Act 1994* requires SWC to compile indicators of the direct impact of the environment of its activities.<sup>14</sup> SWC has developed environmental indicators and has reported on these indicators to the Licence Regulator, eg in an Annual Environment Report 1997. The role of the operating licence will determine the range of environmental indicators to be included in the operating licence.

***The Tribunal seeks views on how environmental indicators should be incorporated in the operating licence. Additionally, what processes should be in place if performance is assessed to be unsatisfactory?***

#### **4.4.4 Customer service standards and guarantees**

##### *Customer Contract*

The *Sydney Water Act 1994* requires that SWC publish the terms and conditions of the customer contract and these must be set out in the operating licence.<sup>15</sup> The original Operating Licence included the Customer Contract as a schedule.

The Customer Contract explains the rights of SWC customers and outlines its policies and procedures for handling complaints and giving redress and compensation if services are not provided to agreed standards set out in the operating licence and customer contract. The Customer Contract has not been varied since SWC was corporatised in 1994. The Tribunal notes that six months notice must be given before a variation to the customer contract becomes effective.<sup>16</sup>

***The Tribunal seeks comments on how the Operating Licence should deal with provisions of the Customer Contract.***

##### *Customer versus consumer*

A customer is defined in the customer contract as a land owner who is connected to water services, sewer services or is within a stormwater drainage area.

The term 'customer' does not cover everyone that uses services provided by SWC. For example, SWC's water and sewerage services are used by landowners, residents, visitors and travellers in public places. The Tribunal notes that such a definition means that renters are not customers of SWC even though they may indirectly pay for water usage.<sup>17</sup>

As a result of the narrow customer definition, the audit of the operating licence could be restricted to the SWC's operations on land owners who pay service charges.

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<sup>14</sup> Section 14(1)(d) of the *Sydney Water Act 1994*.

<sup>15</sup> Section 54 of the *Sydney Water Act 1994*.

<sup>16</sup> Section 59 of the *Sydney Water Act 1994*.

<sup>17</sup> The customer arrangement is between the landlord and SWC. However, in some cases the usage charge is passed on to the tenant. Where the tenancy agreement permits, the tenant is required to pay the usage component of the bill to the landlord.

***The Tribunal seeks comments on whether the operating licence should include the rights of consumers (ie the community at large) and if so, how could this be incorporated into the licence.***

#### *Complaint mechanisms*

During the water incident, where Sydney residents were advised to boil their water, there were concerns that the forms and nature of compensation and redress were inadequate in the operating licence. Another concern is that the current provisions do not encourage a focus on service to all consumers.

***The Tribunal seeks comments on the forms and nature of compensation and redress that should be included in the Operating Licence.***

While the operating licence requires the Licence Regulator to audit the effectiveness of SWC's performance in responding to complaints, the Licence Regulator has no formal power to investigate or resolve complaints.

The 1997 auditor stated that it was not possible to assess compliance with the operating licence's customer complaints requirements because SWC did not have a system that enabled it to report on its handling of complaints not related to pipeline management parameters of the operating licence. That is, their complaint system is designed for engineering related problems. Further, the auditor was concerned that SWC is unable to effectively measure and review all complaints.

The SWI recommended that SWC should be required to join or establish an independent industry based dispute resolution scheme.<sup>18</sup>

In recommending the level of rebate applicable for the Sydney water incident, the Tribunal suggested that an independent complaints mechanism is needed to handle general complaints and claims on incidents such as the recent contamination event.

***The Tribunal invites comments on whether there should be an independent complaints authority and, if so, what form it should take.***

#### *Customer Councils*

In accordance with Section 15 of the *Sydney Water Act 1994*, SWC must establish one or more Customer Councils to enable community involvement in issues relevant to SWC's obligations under the operating licence. These Customer Councils are to include the Corporate Customer Council and Regional Customer Council.

***The Tribunal seeks comments on the function and role of customer councils and whether these should be specified by the Operating Licence.***

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<sup>18</sup> Sydney Water Inquiry, Final Report Volume 1, p 26, Recommendation 73.

#### **4.4.5 Public health and environmental requirements**

The SWI recommended that the Operating Licence for SWC should clearly outline the obligations in terms of customer, operating, health and environmental outcomes.

The SWI recommended that the Operating Licence should be amended to require that MoUs include targets, timelines, and review provisions, and specifically require the Water Auditor to audit their contents.<sup>19</sup> Should the targets, timelines and review provisions be in the Memoranda of Understanding or should they be a condition of the Operating Licence?

***The Tribunal seeks views as to what aspects of the MoU timelines, targets and review provisions should be in the Operating Licence.***

The original operating licence for SWC requires the auditor to report on the achievements of the objectives of SWC's environmental plan. The 1997 audit report noted that "the role and scope of the Environmental Plan needs to be reviewed so that its purpose can be clarified".<sup>20</sup> The Tribunal notes that SWC produce an Annual Environmental Report and has in place WaterPlan 21.<sup>21</sup>

***The Tribunal seeks comments on the role of Environmental Plans and how the Operating Licence should deal them with.***

#### **4.4.6 Cost effective service provision**

The terms of reference require the Tribunal to consider cost effective service provision. This relates to efficiency of SWC's operation.

***The Tribunal seeks comments on how cost effective service provision could be incorporated in the operating licence and what efficiency indicators should be used.***

The terms of reference also require the Tribunal to consider the financial management framework within which SWC operates.

***The Tribunal invites comments on the implications this has for the operating licence.***

#### **4.4.7 Role of the Licence Regulator in auditing the operating licence**

Under the *Sydney Water Act 1994*, the Licence Regulator is a statutory body representing the crown and consists of 5 part-time members appointed by the Minister.

The Licence Regulator has been set up to monitor and report to the Minister on compliance with the licence, to identify breaches, and to advise on penalties and remedial action. The regulator is responsible for organising an annual audit of SWC's performance.<sup>22</sup>

The SWI recommended that the Licence Regulator should be required to investigate and audit any matter concerning the performance of SWC against their operating licence on an

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<sup>19</sup> Sydney Water Inquiry, Final Report Volume 1, p 26, Recommendation 72.

<sup>20</sup> Licence Regulator, 1997 Operational Audit of the Sydney Water Corporation, July 1998, p xiii.

<sup>21</sup> WaterPlan 21 is part of the Government's Waterways Package announced by the Premier on 1 May 1997.

<sup>22</sup> Sections 30 & 31 of the *Sydney Water Act 1994*.

annual basis. Also the Licence Regulator may obtain the Minister's agreement to conduct on-the-spot audits.<sup>23</sup>

Further, the Licence Regulator should be able to audit the operations of parts of SWC which are owned and/or operated by organisations external to the authorities, but form part of the overall treatment and distribution system. This includes water filtration plants.<sup>24</sup>

In a submission to the SWI, the Licence Regulator stated that it has no statutory power to comment upon the contents of the operating licence or the other documents for which it audits compliance.

***The Tribunal seeks comments on the appropriate role for the Licence Regulator in auditing the operating licence.***

***The Tribunal seeks views on whether there is an alternative and more powerful role for the Licence Regulator.***

The SWI reported that the Licence Regulator had stated that the objective of the audit must be to provide an independent assessment of value to the Minister, Government, the community in refining targets, identifying and reducing shortcomings and enhancing performance.

Under the original operating licence for SWC, many of the obligations provide minimal requirements for ensuring their implementation. For example, many requirements were not time limited, only required reporting on progress in implementation, or redirected compliance provisions to non-binding instruments (such as MoU) to be developed how and when the interested parties felt so inclined. For example, the MoU between NSW Health and SWC was signed in November 1997, almost three years after the operating licence was granted.

The effect of providing minimal requirements in the operating licence is to weaken accountability and to diminish the ability of the Licence Regulator to audit effectively.

***The Tribunal seeks views as to how to frame operating licence requirements to ensure accountability.***

The SWI recommended that the Licence Regulator should audit the contents of the MoUs, and that the MoUs should include targets, timelines and review provisions.<sup>25</sup> The terms of reference also address this point.

***The Tribunal seeks comments on how these requirements should be reflected in the operating licence.***

#### **4.4.8 Process, timeframe and other triggers for review of Operating Licence**

The original Operating Licence for SWC has not been varied since it was granted in 1 January 1995. While the mid-term review of the operating licence in November 1997 made recommendations to amend the licence, they were not adopted.

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<sup>23</sup> Sydney Water Inquiry, Final Report Volume 1, p 26, Recommendation 67.

<sup>24</sup> Sydney Water Inquiry, Final Report Volume 1, p 26, Recommendation 68.

<sup>25</sup> Sydney Water Inquiry, Final Report Volume 1, p 26, Recommendation 72.

The SWI recommended that there should be opportunities to review operating standards in line with changing community expectations and an increased understanding of costs and benefits.<sup>26</sup> Further, can audit recommendations be fed back into the operating licence.

***The Tribunal seeks comments on whether the Operating Licence can be an instrument that evolves to meet changed circumstances and Government, market and community priorities.***

***The Tribunal seeks comments on how the licence should deal with the revision of MoUs, other standards in the licence and other plans and strategies such as the Demand Management Strategy and Environment Plan.***

***The Tribunal invites views on how post audit recommendations from the Licence Regulator should be implemented and then audited in subsequent years.***

***The Tribunal seeks comments as to the process for moving forward an interim target in the operating licence.***

#### **4.4.9 Actions and sanctions if licence obligations are not met**

The *Sydney Water Act 1994* empowers the Licence Regulator to provide advice to the Minister concerning SWC's compliance with its operating licence, including advice as to penalties or remedial action required. The Licence Regulator has no authority to give directions to SWC.

The Licence Regulator could have much wider powers, as is the case in other jurisdictions. For example, the power to:

- issue fines to the operator for breaches of licence conditions and daily fines for continuing non-compliance
- issue fines to persons with direct management responsibility for the breach of licence condition
- notify the operator of a breach of a licence condition and request that the situation is remedied
- revoke the operating licence.

The *Sydney Water Act 1994*<sup>27</sup> states that the "Licence Regulator has such other functions as may be conferred or imposed on it by the operating licence".

***The Tribunal invites comment on the functions that may be conferred on the Licence Regulator through the operating licence.***

#### **4.4.10 Any other matters considered appropriate**

The Licence Regulator is responsible to the same portfolio Minister as SWC. This could potentially lead to a conflict of interest.

***The Tribunal seeks views on whether the Licence Regulator's legislative responsibility should be located outside the portfolios of the shareholding Ministers and the portfolio***

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<sup>26</sup> Sydney Water Inquiry, Final Report Volume 1, p 25, Recommendation 64.

<sup>27</sup> Section 31(3) of the *Sydney Water Act 1994*.

***Ministers for SWC and SWC, for example in the Premier's Department or the Attorney-General's Department?***

Treasury currently funds the Licence Regulator and the operating licence audit. In other industries, for example, for gas the cost of regulation is funded from the operating licence authorisation fee. If this were to occur for water then the operating licence would need to provide for such a fee.

***The Tribunal invites comments on how the cost of regulation could be incorporated in the operating licence.***

As part its National Competition Policy, the Council of Australian Governments (COAG) has adopted a strategic water reform framework.

***The Tribunal seeks views on whether the requirements under the COAG water reform framework should be included in the operating licence. If so, how could this be achieved?***

## **4.5 Terms of SCA Operating Licence**

Section 26 of the SWCM Act prescribes the terms and conditions that must be included within the operating licence (see Box 2). While this provides a necessary starting point, it may not represent a complete list of those items that could be included in the terms of the operating licence. The following section identifies a number of issues that may be considered.

### **Box 2 Terms and conditions of operating licence**

1. The operating licence is subject to the terms and conditions determined by the Governor, but must include terms or conditions under which the Authority is required:
  - a) to provide, construct, operate, manage and maintain efficient and co-ordinated viable systems and services for supplying water, and
  - b) to ensure that the systems and services meet the quality and performance standards specified in the operating licence in relation to water quality, service interruptions and other matters determined by the Governor and set out in the operating licence, and
  - c) to compile indicators (taking into account the catchment audits conducted under Part 5) on the ecological health of the catchment area (with particular reference to the vegetation cover, riparian zones and water quality) and of the impact of the Authority's activities (including polluting activities) on the catchment area:
    - (i) to enable preparation of an annual report on the Authority's performance, and
    - (ii) to provide information for a year to year comparison in relation to the Authority's performance in this area, and
    - (iii) to enable preparation of reports to Parliament as referred to in Division 5.
2. The operating licence is to provide for the preparation of an operational audit referred to in Division 2.

### **4.5.1 Activities permitted in the operating licence**

The initial Operating Licence permits the SCA to provide, construct, operate, manage and maintain systems and services in the Area of Operations.

***The Tribunal seeks comments on the activities, which the operating licence should permit SCA to undertake.***

*Area of Operations*

The SWCM Act allows for the grant of an operating licence that empowers SCA to exercise its functions outside the Area of Operations.<sup>28</sup> The Tribunal needs to understand why SCA would want to exercise its functions outside the Area of Operations.

***The Tribunal seeks comments as to what functions SCA needs to exercise outside its Area of Operations and why.***

**4.5.2 Quality and performance standards**

*Water quality standards*

The SWI recommended that water quality should be the primary consideration in decision making affecting Sydney's water catchment areas. Thus water quality will play an important role in SCA's management of the catchment. On the other hand, catchment and river health at critical locations will determine the extent to which water quality goals are achieved. These considerations need to be reflected in the operating licence.

The Healthy Rivers Commission was established to recommend environmental standards to Government on water quality, river flows and other aspects of river health, through a public inquiry process.

In its supplementary report, the Healthy Rivers Commission states:

Addition of specific water quality objectives relating to *Giardia* and *Cryptosporidium* would not lead to new or different strategies. Those already recommended by the Commission (that is, the steps that must be implemented to improve *river* health) set the direction for change, which itself is not dependent upon the availability of any particular set of numeric WQOs (Water Quality Objectives) ...Thus the Commission's recommendations relate to the *actions* that are needed, and its emphasis is on accountability for *action*, with any available numerically specified water quality goals providing useful benchmarks in assessing progress.<sup>29</sup>

***The Tribunal seeks views as to the appropriate water quality standards for SCA's operating licence.***

There are a number of regulators that have responsibilities in the catchment for water quality. These responsibilities require other agencies, in particular the EPA, Department of Urban Affairs and Planning, DLWC and Local Government, to undertake actions to improve water quality.

***The Tribunal seeks views on how the responsibilities of other agencies may impact on the scope of SCA's Operating Licence conditions for water quality.***

Once the water quality standards are set, who is responsible for interpreting what the water quality standards mean and require? For example, who determines what action is to be taken in the event that standards are not met?

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<sup>28</sup> Section 25 (1) of the *Sydney Water Catchment Management Act 1998*.

<sup>29</sup> Healthy Rivers Commission, *Independent Inquiry into the Hawkesbury Nepean River System*, Supplementary Report, April 1999, p 10.

***The Tribunal seeks comments as to the role of the SCA, EPA, Healthy Rivers Commission, NSW Health, DLWC, NPWS and the Licence Regulator in setting and monitoring water quality standards.***

The initial operating licence for the SCA details site specific water quality standards (eg for Prospect, Macarthur and Illawarra) and generic standards. In addition, the SCA is required under the SWCM Act to compile indicators of ecological health of the catchment relating to water quality.

***The Tribunal invites comments as to the relationship between the site specific water quality standards, generic standards and the water quality indicators on catchment health required under the SWCM Act.***

Ensuring the quality of drinking water is a balance between prescriptive standards and the adoption of a risk management approach.

***The Tribunal seeks comments on how to achieve an appropriate balance between prescriptive standards and the risk management approach.***

The SCA is required to enter into arrangements with SWC regarding the supply of water.<sup>30</sup> These arrangements must include the standard of quality of the water supplied and the penalties incurred if those standards are not met.<sup>31</sup> The SCA has a number of customers other than SWC. These customers have a range of water quality requirements that may not align with those of SWC.

***The Tribunal seeks comments on the relationship between the water quality standards specified in the arrangements between SCA and its customers and that in the operating licence.***

#### *Service interruptions*

The arrangements between SCA and SWC require SCA to provide certain levels of performance in relation to the supply of water.

***The Tribunal invites comments on which performance standards relating to service interruptions should be in the SCA's operating licence.***

### **4.5.3 Indicators of ecological health of the catchment**

Under Section 26(1)(c) of the SWCM Act, the SCA is required to compile indicators of the ecological health of the catchment area with particular reference to vegetation cover, riparian zones and water quality. These indicators will take into account the catchment audits as required by Section 42 of the Act.

The Healthy Rivers Commission has released a report on the Hawkesbury Nepean catchment. In its response to McClellan Inquiry, the Government requested the Commission to review its report to ensure that drinking water issues have been addressed adequately. In its supplementary report the Commission identified water quality objectives and broad strategic goals for the hydrological catchment. The Commission noted:

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<sup>30</sup> Section 22(1) of the *Sydney Water Catchment Management Act 1998*.

<sup>31</sup> Section 22(2)(a) of the *Sydney Water Catchment Management Act 1998*.

River health is determined by many parameters which are mutually dependent and interlinked, and management plans fashioned in this knowledge will frequently involve the joint determination of water quality objectives and the strategies to achieve them.

While there may be quantifiable parameters for commercial and system performance for the SCA, considerations relating to strategic management of drinking water catchments will be more difficult to put into an operating licence.

The SWI recommended that a REP be developed for the catchment, which incorporates HRC water quality objectives and catchment wide strategies.<sup>32</sup> The REP will be important for the SCA in securing its overall objectives.

***The Tribunal seeks comments on how the indicators of ecological health should be incorporated in the operating licence to enable performance assessment. Additionally, who is responsible for interpreting and deciding on implementation?***

The new operating licence may need the SCA to develop risk management plans and risk management zones. This framework will need to be based on a hydrological assessment of the patterns of natural phenomena within the catchments, and the implications of seasonal variations in terms of the goals attained and the way risks are managed by the SCA. The Tribunal notes that instruments such as REPs and Protection of the Environment Policies (under the *Protection of the Environment Operations Act 1997*) need to adopt these zones for the risk management approach to be effective.

***The Tribunal invites comments on what the operating licence should specify in terms of the process for the development of risk management plans for the catchment including time frame and public consultation.***

#### **4.5.4 Indicators of the impact of Sydney Catchment Authority's activities on the environment**

Under Section 26(1)(c) of the SWCM Act, the SCA is also required to compile indicators of the impact of its activities (including polluting activities) on the environment.

***The Tribunal seeks comments on how the indicators of the impact of SCA's activities on the environment should be incorporated in the operating licence to enable performance assessment.***

***The Tribunal seeks comments on what the operating licence should specify with respect to the process for developing indicators of the impact of SCA's activities on the environment including time frame and public consultation.***

#### **4.5.5 Environmental flows**

In the original SWC operating licence (granted 1 January 1995), SWC was required to prepare an Environmental Impact Statement (EIS) regarding the environmental flow regimes and other relevant matters for the Hawkesbury Nepean, the Woronora and Shoalhaven Rivers. The timeframe in the operating licence for the completion of the EIS was 36 months.

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<sup>32</sup> Sydney Water Inquiry, Final Report Volume 1, p 20, Recommendation 24.

In creating the SCA, the Government removed from SWC those functions it previously undertook in relation to catchment management. The SCA will now need to be licensed (under Part 9 of the *Water Act 1912*) as to their access to water by the Water Administration Ministerial Corporation and this licence will include requirements as to the provision of environmental flows. This means that the SCA has the responsibility for completing the EISs.

***The Tribunal seeks comments on what licence conditions should be specified in relation to the EIS regarding environmental flow regimes.***

### 4.5.6 Public health and environmental requirements

The SWI recommended that the Operating Licence for SCA should clearly outline the obligations in terms of customer, operating, health and environmental outcomes.

***The Tribunal seeks comments as to what public health and environmental requirements should go in the Operating Licence as opposed to existing requirements in the current regulatory framework, requirements in Regional Environment Plans and requirements in arrangements between SWC and SCA.***

***The Tribunal seeks views as to what aspects of the MoU timelines, targets and review provisions should be in the Operating Licence.***

### 4.5.7 Cost effective service provision

The Terms of Reference require the Tribunal to consider cost effective service provision. This relates to efficiency of SCA's operation in supplying water to SWC.

***The Tribunal seeks comments on how cost effective service provision could be incorporated in the operating licence and what efficiency indicators could be used. What should go into the arrangements between SCA and SWC versus the operating licence?***

The terms of reference also require the Tribunal to consider the financial management framework within which the SCA operates.

***The Tribunal invites comment on the implications this has for the operating licence.***

### 4.5.8 Role of the Licence Regulator in auditing the operating licence

The SWI recommended that the role and structure of the Licence Regulator be modified to enable it to undertake a stronger and better defined role in the management of Sydney's water.<sup>33</sup>

The SWCM Act 1998<sup>34</sup> provides for the Licence Regulator to undertake independent audits of the SCA and the activities of the primary regulators, namely the EPA and DLWC, with respect to their catchment activities and their performance in implementing the proposed Regional Environment Plan (REP).

***The Tribunal seeks comments on the appropriate role for the Licence Regulator in auditing the operating licence.***

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<sup>33</sup> Sydney Water Inquiry, Final Report Volume 1, p 26, Recommendation 66.

<sup>34</sup> Section 31(1)(c) of the *Sydney Water Catchment Management Act 1998*.

The SWI recommended that the Licence Regulator should audit the contents of the MoUs, and that the MoUs should include targets, timelines and review provisions.<sup>35</sup> The terms of reference also address this point.

***The Tribunal seeks comments on how these requirements should be reflected in the operating licence.***

#### **4.5.9 Processes, timeframes and other triggers for review of Operating Licence**

The SWCM Act<sup>36</sup> gives the Governor the power to amend the operating licence.

***The Tribunal seeks comments on whether the Operating Licence can be an instrument that evolves to meet changed circumstances and Government and community priorities.***

***The Tribunal invites views on how the licence should deal with the revision of MoUs, other standards in the licence and other plans such as the Regional Environment Plan.***

***The Tribunal seeks comments on how post audit recommendations from the Licence Regulator should be implemented and audited in subsequent years.***

***The Tribunal seeks comments as to the process for moving forward an interim target in the operating licence.***

#### **4.5.10 Actions and sanctions if licence obligations are not met**

The SWCM Act<sup>37</sup> provides for actions that may be taken by the Minister and Governor if the operating licence is contravened. It allows the Minister to serve a notice on the SCA requiring it to rectify the contravention within a specified period and for the Governor to determine monetary penalties. Section 30 of the SWCM Act provides the conditions under which the Governor may cancel the operating licence.

The Act allows for other functions to be conferred or imposed on the Licence Regulator by the operating licence.<sup>38</sup> Further, regulations may make provision for conferring other functions on the Licence Regulator (eg monitoring and reporting on the activities of public authorities in relation to the catchment areas).<sup>39</sup>

***The Tribunal seeks comments on the functions that may be conferred on the Licence Regulator through the operating licence.***

#### **4.5.11 Any other matters considered appropriate**

Treasury currently funds the Licence Regulator and the operating licence audit. In other industries, for example, for gas the cost of regulation is funded from the operating licence authorisation fee. If this were to occur for water then the operating licence would need to provide for such a fee.

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<sup>35</sup> Sydney Water Inquiry, Final Report Volume 1, p 26, Recommendation 72.

<sup>36</sup> Section 27 of the *Sydney Water Catchment Management Act 1998*.

<sup>37</sup> Section 29 of the *Sydney Water Catchment Management Act 1998*.

<sup>38</sup> Section 31(4) of the *Sydney Water Catchment Management Act 1998*.

<sup>39</sup> Section 31(2) of the *Sydney Water Catchment Management Act 1998*.

***The Tribunal invites comments on how the cost of regulation could be incorporated in the operating licence.***

As part its National Competition Policy, the Council of Australian Governments has adopted a strategic water reform framework.

***The Tribunal seeks views on whether the requirements under the COAG water reform framework should be included in the operating licence. If so, the Tribunal would appreciate comments on how this could be achieved.***

#### **4.6 Interaction of the operating licences for SCA and SWC**

Much of the relationship between SCA and SWC is dealt with under the arrangements entered into under Section 22 of the SWCM Act. However, there are a number of issues that may need to be addressed through the operating licences. For example, the relationship between SWC's demand management strategy and the supply of bulk water by the SCA.

***The Tribunal seeks comment on how the operating licence for SWC should deal with relationships with the SCA, not covered by the arrangements between them, and vice versa.***

## APPENDIX A: TERMS OF REFERENCE

### *Amended or substituted operating licence for Sydney Water Corporation (SWC)*

1. The Tribunal is requested, pursuant to section 9(1)(b) of the *Independent Pricing and Regulatory Tribunal Act 1992*, to draft the recommended terms of an amended or substituted operating licence for SWC, as provided for in the *Sydney Water Act 1994*.
2. The Tribunal should recommend the terms of the next SWC operating licence, including terms relating to:
  - a) the provision, construction, operation, management and maintenance of efficient, coordinated and commercially viable systems and services for supplying water, providing sewerage services and disposing of waste water;
  - b) the provision, construction, operation, management and maintenance of that part of the stormwater drainage system that is owned by SWC;
  - c) quality and performance standards in relation to water quality, service interruptions and pricing;
  - d) indicators of the direct impact of SWC's activities on the environment;
  - e) obligations in terms of clear customer service standards and guarantees;
  - f) obligations in terms of public health and environmental requirements;
  - g) actions and sanctions applying in the event that obligations are not met;
  - h) cost effective service provision;
  - i) provisions outlining the role of the Licence Regulator in auditing the licence;
  - j) the processes, timeframes and other triggers for review of the licence;
  - k) the requirement that the Memoranda of Understanding between SWC and its regulatory agencies include targets, timelines and review provisions and the specific requirement for the Licence Regulator to audit their contents; and
  - l) any other matters considered appropriate.
3. The Tribunal is not required to include any terms that amend, substitute or modify the provisions of the *Sydney Water Act 1994* in its recommendations for the amended or substituted operating licence.
4. The Tribunal is not required to include any terms modifying the area of operations of SWC in its recommendations for the amended or substituted operating licence.
5. When developing its recommendations for the operating licence terms, the Tribunal must consult with relevant Government agencies, the Licence Regulator, expert advisers, other interested persons and the general public.
6. The Tribunal must, when recommending the terms of the operating licence, consider:
  - a) the principal objectives of the SWC, as provided for in sections 21 and 22 of the *Sydney Water Act 1998*;
  - b) the findings, conclusions and recommendations of the Sydney Water Inquiry;
  - c) the regulatory environment in which SWC and the Sydney Catchment Authority operate;

- d) the financial management framework within which SWC and the Sydney Catchment Authority operate;
  - e) the impacts of quality and performance standards on the cost of service provision, and on the water supply arrangements with the Sydney Catchment Authority.
  - f) the terms of the operating licence for the Sydney Catchment Authority.
7. The Tribunal's recommended terms for SWC's operating licence must be provided by 30 September 1999.

### ***Operating licence for the Sydney Catchment Authority***

1. The Tribunal is requested, pursuant to section 9(1)(b) of the *Independent Pricing and Regulatory Tribunal Act 1992*, to recommend the terms of the operating licence for the Authority, as provided for in Part 4 Division 1 of the *Sydney Water Catchment Management Act 1998*.
2. The Tribunal should recommend the terms of the Authority's operating licence, including terms relating to:
  - a) the provision, construction, operation, management and maintenance of efficient and coordinated viable systems and services for supplying water;
  - b) quality and performance standards in relation to water quality, service interruptions and any other matters;
  - c) indicators of the ecological health of the catchment area (with particular reference to the vegetation cover, riparian zones and water quality), taking into account the matters being considered by the Healthy Rivers Commission's review of catchment health;
  - d) indicators of the impact of the Authority's activities on the environment;
  - e) environmental flows, having due regard to the matters to be included in the Authority's water management licence granted under Part 9 of the Water Act 1912;
  - f) obligations in terms of public health and environmental requirements;
  - g) actions and sanctions applying in the event that obligations are not met;
  - h) cost effective service provision;
  - i) provisions outlining the role of the Licence Regulator in auditing the licence;
  - j) the processes, timeframes and other triggers for review of the licence;
  - k) the requirement that the Memoranda of Understanding between the Authority and its regulatory agencies include targets, timelines and review provisions and the specific requirement for the Licence Regulator to audit their contents; and
  - l) any other matters considered appropriate.
3. The Tribunal is not required to include any terms modifying the area of operations of the Authority in its recommendations regarding the operating licence.

4. The Tribunal's recommendations must be developed following consultations with relevant Government agencies, the Licence Regulator, expert advisers, other interested persons and the general public.
5. The Tribunal must, when recommending the terms of the operating licence, consider:
  - a) the principal objectives of the Authority, as provided for in section 14 (1) of the *Sydney Water Catchment Management Act 1998*;
  - b) the findings, conclusions and recommendations of the Sydney Water Inquiry;
  - c) the regulatory environment in which the Authority and Sydney Water Corporation operate;
  - d) the financial management framework within which the Authority and Sydney Water Corporation operate;
  - e) the impact of quality and performance standards on the cost of service provision and on the water supply arrangements with the Sydney Water Corporation; and
  - f) the terms of the operating licence for Sydney Water Corporation.
6. The Tribunal's recommended terms for the Authority's operating licence must be provided by 30 September 1999.